



Town of Hilton Head Island
TOWN COUNCIL MEETING
Wednesday, November 4, 2020, 4:00 p.m.
AGENDA

In accordance the Town of Hilton Head Island Municipal Code § 2-5-15, this meeting is being conducted virtually and can be viewed on the Town's Facebook Page (<http://facebook.com/TownofHiltonHeadIslandSC>), or website (<https://www.hiltonheadislandsc.gov/>), as well as Hargray channels 9 & 113 and Spectrum channel 1304.

1. **Call to Order**
2. **FOIA Compliance:** Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.
3. **Pledge to the Flag**
4. **Invocation – Senior Pastor Neil M. Yongue, Jr. from St. Andrew By-The-Sea**
5. **Approval of Agenda**
6. **Approval of Minutes**
 - a. Special Meeting – October 13, 2020
 - b. Special Meeting – October 19, 2020
 - c. Special Meeting – October 20, 2020, 3:00 p.m.
 - d. Regular Meeting – October 20, 2020, 4:00 p.m.
7. **Report of the Town Manager**
 - a. Senator Tom Davis – U.S. 278 Gateway Corridor Project
 - b. Items of Interest
8. **Reports from Members of Council**
 - a. General Reports from Council
 - b. Report of the Intergovernmental Committee – Bill Harkins
 - c. Report of the Community Services & Public Safety Committee – Marc Grant
 - d. Report of the Public Planning Committee – David Ames
 - e. Report of the Finance & Administrative Committee – Tom Lennox
9. **Proclamations/Commendations – NONE**
10. **Appearance by Citizens**

*Citizens who wish to address Town Council during the meeting by phone must contact the Town Clerk at 843.341.4701 no later than **12:00 p.m. the day of the meeting**. Citizens speaking during the meeting will limit their comments to no longer than three (3) minutes and will conduct themselves in a manner appropriate to the decorum of the meeting, refraining from the use of profane, abusive, or obscene language.*

11. Unfinished Business

a. Second Reading of Proposed Ordinance 2020-25 – Workforce Housing Zoning Amendments

Second Reading of Proposed Ordinance 2020-25 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management (LMO), Chapters 2, 3, 4, 5, and 10. These Amendments, commonly referred to as *Workforce Housing LMO Amendments* as noticed in the Island Packet on July 19, 2020, include changes that add Workforce Housing as a permitted by condition use in certain Zoning Districts and created a Workforce Housing Program as described in Exhibit “A” to this Ordinance, and providing for severability and an effective date.

12. New Business

a. Discussion of the Independent Engineering Review of the U.S. 278 Gateway Corridor Project

b. First Reading of Proposed Ordinance 2020-29 – Dirt Road Paving Zoning Amendments

First Reading of Proposed Ordinance 2020-29 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance (LMO), Chapters 3 and 5. These Amendments, commonly referred to as *Dirt Road Paving LMO Amendments* as noticed in the Island Packet on September 13, 2020, include changes that create greater flexibility for properties that are located along a road paving program. These changes are as described in “Exhibit A” to this ordinance, and providing for severability and an effective date.

c. First Reading of Proposed Ordinance 2020-31 - Stormwater System Refunding Revenue Bonds

First Reading of Proposed Ordinance 2020-31 providing for the issuance and sale of not exceeding \$6,000,000 in aggregate principal amount of the Town of Hilton Head Island, South Carolina, Stormwater System Refunding Revenue Bonds, Series 2021, for the purpose of refinancing all or a portion of the Outstanding \$13,810,000 original principal amount of the Town of Hilton Head Island, South Carolina Stormwater System Refunding Revenue Bond, Series 2010, delegating the authority to the Town Manager to determine certain matters with respect to the Series 2021 Bonds; prescribing the form and details of such Bonds; other matters relating thereto; and providing for severability and an effective date.

d. Consideration of a Recommendation – Revised Standard POA/PUD Drainage Agreement

Consideration of a Recommendation approving the revised Standard Maintenance Drainage Agreement for Property Owners Associations (POA) and Planned Unit Developments (PUD).

e. Consideration of a Recommendation – Parking Master Plan

Consideration of a Recommendation to the Town Council accepting the Parking Master Plan report.

f. Consideration of the Proposed Designated Marketing Organization Agreement with the Hilton Head Island-Bluffton Chamber of Commerce.

13. Executive Session

a. Discussions regarding an economic development prospect

i. Project Cloud

14. Possible Actions by Town Council Concerning Matters Discussed in Executive Session

15. Adjournment

Public comments concerning agenda items can be submitted electronically via the Town's Virtual Town Hall portal (<https://hiltonheadislandsc.gov/opentownhall/>). The portal will close **2 hours prior to the start of the scheduled meeting**. All comments submitted to the portal will be provided to Town Council for review and made part of the official record.



Town of Hilton Head Island
TOWN COUNCIL
Tuesday, October 13, 2020 at 2:00 p.m.
SPECIAL MEETING MINUTES

Present from Town Council: John J. McCann, *Mayor*; David Ames, Tamara Becker, Marc Grant, Tom Lennox, Glenn Stanford, *Council Members*

Absent from Town Council: Bill Harkins, *Mayor Pro-Tempore*;

Present from Town Staff: Angie Stone, *Director of Human Resources*; Krista Wiedmeyer, *Exec. Assist/Town Clerk*

1. Call to Order

Mayor McCann called the meeting to order at 2:00 p.m.

2. FOIA Compliance: Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Approval of Agenda

Mr. Stanford moved to approve the agenda. Mr. Ames seconded. By way of roll call, the agenda was approved by a vote of 6-0, Mr. Harkins was absent.

4. Executive Session

Ms. Stone stated that an Executive Session was needed for contractual matters, discussion of negotiations incident to proposed contractual arrangements with Baenziger and Associates.

At 2:02 p.m., Mr. Stanford moved to go into Executive Session for the reasons described by Ms. Stone. Mr. Ames seconded. The motion was approved by a vote of 6-0.

5. Possible Actions by Town Council Concerning Matters Discussed in Executive Session

6. Adjournment

No action was taken as a result of the Executive Session. By unanimous vote, the meeting adjourned at 4:12 p.m.

Approved: November 4, 2020

Krista M. Wiedmeyer, Town Clerk

John J. McCann, Mayor



Town of Hilton Head Island

TOWN COUNCIL

Monday, October 19, 2020 at 2:00 p.m.

SPECIAL MEETING MINUTES

Present from Town Council: John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; David Ames, Tamara Becker, Marc Grant, Tom Lennox, Glenn Stanford, *Council Members*

Present from Town Staff: Angie Stone, *Director of Human Resources*; Krista Wiedmeyer, *Exec. Assist/Town Clerk*

1. Call to Order

Mayor McCann called the meeting to order at 2:00 p.m.

2. FOIA Compliance: Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Approval of Agenda

Mr. Ames moved to approve the agenda. Mr. Stanford seconded. By way of roll call, the agenda was approved by a vote of 7-0.

4. Executive Session

Ms. Stone stated that an Executive Session was needed for contractual matters, discussion of contractual arrangements related to the Executive Search Firm for the Town Manager search.

At 2:02 p.m., Mr. Harkins moved to go into Executive Session for the reasons described by Ms. Stone. Ms. Becker seconded. The motion was approved by a vote of 7-0.

5. Possible Actions by Town Council Concerning Matters Discussed in Executive Session

6. Adjournment

No action was taken as a result of the Executive Session. By unanimous vote, the meeting adjourned at 2:20 p.m.

Approved: November 4, 2020

Krista M. Wiedmeyer, Town Clerk

John J. McCann, Mayor



Town of Hilton Head Island
TOWN COUNCIL
Tuesday, October 20, 2020 at 3:00 p.m.
SPECIAL MEETING MINUTES

Present from Town Council: John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; David Ames, Tamara Becker, Marc Grant, Tom Lennox, Glenn Stanford, *Council Members*

Present from Town Staff: Steve Riley, *Town Manager*; Josh Gruber, *Assist. Town Manager*; Shawn Colin, *Director of Community Development*; John Troyer, *Finance Director*; Jennifer Ray, *Deputy Director of Community Development*; Krista Wiedmeyer, *Exec. Assist/Town Clerk*

1. Call to Order

Mayor McCann called the meeting to order at 3:00 p.m.

2. FOIA Compliance: Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Pledge to the Flag

4. Invocation – Pastor Kaleb Allen, Christian Renewal Church

Pastor Allen of Christian Renewal Church delivered the invocation.

5. Approval of Agenda

Mr. Harkins moved to approve the agenda. Mr. Stanford seconded. By way of roll call, the agenda was approved by a vote of 7-0.

6. Executive Session

Mr. Riley confirmed there was a need to enter into Executive Session for (a) Land Utilization: discussion of negotiations incident to the proposed sale, lease, or purchase of property.

At 3:02 p.m., Mr. Harkins moved to enter into Executive Session for the reasons stated by Mr. Riley. Mr. Stanford seconded. With no discussion, the motion was approved by a vote of 7-0.

7. Possible Actions by Town Council Concerning Matters Discussed in Executive Session

8. Adjournment

By unanimous vote, the meeting adjourned at 3:57 p.m.

Approved: November 4, 2020

Krista M. Wiedmeyer, Town Clerk

John J. McCann, Mayor



Town of Hilton Head Island
TOWN COUNCIL
Tuesday, October 20, 2020 at 4:00 p.m.
MEETING MINUTES

Present from Town Council: John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; David Ames, Tamara Becker, Marc Grant, Tom Lennox, Glenn Stanford, *Council Members*

Present from Town Staff: Steve Riley, *Town Manager*; Josh Gruber, *Assist. Town Manager*; Shawn Colin, *Director of Community Development*; John Troyer, *Finance Director*; Jennifer Ray, *Deputy Director of Community Development*; Teri Lewis, *Deputy Director of Community Development*; Nicole Dixon, *Development Review Administrator*; Krista Wiedmeyer, *Exec. Assist/Town Clerk*

1. Call to Order

Mayor McCann called the meeting to order at 4:03 p.m.

2. FOIA Compliance: Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Pledge to the Flag

4. Invocation – Pastor Kaleb Allen, Christian Renewal Church

Pastor Allen of Christian Renewal Church delivered the invocation.

5. Approval of Agenda

Mr. Harkins moved to approve the agenda. Mr. Stanford seconded. By way of roll call, the agenda was approved by a vote of 7-0.

6. Approval of Minutes

a. Regular Meeting, October 6, 2020

Mr. Harkins moved to approve all four sets of minutes. Mr. Stanford seconded. Mr. Stanford pointed out a mistake on the minutes under General Reports of Council, noting the committees he and Mr. Lennox reported on were reversed. By way of roll call, the minutes were approved as amended by Mr. Stanford by a vote of 7-0.

7. Report of the Town Manager

a. Hazard Mitigation Plan Annual Progress Report – Shari Mendrick, Floodplain Administrator

Ms. Mendrick explained that the Hazard Mitigation Plan required a progress report to the members of Council annual. She answered questions concerning the report as well as the upcoming flood plain changes.

b. Items of Interest

Mr. Gruber reported that the County Council met at their Public Facilities Committee meeting the day prior where they discussed the independent contractor's agreement. He stated that Senator Davis had submitted some comments regarding some additional changes he would like seen made to the scope of work for this agreement. Mr. Gruber said that the Committee received the request from Senator Davis favorably, asking County staff to update and amend the current proposed scope of work. He said that Town staff will continue to work with the County to obtain a copy of the proposed scope of work once it has been amended. Mr. Gruber said that additional information will be needed to make contact with the County's vendor regarding any changes to the cost and timeline as a result of any proposed changes. He stated that once that information is obtained, the matter would need to go before a committee of Town Council before ultimately moving it forward to County Council for approval.

7(b). Report of the Town Manager, Items of Interest (cont.)

Mayor McCann opened the matter up to a discussion by Council. The consensus was unanimous that the Town should have a joint roll and say in how this matter progresses. Most members echoed the statement that the Town seems to be taking a backseat to the County with regards to this matter. Mayor McCann said that there are many unanswered questions, and as such, he asked to table further discussion until after the County Council meets. He went on to say, it might be necessary to hold a special meeting for Council to continue the discussion.

After the conclusion of the previous discussion, Mr. Riley reviewed the Items of Interest and upcoming scheduled virtual meetings.

8. Reports from Members of Council

a. General Reports from Council

Mr. Ames reported that he had asked at the conclusion of October 19, 2020 Executive Session what would be reported to the public. He said that he was troubled when it was said that no action was taken. Mr. Ames said it seemed to him, at the very least, at the conclusion of meeting what was generally discussed. He said he felt there was news to be reported to the public regarding the consultant and the timing of the Town Manager search. Mr. Ames stated that the information was not confidential in the sense that someone's personal interests are being compromised, or specific negotiations. Mr. Ames said he felt, that the two items that came out of the discussion should be shared.

Mayor McCann said that he agreed with Mr. Ames. The Mayor went on to say that following a review and discussion with the Executive Recruiter Colin Baenziger regarding the process used to find a Town Manager and how that process might be adjusted during a new search, Mr. Baenziger indicated that his firm wished to withdraw from doing any additional work for the Town. There were no objections by the members of Town Council. Mayor McCann said based on a consensus of Council, the process for selecting a new Town Manager will be a topic of discussion at the January Town Council workshop and the search will likely resume thereafter. He said the additional item would need to be discussed during this meeting's Executive Session as Council would need to take action.

Ms. Becker said she was also concerned after the same meeting. She said she was expecting to see a news release, but never saw one. Ms. Becker said she felt it made sense that Council as a whole received information and can make decisions as a group. Ms. Becker said her concerns continue with the Summit Drive, ArborNature/DHEC permit. She said that a virtual Public Hearing was scheduled to take place, and hoped that all interested parties participated. Ms. Becker said she would like to know what the discussions are from the perspective of the Town, in terms of what the Town has as regulations and oversight to ensure the health and safety as it relates to water, the air, and what floats downstream. She said this is not the first time she asked this, and felt as a member of Council, she would like it if they all worked together and were informed of information. She went on to say that she would like to know what follow-up mechanism is in place for Council requests. Ms. Becker said that she saw reports that there were skywriting planes leaving advertised messages of the coastline. She said she would like to hear if anyone else knows about it.

Mr. Ames said that was the first he had heard of the skywriting, and that it is absolutely something that the Town should not be advocating or endorsing. He said thirty years ago there was some discussion about the same, and the Town Council said absolutely not.

Ms. Becker said that if there is a policy in place that action be taken, if there isn't a policy that this gets moved to the appropriate committee to work on a policy.

Mr. Riley said that it had been years since this had come up. He said that Hilton Head Airport does not allow the planes to fly out of their airport, but does not have control over other airports. Mr. Riley said that there have been some questions about what the Town's authority is and certain distances off the beach, but this will have to be reviewed.

Ms. Becker said there was a video and would forward it for review.

8. Reports from Members of Council (cont.)

b. Report of the Intergovernmental Committee – Bill Harkins

Mr. Harkins reported that the Committee would host the Island's Public Service Districts at an upcoming meeting to discuss the land purchase request on November 9, 2020, at 10:00 a.m.

c. Report of the Community Services & Public Safety Committee – Marc Grant

Mr. Grant stated that he did not have a report.

d. Report of the Public Planning Committee – David Ames

Mr. Ames reported that the Committee was going to delay the discussion of the Gullah Overlay proposal in order to give the Committee the time to review all the documentation with detail. He said that the public would be kept apprised of when the meeting would be rescheduled. Mr. Ames said there would be a Committee workshop on October 29, 2020 to discuss the Turtle Lighting ordinance.

e. Report of the Finance & Administrative Committee – Tom Lennox

Mr. Lennox stated that he did not have a report.

Mayor McCann closed out the reports from the members of Council by reminding everyone that the first meeting in December is picture day and swearing in day for new members of Council.

9. Proclamations/Commendations – NONE

10. Appearance by Citizens

Michael Arena and Keith Sledge addressed members of Town Council concerning the Burkes Beach on-street parking.

Merry Harlacher addressed the members of Town Council supporting for the proposed budget amendments.

Kim Likins and Sandy West addressed the members of Town Council opposing the proposed budget amendments.

11. Unfinished Business

a. Second Reading of Proposed Ordinance 2020-22 – Budget Amendments

Second Reading of Proposed Ordinance 2020-22 to amend the budget for the Town of Hilton Head Island, South Carolina, for the Fiscal Year ending June 30, 2021; to provide for the budgeted appropriations of prior year budget roll-forwards and certain other appropriations and commitments, and the expenditures of certain funds; to allocate the sources of revenue for the said funds; and provide for severability and an effective date.

Mr. Harkins moved to approve. Mr. Stanford seconded. Mr. Troyer addressed Council concerning the proposed budget amendments, specifically the funds requested from the Arts Center of Coastal Carolina and the Concours. He confirmed those particular funds would be coming from the General Fund, but are being funded through the Electric Franchise Fee to subsidize those grants, and the balance of that is approximately seven million dollars. A few members of Council stated that there should be a process in place for other organizations to submit a request for funding or grants from the Town. Mr. Ames stated that if there is an economic need, than the Town should help. Mayor McCann reminded Council that the Community Foundation of the Lowcountry has funding and grants available for nonprofit organizations. He also said, further on under the New Business, Council will be reviewing the amendments to the CDBG five year consolidated plan, which will allow more funding to go to the Community Foundation. Other members of Council said they supported the budget amendments as written. Mr. Lennox said that the Finance and Administrative Committee had reviewed these and moved them forward to Council. With no additional discussion, by way of roll call, the motion was approved by a vote of 5-2, Mr. Ames and Ms. Becker opposing.

11. Unfinished Business (cont.)

b. Second Reading of Proposed Ordinance 2020-24 – Our Plan 2020-2040 Comprehensive Plan

Second Reading of Proposed Ordinance 2020-24 to provide for the adoption of Our Plan, the Town of Hilton Head Island 2020-2040 Comprehensive Plan; and to provide for severability and an effective date.

Mr. Stanford moved to approve. Mr. Harkins seconded. Mayor McCann said he would like Council to consider approving the plan as a conceptual plan, making changes as needed as they review. He said, the Comp. Plan would be a primary topic of discussion at the workshop in January. Council was unanimous in giving their appreciation to staff and the community for their hard work. Mr. Ames requested that a workshop of Council be held to continue the discussion prior to the annual workshop in January. Mr. Lennox said, he felt like communication lacking to the community with regards to projects that were either in process or completed as a result of the previous Comp. Plan. He said, the Town needs to ensure or do a better job communicating to the community. Mr. Stanford said, he doesn't view the document as a commitment to an action. He said, he looks at it as a conceptual document as there are several action steps contained within the document. Prior to taking the vote, Mr. Ames asked the Mayor to confirm he would look into having a separate workshop before the formal annual workshop in January. The Mayor said he would look into it. By way of roll call, the motion was approved by a vote of 7-0.

12. New Business

a. Consideration of a Resolution – Dissolving the Our Plan Development Team

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, to dissolve the Our Plan Development Team.

Mr. Harkins moved to approve. Mr. Stanford seconded. With no discussion, by way of roll call the motion was approved by a vote of 7-0.

b. Consideration of a Resolution – Community Development Block Grant Entitlement Program Five Year Consolidated Plan Substantial Amendment

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina to approve the Community Development Block Grant (CDBG) Entitlement Program Five Year Consolidated Plan (2020-2024) substantial amendment.

Mr. Harkins moved to approve. Mr. Stanford seconded. Council asked for communication which will show how the Community Foundation is allocating their funds. Mr. Riley confirmed that he would request staff to prepare the appropriate communications and get that out to Council. With no further discussion, the motion was approved by a vote of 7-0.

c. Consideration of a Recommendation – Revised Standard POA/PUD Drainage Agreement

Consideration of a Recommendation approving the revised Standard Maintenance Drainage Agreement for Property Owners Associations (POA) and Planned Unit Developments (PUD).

Mayor McCann asked Mr. Riley for an overview of what this agreement was and what it was for. Mr. Riley said, in 2018 staff had been charged with reviewing the terms of all the current agreements and drafting language for a new agreement. He said staff has been working with the PUD representatives to revise and include as much of their feedback as possible. After review from the Town Attorney, the agreement before Council is the final draft. After some discussion from the members of Council about the agreement; Mr. Harkins moved to postpone Council's review of the agreement until the November 4, 2020 Town Council meeting. Mr. Stanford seconded. With no further discussion, by way of roll call, the motion to postpone was approved by a vote of 7-0.

12. New Business (cont.)

d. Discussion of the On-Street Parking on Burkes Beach Road

Town Council had a robust discussion concerning this matter. The consensus from the members was that opening the on-street parking back up would not be the right thing, in terms of safety. As such, Mayor McCann made a motion to close off the parking. Ms. Becker seconded. By way of roll call, the motion was approved by a vote of 7-0.

13. Executive Session

Mr. Riley confirmed there was a need to enter into Executive Session for (a) Land Acquisition: discussion of negotiations incident to the proposed sale, lease, or purchase of property in the Palmetto Bay Road area; and (b) Contractual Matters: discussions of proposed contractual matters related to the search for a Town Manager, including securing the services of an Interim Town Manager.

At 5:42 p.m., Mr. Harkins moved to enter into Executive Session for the reasons stated by Mr. Riley. Mr. Stanford seconded. With no discussion, the motion was approved by a vote of 7-0.

14. Possible Actions by Town Council Concerning Matters Discussed in Executive Session

At 6:07 p.m. Council returned from Executive Session.

Mr. Riley stated that he would need a motion to authorize the Mayor to negotiate an agreement with Joshua A. Gruber to serve as the Interim Town Manager and to return to Town Council for action.

Mr. Harkins moved to approve. Mr. Stanford seconded. With no further discussion, the motion was approved by a vote of 7-0.

15. Adjournment

By unanimous vote, the meeting adjourned at 6:08 p.m.

Approved: November 4, 2020

Krista M. Wiedmeyer, Town Clerk

John J. McCann, Mayor



Items of Interest

November 4, 2020

Town News

- ◆ On October 21st, Fire Rescue conducted the first Fire in the Streets program in 2020. This was first time the event was held using appointments due to COVID-19. Hang tags were placed in areas along Squire Pope and Wild Horse including Cobia Court, Murray Ave, Bilgen Lane and Sunday Ford about two weeks prior to the 21st with dates and times for citizens to sign up for the event. In all, Fire Rescue installed 27 smoke alarms and changed 8 batteries while also providing information on home fire safety. This demonstrates the departments continued effort to serve our community and protect citizens during the COVID-19 Pandemic.
- ◆ In observance of Veterans Day, the Town Administrative Offices will be closed Wednesday, November 11, 2020.

Town Meetings

- ◆ Accommodations Tax Advisory Committee – Thursday, November 5, 2020, 9:00 a.m.
- ◆ Design Review Board – Tuesday, November 10, 2020, 1:15 p.m.
- ◆ Parks & Recreation Commission – Thursday, November 12, 2020, 3:30 p.m.
- ◆ Town Council – Tuesday, November 17, 2020, 4:00 p.m.

Currently all public meetings are being conducted virtually. The dates and times listed above are subject to change. For a complete list of meetings please visit the Town's website (www.hiltonheadislandsc.gov).



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, ICMA~CM, *Town Manager*
VIA: Shawn Colin, AICP, *Director of Community Development*
VIA: Jennifer Ray, ASLA, *Deputy Director of Community Development*
FROM: Jayme Lopko, AICP, *Senior Planner*
CC: Teri Lewis, AICP, *Deputy Director of Community Development*
DATE: October 22, 2020
SUBJECT: Proposed Ordinance 2020-25 - Workforce Housing LMO Amendments

Town Council reviewed Proposed Ordinance 2020-25 regarding Workforce Housing LMO Amendments at their October 6, 2020 meeting. At that meeting, Town Council voted unanimously to adopt the amendments related to Commercial Conversion, further recommending that Town Council not adopt the amendments related to bonus density at this time.

Per State Code Section 6-29-760, if Town Council recommends a change to a proposed text amendment after the public hearing, then that text amendment must be reviewed again by the Planning Commission before the change can be adopted by Town Council. The changes proposed by Town Council to remove amendments related to bonus density were required to go back to the Planning Commission for their review and comment.

Planning Commission met on October 21, 2020 and unanimously recommended that Town Council adopt the amendments related to Commercial Conversion. Planning Commission also recommends that Town Council consider allowing bonus density in the Opportunity Zone and Palmetto Bay Road areas.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2020-##

PROPOSED ORDINANCE NO. 2020-25

AN ORDINANCE TO AMEND TITLE 16 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THE LAND MANAGEMENT ORDINANCE (LMO), CHAPTERS 2, 3, 4, 5, AND 10. THESE AMENDMENTS, COMMONLY REFERRED TO AS *WORKFORCE HOUSING LMO AMENDMENTS* AS NOTICED IN THE ISLAND PACKET ON *JULY 19, 2020*, INCLUDE CHANGES THAT ADD WORKFORCE HOUSING AS A PERMITTED BY CONDITION USE IN CERTAIN ZONING DISTRICTS AND CREATES A WORKFORCE HOUSING PROGRAM AS DESCRIBED IN EXHIBIT “A” TO THIS ORDINANCE, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on October 7, 2014, the Town Council did adopt a new Land Management Ordinance (LMO); and

WHEREAS, Town Council identified Workforce Availability, including Workforce Housing, as a Key 2018 Town Council Priority; and

WHEREAS, on November 5, 2019, Town Council accepted the Workforce Housing Strategic Plan prepared by Lisa Sturtevant & Associates, LLC and approved a policy framework for a workforce housing program on the island; and

WHEREAS, on December 19, 2019, Town staff met with the Public Planning Committee to develop criteria to identify areas of the island to target for workforce housing initiatives; and

WHEREAS, from time to time it is necessary to amend the LMO; and

WHEREAS, the LMO Committee held public meetings on February 6, 2020 and August 11, 2020 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed amendments; and

WHEREAS, the LMO Committee recommended that the proposed amendments be forwarded to the Planning Commission with a recommendation of approval; and

WHEREAS, the Planning Commission held a public hearing on August 19, 2020 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed LMO amendments; and

WHEREAS, after consideration of the Staff presentation and public comments the Planning Commission voted 8-0 to forward the proposed amendments to the Public Planning Committee with a recommendation of approval; and

WHEREAS, the Public Planning Committee held a public meeting on August 27, 2020 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed LMO amendments; and

WHEREAS, after consideration of the Staff presentation and public comments, the Public Planning Committee voted 2-1 to recommend approval of the proposed LMO amendments; and

WHEREAS, after due consideration of said LMO amendments and the recommendations of the Planning Commission and Public Planning Committee, the Town Council, upon further review, finds it is in the public interest to approve the proposed amendments.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:

Section 1. Amendment. That the *Workforce Housing LMO Amendments* are adopted and the Land Management Ordinance is amended as shown on Exhibit “A” to this Ordinance. Newly added language is illustrated with double underline and deleted language is illustrated with ~~strikethrough~~.

Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____, 2020.

THE TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

John McCann, Mayor

ATTEST:

Krista Wiedmeyer, Town Clerk

Public Hearing: August 19, 2020
First Reading: October 6, 2020
Second Reading: November 4, 2020

APPROVED AS TO FORM:

Curtis L. Coltrane, Town Attorney

Introduced by Council Member: _____

Exhibit A

Workforce Housing LMO Amendments

Chapter 16-2: Administration

Section 16-2-103.G.2.b Development Plan Review (Minor or Major)

2. Applicability

b. Minor or Major Development Plans

There are two types of Development Plans: Minor and Major.

- i. Approval of a Minor Development Plan is required for the following types of development, provided the development does not involve any wetland alteration:
 01. Accessory uses and structures;
 02. Temporary uses and structures, including temporary construction storage and staging; and
 03. Any other development that does not involve construction of a new building or addition, such as parking lot changes, new pools or decks, recreation fields or courts, or changes in general site design.
 04. Any nonresidential structure(s) that is converted to mixed-use or multifamily.
- ii. Approval of a Major Development Plan is required for all other development subject to Development Plan Review.

Chapter 16-3: Zoning Districts

Section 16-3-105. Mixed-Use and Business Districts

Section 16-3-105.B Coligny Resort (CR) District, Section 16-3-105.G Marshfront (MF) District, Section 16-3-105.J Neighborhood Commercial (NC) District, and Section 16-3-105.L Resort Development (RD) District

2. Allowable Principal Uses				
USE CLASSIFICATION/TYPE		USE SPECIFIC CONDITIONS	MINIMUM NUMBER OF OFF STREET PARKING SPACES	
Residential Uses				
<i>Mixed-Use</i>	PC	<u>Sec. 16-4-102.B.1.a</u>	Residential	1.125 per du
			Nonresidential	1 per 650 GFA
3. Development Form Standards				
MAX. DENSITY (PER NET ACRE)			LOT COVERAGE	
Residential ²				
TABLE NOTES:				
P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = <i>dwelling units</i> ; sf = square feet; GFA = <i>gross floor area</i> in square feet; ft = feet; n/a = not applicable				
<u>2. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.</u>				

Exhibit A

Workforce Housing LMO Amendments

Section 16-3-105.C Community Commercial (CC) District

2. Allowable Principal Uses				
USE CLASSIFICATION/TYPE		USE SPECIFIC CONDITIONS	MINIMUM NUMBER OF OFF STREET PARKING SPACES	
Residential Uses				
<u>Mixed-Use</u> ³	PC	Sec. 16-4-102.B.1.a	Residential	1.125 per du
			Nonresidential	1 per 650 GFA
<u>Multifamily</u> ³	PC	Sec. 16-4-102.B.1.b	1 bedroom	1.4 per du
			2 bedrooms	1.7 per du
			3 or more bedrooms	2.0 per du
<u>Workforce Housing</u>	PC	Sec 16-4-102.B.1.d	See Sec. 16-5-107.D.2	
3. Development Form Standards				
MAX. DENSITY (PER NET ACRE)			LOT COVERAGE	
<u>Residential</u> ²				
TABLE NOTES:				
P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = dwelling units ; sf = square feet; GFA = gross floor area in square feet; ft = feet; n/a = not applicable				
2. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.				
3 The minimum number of off-street parking spaces for mixed-use or multifamily development that contains workforce housing shall be calculated based on Section 16-5-107.D.2.				

Section 16-3-105.D Light Commercial (LC) District, Section 16-3-105.F Main Street (MS) District, Section 16-3-105.M and Sea Pines Circle (SPC) District

2. Allowable Principal Uses				
USE CLASSIFICATION/TYPE		USE SPECIFIC CONDITIONS	MINIMUM NUMBER OF OFF STREET PARKING SPACES	
Residential Uses				
<u>Mixed-Use</u> ³	PC	Sec. 16-4-102.B.1.a	Residential	1.125 per du
			Nonresidential	1 per 650 GFA
<u>Workforce Housing</u>	PC	Sec 16-4-102.B.1.d	See Sec. 16-5-107.D.2	
3. Development Form Standards				
MAX. DENSITY (PER NET ACRE)			LOT COVERAGE	
<u>Residential</u> ²				
TABLE NOTES:				
P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = dwelling units ; sf = square feet; GFA = gross floor area in square feet; ft = feet; n/a = not applicable				
2. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.				
3. The minimum number of off-street parking spaces for mixed-use development that contains workforce housing shall be calculated based on Section 16-5-107.D.2.				

Exhibit A

Workforce Housing LMO Amendments

Section 16-3-105.H Medical (MED) District

2. Allowable Principal Uses				
USE CLASSIFICATION/TYPE		USE SPECIFIC CONDITIONS	MINIMUM NUMBER OF OFF STREET PARKING SPACES	
Residential Uses				
<u>Mixed-Use</u> ³	PC	Sec. 16-4-102.B.1.a	Residential	1.125 per du
			Nonresidential	1 per 650 GFA
<u>Multifamily</u> ³	PC	Sec. 16-4-102.B.1.b	1 bedroom	1.4 per du
			2 bedrooms	1.7 per du
			3 or more bedrooms	2.0 per du
<u>Workforce Housing</u>	PC	Sec 16-4-102.B.1.d	See Sec. 16-5-107.D.2	
3. Development Form Standards				
MAX. DENSITY (PER NET ACRE)			LOT COVERAGE	
<u>Residential</u> ²				
TABLE NOTES:				
P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = dwelling units ; sf = square feet; GFA = gross floor area in square feet; ft = feet; n/a = not applicable				
<u>2. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.</u>				
<u>3. The minimum number of off-street parking spaces for mixed-use or multifamily development that contains workforce housing shall be calculated based on Section 16-5-107.D.2.</u>				

Section 16-3-105.I Mitchelville (MV) District

2. Allowable Principal Uses				
USE CLASSIFICATION/TYPE		USE SPECIFIC CONDITIONS	MINIMUM NUMBER OF OFF STREET PARKING SPACES	
Residential Uses				
<u>Mixed-Use</u> ²	PC	Sec. 16-4-102.B.1.a	Residential	1.125 per du
			Nonresidential	1 per 650 GFA
<u>Workforce Housing</u>	PC	Sec 16-4-102.B.1.d	See Sec. 16-5-107.D.2	
3. Development Form Standards				
MAX. DENSITY (PER NET ACRE)			LOT COVERAGE	
<u>Residential</u> ¹				
TABLE NOTES:				
P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = dwelling units ; sf = square feet; GFA = gross floor area in square feet; ft = feet; n/a = not applicable				
<u>1. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.</u>				
<u>2. The minimum number of off-street parking spaces for mixed-use development that contains workforce housing shall be calculated based on Section 16-5-107.D.2.</u>				

Exhibit A

Workforce Housing LMO Amendments

Section 16-3-105.K Planned Development Mixed Use (PD-1) District

3. Principal Uses Restricted by Master Plan			
The Master Plans and associated text, as approved and amended by the Town, establish general permitted uses for the respective PUDs, except as may be modified by an overlay zoning district. Undesignated areas on these Master Plans shall be considered as <i>open space</i> . The following uses are restricted to locations where a Town-approved Master Plan or associated text specifically states such uses are permitted. In addition, the use-specific conditions referenced below shall apply to any new such use or change to the site for any existing such use.			
USE CLASSIFICATION/TYPE		USE SPECIFIC CONDITIONS	MINIMUM NUMBER OF OFF STREET PARKING SPACES
Residential Uses			
<u>Mixed-Use</u>	PC	<u>Sec. 16-4-102.B.1.a</u>	<u>See Sec. 16-5-107.D.2</u>
<u>Workforce Housing</u>	PC	<u>Sec 16-4-102.B.1.d</u>	<u>See Sec. 16-5-107.D.2</u>
4. Development Area Densities			
MAX. DENSITY (PER NET ACRE)			LOT COVERAGE
Residential ¹			
TABLE NOTES:			
P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = dwelling units ; sf = square feet; GFA = gross floor area in square feet; ft = feet; n/a = not applicable			
<u>1. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.</u>			

Section 16-3-105.O Waterfront Mixed-Use (WMU) District

2. Allowable Principal Uses			
USE CLASSIFICATION/TYPE		USE SPECIFIC CONDITIONS	MINIMUM NUMBER OF OFF STREET PARKING SPACES
Residential Uses			
<u>Mixed-Use</u> ⁴	PC	<u>Sec. 16-4-102.B.1.a</u>	Residential
			Nonresidential
<u>Workforce Housing</u>	PC	<u>Sec 16-4-102.B.1.d</u>	<u>See Sec. 16-5-107.D.2</u>
			1.125 per du
			1 per 650 GFA
3. Development Form Standards			
MAX. DENSITY (PER NET ACRE)			LOT COVERAGE
Residential ³			
TABLE NOTES:			
P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = dwelling units ; sf = square feet; GFA = gross floor area in square feet; ft = feet; n/a = not applicable			
<u>3. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.</u>			
<u>4. The minimum number of off-street parking spaces for mixed-use development that contains workforce housing shall be calculated based on Section 16-5-107.D.2.</u>			

Exhibit A

Workforce Housing LMO Amendments

Section 16-3-105.N Stoney (S) District

2. Allowable Principal Uses				
USE CLASSIFICATION/TYPE		USE SPECIFIC CONDITIONS	MINIMUM NUMBER OF OFF STREET PARKING SPACES	
Residential Uses				
<u>Mixed-Use</u> ²	PC	Sec. 16-4-102.B.1.a	Residential	1.125 per du
			Nonresidential	1 per 650 GFA
<u>Workforce Housing</u>	PC	Sec 16-4-102.B.1.d	See Sec. 16-5-107.D.2	
3. Development Form Standards				
MAX. DENSITY (PER NET ACRE)			LOT COVERAGE	
Residential ²				
TABLE NOTES:				
P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = dwelling units ; sf = square feet; GFA = gross floor area in square feet; ft = feet; n/a = not applicable				
2. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.				
3. The minimum number of off-street parking spaces for mixed-use development that contains workforce housing shall be calculated based on Section 16-5-107.D.2.				

Chapter 16-4: Use Standards

TABLE 16 4 102.A.6: PRINCIPAL USE TABLE																				
P Permitted by Right		PC Permitted Subject to Use Specific Conditions																		
SE Allowed as a Special Exception		Blank Cell = Prohibited																		
USE CLASSIFICATION/ USE TYPE	SPECIAL DISTRICTS		RESIDENTIAL DISTRICTS						MIXED USE AND BUSINESS DISTRICTS										USE SPECIFIC CONDITIONS	
	CON	PR	RSF 3	RSF 5	RSF 6	RM 4	RM 8	RM 12	CR	SP	CC	MS	WMUS	MF	MV	NC	LC	RD		M ED
RESIDENTIAL USES																				
Mixed-Use									PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	Sec. 16-4-102.B.1.a
Multifamily							P	P	P	PC	P	PC	P	P	P	P	P	P	P	Sec. 16-4-102.B.1.b
<u>Workforce Housing</u>										PC	PC	PC	PC	PC			PC	PC		Sec 16-4-102.B.1.d

Exhibit A

Workforce Housing LMO Amendments

B. Use-Specific Conditions for Principal Uses

1. Residential Uses

Section 16-4-102.B.1.a

a. Mixed-Use

- i. Mixed-use development shall designate separate parking spaces for use by the residential units. The parking spaces designated for residential use shall not be included as part of a shared parking plan.
- ii. In the CR District, there shall be no dwelling units located on the first floor of any mixed-use development unless there are commercial services uses located between the street and the proposed dwelling units.
- iii. The density for the redevelopment/conversion of an existing nonresidential structure to mixed-use shall be based on the existing gross floor area and minimum unit sizes as described in Sec. 16-10-102.B.1.
- iv. Mixed-use development that includes workforce housing shall comply with the Workforce Housing Program as outlined in Sec. 16-4-105.

Section 16-4-102.B.1.b

b. Multifamily

- i. In the CR District, there shall be no dwelling units located on the first floor of any multifamily development unless there are commercial services uses located between the street and the proposed dwelling units.
- ii. Multifamily use in the CC and MED Districts shall only be permitted as part of a commercial conversion that includes WFH per Sec. 16-10-102.B.1.
- iii. Multifamily development that includes workforce housing shall comply with the Workforce Housing Program as outlined in Sec. 16-4-105.

Section 16-4-102.B.1.d

d. Workforce Housing

- i. Any development that includes workforce housing shall comply with the Workforce Housing Program as outlined in Sec. 16-4-105.
- ii. Workforce housing may be permitted in the PD-1 District through a Zoning Map Amendment in accordance with Sec. 16-2-103.C.
- iii. In the MS District, properties developed for WFH shall not be permitted on properties currently utilized as a school or fire station.

Exhibit A

Workforce Housing LMO Amendments

- iv. In the S District, properties developed for WFH shall not have vehicular access to U.S. Route 278 (William Hilton Parkway).
- v. In the WMU District, properties developed for WFH shall not have vehicular access to Marshland Road.
- vi. In the LC District, properties developed for WFH shall not have vehicular access to U.S. Route 278 (William Hilton Parkway) between Wexford Drive and Singleton Beach Road.

Section 16-4-105. Workforce Housing (WFH) Program

A. Workforce Housing Density

All Units:

- 1. Commercial conversion projects that include at least 20% workforce housing units will be eligible for incentives as described in Sec. 16-10-102B.1, including:
 - a. A reduction in minimum unit sizes by 30% and;
 - b. Up to 50% of the units in the development may be micro-efficiency and/or studio units.

B. Standards for Workforce Housing Units

All Units:

- 1. For development that contains both market-rate and workforce housing units, the workforce units shall be mixed with, and not clustered together or segregated in any way from, market-rate units. If the development contains a phasing plan, the phasing plan shall provide for the development of workforce units concurrently with the market-rate units.
- 2. The workforce housing units shall include a range of unit sizes, based on the number of bedrooms, which are comparable to units in the overall development.
- 3. The exterior appearance of workforce housing units must be compatible and comparable with the rest of the units in the development by providing similar architectural style and similar exterior building materials, finishes, and quality of construction.
- 4. Prior to the issuance of a building permit for any units in a workforce housing development, the applicant shall execute any and all documents required by the Town, including, without limitation, restrictive covenants, deed restrictions, and related instruments to ensure affordability of workforce housing units in accordance with this Section.

Owner-occupied Units:

- 1. Developers shall enter into a Workforce Housing Agreement with the Town of Hilton Head Island, or its designee. Following execution of the agreement by all parties, the

Exhibit A

Workforce Housing LMO Amendments

- completed Workforce Housing Agreement, or memorandum thereof, shall be recorded and the conditions therefrom filed and recorded on the parcel or parcels designated for the construction of workforce housing units. The Workforce Housing Agreement shall be binding to all future owners and successors in interest. The agreement shall be in a form reviewed and approved by the Administrator.
- a. The agreement, at a minimum, shall establish the number of workforce housing units including their square footage, number of bedrooms, and location within the development. The agreement will also include terms and conditions of affordability, resale provisions, and other standards as set forth in Sec. 16-4-105.
 - b. Owner-occupied workforce housing units that are provided under Sec. 16-4-105 are subject to a Workforce Housing Agreement and shall remain as workforce housing for a minimum of 30 years from the date of initial certificate of occupancy.
 - c. A certificate of occupancy will not be issued until complete certified and recorded copies of the Workforce Housing Agreement have been provided to the Town.
2. Restrictive covenants for workforce housing units subject to the provisions of Sec. 16-4-105 shall be filed that require compliance with the following:
- a. Owner-occupied workforce housing units shall only be sold to households earning 80 to 100% of the most recently published HUD area median income (AMI) for Beaufort County.
 - b. Owner-occupied workforce housing units shall remain in the WFH Program for a minimum of 30 years from the date of the initial certificate of occupancy.
 - c. Prior to the sale of an owner-occupied workforce housing unit, the Town, or its designee, shall be notified of the owner's intent to place the unit for sale and a Certificate of Eligibility (COE) shall be submitted by the potential buyer.
 - d. The workforce housing unit may be subject to a homeowners association (HOA). HOA dues for workforce housing units shall be a maximum of 75% of the HOA dues owed by market-rate unit owners.

Rental Units:

1. The Town will not issue a certificate of occupancy for any building that contains both market-rate and workforce housing rental units unless the development has complied with the workforce housing provisions as outlined in this Section.
2. The designation of a rental workforce housing unit is not required to stay with the same unit over the 30 year affordability period so long as the minimum number and type of workforce units are provided within the development.
3. Developers shall enter into a Workforce Housing Agreement with the Town of Hilton Head Island, or its designee. Following execution of the agreement by all parties, the completed Workforce Housing Agreement, or memorandum thereof, shall be

Exhibit A

Workforce Housing LMO Amendments

recorded and the conditions therefrom filed and recorded on the parcel or parcels designated for the construction of workforce housing units. The Workforce Housing Agreement shall be binding to all future owners and successors in interest. The agreement shall be in a form reviewed and approved by the Administrator.

- a. The agreement, at a minimum, shall establish the number of workforce housing units including their square footage, number of bedrooms, and location within the development. The agreement will also include terms and conditions of affordability, rental rate provisions, and other standards as set forth in Sec. 16-4-105.
 - b. The agreement shall include a provision requiring the owner(s) of rental workforce housing units to submit annually a sworn affidavit to the Town, or its designee, certifying that the rental rate(s) meets the requirements of Sec. 16-4-105.F.
 - c. Rental workforce housing units that are provided under Sec. 16-4-105 are subject to a Workforce Housing Agreement and shall remain as workforce housing for a minimum of 30 years from the date of initial certificate of occupancy.
 - d. A certificate of occupancy will not be issued until complete certified and recorded copies of the Workforce Housing Agreement have been provided to the Town.
4. Restrictive covenants for workforce housing units subject to the provisions of Sec. 16-4-105 shall be filed that require compliance with the following:
- a. Rental workforce housing units shall only be rented to households earning 60 to 80% of the most recently published HUD AMI for Beaufort County.
 - b. Rental workforce housing units shall remain in the WFH Program for a minimum of 30 years from the date of the initial certificate of occupancy.
 - c. Rental workforce housing units shall not be occupied for a period less than 90 days.

C. Workforce Housing Income and Employment Regulations

All Units

1. Eligible households shall meet the income requirements of this Section and have at least one person who is employed by a lawfully licensed business located within the Town of Hilton Head Island.

Owner-occupied Units:

1. The eligibility of a household for a potential owner-occupied workforce housing unit shall be determined upon submittal of a Certificate of Eligibility (COE) to the Town, or its designee, verifying that the applicable income and employment regulations of this Section are met.
2. Per Sec. 16-8-102, failure to submit the required documentation prior to change in ownership shall constitute a violation of the restrictive covenants, the conditions of

Exhibit A

Workforce Housing LMO Amendments

the certificate of occupancy, and this Section, and is subject to code enforcement action by the Town per Sec. 16-8-106.

3. Failure to submit the required documentation prior to change in ownership shall be considered a breach of the restrictive covenants, conditions, and restrictions set forth in the Section and the Town shall be entitled to seek such remedies as may be available by law.

Rental Units:

1. The property owner, or their designee, of a workforce housing unit shall upon lease renewal, but not less than annually, submit a COE to the Town, or its designee, verifying that the applicable income and employment regulations of this Section are met by all households occupying said workforce housing unit(s).
2. Upon lease renewal, eligible households shall include at least one person that is employed ten out of twelve months each year by a lawfully licensed business located within the Town of Hilton Head Island.
3. Per Sec. 16-8-102, failure to submit the required verification shall constitute a violation of the restrictive covenants, the conditions of the certificate of occupancy, and this Section, and is subject to code enforcement action by the Town per Sec. 16-8-106.
4. Failure to submit the required verification shall be considered a breach of the restrictive covenants, conditions, and restrictions set forth in the Section and the Town shall be entitled to seek such remedies as may be available by law.

D. Occupancy and Eligibility Requirements

Owner-occupied Units:

1. The household shall occupy the workforce housing unit as their sole residence.
 - a. If at any time the household no longer occupies the unit as their sole residence, the unit shall be sold.
2. Eligible households shall have an annual household income between 80 and 100% of the most recently published HUD AMI for Beaufort County.
3. Households must be eligible to purchase workforce housing units and obtain the appropriate COE from the Town, or its designee. A sales contract may not be executed before the household receives the COE.

Rental Units:

1. The household shall occupy the workforce housing unit as their sole residence.
2. Eligible households shall have an annual household income between 60 and 80% of the most recently published HUD AMI for Beaufort County.

Exhibit A

Workforce Housing LMO Amendments

3. Households must be eligible to rent workforce housing units and obtain the appropriate COE from the Town, or its designee. A rental agreement may not be executed before the household receives the COE.
 - a. A COE must be renewed prior to the anniversary of a lease renewal. A lease shall not be renewed unless the entire development meets the eligibility requirements outlined in this Section.
 - b. The owner of the rental unit(s) shall be required to submit a sworn affidavit on an annual basis to the Town or its designee, certifying that the workforce housing unit rental rate(s) meets the requirements of Sec. 16-4-105.F.1.
 - c. Per Sec. 16-8-102, occupancy of a rental unit not consistent with this Section shall constitute a violation and is subject to code enforcement action by the Town per Sec. 16-8-106.
 - d. Occupancy of a rental unit not consistent with this Section shall be considered a breach of the restrictive covenants, conditions, and restrictions set forth in the Section and the Town shall be entitled to seek such remedies as may be available by law.

E. Workforce Housing Sale & Resale Price

Owner-occupied Units:

1. The initial sale price of a workforce housing unit shall be determined by the most recently published HUD annual household income limits.
2. The resale price of a workforce housing unit shall not exceed the initial purchase price paid by the owner of the unit with the following exceptions:
 - a. Customary closing costs and costs of sale;
 - b. Costs of real estate commissions paid by the seller if a licensed real estate salesperson is employed;
 - c. Consideration of permanent capital improvements installed by the seller; and
 - d. An inflation factor, based on Consumer Product Index, to be applied to the initial sale price of the unit.
3. All restrictions affecting the workforce housing unit shall be recorded in the deed at the time of initial sale or conveyance and in any future sales or conveyances of the unit.
4. Resale of workforce housing units shall be limited by deed restriction to a purchaser who meets the requirements of 16-4-105.D during the affordability period of the unit.

E. Workforce Housing Rental Rates

Rental Units:

Exhibit A

Workforce Housing LMO Amendments

1. Maximum monthly rental rates for workforce housing shall be calculated using 80% of the most recently published HUD AMI for Beaufort County, multiplying by 30% and dividing by 12.
2. Rental rates shall remain consistent throughout the term of the lease.

Chapter 16-5: Development and Design Standards

Section 16-5-107. Parking and Loading Standards

D. Parking Space Requirements

1. Minimum Number of Parking Spaces

TABLE 16 5 107.D.1: MINIMUM NUMBER OF PARKING SPACES		
USE CATEGORY/USE TYPE	MINIMUM NUMBER OF PARKING SPACES ^{1,2,3,4}	
	CR DISTRICT	ALL OTHER DISTRICTS
RESIDENTIAL USES		
<u>Workforce Housing*</u>	<u>See Sec. 16-5-107.D.2</u>	<u>See Sec. 16-5-107.D.2</u>

*This includes Mixed-Use and Multifamily developments containing workforce housing units.

Chapter 10: Definitions, Interpretation and Measurement

Section 16-10-102. – Rules of Measurement

B. Density

1. Commercial Conversion

For conversion of non-residential square footage (commercial conversion) to residential or mixed-use development, density shall be based on the existing gross floor area and the minimum unit sizes established below:

Minimum Unit Sizes

<u>Unit Type</u>	<u>Market-Rate Conversion Minimum Unit Size</u>	<u>Workforce Housing Conversion Minimum Unit Size</u>
<u>Micro Efficiency</u>	<u>NA</u>	<u>280 square feet</u>
<u>Studio</u>	<u>NA</u>	<u>400 square feet</u>

Exhibit A

Workforce Housing LMO Amendments

<u>1-bedroom</u>	<u>800 square feet</u>	<u>560 square feet</u>
<u>2-bedroom</u>	<u>1,075 square feet</u>	<u>750 square feet</u>
<u>3-bedroom</u>	<u>1,330 square feet</u>	<u>930 square feet</u>

- 2. Density
- 3. Gross Floor Area
- 4. Net Acre

Section 16-10-103. - Use Classifications, Use Types, and Definitions

A. Residential Uses

1. Description

The Residential Uses classification is primarily characterized by the residential occupancy of a dwelling unit by a household. Such household living uses include single-family dwellings and multifamily dwellings (triplexes and other multifamily development, including townhouse development). The Residential Uses classification also includes group living uses (the residential occupancy of a group of living units by persons who do not constitute a single-family), as well as recreational vehicle (RV) parks (providing spaces for overnight accommodation of people in a recreational vehicle), and workforce housing. Accessory uses commonly associated with Residential Uses are recreational activities, raising of pets, hobbies, parking of the occupants' vehicles, and administrative offices in multifamily, group living, ~~and~~ recreational vehicle (RV) parks, and workforce housing developments. Home occupations are accessory uses that are subject to additional regulations (see Sec. 16-4-103.E.3, Home Occupation).

2. Use Types and Definitions

Mixed-Use

Development that includes two or more different uses, which shall include multifamily or workforce housing use and one or more of the Office uses, as described in Sec. 16-10-103.F or one or more of the Commercial Services uses, as described in Sec. 16-10-103.G or some combination thereof. Such uses should be functionally integrated and share vehicular use areas, ingress/egress, and pedestrian access.

Workforce Housing

Housing that is affordable at 60-100% of the Area Median Income (AMI) for Beaufort County.

Section 16-10-104. – Table of Abbreviations

Exhibit A

Workforce Housing LMO Amendments

TABLE 16 10 104: ABBREVIATIONS	
ABBREVIATION	COMPLETE TERM
ac	Acre
AADT	Annual Average Daily Traffic
ACI	Adjusted Caliper Inches
ADA	Americans with Disabilities Act
ADT	Average daily trips
ANSI	American National Standards Institute
AASHTO	American Association of State Highway and Transportation Officials
<u>AMI</u>	<u>Area Median Income</u>
BFE	Base flood elevation
BMP	Best management practice
<u>COE</u>	<u>Certificate of Eligibility</u>
DBH	Diameter at breast height
DRB	Design Review Board
CIP	Capital Improvements Program
DHEC	South Carolina Department of Health and Environmental Control
du	Dwelling unit(s)
EV	Electric vehicle
FAA	Federal Aviation Administration
FCC	Federal Communications Commission
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Maps
ft	Feet
GFA	Gross floor area
HHI	Hilton Head Island
<u>HUD</u>	<u>U.S. Department of Housing and Urban Development</u>
IBC	International Building Code
IESNA	Illuminating Engineering Society of North America
ITE	Institute of Transportation Engineers
LMO	Land Management Ordinance
LOS	Level of service
MSL	Mean sea level
NAD	North American Datum
NAVD	North American Vertical Datum
NPDES	National Pollutant Discharge Elimination System
OCRM	(DHEC) Office of Ocean and Coastal Resource Management
PD	Planned development
PSD	Public Service District
PUD	Planned unit development
SC	South Carolina
S.C. Code of Laws	Code of Laws of South Carolina

Exhibit A

Workforce Housing LMO Amendments

TABLE 16 10 104: ABBREVIATIONS	
ABBREVIATION	COMPLETE TERM
SCDOT	South Carolina Department of Transportation
sf	Square feet
USACOE	United States Army Corps of Engineers
WEC	Wind energy conversion
<u>WFH</u>	<u>Workforce Housing</u>

Section 16-10-105. - General Definitions

Area Median Income (AMI)

The median income level for Beaufort County, as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, (HUD), adjusted for household size.

Household

One or more people who occupy (live in) the same dwelling.

Household Income

The aggregate total of income earned by every member of a household.

Workforce Housing Policy

Workforce Housing

Workforce Housing (WFH) is defined as housing that is affordable at 60-100% of the Area Median Income (AMI) for Beaufort County.

Workforce Housing Program

To create the Workforce Housing Program, amendments will be made to the Land Management Ordinance (LMO) to detail the specifics of the program. Noncompliance with any of the requirements of this Section will be considered a violation of the LMO and will be subject to code enforcement action by the Town.

Workforce housing will be created as a new use in the LMO and will be permitted with conditions in certain base zoning districts (RM-4, RM-8, RM-12, SPC, CC, MS, WMU, S, MV, LC, MED, and PD-1). Mixed-use is an existing use in the LMO that will be expanded to be permitted with conditions in more areas (CR, SPC, CC, MS, WMU, S, MF, MV, NC, LC, RD, MED, and PD-1). Both uses will be permitted with conditions to ensure compliance with the regulations of the Workforce Housing Program.

Workforce Housing and Mixed-Use, associated with a workforce housing development, will be permitted with conditions in the PD-1 District; however, will be restricted to locations where a Town-approved Master Plan or associated text states the use is permitted. For these uses to be permitted in any PD-1 District, a Zoning Map Amendment (ZMA) will be required to amend the Master Plan to permit the use and assign density.

Existing legally platted and developed single family subdivisions and individual multifamily units will not be eligible to participate in the Workforce Housing Program.

Density Bonus

The WFH Program offers a density bonus up to 100% above the base residential density. For every two bonus units permitted, at least one must be a workforce housing unit. If only one bonus unit is proposed, it must be a workforce housing unit. The maximum density permitted in any workforce housing development is 24 units per acre.

Density for commercial conversion will be based on minimum unit sizes and the existing building envelope. Commercial conversion incentives for developments that include at least 20% workforce housing units will be a reduction in minimum unit size by 30% and the ability to use micro-efficiency and studio units in 50% of the development. The net result will permit an increase in the number of units within the same building envelope.

Minimum Unit Sizes

Unit Type	Market-Rate Conversion Minimum Unit Size	Workforce Housing Conversion Minimum Unit Size
Micro Efficiency	NA	280 square feet
Studio	NA	400 square feet
1-bedroom	800 square feet	560 square feet
2-bedroom	1,075 square feet	750 square feet
3-bedroom	1,330 square feet	930 square feet

Workforce Housing Agreement

Developers will be required to enter into a Workforce Housing Agreement with the Town that will be recorded with Beaufort County and tied to the parcel(s) of land where workforce housing is proposed. This agreement will contain information about the development including: the number of workforce housing units, square footage of the units, the number of bedrooms in the units, the location of the units in the development, terms and conditions of affordability, and a provision requiring owners of rental units to submit a sworn affidavit certifying their rental rates.

Affordability Period

Owner-occupied and rental workforce housing units will be required to remain in the program for a minimum of 30 years from the date of initial certificate of occupancy.

Standards for Workforce Housing Units

Workforce housing units will be similar to market-rate units in type of ownership, location throughout the development, range of number of bedrooms, and exterior appearance.

Restrictive Covenants

Workforce housing units will be required to record restrictive covenants that will stay with the parcel(s) as long as it remains in the program. The covenants will include the minimum program affordability period of 30 years from the initial certificate of occupancy, provisions that the household must meet current income and employment eligibility regulations outlined in the WFH Program, and a restriction that prohibits the rental of a unit for less than 90 days.

Income and Employment Regulations

To apply for participation in the WFH Program, households will be required to obtain a Certificate of Eligibility for compliance with the eligibility regulations of the WFH Program. An eligible household will be required to meet income requirements and must have at least one person who is employed in the Town of Hilton Head Island. Employment, as well as income, will

be submitted to the Town or its designee. At recertification, households must have at least one person who is employed ten months out of each calendar year on the Island.

Occupancy and Eligibility Requirements

Any person or household who purchases or rents a workforce housing unit must occupy the unit as their sole residence. Households must meet the income requirements of 60-80% AMI for rental units and 80-100% AMI for owner-occupied units.

Workforce Housing Sale & Resale Price

The initial sale and resale price of any workforce housing unit that is still in the WFH Program based on the affordability period, will be limited based on HUD's annual household income limits. Units will be allowed to build equity based on an inflation factor, based on Consumer Product Index, and when sold can include customary closing costs as well as salesperson commissions and costs related to capital improvements made to the unit.

Workforce Housing Rental Rates

Workforce housing maximum rental rates will be based on 80% of HUD's AMI for Beaufort County, multiplied by 30% and divided by 12. Rental units will be leased with consistent rent throughout the lease. The maximum rent will be determined at initial application and will be recertified during renewal of a lease.

Parking Requirements

The parking requirements for Workforce Housing and Mixed-Use development containing WFH will be determined by developer submitted parking data.

Rules of Measurement

If an existing structure is converted to a mixed-use development under the WFH Program, the permitted density will be determined by using the existing gross floor area. The number of units will not be limited; however, there will be a minimum size for each type of unit.

Definitions

Definitions for Area Median Income, Density Bonus, Household, Household Income, and Workforce Housing will be added.



TOWN OF HILTON HEAD ISLAND

Executive Department

TO: Town Council
FROM: Joshua A. Gruber, Esq., ~ Deputy Town Manager
DATE: October 30, 2020
SUBJECT: Independent Engineering Review of the U.S. 278 Gateway Corridor Project
CC: Stephen G. Riley, ICMA~CM, ~ Town Manager

Background:

At the October 20, 2020 Regular Town Council Meeting, Council discussed actions taken during the Beaufort County Public Facilities Committee Meeting on October 19, 2020 regarding the independent engineering review of the U.S. 278 Gateway Corridor Project. Mayor McCann tabled further discussion on this matter until after the Beaufort County Council meeting on October 26, 2020.

Attachments:

Letter to HRD with Proposed Scope of Services
Proposed Memorandum of Agreement



COUNTY COUNCIL OF BEAUFORT COUNTY
ENGINEERING DIVISION
2266 Boundary Street, Beaufort, South Carolina 29902
Post Office Drawer 1228, Beaufort, South Carolina 29901-1228
Telephone: 843-255-2940
Website: www.beaufortcountysc.gov

October 28, 2020

Mr. David A. Kinard, PE, VP
Program Manager
HDR
4400 Leeds Avenue, Suite 450
North Charleston, SC 29406

RE: US 278 Independent Engineering Review

Dear Mr. Kinard:

The South Carolina Department of Transportation (SCDOT), in cooperation with Beaufort County and the Town of Hilton Head Island, is developing the US 278 Corridor project to address safety and capacity issues currently being experienced within the corridor. The identified project limits are from the Moss Creek intersection to the Cross Island Parkway on Hilton Head Island. SCDOT owns the roads and bridges in question and will be controlling Federal Highway Administration funds associated with the project and as such is leading the environmental assessment and design process through the help of their previously selected consultant design team led by KCI.

Over the past several weeks, there has been much discussion to pursue an independent engineering review of work completed to date by the SCDOT to ensure that safety and traffic congestion mitigation options are optimized while minimizing detrimental environmental and community impacts in a way that is reflective of local operational and aesthetic expectations. Evaluation of adjacent roadway segments and nearby intersection beyond the project boundary stated above is considered an essential component of the independent review.

The scope of the independent engineering review shall include the following:

Scope of Services

- Receive and review all of the design information and data inputs from SCDOT, and also such additional information and data as may be necessary to perform the tasks set forth in this scope, in that this scope shall not be limited to a technical peer review of SCDOT inputs
- Review and verify that the assumptions and methodologies employed for proposed design elements (i.e.,- future traffic volumes and expected growth rates) are appropriate and meet professional standards for validation of use within the project's design
- Verify findings of alternatives already identified to ensure viable ideas were not prematurely discarded and explore other possible alternatives that have not already been examined. Possible alternatives include, but are not limited to: Cross Island Parkway connection; grade-separated intersections; reversible lanes; High Occupancy Vehicle lane, Express Lanes, turning movement prohibitions, specific local traffic only lanes;

intelligent signal system, other improvements without widening to six lanes; and a base alternative that contemplates replacing the deficient bridge, fixing the safety issues on Jenkins Island, improving pedestrian crossing safety, optimizing intersections, and developing a land use plan.

- Review & verify the cost estimates for all of the alternatives that SCDOT has explored thus far and provide a cost estimate for any alternative developed that has not already been explored by SCDOT, including, without limitation, a cost estimate for each SCDOT alternative that assumes the eastern terminus of the alternative is extended to the Cross Island Parkway. Provide cost estimates for all alternatives in a tabular format.
- Review and confirm the operational analyses of the reasonable alternatives and the other possible alternatives identified (both the intersections and the corridor performance) as a measure of delay throughout the entire corridor limits.
- Provide recommendations of feasible options or improvements identified through the study that merit further consideration by the SCDOT design team. Consider and provide recommendations for any landscaping, land use planning, or aesthetic concepts that are developed by others during the study period, such to include, without limitation, recommendations on how to mitigate the disruptive impact the project will have on the Stoney Community.
- Incorporate public participation through the means of the oversight committee. The oversight committee will include at the minimum a resident from the Stoney Community and Jenkins Island to ensure their input is considered. Conduct up to 4 virtual progress meetings with oversight committee.

In addition to the scope as described, please ensure that the following questions are specifically answered as part of the study

Question #1A – Is the projected growth of 39% peak traffic in 25 years realistic?

Question #1B – Do the viable alternatives accommodate growth beyond the 2045 design year?

Question #2 – Are there SAFER alternative designs besides just adding signals and pavement?

Question #3 – Have all reasonable alternatives been considered and fully evaluated?

Schedule & Deliverables

- Provide a detailed engineering report with analysis and recommendations within sixty (60) days from established Notice To Proceed. The report shall contain the following sections: Executive Summary and Recommendations, Goals and Objectives of the Report, Review of Design Data, Criteria, Assumptions and Methodologies, Assessment of Project Needs, Operational Traffic Analysis of Alternatives and Intersections Ancillary to the Corridor, PowerPoint presentation materials for the Elected Official Meetings, and requisite Appendices.
- Provide an interim update within thirty (30) days of commencing work to oversight committee.
- Present findings at both County Council and Town Council meetings in a manner in which the general public will be able to easily and sufficiently understand the results of this examination. VISSIM models or other suitable methods to clearly convey findings to general public and elected officials shall be employed.
- All work must be certified by a Professional Engineer registered in South Carolina.

The intent of this specific project is to ensure that all alternatives, to include those that have been previously established and those that have been potentially unexamined, are fully explored and any findings or recommendations established are provided to SCDOT as additional public input per the NEPA process. Please contact me with any questions you may have and provide a fee proposal for the scope of services outlined herein by Tuesday, October 6. We look forward to acting on this additional design review and ensuring that the benefits proposed as part of the US 278 Corridor Project are meaningful and long lasting, resulting in an improved corridor and project results that are well-received by the citizens of Beaufort County and Hilton Head Island.

Kindest Regards,



Jared Fralix, PE
Assistant County Administrator – Engineering

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) MEMORANDUM OF AGREEMENT
) TOWN OF HILTON HEAD ISLAND

THIS AGREEMENT is made and entered into this ___ day of _____, 2020 by and between the Town of Hilton Head Island, South Carolina (“Town”), and Beaufort County, South Carolina (“County”).

WHEREAS, the Town and the County wish to procure an independent engineering study of the SCDOT conceptual and preliminary engineering work on the US 278 Corridor Improvement Project (“Project”); and

WHEREAS, the Town and the County recognize that it is mutually beneficial to procure and share in the coordinated oversight of professional assistance to conduct this independent review as a means of quality assurance that the conceptual and preliminary engineering work on the Project have adequately assessed and addressed the project goals and desires of the County and the Town; and

WHEREAS, the County has, in accordance with its procurement procedures, selected and contracted the firm of HDR Engineering of the Carolinas, Inc. (“HDR”) to provide traffic engineering and professional consulting services along the US 278 corridor, within the limits of the Project; and

WHEREAS, the County shall administer the contract and the work thereunder; however, the Town shall be granted full and equal participation in decision-making regarding the development of a mutually agreed to scope of work, input and discussions regarding analysis, invitations to all project related meetings, at least one presentation to Town elected officials, and access to all contract data and deliverables, and;

WHEREAS, the County shall enter into a contract amendment with HDR for professional services in the amount of \$134,732.00, attached as Exhibit A; and

WHEREAS, the Town and County shall agree to share in the expense of the contract price as stated above at an equal 50/50 rate with such funds coming from each entities respective General Fund unless otherwise agreed to by both parties. Should there be any changes to the contract amount, a change order shall be approved by both the Town and County prior to execution of work and the cost of that change order shall be shared at the same 50/50 rate as stated above, and;

WHEREAS, the Town and County shall agree to the appointment of a Public Oversight Committee, consisting of 1 Beaufort County staff member, 1 Town of Hilton head Island staff

member, 1 Jenkins Island at-large member, 2 Hilton Head Island at-large members, and 2 Stoney at-large members. The Beaufort County staff member and Jenkins Island staff member shall be appointed by the Chairman of County Council. The Town of Hilton Head staff member, the Hilton Head Island at-large members shall be appointed by the Mayor of Hilton Head Island. The Stoney at-large members shall be mutually agreed upon by both the County Council Chairman and the Mayor of Hilton Head Island.

WHEREAS, the purpose and purview of this Public Oversight Committee shall be to assure the general public that the study has been conducted in accordance with the contract scope of work in an independent and autonomous manner. The Committee shall be given access to study deliverables in a timely manner for review and the Committee shall liaise with the consultant through County staff to address any questions that may arise on behalf of the contractor pertaining to the scope of work.

WHEREAS, both parties have been authorized by their respective councils to enter into this agreement; and

NOW, THEREFORE, be it known, this agreement shall be in effect from the date of execution until the work contracted for is complete and the obligations herein are met.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

WITNESSES:

BEAUFORT COUNTY

By: _____

Name: _____

Title: Interim County Administrator

TOWN OF HILTON HEAD ISLAND

By: _____

Name: Stephen G. Riley

Title: Town Manager



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, ICMA~CM, *Town Manager*
VIA: Shawn Colin, AICP, *Director of Community Development*
FROM: Teri Lewis, AICP, *Deputy Director of Community Development*
DATE: October 23, 2020
SUBJECT: Dirt Road Paving LMO Amendments

Recommendation: The Public Planning Committee recommends that Town Council approve the proposed Dirt Road Paving Land Management Ordinance (LMO) Amendments.

On October 23, 2020, the Public Planning Committee voted 2-1 to forward the proposed Dirt Road Paving LMO amendments to Town Council for approval with the following suggestion:

- provide a definition in proposed new section 16-5-105.D for the Town's Dirt Road Paving Program.

On October 14, 2020, the Planning Commission voted unanimously to forward the proposed Dirt Road Paving LMO amendments to the Town Council for approval.

On September 23, 2020 the LMO Committee voted unanimously to forward the proposed Dirt Road Paving LMO Amendments to the Planning Commission for approval with the following suggestion:

- add a one-way right-of-way width requirement of 24'.

Summary: Approval of the proposed Dirt Road Paving amendments will create greater flexibility for properties that are located along a road that is proposed to be paved as part of the Town's Dirt Road Paving Program. Specific changes include:

- Add language to the RM-4, RM-8, RM-12, MF, MV, NC, S and WMU zoning districts that states that parcels along a right-of-way (ROW) acquired as part of the Town's Dirt Road Paving Program shall be permitted to develop to the density potential that existed prior to the establishment of the ROW;
- Add language that the adjacent street setback will be a minimum of 5' along any parcels abutting a Town ROW acquired as part of the Town's Dirt Road Paving Program;
- Add language that an adjacent street buffer will not be required along any parcels abutting a Town ROW acquired as part of the Town's Dirt Road Paving Program;
- Add a new section to establish the exceptions that will apply to all rights-of-way created as part of the Town's Dirt Road Paving Program; and
- Add language that allows the Town Engineer to accept a minimum ROW width of 30' for two-way traffic and 24' for one-way traffic for streets acquired under the Town's Dirt Road Paving Program where physical and property constraints exist.

Background: The Town has a program to accept donations of public road rights-of-way on qualifying private unpaved roads with a goal to provide publicly maintained infrastructure within these rights-of-way. The Town may approve different right-of-way design standards on these particular roads, including streets, pathways, and storm drainage, to achieve this goal. If the donations of public road rights-of-way meet the Town's acceptance criterion, a public Town right-of-way will be recorded and the Town will maintain that right-of-way in perpetuity. The Town, in an effort to explain the impact of the paving of dirt roads, held several meetings with the residents that would be affected by the proposed changes. These meetings resulted in concerns being expressed related to the size of the right-of-way, setback and buffer requirements, and the impact on existing density. Staff drafted the attached amendments to address these concerns.

Exhibit

A. Dirt Road Paving LMO Amendments

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2020-##

PROPOSED ORDINANCE NO. 2020-29

AN ORDINANCE TO AMEND TITLE 16 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THE LAND MANAGEMENT ORDINANCE (LMO), CHAPTERS 3 AND 5. THESE AMENDMENTS, COMMONLY REFERRED TO AS *DIRT ROAD PAVING LMO AMENDMENTS* AS NOTICED IN THE ISLAND PACKET ON *SEPTEMBER 13, 2020*, INCLUDE CHANGES THAT CREATE GREATER FLEXIBILITY FOR PROPERTIES THAT ARE LOCATED ALONG A ROAD THAT IS PROPOSED TO BE PAVED AS PART OF THE TOWN'S DIRT ROAD PAVING PROGRAM. THESE CHANGES ARE AS DESCRIBED IN EXHIBIT "A" TO THIS ORDINANCE, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on October 7, 2014, the Town Council did adopt a new Land Management Ordinance (LMO); and

WHEREAS, from time to time it is necessary to amend the LMO; and

WHEREAS, Town Council has a Private Dirt Road Acquisition Policy; and

WHEREAS, this policy allows the Town to accept donations of public road rights of way on qualifying private unpaved roads with a goal to provide publicly maintained infrastructure within these rights of way; and

WHEREAS, if the donations of public road rights of way meet the Town's acceptance criterion, a public Town right of way will be recorded and the Town will maintain that right of way in perpetuity; and

WHEREAS, staff held several meetings with residents that would be affected by proposed changes related to the paving of dirt roads; and

WHEREAS, those meetings with residents resulted in a list of concerns specifically related to the size of the right-of-way, setback and buffer requirements, and the impact on existing density; and

WHEREAS, staff has drafted LMO amendments that will provide flexibility related to the size of the right-of-way, setback and buffer requirements, and the impact on existing density; and

WHEREAS, the LMO Committee held a public meeting on September 23, 2020 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed amendments; and

WHEREAS, the LMO Committee recommended that the proposed amendments be forwarded to the Planning Commission with a recommendation of approval; and

WHEREAS, the Planning Commission held a public hearing on October 14, 2020 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed LMO amendments; and

WHEREAS, after consideration of the Staff presentation and public comments the Planning Commission voted 9-0 to forward the proposed amendments to the Public Planning Committee with a recommendation of approval; and

WHEREAS, the Public Planning Committee held a public meeting on October 23, 2020 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed LMO amendments; and

WHEREAS, after consideration of the Staff presentation and public comments, the Public Planning Committee voted 2-1 to recommend approval of the proposed LMO amendments; and

WHEREAS, after due consideration of said LMO amendments and the recommendation of the Planning Commission, the Town Council, upon further review, finds it is in the public interest to approve the proposed amendments recommended by the Public Planning Committee.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:

Section 1. Amendment. That the *Dirt Road Paving LMO Amendments* are adopted and the Land Management Ordinance is amended as shown on Exhibit "A" to this Ordinance. Newly added language is illustrated with double underline and deleted language is illustrated with ~~striketrough~~.

Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____, 2020.

THE TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

John McCann, Mayor

ATTEST:

Krista Wiedmeyer, Town Clerk

Public Hearing: October 14, 2020

First Reading:

Second Reading:

APPROVED AS TO FORM:

Curtis L. Coltrane, Town Attorney

Introduced by Council Member: _____

Attachment A

Proposed Dirt Road Paving Amendments

16-3: Zoning Districts

Section 16-3-104. Residential Base Zoning Districts

E. Low to Moderate Density Residential (RM-4) District

RM-4 Low to Moderate Density Residential District

1. No Change

2. No Change

3. Development Form Standards

MAX. DENSITY (PER NET ACRE) ²		LOT COVERAGE	
Residential	4 du (6 du if lot area is at least 3 acres; 8 du if lot area is at least 5 acres)	Max. <i>Impervious Cover</i> for All <i>Development</i> Except <i>Single-Family</i> ²	35%
<i>Bed and Breakfast</i>	10 rooms		
Nonresidential	6,000 GFA	Min. <i>Open Space</i> for Major Residential <i>Subdivisions</i>	16%
MAX. BUILDING HEIGHT			
All <i>Development</i>	35 ft ¹		

USE AND OTHER DEVELOPMENT STANDARDS

See Chapter 16-4: Use Standards, Chapter 16-5: Development and Design Standards, and Chapter 16-6: Natural Resource Protection.

TABLE NOTES:

P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = *dwelling units* ; sf = square feet; GFA = *gross floor area* in square feet; ft = feet; n/a = not applicable

1. May be increased by up to ten percent on demonstration to the *Official* that:
 - a. The increase is consistent with the character of *development* on surrounding *land*;
 - b. *Development* resulting from the increase is consistent with the purpose and intent of the *building height* standards;
 - c. The increase either (1) is required to compensate for some unusual aspect of the *site* or the proposed *development*, or (2) results in improved *site* conditions for a *development* with *nonconforming site features*;
 - d. The increase will not pose a danger to the public health or safety;
 - e. Any adverse impacts directly attributable to the increase are mitigated; and

f. The increase, when combined with all previous increases allowed under this provision, does not result in a cumulative increase greater than ten percent.

2. Each adjacent parcel abutting the Town right of way acquired under the Town’s Dirt Road Paving Program shall be permitted to develop to its full density potential based on the size of the parcel prior to the establishment of the Town right-of-way. See Section 16-5-105.D for additional details.

F. Moderate Density Residential District (RM-8) District

RM-8 Moderate to High Density Residential District

1. No Change

2. No Change

3. Development Form Standards

MAX. DENSITY (PER NET ACRE) ²		LOT COVERAGE	
Residential	8 du	Max. <i>Impervious Cover</i> for All <i>Development</i> Except <i>Single-Family</i> ²	35%
Nonresidential	6,000 GFA	Min. <i>Open Space</i> for Major Residential <i>Subdivisions</i>	16%
MAX. BUILDING HEIGHT			
<i>All Development</i>	45 ft ¹		

USE AND OTHER DEVELOPMENT STANDARDS

See Chapter 16-4: Use Standards, Chapter 16-5: Development and Design Standards, and Chapter 16-6: Natural Resource Protection.

TABLE NOTES:

P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = *dwelling units* ; sf = square feet; GFA = *gross floor area* in square feet; ft = feet; n/a = not applicable

1. May be increased by up to ten percent on demonstration to the *Official* that:

- a. The increase is consistent with the character of *development* on surrounding *land*;
- b. *Development* resulting from the increase is consistent with the purpose and intent of the *building height* standards;
- c. The increase either (1) is required to compensate for some unusual aspect of the *site* or the proposed *development*, or (2) results in improved *site* conditions for a *development* with *nonconforming site features*;
- d. The increase will not pose a danger to the public health or safety;
- e. Any adverse impacts directly attributable to the increase are mitigated; and

f. The increase, when combined with all previous increases allowed under this provision, does not result in a cumulative increase greater than ten percent.

2. Each adjacent parcel abutting the Town right of way acquired under the Town’s Dirt Road Paving Program shall be permitted to develop to its full density potential based on the size of the parcel prior to the establishment of the Town right-of-way. See Section 16-5-105.D for

additional details.

G. Moderate to High Density Residential District (RM-12) District

RM-12 Moderate to High Density Residential District

1. No Change

2. No Change

3. Development Form Standards

MAX. DENSITY (PER NET ACRE) ²		LOT COVERAGE	
Residential	12 du	Max. <i>Impervious Cover</i> for All <i>Development</i> Except <i>Single-Family</i>	35%
Nonresidential	6,000 GFA		
MAX. BUILDING HEIGHT		Min. <i>Open Space</i> for Major Residential <i>Subdivisions</i>	16%
<i>All Development</i>	45 ft ¹		

USE AND OTHER DEVELOPMENT STANDARDS

See Chapter 16-4: Use Standards, Chapter 16-5: Development and Design Standards, and Chapter 16-6: Natural Resource Protection.

TABLE NOTES:

P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = *dwelling units* ; sf = square feet; GFA = *gross floor area* in square feet; ft = feet; n/a = not applicable

1. May be increased by up to ten percent on demonstration to the *Official* that:
 - a. The increase is consistent with the character of *development* on surrounding *land*;
 - b. *Development* resulting from the increase is consistent with the purpose and intent of the *building height* standards;
 - c. The increase either (1) is required to compensate for some unusual aspect of the *site* or the proposed *development*, or (2) results in improved *site* conditions for a *development* with *nonconforming site features*;
 - d. The increase will not pose a danger to the public health or safety;
 - e. Any adverse impacts directly attributable to the increase are mitigated; and
 - f. The increase, when combined with all previous increases allowed under this provision, does not result in a cumulative increase greater than ten percent.

2. Each adjacent parcel abutting the Town right of way acquired under the Town’s Dirt Road Paving Program shall be permitted to develop to its full density potential based on the size of the parcel prior to the establishment of the Town right-of-way. See Section 16-5-105.D for additional details.

Section 16-3-105. Mixed-Use and Business Districts

G. Marshfront District (MF)

MF
Marshfront District

1. No Change

2. No Change

3. Development Form Standards

MAX. DENSITY (PER NET ACRE) ²			LOT COVERAGE	
Residential ²	Along Major Arterials	4 du (8 du if <i>lot</i> area is at least 3 acres)	Max. <i>Impervious Cover</i>	60%
	Along Other <i>Streets</i>	6 du (10 du if <i>lot</i> area is at least 3 acres)	Min. <i>Open Space</i> for Major Residential <i>Subdivisions</i>	16%
Nonresidential	7,000 GFA			
MAX. BUILDING HEIGHT				
All <i>Development</i>	45 ft ¹			

USE AND OTHER DEVELOPMENT STANDARDS

See Chapter 16-4: Use Standards, Chapter 16-5: Development and Design Standards, and Chapter 16-6: Natural Resource Protection.

TABLE NOTES:

P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = *dwelling units* ; sf = square feet; GFA = *gross floor area* in square feet; ft = feet; n/a = not applicable

1. May be increased by up to ten percent on demonstration to the *Official* that:

- a. The increase is consistent with the character of *development* on surrounding *land*;
- b. *Development* resulting from the increase is consistent with the purpose and intent of the *building height* standards;
- c. The increase either (1) is required to compensate for some unusual aspect of the *site* or the proposed *development*, or (2) results in improved *site* conditions for a *development* with *nonconforming site features*;
- d. The increase will not pose a danger to the public health or safety;
- e. Any adverse impacts directly attributable to the increase are mitigated; and
- f. The increase, when combined with all previous increases allowed under this provision, does not result in a cumulative increase greater than ten percent.

2. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.

3. Each adjacent parcel abutting the Town right of way acquired under the Town’s Dirt Road Paving Program shall be permitted to develop to its full density potential based on the size of the parcel prior to the establishment of the Town right-of-way. See Section 16-5-105.D for additional details.

I. Mitchelville (MV) District

**MV
Mitchelville District**

1. No Change

2. No Change

3. Development Form Standards

MAX. DENSITY (PER NET ACRE)³		LOT COVERAGE	
Residential ¹	12 du	Max. <i>Impervious Cover</i>	50%
<i>Bed and Breakfasts</i>	10 rooms		
<i>Hotel</i>	35 rooms	Min. <i>Open Space</i> for Major Residential <i>Subdivisions</i>	16%
<i>Interval Occupancy</i>	12 du		
Nonresidential	8,000 GFA		
MAX. BUILDING HEIGHT			
<i>All Development</i>	75 ft		

USE AND OTHER DEVELOPMENT STANDARDS

See Chapter 16-4: Use Standards, Chapter 16-5: Development and Design Standards, and Chapter 16-6: Natural Resource Protection.

TABLE NOTES:

P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = *dwelling units* ; sf = square feet; GFA = *gross floor area* in square feet; ft = feet; n/a = not applicable

1. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.
 2. The minimum number of off-street parking spaces for mixed-use development that contains workforce housing shall be

calculated based on Section 16-5-107.D.2.

3. Each adjacent parcel abutting the Town right of way acquired under the Town’s Dirt Road Paving Program shall be permitted to develop to its full density potential based on the size of the parcel prior to the establishment of the Town right-of-way. See Section 16-5-105.D for additional details.

J. Neighborhood Commercial (NC)

NC
Neighborhood Commercial District

1. No Change

2. No Change

3. Development Form Standards

MAX. DENSITY (PER NET ACRE) ^{2,3}		LOT COVERAGE	
Residential ²	4 du	Max. <i>Impervious Cover</i>	45%
Nonresidential	3,000 GFA	Min. <i>Open Space</i> for Major Residential <i>Subdivisions</i>	16%
MAX. BUILDING HEIGHT			
All <i>Development</i>	35 ft ^{1,3}		

USE AND OTHER DEVELOPMENT STANDARDS

See Chapter 16-4: Use Standards, Chapter 16-5: Development and Design Standards, and Chapter 16-6: Natural Resource Protection.

TABLE NOTES:

P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = *dwelling units* ; sf = square feet; GFA = *gross floor area* in square feet; ft = feet; n/a = not applicable

1. May be increased by up to ten percent on demonstration to the *Official* that:
 - a. The increase is consistent with the character of *development* on surrounding *land*;
 - b. *Development* resulting from the increase is consistent with the purpose and intent of the *building height* standards;
 - c. The increase either (1) is required to compensate for some unusual aspect of the *site* or the proposed *development*, or (2) results in improved *site* conditions for a *development* with *nonconforming site features*;
 - d. The increase will not pose a danger to the public health or safety;
 - e. Any adverse impacts directly attributable to the increase are mitigated; and
 - f. The increase, when combined with all previous increases allowed under this provision, does not result in a cumulative increase greater than ten percent.

2. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.

3. Each adjacent parcel abutting the Town right of way acquired under the Town’s Dirt Road Paving Program shall be permitted to develop

to its full density potential based on the size of the parcel prior to the establishment of the Town right-of-way. See Section 16-5-105.D for additional details.

N. Stoney (S) District

1. No Change			
2. No Change			
3. Development Form and Parameters			
No Change			
Residential ²	10 du	Max. <i>Impervious Cover</i>	50%
<i>Bed and Breakfasts</i>	10 rooms		
<i>Hotel</i>	35 rooms	Min. <i>Open Space</i> for Major Residential <i>Subdivisions</i>	16%
Nonresidential	7,000 GFA		
<i>All Development</i>	45 ft ¹		
USE AND OTHER DEVELOPMENT STANDARDS			
See Chapter 16-4: Use Standards, Chapter 16-5: Development and Design Standards, and Chapter 16-6: Natural Resource Protection.			
TABLE NOTES:			

P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = *dwelling units* ; sf = square feet; GFA = *gross floor area* in square feet; ft = feet; n/a = not applicable

1. May be increased by up to ten percent on demonstration to the *Official* that:
 - a. The increase is consistent with the character of *development* on surrounding *land*;
 - b. *Development* resulting from the increase is consistent with the purpose and intent of the *building height* standards;
 - c. The increase either (1) is required to compensate for some unusual aspect of the site or the proposed *development*, or (2) results in improved site conditions for a *development* with *nonconforming site features*;
 - d. The increase will not pose a danger to the public health or safety;
 - e. Any adverse impacts directly attributable to the increase are mitigated; and
 - f. The increase, when combined with all previous increases allowed under this provision, does not result in a cumulative increase greater than ten percent.
2. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.
3. The minimum number of off-street parking spaces for mixed-use development that contains workforce housing shall be calculated based on Section 16-5-107.D.2.
4. Each adjacent parcel abutting the Town right of way acquired under the Town’s Dirt Road Paving Program shall be permitted to develop to its full density potential based on the size of the parcel prior to the establishment of the Town right-of-way. See Section 16-5-105.D for additional details.

O. Waterfront Mixed-Use (WMU) District

WMU			
Waterfront Mixed-Use District			
1. No Change			
2. No Change			
3. Development Form Standards			
MAX. DENSITY (PER NET ACRE)¹⁻⁵		LOT COVERAGE	
Residential ³	16 du	Max. <i>Impervious Cover</i>	50%

<i>Bed and Breakfasts</i>	10 rooms		
<i>Hotel</i>	35 rooms	Min. <i>Open Space</i> for Major Residential <i>Subdivisions</i>	16%
<i>Interval Occupancy</i>	16 du		
Nonresidential	8,000 GFA		
<i>All Development</i>	75 ft		

USE AND OTHER DEVELOPMENT STANDARDS

See Chapter 16-4: Use Standards, Chapter 16-5: Development and Design Standards, and Chapter 16-6: Natural Resource Protection.

TABLE NOTES:
P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = ***dwelling units*** ; sf = square feet; GFA = ***gross floor area*** in square feet; ft = feet; n/a = not applicable

1. For purposes of calculating new ***density***, only 25% of total square footage devoted to boat dry storage facilities shall be counted.

2. Where a ***parcel*** in the WMU District adjoins a zoning district with a ***height*** limit lower than that in the WMU District, no part of a ***building*** on the WMU-zoned ***parcel*** shall exceed a ***height*** equal to the ***height*** limit in the adjoining district plus 1 foot, or major fraction thereof, for each foot of horizontal distance from the adjoining district.

3. For development that converts nonresidential square footage to residential use refer to Sec. 16-10-102.B.1.

4. The minimum number of off-street parking spaces for mixed-use development that contains workforce housing shall be calculated based on Section 16-5-107.D.2.

5. Each adjacent parcel abutting the Town right of way acquired under the Town’s Dirt Road Paving Program shall be permitted to develop to its full density potential based on the size of the parcel prior to the establishment of the Town right-of-way. See Section 16-5-105.D for additional details.

16:5: Development and Design Standards

TABLE 16 5 102.C: ADJACENT STREET SETBACK REQUIREMENTS

PROPOSED USE		MINIMUM SETBACK DISTANCE ¹ / MAXIMUM SETBACK ANGLE ²		
		ADJACENT STREET (BY CLASSIFICATION)		
		MAJOR ARTERIAL	MINOR ARTERIAL	ALL OTHER STREETS
<i>Single-Family</i> ³	Structure > 24 in high	50 ft ^{3,4,5} /75°	40 ft ^{3,4,5} / 70°	20 ft ^{3,4,5} /60°
	Structure ≤ 24 in high	50 ft ^{3,4,5} /n/a	30 ft ^{3,4,5} /n/a	10 ft ^{3,4,5} /n/a
All Other <i>Uses</i>		50 ft ^{3,4,5} /75°	40 ft ^{3,4,5} /70°	20 ft ^{3,4,5} /60°

NOTES: in = inches ft = feet ° = degrees

1. No Change

2. No Change

3. The adjacent street setback shall be a minimum of five (5) feet on any parcel abutting a Town right of way acquired under the Town’s Dirt Road Paving Program. See Section 16-5-105.D for additional details.

~~3.~~ 4. No Change

~~4.~~ 5. No Change

TABLE 16 5 103.D: ADJACENT STREET BUFFER REQUIREMENTS

PROPOSED USE	ADJACENT STREET (BY CLASSIFICATION)		
	MAJOR ARTERIAL	MINOR ARTERIAL	ALL OTHER STREETS
All <i>uses</i> ²	E	B	A

NOTES:

1. Descriptions and width and screening requirements for the various buffer types are set out in Sec. 16-5-103.F, Buffer Types.

2. There shall be no adjacent street buffer required on any parcel abutting a Town right of way acquired under the Town’s Dirt Road Paving Program. See Section 16-5-105.D for additional details.

Sec.16-5-105. - Mobility, Street, and Pathway Standards

A. – C. No Changes

NEW SECTION

D. Exceptions for Streets in the Town’s Dirt Road Paving Program

The Town has a program to accept donations of public road rights of way on qualifying private unpaved roads with a goal to provide publicly maintained infrastructure within these rights of way. The Town may approve different right of way design standards on these particular roads, including streets, pathways, and storm drainage, to achieve this goal. If the donations of public road rights of way meet the Town’s acceptance criterion, a public Town right of way will be recorded and the Town will maintain that right of way in perpetuity. The criterion are as follows:

- The road must serve more than five dwelling units, each with an individual address point; and
- Property owners must express interest in public road right of way assemblage (100% willing participation); and
- Land for the public road right of way must be donated to the Town; and
- Condemn land only as necessary due to unclear title issues; and

- Community volunteers may assist staff with facilitating right of way donations.

In an effort to encourage the right of way donations, the Town will provide relief to certain standards as described below:

1. Right of way width standards per Sec 16-5-105.D.1. shall apply, except the Town Engineer may accept a minimum right-of-way width of 30' for two-way traffic and a minimum right-of-way width of 24' for one-way traffic where physical and property constraints preclude the standard widths from reasonably being met.
2. End Treatments shall be constructed in accordance with Sec 16-5-105.H, except where the Town Engineer and Fire Marshal have deemed physical and property constraints preclude this from reasonably being met.
3. Adjacent street setbacks shall be five feet along properties abutting the new Town right of way.
4. Adjacent street buffers shall not apply to properties abutting the new Town right of way.
5. Each adjacent parcel abutting the Town right of way acquired under this program shall be permitted to develop to its full density potential based on the size of the parcel prior to the establishment of the Town right-of-way.

D. E. Design Standards by Street Type

TABLE 16 5 105. DE.1: STREET STANDARDS¹

STREET TYPE	MAXIMUM AADT	MINIMUM PAVEMENT WIDTH ^{1 2}	MINIMUM SHOULDER WIDTH ^{2 3}	MINIMUM RIGHT OF WAY
Lane	50	20 ft	4 ft	30 ft
Cul-de-sac ^{3 4}	250	20 ft	4 ft	40 ft
	500	20 ft	8 ft	50 ft
Local <i>Access</i>	2,000	22 ft	8 ft	50 ft
Subcollector	4,000	24 ft	8 ft	60 ft
Collector	6,000	24 ft	10 ft	70 ft
Minor Arterial	25,000	24 ft	10 ft	70 ft
Major Arterial	50,000	24 ft	12 t	120

1. Right of way width standards shall apply, except the Town Engineer may accept a minimum right-of-way width of 30' right of way for two-way traffic and a minimum right-of-way width of 24' for one-way traffic for streets acquired under the Town's Dirt Road Paving Program where physical and property constraints preclude the standard widths from reasonably being met.

~~1~~2. One-way *streets* shall have a minimum clear pavement width of 14 feet.

~~2~~ 3. Shoulders shall be stable areas adjoining both sides of the *roadway* that are capable of supporting vehicles. They shall have a cross-slope no steeper than 12:1 (8.33%), and be clear of obstructions. If the required shoulder width is not desirable or attainable, raised curbing compliant with SCDOT standards may be substituted for the shoulder.

~~3~~ 4. A hammerhead may be used in place of a *cul-de-sac* if the maximum AADT are 250 trips or less.



MEMORANDUM

TO: Town Council

FROM: John M. Troyer, CPA, Director of Finance

VIA: Joshua A. Gruber, Assistant Town Manager

VIA: Stephen G. Riley, ICMA-CM, Town Manager

DATE: October 22, 2020

RE: First Reading of Proposed Ordinance No. 2020-31; Special Revenue Stormwater System Bond Refunding. Second Supplemental Ordinance – providing for the issuance and sale of Town of Hilton Head Island, South Carolina, Special Revenue Stormwater Bonds, in one or more series, in the principal amount not exceeding \$ 6,000,000; delegating the authority to the Town Manager to determine certain matters with respect to the bonds; prescribing the form and details of such bonds; other matters relating thereto; and providing for the severability and effective date.

Recommendation:

Staff recommends Council approve first reading of Proposed Ordinance No. 2020-31. The ordinance provides for the authorization to issue special revenue Stormwater bonds to refund special revenue Stormwater System bonds Series 2010 to achieve savings and improve the Town's cash flow. The Town has previously directed the Financial Advisor and Bond Counsel to seek to take advantage of market opportunities to save the Town money on its outstanding debt. This recommendation is a result of those efforts.

Summary:

The Town has previously issued Special Revenue Stormwater System Bonds Series 2010. The bonds were sold competitively at the time. Current market conditions have reduced rates providing an opportunity to capture savings. The Town seeks approval to refund the bonds to provide a net economic benefit. The Town's Financial Advisor and the Town's Bond Counsel both recommend the action to save money, improve cash flow, and improve the Town's portfolio of outstanding bonds.

Details:

Included with these materials is a detailed report on the current market conditions and savings opportunities. The refunding plan uses a current refunding for the Series 2010.

Among the highlights of the report on the following page (and page references to amounts):

Original Issue amounts: Series 2010 \$13,810,000

Bonds outstanding (and bonds to be refunded): Series 2010 \$ 6,265,000 (page 1)

Average coupon of existing bonds: 2.78% (page 1)

Expected bonds to be issued: \$5,695,000 (page 5)

Expected interest rate (TIC) 0.96% (page 5)

Expected Gross Savings \$186,607 (961,398.90 less contribution of funds 774,791.75 – see p. 5)

Present Value Expected Savings \$162,215 (page 5)

Additional refunding details attached.

FOURTH SUPPLEMENTAL ORDINANCE

PROVIDING FOR THE ISSUANCE AND SALE OF NOT EXCEEDING \$6,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, STORMWATER SYSTEM REFUNDING REVENUE BONDS, SERIES 2021, FOR THE PURPOSE OF REFINANCING ALL OR A PORTION OF THE OUTSTANDING \$13,810,000 ORIGINAL PRINCIPAL AMOUNT TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, STORMWATER SYSTEM REFUNDING REVENUE BOND, SERIES 2010; DELEGATING THE AUTHORITY TO THE TOWN MANAGER TO DETERMINE CERTAIN MATTERS WITH RESPECT TO THE SERIES 2021 BONDS; PRESCRIBING THE FORM AND DETAILS OF SUCH BONDS; OTHER MATTERS RELATING THERETO; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council (the “Council”) of the Town of Hilton Head Island, South Carolina (the “Town”), enacted Ordinance No. 2002-44 (the “General Bond Ordinance”) on December 3, 2002, to authorize generally the issuance of Stormwater System Revenue Bonds (as defined in the General Bond Ordinance); and

WHEREAS, pursuant to the General Bond Ordinance, the Bonds are payable from and secured by a pledge of Revenues (as defined in the General Bond Ordinance); and

WHEREAS, the Town has heretofore issued its \$13,810,000 original principal amount Town of Hilton Head Island, South Carolina, Stormwater System Refunding Revenue Bond, Series 2010, dated December 1, 2010, which are presently outstanding in the principal amount of \$6,265,000 (the “Bond of 2010”); and

WHEREAS, the Council originally enacted the Third Supplemental Ordinance (as defined herein) to authorize not exceeding \$14,000,000 principal amount of its Stormwater System Revenue Bonds, in one or more series, for the purpose, among others, of refinancing all or a portion of the Bond of 2010, but when the Town issued the Bond of 2018 (as defined herein) pursuant to such authorization in order to finance certain capital improvements, market conditions did not warrant undertaking such refinancing; and

WHEREAS, the Town now desires to issue not exceeding \$6,000,000 principal amount of its Stormwater System Refunding Revenue Bonds, Series 2021 (the “Series 2021 Bonds”) to refinance all or a portion of the Bond of 2010 and repeal the remaining authorization of Stormwater System Revenue Bonds contained in the Third Supplemental Ordinance, upon issuance of the Series 2021 Bonds; and

WHEREAS, the Council has been advised that in order to refinance all or a portion of the Bond of 2010, the Council must enact an appropriate ordinance supplemental to the General Bond Ordinance authorizing the issuance of the Series 2021 Bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

ARTICLE I

FINDINGS AND DETERMINATIONS

Section 1.01. Certain Findings and Determinations.

The Council hereby finds and determines:

(a) This Ordinance (the “Fourth Supplemental Ordinance”) constitutes and is a “Supplemental Ordinance” within the meaning of such quoted term as defined and used in Ordinance No. 2002-44 enacted by the Council on December 3, 2002, as amended (as so amended, the “General Bond Ordinance”), and is enacted under and pursuant to the General Bond Ordinance.

(b) The Series 2021 Bonds (as defined herein) constitute and are “Bonds” within the meaning of the quoted word as defined and used in the General Bond Ordinance.

(c) The Revenues pledged under the General Bond Ordinance are not encumbered by any lien and charge thereon or pledge thereof, other than (i) the lien and charge thereon and pledge thereof created by the General Bond Ordinance and the Second Supplemental Ordinance (as defined herein) for payment and security of the Bond of 2010 (if any) which remain outstanding after the issuance of the Series 2021 Bonds, (ii) the lien and charge thereon and pledge thereof created by the General Bond Ordinance and the Third Supplemental Ordinance (as defined herein) for payment and security of the Bond of 2018 (as defined herein and (iii) the lien and charge thereon and pledge thereof created by the General Bond Ordinance and this Fourth Supplemental Ordinance for payment and security of the Series 2021 Bonds.

(d) There does not exist an Event of Default (as defined in the General Bond Ordinance), nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute such Event of Default.

(e) The estimated cost of refinancing the Bond of 2010 is approximately \$6,352,083.50.

(f) Section 4.02(B) of the General Bond Ordinance provides that Bonds may be issued at any time for the purpose of refunding (including by purchase) other Bonds, including amounts to pay principal, redemption premium and interest to the date of redemption (or purchase) of the refunded Bonds; provided that (i) the aggregate Debt Service on all Bonds to be Outstanding after the issuance of the proposed Series of refunding Bonds shall not be greater than would have been the aggregate Debt Service of all Bonds not then refunded and the Bonds to be refunded; or (ii) the requirements of parts 4.02(A)1-6 and 4.02(A)(7)(a) of the General Bond Ordinance are met with respect to the refunding Bonds. Bonds issued upon compliance with Section 4.01 and Section 4.02 of the General Bond Ordinance shall be issued on a parity as to the Net Revenues of the System in all respects *inter sese*.

(g) Section 16.01 of the General Bond Ordinance provides that the obligations of the Town under the Ordinance and the liens, pledges, charges, trusts, covenants and agreements of the Town made or provided for therein shall be fully discharged and satisfied as to any Bond, and such Bond shall no longer be deemed to be Outstanding under the General Bond Ordinance when payment of the principal of, premium, if any, and interest on such Bond shall have been provided for by irrevocably depositing with the Paying Agent

in trust and irrevocably set aside exclusively for such payment, (A) moneys sufficient to make such payment, or (B) Defeasance Obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee.

(h) The Town proposes to issue the Series 2021 Bonds, together with other available amounts, for the following principal purposes: (i) refinancing the Bonds to be Refunded, (ii) financing the 2021 Reserve Fund Requirement (if any) through a deposit into the 2021 Debt Service Reserve Fund (if any) of cash, a Letter of Credit, a Surety Bond or a combination thereof, and (iii) paying the costs of issuing the Series 2021 Bonds.

(i) The period of usefulness of the System is in excess of forty (40) years from the date hereof.

(j) It is in the best interest of the Town to authorize the issuance of the Series 2021 Bonds for the purposes set forth in this Fourth Supplemental Ordinance.

ARTICLE II

DEFINITIONS

Section 2.01. Definitions. The terms in this Section 2.01 and all words and terms defined in the General Bond Ordinance as from time to time amended or supplemented by a Supplemental Ordinance (as so amended and supplemented, the “Ordinance”) (except as herein otherwise expressly provided or unless the context otherwise requires), shall for all purposes of this Fourth Supplemental Ordinance have the respective meanings given to them in the General Bond Ordinance and in Section 2.01 hereof.

“2021 Debt Service Fund” shall mean the Fund established pursuant to Section 4.01 hereof to provide for the payment of the principal of and interest on the Series 2021 Bonds.

“2021 Debt Service Reserve Fund” shall mean the Fund, if any, established pursuant to Section 4.02 hereof (a) to insure the timely payment of the principal and interest on the Series 2021 Bonds related thereto; and (b) to provide for the redemption of the Series 2021 Bonds related thereto.

“2021 Reserve Fund Requirement” shall mean the amount, if any, established pursuant to Section 4.02 hereof.

“Beneficial Owner” shall mean any purchaser who acquires beneficial ownership interest in an Initial Bond (to be defined) held by the Depository. In determining any Beneficial Owner the Town, the Trustee and the Paying Agent may rely exclusively upon written representations made and information given to the Town, the Registrar and the Paying Agent, as the case may be, by the Depository or its Participants with respect to any Series 2021 Bond held by the Depository or its Participants in which a beneficial ownership interest is claimed.

“Book-Entry Form” or “Book-Entry System” shall mean with respect to the Initial Bonds, a form or system, as applicable, under which (a) the ownership of beneficial interests in the Initial Bonds may be transferred only through a book-entry and (b) physical bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Holder, with the physical bond certificates “immobilized” in the custody of the Depository. The book-entry maintained by the Depository is the

record that identifies the owners of participatory interest in the Initial Bonds, when subject to the Book-Entry System.

“Bond Insurer” shall mean the issuer of the Insurance Policy (if any) for the Series 2021 Bonds, or a Surety Bond (if any) to satisfy the 2021 Reserve Requirement.

“Bond of 2010” shall mean the \$13,810,000 original principal amount Town of Hilton Head Island, South Carolina, Stormwater System Refunding Revenue Bond, Series 2010 dated December 1, 2010.

“Bond of 2018” shall mean the \$3,200,000 original principal amount Town of Hilton Head Island, South Carolina, Stormwater System Revenue Bond, Series 2018A dated January 31, 2018.

“Bonds to be Refunded” shall mean all or a portion of the Bond of 2010, as determined by the Town Manager, to be refunded with the Series 2021 Bonds.

“Business Day” shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State are required or authorized by law (including executive orders) to close.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and any applicable Treasury regulations.

“Continuing Disclosure Certificate” shall mean the meaning given that term in Section 5.02 hereof.

“Cost of Issuance Fund” shall mean the fund of that name created pursuant to Section 4.05 hereof.

“Custodian” shall have the meaning set forth in Section 4.05 hereof.

“Depository” shall mean any securities depository that is a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, operating and maintaining, with its Participants or otherwise, a Book-Entry System to record ownership of beneficial interests in the Initial Bonds, and to effect transfers of the Initial Bonds, in Book-Entry Form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Escrow Agent” shall mean the Paying Agent for the Bonds to be Refunded.

“Escrow Agreement” shall mean, collectively, one or more Escrow Deposit Agreements dated the date of its respective execution between the Town and the Escrow Agent.

“Escrow Fund” shall mean, collectively, the funds of that name created pursuant to the Escrow Agreement.

“First Amending Ordinance” shall mean Ordinance No. 2003-04 enacted by the Council on February 18, 2003.

“Fourth Supplemental Ordinance” shall mean this Ordinance enacted by the Council on this date, authorizing the Series 2021 Bonds.

“Initial Bonds” shall mean such Bonds (if any) which are registered and held subject to the Book-Entry System of the Depository.

“Interest Payment Date” shall mean April 1 and October 1 of each year commencing April 1, 2021, or such other dates as may be determined by the Town Manager.

“Insurer Default” shall mean there shall exist a default in the payment by the Bond Insurer of principal of or any interest on any New Bond when required to be made by the applicable Policy or Surety Bond.

“Letter of Credit” shall mean, subject to Section 4.02 hereof, a letter of credit (if any) issued by a bank or other financial institution satisfactory to the Town, to satisfy all or a portion of the 2021 Reserve Fund Requirement, if any.

“Paying Agent” shall mean the bank, financial institution or such other entity (including the Town) designated by the Town Manager to serve as Paying Agent for the Series 2021 Bonds.

“Principal Payment Date” shall have the meaning given to such term in Section 3(a).

“Purchase Contract” shall mean the Bond Purchase Agreement (if any) to be dated the date of execution and delivery thereof between the Town and the Underwriter, as it may relate to the Series 2021 Bonds.

“Purchaser” shall mean the purchaser of the Series 2021 Bonds, if sold through a private placement or sale. The Purchaser shall not mean the Underwriter.

“Registrar” shall mean the bank, financial institution or such other entity (including the Town) designated by the Town Manager to serve as Registrar for the Series 2021 Bonds.

“Second Supplemental Ordinance” shall mean Ordinance No. 2010-23 enacted by the Council on November 17, 2010, authorizing the Bond of 2010.

“Series 2021 Bonds” shall mean the Town of Hilton Head Island, South Carolina, Stormwater System Refunding Revenue Bonds, Series 2021, in the aggregate principal amount of not exceeding \$6,000,000 authorized to be issued hereunder.

“Stormwater Act” shall mean the Stormwater Management and Sediment Reduction Act, codified as Section 48-14-10 et. seq., Code of Laws of South Carolina, 1976, as amended.

“Surety Bond” shall mean, subject to Section 4.02, the Surety Bond or surety bond, if any, issued by the Bond Insurer in connection with the Series 2021 Bonds and payable to the Paying Agent.

“Third Supplemental Ordinance” shall mean Ordinance No. 2017-20 enacted by the Council on December 5, 2017, authorizing the Bond of 2018.

“Trustee” shall mean the bank, financial institution, if any, or such other entity designated by the Town Manager to serve as Trustee under the General Bond Ordinance.

“Underwriter” shall mean such bank or financial institution selected by the Town Manager.

“Value” or “Values” means, if a Surety Bonds is in effect for the Series 2021 Bonds, with respect to any Permitted Investments for the 2021 Debt Service Fund and 2021 Debt Service Reserve Fund established for the Series 2021 Bonds, the amount calculated under the Ordinance determined as of any date of calculation as follows:

- (a) the bid price published by a nationally recognized pricing service as selected by the Town in its sole discretion;
- (b) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and
- (c) as to any investment not specified above: the value thereof established by prior agreement between the Town and the Bond Insurer.

ARTICLE III

THE SERIES 2021 BONDS

Section 3.01. Authorization of Series 2021 Bonds.

(a) There is hereby authorized to be issued a Series of Bonds (as defined in the General Bond Ordinance) designated “Town of Hilton Head Island, South Carolina Stormwater System Refunding Revenue Bonds, Series 2021” (the “Series 2021 Bonds”), in the aggregate principal amount of not to exceed \$6,000,000. The proceeds of the Series 2021 Bonds will be used, together with other available amounts, for the purposes of providing funds to (i) refinance the Bonds to be Refunded, (ii) finance the 2021 Reserve Fund Requirement (if any) through a deposit into the 2021 Debt Service Reserve Fund (if any) of cash, the Letter of Credit (if any), the Surety Bond (if any) or a combination thereof, and (iii) pay the costs of issuing the Series 2021 Bonds, including the premiums for the Insurance Policy or Surety Bond (if any); provided, however, that if the Series 2021 Bonds are issued after 2021, any references herein to such Series 2021 Bonds or to the 2021 Debt Service Fund, the 2021 Debt Service Reserve Fund (if any), the 2021 Reserve Fund Requirement (if any) or otherwise, which is identified by the relevant year of issue, such references may be modified to reflect the actual year in which such Series 2021 Bonds are issued and the Series 2021 Bonds shall bear such further numbers, letters or additional words as determined by the Town Manager in order to identify individual series thereof, to identify the purposes for which such Bonds are being issued and to identify the taxable or tax-exempt status thereof.

The Series 2021 Bonds shall mature on such date in each of the years and in the principal amounts, and bear interest at the rates per annum, as determined by the Town Manager pursuant to Section 3.05 hereof.

(b) Such of the Series 2021 Bonds as the Town Manager shall determine pursuant to Section 3.05 hereof shall be subject to mandatory redemption at a redemption price equal to the principal amount

of the Series 2021 Bonds to be redeemed, together with interest accrued from the date of redemption, in the years and in the amounts determined by the Town Manager pursuant to Section 3.05 hereof.

The Trustee or Registrar, if any, without further authorization or direction from the Town, shall give notice of all mandatory redemptions within the time periods and in the manner specified in Article IV of the General Bond Ordinance.

At its option, to be exercised on or before the sixtieth (60th) day prior to any mandatory redemption date, the Town may (i) deliver to the Trustee or Registrar, if any, for cancellation Bonds which are subject to mandatory redemption in any aggregate principal amount desired or (ii) receive a credit in respect of its mandatory redemption obligation for any such Bonds which, prior to such date, have been purchased or redeemed (otherwise than through the operation of the mandatory redemption requirement) by the Town and cancelled by the Trustee or Registrar, if any, and not theretofore applied as a credit against any mandatory redemption obligation. Each Bond so delivered or previously purchased or redeemed shall be credited by the Trustee or Registrar, if any, at one hundred percent (100%) of the principal amount thereof, to the obligation of the Town on those respective mandatory redemption obligations in such order as the Town may direct, and the principal amount of the Series 2021 Bonds to be redeemed by operation of the mandatory redemption requirement shall be accordingly reduced.

(c) The Series 2021 Bonds shall originally be dated the date of delivery thereof, and shall be issued as fully registered Bonds in the denominations of \$5,000 and integral multiples of \$5,000, or such other date or denomination (as applicable) as the Town Manager shall determine pursuant to Section 3.05 hereof.

(d) Principal of and redemption premium, if any, on the Series 2021 Bonds shall be payable at the designated corporate trust office of the Trustee or Paying Agent, if any. Interest on the Series 2021 Bonds shall be payable semiannually each Interest Payment Date, in each case to the Holders as of the immediately preceding Record Date, such interest to be paid by check or draft mailed to each Holder at the address as it appears on the Books of Registry maintained at the designated corporate trust office of the Trustee or Registrar, if any, or, in the case of a Holder of \$1,000,000 or more in principal amount of Bonds, by wire transfer to an account within the continental United States upon the timely receipt of a written request of such Holder.

(e) A copy of the approving opinion to be rendered on the Series 2021 Bonds shall be printed on the back of such Bonds, preceding the same a certificate shall appear, which shall be signed on behalf of the Town by a facsimile signature of the Town Clerk. Such certificate shall be in the form substantially as follows:

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the approving opinion of Burr & Forman LLP, Columbia, South Carolina, the original of which was manually executed, dated and issued as of the date of the delivery of and payment for the Series 2021 Bonds, and a copy of which is on file with the Town.

THE TOWN OF HILTON HEAD, SOUTH CAROLINA

By: _____
Town Clerk

Section 3.02. Optional Redemption of Series 2021 Bonds. Such of the Series 2021 Bonds as may be determined by the Town Manager pursuant to Section 3.05 hereof shall be subject to redemption

prior to maturity, at the option of the Town, in whole or in part at any time in such order of their maturities as the Town shall determine and by lot within a maturity, at the respective redemption prices with respect to each Series 2021 Bond, expressed as a percentage of principal amount of the Series 2021 Bonds to be redeemed, as shall be determined by the Town Manager pursuant to Section 3.05 hereof, together, in each such case, with the interest accrued on such principal amount to the date fixed for redemption.

Section 3.03. Designation of Trustee, Registrar, Paying Agent and Custodian. The Town Manager is hereby authorized and empowered to select the Registrar and the Paying Agent, if any, for the Series 2021 Bonds, and the Custodian (if any) for the Cost of Issuance Fund, and to take all actions necessary or desirable to designate the Trustee, if any, under the General Bond Ordinance and/or the Payment Agent for the Bonds to be Refunded. The Trustee, Registrar and Paying Agent (if any), and the Custodian (if any) shall signify their acceptances of their respective duties upon delivery of the Series 2021 Bonds.

Section 3.04. Book-Entry System; Recording and Transfer of Ownership of the Series 2021 Bonds.

The Initial Bonds will be eligible securities for the purposes of the Book-Entry System of transfer maintained by the Depository, and transfers of beneficial ownership of the Initial Bonds shall be made only through the Depository and its participants in accordance with rules specified by the Depository. Such beneficial ownership must be of \$5,000 principal amount of Initial Bonds of the same Series and maturity or any integral multiple of \$5,000.

The Initial Bonds will be issued in fully-registered form, as a single bond representing the entire principal amount of the Series 2021 Bonds, in the name of Cede & Co., as the nominee of the Depository. When any principal of, premium, if any, or interest on the Initial Bonds becomes due, the Town shall transmit or cause the Paying Agent to transmit to the Depository an amount equal to such installment of principal, premium, if any, and interest. Such payments will be made to Cede & Co. or other nominee of the Depository as long as it is owner of record on the applicable Record Date. Cede & Co. or other nominee of the Depository shall be considered to be the owner of the Initial Bonds so registered for all purposes of this Fourth Supplemental Ordinance, including, without limitation, payments as aforesaid and receipt of notices. The Depository shall remit such payments to the Beneficial Owners of the Series 2021 Bonds or their nominees in accordance with its rules and regulations.

Notices of redemption of the Initial Bonds or any portion thereof shall be sent to the Depository in accordance with the provisions of the General Bond Ordinance.

The Depository is expected to maintain records of the positions of Participants in the Initial Bonds, and the Participants and persons acting through Participants are expected to maintain records of the Beneficial Owners in the Initial Bonds. The Town, the Trustee, the Registrar and the Paying Agent (if any) make no assurances that the Depository and its Participants will act in accordance with such rules or expectations on a timely basis, and the Town, the Trustee, the Registrar and the Paying Agent (if any) shall have no responsibility for any such maintenance of records or transfer of payments by the Depository to its Participants, or by the Participants or persons acting through Participants to the Beneficial Owners.

The Town, the Trustee, the Paying Agent and the Registrar (if any) may treat the Depository (or its nominee) as the sole and exclusive owner of the Series 2021 Bonds registered in its name for the purpose of payment of the principal of, interest or premium, if any, on the Series 2021 Bonds, giving any notice permitted or required to be given to Bondholders under the General Bond Ordinance or this Fourth Supplemental Ordinance, registering the transfer of the Series 2021 Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever, and shall not be affected by any

notice to the contrary. The Town, the Trustee, the Paying Agent and the Registrar (if any) shall not have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Series 2021 Bonds under or through the Depository or any Participant, or any other person which is not shown on the Books of Registry of the Town maintained by the Trustee or Registrar (if any) as being a Bondholder, with respect to: the accuracy of any records maintained by the Depository or any Participant or the maintenance of any records; the payment by the Depository or any Participant of any amount in respect of the principal of, interest or premium, if any, on the Series 2021 Bonds; the sending of any transaction statements; the delivery or timeliness of delivery by the Depository or any Participant of any notice which is permitted or required to be given to Bondholders thereunder; the selection of Bondholders to receive payments upon any partial redemption of the Series 2021 Bonds; or any consent given or other actions taken by the Depository as a Bondholder.

If (a) the Depository determines not to continue to act as securities depository for the Series 2021 Bonds, and gives reasonable notice to the Registrar or the Town, or (b) the Town has advised the Depository of the Town's determination that the Depository is incapable of discharging its duties, then the Town shall attempt to retain another qualified securities depository to replace the Depository. Upon receipt by the Town or the Registrar of the Initial Bonds together with an assignment duly executed by the Depository, the Town shall execute and deliver to the successor depository, the Series 2021 Bonds of the same principal amount, interest rate and maturity. If the Town is unable to retain a qualified successor to the Depository, or the Town has determined that it is in its best interest not to continue the Book-Entry System of transfer or that interests of the Beneficial Owners of the Series 2021 Bonds might be adversely affected if the Book-Entry System of transfer is continued (the Town undertakes no obligation to make any investigation to determine the occurrence of any events that would permit it to make any such determination), and has made provision to so notify Beneficial Owners of the Series 2021 Bonds by mailing an appropriate notice to the Depository, upon receipt by the Town of the Initial Bonds together with an assignment duly executed by the Depository, the Town shall execute, authenticate and deliver to the Depository Participants the Series 2021 Bonds in fully-registered form, in authorized denomination; provided, however, that the discontinuation of the Book-Entry System of registration and transfer with respect to the Series 2021 Bonds or the replacement of the Depository or any successor depository shall be subject to the applicable rules and procedures of the Depository or such successor depository on file or otherwise approved by the Securities and Exchange Commission.

Section 3.05. Sale and Issuance of Series 2021 Bonds; Official Statement.

(a) The Town Manager of the Town is hereby authorized and empowered to determine the aggregate principal amount of the Series 2021 Bonds, if less than authorized by this Fourth Supplemental Ordinance, the principal amount of each maturity of the Series 2021 Bonds, the interest rates for the Series 2021 Bonds, the original issue date, initial Interest Payment Date and Principal Payment Dates for the Series 2021 Bonds, which Bonds (if any) are Initial Bonds and issued on a taxable or tax-exempt basis (and, to the extent all or any portion of the Series 2021 Bonds are issued on a federal-tax exempt basis, determine whether the Series 2021 Bonds shall be designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code relating to the ability of financial institutions to deduct, from income for federal income tax purposes, interest expense that is allocable to carrying and acquiring tax-exempt obligations), the Bonds to be Refunded, the Series 2021 Bonds to be subject to mandatory and optional redemption, the redemption prices of the Series 2021 Bonds subject to optional redemption, any Underwriter's, Purchaser's or original issue discount at which the Series 2021 Bonds will be sold, whether an Insurance Policy will be purchased with respect to the Series 2021 Bonds; whether the 2021 Debt Service Reserve Fund will be established and funded and, if so, the manner in which the 2021 Reserve Fund Requirement will be satisfied; the Trustee, Registrar and Paying Agent (if any) for the Series 2021 Bonds; the Custodian (if any) for the Cost of Issuance Fund and such other terms and conditions related to the Series 2021 Bonds.

(b) The Series 2021 Bonds shall either be sold publicly, following a private sale to the Underwriter, or directly to the Purchaser in a private offering. In connection with a public offering, the Town hereby finds and determines that the Purchase Contract to be dated the date of its execution, submitted by the Underwriter for the purchase of all or a portion (if any) of the Series 2021 Bonds is fair and reasonable and in the best interest of the Town; that, if executed, the Series 2021 Bonds contemplated by the Purchase Contract shall be sold to the Underwriter upon the terms and conditions set forth in the Purchase Contract and upon the basis of the representations therein set forth, and that all conditions precedent to or concurrent with the acceptance of the Purchase Contract by the Town have been met. The Town Manager is hereby authorized and directed to approve the form of Purchase Contract, together with such amendments and modifications to the form thereof as the Town Manager shall negotiate and approve, and to execute the Purchase Contract, as so modified and amended, and deliver the same to the Underwriter, the Town Manager's execution and delivery of the Purchase Contract constituting conclusive evidence of approval of the matters therein contained. Notwithstanding the foregoing, the Town Manager is hereby authorized to take all actions, including the preparation and dissemination of requests for proposals and the publication and/or distribution of information relating to the Town and the System, to solicit interest and receive offers from financial institutions to purchase the Series 2021 Bonds in a private offering, and to accept such offer which is in the best interest of the Town and execute such documents as may be necessary in connection therewith.

(c) The Town Manager is hereby authorized and directed to prepare a Preliminary Official Statement, relating to a public offering of the Series 2021 Bonds (the "Preliminary Official Statement"), and to take such actions necessary to "deem final" the Preliminary Official Statement for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

(d) The Town hereby authorizes the Final Official Statement of the Town to be dated on or about the date of the execution and delivery of the Purchase Contract, relating to the Series 2021 Bonds substantially in the form of the Preliminary Official Statement, with such modifications as the Town Manager approves; the Town Manager of the Town is hereby authorized and directed to execute copies of the Final Official Statement and deliver the same to the Underwriter, which execution and delivery shall be conclusive evidence of the approval of any such modifications; and the Town hereby authorizes the use of the Preliminary Official Statement and Final Official Statement and the information contained therein in connection with the public offering and sale of the Series 2021 Bonds by the Underwriter.

(e) A copy of this Fourth Supplemental Ordinance shall be filed with the minutes of this meeting.

(f) The Town hereby authorizes and directs all of the officers and employees of the Town to carry out or cause to be carried out all obligations of the Town under the aforesaid Purchase Contract and to perform such other actions as they shall consider necessary or advisable in connection with the issuance, sale and delivery of the Series 2021 Bonds.

(g) The Town hereby authorizes the use of the General Bond Ordinance and this Fourth Supplemental Ordinance, which together are the "Ordinance" and the information contained therein in connection with the public offering and sale of the Series 2021 Bonds by the Underwriter.

(h) The Council hereby authorizes the Town Manager to negotiate the terms of, and execute, in the name and on behalf of the Town, and deliver investment agreements, forward delivery agreements, repurchase agreements and other agreements in connection with the Series 2021 Bonds, to prepare and solicit

bids for providers of such agreements and to execute, in the name and on behalf of the Town, written confirmations of any such agreements and other documents as may be necessary in connection therewith.

(i) The Council hereby ratifies, confirms and approves the actions of the Town Manager heretofore undertaken with regard to applications for Insurance Policies, Surety Bonds, Letters of Credit, and other credit enhancements and liquidity arrangements relating to the Series 2021 Bonds from municipal bond insurance companies or financial institutions and to enter into, execute and deliver on behalf of the Town, such loan, insurance, reimbursement or guaranty agreements as shall be necessary and advisable, with advice of counsel, in connection with the transactions and other matters referred to herein; provided, however, that the representations and covenants contained in such agreements may be incorporated in this Fourth Supplemental Ordinance as if fully set forth herein.

Section 3.06. Form of Bonds. The Series 2021 Bonds shall be in substantially the form set forth in Exhibit A hereto, with such necessary or appropriate variations, omissions and insertions as are incidental to the series, numbers, denominations, maturities, dates, interest rate or rates, redemption provisions, the purpose of issuance and other details thereof or as are otherwise permitted or required by law or by the Ordinance, including this Fourth Supplemental Ordinance. The Series 2021 Bonds shall be executed in the name and on behalf of the Town by the manual or facsimile signatures of the Mayor and Town Clerk.

ARTICLE IV

ESTABLISHMENT OF FUNDS; DISPOSITION OF BOND PROCEEDS

Section 4.01. Establishment of 2021 Debt Service Fund. In accordance with Section 7.04 of the General Bond Ordinance, the 2021 Debt Service Fund is hereby directed to be established and held by the Trustee or the Paying Agent, if any, on the date of the original delivery of the Series 2021 Bonds for the benefit of the Holders of the Series 2021 Bonds. Payments into the 2021 Debt Service Fund shall be made pursuant to the provisions of Section 7.02 of the General Bond Ordinance.

Section 4.02. Establishment of the 2021 Reserve Fund Requirement and 2021 Debt Service Reserve Fund. In accordance with Section 7.05 of the Ordinance, the Town Manager may determine whether it is necessary or desirable to establish the 2021 Debt Service Reserve Fund for the benefit of the Holders of the Series 2021 Bonds and the amount and timing of funding of the 2021 Reserve Fund Requirement, and, if so, such 2021 Debt Service Reserve Fund shall be established on the date of the original delivery of the Series 2021 Bonds and held by the Trustee or the Paying Agent, if any, with regard to the Series 2021 Bonds, all as provided in the Ordinance; and (2) in the event of any full or partial defeasance of the Series 2021 Bonds under Article XVI of the Ordinance, then the 2021 Reserve Fund Requirement established for the Series 2021 Bonds shall be recalculated based on the then Outstanding principal amount of such Series 2021 Bonds. If the 2021 Debt Service Reserve Fund is established, the 2021 Reserve Fund Requirement initially will be satisfied by the Town by the deposit of cash into the 2021 Debt Service Reserve Fund (which may, as designated by the Town Manager, be funded from the proceeds of the Series 2021 Bonds on the date of delivery thereof or from Gross Revenues thereafter), by securing the Letter of Credit, with the purchase of the Surety Bond, or any combination of the foregoing, in each case for the benefit of the Holders of the Series 2021 Bonds for which the 2021 Debt Service Reserve Fund (or separate funds or accounts, as applicable) is established.

Section 4.03. Disposition of Proceeds of Series 2021 Bonds and Certain Other Moneys.

The proceeds derived from the sale of the Series 2021 Bonds, net of the original issue discount or premium, the Underwriter's or Purchaser's discount, the premiums on the Insurance Policy and Surety

Bond (if any), shall be deposited with the Trustee, Paying Agent, Escrow Agent, Custodian or the Town, respectively, and used for one or more of the following purposes:

(a) A portion of the proceeds of the Series 2021 Bonds shall be paid over to the paying agent for the Bonds to be Refunded or the Escrow Agent (as applicable), an amount which the Town Manager determines to be required, together with amounts (if any) transferred from the Debt Service Fund related to the Bonds to be Refunded and other available moneys of the Town, to provide for the payment of principal of, redemption premium, if any, and interest on the Bonds to be Refunded upon the redemption thereof.

(b) If the Town Manager determines that a 2021 Debt Service Reserve Fund shall be established and the 2021 Reserve Fund Requirement shall be funded with a portion of the proceeds of the Series 2021 Bonds, there shall be deposited with the Trustee or the Paying Agent (if any) for deposit into such 2021 Debt Service Reserve Fund an amount equal to the 2021 Reserve Fund Requirement.

(c) The remaining amount of the proceeds of the Series 2021 Bonds shall be deposited with the Town or a Custodian (if any) into the Cost of Issuance Fund established in Section 4.05 hereof to be used and applied to the payment of Cost of Issuance as provided in that Section.

The respective amounts specified in this Section 4.03 shall be determined by the Town upon delivery of the Series 2021 Bonds.

Section 4.04. Authorization to Effect Refunding; Redemption of the Bonds to be Refunded. The Town Manager is hereby authorized and directed for and on behalf of the Town to take such actions, including but not limited to the execution by the Town Manager of the Escrow Agreement or other agreements, the giving of any such directions to the paying agent and/or registrar of the Bonds to be Refunded calling all or a portion of the Bonds to be Refunded for redemption on one or more dates or other directions as shall be necessary to carry out the provisions of this Fourth Supplemental Ordinance. If executed, the Escrow Agreement shall be dated the date of delivery of the Series 2021 Bonds to the initial purchaser thereof, and substantially in the form approved by the Town Manager upon the advice of counsel to the Town. The execution thereof shall be evidence of the approval of any such form of agreement.

Upon delivery of the Series 2021 Bonds, a portion of the principal proceeds thereof, together with amounts (if any) deposited in the Debt Service Fund with respect to the Bonds to be Refunded and other funds of the Town, shall be used to refinance the Bonds to be Refunded or, if applicable, be deposited with the Escrow Agent and held by it under the Escrow Agreement and in the Escrow Fund. Subject to the terms of the Escrow Agreement, it shall be the duty of the Escrow Agent to keep such proceeds invested and reinvested to the extent that it shall be practical in Defeasance Obligations and to apply the principal and interest of the trust so established in the manner prescribed in such Escrow Agreement and the General Bond Ordinance.

The Town Manager is hereby authorized to take such actions as may be necessary or desirable, upon the advice of counsel to the Town, to secure the Defeasance Obligations to be purchased under the Escrow Agreement, including but not limited to the preparation and dissemination of bid specifications and subscription documents and the execution of directions to purchase such Defeasance Obligations.

Section 4.05. Establishment of Cost of Issuance Fund. There is hereby created and established the Cost of Issuance Fund which fund shall be held by the Town or by one or more banks or other financial institutions designated by the Town (the "Custodian"). If held by a Custodian, the Town Manager is authorized and directed to negotiate, execute and deliver such agreements with such Custodian as may be necessary or desirable in connection therewith. The moneys on deposit in the Cost of

Issuance Fund shall be used and applied to the payment of the Costs of Issuance incidental to the issuance and sale of the Series 2021 Bonds.

Moneys held for the credit of the Cost of Issuance Fund shall be invested to the fullest extent practicable and reasonable, in Authorized Investments, maturing at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such Fund.

Withdrawals from the Cost of Issuance Fund shall be made in the manner withdrawals from other funds of the Town are made.

If after the payment in full of all Costs of Issuance any moneys remain in the Cost of Issuance Fund, such excess shall be paid in to the 2021 Debt Service Fund and shall be used only for the payment of the interest coming due on the Series 2021 Bonds.

ARTICLE V COVENANTS AND AMENDMENTS

Section 5.01. Federal Tax Covenant. The Town hereby covenants and agrees with the Holders of the Series 2021 Bonds that it will not take any action which will, or fail to take any action which failure will, cause interest on the Series 2021 Bonds to become includable in the gross income of the Holders for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Series 2021 Bonds. The Town further covenants and agrees with the Holders of the Series 2021 Bonds that no use of the proceeds of the Series 2021 Bonds shall be made which, if such use had been reasonably expected on the date of issue of the Series 2021 Bonds would have caused the Series 2021 Bonds to be “arbitrage bonds,” as defined in the Code; and to that end the Town hereby shall:

- (a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as any of the Series 2021 Bonds are Outstanding;
- (b) establish such funds, make such calculations and pay such amounts, if necessary, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebate of certain amounts to the United States; and
- (c) make such reports of such information at the times and places required by the Code.

The Town Manager is hereby further authorized, in accordance with the provisions of the Code, to make such election or designation (as applicable) necessary to be made by or on behalf of the Town that all or a portion of the Series 2021 Bonds are “qualified tax-exempt obligations” as defined in the Code.

Section 5.02. Continuing Disclosure. Pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended (“Section 11-1-85”), the Town covenants that it will file with a central repository for availability in the secondary bond market when requested:

- (a) An annual independent audit, within thirty days of the Town’s receipt of the audit; and
- (b) Event specific information within thirty (30) days of an event adversely affecting more than five (5%) percent of Gross Revenues or the Town’s tax base.

The only remedy for failure by the Town to comply with the covenant of this paragraph shall be an action for specific performance of this covenant. The Town specifically reserves the right to amend or delete this covenant to reflect any change in Section 11-1-85, without the consent of any Bondholder.

In addition, the Town Manager is hereby authorized and directed to approve the form of, and executed and deliver, a Continuing Disclosure or Reporting Certificate of the Town, related to the Series 2021 Bonds as required by applicable law, and the Town hereby covenants and agrees that it will comply with and carry out all of the provisions of such Continuing Disclosure or Reporting Certificate. Notwithstanding any other provisions of this Fourth Supplemental Ordinance, failure of the Town to comply with the Continuing Disclosure or Reporting Certificate shall not be considered an Event of Default, and no liability for damages shall attach therefor. The sole remedy for such failure to comply shall be that any Bondholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Town to comply with their obligations under this paragraph.

Section 5.03. Modification of General Bond Ordinance.

The Third Supplemental Ordinance contained certain amendments to the General Bond Ordinance. The Holders of the Bond of 2018 and the Series 2021 Bonds, by their acceptance thereof, have or are deemed to have consented to the amendments set forth in the Third Supplemental Ordinance.

ARTICLE VI
MISCELLANEOUS

Section 6.01. Further Actions. The Mayor, Clerk, Town Manager, Assistant Town Manager, Director of Finance and Town Attorney are hereby authorized and directed to take any and all such further actions as shall be deemed necessary or desirable in order to effectuate issuance of the Series 2021 Bonds pursuant to the Purchase Contract, to secure a Letter of Credit or purchase the Insurance Policy or Surety Bond (including the execution and delivery of the commitments relating thereto) and to carry out the intentions of this Fourth Supplemental Ordinance.

Section 6.02. Headings. The headings and titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Fourth Supplemental Ordinance.

Section 6.03. Notices. All notices, certificates or other communications hereunder or under the General Bond Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the Town:

Town of Hilton Head Island, South Carolina
One Town Center Court
Hilton Head Island, South Carolina 29928-2701
Attention: Town Manager

The Town and the Trustee may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 6.04. Severability. If any section, phrase, sentence, or portion of this Fourth Supplemental Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 6.05. Codification. This Fourth Supplemental Ordinance shall be forthwith codified in the Code of Town Ordinances in the manner required by law.

Section 6.06. Effective Date. This Fourth Supplemental Ordinance shall be effective upon its enactment by the Council of the Town of Hilton Head Island, South Carolina.

Section 6.07. Repeal of Inconsistent Ordinances. All ordinances of the Town, and any part of any ordinance, inconsistent with this Fourth Supplemental Ordinance are hereby repealed to the extent of such inconsistency. Upon issuance of the Series 2021 Bonds, any remaining authorization to issue Stormwater System Revenue Bonds contained in the Third Supplemental Ordinance shall be repealed and rescinded.

PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA ON THIS ____ DAY OF _____, 2020.

John J. McCann, Mayor

ATTEST:

Krista M. Wiedmeyer
Town Clerk

APPROVED AS TO FORM:

Curtis L. Coltrane, Town Attorney

First Reading:
Second Reading:

Introduced by Council Member:

TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA,
STORMWATER SYSTEM REFUNDING REVENUE BONDS, SERIES _____

No. R-____

Interest Rate Maturity Date Issue Date CUSIP

Registered Holder:

Principal Amount:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA (the "Town") a public body corporate and politic and a political subdivision of the State of South Carolina (the "State"), created and existing by virtue of the laws of the State, acknowledges itself indebted and for value received hereby promises to pay, solely as hereinafter provided, to the Registered Owner named above or registered assigns, the Principal Amount set forth above on the Maturity Date stated above, unless this Bond be subject to redemption and shall have been redeemed prior thereto as hereinafter provided, upon presentation and surrender hereof at the corporate trust office of _____ in _____, and to pay interest on such Principal Amount at the annual Interest Rate stated above (calculated on the basis of a 360-day year of twelve (12) 30-day months), until the obligation of the Town with respect to the payment of such Principal Amount shall be discharged. Interest on this Bond shall be payable in semiannual installments on _____ 1 and _____ 1 of each year beginning _____, 2021. All payments shall be paid to the person in whose name this Bond is registered at the close of business on the fifteenth day of the calendar month preceding each Bond Payment Date (the "Record Date"). The payments shall be payable by check or draft mailed at the times provided herein from the Town (or the Paying Agent or its behalf) to the person in whose name this Bond is registered at the address shown on the registration books. The payments are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

[If Bond is sold bank-qualified, insert Bank Qualification Rider, if any]

THIS BOND HAS BEEN ISSUED UNDER THE PROVISIONS OF TITLE 6, CHAPTER 21, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED AND SECTION 48-14-10 ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED; THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE TOWN WITHIN THE MEANING OF ANY PROVISION, LIMITATION OR RESTRICTION OF THE CONSTITUTION OR THE LAWS OF THE STATE OF SOUTH CAROLINA, OTHER THAN THOSE PROVISIONS AUTHORIZING INDEBTEDNESS PAYABLE SOLELY FROM A REVENUE-PRODUCING PROJECT NOT INVOLVING REVENUES FROM ANY TAX OR LICENSE. THE TOWN IS NOT OBLIGATED TO PAY ANY OF THE BONDS OR THE INTEREST THEREON EXCEPT FROM GROSS REVENUES OF THE SYSTEM. THE BONDS ARE NOT GENERAL OBLIGATIONS OF THE TOWN, THE STATE OF SOUTH CAROLINA, OR ANY POLITICAL SUBDIVISION THEREOF.

This Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Trustee.

This Bond is one of an issue of bonds of the Town in the aggregate principal amount of _____ Million Dollars (\$_____) of like tenor, except as to number, rate of interest, date of maturity and redemption provides, issued pursuant to and in accordance with the Constitution and statutes of the State of South Carolina (the "State"), including particularly Chapter 21, Title 6, inclusive, Code of Laws of South Carolina, 1976, as amended, Section 48-14-10 et. seq., Code of Laws of South Carolina, 1976, as amended, Ordinance No. 2002-44 duly enacted by the Town Council of the Town (the "Council") on December 3, 2002, as amended (as so amended, the "General Bond Ordinance"), and Ordinance No. _____ duly enacted by the Council on _____, 2020 (the "Fourth Supplemental Ordinance") (the General Bond Ordinance and the Fourth Supplemental Ordinance are herein collectively referred to as the "Ordinances") for the purpose of providing moneys, which together with other moneys made available by the Town shall be sufficient to (i) refinance the Bonds to be Refunded, (iii) [satisfy the 2021 Reserve Fund Requirement [through the purchase of a [Letter of Credit][Surety Bond], and (iv)] pay all costs of issuing the Bonds[, including the premium[s] for the Insurance Policy or Surety Bond].

Certain capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Ordinances. Certified copies of the Ordinances are on file in the office of the Trustee and in the office of the Clerk of Court for Beaufort County, South Carolina.

The Ordinances contain provisions defining terms, including the properties comprising the System; set forth the revenues pledged for the payment of the principal of and interest on this Bond and the Bonds of other series herewith which may hereafter be issued on a parity herewith under the Ordinances; set forth the nature, extent and manner of enforcement of the security of this Bond and of such pledge, and the rights and remedies of the Holder hereof with respect thereto; set forth the terms and conditions upon which and the extent to which the Ordinances may be altered, modified and amended; set forth the terms and conditions upon which this Bond is issued upon which other bonds may be hereinafter issued payable as to principal, premium, if any, and interest on a parity with this Bond and equally and ratably secured herewith; sets forth the rights, duties and obligations of the Town thereunder; and set forth the terms and conditions upon which the pledge made in the Ordinances for the security of this Bond and upon which the covenants, agreements and other obligations of the Town made therein may be discharged at or prior to the maturity or redemption of this Bond with provisions for the payment thereof in the manner set forth in the Ordinances. Reference is hereby made to the Bond Ordinance to all of the provisions of which any holder of this Bond by the acceptance hereof thereby assents. The provisions of the General Bond Ordinance pertaining to (1) the definitions of the "Additional Bonds," "Expenses of Operating and Maintaining the System," (2) the ability of underwriters, purchasers or bond insurers to assent to amendments to the General Bond Ordinance, and (3) certain other provisions of the General Bond Ordinance, have been amended by Supplemental Ordinances to the General Bond Ordinance. The provisions of the Act and the Ordinances shall be a contract with the holder of this Bond.

This Bond and the Series of Bonds of which it is one and the interest thereon are special obligations of the Town and are secured by and payable solely from, and secured equally and ratably by a pledge of and lien upon, the Revenues (as defined in the General Bond Ordinance) derived by the Town from the System.

The General Bond Ordinance authorizes the issuance of additional bonds on a parity with the Bonds of this issue which, when issued in accordance with the provisions of the General Bond Ordinance, will rank equally and be on a parity herewith.

This Bond and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments imposed within the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer and certain franchise taxes.

This Bond is transferable, as provided in the Ordinances, only upon the registration books of the Town kept for that purpose and maintained by the Trustee, by the Holder hereof in person or by his duly authorized attorney, upon (a) surrender of this Bond and an assignment with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder hereof or his duly authorized attorney and (b) payment of the charges, if any, prescribed in the Ordinances. Thereupon a new Bond of the same aggregate principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor as provided in the Ordinances. The Town, the Trustee and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or redemption price hereof and interest due hereon and for all other purposes.

For every exchange or transfer of this Bond, the Town or the Trustee or Registrar, as the case may be, may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

[Redemption Provisions]

If less than all the Bonds of any maturity are called for redemption, the Bonds of such maturity to be redeemed shall be selected at random by the Trustee or Registrar, if any. In the event any of the Bonds or portions thereof are called for redemption, the Trustee or Registrar, if any, shall give notice, in the name of the Town, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry of the Town and to such Securities Depositories as the Town may designate not less than thirty (30) days and not more than sixty (60) days prior to the date fixed for the redemption thereof. If this Bond be redeemable and shall have been duly called for redemption and notice of the redemption hereof mailed as aforesaid, and if on or before the date fixed for such redemption, payment thereof shall be duly made or provided for, interest hereon shall cease or accrue from and after the redemption date hereof.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and statutes of the State to exist, be performed or happen precedent to or in the issuance of this Bond, exist, have been performed and have happened, that the amount of this Bond, together with all other indebtedness of the Town, does not exceed any limit prescribed by such Constitution or statutes.

This Bond shall not be valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA has caused this Bond to be signed by the manual or facsimile signature of its Mayor, its corporate seal to be reproduced hereon and the same to be attested by the manual or facsimile signature of its Town Clerk.

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Mayor

(SEAL)

ATTEST:

By: _____
Town Clerk

FORM OF CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within mentioned Ordinance.

_____, as Trustee

By: _____
Authorized Agent

Date: _____

FORM OF ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

_____ (please print or type name and address of Transferee and Social Security or other identifying number of Transferee)

the within Bond and all rights and title thereunder, and hereby irrevocably constitutes and appoints attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____

STAMP Language

Signature Guaranteed: _____

NOTICE: Signature(s) must be guaranteed
By an institution which is a participant in the
Securities Transfer Agent Medallion Program
(STAMP) or similar program.

NOTICE: The signature to this assignment
must correspond with name as it appears
upon the face of the within bond in every
particular, without alteration or enlargement
or any change whatever.

TABLE OF CONTENTS

Town of Hilton Head Island, SC (21oct2020 SWU Refunding Update)
Refunding of 2010 Stormwater Bonds 21oct2020

Report	Page
Prior Bond Debt Service	1
Summary of Bonds Refunded	2
Escrow Requirements	3
Escrow Statistics	4
Summary of Refunding Results	5
Savings	6
Sources and Uses of Funds	7
Bond Pricing	8
Bond Summary Statistics	9
Bond Debt Service	10

PRIOR BOND DEBT SERVICE

Town of Hilton Head Island, SC (21oct2020 SWU Refunding Update)
 Refunding of 2010 Stormwater Bonds 21oct2020

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
04/01/2021	975,000	2.780%	87,083.50	1,062,083.50	1,062,083.50
10/01/2021			73,531.00	73,531.00	
04/01/2022	1,000,000	2.780%	73,531.00	1,073,531.00	1,147,062.00
10/01/2022			59,631.00	59,631.00	
04/01/2023	1,030,000	2.780%	59,631.00	1,089,631.00	1,149,262.00
10/01/2023			45,314.00	45,314.00	
04/01/2024	1,055,000	2.780%	45,314.00	1,100,314.00	1,145,628.00
10/01/2024			30,649.50	30,649.50	
04/01/2025	1,085,000	2.780%	30,649.50	1,115,649.50	1,146,299.00
10/01/2025			15,568.00	15,568.00	
04/01/2026	1,120,000	2.780%	15,568.00	1,135,568.00	1,151,136.00
	6,265,000		536,470.50	6,801,470.50	6,801,470.50

SUMMARY OF BONDS REFUNDED

Town of Hilton Head Island, SC (21oct2020 SWU Refunding Update)
Refunding of 2010 Stormwater Bonds 21oct2020

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
2010 Refunding Bonds	**FINAL PRICING**, 2010:				
SERIALS	04/01/2021	2.780%	975,000.00		
	04/01/2022	2.780%	1,000,000.00	04/01/2021	100.000
	04/01/2023	2.780%	1,030,000.00	04/01/2021	100.000
	04/01/2024	2.780%	1,055,000.00	04/01/2021	100.000
	04/01/2025	2.780%	1,085,000.00	04/01/2021	100.000
	04/01/2026	2.780%	1,120,000.00	04/01/2021	100.000
			6,265,000.00		

ESCROW REQUIREMENTS

Town of Hilton Head Island, SC (21oct2020 SWU Refunding Update)
Refunding of 2010 Stormwater Bonds 21oct2020

Period Ending	Principal	Interest	Principal Redeemed	Total
04/01/2021	975,000.00	87,083.50	5,290,000.00	6,352,083.50
	975,000.00	87,083.50	5,290,000.00	6,352,083.50

ESCROW STATISTICS

Town of Hilton Head Island, SC (21oct2020 SWU Refunding Update)
 Refunding of 2010 Stormwater Bonds 21oct2020

Total Escrow Cost	Modified Duration (years)	Yield to Receipt Date	Yield to Disbursement Date	Perfect Escrow Cost	Value of Negative Arbitrage	Cost of Dead Time
Global Proceeds Escrow: 6,352,083.50				6,341,445.34		10,638.16
6,352,083.50				6,341,445.34	0.00	10,638.16

Delivery date 01/28/2021
 Arbitrage yield 0.960100%

SUMMARY OF REFUNDING RESULTS

Town of Hilton Head Island, SC (21oct2020 SWU Refunding Update)
Refunding of 2010 Stormwater Bonds 21oct2020

Dated Date	01/28/2021
Delivery Date	01/28/2021
Arbitrage yield	0.960100%
Escrow yield	0.000000%
Value of Negative Arbitrage	
Bond Par Amount	5,695,000.00
True Interest Cost	0.960100%
Net Interest Cost	0.960000%
Average Coupon	0.960000%
Average Life	2.653
Par amount of refunded bonds	6,265,000.00
Average coupon of refunded bonds	2.780000%
Average life of refunded bonds	2.755
PV of prior debt to 01/28/2021 @ 0.960100%	6,629,298.62
Net PV Savings	162,215.12
Percentage savings of refunded bonds	2.589228%
Percentage savings of refunding bonds	2.848378%

SAVINGS

Town of Hilton Head Island, SC (21oct2020 SWU Refunding Update)
Refunding of 2010 Stormwater Bonds 21oct2020

Date	Prior Debt Service	Refunding Debt Service	Savings	Present Value to 01/28/2021 @ 0.9601004%
04/01/2021	1,062,083.50	1,029,567.60	32,515.90	32,461.44
04/01/2022	1,147,062.00	959,880.00	187,182.00	185,329.75
04/01/2023	1,149,262.00	966,096.00	183,166.00	179,585.22
04/01/2024	1,145,628.00	962,168.00	183,460.00	178,112.67
04/01/2025	1,146,299.00	958,192.00	188,107.00	180,832.75
04/01/2026	1,151,136.00	964,168.00	186,968.00	177,976.79
	6,801,470.50	5,840,071.60	961,398.90	934,298.62

Savings Summary

PV of savings from cash flow	934,298.62
Less: Prior funds on hand	(774,791.75)
Plus: Refunding funds on hand	2,708.25

Net PV Savings	162,215.12

SOURCES AND USES OF FUNDS

Town of Hilton Head Island, SC (21oct2020 SWU Refunding Update)
Refunding of 2010 Stormwater Bonds 21oct2020

Sources:

Bond Proceeds:	
Par Amount	5,695,000.00
Other Sources of Funds:	
2010 Bond 4/1/2021 Interest Set Aside (3 months)	43,541.75
2010 Bond 4/1/2021 Principal Set Aside (9 months)	731,250.00
	<u>774,791.75</u>
	<hr/> 6,469,791.75 <hr/> <hr/>

Uses:

Refunding Escrow Deposits:	
Cash Deposit	6,352,083.50
Delivery Date Expenses:	
Cost of Issuance	115,000.00
Other Uses of Funds:	
Proceeds	2,708.25
	<hr/> 6,469,791.75 <hr/> <hr/>

BOND PRICING

Town of Hilton Head Island, SC (21oct2020 SWU Refunding Update)
Refunding of 2010 Stormwater Bonds 21oct2020

Bond Component	Maturity Date	Amount	Rate	Yield	Price
Single-A RBI 20oct2020 3-yr Spot + 55 bps:					
	04/01/2021	1,020,000	0.960%	0.960%	100.000
	04/01/2022	915,000	0.960%	0.960%	100.000
	04/01/2023	930,000	0.960%	0.960%	100.000
	04/01/2024	935,000	0.960%	0.960%	100.000
	04/01/2025	940,000	0.960%	0.960%	100.000
	04/01/2026	955,000	0.960%	0.960%	100.000
		5,695,000			

Dated Date	01/28/2021	
Delivery Date	01/28/2021	
First Coupon	04/01/2021	
Par Amount	5,695,000.00	
Original Issue Discount		
Production	5,695,000.00	100.000000%
Underwriter's Discount		
Purchase Price	5,695,000.00	100.000000%
Accrued Interest		
Net Proceeds	5,695,000.00	

BOND SUMMARY STATISTICS

Town of Hilton Head Island, SC (21oct2020 SWU Refunding Update)
Refunding of 2010 Stormwater Bonds 21oct2020

Dated Date	01/28/2021
Delivery Date	01/28/2021
Last Maturity	04/01/2026
Arbitrage Yield	0.960100%
True Interest Cost (TIC)	0.960100%
Net Interest Cost (NIC)	0.960000%
All-In TIC	1.749870%
Average Coupon	0.960000%
Average Life (years)	2.653
Duration of Issue (years)	2.612
Par Amount	5,695,000.00
Bond Proceeds	5,695,000.00
Total Interest	145,071.60
Net Interest	145,071.60
Total Debt Service	5,840,071.60
Maximum Annual Debt Service	1,029,567.60
Average Annual Debt Service	1,128,516.25
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	

Total Underwriter's Discount	
Bid Price	100.000000

Bond Component	Par Value	Price	Average Coupon	Average Life
Single-A RBI 20oct2020 3-yr Spot + 55 bps	5,695,000.00	100.000	0.960%	2.653
	5,695,000.00			2.653

	TIC	All-In TIC	Arbitrage Yield
Par Value	5,695,000.00	5,695,000.00	5,695,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense		(115,000.00)	
- Other Amounts			
Target Value	5,695,000.00	5,580,000.00	5,695,000.00
Target Date	01/28/2021	01/28/2021	01/28/2021
Yield	0.960100%	1.749870%	0.960100%

BOND DEBT SERVICE

Town of Hilton Head Island, SC (21oct2020 SWU Refunding Update)
Refunding of 2010 Stormwater Bonds 21oct2020

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
04/01/2021	1,020,000	0.960%	9,567.60	1,029,567.60	1,029,567.60
10/01/2021			22,440.00	22,440.00	
04/01/2022	915,000	0.960%	22,440.00	937,440.00	959,880.00
10/01/2022			18,048.00	18,048.00	
04/01/2023	930,000	0.960%	18,048.00	948,048.00	966,096.00
10/01/2023			13,584.00	13,584.00	
04/01/2024	935,000	0.960%	13,584.00	948,584.00	962,168.00
10/01/2024			9,096.00	9,096.00	
04/01/2025	940,000	0.960%	9,096.00	949,096.00	958,192.00
10/01/2025			4,584.00	4,584.00	
04/01/2026	955,000	0.960%	4,584.00	959,584.00	964,168.00
	5,695,000		145,071.60	5,840,071.60	5,840,071.60



TOWN OF HILTON HEAD ISLAND

Public Projects and Facilities Management Department

TO: Stephen G. Riley, ICMA-CM, Town Manager
VIA: Josh Gruber, Assistant Town Manager
Scott Liggett, PE, Director of PP&F/Chief Engineer
Jeff Buckalew, PE, Town Engineer
Curtis Coltrane, Town Attorney
FROM: Jeff Netzinger, PE, Storm Water Manager

DATE: October 30, 2020
SUBJECT: Updated Standard POA/PUD Drainage Agreement

Recommendation

Staff recommends the Town Council approve the following items related to drainage maintenance agreements with Property Owners Associations (POA) and Planned Unit Developments (PUD):

1. Adoption of a revised standard maintenance agreement for POAs and PUDs (attached as Exhibit 1);
2. Offering the revised standard agreement to those POAs requesting service.
3. Provide the requisite notice and then terminate any existing agreements whereby an existing agreement partner does not wish to accept the non-negotiable terms of the revised standard agreement as an amendment to supersede their existing agreement.

Summary

On October 6, the Finance and Administrative Committee unanimously approved a motion to bring forth and recommend Town Council approve the revised agreement, pending that staff and the Town Attorney consideration of the suggestions by Bill Harkins (correcting the identified typing error, adding the specified definitions, and creating a sense of “reasonable discretion”). The revised standard agreement includes clarifying language defining qualifying and non-qualifying system deficiencies, specific stipulation of responsibilities of both the Town and the POA, and refinement of terms and process requirements for agreement partners to receive reimbursement for maintenance work not undertaken by the Town. A table summarizing the revisions is attached as Exhibit 2.

Background

Some of the existing agreements included minor negotiated items by the grantors and their attorneys and over a long period of time and use, staff has identified areas where the agreement could be more clear and informative. Staff has worked with the Town Attorney and PUD managers for approximately two years in updating the agreement. Staff has also received requests from the following POAs seeking public maintenance and repair service of their private storm drainage systems: Spanish Wells, Yacht Cove, Wells East, Bermuda Pointe, Jarvis Creek Club, Seagrass Landing, Carolina Isles and Beach City Place.

During the October 20 meeting, Town Council motioned to postpone consideration of the these recommendations until the next scheduled meeting to allow PUD managers more time to review and comment on the revised agreement document. Comments were received from Port Royal and two minor changes to the agreement were made as a result.

WHEREAS, **[insert association name here]**, desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Utility Service Fees to undertake maintenance and improvement of the storm water drainage system in **[insert name of development]**, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the **[insert association name here]**, has agreed to grant access, drainage and maintenance easements to the Town, in order to facilitate the maintenance and improvement of the qualifying storm water drainage system in **[insert name of development]**.

Now, therefore, know all men by these presents, that **[insert association name here]**, and the Town of Head Island, South Carolina, for and in consideration of the sum of One and no/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used in this Agreement, the following terms as related to this agreement shall mean:
 - a. *Agreement:* This “Drainage System Maintenance Agreement”.
 - b. *Association:* **[insert association name here]**, a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement and to complete all of the Association’s obligations under it, and the execute and deliver the Access, Drainage and Maintenance Easement Agreement attached hereto as Exhibit “C.”

- c. *Casualty*: The destruction of all or any part of the Drainage System through a natural disaster.
- d. *Covenants*: Any one or more of Covenants, Conditions, and Restrictions for **[insert association name here]** recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: **[insert development name here]** A planned unit development or subdivision lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.
- f. *Drainage System*: The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit “A,” which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.

- g. *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or substantially inhibits the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property.
- h. *Permanent Structure*: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.
- i. *Pollutant*: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; sediment; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.
- j. *Post-construction Structural Best Management Practice Facility*: A Post-construction Structural Best Management Practice Facility (BMPF) is a facility designed and built to provide treatment of storm

water either through storage, filtration or infiltration (i.e. detention basins, retention basins, rain gardens, bioretention cells, sand filters, vegetated filter strips, water quality swales and infiltration trenches) as set forth in the latest editions of the Beaufort County Manual for Storm Water Best Management and Design Practices, the South Carolina DHEC Storm Water Management BMP Handbook, and the Georgia Coastal Stormwater Supplement, which include descriptions standards, and design guidelines for these facilities.

- k. *Project:* Work, including repairs and improvements performed or approved by the Town to correct a specific Qualifying Storm Drainage System Deficiency.
- l. *Qualifying Drainage System Deficiency:* Anything that, in the determination of the Town, prevents, impairs or impedes the adequate conveyance or drainage of storm water runoff through the Drainage System or the structural failure of a Drainage System component. Qualifying Drainage System Deficiencies include, but are not limited to, the following:
 - i. Lagoon bank erosion that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;
 - ii. Presence of sediment and debris located in the Drainage System that has an appreciable adverse impact on the

- conveyance of storm water runoff through the Drainage System or the functioning of the Drainage System;
- iii. Structural deficiencies associated with pipes and culverts, including, but not limited to, joint failures, deterioration, root intrusion, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures;
 - iv. Structural deficiencies associated with inlets, manholes, junction boxes, control structures and headwalls including, but not limited to, connection failure, deterioration, mechanical failure, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System, or that threatens the integrity of adjacent infrastructure or Permanent Structures. Examples of typical deficiencies include damaged grates, grout failures at pipe connections, deterioration or failure of flap gates and sluice gates, or failure of structure walls;
 - v. Sinkholes caused by Drainage System pipe or Drainage System structure Deficiencies, but not those caused by the actions of any third party, including utility providers;
 - vi. Drainage System conveyance or performance deficiencies due to inadequate design capacity. Examples of typical

conveyance or performance deficiencies include undersized pipes and insufficient weir capacities.

Qualifying Drainage System Deficiencies do not include the following:

- i. The aesthetic appearance or appeal of any part of the Drainage System, including but not limited to lagoons, banks of lagoons, channel banks, landscaping, drains, catch basins, canals, structures, bridges, bulkheads, pipes, culverts, valves gates, debris that does not have an appreciable adverse impact on the conveyance of storm and surface water through the Drainage System, or other visible components of the Drainage System;
- ii. The introduction of pollution or pollutants into the Drainage System from any source;
- iii. Lagoon bank erosion that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of adjacent Drainage System infrastructure or Permanent Structures;
- iv. Tidal erosion or tidal flooding that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of Drainage System infrastructure;

- v. Establishment of access to the Drainage System by the Association, including, but not limited to, grading, clearing of vegetation, removal of trees, or removal of other obstructions or Permanent Structures in order to provide physical access to the Drainage System;
- vi. Drainage System damage or deficiencies caused by the actions of others, including utilities and property owners (including, but not limited to, bores or cuts into pipes or structures);
- vii. Minor or nuisance flooding that does not adversely affect transportation infrastructure, Permanent Structures, hardscape amenities, or conveyance of storm water runoff through the Drainage System, including golf course flooding, isolated lawn and yard ponding, or standing water in roadway shoulders and unimproved lots or land;
- viii. Drainage System Deficiencies determined by the Town to be caused or exacerbated by intentional acts causing tidal backflow and saltwater intrusion into the Drainage System through failure to operate control structures per the design intent or the failure by the Association to monitor and maintain proper functioning of backflow prevention devices including flaps, gates, sluice gates, check valves, or similar devices;

- ix. Damage to, or failure of, Drainage System components situated underneath or within five (5) feet of any Permanent Structure that is not a part of the Drainage System, where the Town determines that difficult access and/or liabilities exist, or within the zone of influence for the foundation of a Permanent Structure;
 - x. The construction of a new drainage system or an addition to an existing Drainage System, or the modification of an existing Drainage System to accommodate drainage requirements for new development within the Development.
 - xi. Drainage System deficiencies determined by the Town to be caused by or originating from unauthorized or non-permitted modifications to the Drainage System by any party other than the Town.
- m. *Storm Water Utility Service Fees:* The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by Beaufort County, South Carolina, to the Town; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town, under the authority of Town Ordinance Number 2002-43.

- n. *Storm Water Utility Project Prioritization and Annual Budget Process:* The annual process by which the Town of Hilton Head Island, South Carolina, shall establish and maintain a prioritized list of all known Qualifying Drainage System Deficiencies within the Town limits determined to be eligible for service using Storm Water Utility Service Fees. Prior to the beginning of each fiscal year, the Town shall establish an annual Storm Water Utility budget which defines all revenues and expenditures associated with the Storm Water Utility Service Fees. This budget shall include those known Projects to correct Qualifying Drainage System Deficiencies intended to be completed within that fiscal year.
- o. *Town:* The Town of Hilton Head Island, South Carolina.
2. **Grant of Easements:** Contemporaneously with the execution and delivery of this Agreement, the Association and the Town have entered into an “Access, Drainage and Maintenance Easement Agreement” which grants the Town rights to access, operate, utilize, maintain, and improve the Drainage System within the Development, with said easement being in the form attached hereto as Exhibit “C”.
3. **Maintenance, Inspection and Operation of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement Agreement:
- (a) the Town shall be responsible for the maintenance, repairs and improvements necessary to correct any Qualifying Drainage System Deficiency under the terms and conditions of this Agreement. This

Agreement does not preclude the Association from repairing, maintaining, or improving any component of its Drainage System at its expense.

(b) The Association shall be responsible for the following within the Development:

- (i) Normal and emergency operation of Drainage System control structures, including gates, weirs and pumps, and for lowering water levels in compliance with pre-storm preparation protocols established by the Town.
- (ii) Maintenance and replacement of weir boards, maintenance of control structure access ways, decking and railings, and maintaining control structure accessibility for inspection and operation by controlling and/or removing vegetation as necessary.
- (iii) Performing maintenance of work shelves along ditches and canals to provide reasonable and adequate access for inspection, maintenance and repair.
- (iv) Monitoring the condition of flap gates, sluice gates, check valves, and similar devices intended to prevent the intrusion of tidal backflow and brackish water into the Drainage System to ensure that they are in proper working order and functioning as intended.
- (v) Making repairs to roadway pavement, pathway pavement, curb and gutter and related ancillary infrastructure or property damage attributed to a past or existing Qualifying Drainage System Deficiency if the deficiency has been corrected by the Town via

trenchless technology methods (i.e. pipe lining). This does not obligate the Association to repair or replace such infrastructure if the repair is made using open cut excavations where removal of surface infrastructure is necessary to complete the repair, in which case, the repair of the ancillary infrastructure shall be considered to be a part of the Town's work to correct the deficiency.

- (vi) Performing annual inspections of Post-construction Structural Best Management Practice Facilities in order to comply with Stormwater Management Plan obligations, including submittal of inspection documentation to the Town in accordance with § 16-5-109 (H)(2), *Municipal Code to the Town of Hilton Head Island* (1983).
- (vii) Regulating the actions of utility providers and property owners, or their assigns, to prevent and mitigate any damage they may cause to the Drainage System.

4. Procedure for Town's Maintenance of Drainage System: The Parties acknowledge that the Town intends to provide for the maintenance and improvement of the Drainage System and the repair of identified Qualifying Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Utility Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7, 8 and 10 below, or work completed directly by the Association under Article 9, the Parties agree:

- a. *Identifying Qualifying Drainage System Deficiencies:* The Association shall be responsible for identifying any Qualifying Drainage System Deficiencies.
- b. *Schedule for Submission:* The Association shall submit a written description of each known Qualifying Drainage System Deficiency to the Town using the service request form provided by the Town, describing the nature, location and cause (if known) of each Qualifying Drainage System Deficiency. The Association may identify a potential solution is for the deficiency. In such case, the Association shall include a description of the solution and a preliminary estimate of anticipated costs for the proposed solution. Qualifying Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town, by the end of any calendar year will be considered in the development of the Storm Water Utility Project Prioritization and Annual Budget Process for the following fiscal year.
- c. *Completion of Maintenance:* The Town shall annually develop a Storm Water Utility Project Prioritization and an Annual Budget that will address identified Qualifying Drainage System Deficiencies as follows:
 - i. The Town shall determine the scope and extent of the maintenance, repair or improvement that is necessary to correct any Qualifying Drainage System Deficiencies, and the

means, methods and materials needed to accomplish the same.

- ii. The Town shall determine the priority and number of the Projects and schedule the Projects to correct to correct the Qualifying Drainage System Deficiencies for each fiscal year. The determination of the scheduling and funding for the correction of the Qualifying Drainage System Deficiencies shall be made by the Town, taking into account the following:
 1. The availability and amount of the Storm Water Utility Service Fees fund balance, revenue from bonds paid by Storm Water Utility Service Fees, and Storm Water Utility Service Fees in any given fiscal year;
 2. Prioritization of all other Projects, or qualifying requested improvements, repair and maintenance that are to be funded with Storm Water Utility Service Fees; and
 3. The annual cost required to operate the Storm Water Utility, its programs and initiatives, and debt service.
- iii. The Town will complete the Projects as determined by the Town as a part of the Storm Water Utility Project Prioritization and Annual Budget Process, unless

Emergencies or Casualties occur that alter the prioritization and funding such that funds are insufficient to correct all Qualifying Drainage System Deficiencies as intended within the same fiscal year.

- d. *Scheduling of Projects*: Other than in the case of an Emergency or Casualty, the Town and the Association shall mutually agree in writing as to the scheduling of any Project to be performed under this Agreement in the Development in advance of the commencement of the Project.
- e. *Resident Notification*: The Association shall be solely responsible for the notification of its owners and guests that may be affected by any Project, or by work to address any Emergency or Casualty.
- f. *Legal Access to Private Property*: The Association shall be responsible for obtaining all access rights, including access rights over and across property in the Development that is not owned by the Association, as may be deemed necessary by the Town to complete any Project.
- g. *Access Needed to Complete Project*: The Association shall be responsible for providing clear and adequate physical access to each Project site at no cost to the Town. If clear, adequate physical access to the Project site cannot be provided sufficient to complete the Project without the likelihood of damage to property, assets and amenities by contractors and equipment, the repair and replacement

of any property, assets and amenities damaged as a result of the Project shall be the responsibility of the Association, at no additional cost to the Town. Such property, assets and amenities shall include, but are not limited to, landscaping, flowerbeds, ornamental shrubs and trees, lawns, irrigation systems, boardwalks, cart paths, driveways, and sidewalks. The determination of whether the access is clear and adequate, and whether there is a likelihood of damage shall be made in the sole discretion of the Town, prior to the commencement of the Project. The Association has the right to withdraw the service request if the magnitude of potential damage is not acceptable to the Association. If the service request is withdrawn, completing the Project shall be the responsibility of the Association.

- h. *No Guarantees Regarding Schedule:* The Town cannot guarantee that the amount of available Storm Water Utility Service Fees, the number of Projects to be funded with Storm Water Utility Service Fees in any given fiscal year, and whether Emergencies and Casualties and weather related general emergencies will not cause delays in the correction of Qualifying Drainage System Deficiencies within the Development and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of any Project shall be made at the Town's discretion and shall be final.

5. **Further Obligations of the Association:** The Association agrees that during the term, or any renewal term, of this Agreement, it shall take no action which damages the Drainage System, allows damage to the Drainage System, or creates a Drainage System Deficiency, including, but not limited to allowing salt water intrusion or pollutants to enter the Drainage System and allowing utility providers, property owners, or their assigns to impair the function of the Drainage System. To the extent the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Development including lagoons and lagoon banks, ditch maintenance shelves, roads, pathways, utilities, this Agreement is not intended to in any way restrict or limit the Association's completion of its obligations.
6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Storm Water Utility Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.
7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:
 - a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.

- b. *Responsibilities of the Association:* The Association shall take such steps as may be reasonably necessary to secure any area affected by the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency. The Association may complete any repairs to the Drainage System needed to address the Emergency, as provided for in Article 10, below.
 - c. *Responsibilities of the Town:* Upon receipt of notification of an Emergency from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as practical, taking into account the threat presented by the Emergency, the existence of any other Emergency or Casualty, the cause of the Emergency and/or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement from third parties for any costs incurred by the Town as a result of any Emergency found to have been caused by the negligence of said third parties.
8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:
- a. *Agreement Not Terminated:* This Agreement shall remain in full force and effect.

- b. *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for the reconstruction of all or any part of the Drainage System affected by the Casualty.
- c. *Approval of Plans:* The engineering and design plans must be approved by the Association prior to any reconstruction of the Drainage System. If the Association does not approve the engineering and design plans prepared by the Town, the Association may reconstruct the Drainage System at its own expense and shall not seek reimbursement for the cost thereof from the Town.
- d. *Right of Entry and Access:* If the engineering and design plans approved by the Association require work outside of easement limits described in the Access, Drainage and Maintenance Easement Agreement, the Association shall provide temporary easements for access and construction over any property it owns or controls, and shall deliver a valid temporary construction easement for access and construction from the owners of property that the Association does not own.
- e. *Amendment of Access, Drainage and Maintenance Easement Agreement:* In the event that the engineering and design plans approved by the Association include permanent improvements or create access or other needs that are in areas not included in the Access, Drainage and Maintenance Easement Agreement, the Association agrees that it will execute and deliver an amendment to

the Access, Drainage and Maintenance Easement Agreement to subject any such areas in the Access, Drainage and Maintenance Easement Agreement.

- f. *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association, the Association's delivery of any needed temporary easements for access and construction, the Town shall complete the reconstruction of the Drainage System, or any part of it, as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town, the existence of other Emergencies and Casualties and availability of funding. Other than the expenses identified in subsection (b) of this Article 8, the Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Utility Service Fees, bond, any government aid and assistance programs, or the Association, if the Association is responsible for all or any part of the Casualty.
9. **Maintenance of Drainage System by the Association:** Nothing herein shall prohibit the Association from performing any Project in advance of the time that any such Project is scheduled as a part of the Town's Storm Water Utility Project Prioritization and Annual Budget Process, if the Association determines that it is in its interest to do so. Other than in the case of an Emergency (addressed in Article 10, below), or a Casualty (addressed in Article 8, above), the Association shall be

entitled to reimbursement, in an amount up to the amount budgeted by the Town for the Project but not exceeding the actual cost to the Association, from Storm Water Utility Service Fees, in the fiscal year that such Project is scheduled to be done as a part of Town's Storm Water Utility Project Prioritization and Annual Budget Process, as follows;

- a. The Association shall submit its plans, quantities, and specifications for any Project to the Town.
- b. The Town shall grant its written approval to the Association to complete the Project unless it determines that:
 - i. The plan and work proposed by the Association will not correct the existing Qualifying Drainage System Deficiency; or,
 - ii. The scope of the proposed work exceeds what is necessary to correct the existing Qualifying Drainage System Deficiency,
- c. Upon receipt of the Town's written approval, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time.
- d. Any changes in the approved scope of work for the Project resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.

- e. The Association shall notify the Town at least seventy-two (72) hours prior to the commencement of work on the Project and at any key junctures of the work where the Town may need to inspect the work.
- f. Upon completion of the Project, the Town shall inspect the Project and provide the Association written approval or rejection of the Project.
- g. If the Project is approved by the Town, the Association shall submit to the Town its request for reimbursement, which shall include full documentation of the bid and procurement of the work to complete the Project, the contract for the work to complete the Project, the construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work in progress, documentation of the payments made by the Association, any required test reports and the Association's written certification that the Project was completed in accordance with the approved plans and specifications.
- h. The Town shall thereafter budget funds for reimbursement to the Association from Storm Water Utility Service Fees in the fiscal year that the Project would have otherwise been scheduled in the Town's Storm Water Utility Project Prioritization and Annual Budget Process. The schedule for reimbursement shall depend upon the Project ranking when compared to all other Projects as determined in the Town's Storm Water Utility Project Prioritization and Annual

Budget Process and may be moved forward into a future budget year as a result. The Association acknowledges that the Town has no obligation to reimburse the Association for any Project in the fiscal year following the Association's completion of the Project, or in any other particular fiscal year.

10. **Emergency Work by the Association:** If for any reason, the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:
- a. The Association shall consult with the Town to determine a cost-efficient scope and extent of work necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The TOWN must approve in writing, the scope and plans for the work and procurement of construction services, prior to the commencement of work. The Association is not required to bid the work but if the Association chooses to bid the work, the Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina (1983)*, as the same may be amended from time to time.
 - b. The Association shall complete the work that is necessary to repair or correct the damage caused by the Emergency.
 - c. The Association shall, whenever possible, notify the Town at least seventy-two (72) hours prior to the commencement of work and at

any key junctures of the work whereas the Town may need to inspect the work.

- d. Upon completion of the work that has been authorized and approved by the Town, the Association shall submit to the Town a request for reimbursement, which shall include full documentation of the bid and procurement documents for the work, the contract for the work, construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work done and documentation of the payments made, any required test reports and the Association's written certification that the work was completed in accordance with the approved plans and specifications and state the date the work was completed.
- e. The Town shall approve the Association's request for reimbursement unless it determines that :
 - i. The requested reimbursement includes work other than the work authorized and approved by the Town.
- f. Within three (3) fiscal years following the Town's approval of the Association's request for reimbursement, the Town shall reimburse the Association in the amount approved.
- g. Requests for reimbursement by the Association be submitted to the Town within three years following the completion of the work by the Association. The failure to submit the request for reimbursement to

the Town within three years following completion of the Work shall bar any reimbursement for the work.

11. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within the Development will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within the Development.
12. **Waiver of Storm Water Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Association acknowledges it shall not be entitled to receive and hereby waives any Storm Water Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the Development, for and during the term of this Agreement or any renewal of this Agreement.
13. **Term:** This Agreement shall remain in place for ten years from the date of execution and shall renew automatically for successive two (2) year terms beginning July 1 each year thereafter, unless either Party notifies the other, in writing, of its intention to terminate this Agreement. Any such notice shall be delivered not less than two hundred and seventy (270) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate the Agreement. Upon delivery of such notice, this Agreement shall terminate at midnight on June 30th of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would

terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.

(a) **Superceding Legislation:** In the event that the South Carolina General Assembly enacts legislation prohibiting the ability of local governments to impose and collect Storm Water Service Fees then.

14. **Representation and Warranties of the Association:**

The Association represents and warrants:

- a. That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance Easement to be delivered pursuant to this Agreement, and that the individual(s) executing such documents have full power and authority to bind the Association to the same.
- b. That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the obligations of the Association under this Agreement or the Access, Drainage and Maintenance Easement, and the Association knows of no litigation or threatened litigation affecting their ability to grant said easements.
- c. That as to any pipes or other portions of the Drainage System as shown on Exhibit "A" hereto which are located in whole or in part on private residential lots, the Association has full authority under the

Covenants to convey or assign to the Town the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement Agreement.

15. **Town Representation and Warranties:**

The Town represents and warrants to the Association:

- a. As is shown by the Resolution of the TOWN that is attached hereto as Exhibit “D”, the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
 - b. That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.
16. **Taxes:** The Association shall ensure payment, prior to delinquency, all taxes on Association properties within the Development burdened by the easements granted under this Agreement.
17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, unless a non-monetary default or breach cannot reasonably be cured within said thirty (30) day time period, then said period shall be reasonably

extended, up to one hundred and twenty (120) days, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.

18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to seek recovery of its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.

19. **General Provisions:**

- a. *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.
- b. *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be modified, amended, changed or altered without the written consent of the TOWN and the Association.
- c. *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court

of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.

- d. *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.
- e. *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- f. *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.
- g. *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.
- h. *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.
- i. *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and

shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town: The Town of Hilton Head Island, SC
 Attn: Stephen G. Riley, Town Manager
 One Town Center Court
 Hilton Head Island, SC 29928

To the Association: **[insert association name here]**
 Attn: **[insert association POC here]**
 [insert association address here]
 Hilton Head Island, SC 29928

- j. *No Waiver*: No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.
- k. *Further Assurances and Corrective Documents*: The TOWN and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be

necessary to carry out this Agreement and each of the terms and provisions hereof.

In Witness Whereof, The Town of Hilton Head Island, South Carolina; and **insert association name here**, by and through their duly authorized officers, have executed and delivered this Agreement as of this ____ day of _____, 2020.

SIGNATURES BEGIN ON NEXT PAGE

WITNESSES:

[insert association name here]

By: _____

Its: _____

Attest: _____

Its: _____

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____

John McCann, Mayor

Attest: _____

Stephen G. Riley, Manager

List of Exhibits

- Exhibit A Map depicting the limits of the Access, Drainage and Maintenance Easement areas and Drainage Systems covered by this Agreement
- Exhibit B Map depicting the Development covered by this Agreement
- Exhibit C Access, Drainage and Maintenance Easement Agreement
- Exhibit D Town Resolution authorizing this Agreement

EXHIBIT B
2020 Update to the Standard Drainage Agreement
Summary of Significant Revisions
 Revised 10-30-2020

1. Definition: Drainage System

Reference Location: Section 1 / Item f (Page 3)		REVISION
Explanation: Expanded definition of " <u>does include</u> " components, and Added more specific language identifying " <u>shall not include</u> " components to improve clarity including each of the following for purposes of this Agreement:		
<ul style="list-style-type: none"> • Driveway pipes are excluded unless they are a component of a larger, connected drainage system • Estuaries, marshes, tidal banks and beaches are excluded • Underdrains are excluded (ground water is not stormwater) 		
New Language: The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, drains, manholes, junction boxes, weirs, valves, gates, pumps, structures, related equipment and related infrastructure, in the Development lying within the Easement Areas shown on the map attached hereto as Exhibit "A," which facilitates the collection, storage and conveyance of storm and surface water runoff for public benefit through, within, and from the Development. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, or salt marshes, or driveway pipes, unless the Town, in its sole discretion deems any particular driveway pipe as critical to the function of the Drainage System.	Old Language: The existing system of ditches, drains, lagoons, pipes, culverts, structures, facilities and any related storm water improvements, lying within the limits of the easement areas as depicted on the map attached hereto as Exhibit "A" which facilitate the collection, storage and conveyance of storm and surface water runoff through and from within <i>the Development</i> . For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, or structural bulkheads.	

2. Definition: Permanent Structures

Reference Location: Section 1 / Item h (Page 4)		ADDITION
Explanation: Added to support stipulations for certain non-qualifying deficiencies		
New Language: Any immovable structure, including, but not limited to, buildings, sheds, pavilions, walls, masonry structures, tennis courts, and swimming pools, including swimming pool decks.	Old Language: n/a	

3. Definition: Pollutant

Reference Location: Section 1 / Item i (Page 4)		ADDITION
Explanation: Added to support stipulations for certain non-qualifying deficiencies		
New Language: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; sediment; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.	Old Language: n/a	

4. Definition Post-construction Structural Best Management Practice Facility

Reference Location: Section 1 / Item j (Page 4)		ADDITION
Explanation: Added to support stipulations for certain non-qualifying deficiencies		
New Language: A Post-construction Structural Best Management Practice Facility (BMPF) is a facility designed and built to provide treatment of storm water either through storage, filtration or infiltration (i.e. detention basins, retention basins, rain gardens, bioretention cells, sand filters, vegetated filter strips, water quality swales and infiltration trenches) as set forth in the latest editions of the Beaufort County Manual for Storm Water Best Management and Design Practices, the South Carolina DHEC Storm Water Management BMP Handbook, and the Georgia Coastal Stormwater Supplement, which include descriptions standards, and design guidelines for these facilities.	Old Language: n/a	

5. Definition: Qualifying Drainage System Deficiency

<p>Reference Location: Section 1 / Item I (Page 5)</p>	<p>REVISION</p>
<p>Explanation: Added "Qualifying" designation to more succinctly identify deficiencies that can be addressed and corrected by the Town under this Agreement.</p> <p>Significant expansion of this definition now includes a list of examples of deficiencies that would typically qualify for service and an extensive, specific and more comprehensive list of non-qualifying deficiencies.</p> <p>The intent is to provide clear and concise language defining deficiencies that will qualify for Town service under this agreement.</p>	
<p>New Language:</p> <p>Anything that, in the determination of the Town, prevents, impairs or impedes the adequate conveyance or drainage of storm water runoff through the Drainage System or the structural failure of a Drainage System component.</p> <p>Qualifying Drainage System Deficiencies include, but are not limited to, the following:</p> <ul style="list-style-type: none"> i. Lagoon bank erosion that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures; ii. Presence of sediment and debris located in the Drainage System that has an appreciable adverse impact on the conveyance of storm water runoff through the Drainage System or the functioning of the Drainage System; iii. Structural deficiencies associated with pipes and culverts, including, but not limited to, joint failures, deterioration, root intrusion, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threatens the integrity of adjacent Drainage System infrastructure or Permanent Structures; iv. Structural deficiencies associated with inlets, manholes, junction boxes, control structures and headwalls including, but not limited to, connection failure, deterioration, mechanical failure, or collapse that has an appreciable adverse impact on conveyance of storm water runoff through the Drainage System, or that threatens the integrity of adjacent 	<p>Old Language:</p> <p>A Drainage System Deficiency is anything which prevents, impairs or impedes the adequate flow or drainage of storm and surface water through the Drainage System, areas needing improvements to facilitate the adequate flow of storm and surface water through the Drainage System, soil erosion, or any structural inadequacies.</p>

<p>infrastructure or Permanent Structures. Examples of typical deficiencies include damaged grates, grout failures at pipe connections, deterioration or failure of flap gates and sluice gates, or failure of structure walls;</p> <p>v. Sinkholes caused by Drainage System pipe or Drainage System structure Deficiencies, but not those caused by the actions of any third party, including utility providers;</p> <p>vi. Drainage System conveyance or performance deficiencies due to inadequate design capacity. Examples of typical conveyance or performance deficiencies include undersized pipes and insufficient weir capacities.</p> <p>Qualifying Drainage System Deficiencies do not include the following:</p> <p>i. The aesthetic appearance or appeal of any part of the Drainage System, including but not limited to lagoons, banks of lagoons, channel banks, landscaping, drains, catch basins, canals, structures, bridges, bulkheads, pipes, culverts, valves gates, debris that does not have an appreciable adverse impact on the conveyance of storm and surface water through the Drainage System, or other visible components of the Drainage System;</p> <p>ii. The introduction of pollution or pollutants into the Drainage System from any source;</p> <p>iii. Lagoon bank erosion that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of adjacent Drainage System infrastructure or Permanent Structures;</p> <p>iv. Tidal erosion or tidal flooding that does not have an appreciable adverse impact on conveyance of storm water runoff through the Drainage System or threaten the integrity of Drainage System infrastructure;</p> <p>v. Establishment of access to the Drainage System by the Association, including, but not limited to, grading, clearing of vegetation, removal of trees, or removal of other obstructions or Permanent Structures in order to provide physical access to the Drainage System;</p>	<p>Drainage System Deficiencies do not include the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates. Drainage System Deficiencies do not include the introduction of pollution or pollutants into the Drainage System from any source.</p>
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<ul style="list-style-type: none"> vi. Drainage System damage or deficiencies caused by the actions of others, including utilities and property owners (including, but not limited to, bores or cuts into pipes or structures); vii. Minor or nuisance flooding that does not adversely affect transportation infrastructure, Permanent Structures, hardscape amenities, or conveyance of storm water runoff through the Drainage System, including golf course flooding, isolated lawn and yard ponding, or standing water in roadway shoulders and unimproved lots or land; iii. Drainage System Deficiencies determined by the Town to be caused or exacerbated by intentional acts causing tidal backflow and saltwater intrusion into the Drainage System through failure to operate control structures per the design intent or the failure by the Association to monitor and maintain proper functioning of backflow prevention devices including flaps, gates, sluice gates, check valves, or similar devices; ix. Damage to, or failure of, Drainage System components situated underneath or within five (5) feet of any Permanent Structure that is not a part of the Drainage System, where the Town determines that difficult access and/or liabilities exist, or within the zone of influence for the foundation of a Permanent Structure; x. The construction of a new drainage system or an addition to an existing Drainage System, or the modification of an existing Drainage System to accommodate drainage requirements for new development within the Development. xi. Drainage System deficiencies determined by the Town to be caused by or originating from unauthorized or non-permitted modifications to the Drainage System by any party other than the Town. 	
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6. Maintenance, Inspection and Operation of Drainage System

<p>Reference Location: Section 3 (Page 10) REVISION</p>	
<p>Explanation: Adding a specific list of Association responsibilities related to maintenance, operations, inspection, monitoring and providing access to drainage system infrastructure, including:</p> <ul style="list-style-type: none"> • Normal operation of gates, weirs and pumps • Maintenance of weir boards, and accessways (including decking and railings) • Maintaining access to control structures and ditches (keeping workshelves clear and free from obstructions) • Monitoring the condition of drainage system control devices including weir gates, sluice gates, check valves, and flapgates • Making repairs to pavement and other improvements on the ground if a pipe is replaced via trenchless technology (i.e. pipe lining) • Performing annual inspection of post-construction structural BMPs 	
<p>New Language: Maintenance, Inspection and Operation of Drainage System: Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement Agreement:</p> <p>(a) The Town shall be responsible for the maintenance, repairs and improvements necessary to correct any Qualifying Drainage System Deficiency under the terms and conditions of this Agreement. This Agreement does not preclude the Association from repairing, maintaining, or improving any component of its Drainage System at its expense.</p> <p>(b) The Association shall be responsible for the following within the Development:</p> <p>(i) Normal and emergency operation of Drainage System control structures, including gates, weirs and pumps, and for lowering water levels in compliance with pre-storm preparation protocols established by the Town.</p> <p>(ii) Maintenance and replacement of weir boards, maintenance of control structure access ways, decking and railings, and maintaining control structure accessibility for inspection and</p>	<p>Old Language: Upkeep and Maintenance of Drainage System: Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement, the Town shall be responsible for any improvement, repair or maintenance necessary to correct any Drainage System Deficiency under the terms and conditions of this Agreement</p>

<p>operation by controlling and/or removing vegetation as necessary.</p> <p>(iii) Performing maintenance of work shelves along ditches and canals to provide reasonable and adequate access for inspection, maintenance and repair.</p> <p>(iv) Monitoring the condition of flap gates, sluice gates, check valves, and similar devices intended to prevent the intrusion of tidal backflow and brackish water into the Drainage System to ensure that they are in proper working order and functioning as intended.</p> <p>(v) Making repairs to roadway pavement, pathway pavement, curb and gutter and related ancillary infrastructure or property damage attributed to a past or existing Qualifying Drainage System Deficiency if the deficiency has been corrected by the Town via trenchless technology methods (i.e. pipe lining). This does not obligate the Association to repair or replace such infrastructure if the repair is made using open cut excavations where removal of surface infrastructure is necessary to complete the repair, in which case, the repair of the ancillary infrastructure shall be considered to be a part of the Town's work to correct the deficiency.</p> <p>(vi) Performing annual inspections of Post-construction Structural Best Management Practice Facilities in order to comply with Stormwater Management Plan obligations, including submittal of inspection documentation to the Town in accordance with § 16-5-109 (H)(2), Municipal Code to the Town of Hilton Head Island (1983).</p> <p>(vii) Regulating the actions of utility providers and property owners, or their assigns, to prevent and mitigate any damage they may cause to the Drainage System.</p>	
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7. Legal Access to Private Property

Reference Location: Section 4 / Item f (Page 15)		ADDITION
Explanation: Private property ROE to be obtained by the Association on behalf of the Town and its contractors		
New Language: The Association shall be responsible for obtaining all access rights, including access rights over and across property in the Development that is not owned by the Association, as may be deemed necessary by the Town to complete any Project.	Old Language: n/a	

8. Access Needed to Complete Project

Reference Location: Section 4 / Item g (Page 15)		ADDITION
Explanation: <ul style="list-style-type: none"> • The Association is responsible for providing and/or creating adequate and reasonable access and for repairing unavoidable damage to adjacent amenities if said damage is determined to be unavoidable, including making repairs to cart paths, replacing sod, restoring shrubbery, etc. • The Association has the right to withdraw a service request if the magnitude of potential damage is unacceptable to the Association. 		
New Language: The Association shall be responsible for providing clear and adequate physical access to each Project site at no cost to the Town. If clear, adequate physical access to the Project site cannot be provided sufficient to complete the Project without the likelihood of damage to property, assets and amenities by contractors and equipment, the repair and replacement of any property, assets and amenities damaged as a result of the Project shall be the responsibility of the Association, at no additional cost to the Town. Such property, assets and amenities shall include, but are not limited to, landscaping, flowerbeds, ornamental shrubs and trees, lawns, irrigation systems, boardwalks, cart paths, driveways, and sidewalks. The determination of whether the access is clear and adequate, and whether there is a likelihood of damage shall be made in the sole discretion of the Town, prior to the commencement of the Project.	Old Language: n/a	

<p>The Association has the right to withdraw the service request if the magnitude of potential damage is not acceptable to the Association. If the service request is withdrawn, completing the Project shall be the responsibility of the Association.</p>	
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9. Emergency - Responsibilities of the Town

<p>Reference Location: Section 7 / Item c (Page 18) REVISION</p>	
<p>Explanation: Added clause related to negligence of third parties</p>	
<p>New Language: Upon receipt of notification of an Emergency from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as practical, taking into account the threat presented by the Emergency, the existence of any other Emergency or Casualty, the cause of the Emergency and/or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement <u>from third parties</u> for any costs incurred by the Town as a result of any Emergency <u>found to have been caused by the negligence of said third parties.</u></p>	<p>Old Language: Upon receipt of such notification from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as is practical, taking into account the threat presented by the Emergency, the cause of the Emergency or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Emergency from Storm Water Service Fees.</p>

10. Casualty – Approval of Plans / Right of Entry and Access

<p>Reference Location: Section 8/ Items c & d (Page 19)</p>		<p>REVISION (SPLIT)</p>
<p>Explanation: Split item c in old agreement language into two items</p> <ul style="list-style-type: none"> • Approval of plans now includes language stipulating that the Association is responsible for addressing deficiencies at its own expense if the Association does not approve engineering plans prepared by the Town • Obtaining Right-of Entry and providing temporary easements for access to construct a project is the responsibility of the Association If access required to construct per the approved plans requires access outside the limits of the current Easement agreement. 		
<p>New Language:</p> <p>c. <i>Approval of Plans:</i> The engineering and design plans must be approved by the Association prior to any reconstruction of the Drainage System. <u>If the Association does not approve the engineering and design plans prepared by the Town, the Association may reconstruct the Drainage System at its own expense and shall not seek reimbursement for the cost thereof from the Town.</u></p> <p>d. <i>Right of Entry and Access:</i> If the engineering and design plans approved by the Association require work outside of easement limits described in the Access, Drainage and Maintenance Easement Agreement, the Association shall provide temporary easements for access and construction over any property it owns or controls, and shall deliver a valid temporary construction easement for access and construction from the owners of property that the Association does not own.</p>	<p>Old Language:</p> <p>c. <i>Approval of Plans:</i> The engineering and design plans must be approved by the Association, prior to any reconstruction of the Drainage System. In the event such reconstruction requires work outside of the Easement limits as depicted in Exhibit “A,” the parties agree to modify the Access, Drainage and Maintenance Easement by a written agreement to be recorded in the Office of Register of Deeds for Beaufort County, South Carolina increasing the Easement areas as reasonably necessary to accommodate such reconstruction and the Association agrees to grant any temporary license allowing the Town temporary access to those Common Areas of the Development reasonably necessary to accommodate such reconstruction.</p>	

11. Maintenance of Drainage System by the Association – Town Notification

Reference Location: Section 9/ Item e (Page 22)		REVISION
Explanation: Increased minimum notification time for Town opportunity to inspect work at key junctures from 48 to 72 hours.		
New Language: e. The Association shall notify the Town at least seventy-two (72) hours prior to the commencement of work on the Project and at any key junctures of the work where the Town may need to inspect the work.	Old Language: e. The Association shall notify the Town at least forty-eight (48) hours prior to the commencement of work on the Project and at any key junctures of the work where the Town may need to inspect the work.	

12. Maintenance of Drainage System by the Association – Town Inspection

Reference Location: Section 9/ Item f (Page 22)		ADDITION
Explanation: Added requirement for Town inspection and approval at project completion.		
New Language: Upon completion of the Project, the Town shall inspect the Project and provide the Association written approval or rejection of the Project.	Old Language: n/a	

13. Maintenance of Drainage System by the Association – Reimbursement Documentation

Reference Location: Section 9/ Item g (Page 22)		REVISION
Explanation: Reimbursement documentation requirements now include more specific details.		
New Language: g. If the Project is approved by the Town, the Association shall submit to the Town its request for reimbursement, which shall include full documentation of the bid and procurement of the work to complete the Project, the contract for the work to complete the Project, the construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work in progress, documentation of the payments made by the Association, any required test reports and the Association’s written certification that the Project was completed in accordance with the approved plans and specifications.	Old Language: f. Upon completion of the work as approved by the Town, The Association shall submit its request for payment to the Town, which shall detail the work done and the payments made, and be accompanied by any required test reports, construction data / measurements or as-built surveys, and its written certification that the work was completed in accordance with the approved plans and specifications.	

14. Emergency Work by the Association – Town Inspection

Reference Location: Section 10/ Item a (Page 23)		REVISION
Explanation: Added requirement for Town approval in writing and requirement for Association to comply with Town procurement code if the Association intends to bid the work and request reimbursement.		
New Language: The Association shall consult with the Town to determine a cost-efficient scope and extent of work necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The TOWN must approve in writing, the scope and plans for the work and procurement of construction services, prior to the commencement of work. The Association is not required to bid the work but if the Association chooses to bid the work, the Association shall bid the work in accordance with the Town’s Procurement Code, § 11-1-111, <i>Municipal Code of The Town of Hilton Head Island, South Carolina</i> (1983), as the same may be amended from time to time.	Old Language: The Association shall consult with the Town to determine a cost efficient scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same.	

15. Emergency Work by the Association – Town Notification

Reference Location: Section 10/ Item c (Page 23)		ADDITION
Explanation: Added Town advance notification requirement to allow the Town the opportunity to inspect work at key junctures.		
New Language: The Association shall, whenever possible, notify the Town at least seventy-two (72) hours prior to the commencement of work on the Project and at any key junctures of the work where the Town may need to inspect the work.	Old Language: n/a	

16. Emergency Work by the Association – Reimbursement Documentation

Reference Location: Section 10/ Item d (Page 24)		REVISION
Explanation: Reimbursement documentation requirements now include more specific details.		
New Language: <p>d. Upon completion of the work that has been authorized and approved by the Town, the Association shall submit to the Town a request for reimbursement, which shall include full documentation of the bid and procurement documents for the work, the contract for the work, construction plans, details and as-built surveys or drawings, measurements, dated inspection reports, photographs of the work done and documentation of the payments made, any required test reports and the Association’s written certification that the work was completed in accordance with the approved plans and specifications and state the date the work was completed.</p>	Old Language: <p>c. Upon completion of the work, The Association shall submit its or their request for payment to the Town, which shall detail the work performed and the cost for the same, and be accompanied by any required test reports, construction data / measurements or as-built surveys, with a written certification that the work was necessary to repair or correct the damage caused by an Emergency.</p>	

17. Term

Reference Location: Section 13 (Page 25)	REVISION
Explanation: Notification to terminate increased from 120 to 270 days; auto-renewal term increased from 1 year to 2 years.	
New Language: This Agreement shall remain in place for ten years from the date of execution and shall renew automatically for successive two (2) year terms beginning July 1 each year thereafter, unless either Party notifies the other, in writing, of its intention to terminate this Agreement. Any such notice shall be delivered not less than two hundred and seventy (270) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate the Agreement. Upon delivery of such notice, this Agreement shall terminate at midnight on June 30 th of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance Easement delivered pursuant to this Agreement.	Old Language: This Agreement shall remain in place for a period of Five (5) year(s), and shall renew automatically for successive one (1) year terms thereafter, unless either Party notifies the other, in writing, of its intention to terminate this Agreement. Any such notice shall be delivered more than one hundred and twenty (120) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate. Upon delivery of such notice, this Agreement shall terminate on July 1 of the calendar year in which the notice is delivered. The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance and Construction Easements delivered pursuant to this Agreement.

18. Default

Reference Location: Section 17 (Page 27)	REVISION
Explanation: Added clause related to inability to reasonably cure, extending time from 30 to 120 days.	
New Language: The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, <u>unless a non-monetary default or breach cannot reasonably be cured within said thirty (30) day time period, then said period shall be reasonably extended, up to one hundred and twenty (120) days</u> , then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.	Old Language: The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.



TOWN OF HILTON HEAD ISLAND

Executive Department

TO: Town Council
FROM: Joshua A. Gruber, Esq., ~ Deputy Town Manager
DATE: October 30, 2020
SUBJECT: Beach Parking Study
CC: Stephen G. Riley, ICMA~CM, ~ Town Manager

Background:

The Town issued a Request for Qualifications (RFQ) soliciting credentials from firms to conduct a parking analysis and develop a comprehensive parking plan that would help to better address the Town's current and future parking needs, particularly with the opening of the new Celebration Park.

The Town received submissions from several vendors and ultimately selected Walker and Associates to perform this project. Walker and Associates conducted several site visits and inventory surveys, met directly with Town staff and Town Council members, and held several community engagement meetings to obtain public comment and feedback. Additionally, the Town solicited public comment through its Open Town Hall portal and received in excess of 860 individual citizen comments.

Walker and Associates have developed a proposed plan that calls for multiple short-term, mid-term, and long-term actions. Those items can be summarized as follows:

Short-Term Objectives

- Establish a Parking Enterprise Fund within the Town's Operations
- Establish Paid Parking Zones at all Beach Access Points via Ordinance Amendment
- Amend the Town Code Relative to Parking Enforcement to Allow for Administrative Citations
- Create Policy via Ordinance that Empowers the Town Manager to Administer the Parking Policies Adopted by Town Council
- Explore Contracting for Administration/Management/Enforcement Services for all Parking Related Functions

Mid-Term Objectives

- Develop a Dynamic Wayfinding Solution that Compatible with Town Development Standards That Can be Paired with Real-Time Payment Solutions
- Expand the Development of Bicycle Friendly Infrastructure
- Establish Public/Private Partnership with Existing Organizations to Provide Additional Parking Capacity During Peak Times
- Long-Term Objectives

- Expand Enforcement of Parking Regulations to Include Adjacent Public Commercial Areas and Adjacent Residential Neighborhoods
- Explore Development of Additional Wayfinding and Signage Capabilities Within Existing Transportation Corridors
- Continue to Evaluate Inventory and Parking Demand and Make Adjustment or Modification to Program as Needed.

Recommendations:

Staff recommends that Town Council accept receipt of the Walker and Associates report and that this matter be referred to the appropriate committee(s) of Town Council for additional discussion and development of short-term goals as identified within the report.

Coligny Area and Beach Access Parking Study

Parking Master Plan



WALKER
CONSULTANTS

Town of Hilton Head Island Council Workshop

October 27, 2020



PROJECT TEAM

Jim Corbett CAPP



Project Manager

Joey Rowland, P.E.



Principle in Charge

Geoff Posluszny, CPP



Technology Advisor

Thomas Szubka, CAPP, CPP



Strategy Advisor

STUDY METRICS



AMOUNT OF ON-STREET PARKING

43 Spaces – Coligny Area

Nassau Street/Lagoon Road/North Forest Beach Drive



AMOUNT OF OFF-STREET PARKING

1,554 Spaces

7 Beach Access Parks and 3 Community Parks



TOTAL AMOUNT OF PARKING

1,597 Spaces



POTENTIAL and COMMUNITY PARTNER PARKING INVENTORY CIRCLE TO CIRCLE

228 University of South Carolina Beaufort Hospitality Campus

239 Holy Family Catholic Church – Discussion Initiated

112 St. Luke's Church – Discussion Initiated



Gold Level Recognition Bicycle Friendly Community

64 Miles of public pathways and nature trails

50 Miles of pathways and shared roadways
within private developments



Public Stakeholder Meetings

Leadership of Coligny Area Merchants and
Forest Beach Property Owners Association
June 3rd
September 24th

863

Online Public Survey Responses
July 6th to July 19th

43.2 Hours of Public Comment

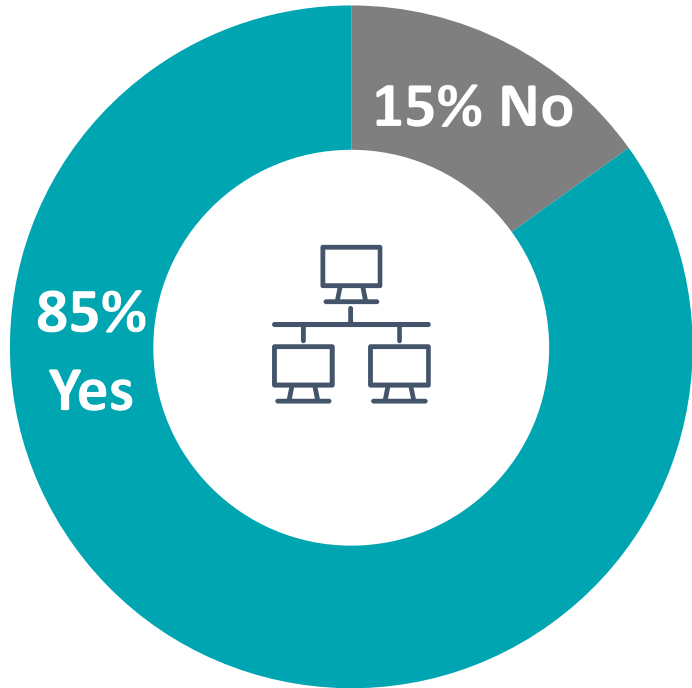


Total Focus Group Meetings

15

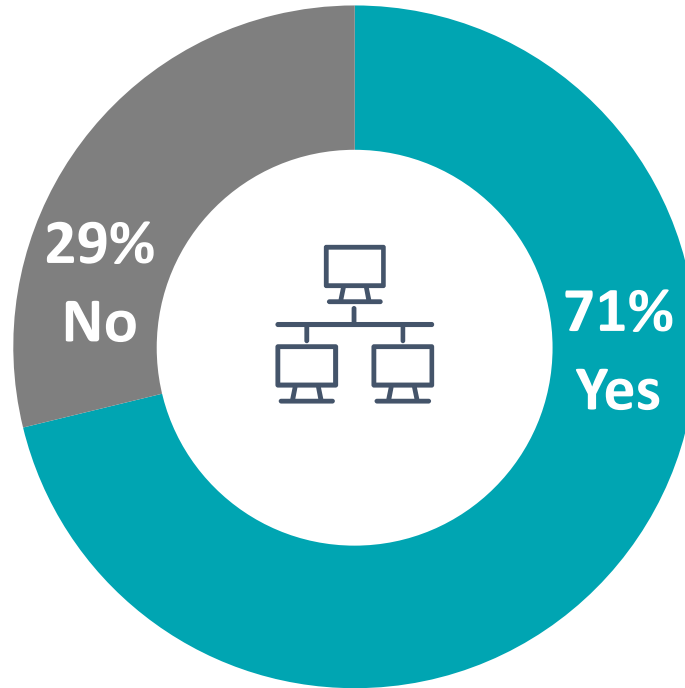
Town Departments
Town Council Members
Sandbox Children's Museum
Circle Center Shopping
Coligny Plaza

PUBLIC ONLINE SURVEY (JULY 6TH - JULY 19TH)



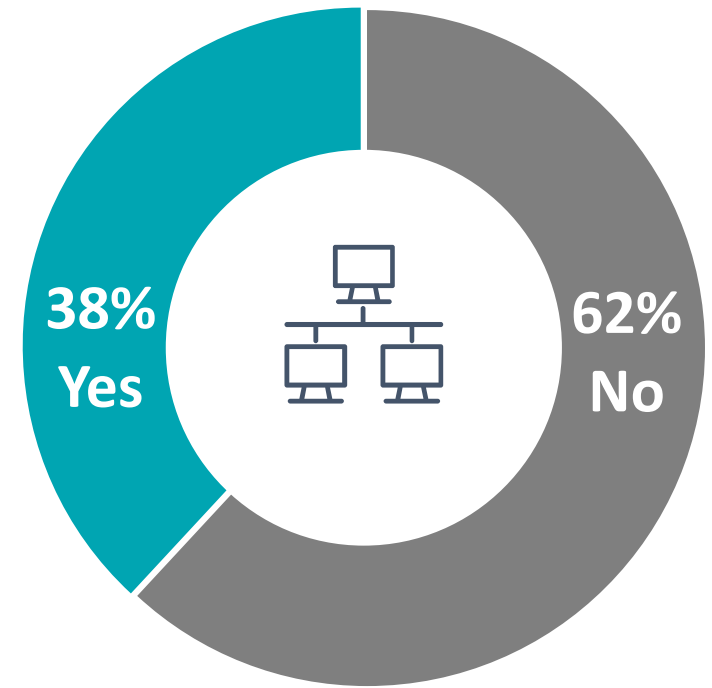
Fee To Park

Should all locations charge a fee to park for non-residents, while allowing island residents with a valid beach parking pass to park free of any additional hourly or daily parking fees?



Parking Citation

As an alternative to the Town's towing ordinance and enforcement policies, would you support the implementation of a civil citation program, whereby parking compliance is encouraged through the use of issuing a civil parking citation to a registered license plate?



Parking Structure

Do you support the development and construction of a parking structure on an existing parking lot to provide additional public parking inventory in areas where peak season capacity demands?

WHAT'S THE STUDY OBJECTIVE?



Mission

Provide well-maintained, safe, and convenient public parking and mobility access for the Town's residents and visitors of the Coligny Area and beach access locations.

Vision

Parking and mobility access will be provided using a unified and coordinated parking policy, to include management, parking fee structure, resident pass issuance, and collections and enforcement mechanisms which will be utilized to effectively maximize public parking availability and usage within the Town.

RECOMMENDATIONS



Fee to Park

Hourly Parking at Beach Access Parks



Resident Beach Access Pass

Residents park free of additional hourly fees with valid Beach Access Pass



Coligny Area On-Street Spaces

Charge an hourly fee to park



Implement Pay-By-Cell

Pay-by-cell Only Program



Resident Parking District

Establish policy and procedure for request and implementation



License Plate Permit Credential

Eliminate the peel-n-stick decal



Consistent Parking Enforcement

Ambassador program



Municipal Parking Citation Program

Ordinance for Administrative or Civil Citation



Third Party Management Contract

Dedicated resource for the parking system



Wayfinding and Guidance

Software platform to communicate parking availability



01 Immediate Action Items

IMMEDIATE ACTION ITEMS (3 TO 6 MONTHS)



A wooden signpost stands in a wooded area. The sign is rectangular with a white border and a dark background. It reads "ISLANDERS BEACH PARK" in large, white, sans-serif capital letters. Below the text is a white arrow pointing left, followed by the number "92". A teal semi-transparent banner is overlaid on the right side of the image, containing the text "02 Short-Term Action Items".

ISLANDERS
BEACH
PARK
← 92

02 Short-Term Action Items

SHORT-TERM ACTION ITEMS (6 TO 12 MONTHS)





03 | Mid-Term Action Items

MID-TERM ACTION ITEMS (12 TO 24 MONTHS)



DYNAMIC WAYFINDING SOLUTION

Create a solution paired with real-time mobile payment transactions and camera counting systems

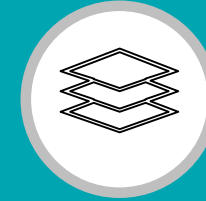
Technology



BICYCLE FACILITY INFRASTRUCTURE

Provide additional bike parking capacity at each beach access location with support amenities

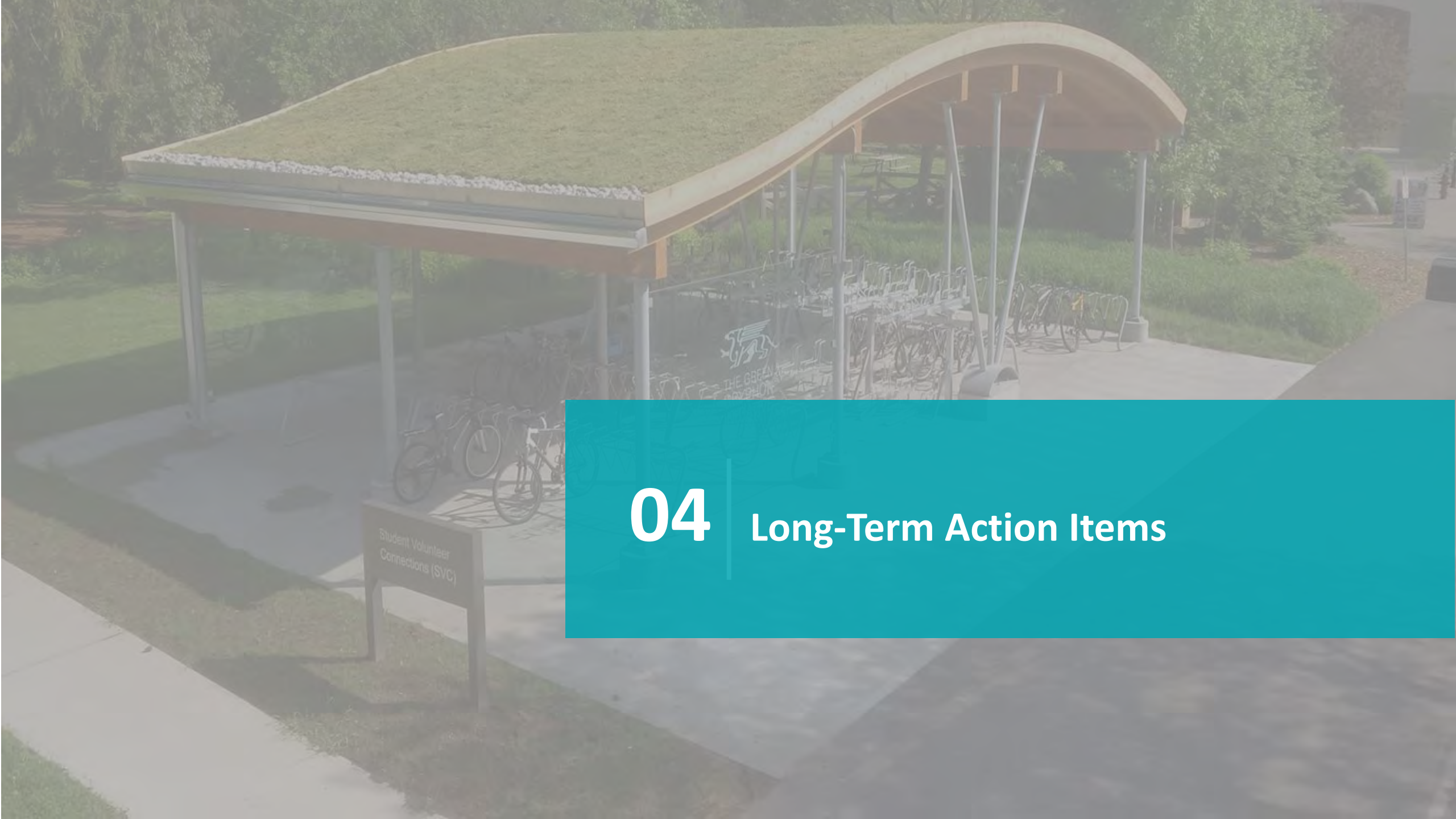
Program



PUBLIC/PRIVATE PARTNERSHIPS

Include community partners with available public parking inventory under the parking management program

Partnerships



04 Long-Term Action Items

LONG-TERM ACTION ITEMS

Expanded Enforcement

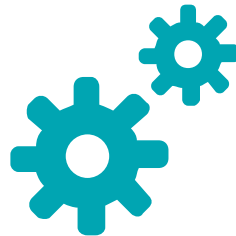
Use a portion of the paid parking net operating revenues to provide parking management and enforcement in commercial parking areas



Partnerships

Wayfinding Infrastructure

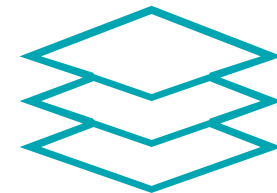
Upgrade the Highway 278 rights of way signs to communicate real-time availability



Technology

Parking Inventory Evaluation

Continue to monitor the seasonal parking demand with a focus on adding additional structured inventory as needed



Program

LONG-TERM ACTION ITEMS

South Island

\$4.00/HR (May – September)

\$2.00/HR (October – April)

Central Island

\$3.00/HR (May – September)

\$1.50/HR (October – April)

North Island

\$2.00/HR (May – September)

\$1.00/HR (October – April)

	Year 1	Year 2	Year 3	Year 4	Year 5
Revenues					
Alder Lane Beach Access	\$ 65,757	\$ 67,730	\$ 69,762	\$ 71,854	\$ 74,010
Burkes Beach	\$ 27,875	\$ 28,712	\$ 29,573	\$ 30,460	\$ 31,374
Chaplin Community Park	\$ 493,178	\$ 507,973	\$ 523,212	\$ 538,908	\$ 555,076
Coligny Beach Park	\$ 37,167	\$ 38,282	\$ 39,430	\$ 40,613	\$ 41,832
Coligny Beach Park Access Lot	\$ 1,143,600	\$ 1,177,908	\$ 1,213,245	\$ 1,249,643	\$ 1,287,132
Driessen Beach Park	\$ 441,716	\$ 454,967	\$ 468,616	\$ 482,674	\$ 497,155
Fish Haul Beach/Barker Field Expansion	\$ 241,586	\$ 248,833	\$ 256,298	\$ 263,987	\$ 271,907
Folly Field Beach Park	\$ 115,790	\$ 119,263	\$ 122,841	\$ 126,526	\$ 130,322
Islanders Beach Park	\$ 53,606	\$ 55,214	\$ 56,871	\$ 58,577	\$ 60,334
Lowcountry Celebration Park	\$ 283,041	\$ 291,532	\$ 300,278	\$ 309,287	\$ 318,565
Coligny Area On-Street	\$ 122,937	\$ 126,625	\$ 130,424	\$ 134,337	\$ 138,367
Non-Resident Hourly Parking Total	\$ 3,026,252	\$ 3,117,039	\$ 3,210,550	\$ 3,306,867	\$ 3,406,073
Resident Beach Access Pass	\$ 60,000	\$ 61,800	\$ 63,654	\$ 65,564	\$ 67,531
Civil Parking Citations	\$ 856,382	\$ 882,074	\$ 908,536	\$ 935,792	\$ 963,866
Total Revenues	\$ 3,942,634	\$ 4,060,913	\$ 4,182,740	\$ 4,308,222	\$ 4,437,469
Total Operating Expenses	\$ 1,051,153	\$ 1,081,607	\$ 1,112,976	\$ 1,145,285	\$ 1,178,564
Net Operating Income	\$ 2,891,481	\$ 2,979,305	\$ 3,069,764	\$ 3,162,937	\$ 3,258,905

LONG-TERM ACTION ITEMS

South Island

\$2.00/HR (May – September)

\$1.00/HR (October – April)

Central Island

\$1.50/HR (May – September)

\$.75/HR (October – April)

North Island

\$1.00/HR (May – September)

\$.50/HR (October – April)

	Year 1	Year 2	Year 3	Year 4	Year 5
Revenues					
Alder Lane Beach Access	\$ 32,879	\$ 33,865	\$ 34,881	\$ 35,927	\$ 37,005
Burkes Beach	\$ 13,938	\$ 14,356	\$ 14,786	\$ 15,230	\$ 15,687
Chaplin Community Park	\$ 246,589	\$ 253,986	\$ 261,606	\$ 269,454	\$ 277,538
Coligny Beach Park	\$ 18,584	\$ 19,141	\$ 19,715	\$ 20,307	\$ 20,916
Coligny Beach Park Access Lot	\$ 571,800	\$ 588,954	\$ 606,623	\$ 624,821	\$ 643,566
Driessen Beach Park	\$ 220,858	\$ 227,483	\$ 234,308	\$ 241,337	\$ 248,577
Fish Haul Beach/Barker Field Expansion	\$ 120,793	\$ 124,417	\$ 128,149	\$ 131,993	\$ 135,953
Folly Field Beach Park	\$ 57,895	\$ 59,632	\$ 61,421	\$ 63,263	\$ 65,161
Islanders Beach Park	\$ 26,803	\$ 27,607	\$ 28,435	\$ 29,288	\$ 30,167
Lowcountry Celebration Park	\$ 141,521	\$ 145,766	\$ 150,139	\$ 154,643	\$ 159,283
Coligny Area On-Street	\$ 61,469	\$ 63,313	\$ 65,212	\$ 67,168	\$ 69,183
Non-Resident Hourly Parking Total	\$ 1,513,126	\$ 1,558,520	\$ 1,605,275	\$ 1,653,433	\$ 1,703,036
Resident Beach Access Pass	\$ 60,000	\$ 61,800	\$ 63,654	\$ 65,564	\$ 67,531
Civil Parking Citations	\$ 428,191	\$ 441,037	\$ 454,268	\$ 467,896	\$ 481,933
Total Revenues	\$ 2,001,317	\$ 2,061,356	\$ 2,123,197	\$ 2,186,893	\$ 2,252,500
Total Operating Expenses	\$ 995,483	\$ 1,024,268	\$ 1,053,916	\$ 1,084,453	\$ 1,115,907
Net Operating Income	\$ 1,005,833	\$ 1,037,088	\$ 1,069,281	\$ 1,102,440	\$ 1,136,593

LONG-TERM ACTION ITEMS

South Island

\$2.00/HR (May – September)

\$0.00/HR (October – April)

Central Island

\$1.50/HR (May – September)

\$0.00/HR (October – April)

North Island

\$1.00/HR (May – September)

\$0.00/HR (October – April)

	Year 1	Year 2	Year 3	Year 4	Year 5
Revenues					
Alder Lane Beach Access	\$ 29,746	\$ 30,638	\$ 31,557	\$ 32,504	\$ 33,479
Burkes Beach	\$ 12,610	\$ 12,988	\$ 13,378	\$ 13,779	\$ 14,192
Chaplin Community Park	\$ 223,094	\$ 229,787	\$ 236,681	\$ 243,781	\$ 251,095
Coligny Beach Park	\$ 16,813	\$ 17,317	\$ 17,837	\$ 18,372	\$ 18,923
Coligny Beach Park Access Lot	\$ 517,320	\$ 532,840	\$ 548,825	\$ 565,290	\$ 582,248
Driessen Beach Park	\$ 199,815	\$ 205,809	\$ 211,984	\$ 218,343	\$ 224,893
Fish Haul Beach/Barker Field Expansion	\$ 109,284	\$ 112,562	\$ 115,939	\$ 119,417	\$ 123,000
Folly Field Beach Park	\$ 52,379	\$ 53,950	\$ 55,569	\$ 57,236	\$ 58,953
Islanders Beach Park	\$ 24,249	\$ 24,977	\$ 25,726	\$ 26,498	\$ 27,293
Lowcountry Celebration Park	\$ 128,037	\$ 131,878	\$ 135,834	\$ 139,909	\$ 144,106
Coligny Area On-Street	\$ 55,612	\$ 57,280	\$ 58,999	\$ 60,769	\$ 62,592
Non-Resident Hourly Parking Total	\$ 1,368,958	\$ 1,410,027	\$ 1,452,328	\$ 1,495,897	\$ 1,540,774
Resident Beach Access Pass	\$ 60,000	\$ 61,800	\$ 63,654	\$ 65,564	\$ 67,531
Civil Parking Citations	\$ 299,333	\$ 308,313	\$ 317,562	\$ 327,089	\$ 336,902
Total Revenues	\$ 1,728,291	\$ 1,780,139	\$ 1,833,544	\$ 1,888,550	\$ 1,945,206
Total Operating Expenses	\$ 847,550	\$ 871,897	\$ 896,974	\$ 922,803	\$ 949,407
Net Operating Income	\$ 880,741	\$ 908,243	\$ 936,570	\$ 965,747	\$ 995,800

LONG-TERM ACTION ITEMS



Conceptual Designs



Travel Lane



Travel Lane

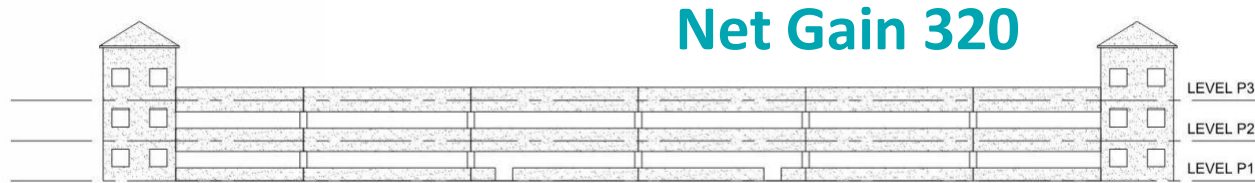
Median



LONG-TERM ACTION ITEMS

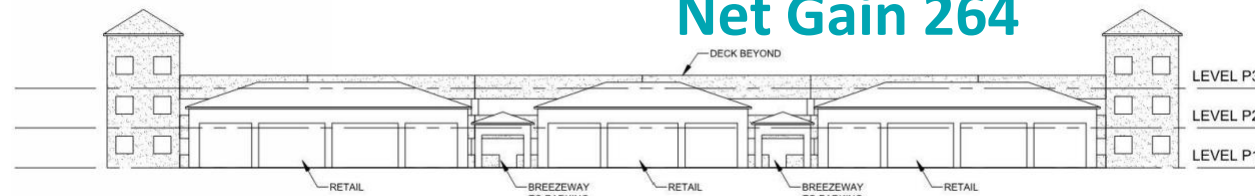
POPE AVENUE PARKING DECK

COLIGNY
CONCEPTUAL



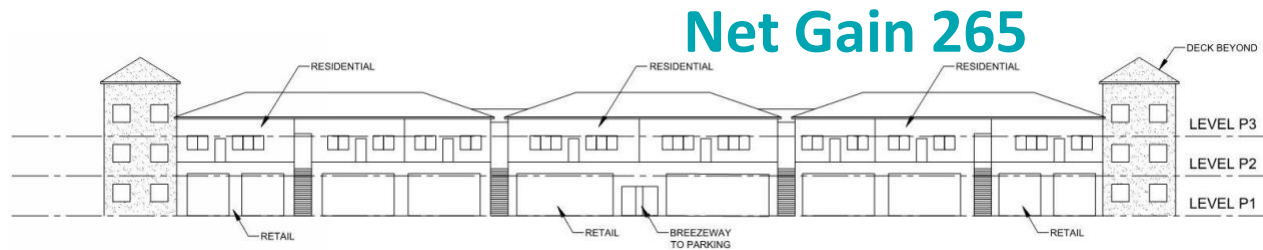
Net Gain 320

Project Cost Per Space = \$ 23,762 per space
Project Cost Per Sq. Ft. = \$ 72.81 per sf



Net Gain 264

Project Cost Per Space = \$ 24,127 per space
Project Cost Per Sq. Ft. = \$ 73.92 per sf



Net Gain 265

Project Cost Per Space = \$ 23,574 per space
Project Cost Per Sq. Ft. = \$ 72.39 per sf

400 Existing Surface



464 Structure
256 Surface
720 Total



464 Structure
200 Surface
664 Total



465 Structure
200 Surface
665 Total

A photograph of a park area with a paved path, trees, and a sign. The path is curved and leads through a lush green area with various trees and plants. A sign is visible in the middle ground, and a bicycle is parked on the path. The overall scene is a well-maintained urban park.

Operating Surplus

Operating Benefits:

Self-Sufficient System
Public Private Partnerships

Capital Benefits:

Bicycle Infrastructure
Mobility Services
Automated Parking Guidance
Safety and Beautification
Parking Inventory

Discussion



WALKER
CONSULTANTS





TOWN OF HILTON HEAD ISLAND

Executive Department

TO: Town Council
FROM: Joshua A. Gruber, Esq., ~ Deputy Town Manager
DATE: October 30, 2020
VIA:
SUBJECT: Proposed Destination Marketing Organization Agreement with the Hilton Head Island-Bluffton Chamber of Commerce
CC: Stephen G. Riley, ICMA~CM, ~ Town Manager

Background:

Following a formal Request for Qualifications (RFQ), Town Council designated the Hilton Head Island-Bluffton Chamber of Commerce (the “Chamber”) as the preferred vendor to be the Designated Marketing Organization for the Town of Hilton Head Island (the “Town”), and further authorizing contract negotiations to commence between the Town and the Chamber.

After several months of negotiations between the two parties, the proposed draft agreement has been finalized and made ready for Town Council to review and consider at their November 4, 2020 Town Council Meeting.

Attachments:
Proposed Draft Agreement

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) CONTRACT FOR
) PROFESSIONAL SERVICES

This Contract for Professional Services (the “Contract”) is made by and between The Town of Hilton Head Island, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina (herein, the “Town”) and the Hilton Head Island-Bluffton Chamber of Commerce, Inc., a nonprofit corporation existing under the laws of the State of South Carolina (herein, the “Chamber”).

Whereas, S. C. Code Ann. § 12-36-920 (A)(Supp. 2020), authorizes the imposition of a Seven (7%) “Accommodations Tax” on proceeds derived from the rental of accommodations to transients; and,

Whereas, S. C. Code Ann. § 12-36-2630 (3)(Supp. 2020), divides the Seven (7%) “Accommodations Tax” so that a Two (2%) Accommodations Tax is allocated to the political subdivision where the Accommodations Tax was collected, and Chapter 4 of Title 6 of the South Carolina Code governs the use of the Two (2%) Per Cent Accommodations Tax; and,

Whereas, S. C. Code Ann. § 6-4-10 (3)(Supp. 2020) requires thirty per cent of the Accommodation Tax received by the Town be allocated to a nonprofit corporation and allocated to a special fund (herein, the “Thirty Per Cent Fund”) used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity; and,

Whereas, S. C. Code Ann. § 6-4-10(3)(Supp. 2020), requires the Town to select a recipient of the Thirty Per Cent fund, such as a chamber of commerce, visitor and convention bureau, or regional tourism commission, which has an existing, ongoing tourist

promotion program; and,

Whereas, the Thirty Per Cent Fund is not part of the general fund of the Town and it must be allocated and used as required by S. C. Code Ann. § 6-4-10(3)(Supp. 2020); and,

Whereas, nonprofit corporations are formed and governed pursuant to the South Carolina Non Profit Act (herein, the “Act”) and the Act requires the corporation to be governed by a Board of Directors; and,

Whereas the promotion of a destination is a public good for the benefit and well-being of the community and is an investment in a community’s present and future economic and social well-being; and,

Whereas, through the promotion of tourism, the Chamber builds community, strengthens a value-added economy, and provides opportunities for people and businesses; and,

Whereas, the Town believes that community trust and goodwill, essential to community engagement, will be derived through a contract that assures regulatory compliance, financial accountability, transparency, and alignment with broader community goals and aspirations; and,

Whereas, the Town previously issued a Request for Qualifications (RFQ) for third party entities to bid to become the Town’s Designated Marketing Organization, said process followed local and state procurement requirements, and the Chamber was selected from the qualified bidders; and,

Whereas, the Chamber believes that entering into a contract with the Town is its best interest and will provide for improved long-term planning; and,

Whereas, the Chamber has been the recipient of the Thirty Per Cent Fund for a

period of years and has demonstrated good stewardship of the Thirty Per Cent Fund, and has demonstrated effective programs in aid of its obligation to utilize the Thirty Per Cent Fund for the promotion of tourism to develop and increase tourist attendance through the generation of publicity.

Now, Therefore, for and in consideration of the mutual performance of the obligations of the Chamber and the Town set out in this Contract, the sufficiency of which is acknowledged, the Chamber and the Town agree as follows:

1. The above recitals are incorporated herein:
2. Appointment of Chamber as Designated Marketing Organization:

The Town hereby appoints the Chamber as its “Designated Marketing Organization” (herein, the “DMO”), in accordance with S. C. Code Ann. § 6-4-10(3)(Supp. 2020) .

3. Mutual Compliance with Laws:

The Town and the Chamber agree that each of them shall adhere to and comply all applicable laws which govern their respective entities, including those governing the allocation and use of the Thirty Per Cent Fund.

4. Chamber Obligations:

4.1 As the DMO, the Chamber shall manage and direct the expenditure of the Thirty Per Cent Fund. The Chamber shall also be eligible to apply for annual supplemental grants from the accommodations tax pool and from the emergency reserve fund established by the Town. Any and all public funds received by the Chamber from the Town shall be subject to the auditing and reporting requirements of this Contract.

- 4.2 DMO Standard:

The Chamber and the Town agree that Destinations International (herein, “DI”) is

the industry leader in setting standards and accreditations with regard to destination and/or designated marketing organizations. The Chamber agrees that it shall adopt policies and procedures and operate in a manner which satisfies the applicable standards set forth by DI under their categories of governance, finance, human resources, technology, marketing, visitor services, group services, sales, communications, membership, management and facilities, brand management, destination development, research and marketing intelligence, innovation, and stakeholder relationships with the goal of receiving accreditation by DI. The Chamber shall maintain accreditation with DI. The Chamber has and shall maintain its four star accreditation from the United States Chamber of Commerce during the term of this Contract.

4.3 Process:

The Chamber shall submit a budget (herein, the “Budget”) of planned expenditures for the Thirty Per Cent Fund and a Marketing Plan (herein, the “MP”) for each fiscal year. The MP shall be recommended by the Chamber’s Marketing Council and the MP and the Budget shall be approved by the Board of Directors of the Chamber. The Town may elect to have one staff member and one Town Council member to participate as ad hoc members of the Marketing Council provided the individual agrees to all policies and procedures which apply to the Chamber’s Board of Directors. The Chamber makes no representation or assurance that the individual who participates on the Marketing Council will be covered with the Chamber’s Directors and Officers’ liability insurance. The Budget and MP will then be submitted to the Town’s Accommodations Tax Advisory Committee (herein, the “ATAC”) for review and recommendation. Upon the recommendation by the ATAC, the Budget and MP shall be forwarded to the Town Council for review and approval. The ATAC and the

Town shall make all reasonable efforts to provide review and approval in a timely manner since private funds, state funds, and placement of public relations and marketing programs are dependent on meeting deadlines. The Chamber shall submit the Budget and MP to the Town on or before April 30th after the applicable fiscal year end.

4.4 Annual Audit:

The Chamber agrees to provide an independent auditor's report to the Town on an annual basis with regard to each of its fiscal years, (July 1st, through June 30th,) during the term of this Contract. The audit shall be delivered to the Town by November 15th following the applicable fiscal year end.

4.5 Audit and Auditor Standards:

The following standards shall apply to the audit and/or the auditor:

- a) The audit shall be conducted in conformity with the statements, rules, policies, and procedures set forth by the American Institute of Certified Public Accountants, (herein, "AICPA").
- b) The audit shall be performed in accordance with generally accepted auditing standards, (herein, "GAAS").
- c) The auditor must comply with all applicable statements on auditing standards, ("SAS") that are issued by the Auditor's Standing Board of the AICPA.
- d) The auditor must maintain malpractice insurance in an amount equal to at least One Million and No/100 (\$1,000,000.00) Dollars.
- e) The auditor must provide evidence of successful completion of the peer review process approved by the AICPA.

4.6 Additional Requirements:

To promote the Chamber's ongoing commitment to transparency in connection with the receipt and expenditure of the Thirty Per Cent Fund, and to promote the Chamber's ongoing good stewardship of the Thirty Per Cent Fund, the audit shall also show:

a) Expenses from the Thirty Per Cent Fund are reported by expense type, were reviewed, tested and reported by the Auditor for compliance with the requirements S.C. Code Ann. § § 6-4-10(3)(Supp. 2020), and subsections (a) and (b) of this Section 3.4. The auditor will certify the money from the Thirty Per Cent Fund was used exclusively for the advertising and promotion of tourism and to develop and increase tourist attendance through the generation of publicity for the Town, all in accordance with S. C. Code Ann. §§ 6-4-10(3)(Supp. 2020) and this contract.

In addition to the annual audit as described above, the auditing firm will perform a separate Agreed-Upon Procedures examination covering the same period as the audit.

That Agreed-Upon Procedures examination will include the following:

- (i) The Auditor will conduct a sampling of one hundred (100%) percent of all payments and paid invoices in amounts equal to or greater than Ten Thousand and No/100 (\$10,000) Dollars, and;
- (ii) The auditor will conduct a random sampling of fifty five (55%) per cent of all payments and paid invoices in amounts equal to or greater than Five Thousand and No/100 (\$5,000) Dollars, and;
- (iii) The auditor will conduct a random sampling of two (2%) per cent of all payments and paid invoices in amounts less than Five Thousand and No/100 (\$5,000) Dollars.

b) The audit shall show:

i) DMO Revenue, which shall include only the Thirty (30%) percent fund allocated by the Town.

ii) The Thirty Per Cent Fund allocated by the Town shall be shown separately from any other revenue of the Chamber or any other Thirty Per Cent Fund allocated from any other source, including the Town of Bluffton, South Carolina, and Beaufort County, South Carolina.

iii) All DMO expenses made from the Thirty Per Cent Fund shall be shown separately from expenses of the Chamber of any other revenue or Thirty Per Cent Fund allocated from any other source, including the Town of Bluffton, South Carolina, and Beaufort County, South Carolina.

(iv) All DMO expenses made from the Thirty Per Cent Fund shall be shown separately from expenses of the Chamber of any other revenue or Thirty Per Cent Fund allocated from any other source, including the Town of Bluffton, South Carolina, and Beaufort County, South Carolina.

4.7 Auditor:

The Chamber agrees that it will cause its Finance Committee to interview other auditing firms no less frequently than every five (5) years. The Town may appoint one town staff member, with relevant experience or expertise, and one member of Town Council, to participate with the Chamber's Finance Committee during this process. Town Council members may participate in this auditor review process on an ad hoc basis. The Chamber makes no representation or assurance that the individual who participates on the Marketing Council will be covered with the Chamber's Director's and Officer's liability insurance.

4.8 Tax Returns:

To promote the Chamber's ongoing commitment to transparency the federal and state tax returns for the Chamber shall be prepared and filed by a tax professional that must

execute the returns as a tax preparer as defined by the Internal Revenue Code, the South Carolina tax code, and/or their regulations. This requirement will ensure that such professional tax return preparer is subject to all penalties set forth in the Internal Revenue Code or the South Carolina code concerning tax preparers. Copies of said tax returns shall be provided to the Town once they are filed.

4.9 DMO Report:

S. C. Code Ann. § 6-4-10(3)(Supp. 2020) requires the Chamber to produce and deliver to the Town a report for each fiscal year for the Designated Marketing Organization division of the Chamber (herein, the “DMO Report”). The Report shall be delivered to the Town by November 15, after the applicable fiscal year.

(a) The DMO Report shall provide an overview of the DMO’s activities and production for the year, and shall include survey results, tourism metrics, and reports detailing:

- (i) Visitor and Resident satisfaction;
- (ii) Revenue per available room (REVPAR);
- (iii) Occupancy rates;
- (iv) Visitor spending studies;
- (v) Return on investment for visitor spending per dollar of investment;
- (vi) Local tax revenues generated by visitors;
- (vii) Number of visitors;
- (viii) Number of referrals made to area businesses and number of website;
- (ix) Hits and click through(s) made to area businesses
- (x) Numbers related to mail fulfillment and other contacts;

- (xi) Industry awards received for marketing public relations efforts;
- (xii) Number of jobs created by tourism;
- (xiii) Events held and participation events by Chamber members;
- (ixv) Update on its public relations efforts to include the number of media
- (xv) Impressions and the dollar equivalent for media impressions

The Chamber and the Town acknowledge that the metrics and/or reports may change from time to time based upon best practices, available funding, and the goals set forth in the MP.

(b) The Town shall review the DMO Report and evaluate the performance of the DMO. The evaluation shall consider the above survey results, metrics, and reports, collectively, and shall be compared with peers and other factors that affect the tourism industry such as the state of the economy, weather, pandemics, condition of lodging properties, etc.

(c) If the Town determines the Chamber has underperformed, it shall retain an industry recognized expert that has been recommended by DI (herein, the “Expert”) to confirm its determination and to recommend strategies and policies to cure the deficiencies which has created the under performance (herein, the “Cure Plan”), within sixty (60) days. In such event, the Chamber shall cooperate with the Town Council and the Expert to implement the Cure Plan. If, after one year from the date of the delivery of the Cure Plan, the Town Council, after consultation with the Expert, determines the implementation of the Cure Plan has not occurred, the Town shall have the right to terminate this Contract by written notice, said termination to be effective sixty (60) days after said notice is given.

5.0 Inspection Rights:

The Town Manager (or a designee that satisfies the same standard to interview auditors as set forth in Section 4.7), or a representative from the Town's Finance and Administration Committee (who also satisfied the same standard to interview auditors as set forth in Section 4.7) may, upon reasonable notice, inspect the necessary financial records, including third party invoices, of the Chamber in order to verify compliance of the Report in all material respects. This inspection right shall not be exercised more than twice in each fiscal year, unless otherwise agreed by the parties.

6.0 Chamber Warranties and Representations:

6.1 The Chamber warrants and represents that it has all necessary licenses and consents required for the Chamber to enter into and fully perform this Contract.

6.2 The Chamber warrants and represents to perform all tasks required under this Contract with a degree of skill and care of reputable organizations of the same profession in South Carolina.

6.3 The Chamber warrants and represents to properly withhold from all wages, commissions, salaries, and fees paid by Chamber to third parties or employees, agents, or sub-contractors of Chamber, all amounts required by state or federal law to be withheld for or on account of taxes, social security payments, or other withholdings mandated by law or regulation.

6.4 The Chamber warrants and represents that the MP shall include a "Cornerstone Plan" which engages the community, with public relations, education, and social media strategies.

6.5 The Chamber covenants and represents the DMO Report shall include as exhibits the

prior years' calendar of events and a five (5) year dashboard of year over year survey results and tourism metrics.

6.6 The Chamber warrants and represents to maintain the website "www.ThinkHiltonHeadIsland.org," and to post five (5) years of audits and tourism metrics as historically reported.

6.7 The Chamber warrants and represents that it will comply with all state accommodation tax laws in administering the Thirty Per Cent Fund.

6.8 The Chamber warrants and represents that DMO revenue, less expenses, derived from DMO non programming activities to accrue for the benefit of the DMO.

6.9 The Chamber acknowledges that its role as the DMO recipient and end user of the Thirty Per Cent Fund is a separate and distinct component within the Chamber of Commerce, and is separate and distinct from the Chamber's role as the DMO and recipient and end user of any promotional funds through any other government entity. The Chamber agrees that the Thirty Per Cent Fund shall be accounted for separately from any other funds of the Chamber, or any other Accommodations Tax Fund administered by the Chamber.

6.10 The Chamber warrants and represents that allocations to and expenses from the Thirty Per Cent Fund shall be received, used, and reported in compliance with the requirements of S. C. Code Ann. § 6-4-10 (Supp. 2020), and this Contract.

7. Town Warranties and Representations:

7.1 The Town warrants and represents that it will comply with S. C. Code Ann. § 6-4-10 (Supp. 2020) in allocating the Thirty Per Cent Fund to the Chamber and other non-profit corporations.

7.2 The Town warrants and represents that it shall comply with all such laws and

procedures in a manner not to discriminate against other non-profit corporations.

7.3 The Town warrants and represents that it shall cause the Thirty Per Cent Fund to promptly be allocated to the Chamber as required by S. C. Code Ann. § 6-4-10 (Supp. 2020) in order for the Budget and MP to be implemented.

7.4 The Town warrants and represents not to disturb, violate, request to be violated, any laws, loan covenants, policies and procedures, including but not limited to, all federal and state laws, and the South Carolina Non-Profit Act which affect the Chamber.

7.5 The Town warrants and represents the Town has lawful authority required under State law and Town's ordinances to enter into and perform this Contract.

8.0 Term:

Because the current fiscal year's budget and MP are in the process of being approved, this Contract shall be effective as of the 1st day of December 1st, 2020, and shall continue for a period of five (5) years and (herein, the "Term"), unless terminated as herein provided. At the conclusion of the fourth year of the Term, the Town will issue a RFQ for destination marketing services to be effective December 1, 2025, and will review any and all responses from qualified non-profit organizations, including the Chamber.

9.0 Termination:

9.1 The parties may agree, at any time, to terminate this Contract.

9.2 Except as is set out in Section 4.9, if the Performance Standards and other obligations of the Chamber have not been complied with in all material aspects as determined by DI, the United States Chamber of Commerce, or the Town, the Town shall provide written notice to the Chamber of the deficiency and the Chamber shall have one hundred eighty (180) days to cure the deficiency. If the deficiency is not cured, the Town

may terminate this Contract by providing ninety (90) days written notice to the Chamber. In addition, the Town shall have the right to terminate the Contract by providing ninety (90) days' notice if the auditor or DI determines fraud has occurred in the operation of the Chamber.

8.3 With respect to the failure of the Chamber to meet the Performance Standards set forth in Section 4.0 above, the termination process set forth in Section 4.9 shall govern.

8.4 The Chamber may terminate this Contract by giving six (6) months advance written notice.

9. Other Terms:

9.1 Headings:

Headings to paragraphs in this Contract shall not interpret or alter the meaning of the words in the respective paragraph, not any other provision of this Contract.

9.2 Notices:

All notices to the Town or to the Chamber in connection with this Contract shall be in writing, and sent as follows:

To the Town:

Town of Hilton Head Island, South Carolina
Attn: Town Manager
One Town Center Court
Hilton Head Island, SC 29928

To the Chamber:

Hilton Head Island-Bluffton Chamber of Commerce, Inc.
Attn: William G. Miles, President & CEO
1 Chamber of Commerce Drive
Hilton Head Island, SC 29928

9.3 Form of Notice:

All notices required or permitted under this Contract shall be sent Certified mail with signature required or may be hand delivered to the addresses shown in paragraph 9.2, listed above.

9.4 Merger, Amendment, and Waiver:

This Contract contains all the terms of all agreements, oral or written, between the Chamber and the Town, and is the only document containing all such terms. This Contract merges all prior discussions, negotiations, contracts, agreements, and understandings between the Town and the Chamber concerning the subject matter of this Contract. This Contract may only be amended or varied by a written instrument signed by a duly authorized signatory of the Town and the Chamber. Forbearance by the Town from enforcing strict terms of this Contract shall not be a waiver of any other term of this Contract, nor shall such forbearance entitle the Chamber to rely upon such forbearance in the future.

9.5 Independent Contractor Status:

The Chamber shall not, by entering into this Contract, become a servant, agent, or employee of the Town, but shall remain at all times an independent contractor. This Contract shall not be deemed to create any joint venture, partnership, or common enterprise between the Chamber and the Town, and the rights and obligations of the parties shall not be other than as expressly set forth herein.

9.6 No Third Party Beneficiaries:

The Town and the Chamber affirmatively represent that this Contract is made solely for the benefit of the parties hereto and their respective successors and assigns and not for

the benefit of any third party who is not a signature party hereto. No party other than the signature parties and their respective successors and assigns hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

9.6 Attorney's Fees, Dispute Resolution:

In the event of an arising dispute between the parties, the prevailing party in any dispute shall be entitled to an award of all reasonable attorneys' fees, costs, including the cost of appeal, if any.

In Witness Whereof, The Town of Hilton Head Island, South Carolina and the Hilton Head Island-Bluffton Chamber of Commerce, Inc., have caused their duly authorized officers and representatives to execute this Contract as of this ____ Day of October, 2020.

THE HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE, INC.

By: _____
William G. Miles

Its: Chief Operating Officer

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
John J. McCann, Mayor

Attest: _____
Stephen G. Riley, Town Manager