



Town of Hilton Head Island  
**FINANCE & ADMINISTRATIVE  
COMMITTEE MEETING**  
Tuesday, May 16, 2023, 1:00 PM  
**AGENDA**

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The Finance and Administrative Committee meeting will be held in-person at Town Hall in the Benjamin M. Racusin Council Chambers. The meeting can be viewed on the [Town's YouTube Channel](#), the [Beaufort County Channel](#), 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. **Roll Call**
4. **Approval of the Minutes**
  - a. Regular Meeting – April 18, 2023
5. **Appearance by Citizens:** Citizens who wish to address the Committee may do so by contacting the Town Clerk at 843.341.4646, no later than 4:30 p.m., Monday, May 15, 2023. Citizens may also submit written comments on the agenda item via the [Open Town Hall Portal](#).
6. **New Business**
  - a. Review and Discussion of the Town of Hilton Head Island Affiliated Agencies Memorandum of Understanding, Program Requests, and Statutory Provisions
  - b. Consideration of a Resolution of the Town of Hilton Head Island Approving the Technology and Innovation Strategic Plan
  - c. Consideration of a Resolution Authorizing the Execution of Standardized Stormwater Agreements:
    - i. Ashton Cove
    - ii. Carolina Isles
    - iii. Peregrine Point
    - iv. Beach City Place
    - v. Chinaberry Ridge
  - d. Town of Hilton Head Island Fiscal Year 2023 Year to Date Financial Update

7. **Adjournment**

***Please note, a quorum of Town Council may result if four (4) or more of their members attend this meeting***



Town of Hilton Head Island  
**FINANCE & ADMINISTRATIVE  
COMMITTEE MEETING**  
Tuesday, April 18, 2023, 1:00 PM  
**Minutes**

**Present from the Committee:** Alex Brown, *Chairman*; David Ames, Steve Alfred, Glenn Stanford, *Members*

**Present from Town Council:** Patsy Brison

**Present from Town Staff:** Marc Orlando, *Town Manager*; Josh Gruber, *Deputy Town Manager*; Angie Stone, *Assistant Town Manager*; John Troyer, *Director of Finance*; Mac Deford, *General Counsel*; Bob Bromage, *Public Safety Director*; Todd McNeil, *Community Code Enforcement Officer*; Cindaia Ervin, *Interim Town Clerk*

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**1. Call to Order**

**2. FOIA Compliance**

Ms. Ervin affirmed compliance with FOIA

**3. Roll Call**

Attendance was confirmed by way of roll call.

**4. Approval of the Minutes**

**a. Regular Meeting – April 4, 2023**

Mr. Ames moved to approve. Mr. Alfred seconded. Motion carried 4-0.

**5. Appearance by Citizens**

Public comment was received by the Committee. Comments can be viewed through our website listed below.

**6. New Business**

**a. Review of the 2022 Hilton Head Island Destination Marketing Organization (DMO) Industry Metrics Report**

Josh Gruber informed the Committee staff has been working with the Visitor and Conventions Bureau along with the DMO over the past year developing the plan and information that will be presented. He noted there is an emphasis placed on ensuring that the marketing plan is community focused and connection with the Town's comprehensive plan ensuring that goals and objectives are aligned.

Ariana Pernice, Vice President of the Visitors and Convention Bureau conducted a detailed presentation focusing on the metrics within the contract which consists of 1) Visitor and resident satisfaction; 2) Revenue available per room; 3) Occupancy rates; 4) Visitor spending studies; 5) Return on investment for visitor spending per dollar of investment; 6) Local tax revenues generated by visitors; 7) Number of visitors; 8) Number of referrals made to area businesses and number of website and click through(s) made to area businesses; 9) Numbers related to mail fulfillment and other contacts; 10) Industry awards received for marketing and public relations efforts; 11) Number of jobs created by tourism; 12) Events held and participation events by Chamber members; and 13) Update on its public relations efforts to include the number of media impressions and the dollar equivalent for media impressions. She noted the presentation was for the 2022 calendar year. She reviewed detailed results of each metric. The Committee asked questions and provided input regarding: clarification of referrals to businesses located on the website; the importance of reaching out to residents through a survey; concerns over traffic due to overdevelopment; short-term rental issues; the need for alignment with the Town's Comprehensive Plan; the need for quality of visitors and the quality of the marketing product; explanation as to the awards received are not paid for; the need for a balance regarding the number of tourists; the need to promote the benefits of the tourists; the need for emphasis on cultural tourism; a strong suggestion that we need more conventions, meetings and reunions held here; a request that points of concern are included in the metric report; a request for further explanation regarding the increase of jobs; request for an explanation on the number of visitors and whether it includes day visitors staying in surrounding areas; and concern over short term rentals and hotels and whether hotels are making enough for reinvestment in their properties.

**b. Consideration of Resolution Recommending the 2023-2024 Destination Marketing Organization (DMO) Marketing Plan & Budget**

Ariana Pernice, Vice President of the Visitors and Convention Bureau conducted a detailed presentation focusing on the DMA Marketing Plan and Budget. She explained that after meeting with members of Council, Staff and hearing from the public the need to work towards responsible and sustainable tourism. She stated that as a result of those meetings and conversations they need to provide more detail in what is being promoted regarding tourism. Ms. Pernice stated the plan has been adjusted to include a broader spectrum. She went through the plan in detail regarding the implementation of the 1) implementation of the Community Cornerstone Plan; 2) connecting the Marketing Promise with the On-Island Experience; 3) creating an understanding of and respect for our delicate ecosystem (residents and visitors); driving deeper discovery and exploration of our destination; 5) building brand awareness; and 6) enhancing leisure and group business through qualified visitation. The Committee asked questions and provided input regarding: discussions regarding the increase in the estimated 30% amount; discussion of the addition of supplemental requests to the comprehensive plan presented so they would not have to come back; the concern that they are

the Chamber is operating off of current numbers and talking about adjustment to current numbers rather than justifying the budget; the need to come back to the Committee and justify the components of the budget; the need to measure success of the program annually; the need to verify to the community of an effort made regarding the effectiveness of program; recognizing the challenge in dealing with ATAX funds to consider investment in more marketing or facilities and programming; and a request for an explanation of the increase in the budget in the form of a memo. After discussion, Mr. Ames moved to forward the resolution to Town Council for consideration regarding the 2023-2024 Destination Marketing Organization (DMO) Marketing Plan & Budget as presented. Mr. Alfred seconded. Motion carried 4-0.

- c. Consideration of a Proposed Ordinance 2023- 11 Amending Section 4-10-100 (Management and Use of Local Accommodation Taxes) of the Town of Hilton Head Island Code of Ordinances Pertaining to the Event Management and Hospitality Training Program Fund

Josh Gruber conducted an explanation of the amendment changing the funding from a fixed percentage to a proposed budget submitted annually for consideration as part of the town's budget adoption process. Mr. Ames moved to forward the proposed ordinance to Town Council for consideration as presented. Mr. Stanford seconded. Motion carried 4-0.

## **7. Adjournment**

The meeting adjourned at 2:22 p.m.

Drafted and Submitted by:  
Vicki L. Pfannenschmidt  
Temporary Administrative Assistant

### **APPROVED:**

The recording of this meeting can be found on the Town's website at [www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)



# TOWN OF HILTON HEAD ISLAND

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## *Town Council*

**TO:** Finance & Administrative Committee Members  
**FROM:** Josh Gruber, *Deputy Town Manager*  
**CC:** Marc Orlando, *ICMA-CM, Town Manager*  
**DATE:** May 10, 2023  
**SUBJECT:** Review and Discussion of the Town of Hilton Head Island Affiliated Agencies Memorandum of Understanding, Program Requests, and Statutory Provisions

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### **RECOMMENDATION:**

The Finance and Administrative Committee should review the Town's existing Memorandums of Understanding (MOU) for its current affiliated agencies as well as those affiliated agencies that don't currently have an MOU. Following this review, the Committee should provide policy guidance to staff on the reporting of these materials, the modifications that may need to be made to these existing agreements, if any, and the potential need to create new MOUs for affiliated agencies that are not currently subject to one.

### **BACKGROUND:**

The Town provides funding to a variety of nonprofit organizations who provide services to the community on the Town's behalf. Beginning in 2022, a process for standardizing the funding of the agencies was implemented to ensure a consistent and transparent process for reviewing and approving their annual budget requests. The Finance and Administrative Committee has requested that a review and discussion occur concerning the MOUs that are associated with these agencies, those that have been subject to prescribed statutory requirements, and those that are funding specific programmatic elements.

### **ANALYSIS:**

The Town currently provides funding to eight separate organizations with the 14<sup>th</sup> Circuit Solicitor's Office Receiving funding for two separate programmatic requests. Thus, the FY 2024 proposed budget provides for nine separate affiliated agency funding requests.

	FY 2021 Actual	FY 2022 Actual	FY 2023 Request	FY 2023 Budget	FY 2024 Request	FY 2024 F&A Proposed
Island Recreation Association	1,060,706	1,087,578	1,099,304	1,099,304	1,123,766	1,123,766
Coastal Discovery Museum	75,000	75,000	92,775	92,775	102,432	102,432
Mitchelville Executive Director	105,000	105,000	105,000	105,000	105,000	105,000
USCB Event Management/Ambassadors	110,663	186,367	190,094	190,094	238,985	238,985
LRTA (Palmetto Breeze)	200,000	225,165	283,478	282,404	277,842	277,842
14th Circuit Solicitor-Multidisciplinary	50,000	50,000	50,000	50,000	50,000	50,000
14th Circuit Solicitor-Career Criminal	118,500	118,500	118,500	118,500	118,500	118,500
Beaufort County EDC	25,000	25,000	25,000	25,000	40,000	40,000
Heritage Classic	-	289,815	298,513	298,513	307,469	307,469
Habitat for Humanity	-	-	-	-	500,000	-
Grant Matching Funds	-	-	30,000	30,000	-	-
LEPC/Beaufort County	4,246	-	-	-	-	-
Concours D'Elegance	150,000	-	-	-	-	-
Arts Center	200,000	-	-	-	-	-
<b>Total</b>	<b>2,099,115</b>	<b>2,162,425</b>	<b>2,292,664</b>	<b>2,291,590</b>	<b>2,863,994</b>	<b>2,363,994</b>

Each one of these funding requests is discussed separately below.

### Island Recreation Association

The Town’s current MOU with the Island Recreation Association was signed in July of 2018 and is set to expire in September of 2023.

This Agreement states that Island Recreation Association will submit an annual budget for Town Council consideration and that at least 50% of its operating budget will be raised from sources other than Town funding. A copy of this MOU has been attached to this Memorandum.

### Coastal Discovery Museum

The Town’s current MOU with the Coastal Discovery Museum was signed in April of 2017 and is set to expire on June 30, 2027.

The Agreement states that the Town will pay the Coastal Discovery Museum an operating fee of \$75,000 annually. In addition, the Coastal Discovery Museum is required to submit an annual budget wherein the annual management fee may be adjusted as agreed upon by the parties. A copy of this MOU has been attached to this Memorandum.

### Historic Mitchelville Freedom Park

The Town’s current MOU with the Historic Mitchelville Freedom Park was signed in March of 2021 and expired in March of 2023. The Town Council approved a new MOU with the Historic

Mitchelville Freedom Park in April of 2023. The Town is awaiting signatures on that document. Both the prior MOU and the current, but unsigned, MOU are attached to this Memorandum.

The Agreement states that the Town will pay an annual management fee of \$105,000 and that the remainder of the organizations operational budget will be satisfied from other sources. The Agreement also requires that an annual operating budget be submitted to coincide with the Town's annual budget adoption.

### **USCB Event Management/Island Ambassador Program**

The Town does not currently possess an MOU with the University of South Carolina – Beaufort (USCB). The reason for this is that the Town's financial support for this affiliated agency has historically been dictated by Section 4-10-100 of the Town's Code of Ordinances. This section required the Town to fund this program with 5% of its anticipated annual local accommodation tax collections. A full copy of the current 4-10-100 language has been attached to this Memorandum.

### **Lowcountry Regional Transit Authority (Palmetto Breeze)**

The Lowcountry Regional Transit Authority was created in 1978 to serve Beaufort and Jasper Counties. It was expanded in 1984 to include Allendale, Hampton, and Colleton counties.

Pursuant to Section 58-25-50, The authority or other authorized regional transportation organization, in conjunction with all other organizations providing public transportation in the service area, shall prepare and produce a plan to coordinate public transportation services provided by each entity within the designated service area utilizing state funds or funds administered by the State to ensure that resources are being used in the most efficient and cost-effective manner. Section 58-25-90 goes on to further state that the Regional Transportation Authority, through its board, officers, and staff, shall have sole responsibility for the operations of the transportation services.

LRTA is authorized to raise funds from the local governments that are contained within its respective service areas. These funds must be spent on the Authority's service plan for the area as outlined in its annual budget request.

### **14<sup>th</sup> Circuit Solicitor – Multidisciplinary Court**

Prior to 2009, the Town contributed funding to Beaufort County to operate what was then known as the "Drug Court." This program was intended to serve as an diversionary program to treat individuals with substance abuse and mental health program instead of placing them in prison. In 2009, 14<sup>th</sup> Circuit solicitor Duffie Stone took over the program and it has subsequently been renamed the Multidisciplinary Court. The Town has provided an annual financial contribution towards the operational expenses of the court every year since 2009. There is currently no MOU associated with this program as this funding is limited to the operations of this specific program.

### **14<sup>th</sup> Circuit solicitor – Career Criminal Prosecutor**

Beginning in 2009, 14<sup>th</sup> Circuit Solicitor Duffie Stone requested that the Town contribute funding towards the creation of a “Career Criminal” prosecution team. This team consists of experienced prosecutors, investigators, and intelligence analysts who focus solely on prosecuting individuals with substantial histories of committing crimes or who pose a significant danger to the community based upon the nature of the crimes that they are charged with committing. There is currently no MOU associated with this program as this funding is limited to the operations of this specific program.

### **Beaufort County Economic Development Corporation**

The Beaufort County Economic Development Corporation was formed in 2017 with the stated goal of serving as the lead entity for organizing, structuring, and pursuing economic development efforts within Beaufort County. The current bylaws of the Corporation state that the mayors for each of the four primary municipalities located within Beaufort County, or their designees, will serve on its Board of Directors. The Corporation’s Board prepares a proposed membership fee schedule which is presented to the County and each of the municipalities annually to support the operational expenses of the Corporation. There is currently no MOU associated with this program as this funding is limited to the operational expenses of the Corporation.

### **Heritage Classic Foundation**

The Town entered into a one-year Sponsorship Agreement with the Heritage Classic Foundation to support the annual Heritage Golf Tournament. The current Agreement outlines the Town’s funding level and the corresponding advertising and promotional materials that it will receive in exchange for this funding. A copy of this Sponsorship Agreement is attached.

### **SUMMARY:**

The Town provides funding to various affiliated agencies all of whom provide some form of public service on the Town’s behalf. There are currently three (3) active MOUs with the Town’s affiliated agencies. Funding for USCB’s Event Management and Hospitality Training program is currently provided within the Town’s Code of Ordinances One agency is regulated by South Carolina statute and the other two remaining agencies request funding support for specifically defined programs.

### **ATTACHMENTS:**

1. Island Recreation Association MOU
2. Coastal Discovery Museum MOU
3. Historic Mitchelville Freedom Park Prior MOU
4. Historic Mitchelville Freedom Park Current POU (unsigned)
5. Town of Hilton Head Island Code of Ordinances Section 4-10-100
6. 2023 Heritage Classic Foundation Sponsorship Agreement



C45-2018

STATE OF SOUTH CAROLINA )  
 ) MEMORANDUM OF UNDERSTANDING  
 COUNTY OF BEAUFORT )

**THIS MEMORANDUM OF UNDERSTANDING** is made and entered into this 17 day of July, 2018, by and between the Town of Hilton Head Island, South Carolina, (hereinafter referred to as the “Town”), and the Hilton Head Island Recreation Association, Inc., a South Carolina not-for-profit corporation (hereinafter referred to as the “Association”).

**WHEREAS**, the Town recognizes the need for providing for a recreational services and facilities throughout the Town; and

**WHEREAS**, the Town owns the Recreation Center, Shelter Cove Community Park, Jarvis Creek Park, Crossings Park, Bristol Sports Arena, Barker Field Extension, Green’s Shell Park, Chaplin Community Park and Tennis Courts, Rowing and Sailing Center at Squire Pope Community Park, Coligny Park, Low Country Celebration Park, and the Cordillo Tennis Courts, all located within the Town; and

**WHEREAS**, the Town of Hilton Head Island and the Hilton Head Island Recreation Association desire to enter into an agreement wherein the Association will manage and operate the Recreation Center, Shelter Cove Community Park, Jarvis Creek Park, Crossings Park, Bristol Sports Arena, Barker Field Extension, Chaplin Community Park and Tennis Courts, Rowing and Sailing Center at Squire Pope Community Park, Green’s Shell Park, Coligny Park, Low Country Celebration Park, and the Cordillo Tennis Courts.

**NOW, THEREFORE**, for and in consideration of the mutual promises, undertakings and covenants set forth herein, the receipt and sufficiency of which is acknowledged and affirmed by the Town and the Association, the parties hereto agree as follows:

1. **Governing Document.** It is the intent of the parties that this Memorandum of Understanding and the accompanying exhibits shall replace all previous documents entered into between the Town and the Association regarding the management and operation of the Recreation Center, Shelter Cove Community Park, Jarvis Creek Park, Crossings Park, Bristol Sports Arena, Barker Field Extension, and Chaplin Community Park and Tennis Courts, Rowing and Sailing Center at Squire Pope Community Park, Green’s Shell Park, Coligny Park, Low Country Celebration Park, and the Cordillo Tennis Courts.

**Exhibit A.** Agreement which shall govern the management and operation of Shelter Cove Community Park, Jarvis Creek Park, Crossings Park, Bristol Sports Arena, Barker Field Extension, Chaplin Community Park and Tennis Courts, Rowing and Sailing Center at Squire Pope Community Park, Green’s Shell Park, Coligny Park, Low Country Celebration Park, and the Cordillo Tennis Courts.

- Exhibit B.** Site Plans for Parks and Tennis Facilities.
- Exhibit C.** Covenants and Restrictions (Shelter Cove Park).
- Exhibit D.** Use and Assessments Agreement (Shelter Cove Park).
- Exhibit E.** Park Management Plan (Shelter Cove Park).
- Exhibit F.** Operation Plan for Tennis Courts.
- Exhibit G.** Fee Schedules for Parks and Tennis Courts.
- Exhibit H.** Lease with Beaufort County School District dated July 19, 2016.
- Exhibit I.** Memorandum of Understanding between Sandbox and Town of Hilton Head Island, with Conceptual Design Plan and Proposed Lease.
- Exhibit J.** Van Der Meer Agreement (Cordillo Tennis Courts).
- Exhibit K.** Sample Island Recreation Association Annual Metrics Report.

2. **General.**

a. The Town owns the Recreation Center, Shelter Cove Community Park, Jarvis Creek Park, Chaplin Community Park, Coligny Park, Low Country Celebration Park, and the Cordillo Parkway Tennis Courts. The Association shall manage and operate the Recreation Center, Shelter Cove Community Park, Jarvis Creek Park, Crossings Park, Bristol Sports Arena, Barker Field Extension, Chaplin Community Park and Tennis Courts, Rowing and Sailing Center at Squire Pope Community Park, Green Shell Park, Coligny Park, Low Country Celebration Park, and the Cordillo Tennis Courts. Personnel of the Association shall not be employees of the Town.

b. The Association shall coordinate a schedule of programs that utilizes all areas at the Recreation Center, above mentioned Parks and Tennis Courts and those School District recreational facilities made available to the Town by the lease, Exhibit H. Programs shall be offered for all age groups. Access to facilities at the Recreation Center, Parks, and Tennis Court facilities shall be without regard to race, creed, disability, color, sex or national origin.

3. **Maintenance.** The Association shall maintain all buildings, facilities and grounds at the Recreation Center in a clean, safe manner and in good repair, normal wear and tear excepted. Maintenance of the Shelter Cove Community Park, Coligny Park, Low Country Celebration Park, Green's Shell Park, Jarvis Creek Park, Rowing and Sailing Center, Chaplin Community Park athletic fields and tennis courts, and the Cordillo tennis courts shall be through the Facilities

Management Division of the Town. Maintenance of the Crossings Park, Bristol Sports Arena, Barker Field Extension, and Chaplin Community Park (except for the tennis courts) shall be through Beaufort County.

4. **Programming.**

- a. The Recreation Center, excluding the swimming pool, shall be open daily, except during annual maintenance and the following holidays: Christmas Eve, Christmas, New Years Day, Thanksgiving Day, Easter Sunday, Memorial Day, July 4th and Labor Day. Unless otherwise listed in the Agreement, hours of operation shall be as follows:

Monday through Friday	8:00 am-9:00 pm
Saturday	10:00 am-3:00 pm
Sunday	12:00 noon-4:00 pm

- b. The Parks shall be open the following hours:

Shelter Cove Community Park	8:00 a.m. - 10:00 p.m.;
Coligny Park	8:00 a.m. - 10:00 p.m.;
Low Country Celebration Park,	8:00 a.m. – 10:00 p.m.;
Green’s Shell Park	dawn - dusk;
Jarvis Creek Park	dawn - dusk;
Rowing and Sailing Center	dawn - dusk;
Chaplin Tennis Courts	7:00 a.m. - 10:00 p.m.;
Cordillo Tennis Courts	7:00 a.m. - sunset ;
Crossings Park	8:00 a.m. - 10:00 p.m.;
Bristol Sports Arena,	8:00 a.m. - 10:00 p.m.;
Barker Field Extension	8:00 a.m. - 10:00 p.m.; and
Chaplin Community Park.	8:00 a.m. - 10:00 p.m.

- c. The Association may schedule programs or have facility rentals that occur outside the normal operating hours.
- d. The Association shall be authorized to provide supervised instruction for various recreation activities as part of its regular programming, which will include instruction for surfing classes, Adventure Camp, and paddle board lessons that may occur at the beach. These instructional classes will not be considered to be commercial activity upon the beach. The Association shall be authorized to utilize a golf cart or gator to access the beach and carry the equipment to and from the instruction areas on the beach.

5. **Swimming Pool.**

- a. The swimming pool shall be open and staffed daily, except during inclement weather, periods of pool malfunction, installation and deflation of the Air Dome and the following holidays: Christmas Eve, Christmas Day, New Years

Day, Easter Sunday, and Thanksgiving Day. The hours of operation shall be as follows:

Monday through Friday	9:00 am-7:00 pm
Saturday & Sunday	12:00 noon-4:00 pm

(During weekends, the Association may schedule programs or have facility rentals that occur outside these normal operating hours.)

The Association may also open the swimming pool at such hours as it shall determine are needed for special events, or during such additional periods as it determines are warranted by weather and anticipated use.

- b. In accordance with paragraph 14 of the Lease, exhibit H, the swimming pool shall also be open during dates and times mutually agreed upon between the Association and the Beaufort County School District purposes of teaching swimming and for practices for swim meets for the Hilton Head Island High School swimming teams. Staffing during these dates and times will be by appropriately certified Board of Education and Association personnel.

6. **Operating Funds.**

- a. The Association shall submit an annual operating budget to the Town. The submission of this budget shall coincide with the Town's annual budget process. The Town Manager, or his designee, shall inform the Association of the procedures to be followed in regard to the budgeting process.
- b. The Association shall raise a minimum of fifty percent (50%) of its operating budget as shown on its operating account profit and loss statement from all sources other than the Town General Fund commitment for the annual operating budget of the Center. The Association shall also be authorized to charge reasonable user fees for programs and services provided by the Center, Parks and Tennis Court facilities. Such fees shall be designed to offset applicable personnel, administrative and operating expenses allocable to the program or service.
- c. Other entities, public or private, may contribute to the annual operating budget of the Association.
- d. It is understood by the Association that the Town will not provide operating funds for the facility on Cordillo Parkway now known as the Island Art Academy, during the term of the Association's lease agreement with the Art League or any other entity.

7. **Accounting Services.** The Town shall provide timely accounting, check writing, payroll, audit and income tax preparation services to the Association. These services shall include:

- a. a monthly and annual balance sheet and profit and loss statement;
- b. a monthly and annual general ledger of transactions;
- c. monthly reconciliation of bank statements;
- d. preparation of checks, including payroll checks and payroll tax payments, including filing of withholding, FICA and similar state and federal reports;
- e. all audit and audit review preparation services necessary to comply with Town requirements; and
- f. annual state and federal income tax submissions.

Accounting reports shall be in a format reasonably acceptable to the Association and the Town.

8. **Bank Accounts, Checks, and Payments.**

- a. Bank accounts shall be maintained in such institutions as the Association shall determine appropriate. Checks shall be prepared by the Town on the Association's check forms, normally based on a written request of the Association indicating the payee, account code and invoice or other appropriate reference data. Checks shall be signed by such person(s) as the Association shall determine.
- b. A separate checking account in an amount not to exceed Ten Thousand dollars (\$10,000.00), unless otherwise authorized in writing by the Town, shall be maintained by the Association to fund smaller ongoing cash needs. Checks drafted upon this account shall be prepared and signed by such person(s) as the Association shall determine. When the Association requests the Town to transfer additional funds to replenish this account the Association will provide to the Town adequate information regarding payees, account numbers, and invoice or reference data to permit the Association's accounting records to be maintained properly. The Association shall make requests for the Town to transfer additional funds to replenish this account on a not less than monthly basis.
- c. The Association shall provide to the Town schedules of pay rates of Association personnel, time sheets and other information requested by the Town for proper payroll records. Such personnel shall not be deemed employees or agents of the Town.

9. **Procurement and Purchasing.** Unless otherwise authorized in writing by the Town, the Association will adhere to procurement and purchasing procedures of the Town in its purchase of materials and services for the Recreation Center, Parks, and Tennis Courts. This shall not be interpreted to mean that the Town must execute or approve such purchases, however, unless otherwise agreed upon

between the parties. All such purchases shall be deemed direct transactions between the Association and the entity providing the materials or services.

10. **Miscellaneous.**

- a. The Association shall provide the Town with current copies of all insurance policies of the Association relating to the Recreation Center, Parks, and Tennis Courts within thirty (30) days of signing of the Agreement and copy the Town upon each renewal of said insurance policies.
- b. The Association shall provide the Town with copies of all insurance policies the Association requires Users to provide to the Association in accordance with the Agreements in Exhibits A, B, and C relating to the Recreation Center, Parks, and Tennis Courts within thirty (30) days of receiving of the copy of the policy.
- c. The Association shall remain a not-for-profit independent entity whose policies and procedures shall be determined by its Board of Directors.
- d. The Association shall provide the Town with an annual independent audit report or audit review report. An annual audit report shall be submitted no less than every third year.

11. **Notices.** All notices required under this Memorandum shall be deemed to have been given if in writing and (a) delivered personally or (b) mailed first class, postage prepaid, to the address of record set forth below, in which case delivery shall be deemed to have occurred two calendar days after the date of postmark. The address of record may be changed by written notice to the other party.

12. **Term.** The term of this Memorandum of Understanding shall be from the date of execution to September 30, 2023. Prior to September 30, 2023 the Memorandum of Understanding will be reviewed by the Town and the Association. Changes may be made only with the mutual consent of both parties.

13. **Termination.** In addition any other rights of termination set forth in this Memorandum, each party shall have the right to terminate this Memorandum, by written notice to the other party, if the other party is in default of any term or provision of this Memorandum, and the defaulting party fails to cure or correct such default within fourteen (14) days of notice thereof from the non-defaulting party. A party may elect to disregard a default for the period of time without waiving its right to declare a default at a subsequent time or upon reoccurrence of the default.

**IN WITNESS WHEREOF**, the parties hereto have affixed their signatures hereto the date first written hereinabove.

**WITNESSES:**

**HILTON HEAD ISLAND RECREATION  
ASSOCIATION, INC.**

Mary G. Hall

By:

J. Meza

Marta J. Hunt

Attest:

[Signature]

**WITNESSES:**

**TOWN OF HILTON HEAD ISLAND**

[Signature]

By:

David Bennett

David Bennett, Mayor

[Signature]

Attest:

[Signature]

Stephen G. Riley, ICMA-CM, Town Manager

C10-2017

STATE OF SOUTH CAROLINA )  
 ) MEMORANDUM OF UNDERSTANDING  
 COUNTY OF BEAUFORT )  
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This Memorandum of Understanding (the "Memorandum") is entered into by and between the Town of Hilton Head Island (hereinafter referred to as the "Town,") and the Coastal Discover Museum, a South Carolina not-for-profit corporation (hereinafter referred to as the "Museum") regarding the Town assuming responsibility for the accounting and payroll functions of the Museum, the Town's payment of an annual management fee to the Museum, and the Town's assumption of responsibility for and payment for landscaping at Honey Horn.

1. **Governing Document.** It is the intent of the parties that this Memorandum shall not replace the existing Agreement and Lease between the Town and Museum regarding the use of Honey Horn. This Memorandum shall only govern circumstances wherein the Town assumes the accounting and payroll functions of the Museum, paying a management fee to the Museum, and the Town assumes the responsibility for landscaping at Honey Horn during the term of this Memorandum.
2. **General.** The Town owns Honey Horn and has entered into an Agreement with the Museum for the management and preservation of Honey Horn. This Memorandum does not replace or terminate the existing Agreement and Lease between the Town and Museum pertaining to Honey Horn.
3. **Maintenance.** During the term of this Memorandum, the Town shall, at its sole cost and expense, provide for the maintenance and general upkeep of all exterior landscaping at Honey Horn. This will not include irrigation or special event landscape support.
4. **Operating Funds.**
  - a. The Museum shall submit an annual operating budget to the Town. The submission of this budget shall coincide with the Town's annual budget process. The Town Manager shall inform the Museum of the procedures to be followed in regard to the budgeting process.
  - b. The Town shall pay to the Museum a management fee of Seventy Five Thousand dollars (\$75,000.00) per annum. During the annual budget process each year, this management fee may be reviewed and adjusted as the parties may agree. The Museum shall raise the balance of its operating budget as shown on its operating account profit and loss statement from sources other than the Town for the annual operating budget of the Museum.
  - c. Other entities, public or private, may contribute to the annual operating



budget of the Museum.

d. It is understood by the Town and the Museum that the Town will contract for and pay all expenses related to the maintenance and upkeep of all exterior landscaping at Honey Horn.

5. **Accounting Services.** The Town shall provide accounting, check writing, and payroll services to the Museum. These services shall include:

- a. a monthly and annual balance sheet and profit and loss statement;
- b. a monthly and annual general ledger of transactions;
- c. monthly reconciliation of bank statements;
- d. preparation of checks, including payroll checks and payroll tax payments, including filing of withholding, FICA and similar state and federal reports;
- e. all audit preparation services necessary to comply with Town requirements; and
- f. other financial services as the Town and Museum shall agree upon.

Accounting reports shall be in a format mutually agreeable to the Town and Museum.

6. **Bank Accounts, Checks, and Payments.**

a. Bank accounts shall be maintained in such institutions as the Museum shall determine. The Town shall maintain no more than four separate banking accounts for the Museum. Checks shall be prepared by the Town on the Museum's check forms, normally based on a written request of the Museum indicating the payee, account code and invoice or other appropriate reference data. Checks shall be signed by such person(s) as the Museum shall determine.

b. A separate checking account in an amount not to exceed \$2,500 (unless otherwise authorized in writing by the Town) shall be maintained by the Museum to fund smaller ongoing cash needs. Checks on this account shall be prepared and signed by such person(s) as the Museum shall determine. The Museum may request the Town to transfer additional funds to replenish this account on a regular basis, but not more often than monthly. The Museum shall provide to the Town adequate information regarding all payees, account numbers, and invoice or reference data to permit the Museum's accounting records to be maintained properly with this account.

c. The Museum shall provide to the Town schedules of pay rates of Museum personnel, time sheets and other information requested by the Town for proper payroll records. Such personnel shall not be deemed employees or agents of the Town.

7. **Procurement and Purchasing.** Unless otherwise authorized in writing by the Town, the Museum will in its purchase of materials and services for the Museum adhere to procurement and purchasing procedures of the Town. This shall not be interpreted to mean that the Town must execute or approve such purchases; however, unless otherwise agreed upon between the parties, all such purchases shall be deemed direct transactions between the Museum and the entity providing the materials or services.

8. **Miscellaneous.** The Museum shall provide the Town with copies of all insurance policies of the Museum relating to their operations within thirty (30) days of signing of the Memorandum. The Museum shall remain a not-for-profit independent entity whose policies and procedures shall be determined by its Chief Executive Officer and Board of Directors. The Museum shall provide the Town with an annual independent audit report.

9. **Notices.** All notices required under this Memorandum shall be deemed to have been given if in writing and

(a) delivered personally to the Town Manager or Museum CEO, or

(b) mailed first class, postage prepaid, to the address of record set forth below, in which case delivery shall be deemed to have occurred two calendar days after the date of postmark.

**COASTAL DISCOVERY MUSEUM**  
President and Chief Executive Officer  
P. O. Box 23947  
Hilton Head Island, SC 29925

**TOWN OF HILTON HEAD ISLAND**  
Town Manager  
One Town Center Court  
Hilton Head Island, SC 29928

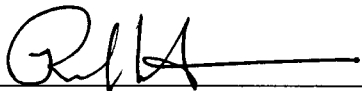
The address of record may be changed by written notice to the other party.

10. **Term.** The term of this Memorandum of Understanding shall be for a period of ten years, from July 01, 2017 to June 30, 2027. Prior to June 30, 2027, this Memorandum will be reviewed by the Town and the Museum. Changes may be made only with and by the mutual consent of both parties.

11. **Termination.** In addition any other rights of termination set forth in this Memorandum, each party shall have the right to terminate this Memorandum, by written notice to the other party, if the other party is in default of any term or provision of this Memorandum, and the defaulting party fails to cure or correct such default within sixty (60) days of notice thereof from the non-defaulting party. A party may elect to disregard a default for the period of time without waiving its right to declare a default at a subsequent time or upon reoccurrence of the default.

**IN WITNESS WHEREOF**, the parties hereto have hereby affixed their signatures.

**COASTAL DISCOVERY MUSEUM**

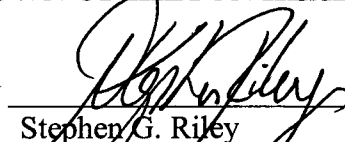
By   
Rex Garniewicz

Its: Chief Executive Officer

Date April 5, 2017

Address:  
P. O. Box 23947  
Hilton Head Island, SC 29925

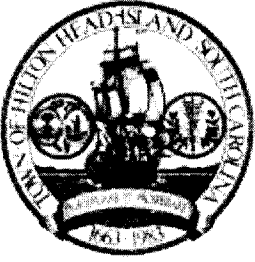
**TOWN OF HILTON HEAD ISLAND**

By   
Stephen G. Riley

Its: Town Manager

Date APRIL 5, 2017

Address:  
One Town Center Court  
Hilton Head Island, SC 29928



## Town of Hilton Head Island

One Town Center Court  
Hilton Head Island, SC 29928

### MEMORANDUM

**TO:** Town Council  
**FROM:** Stephen G. Riley, Town Manager  
**VIA:** Brian E. Hulbert, Esq., Staff Attorney  
**DATE:** March 17, 2017  
**RE:** Memorandum of Understanding between Town of Hilton Head Island and the Coastal Discovery Museum

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**Recommendation:** Staff recommends that Town Council authorize the Town Manager to execute this Memorandum of Understanding (MOU) between the Town of Hilton Head Island (Town) and the Coastal Discovery Museum (Museum).

**Summary:** A MOU was first entered into between the Town and the Coastal Discovery Museum in 2007. It is set to expire June 30, 2017. This MOU between the Town and the Museum would have the Town continue to take responsibility for the accounting and payroll functions of the Museum, continue to take responsibility for the general landscaping at Honey Horn, and continue the payment of a \$75,000.00 per year management fee to Coastal Discovery Museum. This MOU would renew the agreement for another 10 year term.

**Background:** At its 2006 annual workshop, Town Council adopted as a Top Priority, the execution of a management agreement with the Museum. The management agreement was proposed so that the Town would assume responsibility for the accounting and payroll functions of the Museum take over responsibility for the landscaping at Honey Horn. The Town currently has an Agreement and Lease with the Museum in which they manage Honey Horn. The lease was executed on January 29, 2002 and is for a term of 45 years.

**CC:** Gregory D. DeLoach, Esq., Assistant Town Manager  
Mr. Rex Garniewicz, President and CEO Coastal Discovery Museum  
John Troyer, Director, Finance Department  
Scott Liggett, Director PP&F

C25-2021

## Exhibit A

STATE OF SOUTH CAROLINA )  
 ) MEMORANDUM OF UNDERSTANDING  
 COUNTY OF BEAUFORT )  
 )

This Memorandum of Understanding (the "Memorandum") is entered into by and between the Town of Hilton Head Island (hereinafter referred to as the "Town,") and the Historic Mitchelville Freedom Park Inc. (formerly known as: Mitchelville Preservation Project, Inc.), a South Carolina not-for-profit corporation (hereinafter referred to as "Mitchelville") regarding the Town's assumption of responsibility and payment for janitorial, landscaping, general maintenance, and current capital costs at Historic Mitchelville Freedom Park.

1. **Governing Document.** It is the intent of the parties that this Memorandum shall not replace the Lease between the Town and Mitchelville regarding the use of Historic Mitchelville Freedom Park. This Memorandum shall only govern circumstances wherein the Town pays a management fee to Mitchelville and assumes the responsibility for janitorial, landscaping, general maintenance, and current capital costs at Historic Mitchelville Freedom Park during the term of this Memorandum. Any additional capital and operating costs will be the responsibility of Mitchelville.
2. **General.** The Town owns Historic Mitchelville Freedom Park and has entered into a Lease with Mitchelville for the creation of a historical and cultural museum at Historic Mitchelville Freedom Park. This Memorandum does not replace or terminate the Lease between the Town and Mitchelville pertaining to Historic Mitchelville Freedom Park.
3. **Maintenance.** During the term of this Memorandum, the Town shall, at its sole cost and expense:
  - a. Provide for the janitorial and landscaping services at Historic Mitchelville Freedom Park.
  - b. Provide for general maintenance of the park including driveway and parking area scraping and stocking of paper products in the restroom.
  - c. Continue the 10 year Capital Improvements planned for the park, including: roof replacement, partition replacement, light fixtures, plumbing fixtures, exterior/interior painting, structure repairs, pathway/sidewalk repairs, parking lot repairs, amenities/signage replacements, and landscape replacements.
4. **Programming.**
  - a. The Park shall be open daily unless otherwise listed, hours of operation shall be as follows: Monday through Sunday dawn to dusk.

## Exhibit A

- b. Mitchelville may schedule programs or have facility rentals that occur outside normal operating hours.

### 5. Operations.

- a. The Town shall pay to Mitchelville a management fee of One Hundred Five Thousand dollars (\$105,000.00) per annum. Mitchelville shall raise the balance of its operating budget as shown on its operating account profit and loss statement from sources other than the Town for the annual operating budget of the Mitchelville.
- b. Other entities, public or private, may contribute to the annual operating budget of Mitchelville.
- c. It is understood by the Town and Mitchelville that the Town will contract for and pay all expenses related to janitorial, landscaping, general maintenance, and current capital costs at Historic Mitchelville Freedom Park. Any new capital projects would be at the sole cost and expense of Mitchelville.
- d. Mitchelville shall be entitled to charge User Fees for the use of the Park and its facilities to defray the cost of event set up, event cleanup, and supervision of the Park and facilities during events. Prior to charging any User Fees for the use of the Park and facilities, Mitchelville shall prepare a schedule of such fees and present the same to the Town for approval by the Town Council. Any changes to the approved schedule of fees shall be submitted to the Town Council for its approval.

### 6. Miscellaneous.

- a. Mitchelville shall provide the Town with current copies of all insurance policies of Mitchelville relating to their operations within thirty (30) days of signing of the Memorandum and copy the Town upon each renewal of said insurance policies.
- b. Mitchelville shall remain a not-for-profit independent entity whose policies and procedures shall be determined by its Executive Director and Board of Directors.
- c. Financial Statements:
  - i. Mitchelville shall cause a financial statement to be prepared each year at the conclusion of Mitchelville's fiscal year by an entity independent of, and unconnected to, Mitchelville. Mitchelville's fiscal year ends on December 31 of each calendar year. Mitchelville shall deliver a copy of

## Exhibit A

its financial statement to the Town within thirty (30) days of the completion of the financial statement each calendar year.

- ii. Mitchelville shall submit an annual operating budget to the Town. The submission of this budget shall coincide with the Town's annual budget process. The Town Manager shall inform Mitchelville of the procedures to be followed in regard to the budgeting process.
- iii. Mitchelville shall provide the Town with an annual independent audit report or review report prepared by a Certified Public Accountant (CPA) acceptable to the Town. An annual report shall be submitted no less than every third year.
- iv. Upon request of the Town, Mitchelville shall make its financial books and records available to the Town for Review. The Town shall give Mitchelville written notice of its intention to review Mitchelville's financial books and records. Mitchelville shall make its financial books and records available for review by the Town within twenty (20) days of the Town's written notice.

7. **Notices.** All notices required under this Memorandum shall be deemed to have been given if in writing and

- a. delivered personally; or
- b. mailed first class, postage prepaid, to the address of record set forth below, in which case delivery shall be deemed to have occurred two calendar days after the date of postmark.

**HISTORIC MITCHELVILLE FREEDOM PARK, Inc.**  
Executive Director  
539 William Hilton Parkway, Suite 134  
Hilton Head Island, SC 29928

**TOWN OF HILTON HEAD ISLAND**  
Town Manager  
One Town Center Court  
Hilton Head Island, SC 29928

The address of record may be changed by written notice to the other party.

8. **Term.** The term of this Memorandum of Understanding shall be for a period of two (2) years from the date of execution, March 16, 2021. Prior to March 16, 2021, this Memorandum will be reviewed by the Town and Mitchelville. Changes may be made only with and by the mutual consent of both parties.

## Exhibit A

9. **Termination.** In addition to any other rights of termination set forth in this Memorandum, each party shall have the right to terminate this Memorandum, by written notice to the other party, if the other party is in default of any term or provision of this Memorandum, and the defaulting party fails to cure or correct such default within fourteen (14) days of notice thereof from the non-defaulting party. A party may elect to disregard a default for the period of time without waiving its right to declare a default at a subsequent time or upon reoccurrence of the default.

(SIGNATURE PAGES FOLLOW)



Exhibit A

IN WITNESS WHEREOF, Mitchelville has caused this Agreement to be signed and sealed this 19<sup>th</sup> day of April, 20 21.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Anne Cyprian  
Diane Bruce

HISTORIC MITCHELVILLE FREEDOM PARK, INC.

By: Shirley Peterson  
Shirley Peterson  
President, Board of Directors

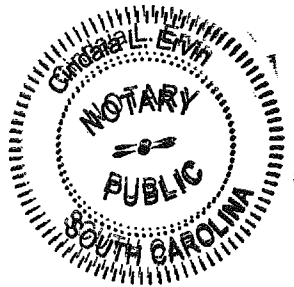
Attest: Ahmad Ward  
Print Name: Ahmad Ward

STATE OF SOUTH CAROLINA )  
COUNTY OF Beaufort )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Shirley Peterson and Ahmad Ward personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Historic Mitchelville Freedom Park, Inc.

Witness my hand and seal this 19<sup>th</sup> day of April, 20 21.



Cindaia J. Ekin  
Notary Public for South Carolina  
My Commission Expires: 9/30/2030



Exhibit A

STATE OF SOUTH CAROLINA )  
 ) MEMORANDUM OF UNDERSTANDING  
 COUNTY OF BEAUFORT )  
 )

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1. **Governing Document.** It is the intent of the parties that this Memorandum shall not replace the Lease between the Town and Mitchelville regarding the use of Historic Mitchelville Freedom Park. This Memorandum shall only govern circumstances wherein the Town pays a management fee to Mitchelville and assumes the responsibility for janitorial, landscaping, general maintenance, and current capital costs at Historic Mitchelville Freedom Park during the term of this Memorandum. Any additional capital and operating costs will be the responsibility of Mitchelville.
  
2. **General.** The Town owns Historic Mitchelville Freedom Park and has entered into a Lease with Mitchelville for the creation of a historical and cultural museum at Historic Mitchelville Freedom Park. This Memorandum does not replace or terminate the Lease between the Town and Mitchelville pertaining to Historic Mitchelville Freedom Park.
  
3. **Maintenance.** During the term of this Memorandum, the Town shall, at its sole cost and expense:
  - a. Provide for the janitorial and landscaping services at Historic Mitchelville Freedom Park.
  - b. Provide for general maintenance of the park including driveway and parking area scraping and stocking of paper products in the restroom.
  - c. Continue the 10 year Capital Improvements planned for the park, including but not limited to: roof replacement, partition replacement, light fixtures, plumbing fixtures, exterior/interior painting, structure repairs, pathway/sidewalk repairs, parking lot repairs, amenities/signage replacements, and landscape replacements.
  
4. **Programming.**
  - a. The Park shall be open daily unless otherwise listed, hours of operation shall be as follows: Monday through Sunday dawn to dusk.

## Exhibit A

- b. Mitchelville may schedule programs or have facility rentals that occur outside normal operating hours.

### 5. Operations.

- a. The Town shall pay to Mitchelville a management fee of One Hundred Five Thousand dollars (\$105,000.00) per annum. Mitchelville shall raise the balance of its operating budget as shown on its operating account profit and loss statement from sources other than the Town for the annual operating budget of the Mitchelville.
- b. Other entities, public or private, may contribute to the annual operating budget of Mitchelville.
- c. It is understood by the Town and Mitchelville that the Town will contract for and pay all expenses related to janitorial, landscaping, general maintenance, and current capital costs at Historic Mitchelville Freedom Park. Any new capital projects would be at the sole cost and expense of Mitchelville.
- d. Mitchelville shall be entitled to charge User Fees for the use of the Park and its facilities to defray the cost of event set up, event cleanup, and supervision of the Park and facilities during events. Prior to charging any User Fees for the use of the Park and facilities, Mitchelville shall prepare a schedule of such fees and present the same to the Town for approval by the Town Council. Any changes to the approved schedule of fees shall be submitted to the Town Council for its approval.

### 6. Miscellaneous.

- a. Mitchelville shall provide the Town with current copies of all insurance policies of Mitchelville relating to their operations within thirty (30) days of signing of the Memorandum and copy the Town upon each renewal of said insurance policies. Mitchelville shall carry a general liability policy at a minimum of one million dollars (\$1,000,000). Mitchelville shall provide a certificate of insurance outlining the insurance requirements set forth herein upon written request by the Town.
- b. Mitchelville shall remain a not-for-profit independent entity whose policies and procedures shall be determined by its Executive Director and Board of Directors.
- c. Financial Statements:
  - i. Mitchelville shall cause a financial statement to be prepared each year at the conclusion of Mitchelville's fiscal year by an entity independent of, and unconnected to, Mitchelville. Mitchelville's fiscal year ends on

## Exhibit A

December 31 of each calendar year. Mitchelville shall deliver a copy of its financial statement to the Town within thirty (30) days of the completion of the financial statement each calendar year.

- ii. Mitchelville shall submit an annual operating budget to the Town. The submission of this budget shall coincide with the Town's annual budget process. The Town Manager shall inform Mitchelville of the procedures to be followed in regard to the budgeting process.
- iii. Mitchelville shall provide the Town with an annual independent audit report or review report prepared by a Certified Public Accountant (CPA) acceptable to the Town. An annual report shall be submitted no less than every third year.
- iv. Upon request of the Town, Mitchelville shall make its financial books and records available to the Town for Review. The Town shall give Mitchelville written notice of its intention to review Mitchelville's financial books and records. Mitchelville shall make its financial books and records available for review by the Town within twenty (20) days of the Town's written notice.

7. **Notices.** All notices required under this Memorandum shall be deemed to have been given if in writing and
  - a. delivered personally; or
  - b. mailed first class, postage prepaid, to the address of record set forth below, in which case delivery shall be deemed to have occurred two calendar days after the date of postmark.

**HISTORIC MITCHELVILLE FREEDOM PARK, Inc.**  
Executive Director  
539 William Hilton Parkway, Suite 134  
Hilton Head Island, SC 29928

**TOWN OF HILTON HEAD ISLAND**  
Town Manager  
One Town Center Court  
Hilton Head Island, SC 29928

The address of record may be changed by written notice to the other party.

8. **Term.** The term of this Memorandum of Understanding shall be for a period of ten (10) years from the date of execution, March 21, 2023. Prior to March 21, 2023, this Memorandum will be reviewed by the Town and Mitchelville. Changes may be made only with and by the mutual consent of both parties.

## Exhibit A

9. **Termination.** In addition to any other rights of termination set forth in this Memorandum, each party shall have the right to terminate this Memorandum, by written notice to the other party, if the other party is in default of any term or provision of this Memorandum, and the defaulting party fails to cure or correct such default within fourteen (14) days of notice thereof from the non-defaulting party. A party may elect to disregard a default for the period of time without waiving its right to declare a default at a subsequent time or upon reoccurrence of the default.

(SIGNATURE PAGES FOLLOW)



Exhibit A

IN WITNESS WHEREOF, the Town has caused this Agreement to be signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_ Alan R. Perry, Mayor

\_\_\_\_\_

By: \_\_\_\_\_ Marc Orlando, Town Manager

Attest: \_\_\_\_\_ Krista Wiedmeyer, Town Clerk

STATE OF SOUTH CAROLINA )
COUNTY OF BEAUFORT )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Alan R. Perry, Marc Orlando and Krista Wiedmeyer personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Town of Hilton Head Island, South Carolina.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public for South Carolina
My Commission Expires: \_\_\_\_\_



**Sec. 4-10-100. Management and use of local accommodations tax.**

*Event management and hospitality training program fund.* The town shall set aside five (5) percent of this local accommodations tax for special events production and volunteerism and hospitality training. The town shall select one (1) organization to manage and direct such fund expenditures. To be eligible for selection the organization must be local, organized as a nonprofit (501c), and be mission driven to promote tourism development. The organization must employ a full-time executive director and provide an annual audited financial report in accordance with generally accepted accounting principles. The organization must not otherwise be designated as the official tourism agency by the town or any other governmental agency. The organization is required to submit an annual budget to the town prior to April 1 of each calendar year for inclusion in the town's proposed annual budget. The town council shall consider the budget and award the organization a reimbursable grant on a June 30 fiscal year basis.

(Ord. No. 98-05, § 1, 1-21-98; Ord. No. 00-06, § 1, 2-8-00; Ord. No. 2008-16, § 1, 6-17-08; Ord. No. 2011-13, § 1, 8-2-11)

Attachment 6

**TOWN OF HILTON HEAD ISLAND  
BEAUFORT COUNTY, SOUTH  
CAROLINA**

**2023 RBC Heritage Presented by Boeing  
Sponsorship Agreement**



# **TOWN OF HILTON HEAD ISLAND**

*RBC Heritage April 10-16, 2023*

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2023, by and among HERITAGE CLASSIC FOUNDATION (hereinafter referred to as "Heritage"), a South Carolina not-for-profit corporation and the TOWN OF HILTON HEAD ISLAND (hereinafter referred to as "TOWN").

## **W I T N E S E T H**

WHEREAS, Heritage contracts annually with the PGA TOUR, Inc. (hereinafter sometimes referred to as "PGA TOUR") to conduct a PGA TOUR sanctioned golf tournament known as the RBC Heritage Presented by Boeing (the "Tournament") on the Harbour Town Golf Links (the "Golf Course") in Sea Pines Resort, Hilton Head Island, South Carolina, such contracts to be hereinafter referred to as the "PGA TOUR Agreement";

WHEREAS, the Tournament provides significant economic impact and publicity to the Town of Hilton Head Island and;

WHEREAS, TOWN desires to become a non-named sponsor of the Tournament under the terms and conditions set forth herein.

NOW, THEREFORE for valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto agree as follows:

1. The above WHEREAS clauses are hereby incorporated into the body of this agreement.

2. **DURATION**

The Agreement shall begin upon the date of signing of this agreement and concluding December 31st, 2023; provided, however, in the event Heritage enters into an agreement with a title sponsor or with a title and presenting sponsor for more than one year, then the term of this agreement shall be the same as that in the title/presenting sponsor agreements but not beyond 2023.

3. **TOURNAMENT NAME AND LOGO**

The Tournament shall be known as the "RBC Heritage Presented by Boeing." As a condition of its association with the Tournament, TOWN is hereby required to refer to the Tournament solely as the "RBC Heritage Presented by Boeing" and to only use the OFFICIAL logo as supplied by the Tournament in any promotional or advertising materials wherein the Tournament is mentioned. **Promotional materials must be approved by the Heritage Classic Foundation before they are put into use, that include OFFICIAL Tournament mention. Such materials must be sent to the Heritage for approval at least 48 hours prior to scheduled production.**

Heritage reserves the right to change the name of the Tournament and the official logo. If a change is made, TOWN agrees to refer to the Tournament by the new name and to use the new name from the date of being notified by Heritage of a change in name or official logo.

4. **PRIVILEGES**

Heritage accepts and designates TOWN as an Official sponsor of the Tournament for the term of this agreement.

Heritage will provide or cause to be provided to TOWN the following, upon request and without cost, for the use by TOWN personnel and their guests:

- a) TOWN will receive an upper tier logo placement in the Official Pairings Guide, Wednesday through Sunday of Tournament week;
- b) TOWN will receive one (1) full page four (4) color ad in the Official Pairings Guide;
- c) TOWN will receive a listing and link on the official website [www.rbheritage.com](http://www.rbheritage.com) and the PGA TOUR Tournament specific website at [www.pgatour.com](http://www.pgatour.com);
- d) TOWN will receive a listing on the Tournament's Official scoreboards, Monday through Wednesday of Tournament week;
- e) TOWN will receive an upper tier placement on the year-round Sponsor Board;
- f) TOWN will receive a listing in the Official Media Guide;
- g) TOWN will provide the Official Welcome Message on the Bus DVD's and placement of one (1) thirty (30) second commercial ad within the running time on the video boards located on the Heritage Lawn.

5. **FEE**

TOWN agrees to pay Two Hundred and Ninety Eight Thousand Five Hundred and Nine Dollars and 71/100 Cents (\$298,509.71) due no later than April 1, 2023. The sponsorship fee for the Privileges listed in Item #4 above will support the operational needs of the Tournament, including but not limited to transportation and marketing. Further, this contract may be terminated and all the rights and privileges under this Agreement shall be forfeited if payment of the Sponsor fee is not paid within ten (10) days of being given written notice by Heritage that the Sponsor fee has not been paid. In addition to the forfeiture of all privileges, a default under this Agreement which is not timely cured shall also result in the forfeiture of all money paid to date as liquidated damages. Time shall be of the essence regarding the provisions of this section.

6. **INDEMNIFICATION**

Heritage agrees to hold harmless TOWN, its subsidiaries, successors and assigns from and against all claims, damages, issues and expenses including reasonable attorneys' fees, arising out of or resulting from the Tournament or any of its related activities, provided that any such claims, damages, loss or expense (1) is attributed to bodily injury or property damage, and (2) is caused in whole or in part by any negligent act or omission of Heritage and not proximately caused in whole or in part by TOWN.

**Section 6 continued:**

TOWN agrees to hold harmless Heritage, from and against all claims, damages, issues and expenses, including reasonable attorney's fees, arising out of or resulting from TOWN use of the Tournament facilities and the skybox/tent or its related activities, provided that any such claims, damages, loss or expense (1) is attributable to bodily injury or property damage, or claims by suppliers, guest, or third parties of TOWN; and (2) is caused in whole or in part by any negligent act or omission of TOWN and not proximately caused by Heritage. Sponsor must show proof of insurance with a Certificate of Insurance supplied to the Tournament prior to March 31, 2019 with a minimum of \$1,000,000 in Liability coverage per occurrence. The Tournament in turn will insure Sponsor under the Tournament's umbrella policy.

**7. WARRANTIES AND REPRESENTATIONS**

- (a) For the term of this Agreement, Heritage warrants and represents to TOWN:
- (i) Heritage has the authority to enter into this Agreement and has obtained all permissions and consents necessary to fulfill Heritage's obligations under this Agreement;
  - (ii) The Tournament will be sanctioned as a scheduled event on the PGA TOUR and televised live by The Golf Channel and CBS;
  - (iii) Heritage has a valid cosponsor Agreement with the PGA TOUR for the Tournament;
  - (iv) The Tournament will be held principally to raise proceeds for charity and a substantial majority of Tournament personnel will be volunteers.

**8. CANCELLATION OF THE TOURNAMENT**

In the event the Tournament or portions of the Tournament are cancelled due to inclement weather or other event (such as acts of God, earthquakes, tornadoes, hurricanes, malicious mischief, flood, insurrections, riots, labor disturbances, public enemy/terrorist activity, war, epidemics, explosives, court orders or injunctions beyond the reasonable control of Heritage) during the Tournament or within thirty (30) days prior to the Tournament, Heritage shall have no obligation to refund any portion of the fee paid by TOWN to date. If the cancellation of the event occurs prior to the expenditure of significant money by Heritage to provide benefits given to TOWN hereunder, Heritage will refund the amounts paid by TOWN to Heritage less any reasonable amount to make Heritage whole.

Should TOWN cancel the Agreement at any time the following cancellation sliding scale will apply:

- Signing of Agreement to 120 Days of Tournament: 25% of Fee retained by Heritage
- Signing of Agreement to 90 Days of Tournament: 50% of Fee retained by Heritage
- Signing of Agreement to 60 Days of Tournament: 75% of Fee retained by Heritage
- Signing of Agreement to 30- 0 Days of the Tournament: 100% of Fee retained by Heritage

Cancellation sliding scale will also apply to multiple year Agreements. Refund of Cancellation Fee will be at the discretion of the Tournament based on the resale of space. Cancellation Fee can be applied as a deposit for a future Tournament not to exceed more than two years out from the original Agreement cancellation.

9. **MISCELLANEOUS**

- (a) No person not a party to this Agreement shall have any equitable or other rights by virtue of this Agreement.
- (b) If any term or provision of this Agreement should be determined to be invalid or unenforceable, such term or provision shall, if possible, be changed to the most minor extent necessary to make it valid and enforceable and to carry out the intent of the parties. In such event, all remaining terms and provisions of this Agreement shall remain in full force and effect with such change or without the effected term or provision, as the case may be.
- (c) This Agreement constitutes the entire agreement of the parties and supersedes all prior written and all contemporaneous oral agreements, understandings, and negotiations between the parties.
- (d) This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same documents.
- (e) This Agreement and any rights herein granted are personal to the parties hereto, and shall not be assigned, sublicensed, encumbered, or otherwise transferred by any party without the prior written consent of the parties. Any attempt at volatile assignment, sublicense, encumbrance, or other transfer, whether voluntary or by operation of law, shall be void and of no force and effect.
- (f) Failure of any party to complain of any act or omission on the part of any other party, no matter how long the same may continue, shall not be deemed to be a waiver by any party of its rights under this Agreement.
- (g) This Agreement shall be binding on the parties hereto, their successors, assigns and legal representatives.
- (h) Notice by any party is deemed given when personally delivered or mailed, postage prepaid, addressed to the other parties at the address appearing below.
- (i) In the event either party must resort to litigation to protect or enforce its rights hereunder, the prevailing party is entitled to recover its reasonable attorney's fees and costs.
- (j) Heritage is moving towards a virtual ticketing platform and all tickets will be digital.
- (k) The Clubhouse is restricted to spectators who specifically have clubhouse tickets.

**HERITAGE  
CLASSIC  
FOUNDATION**

Simon Fraser, Chairman  
Heritage Classic Foundation  
Post Office Box 3244  
Hilton Head Island, SC 29928

**TOWN OF HILTON HEAD ISLAND**

(name) \_\_\_\_\_

(company) \_\_\_\_\_

(address) \_\_\_\_\_

(city, state, zip) \_\_\_\_\_

WITNESSETH WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**WITNESSES:**

***HERITAGE CLASSIC FOUNDATION***

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**WITNESSES:**

***TOWN OF HILTON HEAD ISLAND***



By: Marc Orlando

Its: Town Manager

Date: 1/26/2023

Date: 1-26-2023



# TOWN OF HILTON HEAD ISLAND

## Finance & Administrative Committee

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**TO:** Finance & Administrative Committee  
**FROM:** Thomas Sunday, Technology & Innovation Director  
**VIA:** Angie Stone, Assistant Town Manager  
**CC:** Marc Orlando – ICMA-CM, Town Manager  
**DATE:** May 16, 2023  
**SUBJECT:** Consideration of a Resolution of the Town of Hilton Head Island Adopting the FY24-26 Technology Strategic Plan

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### **RECOMMENDATION:**

Staff recommends Town Council consider approval of a Resolution adopting the Fiscal Year 2024-2026 Technology Strategic Plan.

### **BACKGROUND:**

The Town's Technology & Innovation Department is responsible for the operation and maintenance of all technology assets at the Town. As technology is an ever-changing world, it is necessary that we strive to keep up with the changes and address the coming challenges. Providing our customers with efficient core offerings and exceeding their expectations is the driving force behind our customer service initiatives. We will continue to improve our operations in innovative ways. The Goals and Strategies set forth in this document will guide the Town's use of technology to enhance security capabilities, leverage new technologies to meet our customers' needs, develop a strong and collaborative workforce, and implement financial stewardship in our departmental budgeting. Our Tactics specify the ways we continue to improve our processes, investigate new capabilities, support workforce needs, and implement solutions to keep the department abreast of technology and service delivery.

### **SUMMARY:**

The FY24-FY26 Technology Strategic Plan will give direction to the Technology & Innovation Department and guide the use of technology resources at the Town. Staff recommends adoption of the FY24-FY26 Technology Strategic Plan via the attached Resolution.

### **ATTACHMENTS:**

1. Resolution adopting the Fiscal Year 2024-2026 Technology Strategic Plan
2. FY24-FY26 Technology Strategic Plan
3. Technology Strategic Plan PowerPoint Presentation



**TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**

**RESOLUTION No. \_\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ADOPTING THE FISCAL YEAR 2024-2026 TECHNOLOGY STRATEGIC PLAN**

**WHEREAS**, the Town of Hilton Head Island Town Council (the "Town Council") believes that the development of specific goals and objectives is vital to planning for the future of the community; and

**WHEREAS**, a defined strategic plan for technology needs will identify the priorities of the Town of Hilton Head Island to guide the budget process and ensure that the Town Council clearly communicates its priorities; and

**WHEREAS**, with input and collaboration from the Town Manager, the Town senior Staff, and various stakeholders, the Fiscal Year 2024-2026 Technology Strategic Plan was crafted to identify those goals, priorities, and actions that will be pursued through Fiscal Year 2026 and identifies the indicators needed to measure progress towards achieving these priorities; and

**WHEREAS**, the Town Council desires to adopt the Fiscal Year 2024-2026 Technology Strategic Plan.

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

The Fiscal Year 2024-2026 Technology Strategic Plan is hereby adopted and attached to this Resolution as Exhibit A and incorporated herein by reference.

The Technology Strategic Plan shall be used as the guiding principles for making decisions on Town matters and Town staff shall follow and implement elements of the Strategic Plan as identified within the Plan document.

**MOVED, APPROVED, AND ADOPTED ON THIS DAY \_\_\_\_\_ OF \_\_\_\_\_ 2023.**

**TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**

\_\_\_\_\_  
Alan R. Perry, Mayor

ATTEST:

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Kimberly Gammon, Town Clerk

APPROVED AS TO FORM:

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Curtis L. Coltrane, Town Attorney

Town of Hilton Head Island

# Technology Strategic Plan

FY2024- FY2026



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## Message from the Technology & Innovation Director Thomas Sunday, CGCIO



I am pleased to present to you the **Technology Strategic Plan for Fiscal Years 2024-2026**. This plan has been a collaboration between the Technology & Innovation Department and Town staff to guide the needs of the Town as we move into the future.

Technology is an ever-changing world, and it's necessary that we strive to keep up with the changes and address the coming challenges. Providing our customers with efficient core offerings and exceeding their expectations is the driving force behind our customer service initiatives. We will continue to improve our operations in innovative ways.

The boundaries of technology continue to be pushed and it is imperative that our services enable the Department to effectively navigate dynamic changes. Cyber-attacks happen daily and impact local governments throughout the United States. We will continue to diligently protect the Town's critical data through increased cyber resilience and optimize data utilization to provide safe and secure activity, both locally and through cloud-based applications.

The **Goals and Strategies** set forth in this document will guide the Town's use of technology to enhance security capabilities, leverage new technologies to meet our customers' needs, develop a strong and collaborative workforce, and implement financial stewardship in our departmental budgeting. Our **Tactics** specify the ways we continue to improve our processes, investigate new capabilities, support workforce needs, and implement solutions to keep the department abreast of technology and service delivery.

Thank you to everyone who had a part of this plan, and we look forward to implementing our strategic initiatives for the years to come.

# INTRODUCTION TO TECHNOLOGY STRATEGIC PLAN

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The **Town of Hilton Head Island FY2024-2026 Technology Strategic Plan** describes the goals and objectives of the Technology & Innovation Department over the next three years to evolve our organization **for the benefit of the Town’s mission, workforce, partner organizations, and stakeholders.**

Our focus is on enabling the Town’s mission through technology. Our vision for the future of technology at the Town is aligned to the Town’s priorities so that we are moving in lockstep with the overall enterprise plan. This includes the Department’s strategic priorities on enhancing cybersecurity, achieving management excellence through innovation, leadership development, and furthering accessibility to foster a talented workforce representative of the public we serve.

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## TECHNOLOGY & INNOVATION DEPARTMENT

### MISSION

Provide innovative, secure, and high-quality customer service to all our internal and external users.

### VISION

Deliver exceptional technology services and capabilities, while continually being able to adapt to a future of changing technology demands.

## TECHNOLOGY TRENDS

Several trends play a major role in shaping the direction in which we will take the Town’s technology and our subsequent strategic plan.

### 1. USER EXPERIENCE EXPECTATIONS

As part of our continued SWOT analysis, we strive to improve our user experience. We will continue to improve customer service for all end users. We will improve our new employee onboarding as staff begin their positions with the Town. We also continue to improve on our response to Help Desk requests and meeting the day-to-day needs for all users. A well-planned user experience provides a considerable return on investment for the Town by fulfilling customer needs; increasing productivity, collaboration, and engagement; optimizing development time and costs; and building a relationship of trust and partnership between the Technology Department and internal and external users.

## **2. CYBER THREATS**

Over the last decade, threats to government have increased in the form of cyber-attacks originating from a wide array of players: foreign intelligence services, criminal groups, hacktivists, and insider threats. The attacks have grown in sophistication and include exploitation of systemic weaknesses in authentication architecture, ransomware attacks, social media misinformation, and attacks on supply chains and industrial controls. These risks pose significant danger to our Town's critical infrastructure and could cost millions of dollars to government and commercial organizations in recovery.

Combating cybercrime and cyber-enabled threats to our security remain among our highest priorities in our department's mission to ensure safety against foreign and domestic threats. These risks require us to fortify our existing technology environment and update our approach on how we advise other organizations on cyber capabilities. Our initial focus is to expand and reinforce a resilient enterprise that is both well-protected from threats and has the mechanisms to rapidly recover from attacks with minimal disruption to our mission operations.

## **3. TECHNOLOGY COMPLEXITY**

Technology is rapidly changing how people work. Intelligent automation, process automation, artificial intelligence, machine learning, and natural language processing, to name a few disciplines, all show great potential in transforming operations.

In a rapidly evolving and increasingly more complex digital landscape, our goal is to become the technology advisor and implementation partner of choice to the mission areas. We aim to enhance mission operations and support our users in an impactful way while effectively managing the cost of risk within a more sophisticated technology environment. In addition to becoming savvy on emerging technologies, standardizing architecture, and improving governance and oversight, managing costs and integrating different solutions into our technology ecosystem will be critical. We plan on being at the forefront of understanding and applying best practices to accelerate technology adoption and integration into the mission.

## **4. OPTIMIZATION OF RESOURCES**

As we tackle all the factors needed to perform at a highly efficient level, we will continue to examine our operations for cost savings that can be used to support our strategic initiatives. We must accurately forecast the budgets and resources needed to execute our strategic priorities. To do so, we will need to set up practices to enable cost transparency to support better planning and decision-making in allocating resources to our most critical projects, initiatives, and assets.

## **5. DISTRIBUTED WORKFORCE**

During the COVID-19 pandemic, we learned the importance of adapting to an ever-changing work environment. We see the need for new and flexible tools, policies, and mindsets to support a distributed workforce more effectively and securely. Effectively using technology will continue to enable the organization's people to be productive, communicate, and collaborate well to execute mission responsibilities and maintain our Town culture, even while working remotely.

# GOALS AND STRATEGIES

## GOAL: ENHANCE SERVICE DELIVERY

Strategy 1: Establish a customer-centric culture that delivers services that meet the dynamic and evolving needs of the organization's mission

Strategy 2: Deliver industry-leading service management practices to improve reliability of IT services and vendor accountability

Strategy 3: Use innovative new capabilities and service offerings to improve or enhance mission operations

## GOAL: ELEVATE CYBERSECURITY

Strategy 1: Reinforce Town's cybersecurity foundation

Strategy 2: Enhance cloud security to support the organization's growing cloud adoption

Strategy 3: Centralize cloud monitoring and secure access to cloud services

## GOAL: EMBRACE INNOVATION

Strategy 1: Create a culture of innovation to reduce barriers for adopting emerging technology

Strategy 2: Optimize infrastructure and applications to enhance mission-critical operations and collaboration

Strategy 3: Implement intelligent automation to enhance productivity and efficiency

## GOAL: EXPAND AND ENHANCE THE WORKFORCE

Strategy 1: Recruit a talented and diverse workforce

Strategy 2: Upskill workforce to keep pace with the transformative impacts of emerging and expanding technologies

Strategy 3: Enable workforce to be agile and responsive so that Town can work efficiently without disruption



# GOAL: ENHANCE SERVICE DELIVERY

The Technology & Innovation Department's number one priority is customer service. We strive to provide excellent customer service to our internal and external customers. We continue to enhance the quality of our end-user experiences through a SWOT analysis. We will leverage the voice of the customer, holding vendors that provide us support accountable, while monitoring our services so we can provide quick responses to be more proactive in our service deliveries.

## **Strategy 1: Establish a customer-centric culture that delivers services that meet the dynamic and evolving needs of the organization's mission.**

We will leverage customer feedback to better understand where our services and customer engagement can be improved. This knowledge will be used to facilitate improvements in communication with our internal and external users.

## **Strategy 2: Deliver industry-leading service management practices to improve reliability of IT services and vendor accountability.**

We are responsible for ensuring that the services we contract from providers and the services offered to our customers are reliable, resilient, and transparent. With the prevalence of large-scale cyber-attacks, it is more important than ever that we closely monitor services to detect abnormalities. This is a priority as we moved towards a cloud-based platform for hosted services.

Effective use of technology is critical to the Department's mission and requires limited disruption of service. To prevent unexpected or recurring failures of service, we must enhance our service management practices, such as performing post-incident analysis to apply lessons learned and enhancing configuration management to clearly define connections and dependencies across the environment. We will also prioritize using enhanced cloud technology features for disaster recovery to increase service resiliency and reliability. Resilient services will decrease downtime and allow the Town to remain operational when unexpected events or challenges arise.

We must proactively monitor services to improve delivery of reliable services and detect abnormalities that could cause interruption in service or result in a security breach. Through increased visibility into the performance of services, we can minimize disruptions and meet or exceed performance standards.

As a consumer of both cloud and hosted services, we will establish service level agreements for services that currently do not have one in place or ones that are not sufficiently robust. This will allow us to be a liaison for our customers and be able to hold vendors accountable to a comprehensive set of metrics, responsibilities, and expectations for both parties.

# GOAL: ENHANCE SERVICE DELIVERY

## Strategy 3: Use innovative new capabilities and service offerings to improve or enhance Mission operations.

As improvements and technologies change, we must be proactive by improving back-office functions to enable staff to be more efficient in their day-to-day operations. Within the various software applications we manage, we have opportunities to work with staff to address their daily challenges and needs. We will continue to use innovative technologies to support these needs.

As the Town's Fire Rescue Department continues to grow and evolve, we must continue to support their mission. The technologies used daily in Fire Rescue and EMS services continue to change, and we will need to adapt to support their needs. As new applications and equipment are developed, we have an opportunity to help make these important and difficult jobs easier and more efficient with technology enhancements.

To help achieve the goals and objectives of this initiative, Town IT will support enterprise tools to address gaps in current technology. The Department is assessing new technology to offer to all components as part of a shared service model to address common requirements and business needs. Over the next 24 months, we will also create an information management strategy and enhance governance to better manage data, information, files, and knowledge to make it easier to access through cloud-based applications.



# GOAL: ELEVATE CYBERSECURITY

We must have a standard of excellence for cybersecurity to effectively identify risks and address challenges within our network. These challenges include vulnerabilities and various threats that are changing daily. Our goal is to strengthen our security posture against complex cybersecurity attacks, improve and fortify internal remote access for hybrid work abilities, and streamline identity and access management.

## **Strategy 1: Reinforce Town’s cybersecurity foundation.**

Modernize monitoring and management of internet traffic. Traditional foundational principles implement Trusted Internet Connections. As we build off that foundation, we will implement Zero Trust architecture. This is a strategic approach to cybersecurity that secures an organization by eliminating implicit trust and continuously validates every stage of digital interaction. We will accomplish this through a segmented network to limit interaction, implement least privilege access at the firewall, and log and analyze security events.

## **Strategy 2: Enhance cloud security to support the Department’s growing cloud adoption.**

As we continue to implement cloud technology, we need do so in a coordinated, deliberate way that allows us to prevent, detect, assess, and remediate cyber incidents. In order to protect cloud data from threats, the Department will closely monitor and manage cloud accounts and services while also integrating new technology to tighten security. This is called a Zero Trust security. Zero Trust is a security framework requiring all users, whether in or outside the organization’s network, to be authenticated, authorized, and continuously validated for security configuration and posture before being granted or keeping access to applications and data. Zero Trust assumes that there is no traditional network edge; networks can be local, in the cloud, or a combination or hybrid, with resources anywhere as well as workers in any location. We will focus on three key areas, including improving our cloud service management, enhancing cloud monitoring, and better securing cloud access.

## **Strategy 3: Centralize cloud monitoring and secure access to cloud services.**

As we transition to more cloud services, we need to be able to monitor logins and events within the systems. We also need to secure this through multifactor authentication (MFA) for secure access. We can closely monitor access through MFA when accessing data and applications outside of our network.

# GOAL: EMBRACE INNOVATION

We will accelerate innovation by supporting information sharing, improving collaboration, and removing barriers to technology adoption across the Town. As a result, the Town will be better equipped to use data to make strategic decisions, modernize IT systems, and capitalize on new technologies.

## **Strategy 1: Create a culture of innovation to reduce barriers for adopting emerging technologies.**

Today's fast-paced work environment requires us to adapt actively and continuously. We must have the infrastructure and resources to aid in the exploration and pursuit of emerging technologies.

We will continue to improve collaboration between Town departments. This will foster development of technology growth, support day-to-day needs, and help us prepare for future needs.

## **Strategy 2: Optimize infrastructure and applications to enhance mission-critical operations and collaboration.**

As we continue to support hosted services and applications, we need to ensure these important pieces of our day-to-day business are running efficiently and reliably. We will continue to work internally and externally with our service providers to ensure these resources are running at optimal levels.

## **Strategy 3: Implement intelligent automation to enhance productivity and efficiency.**

Taking advantage of new technologies and enhancing our automation processes will help increase productivity and efficiency. Within our existing and future applications, these automation processes will improve functionality and our response time to internal and external users.



# GOAL: EXPAND AND ENHANCE THE WORKFORCE

As technologies change and grow, we need to ensure that we have adequate staffing and that the team has the proper training and equipment to be efficient in our day-to-day needs along with being able to properly plan for the future.

## **Strategy 1: Recruit a talented and diverse workforce.**

Attracting a strong workforce that has the skills the organization needs to be successful is a priority as we experience staff turnover. In today's world, most businesses expect an employee to be with the organization five years or less. We will work with Human Resources to ensure our opportunities reach all areas to recruit great people to join our team.

## **Strategy 2: Upskill workforce to keep pace with the transformative impacts of emerging and expanding technologies.**

To be successful with new and emerging technologies requires a team with the skills to use these technologies. We will commit to making the investments in staff to build upon their talents and skills to keep up with demand. Staff upskilling and training is imperative to achieve and maintain our goals. We live in and work in a fast-paced technology environment and must continuously grow to keep up.

## **Strategy 3: Enable workforce to be agile and responsive so that Town can work efficiently without disruption.**

As we learned during the COVID-19 pandemic, we must be more agile in how we accomplish our day-to-day duties. Being a model employer includes evolving our workspaces and work practices to reflect the needs of our staff for today and tomorrow. With the increased adoption of remote work opportunities and the potential need to widen our geographical remote work capabilities, we need to have adequate equipment and resources to handle the hybrid environment to accomplish this efficiently and securely. The idea of being able to support a staff of tomorrow to work from anywhere at any time, both securely and efficiently, is imperative to our growth as a Department and a Town. We will continue to enhance our security and implement modern collaboration tools to accomplish this goal.

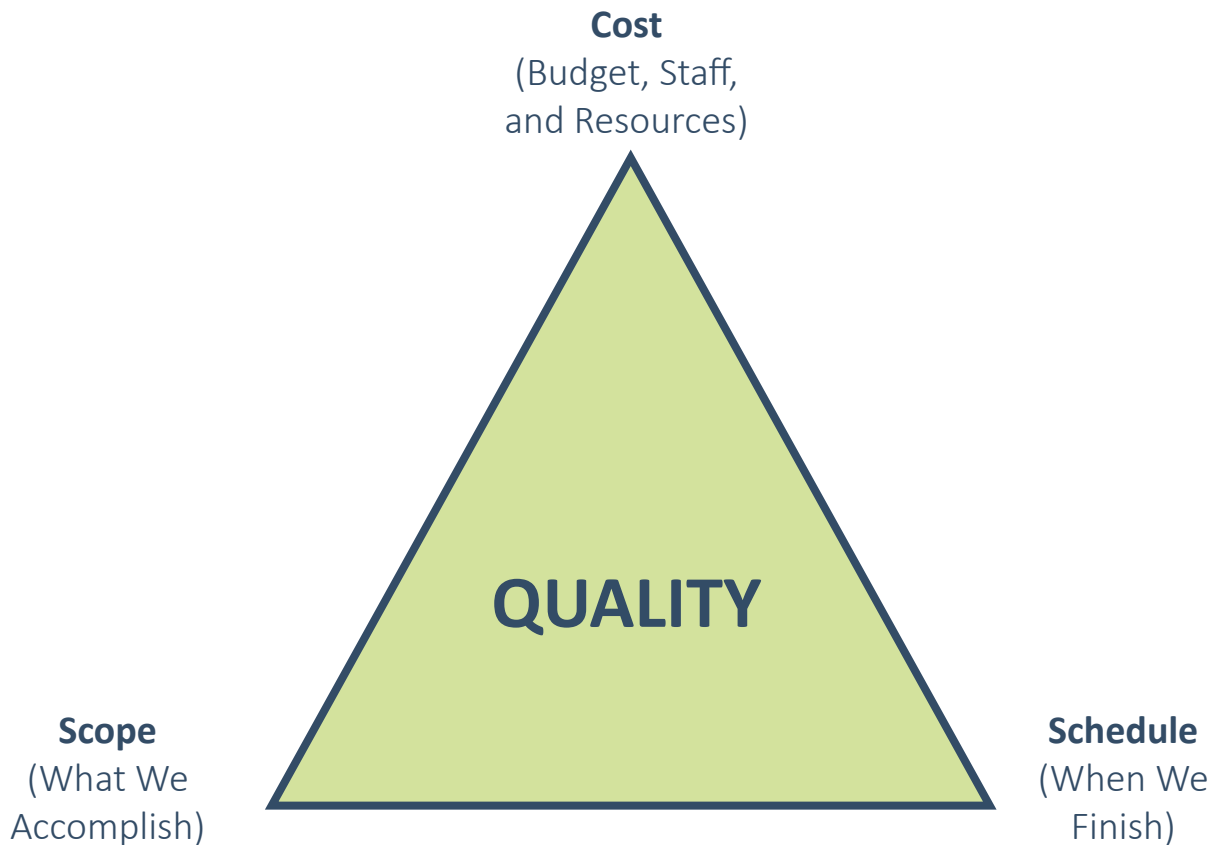
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# INTRODUCTION TO FY2024-FY2026 TACTICS

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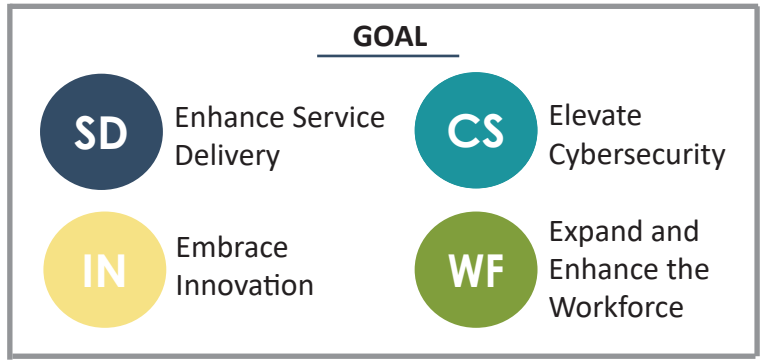
The following pages contain our tactics by goal for fiscal years 2024, 2025, and 2026. Accomplishing these objectives in full, on time, and at a high level of quality will require adequate budget funds, staff time, and resources. These factors will be vital to our success.



























If adequate funding or resources are unavailable, some of our tactics may need to be delayed or reduced in scope in order to maintain quality. This principle is demonstrated in the triangle below, where cost, scope, and schedule are interconnected, and all three have an impact on project quality.



# Fiscal Year 2024

## TACTICS



				1. Implement Monthly Staff Trainings for all Town staff.
				2. Improve Technology onboarding for new Town staff.
				3. Expand online offerings for all citizens.
				4. Implement cyber-security measures to improve Townwide network security.
				5. Place all vital network infrastructure on a five-year lifecycle replacement.
				6. Improve connectivity between all Town buildings, fire stations and parks.
				7. Place staff laptops/desktops into a four-year lifecycle replacement plan.
				8. Communicate with citizens with interactive displays in various Town locations.
				9. Update existing and implement new policies to address departmental issues.
				10. Move current on-premises document management and user files to cloud-based option.




## Fiscal Year 2024 Tactics Detail

- 1. Implement Monthly Staff Trainings for all Town staff.** Give staff training opportunities to help them become more effective with existing and future applications that are used at the Town. Trainings will be offered monthly, and this is an ongoing project.
- 2. Improve Technology onboarding for new Town staff.** As new hires begin with the Town, we will implement improved initial training to help staff become comfortable with Townwide technologies. This will be beneficial to both the Technology Department and the hiring department.
- 3. Expand online offerings for all citizens.** We will improve our online access for citizens. We will review the current abilities within our Customer Self Service Portal and continue to expand this with added capabilities for Special Events and electronic reviews. As part of our continued SWOT analysis, we will look at additional offerings to enhance the Town's online presence.
- 4. Implement additional cyber-security measures to improve Townwide network security.** With the added cloud-based systems local government and business are using, we need to implement multi-factor authentication when outside of our Town network to ensure safety. We will also improve our password requirements for all staff. The addition of Single Sign On focus will also improve security within the various applications we use at the Town.
- 5. Place all vital network infrastructure on a five-year lifecycle replacement.** This equipment is important to our day-to-day continuity of government operations. Our network switches, access points, firewalls, and servers are what maintain the high level of service needed for staff to complete their duties. This is the driving force of our technology needs. We estimate an added cost of \$225,000 to our budget each year to accomplish this goal.
- 6. Improve connectivity between all Town buildings, fire stations and parks.** As technology demands expand year after year, we need to enhance our network connectivity. We can use fiber optics to implement larger bandwidth speed between buildings as we use larger chunks of data. This can be obtained with the adoption of the improved network infrastructure request above. We will also re-cable our existing buildings that have old and outdated low-voltage cabling over the next two years. The cost over the next two years will be an estimated \$85,000.
- 7. Place staff laptops/desktops into a four-year lifecycle replacement plan.** We will replace 25% of our equipment each year. As we become more agile with staff working, most Town staff will have laptops to give that ability to work in the office, at home or in a remote location. Laptops make it easier with our disaster planning and the need to evacuate. Also, after COVID we have learned we need to make the ability to work remote or in a hybrid situation more accessible. In previous budgets we have added funds to replace equipment but not on a set schedule. This process will involve buying equipment with a full four-year warranty to cover the needs of the equipment for its lifecycle. The added cost for this each year is an estimated \$100,000, but as stated earlier, this is not a fully added cost each year due to existing budgeting for equipment purchases.
- 8. Communicate with citizens with interactive displays in various Town locations.** These interactive displays will be able to share information to citizens about upcoming events, meetings, announcements, and other information. With multiple locations that are Town owned properties this will help improve our communication abilities. The cost for this would be for a large monitor and android computer to control the cloud-based software for remote deployment.
- 9. Update existing and implement new policies to address many different issues in our department.** Some of these will be a Disaster Recovery Plan, Cybersecurity training, Hybrid and remote work, and others as we continue to grow.
- 10. Move our current on-premises document management and user files to a cloud-based option.** By using our current Office 365 software, we can help departments and staff transition to a cloud-based solution that we already pay for. With the need to easily access and view these documents, this helps us to move forward in the technology realm and gives staff the ability to access these vital documents from anywhere as long as they have internet access. This project will be phased in over the next two years.


# Fiscal Year 2025

# TACTICS


**GOAL**




**SD** Enhance Service Delivery




















**CS** Elevate Cybersecurity



**IN** Embrace Innovation



**WF** Expand and Enhance the Workforce

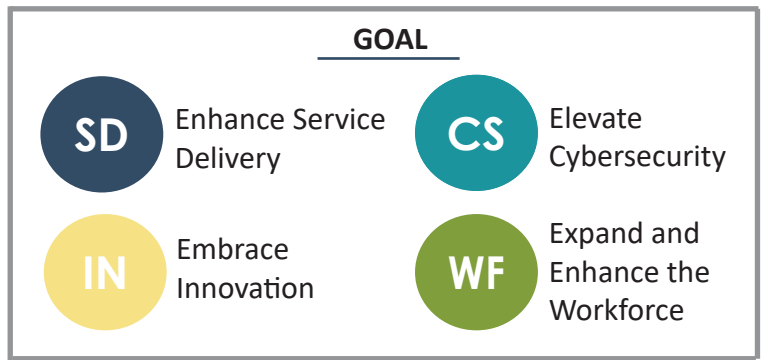
				1. Update the Town’s phone system to a more modern approach.
				2. Improve park and facilities public safety cameras by building off connectivity enhancements from previous years.
				3. Enhance cybersecurity with an Intrusion Detection System.
				4. Continue cloud-based migration of document management system and user documents.
				5. Continue to place all vital network infrastructure on a five-year lifecycle replacement.
				6. Maintain goal of placing staff laptops/desktops into a four-year lifecycle replacement plan.
				7. Hire a Cybersecurity Engineer.
				8. Perform SWOT analysis to identify and improve customer service needs.

## Fiscal Year 2025 Tactics Detail

- 1. Update the Town's phone system to a more modern approach.** As we learned from COVID-19, our staff needs to be more agile with their ability to use and answer the phone to improve our service deliveries. With modern phone systems, it is not always necessary to have a physical desk phone anymore. Employees may be able to use applications on their computers or iPad or their cell phone to be able to answer the "desk phone." Certain staff that answer the phone throughout the day will also still be able to have a true desk phone in this instance too. Ease of use and portability are important in the modern workforce. The estimated cost for the project would be approximately \$100,000 and an ongoing yearly cost of \$65,000.
- 2. Improve our park and facilities public safety cameras by building off connectivity enhancements from previous years.** With the harsh weather conditions of the summers in the Lowcountry we need to implement a life cycle replacement plan for the cameras. This will be a five-year plan to address all existing cameras and will also incorporate new parks and facilities into our inventory. This plan is currently in place with CIP funds and will continue as a proactive measure. This cost will be an estimated \$175,000 each year.
- 3. Enhance cybersecurity with an Intrusion Detection System.** This expands off our improvements to network infrastructure from 2024. This system will improve our cyber posture and the ability to quickly detect any abnormalities within our system. This, along with the firewall improvements from FY24, will help make our network more secure and proactive rather than reactive in nature.
- 4. Build off the cloud-based migration of document management system and user documents.** This should be wrapped up within this fiscal year as the two-year project concludes.
- 5. Maintain all vital network infrastructure on a five-year lifecycle replacement.** This equipment is important to our day-to-day continuity of government. Our network switches, access points, firewalls and servers are what maintains the high level of service needed to staff to complete their duties. This is the driving force of our technology needs. As we implement this project, there will be a need to dedicate funds to our annual budget to reach our goal. We estimate this will be roughly an added cost of \$225,000 each year.
- 6. Maintain goal of placing staff laptops/desktops into a four-year lifecycle replacement plan.** We are committed to replacing 25% of our equipment each year. As we become more agile with staff working on laptops, most Town staff will have the ability to work in the office, at home, or in a remote location. Laptops make it easier with our disaster planning and the need to evacuate. Also, after COVID, we have learned we need to make the ability to work remotely or in a hybrid situation an easier transition. In previous budgets we have added funds to replace equipment but not on a set schedule. This process will involve buying equipment with a full four-year warranty to cover the needs of the equipment for its lifecycle. The added cost for this each year is an estimated \$100,000, but as stated earlier this is not a fully added cost each year due to existing budgeting for equipment purchases.
- 7. Hire a Cybersecurity Engineer.** As the need to have a dedicated focus on cybersecurity with the expanded cyber threat that grows daily for local governments, this position will help in the proactive versus reactive state of security. They will monitor the firewalls and intrusion detection systems we have implemented over last fiscal year and this year to properly monitor for abnormalities, and they will help to craft policies and procedures for day-to-day needs. We estimate this position would be compensated in the \$100,000 annual salary range, along with the cost for insurance and benefits.
- 8. Perform SWOT analysis to identify and improve customer service needs.** This will be an ongoing process through the lifecycle of the strategic plan.

# Fiscal Year 2026

## TACTICS



				1. Improve park and facilities public safety cameras by building off connectivity enhancements from previous years.
				2. Maintain all vital network infrastructure on a five-year lifecycle replacement.
				3. Maintain goal of placing staff laptops/desktops into a four-year lifecycle replacement plan.
				4. Perform SWOT analysis to identify and improve customer service needs.

## Fiscal Year 2026 Tactics Detail

- 1. Improve our park and facilities public safety cameras by building off connectivity enhancements from previous years.** With the harsh weather conditions of the summers in the Lowcountry we need to implement a life cycle replacement plan for the cameras. This will be a five-year plan to address all cameras in place and incorporate new parks and facilities into the rotation. This plan is currently in place with CIP funds and will continue as a proactive measure. This cost will be an estimated \$175,000 each year.
- 2. Maintain all vital network infrastructure on a five-year lifecycle replacement.** This equipment is important to our day-to-day continuity of government. Our network switches, access points, firewalls and servers are what maintains the high level of service needed for staff to complete their duties. This is the driving force of our technology needs. As we implement this it will be an added cost to our yearly budget to dedicate funds to obtain this goal. We estimate this will be roughly an added cost of \$225,000 each year.
- 3. Maintain goal of placing staff laptops/desktops into a four-year lifecycle replacement plan.** We will replace 25% of our equipment each year. As we become more agile with staff working on laptops, most Town staff will have the ability to work in the office, at home, or in a remote location. Laptops make it easier with our disaster planning and the need to evacuate. Also, after COVID, we have learned we need to make the ability to work remotely or in a hybrid situation an easier transition. In previous budgets we have added funds to replace equipment but not on a set schedule. This process will involve buying equipment with a full four-year warranty to cover the needs of the equipment for its lifecycle. The added cost for this each year is an estimated \$100,000, but as stated earlier this is not a fully added cost each year due to existing budgeting for equipment purchases.
- 4. Perform SWOT analysis to identify and improve customer service needs.** This will be an ongoing process through the lifecycle of the strategic plan.

# APPENDIX

## Sample Results of IT User Survey

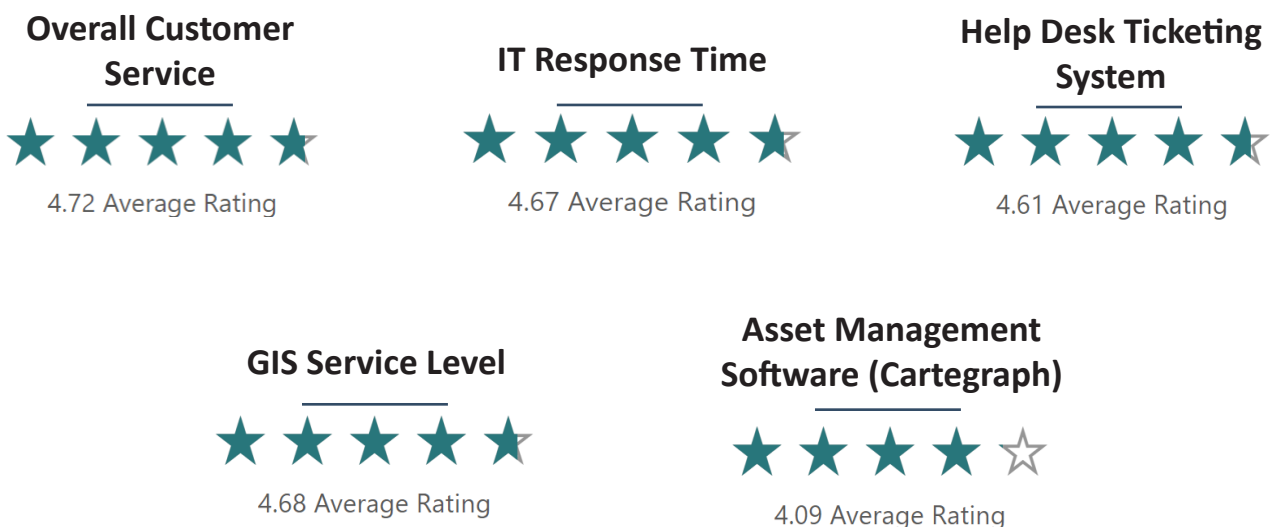
October 2022

Below is a summary of 56 responses received. Survey was delivered via email to all staff on October 10 and closed on October 24.

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### Customer Service Ratings

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### Overarching Themes

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- Desire for cloud-based resources
- Need for training on currently owned software and hardware
- Desire for IT to take greater initiative with training, solution design, and process enhancements
- Proactive IT over reactive IT
- File management and project management is a huge challenge
- Need to balance technology fatigue with technology enhancements
- Individuals working in IT are great at providing individualized customer service, but overall IT management needs direction

# APPENDIX

## Sample Results of IT User Survey

October 2022

---

### Summary of Open-Ended Responses

---

#### **What software not currently in use by the Town of HHI would you like to see implemented in the future?**

- Access to cloud-based applications for sharing and collaborating such as Confluence
- Better creative solutions- screen capture programs, photo/video editing software such as Canva, interactive presentation software such as Mentimeter, greater access to InDesign
- Forerunner for Floodplain Management
- Agenda planning software
- Secure electronic signature software like DocuSign
- Single sign-on solution, biometrics, facial recognition
- Special event approval software
- Better mobile CAD system, ASAP to PSAP for Dispatch
- Time tracking solution for disasters/EOC and timecard routing for Fire Rescue

#### **What hardware not currently in use by the Town of HHI would you like to see implemented in the future?**

- Council Chambers technology enhancements
- Server updates for speed
- Interactive kiosk in lobby for information and permitting
- Large monitors for those who want them
- Bluetooth printers for cell/mobile devices
- Security upgrades to Town facilities – cameras, alarms
- New GPS receivers for field data collection
- Webcam and microphone updates for Fire Rescue conference rooms and classrooms
- Biometrics/facial recognition hardware
- More streamlined and updated CAD, phone and radio consoles
- Docking stations in EOC and conference rooms at Town facilities to enable working from different locations
- Additional Apple products

# APPENDIX

## Sample Results of IT User Survey

October 2022

---

### Summary of Open-Ended Responses

---

#### **What mobile apps not currently in use by the Town of HHI would you like to see implemented in the future?**

- Enterprise password manager
- Tidal gauge app
- Field access to files from cell/mobile
- Help desk mobile app
- Weather Sentry/DTN (WxSentry on the app store)
- Heat Index- OSHA app
- App to access CAD on mobile

#### **How do you feel we can improve our customer service?**

- Continue to improve communication
- Be proactive instead of reactive
- Improve Help Desk ticket management
- Provide tutorials, entry-level, and ongoing technology training
- Testing settings and training users before deployment
- Find new ways to broadcast Council meetings

#### **What technology processes, if any, would you like to see change? Ex: IT Orientation, monthly trainings, etc.**

- Training on apps and software
- Improve administration of certain programs and hardware to decrease user frustration
- Better communication about how, why, and what programs to use for different scenarios
- Provide department and use-case-specific tutorials, short videos
- Conduct comprehensive review of software systems currently in use
- Single source of information for training and resources
- Better orientation on IT systems
- Streamlined databases so same information isn't entered in multiple places
- File organization structure and naming convention
- Strategic IT planning and involvement from upper management
- Move processes such as daily apparatus check offs to an online solution
- Install a Town-wide technology committee



# APPENDIX

## Sample Results of IT User Survey

October 2022

---

### Summary of Open-Ended Responses

---

#### **What kind of training would be beneficial to you, your department, or the Town as a whole?**

- Photo and file management in OneDrive and Teams
- Strategic project management in Teams
- Microsoft Office programs (Word, Outlook, Excel, PowerPoint) basic, intermediate, and advanced
- Shadowing and cross training with other employees
- GIS training
- Cyber security training
- Munis Cubes
- Records retention
- Other software – Fireworks, Payroll/ESS

#### **What improvements to the IT Help Desk ticketing system would you like to see?**

- Additional training for responders
- Improved login screen options
- Reduce confusion in terminology
- Reduce number of automated emails
- Add estimated wait time
- Improve knowledge base

#### **What GIS services would you like to see us offer that are not currently being offered?**

- Drone services
- GIS training for basic users
- Other software programs like Google Earth 3D
- ArcGIS Pro and Spatial Analyst
- Better CAD mapping
- More proactive use of GIS for planning and public communications
- Regular demos of GIS capabilities
- Survey123/Quick Capture testing and training

#### **What dashboards would you like to see added to the Town's GIS Open Data Portal?**

- Park and amenity map enhancements
- Town-owned property assets and restrictions
- RETF acquisitions
- Workforce Housing
- Public-facing Property Viewer
- Storm water utility dashboard
- EOC common operating picture



**Prepared by the  
Town of Hilton Head Island**

One Town Center Court  
Hilton Head Island, South Carolina 29928  
[hiltonheadilandsc.gov](http://hiltonheadilandsc.gov)

# Technology Strategic Plan FY24-FY26

Finance & Administration Committee Presentation  
May 2023

**Town of Hilton Head Island  
Technology & Innovation Department**



# Technology Trends

- User Experience Expectations
- Cyber Threats
- Technology Complexity
- Optimization of Resources
- Distributed Workforce



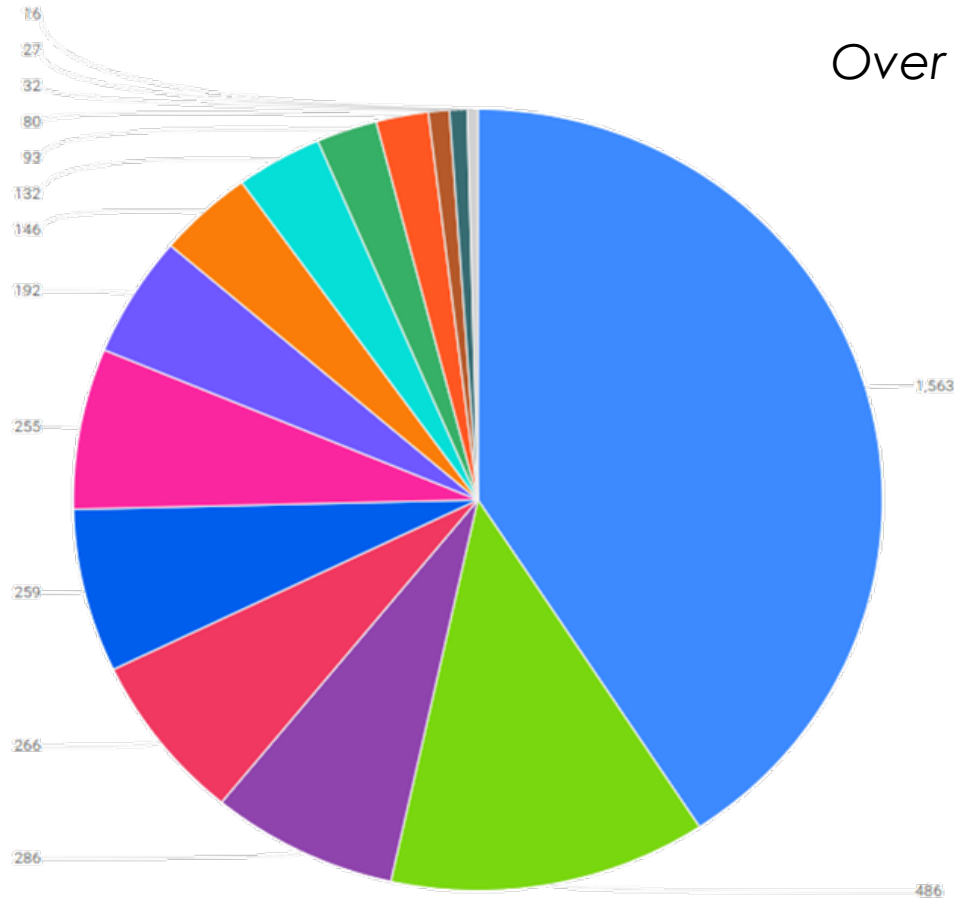
# Town IT Services

- Customer Service (Help Desk)
- Network Infrastructure/Hardware
- Geographic Information Systems (GIS)
- Public Safety Systems
- Enterprise Software and Applications

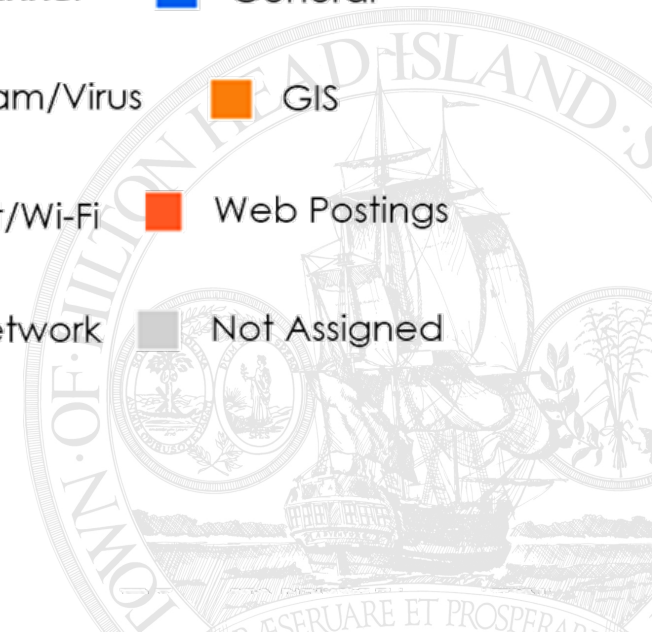


## Help Desk

*Over 4,500 Requests Closed since May 2022*



- Software
- Hardware
- User Account Inquiries
- Printers, Copiers, Plotters, Scanner
- General
- Telephone
- Phishing/Spam/Virus
- GIS
- E-911 Systems
- Internet/Wi-Fi
- Web Postings
- FR Access Control
- Network
- Not Assigned

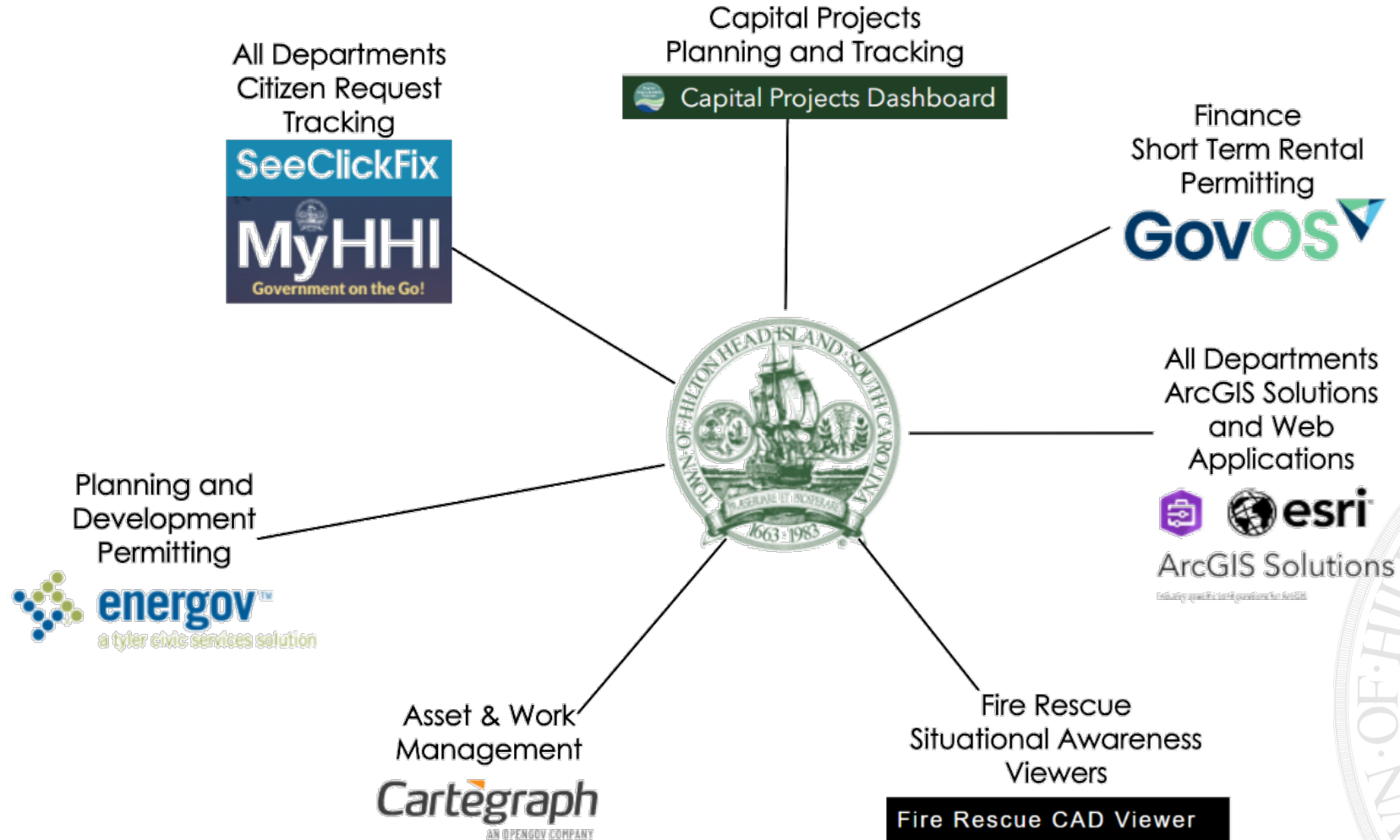


# Network Infrastructure and Hardware



Park cameras & WiFi

## Geographic Information Systems

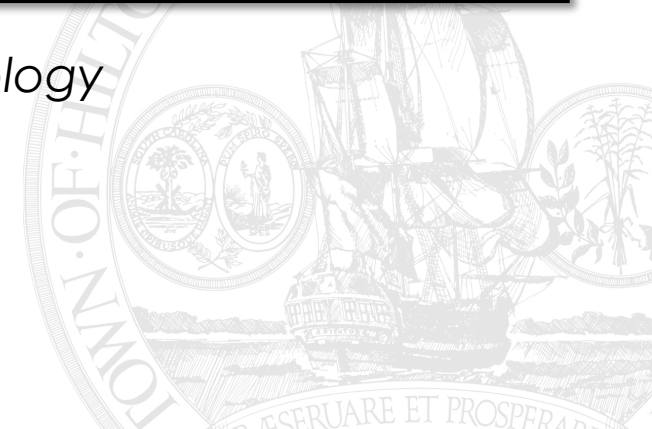




# Public Safety Systems



*Apparatus technology*



# Enterprise Software and Applications



# IT User Survey

- Survey open October 10-24, 2022
- Sent to all Town staff
- 56 responses received



# IT User Survey Highlights

## Customer Service Ratings

### Overall Customer Service



4.72 Average Rating

### IT Response Time



4.67 Average Rating

### Help Desk Ticketing System



4.61 Average Rating

### GIS Service Level



4.68 Average Rating

### Asset Management Software (Cartegraph)



4.09 Average Rating



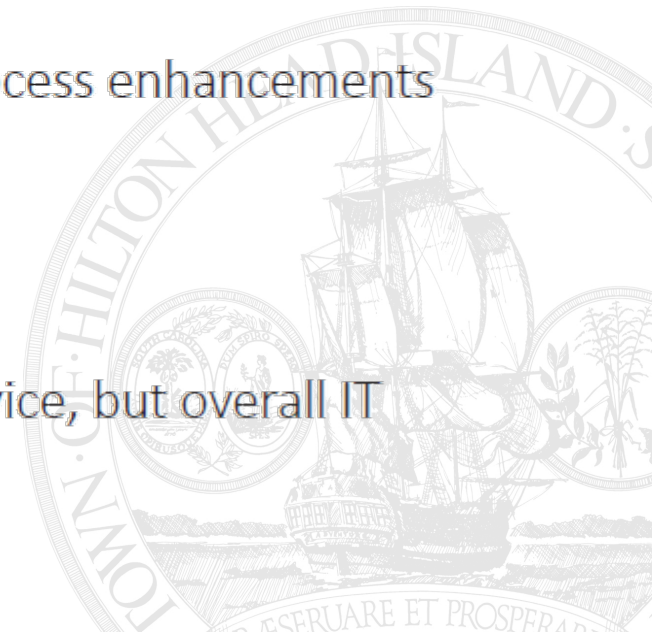
# IT User Survey Highlights

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## Overarching Themes

---

- Desire for cloud-based resources
- Need for training on currently owned software and hardware
- Desire for IT to take greater initiative with training, solution design, and process enhancements
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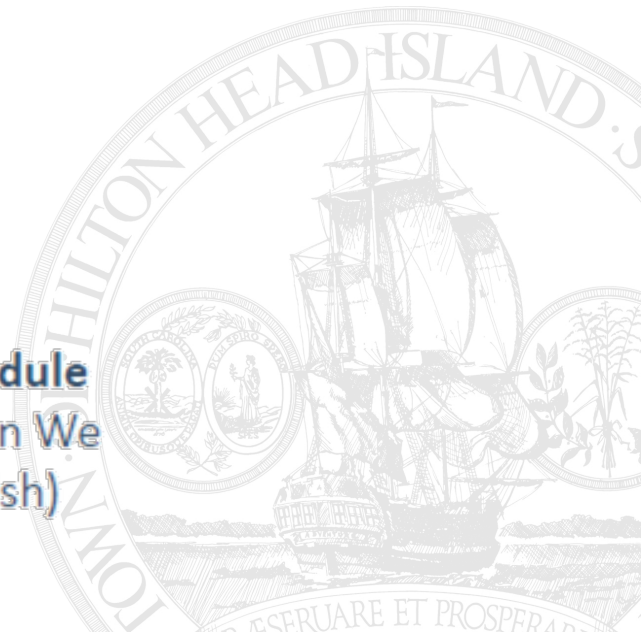


# Overview of FY24-FY26 Goals

1. Enhance Service Delivery
2. Elevate Cybersecurity
3. Embrace Innovation
4. Expand and Enhance the Workforce



*Cost, Scope and Schedule are interrelated, and all have an impact on Quality.*



# FY24 Tactics

1. Monthly staff training program
2. Improve Technology onboarding
3. Expand online offerings for citizens
4. Cybersecurity measures
5. Five-year replacement cycle for network infrastructure





## FY24 Tactics, cont.

6. Improve connectivity
7. Four-year replacement cycle for laptops/desktops
8. Interactive displays
9. Policy updates
10. Cloud-based document management



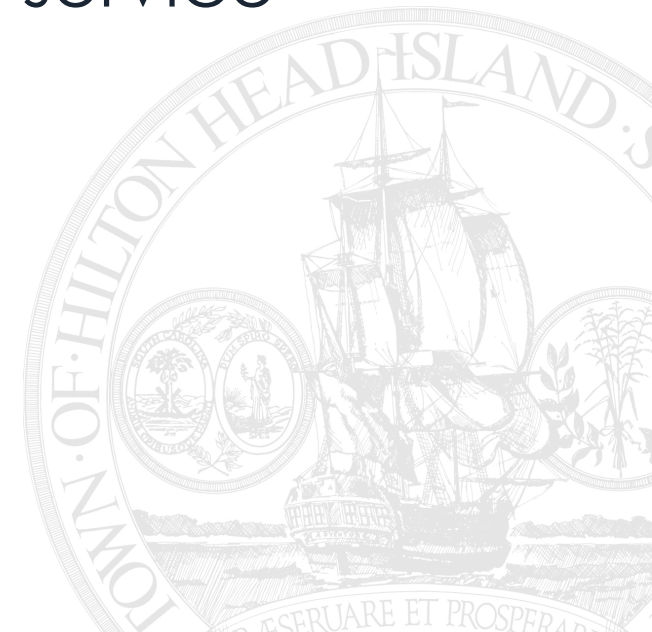
## FY25 Tactics

1. Update phone system
2. Improve park and facility camera system
3. Intrusion Detection System
4. Cloud-based document management migration continues
5. Five-year replacement cycle for network infrastructure continues



## FY25 Tactics, cont.

6. Four-year replacement cycle for laptops/desktops continues
7. Hire a Cybersecurity Engineer
8. Perform SWOT Analysis to improve customer service



## FY26 Tactics

1. Improve park and facility camera system
2. Five-year replacement cycle for network infrastructure continues
3. Four-year replacement cycle for laptops/desktops continues
4. Perform SWOT Analysis to improve customer service



**Questions or Comments?**





# TOWN OF HILTON HEAD ISLAND

## Finance & Administrative Committee

---

**TO:** Finance & Administrative Committee  
**FROM:** Jeff Netzinger, Stormwater Manager  
**VIA:** Shawn Colin, Assistant Town Manager – Community Development  
Curtis Coltrane, Town Attorney  
Bryan McIlwee, Assistant Community Development Director  
**CC:** Marc Orlando, Town Manager  
Josh Gruber, Deputy Town Manager  
John Troyer, Finance Director  
**DATE:** May 16, 2023  
**SUBJECT:** Consideration of a Resolution Authorizing the Execution of Standardized Stormwater Agreements:  
i. Ashton Cove  
ii. Beach City Place  
iii. Carolina Isles  
iv. Chinaberry Ridge  
v. Peregrine Pointe

---

### **RECOMMENDATION:**

Staff recommends the consideration of a Resolution (Attachment 1) authorizing the execution of standardized stormwater agreements and access, drainage, and maintenance easements with the following five (5) requesting property owners' and homeowners' associations:

- Ashton Cove Property Owners Association, Inc.
- Beach City Place Homeowners Association, Inc.
- Carolina Isles Property Owners' Association, Inc.
- Chinaberry Ridge Owners' Association, Inc.
- Peregrine Pointe Property Owners' Association, Inc.

### **BACKGROUND:**

After the creation of the Storm Water Utility in 2001, the Town offered to accept maintenance responsibility for storm water systems located within private Planned Unit Developments (PUDs). Between 2007 and 2012, the Town executed and delivered drainage agreements with eleven (11) PUDs including Shipyard, Wexford, Long Cove Club, Sea Pines, Palmetto Dunes, Leamington, Shelter Cove, Port Royal Plantation, Indigo Run, Hilton Head Plantation, and Palmetto Hall.

On September 21, 2021, Town Council authorized executing drainage agreements with six (6) additional communities, including Bermuda Pointe, Jarvis Creek Club, Seagrass Landing, Spanish Wells, Wells East, and Yacht Cove.

On November 4, 2020, Town Council approved standardized terms and conditions for current and future drainage agreements. All eleven (11) original agreements were recently updated, using the standard terms and conditions, as authorized by Town Council on July 19, 2022.

The five (5) communities currently requesting agreements with the Town made initial inquiries in 2020 and 2021, following with firm requests in 2022.

Town staff maintains a spreadsheet utilized to track the onboarding process for new drainage agreement partners. This document was last updated on March 10, 2023 (Attachment 2). Staff also maintains an exhibit depicting the location and boundaries of current and prospective drainage agreement partners (Attachment 3).

### **SUMMARY:**

The Town currently has similar drainage agreements and easements with seventeen (17) PUDs, property owners' associations, and homeowners' associations. These potential new partners have requested service via drainage agreements with the Town. All five (5) of the requesting entities meet the qualifications for acceptance of new systems, including the presence of shared, common road rights-of-way within their respective private communities. All new agreements use the standardized terms and conditions approved by Town Council on November 4, 2020. Drainage Agreements and Access, Drainage and Maintenance Easements were prepared by the Town and signed by authorized owners' association board members for each of the five (5) entities (Attachment 4).

### **ATTACHMENTS:**

1. Resolution
2. Drainage Agreement Standardization & New Partner Process Tracking Worksheet (Revised 3/10/23)
3. Prospective 2023 Drainage Agreement Partners Exhibit
4. Drainage Agreements and Access, Drainage and Maintenance Easements signed by authorized owners' association board members for each of five (5) entities currently requesting agreements.

**RESOLUTION 2023-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF DRAINAGE AGREEMENTS AND ACCESS, DRAINAGE, AND MAINTENANCE EASEMENTS WITH ASHTON COVE PROPERTY OWNERS ASSOCIATION, INC.; BEACH CITY PLACE HOMEOWNERS ASSOCIATION, INC.; CAROLINA ISLES PROPERTY OWNERS' ASSOCIATION, INC.; CHINABERRY RIDGE OWNERS' ASSOCIATION, INC.; AND PEREGRINE POINTE PROPERTY OWNERS' ASSOCIATION, INC.**

WHEREAS, The Town of Hilton Head Island, South Carolina, has negotiated Drainage Agreements and Access, Drainage, and Maintenance Easements related to the management of storm and surface drainage with property owners' and homeowners' associations on Hilton Head Island, known as Ashton Cove Property Owners Association, Inc.; Beach City Place Homeowners Association, Inc.; Carolina Isles Property Owners' Association, Inc.; Chinaberry Ridge Owners' Association, Inc.; and Peregrine Pointe Property Owners' Association, Inc.; and,

WHEREAS, Beaufort County, South Carolina adopted Ordinance 99-101 et seq., as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina and which also provides that fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina ("Town") are returned to the Town to be used for the purposes set forth in the Ordinance including the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town; and,

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to authorize the execution and delivery of the Agreements and Easements.



**NOW, THEREFORE, BE IT RESOLVED AND IT HEAREBY IS RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Mayor and Town Manager are hereby authorized to execute and deliver Drainage Agreements and Access, Drainage, and Maintenance Easements between The Town of Hilton Head Island, South Carolina, and Ashton Cove Property Owners Association, Inc.; Beach City Place Homeowners Association, Inc.; Carolina Isles Property Owners' Association, Inc.; Chinaberry Ridge Owners' Association, Inc.; and Peregrine Pointe Property Owners' Association, Inc., copies of which are attached hereto as Exhibits "A-E."
2. The Town Manager is hereby authorized to take all other and further actions as may be necessary to comply with the obligations of The Town of Hilton Head Island, South Carolina, in the Agreements.

**MOVED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

\_\_\_\_\_  
**Alan R. Perry, Mayor**

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, **Town Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Curtis L. Coltrane, Town Attorney**

**Introduced by Council Member: \_\_\_\_\_**

ATTACHMENT 2

Agreement Partner	POA Contact	Action Required by	Initial Request Date	Agreement Process sent to POA	New Agrmt Package Sent to POA	POA Comments Received	Changes Requested?	Comments Addressed	Approved by POA	Final Version to POA	Meeting with POA	Received with Signatures	CS&PSC Meeting	Committee Endorsement	Council Meeting Date	Council Approval	Documents Fully Executed	Documents Recorded
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PROSPECTIVE													COMMITTEE APPROVAL		COUNCIL APPROVAL		DOCUMENT EXECUTION	
Graham Lane	Danielle Tison 843-682-5144 daniellet@hiltonheadislandsc.gov	POA	inquiry 10/8/21	10/08/21	POA has not requested													
The Paddocks	Tim Wright 843-645-4446 wright.t@coastalsurveyingsc.com	POA	inquiry 11/6/20	11/06/20	POA has not requested													

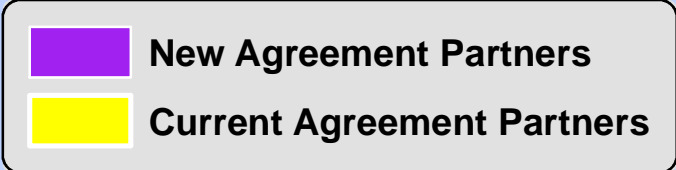
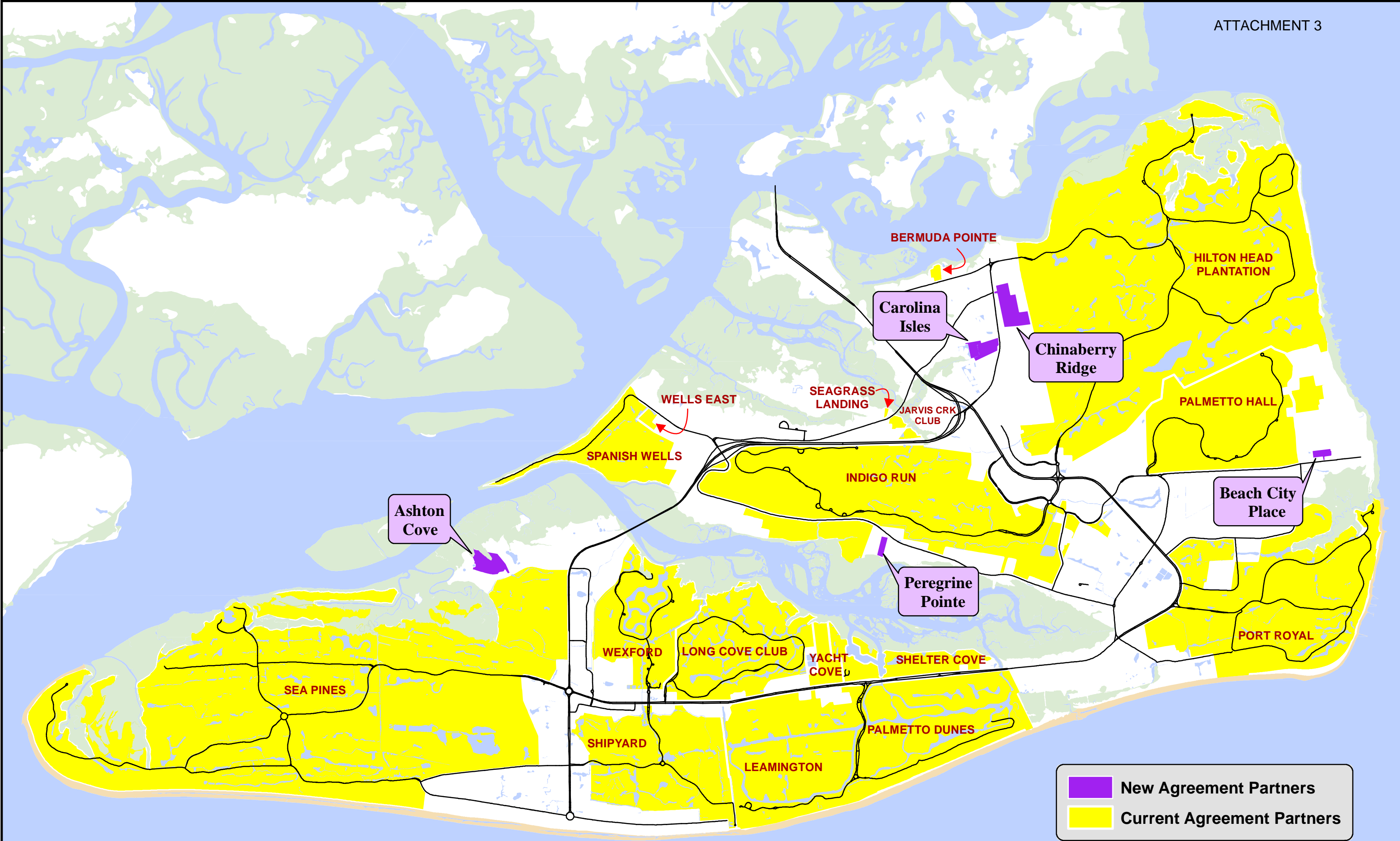
FALL 2022 BATCH													COMMITTEE APPROVAL		COUNCIL APPROVAL		DOCUMENT EXECUTION	
18 Carolina Isles	Kathleen Smith 843-785-4775 x206 kathleen@imcresortservices.com	Town	inquiry 10/19/20	10/19/20	10/17/22	10/31/22	NO	n/a	10/31/22	10/31/22	no meeting occurred	11/18/22						
19 Ashton Cove	Savannah Hartzog (IMC) 843-785-4775 x137 Savannah@IMCHHI.com	Town	inquiry 12/7/20	12/09/20	10/17/22	12/08/22	NO	n/a	12/08/22	12/08/22	no meeting occurred	12/09/22						
20 Chinaberry Ridge	Chris Williams 484-443-6597 chris@aimstars.com	Town	inquiry 10/27/21	10/29/21	10/17/22	10/28/22	NO	n/a	10/28/22	10/28/22	11/09/22	11/15/22						
21 Beach City Place	Scott Connal 843-686-2241 x111 Scott@Hightideassociates.com	Town	inquiry 11/2/21	02/04/22	10/17/22	01/10/23	NO	n/a	01/10/23	01/10/23	no meeting occurred	03/10/23						
22 Peregrine Pointe	Bobby Tillison 843-681-6255 rtillison@aol.com	Town	inquiry 11/29/21	12/01/21	10/17/22	10/18/22	YES	YES	10/20/22	10/20/22	no meeting occurred	11/10/22						

ORIGINAL PARTNERS (new agreements effective 08/08/2022)													COMMITTEE APPROVAL		COUNCIL APPROVAL		DOCUMENT EXECUTION	
1 Hilton Head Plantation	Peter Kristian (HHPPOA) 843-681-8800 pkristian@hhppoa.org	n/a	CURRENT	n/a	07/14/21	Signed documents received					07/19/21 Meeting	10/04/21		n/a	07/19/22	YES	08/08/22	
2 Indigo Run	Cary Kelley (IRCOA) 843-689-7300 ckelley@indigoruncoa.org	n/a	CURRENT	n/a	07/14/21	Signed documents received					07/19/21 Meeting	12/02/21		n/a	07/19/22	YES	08/08/22	
3 Leamington	Richard Vanderveer (LPOA) rbv@rbv3.com	n/a	CURRENT	n/a	07/14/21	Signed documents received					07/22/21 Phone Call	09/16/21		n/a	07/19/22	YES	08/08/22	
4 Long Cove Club	Leon Crimmins (LCCPOA) 843-686-1070 lcrimmins@longcoveclub.com	n/a	CURRENT	n/a	07/14/21	Signed documents received					07/22/21 Meeting	10/29/21		n/a	07/19/22	YES	08/08/22	
5 Palmetto Dunes	Andrew Schumacher (PDPOA) 843-785-1109 Aschumacher@pdpoa.org	n/a	CURRENT	n/a	07/14/21	Signed documents received					10/27/21 Meeting	11/22/21		n/a	07/19/22	YES	08/08/22	
6 Palmetto Hall	Courtney Struna (PHPOA) 843-682-4182 managerphpoa@hargray.com	n/a	CURRENT	n/a	07/14/21	Signed documents received					07/28/21 Meeting	09/29/21		n/a	07/19/22	YES	08/08/22	
7 Port Royal	Lance Pyle (ALPRP) 843-991-7640 genmgr@portroyalplantation.net	n/a	CURRENT	n/a	07/14/21	Signed documents received					08/04/21 Meeting	12/08/21		n/a	07/19/22	YES	08/08/22	
8 Sea Pines	Sam Bennett (CSA) 843-671-1343 sbennett@caseapines.com	n/a	CURRENT	n/a	07/14/21	Signed documents received					10/12/21 Meeting	04/01/22		n/a	07/19/22	YES	08/08/22	
9 Shelter Cove	Denise Dominguez (SCC) 843-310-0431 Ddominguez@sheltercovehc.org	n/a	CURRENT	n/a	07/14/21	Signed documents received					07/20/21 Phone Call	07/30/21		n/a	07/19/22	YES	08/08/22	
10 Shipyard	Sally Warren (SYPOA) 843-422-1486 shipyard02@aol.com	n/a	CURRENT	n/a	07/14/21	Signed documents received					07/21/21 Meeting	10/07/21		n/a	07/19/22	YES	08/08/22	
11 Wexford	Ryan Spence (WPOA) 843-686-8810 rspence@wexfordhiltonhead.com	n/a	CURRENT	n/a	07/14/21	Signed documents received					07/30/21 Meeting	10/25/21		n/a	07/19/22	YES	08/08/22	

NEWEST PARTNERS (agreements effective as of 10/18/2021)													COMMITTEE APPROVAL		COUNCIL APPROVAL		DOCUMENT EXECUTION	
12 Bermuda Pointe	David Howard (ASM) 843-785-3278 ext 1001 Dhoward@atlanticstatesmanagement.com	n/a	inquiry 3/2015	05/02/19	12/10/20	05/04/21	YES	YES	05/04/21	05/25/21	n/a	05/27/21	07/26/21	YES	09/21/21	YES	10/18/21	11/10/21
13 Jarvis Creek Club	Peter Kristian (HHPPOA) 843-681-8800 pkristian@hhppoa.org	n/a	inquiry 5/2/19	05/03/19	12/10/20	12/10/20	NO	n/a	12/11/20	12/14/20	n/a	12/16/20	07/26/21	YES	09/21/21	YES	10/18/21	11/10/21
14 Spanish Wells	John Cardamone 843-816-7848 jcardamone@villageparkgroup.com	n/a	inquiry 7/2018	12/21/18	12/10/20	12/10/20	YES	YES	04/30/21	04/30/21	n/a	05/20/21	07/26/21	YES	09/21/21	YES	10/18/21	11/10/21
15 Wells East	Terre Kelly (ALOWE) 843-682-3331 terrek@hargray.com	n/a	inquiry 7/26/15	05/03/19	12/10/20	01/26/21	NO	n/a	01/26/21	01/26/21	n/a	01/28/21	07/26/21	YES	09/21/21	YES	10/18/21	11/10/21
16 Yacht Cove	Linda McAndrews (YCPOA) 516-835-7063 lindamcandrews29@gmail.com	n/a	inquiry 3/2018	04/06/19	12/10/20	06/03/21	NO	n/a	06/03/21	06/03/21	06/04/21	06/04/21	07/26/21	YES	09/21/21	YES	10/18/21	11/10/21
17 Seagrass Landing	Stephan Hall (SLHOA) hallmarkaviation@comcast.net	n/a	inquiry 10/31/18	09/25/19	12/10/20	12/10/20	YES	YES	12/14/20	12/14/20	n/a	05/24/21	07/26/21	YES	09/21/21	YES	10/18/21	11/10/21

Notes  
1. New Standard Agreement language adopted by Town Council on November 4, 2020

only easements



Prospective 2023 Drainage Agreement Partners

<b>STATE OF SOUTH CAROLINA</b>	)	
	)	<b>DRAINAGE SYSTEM</b>
<b>COUNTY OF BEAUFORT</b>	)	<b>MAINTENANCE AGREEMENT</b>

This Drainage System Maintenance Agreement is made this 9 day of December, 2022, by and between Ashton Cove Property Owners Association, Inc., a South Carolina nonprofit organization, and the Town of Hilton Head Island, South Carolina, a body politic, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

WITNESSETH

WHEREAS, Ashton Cove is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter the “Development”); and,

WHEREAS, Ashton Cove Property Owners Association, Inc., is the owner of improved and unimproved real property and easements within Ashton Cove; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Utility Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Utility Service Fees collected from property owners within the Town of Hilton Head Island, South Carolina, are returned to it, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*, as amended; and,

WHEREAS, the imposition and collection of Storm Water Utility Service Fees results in a fund available for the construction and maintenance of existing and planned

infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, Ashton Cove Property Owners Association, Inc., 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 Ashton Cove, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Ashton Cove Property Owners Association, Inc., 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 Ashton Cove.

Now, therefore, know all men by these presents, that Ashton Cove Property Owners Association, Inc., 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:* Ashton Cove Property Owners Association, Inc., 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 to execute and

deliver the Access, Drainage and Maintenance Easement 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 Ashton Cove Property Owners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: Ashton Cove, 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” 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:
- (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, 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:* 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, the Association agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance Easement to subject any such areas in the Access, Drainage and Maintenance Easement.
- 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 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 30<sup>th</sup> 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. **Superseding 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 this Agreement shall terminate.

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.

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: Marc Orlando, Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Association: Ashton Cove Property Owners  
                              Association, Inc.  
                              Attn: Savannah Hartzog  
                              C/O: IMC Resort Services, Inc.  
                              2 Corpus Christi Place, Suite 302  
                              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 Ashton Cove Property Owners Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this 9 day of December, 2022.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

Ashton Cove Property Owners Association, Inc.

Lindsay Dawson

By: Jay Vinson  
Jay Vinson  
President

[Signature]

Attest: [Signature]  
RYAN BASSETT  
Secretary

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_  
Alan Perry, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Marc Orlando, Town 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
- Exhibit D Town Resolution authorizing this Agreement

**STATE OF SOUTH CAROLINA     )**     **ACCESS, DRAINAGE AND**  
**)**     **MAINTENANCE EASEMENT**  
**COUNTY OF BEAUFORT            )**

Know all men by these presents, that Ashton Cove Property Owners Association, Inc. and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, 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 Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. Defined Terms: As used herein, the following terms shall mean:
  - (a) *Association:* Ashton Cove Property Owners Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
  - (b) *Covenants:* Any one or more of Covenants, Conditions, and Restrictions for Ashton Cove Property Owners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
  - (c) *Development:* Ashton Cove, 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.

- (d) *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.
- (e) *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.
- (f) *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.
- (g) *Town:* The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery, and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property owned by the Association encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage

and conveyance of storm and surface water now or hereafter existing within the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M.,



Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, make repairs, and otherwise maintain the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Development encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The

Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System; provided, however, that the Association shall have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain 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.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association which may be damaged as a

result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to any property currently owned by the Association.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this 9 day of December, 2022.

WITNESSES:

Ashton Cove Property Owners Association, Inc.

Lyndsey Dorshimer

By:

Jay Vinson  
Jay Vinson

Ryan Bassett

Attest:

Ryan Bassett  
RYAN BASSETT

STATE OF SOUTH CAROLINA )

UNIFORM ACKNOWLEDGMENT

COUNTY OF BEAUFORT )

S.C. CODE § 30-5-30 (SUPP. 2010)

I, the undersigned Notary Public do hereby certify that Jay Vinson/Ryan Bassett personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of Ashton Cove Property Owners Association, Inc..

Sworn to and Subscribed before me

on this 9<sup>th</sup> Day of DECEMBER, 2022.

Lyndsey Dorshimer

Notary Public for South Carolina

My Commission Expires: 8/14/2029

LYNDESEY DORSHIMER  
Notary Public, State of South Carolina  
My Commission Expires 8/14/2029

WITNESSES:  
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

\_\_\_\_\_

By: \_\_\_\_\_  
Alan Perry, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Marc Orlando, Town Manager

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that Alan Perry and Marc Orlando personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_



 Drainage Easement Area
  Right-of-Way Area
  Ashton Cove Limits

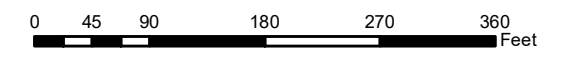
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

# Exhibit A

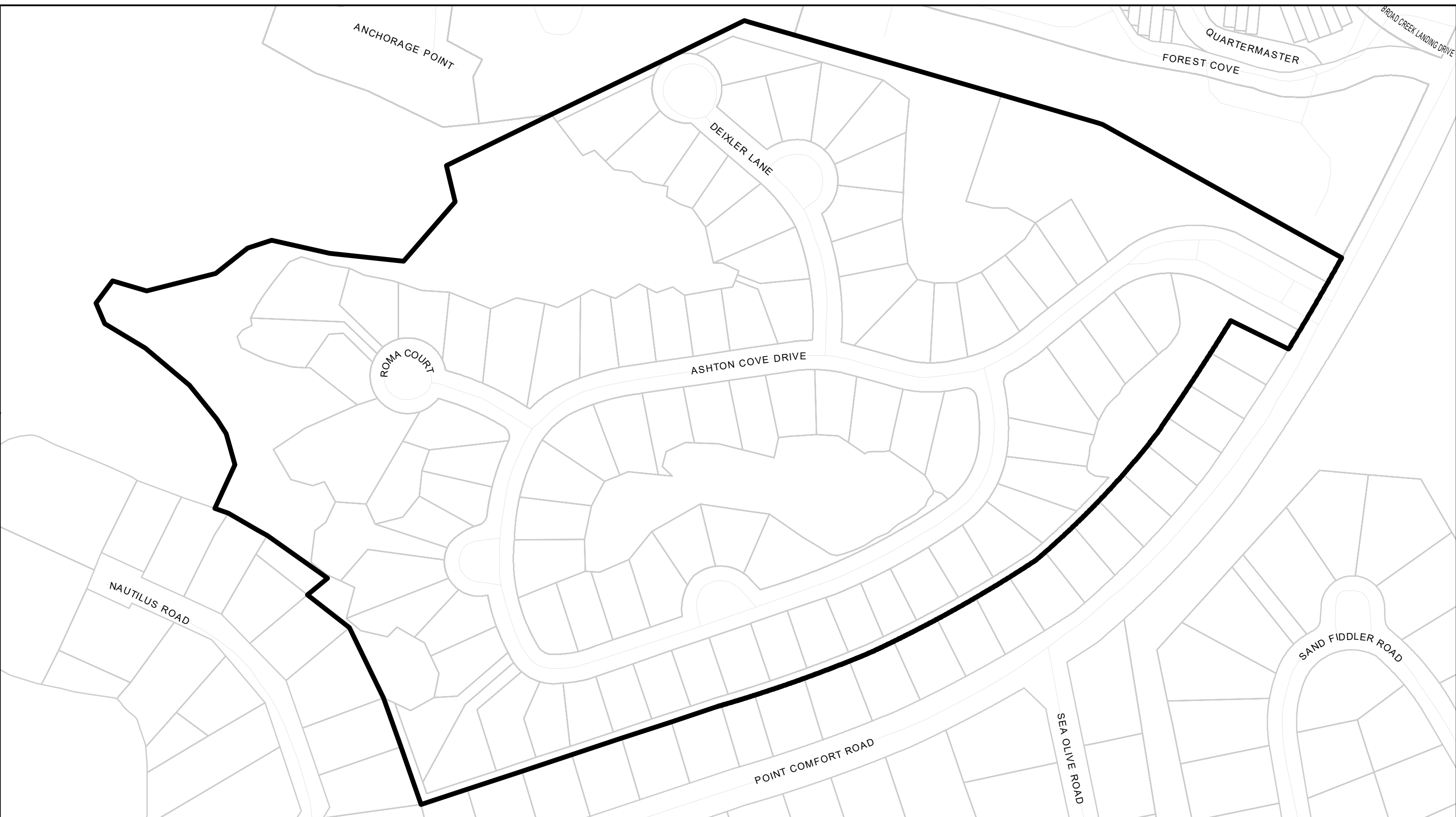
## Ashton Cove

### Drainage Easement Agreement Limits

Revised on October 31, 2022



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

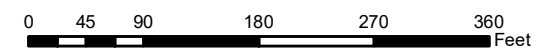


 Ashton Cove Limits

Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

# Exhibit B Ashton Cove Development Boundary

Revised on October 14, 2022



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.





infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, Beach City Place Homeowners Association, Inc., 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 Beach City Place, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Beach City Place Homeowners Association, Inc., 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 Beach City Place.

Now, therefore, know all men by these presents, that Beach City Place Homeowners Association, Inc., 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:* Beach City Place Homeowners Association, Inc., 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 to execute and

deliver the Access, Drainage and Maintenance Easement 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 Beach City Place Homeowners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: Beach City Place, 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 (BMPPF) 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” 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:

**(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, 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:* 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, the Association agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance Easement to subject any such areas in the Access, Drainage and Maintenance Easement.
- 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 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 30<sup>th</sup> 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. **Superseding 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 this Agreement shall terminate.

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.

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: Marc Orlando, Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Association: Beach City Place Homeowners  
                              Association, Inc.  
                              Attn: Scott Connal  
                              C/O: High Tide Associates  
                              55 New Orleans Road, Suite 211  
                              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 Beach City Place Homeowners Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

[Handwritten Signature]

Jennifer Mendez

Beach City Place Homeowners Association, Inc.

By: Kathleen L. Gance

Its: President

Attest: Ken Zou

Its: Treasurer

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_  
Alan R. Perry, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Marc Orlando, Town 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
- Exhibit D Town Resolution authorizing this Agreement



**STATE OF SOUTH CAROLINA        )**     **ACCESS, DRAINAGE AND**  
   **)**     **MAINTENANCE EASEMENT**  
**COUNTY OF BEAUFORT                )**

Know all men by these presents, that Beach City Place Homeowners Association, Inc. and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, 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 Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1.     **Defined Terms:** As used herein, the following terms shall mean:
  - (a)    *Association:* Beach City Place Homeowners Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
  - (b)    *Covenants:* Any one or more of Covenants, Conditions, and Restrictions for Beach City Place Homeowners Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
  - (c)    *Development:* Beach City Place, 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.

- (d) *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.
- (e) *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.
- (f) *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.
- (g) *Town:* The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery, and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property owned by the Association encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage

and conveyance of storm and surface water now or hereafter existing within the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M.,

Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, make repairs, and otherwise maintain the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Development encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The

Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System; provided, however, that the Association shall have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain 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.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association which may be damaged as a

result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to any property currently owned by the Association.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

WITNESSES:

Beach City Place Homeowners Association, Inc.

Jennifer Mendez

By: Kathleen LaSauce

[Signature]

Attest: Ron Zane

STATE OF SOUTH CAROLINA )

UNIFORM ACKNOWLEDGMENT

COUNTY OF BEAUFORT )

S.C. CODE § 30-5-30 (SUPP. 2010)

I, the undersigned Notary Public do hereby certify that Kathleen LaSauce Ron Zane personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of Beach City Place Homeowners Association, Inc..



Sworn to and subscribed before me  
at this 14th Day of March, 2023

[Signature]  
Notary Public for South Carolina

My Commission Expires: 

CYNTHIA J SLATTMAN Notary Public, State of South Carolina My Commission Expires May 19, 2032
--



WITNESSES:  
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

\_\_\_\_\_

By: \_\_\_\_\_  
Alan R. Perry, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Marc Orlando, Town Manager

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

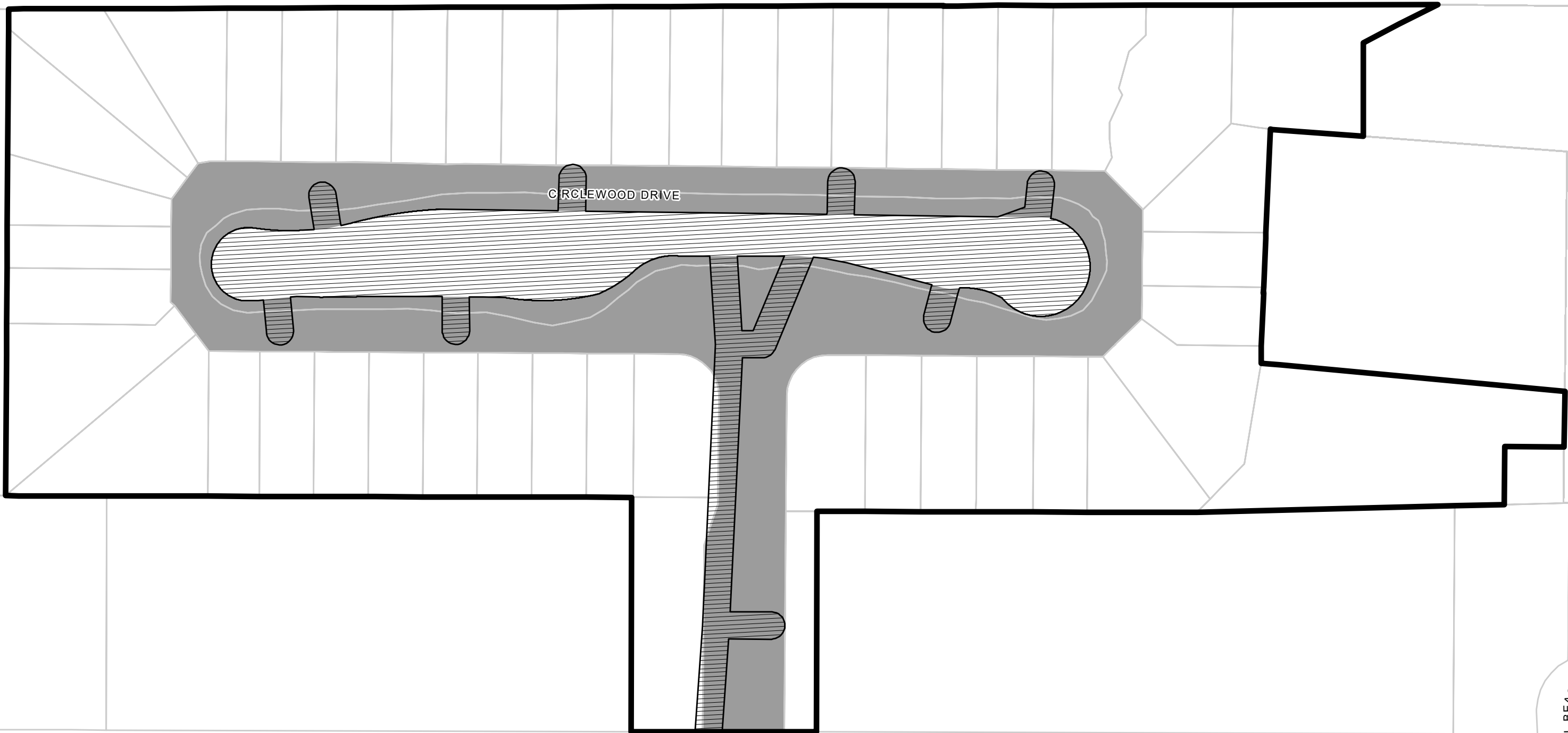
**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that Alan R. Perry and Marc Orlando personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_






CIRCLEWOOD DRIVE

BEACH CITY ROAD

HARRIET TUBMAN WAY

TRAIL BEACH MANOR

 Drainage Easement Area 
  Right-of-Way Area 
  Beach City Place Boundary

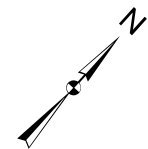
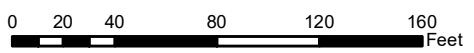
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

# Exhibit A

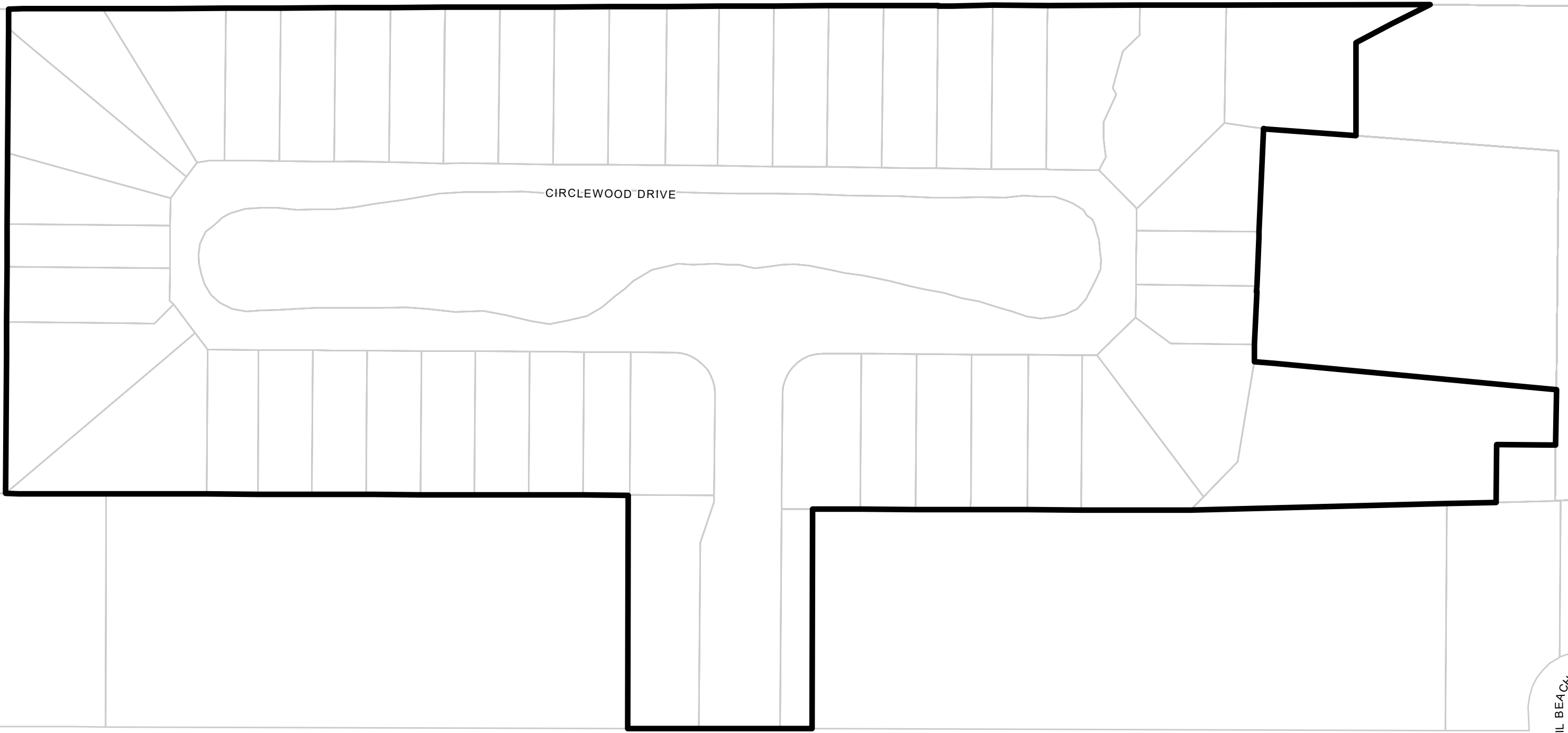
## Beach City Place

### Drainage Easement Agreement Limits

Revised on October 14, 2022



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



CIRCLEWOOD DRIVE

BEACH C TY ROAD

HARRIET TUBMAN WAY

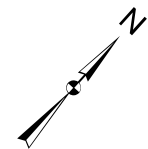
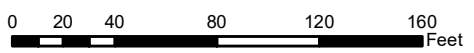
TRAIL BEACH MANOR

 Beach City Place Boundary

Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

# Exhibit B Beach City Place Development Boundary

Revised on October 14, 2022



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

**STATE OF SOUTH CAROLINA     )**  
**)**  
**COUNTY OF BEAUFORT            )**                   **DRAINAGE SYSTEM**  
**)**                   **MAINTENANCE AGREEMENT**

This Drainage System Maintenance Agreement is made this 15<sup>th</sup> day of NOVEMBER, 2022, by and between Carolina Isles Property Owners’ Association, Inc., a South Carolina nonprofit organization, and the Town of Hilton Head Island, South Carolina, a body politic, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

**WITNESSETH**

WHEREAS, Carolina Isles is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter the “Development”); and,

WHEREAS, Carolina Isles Property Owners’ Association, Inc., is the owner of improved and unimproved real property and easements within Carolina Isles; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Utility Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Utility Service Fees collected from property owners within the Town of Hilton Head Island, South Carolina, are returned to it, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*, as amended; and,

WHEREAS, the imposition and collection of Storm Water Utility Service Fees results in a fund available for the construction and maintenance of existing and planned

infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, Carolina Isles Property Owners' Association, Inc., 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 Carolina Isles, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Carolina Isles Property Owners' Association, Inc., 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 Carolina Isles.

Now, therefore, know all men by these presents, that Carolina Isles Property Owners' Association, Inc., 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:* Carolina Isles Property Owners' Association, Inc., 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 to execute and

deliver the Access, Drainage and Maintenance Easement 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 Carolina Isles Property Owners' Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: Carolina Isles, 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" 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:

- (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, 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:* 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, the Association agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance Easement to subject any such areas in the Access, Drainage and Maintenance Easement.
- 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 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 30<sup>th</sup> 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. **Superseding 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 this Agreement shall terminate.

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.

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: Marc Orlando, Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Association: Carolina Isles Property Owners'  
                              Association, Inc.  
                              Attn: Kathleen Smith  
                              C/O: IMC Resort Services, Inc.  
                              2 Corpus Christi Place, Suite 302  
                              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 Carolina Isles Property Owners' Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this 1<sup>st</sup> day of NOVEMBER, 2022.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

Carolina Isles Property Owners' Association,  
Inc.

Angela Johnson

By: [Signature]

Its: PRESIDENT

Neale Rj

Attest: Kathleen Smith

Its: Agent for the Association

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

Marc Orlando, Town Manager

**LYNDEY DORSHIMER**  
Notary Public, State of South Carolina  
My Commission Expires 8/14/2029

## **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
- Exhibit D Town Resolution authorizing this Agreement

**STATE OF SOUTH CAROLINA     )**  
**)**  
**COUNTY OF BEAUFORT            )**     **ACCESS, DRAINAGE AND**  
**)**     **MAINTENANCE EASEMENT**

Know all men by these presents, that Carolina Isles Property Owners’ Association, Inc. and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, 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 Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. Defined Terms: As used herein, the following terms shall mean:
  - (a) *Association:* Carolina Isles Property Owners’ Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
  - (b) *Covenants:* Any one or more of Covenants, Conditions, and Restrictions for Carolina Isles Property Owners’ Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
  - (c) *Development:* Carolina Isles, 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.

- (d) *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.
- (e) *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.
- (f) *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.
- (g) *Town:* The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery, and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property owned by the Association encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage

and conveyance of storm and surface water now or hereafter existing within the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M.,



Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, make repairs, and otherwise maintain the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Development encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The

Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System; provided, however, that the Association shall have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain 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.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association which may be damaged as a

result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to any property currently owned by the Association.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this 1st day of NOVEMBER, 2022.

WITNESSES:

Carolina Isles Property Owners' Association, Inc.

Angela Johnson  
Neale Pij

By: Edward D. Camillo

Attest: Kathleen Smith

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

UNIFORM ACKNOWLEDGMENT  
S.C. CODE § 30-5-30 (SUPP. 2010)

I, the undersigned Notary Public do hereby certify that EDWARD D. CAMILLO personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of Carolina Isles Property Owners' Association, Inc..

Sworn to and Subscribed before me  
on this 1<sup>st</sup> Day of NOVEMBER, 2022.

Lyndsey Dorshimer  
Notary Public for South Carolina  
My Commission Expires: 8/14/2029

LYNDESEY DORSHIMER  
Notary Public, State of South Carolina  
My Commission Expires 8/14/2029

WITNESSES:  
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

Marc Orlando, Town Manager

STATE OF SOUTH CAROLINA )

UNIFORM ACKNOWLEDGMENT

COUNTY OF BEAUFORT )

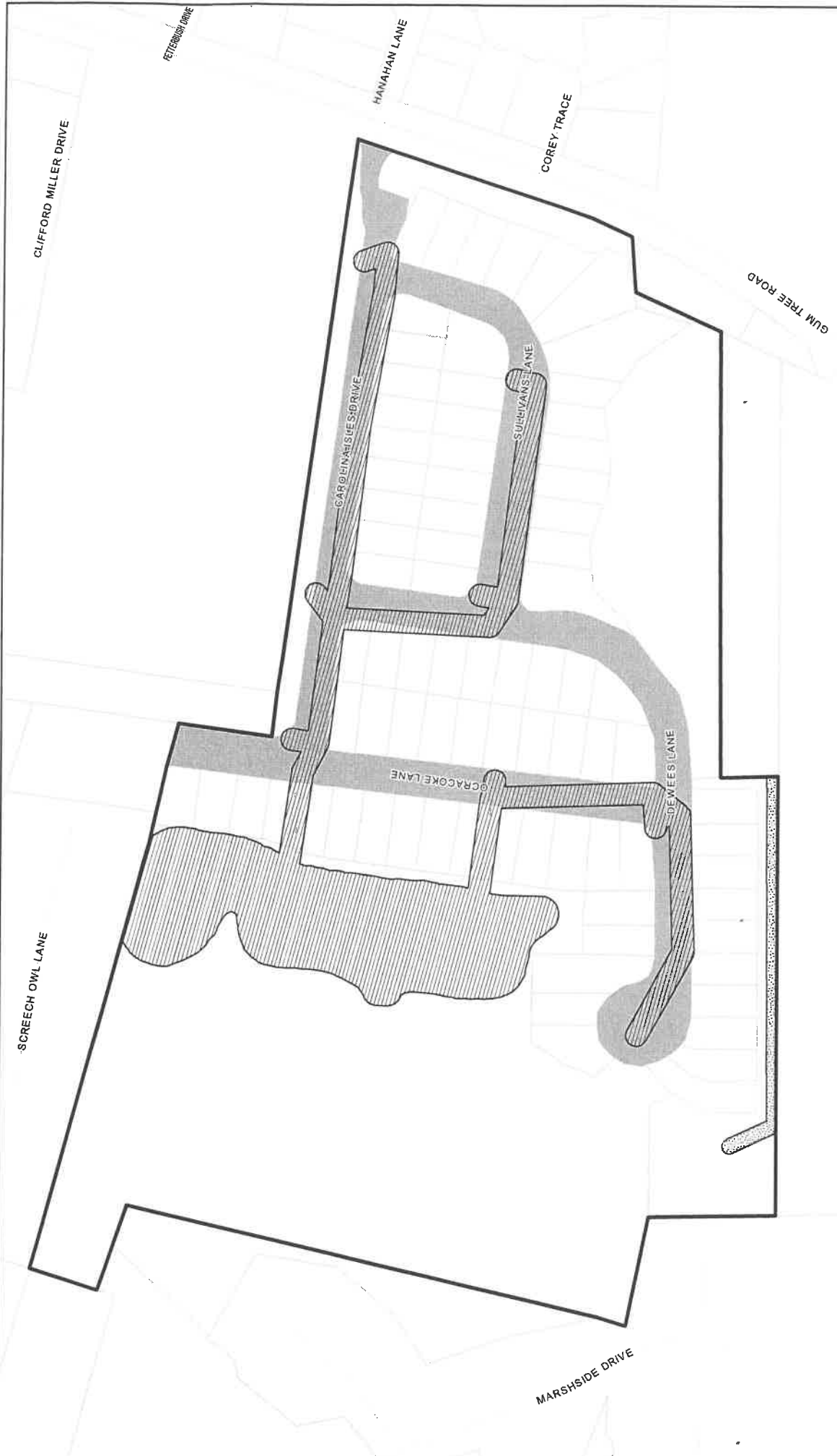
S.C. CODE § 30-5-30 (SUPP. 2010)

I, the undersigned Notary Public do hereby certify that EDWARD DiCamillo  
and Marc Orlando personally appeared before me on this day and duly acknowledged the  
execution of the foregoing instrument on behalf of The Town of Hilton Head Island,  
South Carolina.

Sworn to and Subscribed before me  
on this 15<sup>th</sup> Day of November, 2022.

LYNDEY DORSHIMER  
Notary Public, State of South Carolina  
My Commission Expires 8/14/2029

Lyndey Dorshimer  
Notary Public for South Carolina  
My Commission Expires: 8/14/2029



Drainage Easement Area  Right-of-Way Area  Carolina Isles Limits

Carolina Isles Permanent Town Stormwater Easement

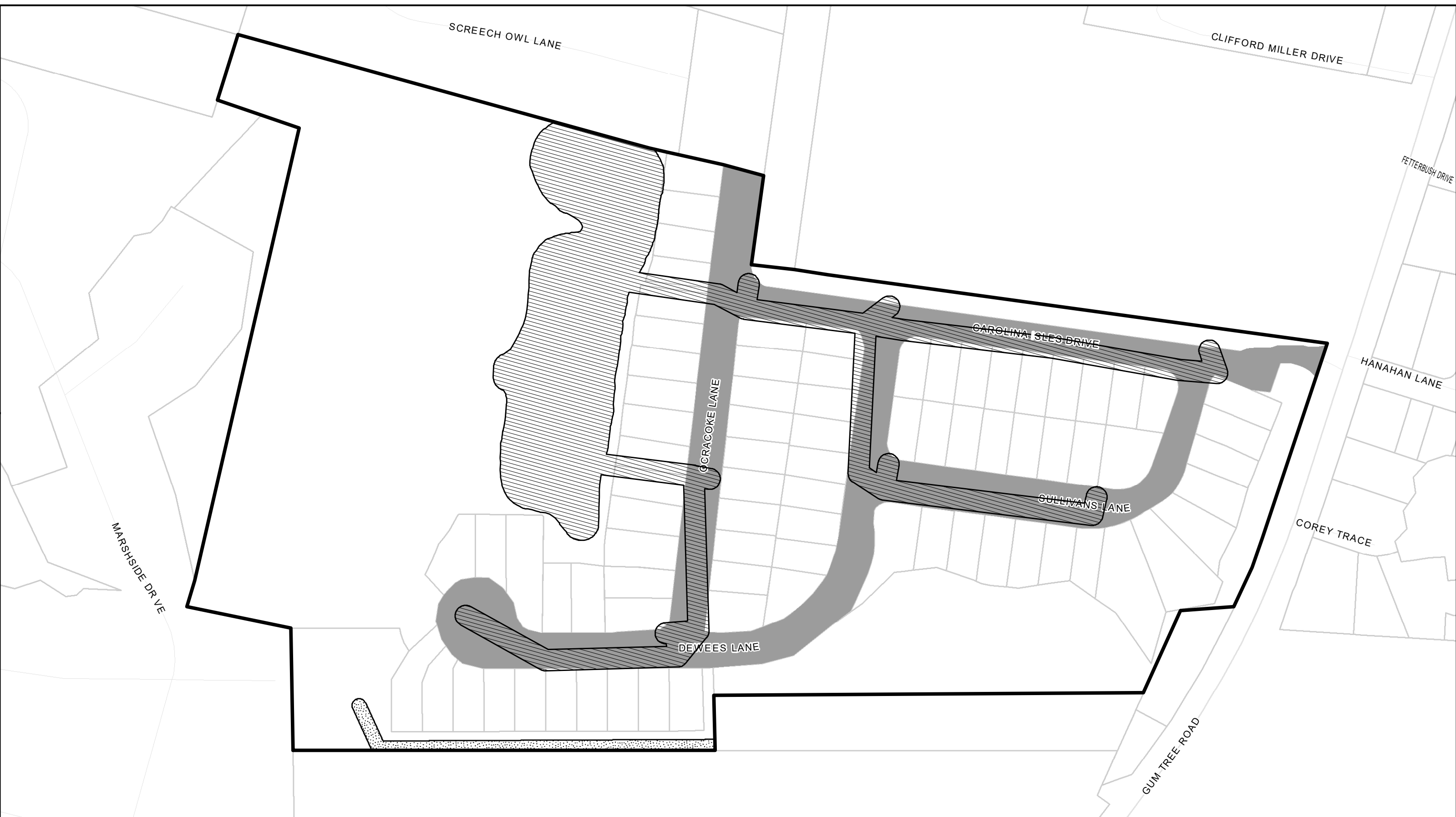
Drainage easement widths are 20 feet around pipes  
 every public runoff and 15 feet from the edge of bank  
 areas that receive public runoff.





Exhibit A  
 Carolina Isles  
 Drainage Easement Agreement Limits

Revised on October 19, 2022

0 37.5 75 150 225 300 Feet

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided as a service to the public and does not constitute an accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or date of completion or for any losses arising from the use of the map.



 Drainage Easement Area  
  Right-of-Way Area  
  Carolina Isles Limits  
 Carolina Isles Permanent Town Stormwater Easement

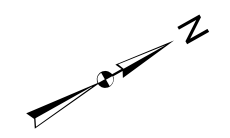
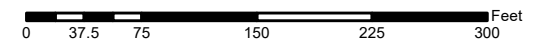
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

# Exhibit A

## Carolina Isles


### Drainage Easement Agreement Limits

Revised on October 19, 2022



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

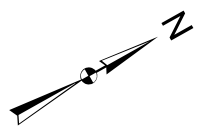
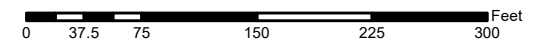


 Carolina Isles Boundary

Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

Revised on October 14, 2022

# Exhibit B Carolina Isles Development Boundary



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



**STATE OF SOUTH CAROLINA        )**  
**)**  
**COUNTY OF BEAUFORT            )**        **DRAINAGE SYSTEM**  
**)**        **MAINTENANCE AGREEMENT**

This Drainage System Maintenance Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_, by and between Chinaberry Ridge Owners’ Association, Inc., a South Carolina nonprofit organization, and the Town of Hilton Head Island, South Carolina, a body politic, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

**WITNESSETH**

WHEREAS, Chinaberry Ridge is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter the “Development”); and,

WHEREAS, Chinaberry Ridge Owners’ Association, Inc., is the owner of improved and unimproved real property and easements within Chinaberry Ridge; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Utility Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Utility Service Fees collected from property owners within the Town of Hilton Head Island, South Carolina, are returned to it, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*, as amended; and,

WHEREAS, the imposition and collection of Storm Water Utility Service Fees results in a fund available for the construction and maintenance of existing and planned

infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, Chinaberry Ridge Owners' Association, Inc., 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 Chinaberry Ridge, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Chinaberry Ridge Owners' Association, Inc., 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 Chinaberry Ridge.

Now, therefore, know all men by these presents, that Chinaberry Ridge Owners' Association, Inc., 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:* Chinaberry Ridge Owners' Association, Inc., 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 to execute and deliver the

Access, Drainage and Maintenance Easement 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 Chinaberry Ridge Owners' Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development:* Chinaberry Ridge, 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” 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:
- (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, 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:* 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, the Association agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance Easement to subject any such areas in the Access, Drainage and Maintenance Easement.
- 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 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 30<sup>th</sup> 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. **Superseding 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 this Agreement shall terminate.

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.

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: Marc Orlando, Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Association: Chinaberry Ridge Owners'  
                              Association, Inc.  
                              Attn: Chris Williams  
                              C/O: AIM Real Estate Management, Inc.  
                              840 William Hilton Parkway, Suite E  
                              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 Chinaberry Ridge Owners' Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

Chinaberry Ridge Owners' Association, Inc.

Christopher J. Mullen

By: [Signature]

Its: PRESIDENT

[Signature]

Attest: [Signature]

Its: SECRETARY

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

Marc Orlando, Town 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
- Exhibit D Town Resolution authorizing this Agreement

**STATE OF SOUTH CAROLINA     )**  
**)**  
**COUNTY OF BEAUFORT            )**     **ACCESS, DRAINAGE AND**  
**)**     **MAINTENANCE EASEMENT**

Know all men by these presents, that Chinaberry Ridge Owners’ Association, Inc. and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, 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 Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used herein, the following terms shall mean:
  - (a) **Association:** Chinaberry Ridge Owners’ Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
  - (b) **Covenants:** Any one or more of Covenants, Conditions, and Restrictions for Chinaberry Ridge Owners’ Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
  - (c) **Development:** Chinaberry Ridge, 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.

- (d) *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.
- (e) *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.
- (f) *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.
- (g) *Town:* The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery, and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property owned by the Association encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage

and conveyance of storm and surface water now or hereafter existing within the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M.,

Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, make repairs, and otherwise maintain the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Development encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The

Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System; provided, however, that the Association shall have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain 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.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association which may be damaged as a

result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to any property currently owned by the Association.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.



WITNESSES:

Chinaberry Ridge Owners' Association, Inc.

Christopher J. Williams

By: Robert Bryan

[Signature]

Attest: [Signature]

STATE OF SOUTH CAROLINA )

UNIFORM ACKNOWLEDGMENT

COUNTY OF BEAUFORT )

S.C. CODE § 30-5-30 (SUPP. 2010)

I, the undersigned Notary Public do hereby certify that Robert Bryan personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of Chinaberry Ridge Owners' Association, Inc..

Sworn to and Subscribed before me

on this 3 Day of NOVEMBER, 2022.

Tasha Ard  
Notary Public for South Carolina

My Commission Expires: May 22, 2023



WITNESSES:  
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

Marc Orlando, Town Manager

**STATE OF SOUTH CAROLINA**

)

**UNIFORM ACKNOWLEDGMENT**

)

**COUNTY OF BEAUFORT**

)

**S.C. CODE § 30-5-30 (SUPP. 2010)**

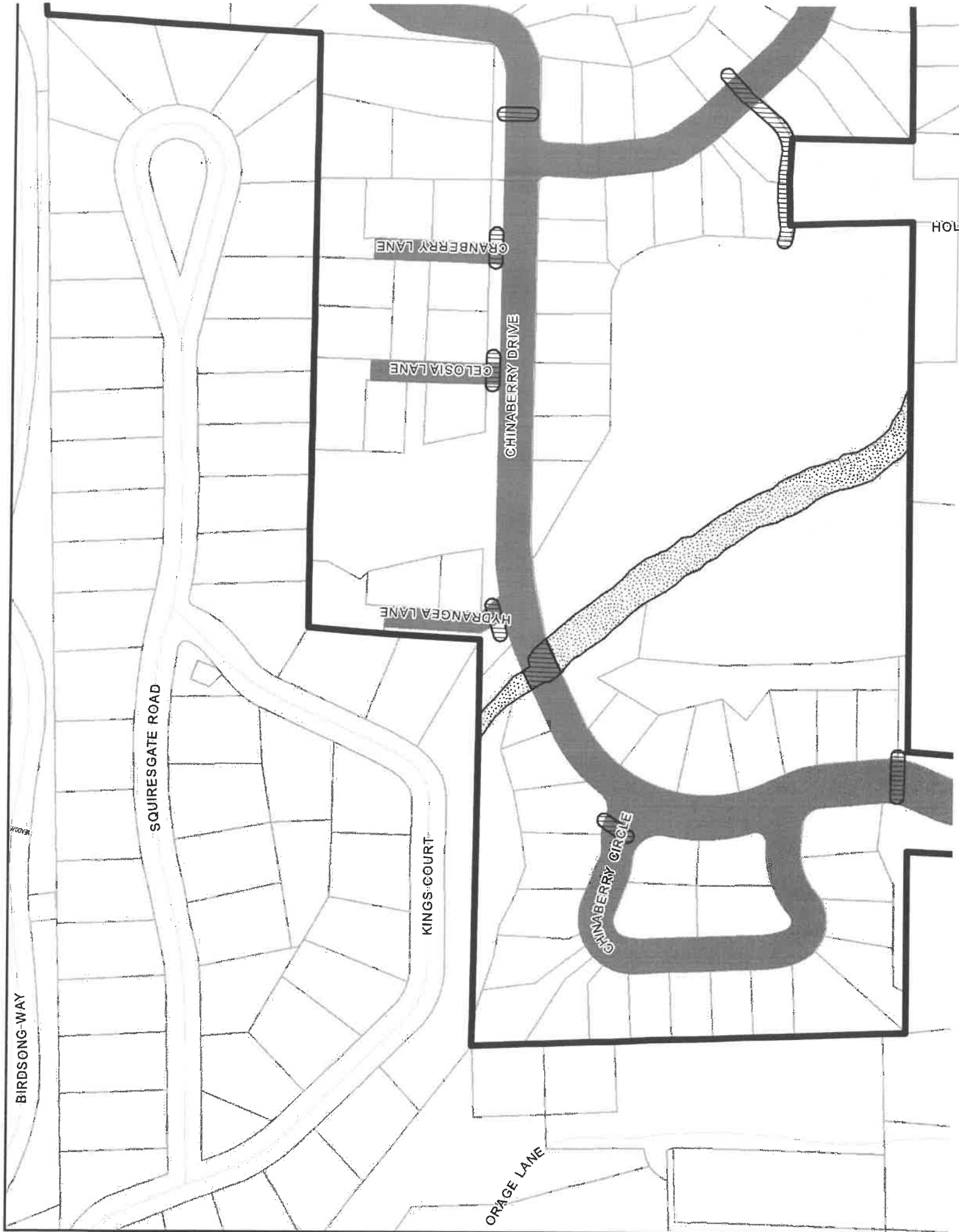
I, the undersigned Notary Public do hereby certify that \_\_\_\_\_  
and Marc Orlando personally appeared before me on this day and duly acknowledged the  
execution of the foregoing instrument on behalf of The Town of Hilton Head Island,  
South Carolina.

Sworn to and Subscribed before me

on this \_\_\_\_\_ Day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_





BIRDSONG WAY

SQUIRESGATE ROAD

KINGS COURT

CHINABERRY DRIVE

ORANGE LANE

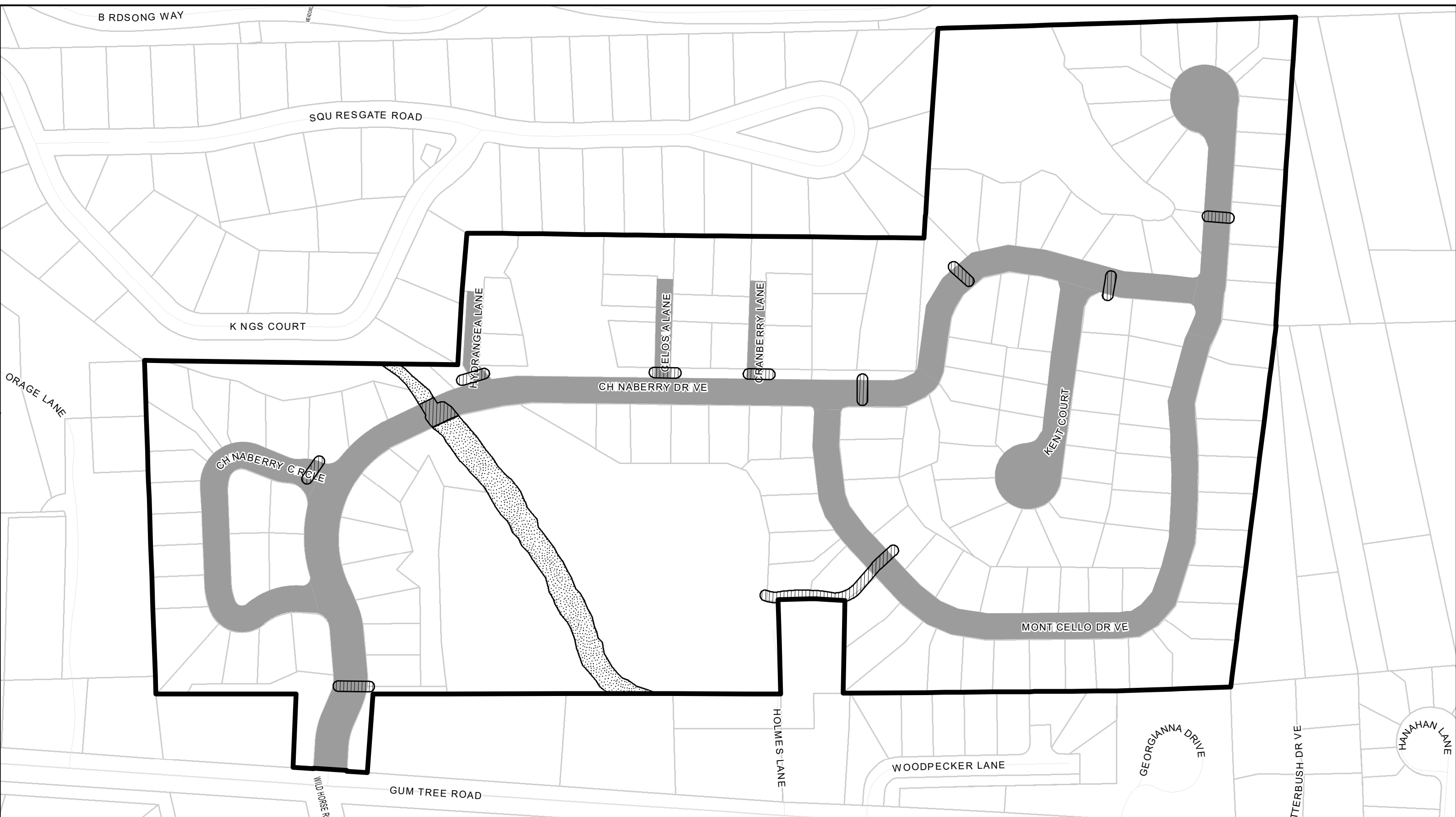
CHINABERRY CIRCLE





HYDRANGEA LANE

CELOSIA LANE

CRANBERRY LANE

HOH



 Drainage Easement Area  
  Right-of-Way Area  
  Chinaberry Ridge Limits  
 Permanent Town Stormwater Easement

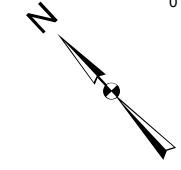
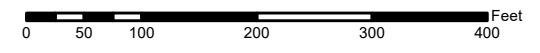
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

# Exhibit A

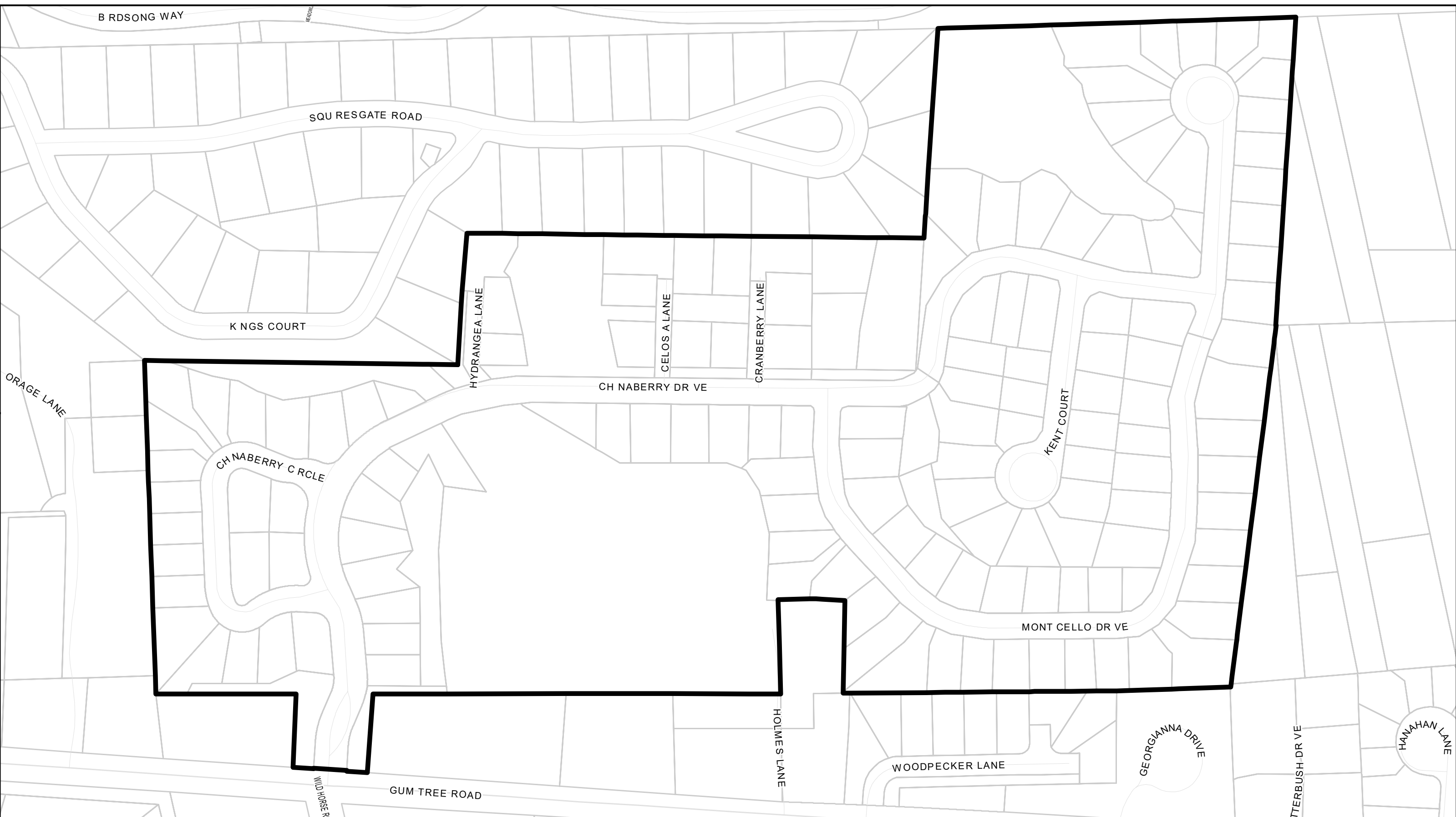
## Chinaberry Ridge


### Drainage Easement Agreement Limits

Revised on October 19, 2022



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

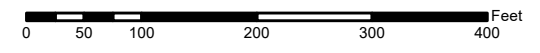
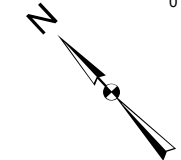


 Chinaberry Ridge Boundary

Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

# Exhibit B Chinaberry Ridge Development Boundary

Revised on October 14, 2022



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

**STATE OF SOUTH CAROLINA        )**  
**)**  
**COUNTY OF BEAUFORT            )**       **DRAINAGE SYSTEM**  
**)**       **MAINTENANCE AGREEMENT**

This Drainage System Maintenance Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_, by and between Peregrine Pointe Property Owners’ Association, Inc., a South Carolina nonprofit organization, and the Town of Hilton Head Island, South Carolina, a body politic, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

WITNESSETH

WHEREAS, Peregrine Pointe is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter the “Development”); and,

WHEREAS, Peregrine Pointe Property Owners’ Association, Inc., is the owner of improved and unimproved real property and easements within Peregrine Pointe; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Utility Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Utility Service Fees collected from property owners within the Town of Hilton Head Island, South Carolina, are returned to it, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*, as amended; and,

WHEREAS, the imposition and collection of Storm Water Utility Service Fees results in a fund available for the construction and maintenance of existing and planned

infrastructure for the collection and conveyance of storm water runoff within the Town of Hilton Head Island, South Carolina, and,

WHEREAS, Peregrine Pointe Property Owners' Association, Inc., 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 Peregrine Pointe, to facilitate the conveyance of storm water runoff within and through the Development; and,

WHEREAS, the Peregrine Pointe Property Owners' Association, Inc., 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 Peregrine Pointe.

Now, therefore, know all men by these presents, that Peregrine Pointe Property Owners' Association, Inc., 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:* Peregrine Pointe Property Owners' Association, Inc., 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 to execute and



deliver the Access, Drainage and Maintenance Easement 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 Peregrine Pointe Property Owners’ Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
- e. *Development*: Peregrine Pointe, 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 (BMPPF) 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” 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:

- (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, 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:* 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, the Association agrees that it will execute and deliver an amendment to the Access, Drainage and Maintenance Easement to subject any such areas in the Access, Drainage and Maintenance Easement.
- 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 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 30<sup>th</sup> 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. **Superseding 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 this Agreement shall terminate.

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.

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: Marc Orlando, Town Manager  
                              One Town Center Court  
                              Hilton Head Island, SC 29928

To the Association: Peregrine Pointe Property Owners'  
                              Association, Inc.  
                              Attn: Bobby Tillison  
                              Board President  
                              46 Peregrine Drive  
                              Hilton Head Island, SC 29926

- 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 Peregrine Pointe Property Owners' Association, Inc., by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

Peregrine Pointe Property Owners' Association,  
Inc.

Patricia M. Moore

By: Mitallina J.

Its: President

Shay Jenkins

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

Marc Orlando, Town 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
- Exhibit D Town Resolution authorizing this Agreement

**STATE OF SOUTH CAROLINA        )**     **ACCESS, DRAINAGE AND**  
**)**     **MAINTENANCE EASEMENT**  
**COUNTY OF BEAUFORT                )**

Know all men by these presents, that Peregrine Pointe Property Owners’ Association, Inc. and the Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, SC, 29928, 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 Access, Drainage and Maintenance Easement, the receipt and sufficiency whereof is acknowledged, agree as follows:

1. **Defined Terms:** As used herein, the following terms shall mean:
  - (a) *Association:* Peregrine Pointe Property Owners’ Association, Inc., a South Carolina not-for-profit corporation with the full authority under the Covenants to enter into this Agreement.
  - (b) *Covenants:* Any one or more of Covenants, Conditions, and Restrictions for Peregrine Pointe Property Owners’ Association, Inc. recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
  - (c) *Development:* Peregrine Pointe, 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.



- (d) *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.
- (e) *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.
- (f) *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.
- (g) *Town:* The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery, and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within the Development, and on, over and across any property owned by the Association encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Development, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, held by the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage

and conveyance of storm and surface water now or hereafter existing within the Development, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of the Development through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within the Development and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of the Development and through the Development Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A.M., to 5:00 o'clock, P.M.,

Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build improvements, make repairs, and otherwise maintain the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Development encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The

Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System; provided, however, that the Association shall have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain 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.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantor, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association which may be damaged as a

result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to any property currently owned by the Association.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

WITNESSES:

Peregrine Pointe Property Owners' Association, Inc.

[Signature]

By: [Signature]

[Signature]

Attest: \_\_\_\_\_

STATE OF SOUTH CAROLINA )

UNIFORM ACKNOWLEDGMENT

COUNTY OF BEAUFORT )

S.C. CODE § 30-5-30 (SUPP. 2010)

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_ personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of Peregrine Pointe Property Owners' Association, Inc..



Sworn to and Subscribed before me on this 10TH Day of NOVEMBER, 2022.

[Signature]  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

WITNESSES:  
SOUTH CAROLINA

THE TOWN OF HILTON HEAD ISLAND,

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

Marc Orlando, Town Manager

**STATE OF SOUTH CAROLINA**  
**COUNTY OF BEAUFORT**

)  
)  
)

**UNIFORM ACKNOWLEDGMENT**  
**S.C. CODE § 30-5-30 (SUPP. 2010)**

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_  
and Marc Orlando personally appeared before me on this day and duly acknowledged the  
execution of the foregoing instrument on behalf of The Town of Hilton Head Island,  
South Carolina.




Sworn to and Subscribed before me  
on this \_\_\_\_\_ Day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_





 Drainage Easement Area 
  Right-of-Way Area 
  Peregrine Pointe Limits

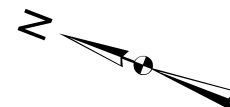
Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

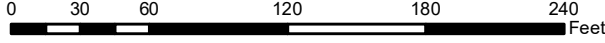
# Exhibit A

## Peregrine Pointe

### Drainage Easement Agreement Limits

Revised on October 14, 2022





The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

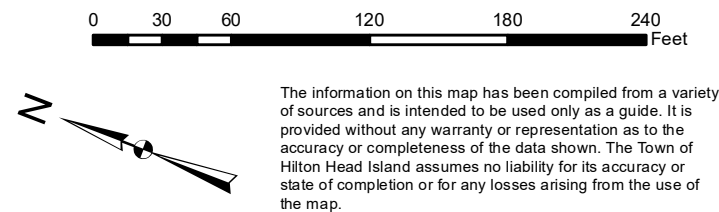


 Peregrine Pointe Boundary

Note: Drainage easement widths are 20 feet around pipes that convey public runoff and 15 feet from the edge of bank of lagoons that receive public runoff.

Revised on October 14, 2022

# Exhibit B Peregrine Pointe Development Boundary



0 30 60 120 180 240 Feet

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



# TOWN OF HILTON HEAD ISLAND

## *Finance & Administrative Committee*

---

**TO:** Finance & Administrative Committee  
**FROM:** John Troyer, Finance Director  
**VIA:** Marc Orlando ICMA-CM, Town Manager  
**CC:** John Troyer, Finance Director  
**DATE:** May 16, 2023  
**SUBJECT:** Town of Hilton Head Island Fiscal Year 2023 Year to Date Financial Update

---

### **RECOMMENDATION:**

Staff recommends the Finance & Administrative Committee receive and discuss the Town of Hilton Head Island Fiscal Year 2023 Year-to-Date Financial Update to help keep Committee members apprised of the Town's financial condition.

### **BACKGROUND:**

Town staff monitors the financial activity daily. On regular intervals, Town staff presents information to the Finance and Administrative Committee to keep the Committee up to date on the progress of the budget, the financial status, collections, and spending. This information assists the Committee in assessing the financial status and provides background information to prepare the Committee for future decisions that have financial implications.

### **SUMMARY:**

The Finance Director will present financial information to the Finance and Administrative Committee to provide a picture of the financial status and financial results to April 30, 2023. This update will assist the Finance and Administrative Committee in keeping apprised of the Town's financial capacity as they consider new decisions impacting the Town's finances.

### **ATTACHMENTS:**

1. Fiscal Year 2023 Year to Date Financial Update Presentation

# Town of Hilton Head Island Financial Update

Finance and Administrative Committee | For the ten months ending April 30, 2023



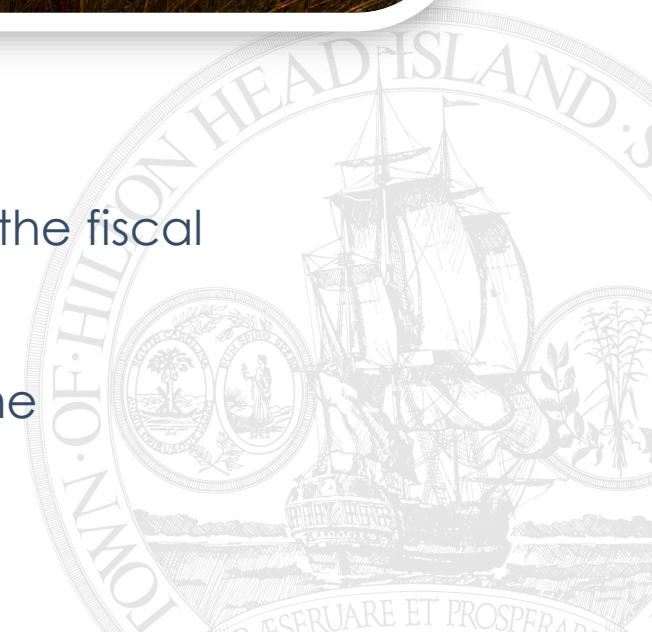
# Key Issues

## The Town is . . .

- Monitoring revenues
- Controlling expenditures
- Adjusting where necessary



- This is ten months into the year – we are starting to get a picture – how the fiscal year might finish
- So far: Revenues on track to provide for the budget
- So far: Expenditures on track to finish within budget – we may need some reclassifications to finish the year.



# Key Issues

The Town is . . .



*continuing to benefit from Town Council's previous actions to:*

- 1. Build Reserves*
- 2. Diversify Revenue streams*
- 3. Invest in the Island*



# Revenue Review

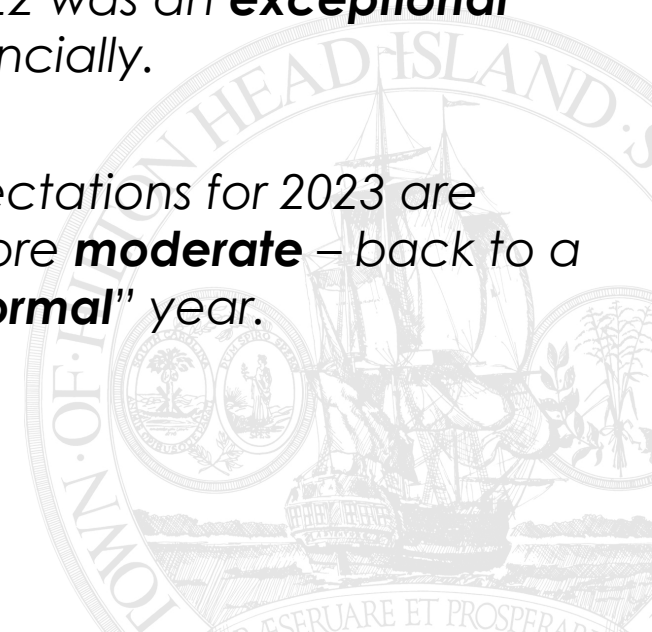
## Top 10 revenues in FY 2022 compared to FY 2021

Revenue Item	FY 2022	FY 2021	Inc. (Dec.) in \$	Inc. (Dec.) in %	
Business Licenses Local	7,168,807	5,255,705	1,913,102	36.4%	#1 All-time best
Bus. Licenses State/MASC	6,915,563	5,188,526	1,727,037	33.3%	#1 All-time best
Business Licenses (total)	14,110,311	10,455,636	3,654,675	35.0%	#1 All-time best
Hospitality Tax	9,907,025	8,051,256	1,855,769	23.0%	#1 All-time best
Property Taxes	26,897,529	26,151,026	746,503	2.9%	#1 All-time best
Beach Fee	14,053,062	11,123,801	2,929,261	26.3%	#1 All-time best
Local Accomodations Tax	7,026,531	5,561,090	1,465,441	26.4%	#1 All-time best
Tax Increment Financing	5,792,527	5,361,900	430,627	8.0%	#1 Since the extension
Emergency Medical Services	2,016,643	1,776,344	240,299	13.5%	#1 All-time best
Real Estate Transfer Fee	6,957,245	7,127,885	(170,640)	-2.4%	2nd Best All-time
State Accomodations Tax	13,569,288	10,183,479	3,385,809	33.2%	#1 All-time best
Subtotal	100,330,161	85,792,417	14,537,744	16.9%	



Fiscal 2022 was an **exceptional** year financially.

Our expectations for 2023 are much more **moderate** – back to a more “**normal**” year.





## April *preliminary*\* results:

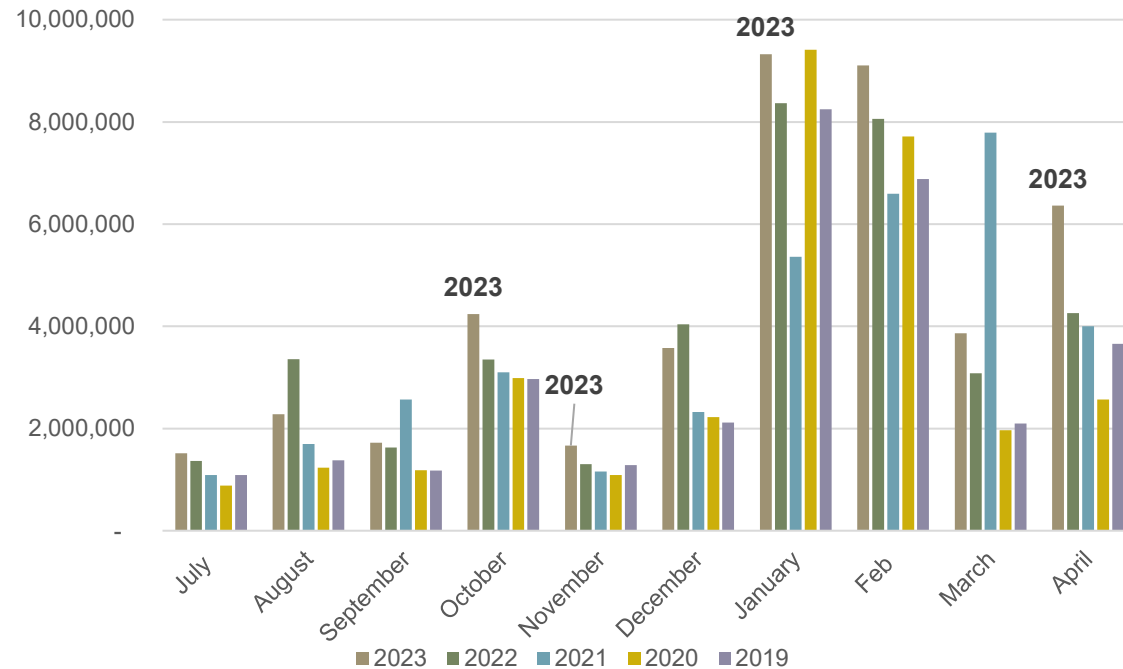
\* Not all information has been received yet to record for monthly closing yet -- look for the monthly report – coming soon.





# General Fund Revenues

Revenues by month

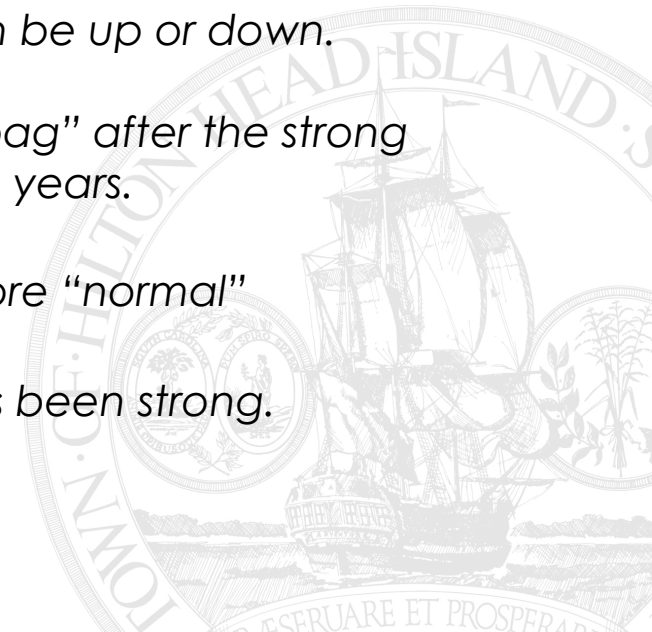


*Any individual month can be up or down.*

*2023 – a bit of a “mixed bag” after the strong collections of the last two years.*

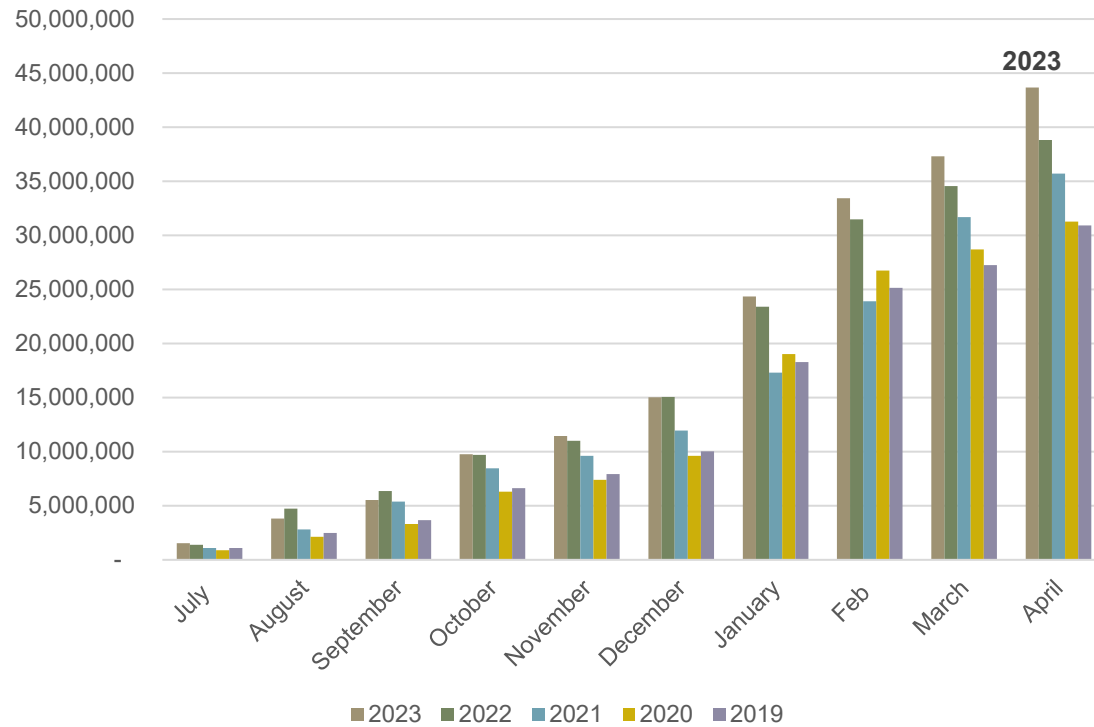
*It seems this is back to more “normal”*

*January through April has been strong.*



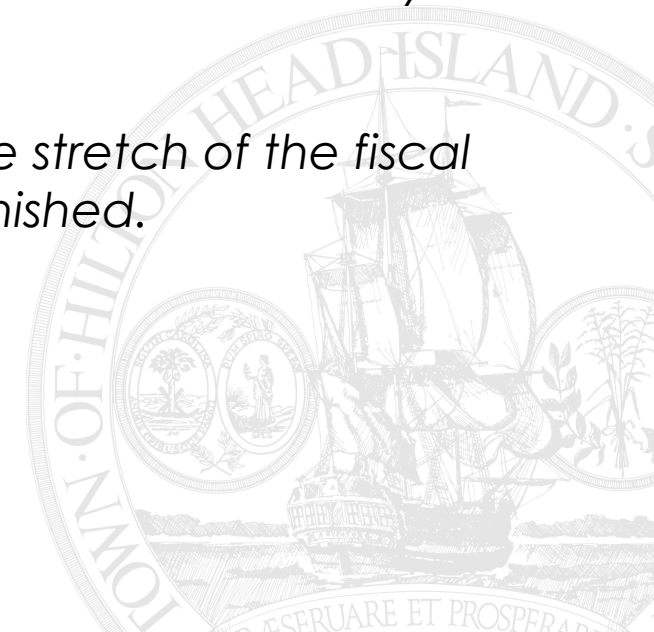
# General Fund Revenues

## YTD Revenues by month



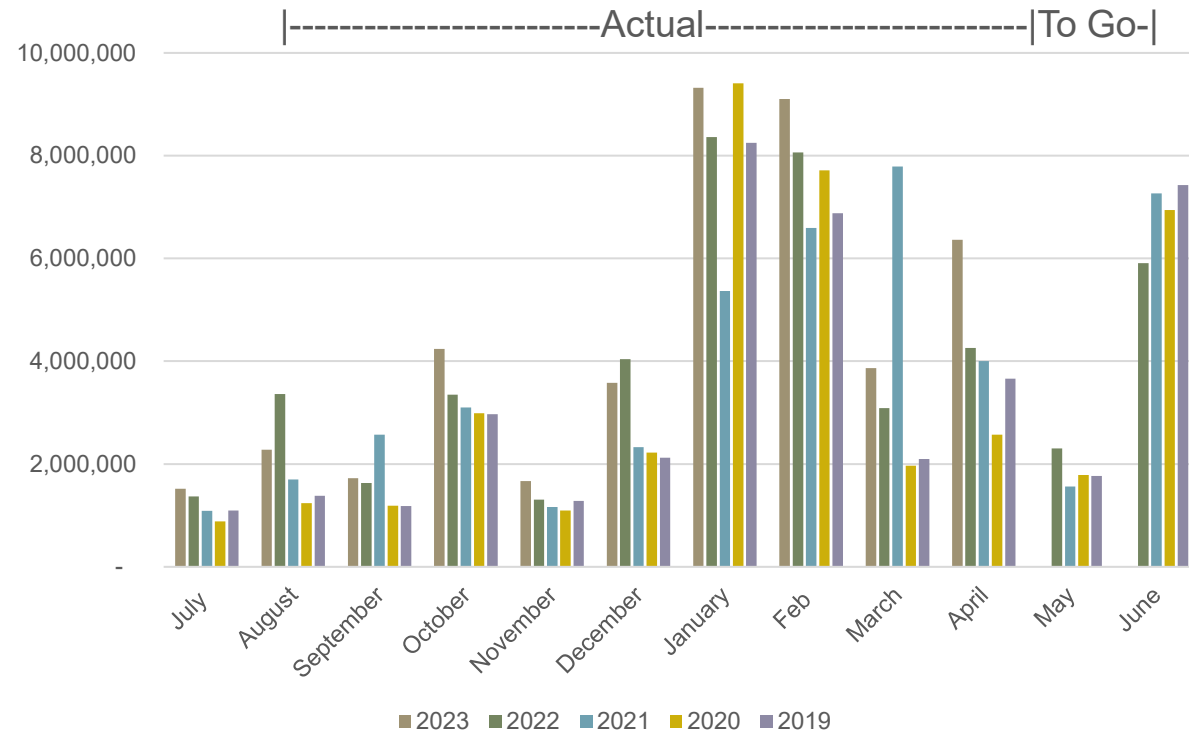
*2023 – Collections are more than last year.*

*We are on the home stretch of the fiscal year – but not yet finished.*



# General Fund Revenues

## Revenues by month



2023 – \$43.7 million collected, and \$7.2 million collections to go (86% collected).

2022 was a record year.

The revised budgeted collections are \$50.9 million.

We expect significant collections in June.

# Revenue Preview

## Year to Date Collections

	YTD April 2023	YTD April 2022	\$ Increase (Decrease)	% Increase (Decrease)
Tax Increment Financing	6,370,409	5,705,097	665,312	11.7%
Local ATAX	4,496,392	4,428,635	67,757	1.5%
State ATAX	8,227,757	8,255,236	(27,479)	-0.3%
Real Estate Transfer Fee	3,944,718	5,659,894	(1,715,176)	-30.3%
HTAX	7,032,021	6,727,957	304,064	4.5%
Beach Preservation Fee	8,992,785	8,857,270	135,515	1.5%
Electric Franchise Fee	2,173,163	2,053,092	120,071	5.8%
Road Usage Fee	9,797	350,928	(341,131)	-97.2%
Stormwater	5,002,981	4,969,761	33,220	0.7%
Property Taxes - General Fund	16,629,358	15,631,946	997,412	6.4%
Business licenses	7,220,201	7,737,940	(517,739)	-6.7%
EMS revenues	1,857,917	1,634,460	223,457	13.7%
Permits	1,315,331	1,667,357	(352,026)	-21.1%
<b>Total</b>	<b>73,272,830</b>	<b>73,679,573</b>	<b>(406,743)</b>	<b>-0.6%</b>



*Remember 2022 was a record year.*

*The increase in interest rates has affected RETF and permits.*

*PY Business license amounts include a one-time off-schedule payment from the state.*

*The Road Usage fee has been paused.*

# Revenue Preview

## Year to Date Collections

	YTD April FY 23	Full Fiscal Collections FY 2022	% of Total Collections	Full Fiscal Collections FY 2021
Tax Increment Financing	6,370,409	5,792,527	110%	5,361,090
Local ATAX	4,496,392	7,026,531	64%	5,561,900
State ATAX	8,227,757	13,569,288	61%	10,183,480
Real Estate Transfer Fee	3,944,718	6,957,245	57%	7,127,885
HTAX	7,032,021	9,907,025	71%	8,051,256
Beach Preservation Fee	8,992,785	14,053,062	64%	11,123,801
Electric Franchise Fee	2,173,163	2,707,124	80%	2,811,144
Road Usage Fee	9,797	357,960	3%	1,055,675
Stormwater	5,002,981	5,081,075	98%	5,043,167
Property Taxes - General Fund	16,629,358	16,372,285	102%	15,925,355
Business licenses	7,220,201	14,110,311	51%	10,455,636
EMS revenues	1,857,917	2,016,643	92%	1,776,344
Permits	1,315,331	2,001,045	66%	2,125,382
<b>Total</b>	<b>73,272,830</b>	<b>99,952,121</b>	<b>73.3%</b>	<b>86,602,115</b>



*Remember 2022 was a record year.*

*The increase in interest rates has affected RETF and permits.*

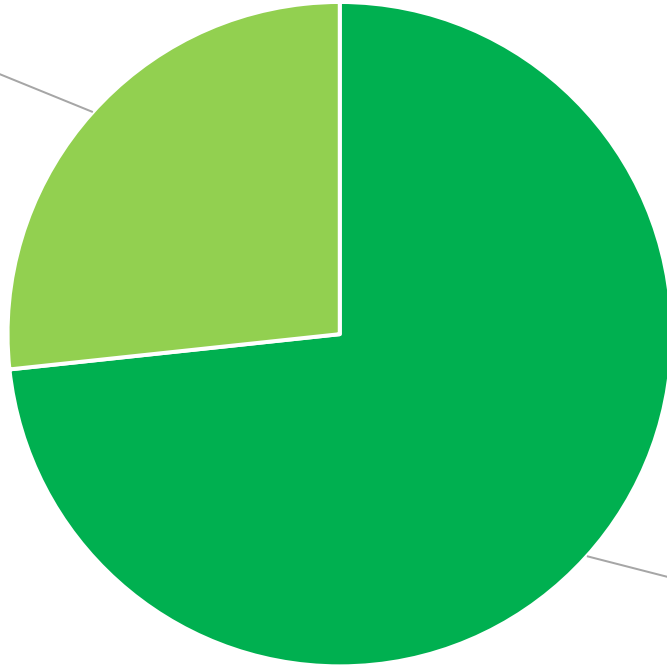
*PY Business license amounts include a one-time off-schedule payment from the state.*

*The Road Usage fee has been paused.*

# Revenue Preview

Collected / Yet to Collect

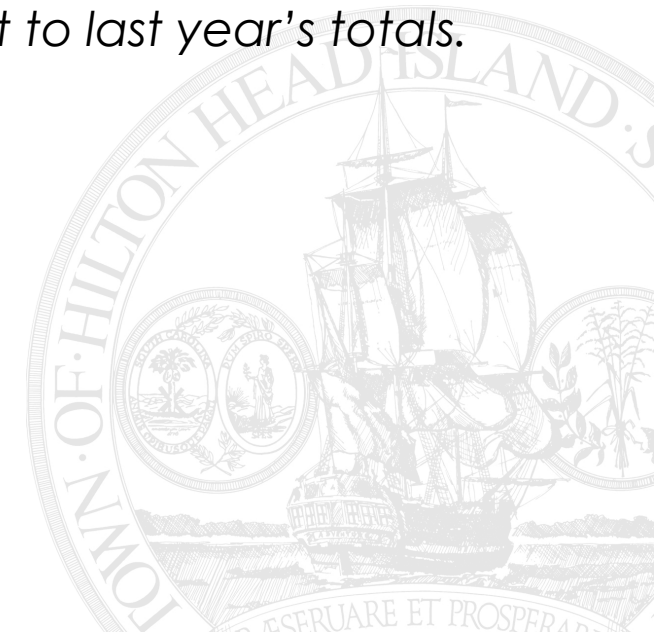
Yet to Collect,  
26,679,291 ,  
27%



Collected ,  
73,272,830 ,  
73%

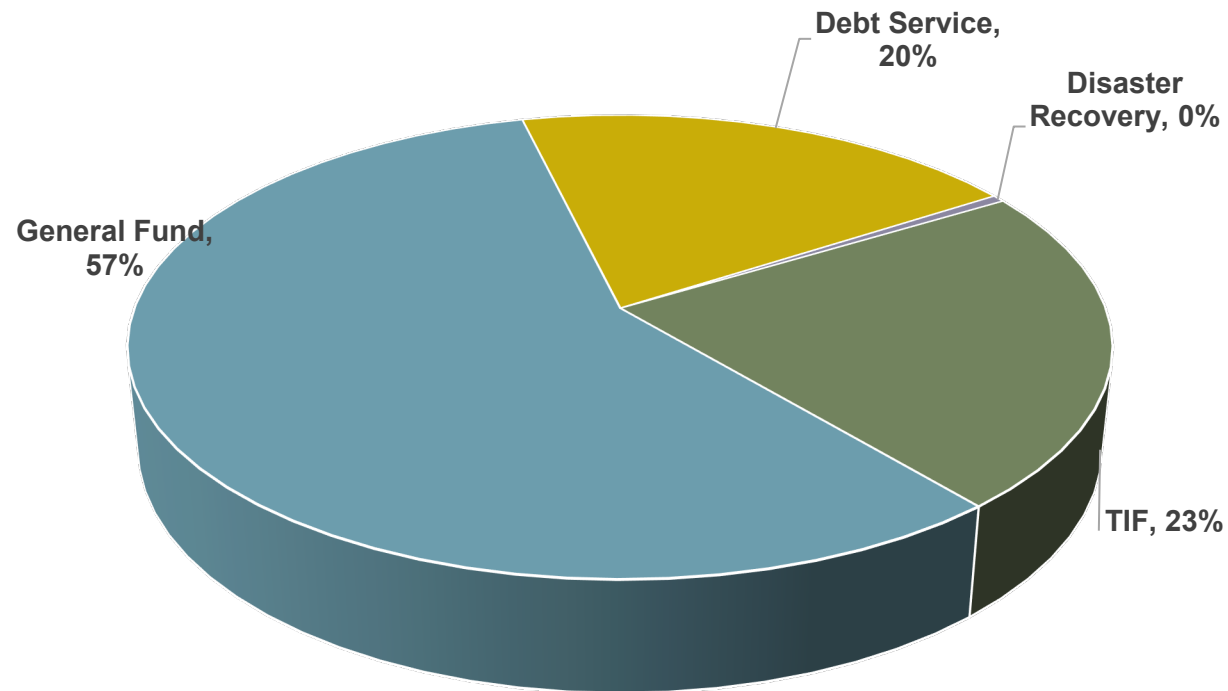


*This is to get to last year's totals.*



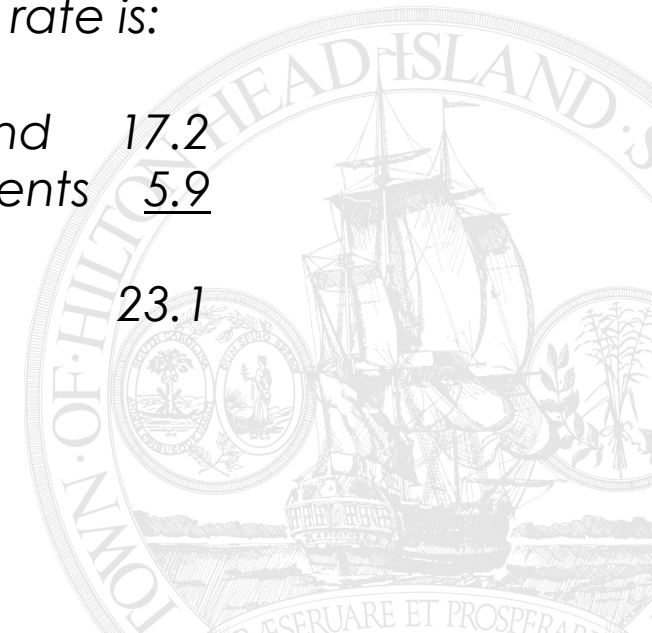
# Property Taxes

Split of collections



The Millage rate is:

General Fund	17.2
Debt Payments	<u>5.9</u>
Total	23.1



# Gen. Fund Property Taxes

By the numbers . . .

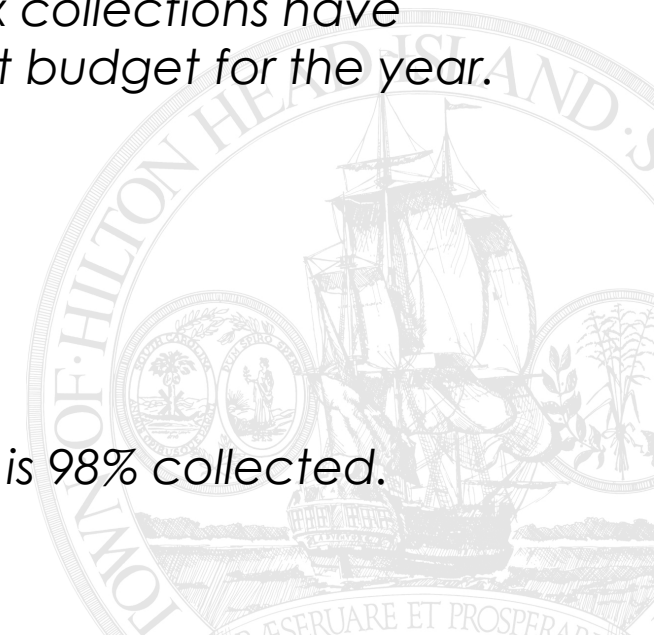
**Property Taxes**

	2021 Actual	2022 Actual	April 2023 YTD Actual	as a % of PY 22 Actual
<b>Budgeted Funds</b>				
General Fund	15,925,355	16,372,285	16,629,358	101.6%
Debt Service	5,448,437	5,600,014	5,692,907	101.7%
<b>Total Budgeted Funds</b>	<u>21,373,792</u>	<u>21,972,299</u>	22,322,265	101.6%
<b>Other Funds</b>				
Natural Disaster Fund	4,777,234	4,925,232	137,591	2.8%
TIF	5,361,090	5,792,527	6,370,409	110.0%
<b>Total Property Taxes</b>	<u>31,512,116</u>	<u>32,690,058</u>	<u>28,830,265</u>	88.2%
<b>Stormwater Fees</b>	<u>4,928,623</u>	<u>5,081,075</u>	<u>5,002,981</u>	<u>98.5%</u>



*Property tax collections have already met budget for the year.*

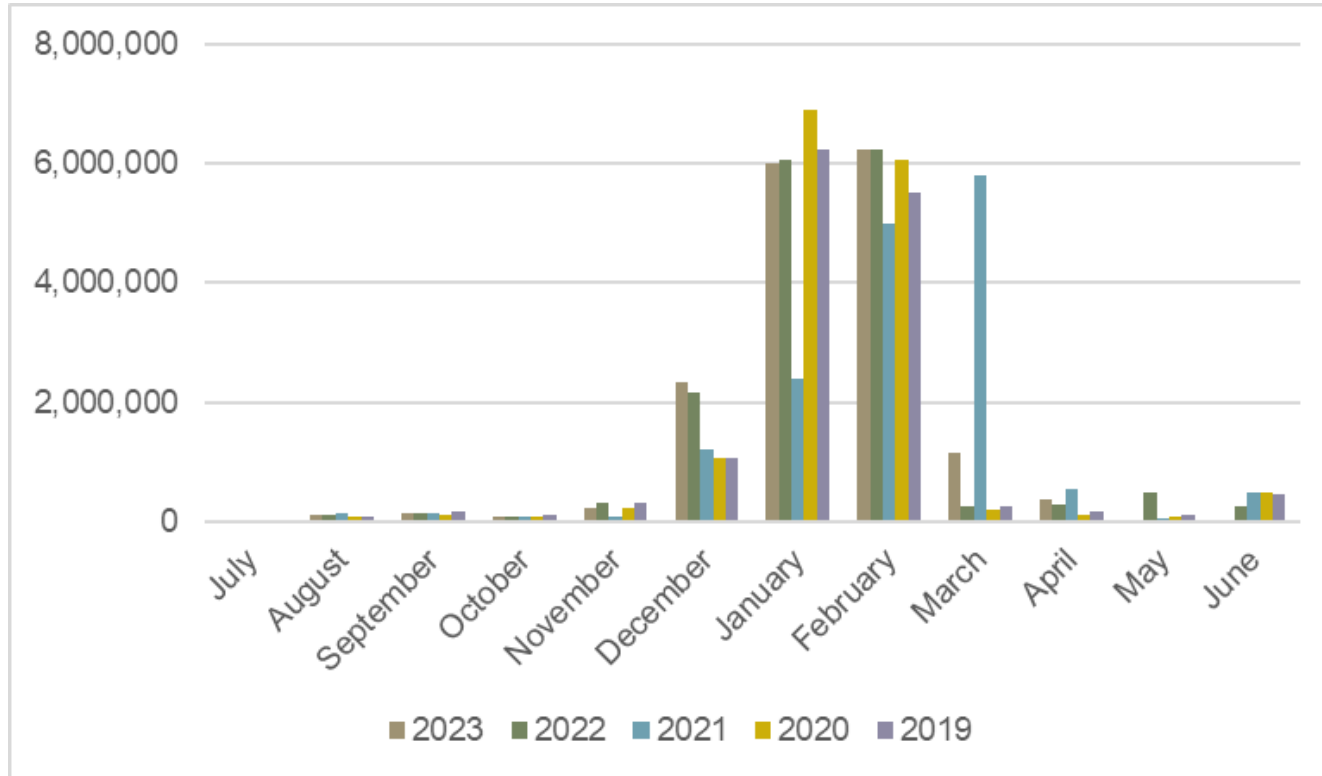
*Stormwater is 98% collected.*



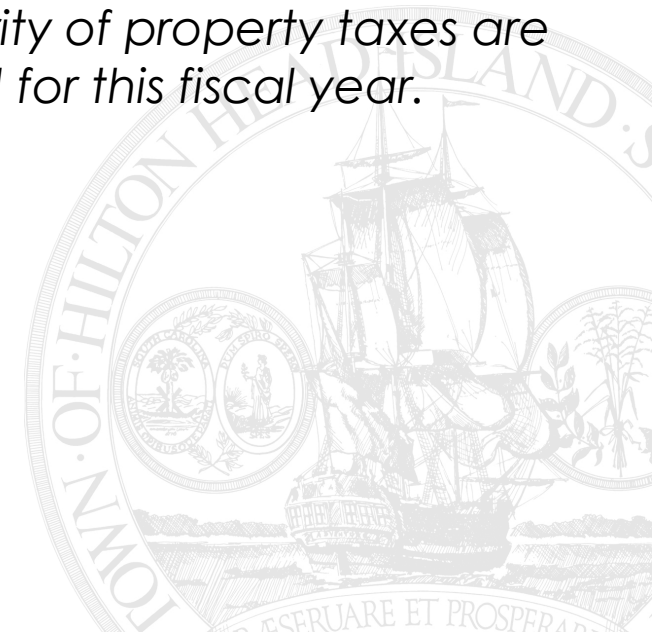


# Gen. Fund Property Taxes

## Statistics

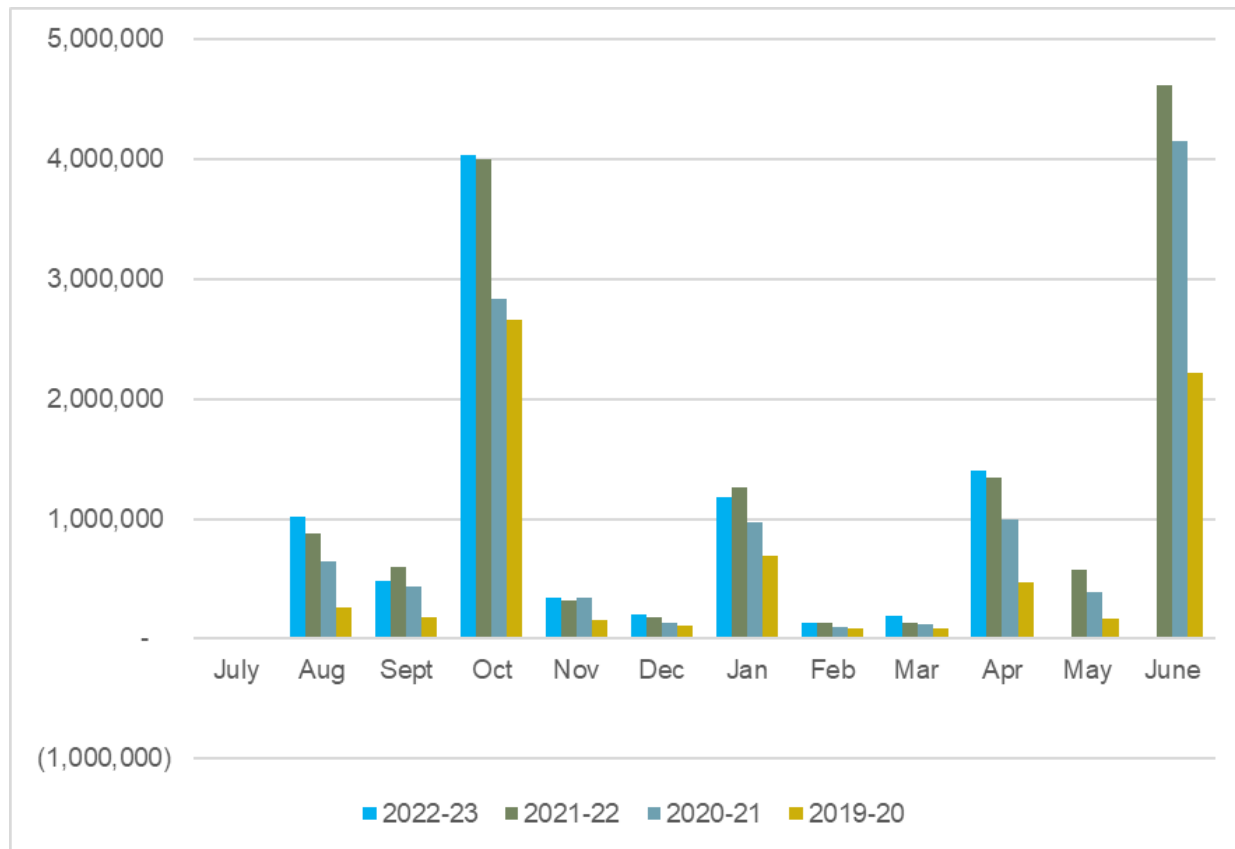


*The vast majority of property taxes are now collected for this fiscal year.*

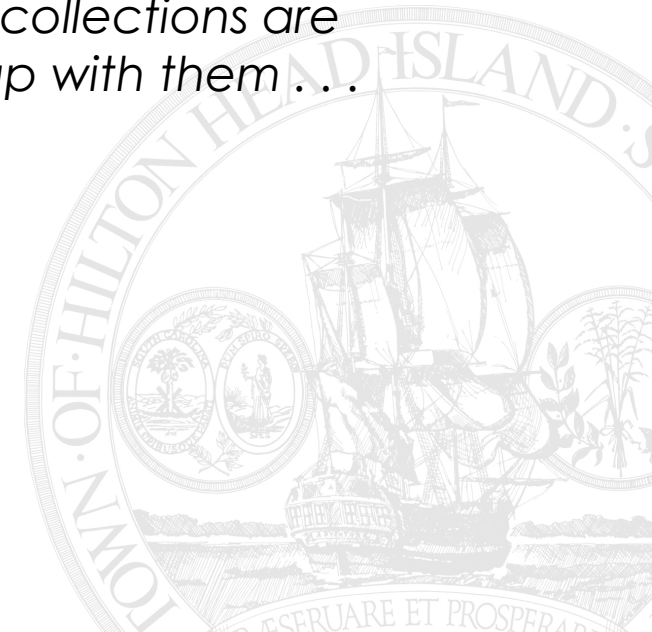


# Beach Fees

## Collections by month

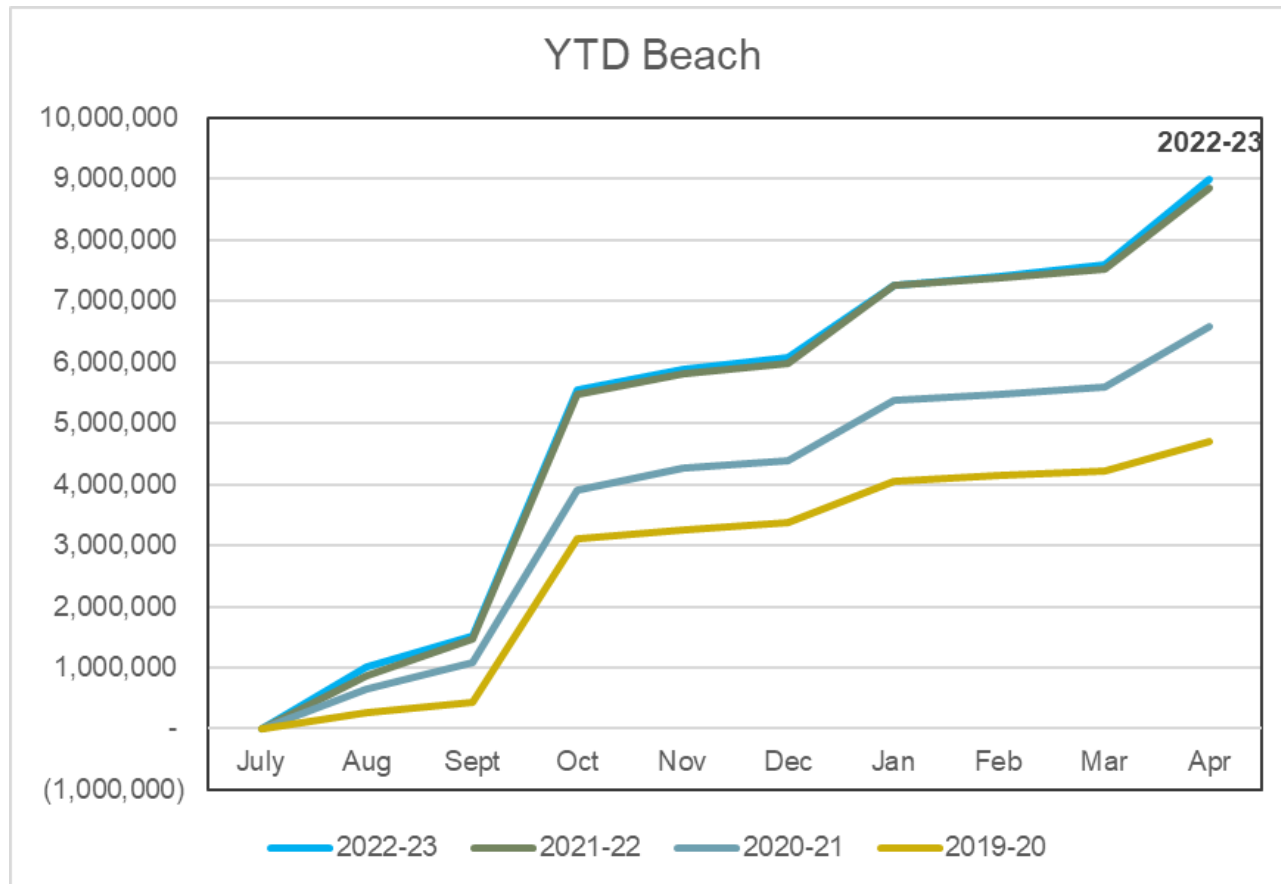


*Record year collections in 2022 and 2023 collections are keeping up with them...*

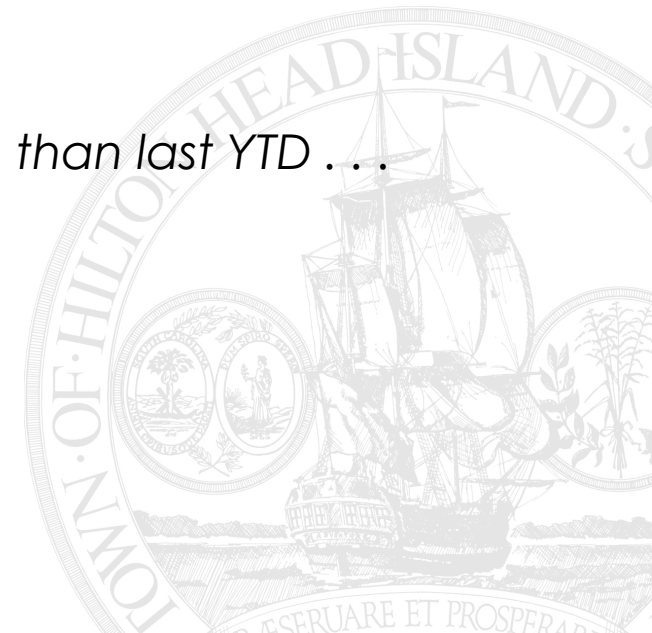


# Beach Fee

## YTD Collections

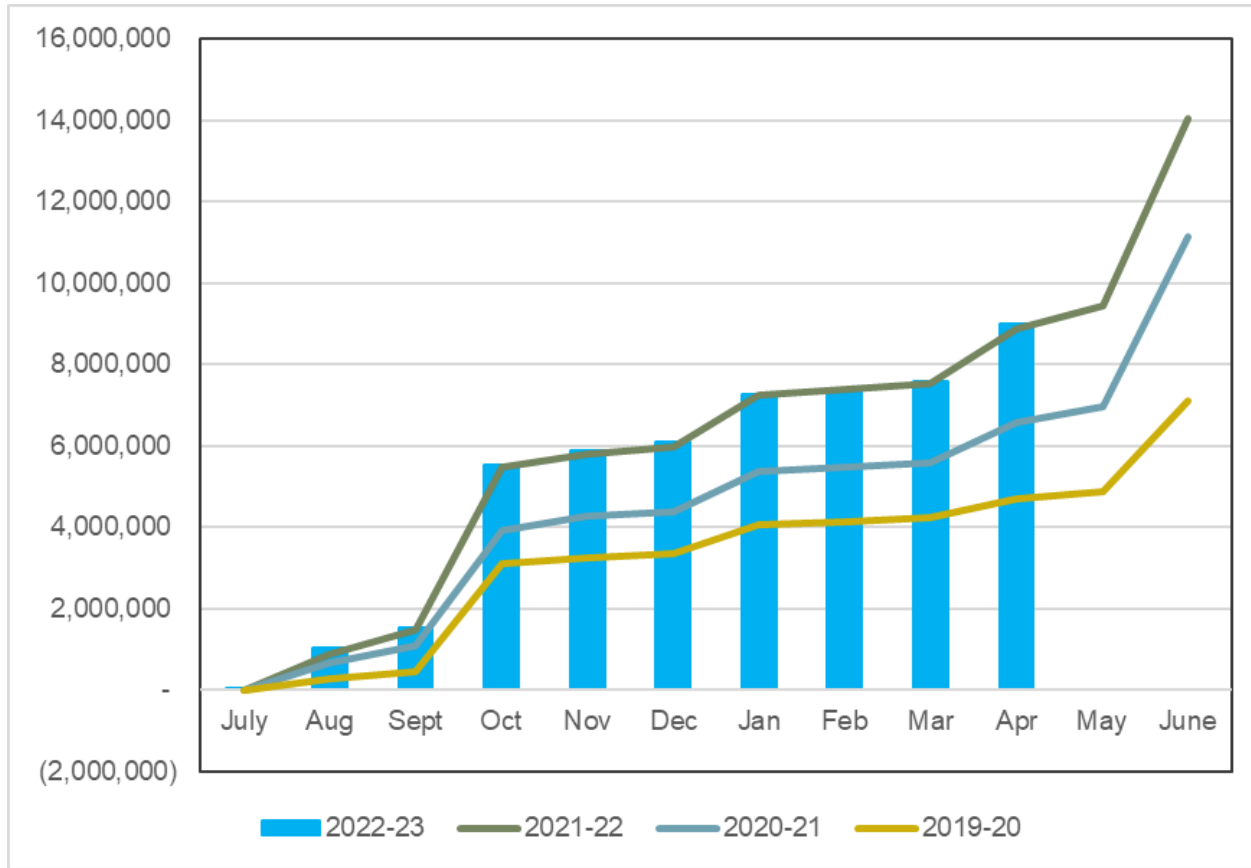


YTD is slightly more than last YTD ...

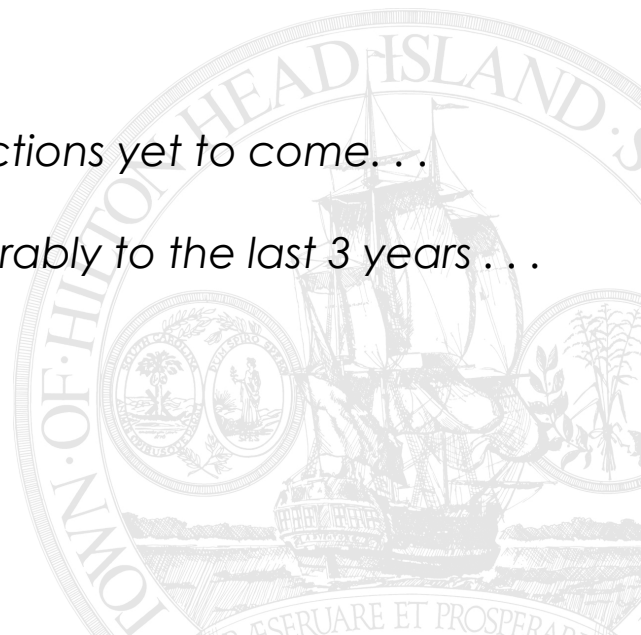


# Beach Fee

## YTD Collections

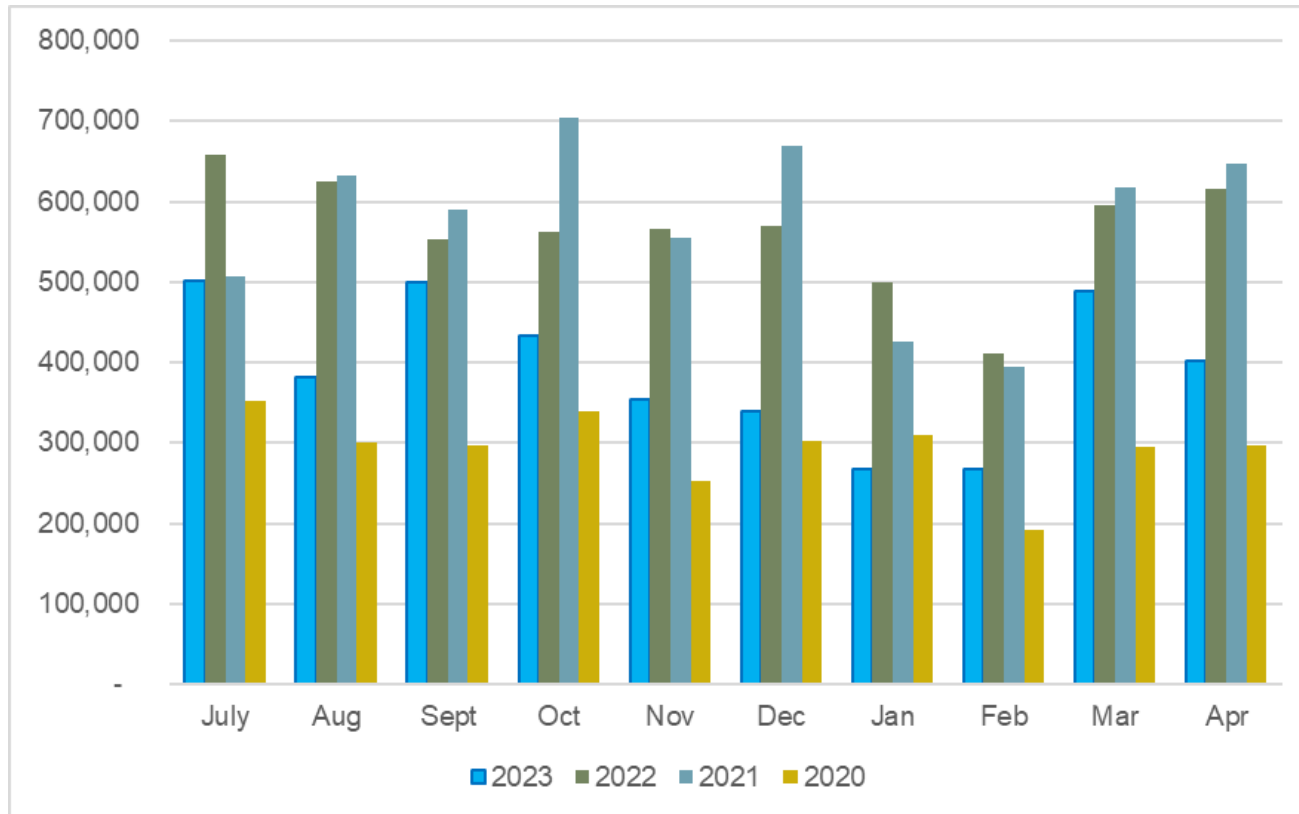


*There are significant collections yet to come. . .*  
*Collections compare favorably to the last 3 years . . .*



# Real Estate Transfer Fee

Collections by month

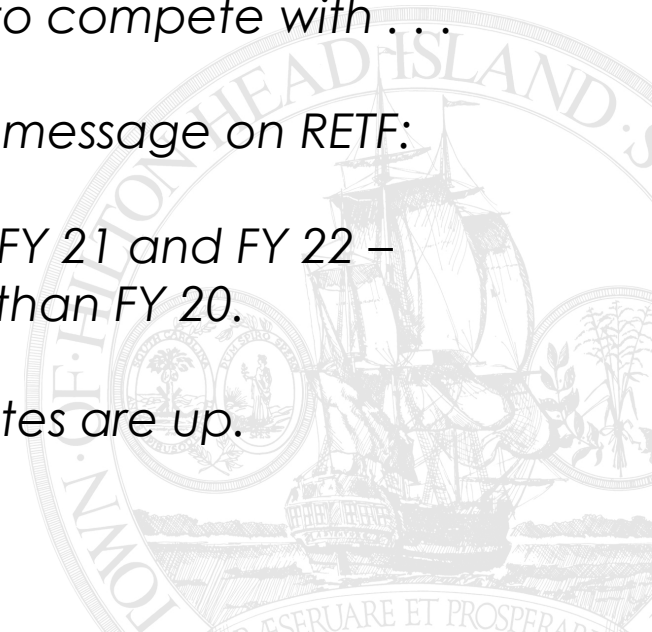


*Collections in 2022 and 2021 – are hard to compete with ...*

*A familiar message on RETF:*

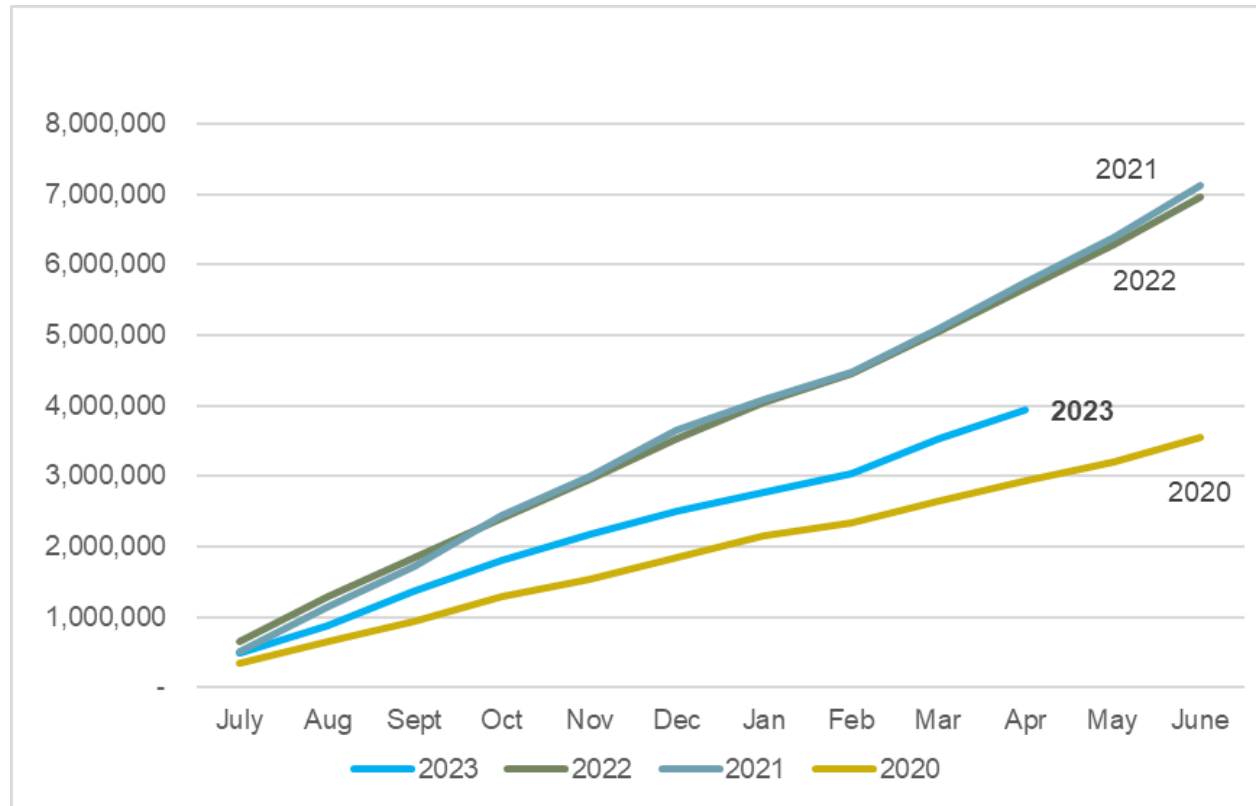
*Less than FY 21 and FY 22 –  
But more than FY 20.*

*Interest rates are up.*



# Real Estate Transfer Fee

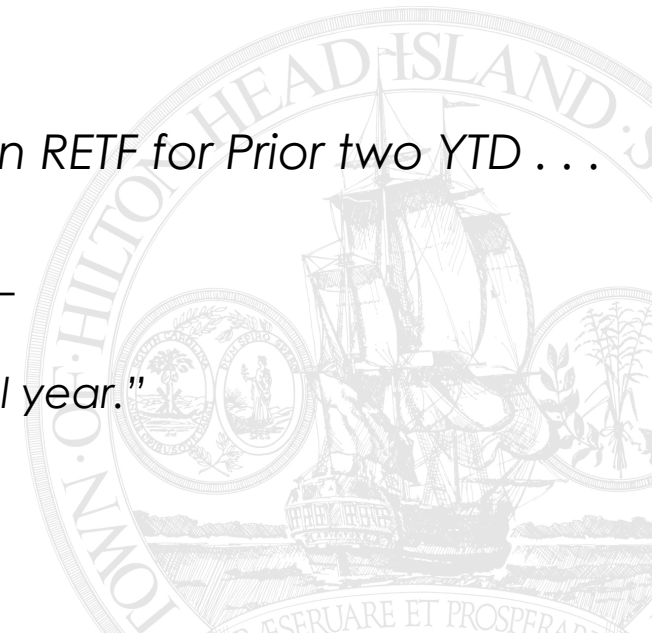
## YTD Collections



*RETF YTD is less than RETF for Prior two YTD . . .*

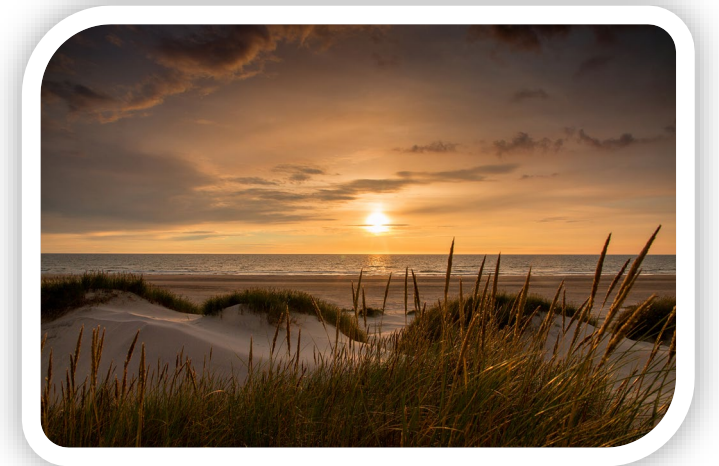
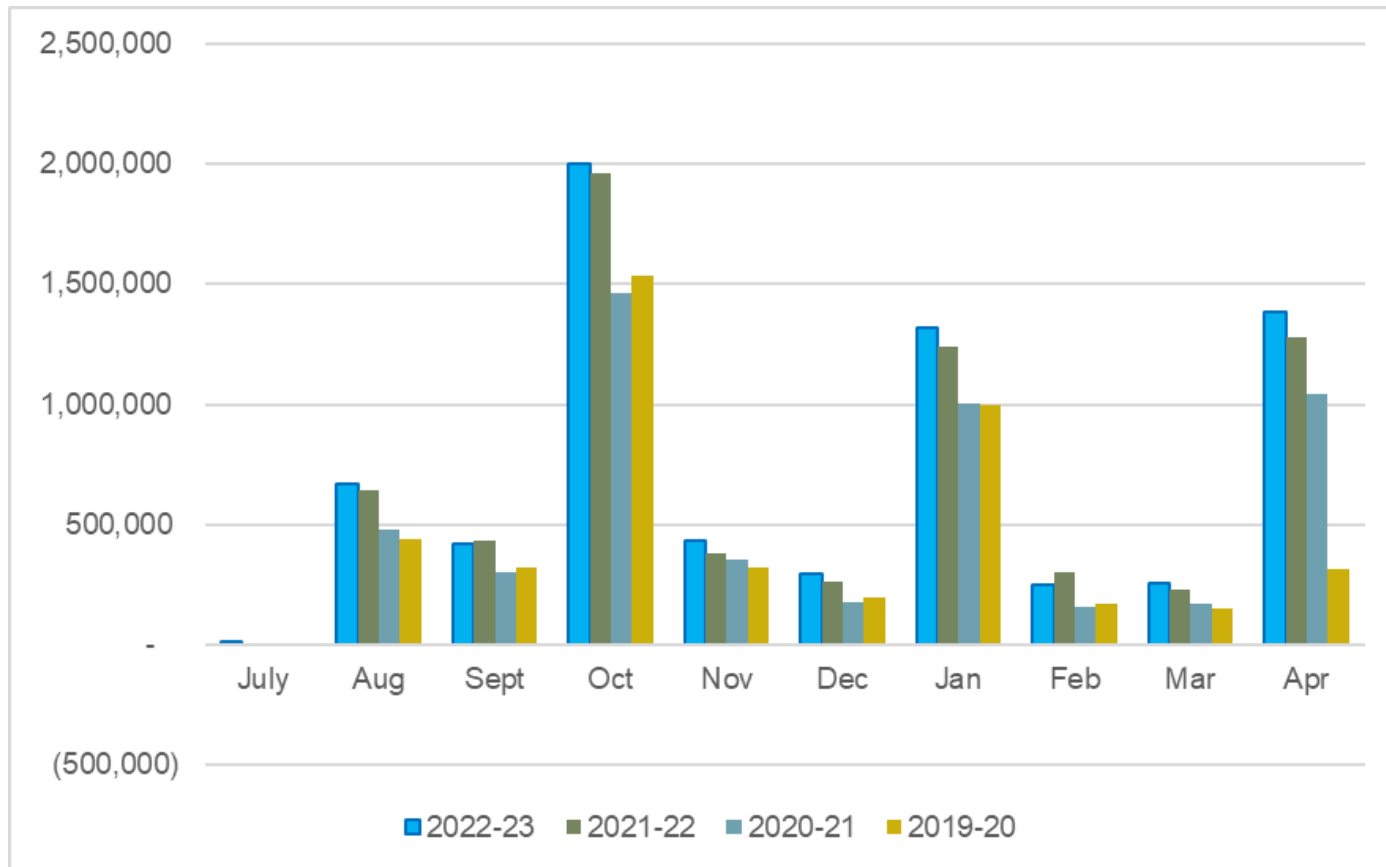
*Still more than FY 20 –*

*which was a “normal year.”*



# Hospitality Tax Collections

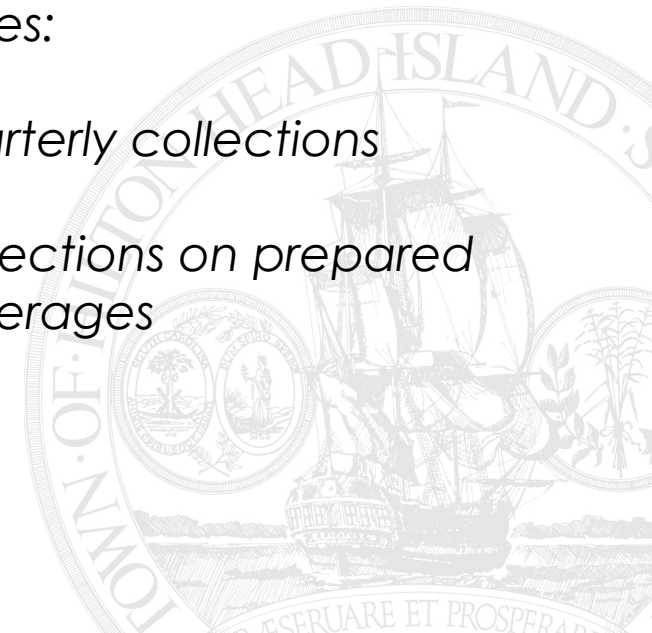
Collections by month



*Hospitality taxes:*

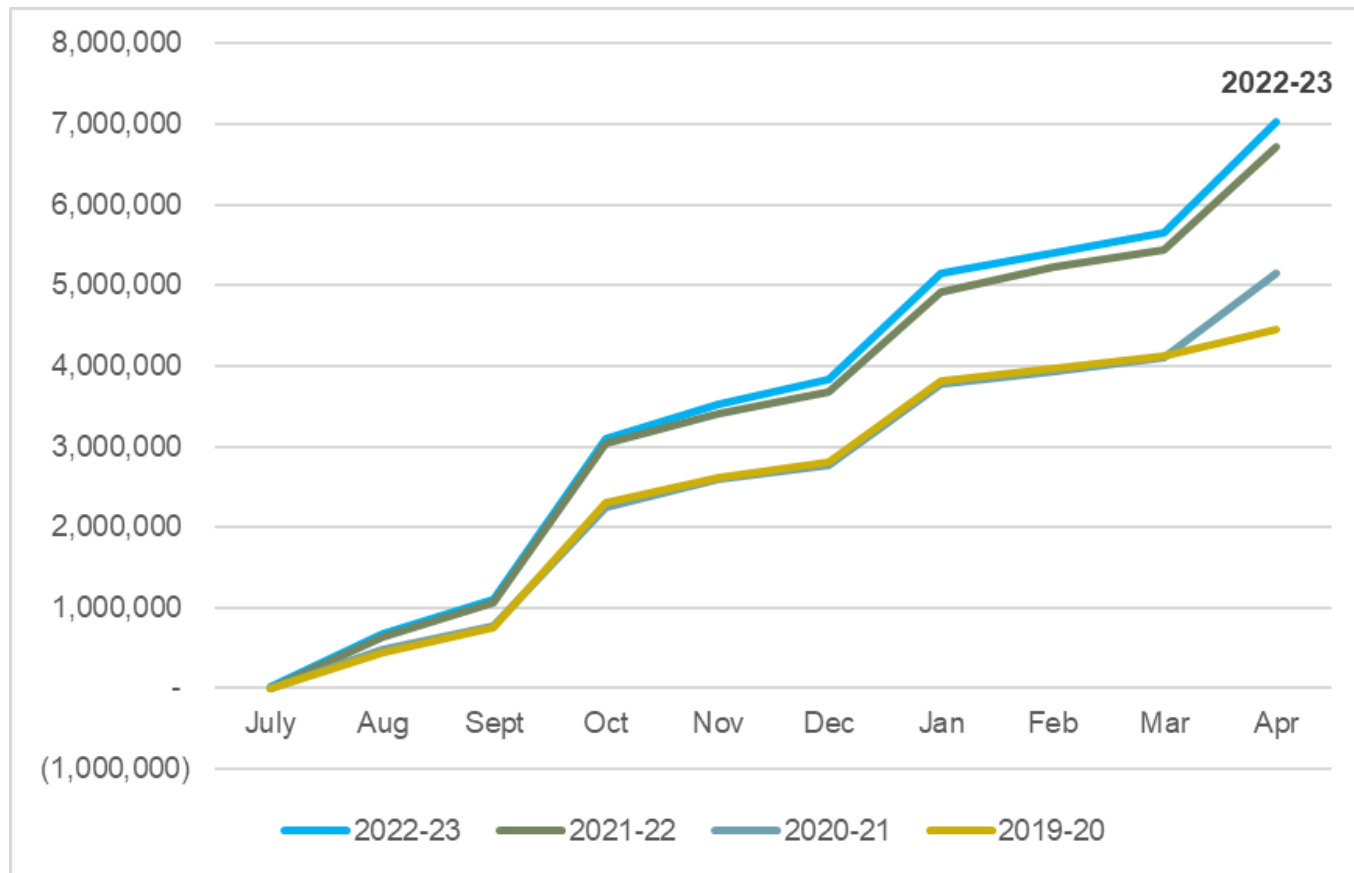
*Generally quarterly collections*

*Based on collections on prepared food and beverages*

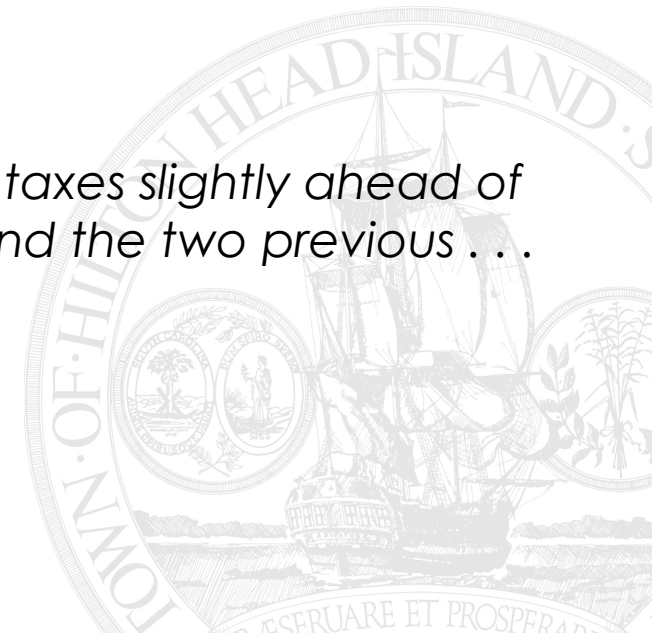


# Hospitality Tax Collections

YTD Collections by month



*YTD Hospitality taxes slightly ahead of last year . . . And the two previous . . .*





# Short Term Rentals – by the numbers . . .

STRs by the numbers as of April 2023:

We hit another milestone of 6,000 STR Permit applications this week.

There are 31,470 listings on the island with 14,682 total active STR Listings.

We had 439 new listings hit the market in April. GovOS team remains very busy monitoring and identifying properties. The identification process is tedious at best.

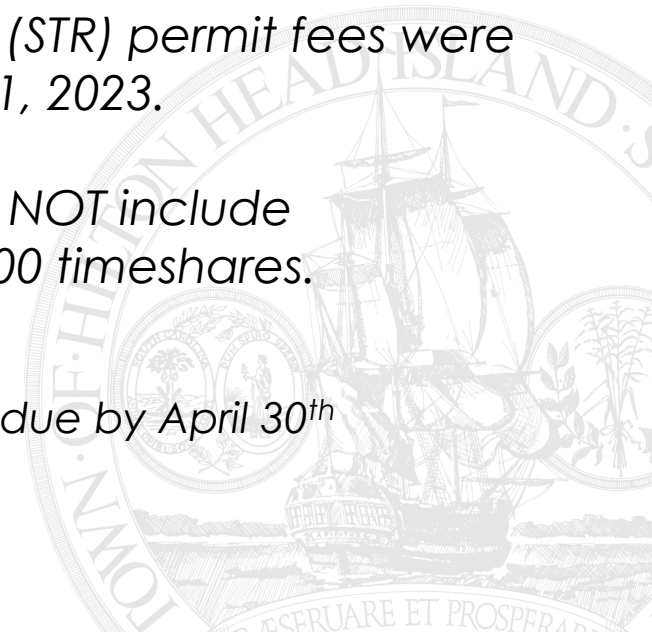
Average daily rate remains stable at \$424.47.



*Short Term Rentals (STR) permit fees were effective January 1, 2023.*

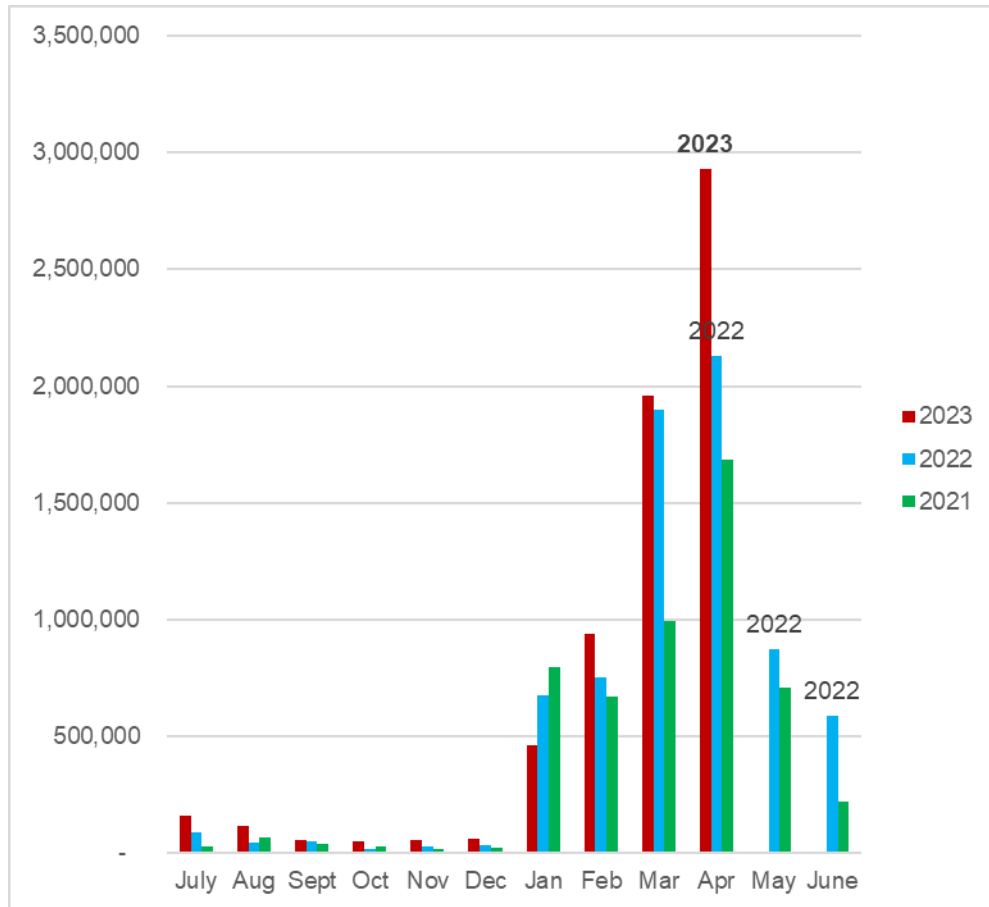
*These numbers do NOT include approximately 3,000 timeshares.*

*Business licenses are due by April 30<sup>th</sup>*



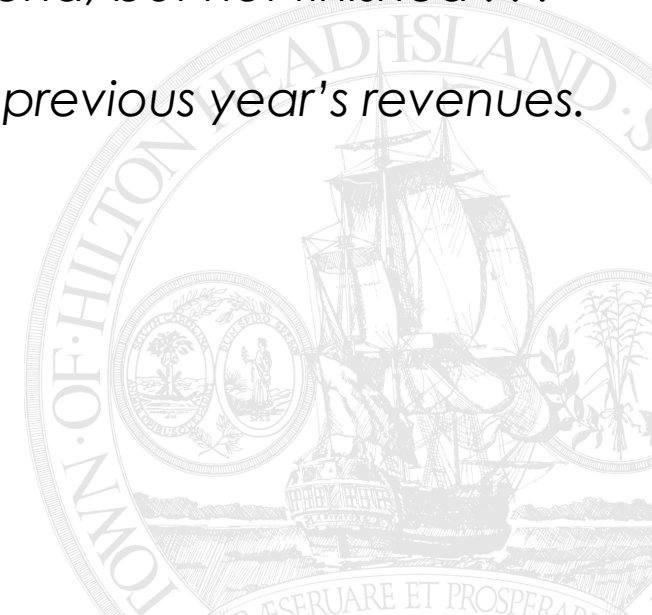
# Business Licenses

## Comparisons of Collections – Local



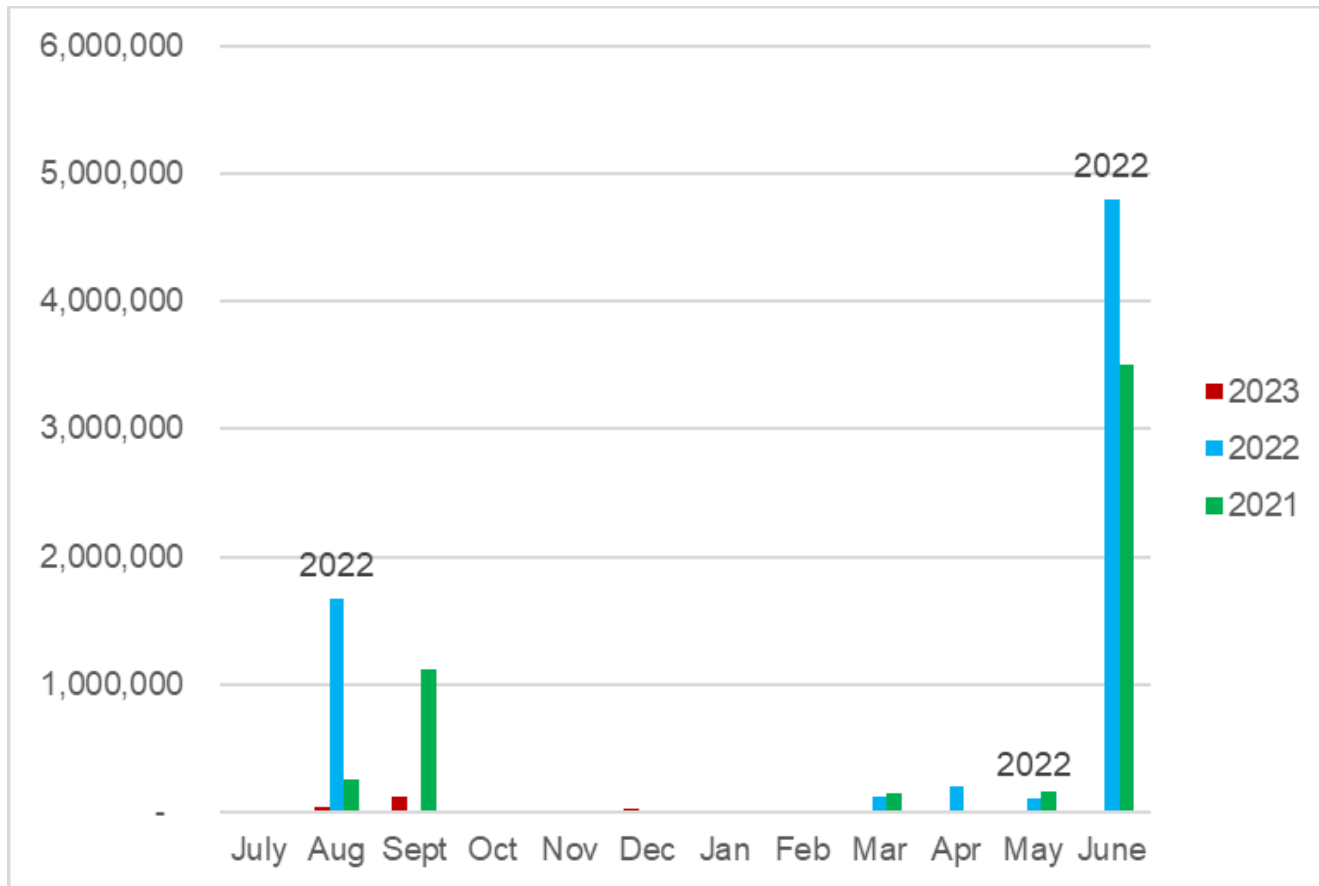
*A good trend, but not finished . . .*

*Based on previous year's revenues.*



# Business Licenses

## Comparisons of Collections – State (MASC)

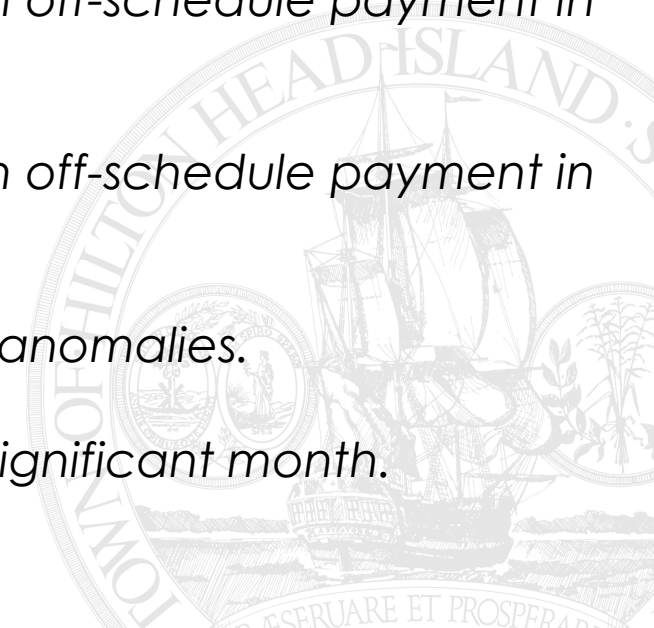


*2022 had an off-schedule payment in August*

*2021 had an off-schedule payment in September*

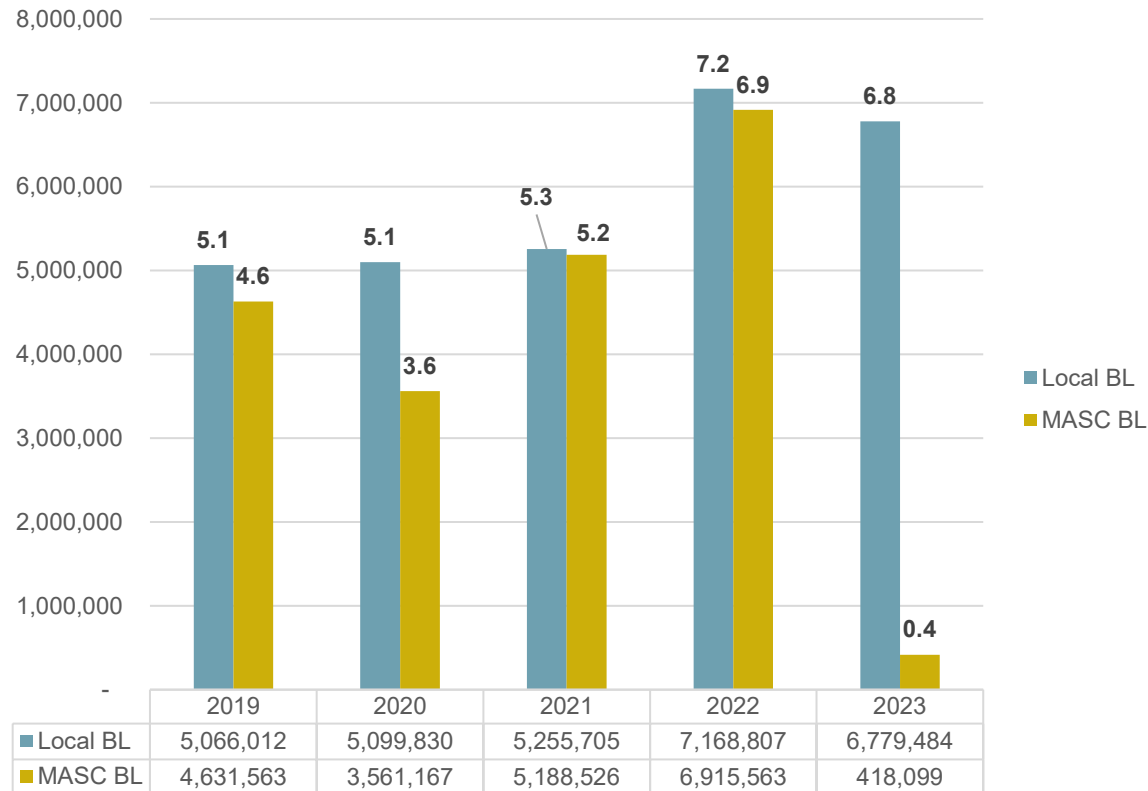
*These were anomalies.*

*June is the significant month.*



# Business Licenses

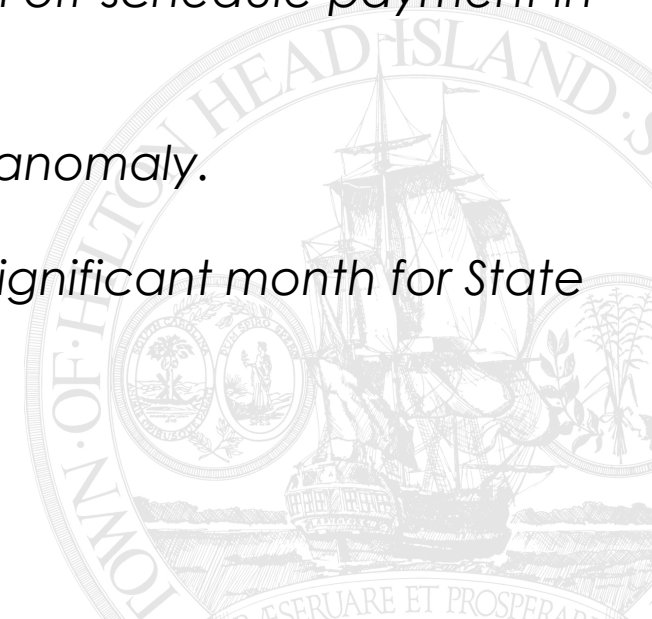
## Comparisons of Collections – Local and State (MASC)



*2022 had an off-schedule payment in August*

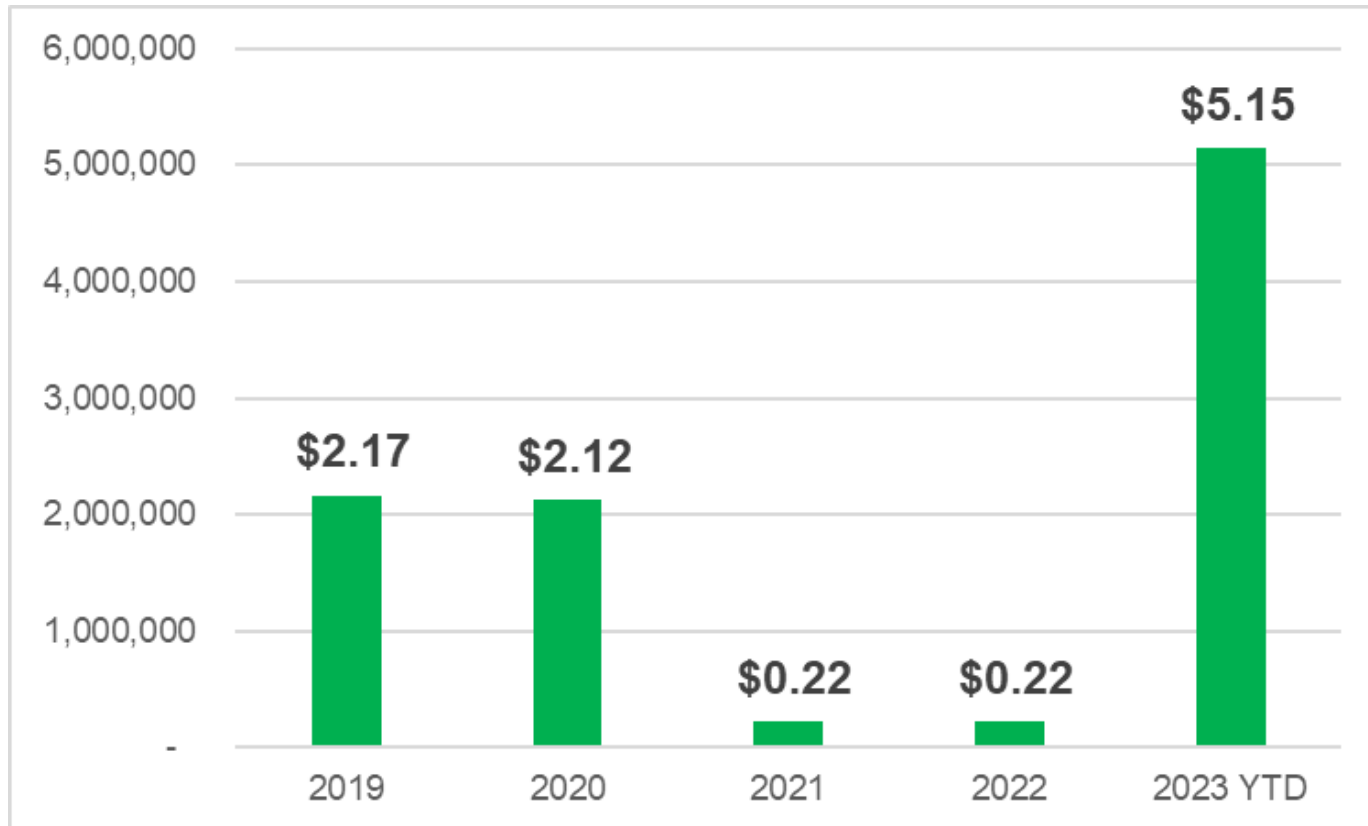
*This was an anomaly.*

*June is the significant month for State collections.*



# Interest Earnings

(In millions)

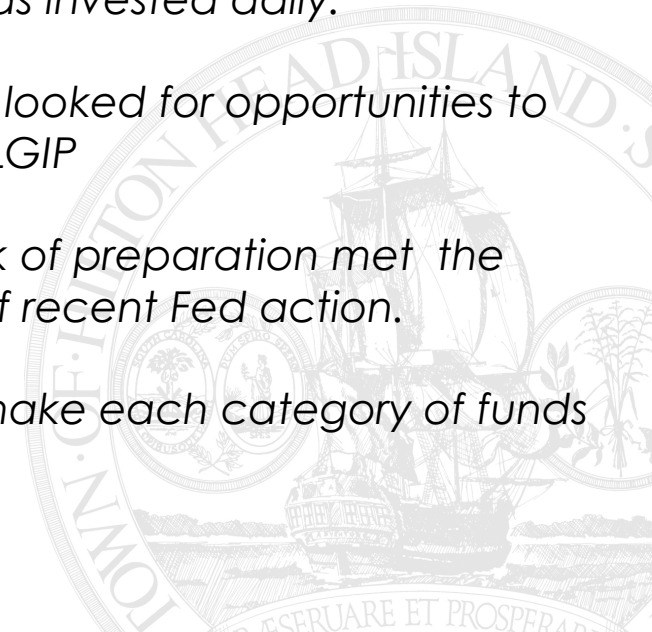


*The Town has worked diligently to maximize funds invested daily.*

*The Town has looked for opportunities to pair with the LGIP*

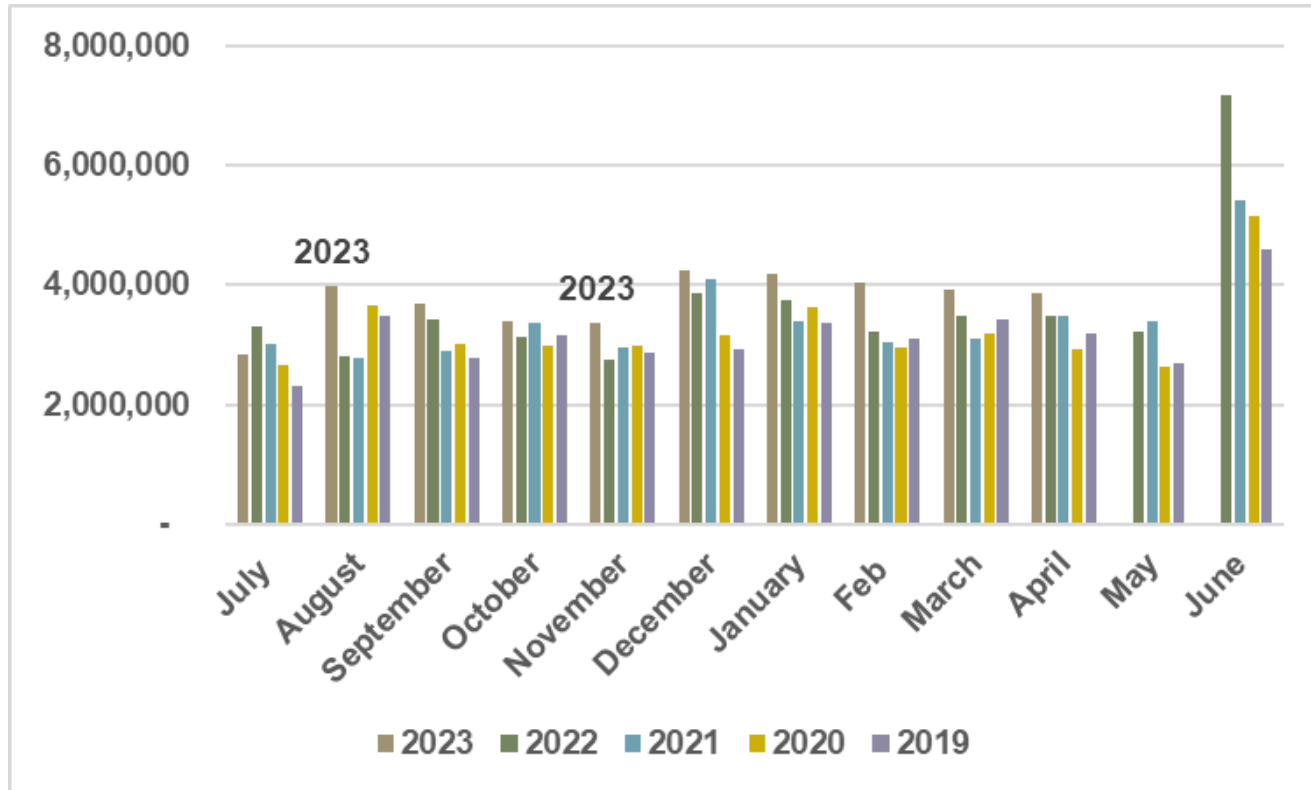
*The hard work of preparation met the opportunity of recent Fed action.*

*These funds make each category of funds go further.*



# General Fund Expenditures

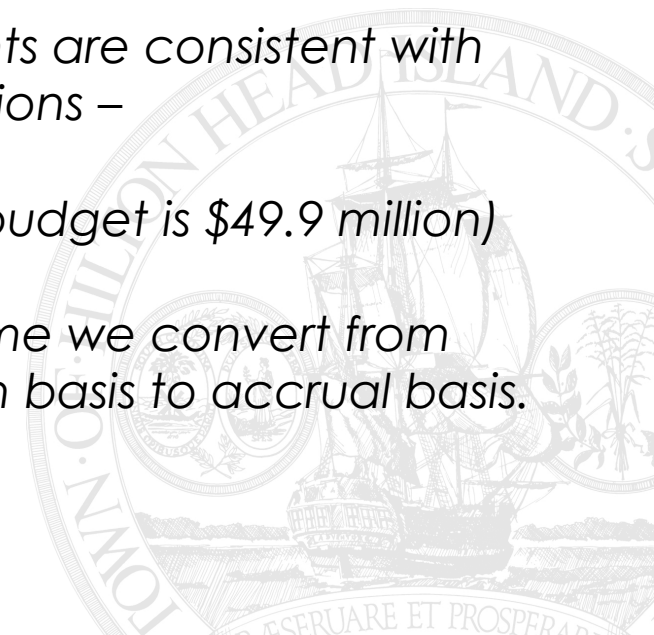
## Monthly Spending by Year



*These amounts are consistent with our expectations –*

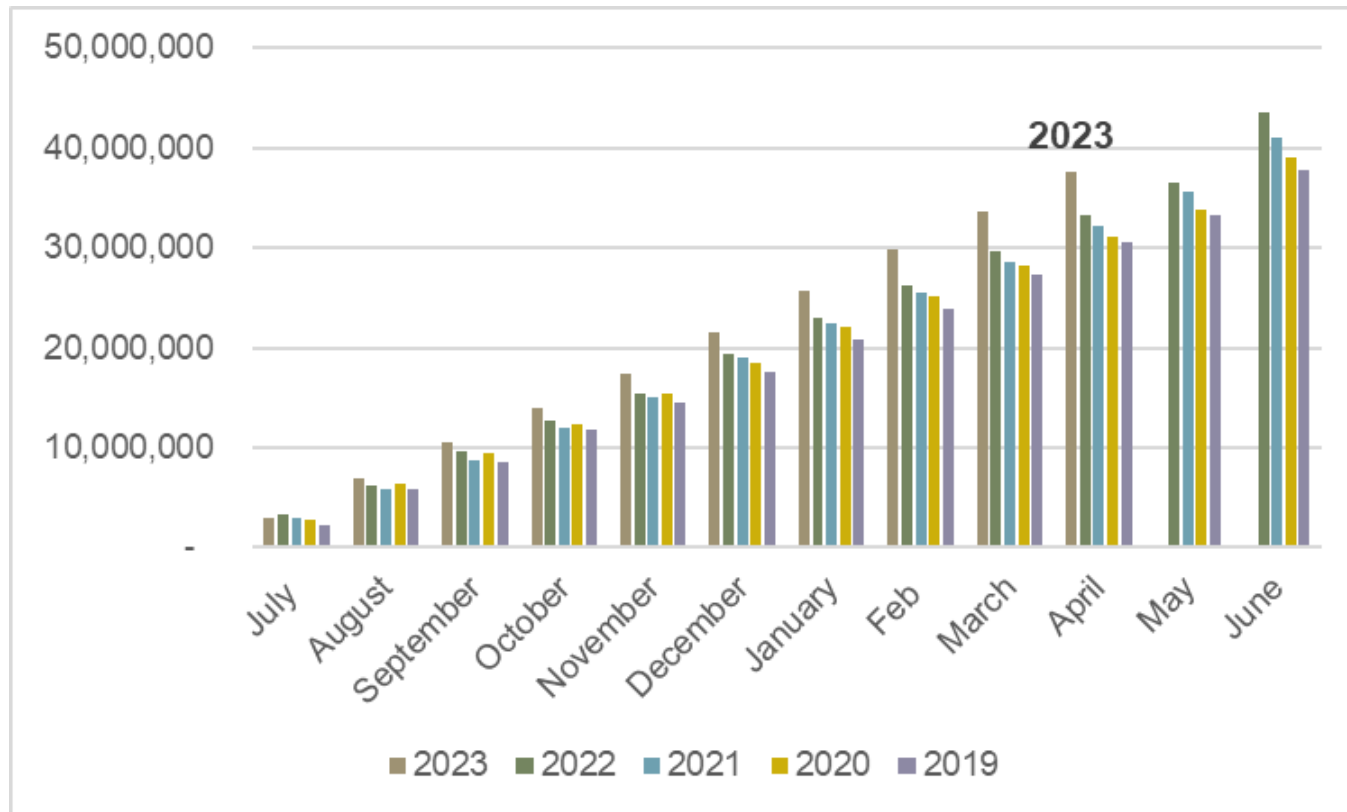
*(our annual budget is \$49.9 million)*

*June is the time we convert from primarily cash basis to accrual basis.*



# General Fund Expenditures

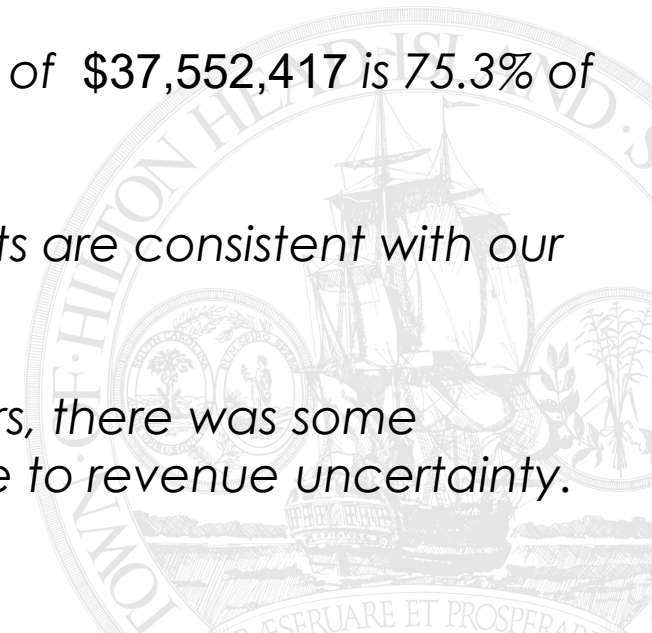
Year to Date Spending by Year



YTD spending of \$37,552,417 is 75.3% of Budget

These amounts are consistent with our expectations.

In recent years, there was some hesitation due to revenue uncertainty.



# General Fund Expenditures

## Year to Date Spending to Budget

	YTD			Actual
	April	Budget	Remaining	As a %
	FY 23	2023	Budget	of Budget
Town Council/Manager	1,600,186	1,982,142	381,956	80.7%
Administrative/Legal	4,441,429	5,476,980	1,035,551	81.1%
Finance	1,900,414	2,289,132	388,718	83.0%
Community Development	2,773,683	4,435,784	1,662,101	62.5%
Public Projects and Facilities	5,959,686	7,999,772	2,040,086	74.5%
Sheriff and Beach Services	2,269,817	3,343,480	1,073,663	67.9%
Fire Rescue	14,771,464	18,426,538	3,655,074	80.2%
Townwide	3,835,736	5,907,588	2,071,852	64.9%
<b>Total General Fund Spending</b>	<b>37,552,415</b>	<b>49,861,416</b>	<b>12,309,001</b>	<b>75.3%</b>



*Spending 75.3% of budget while 83.3% of the year has passed.*

*These amounts are consistent with our expectations and the budget.*

*We expect even less of the budget un-utilized this year.*



# General Fund Expenditures

## Year to Date Spending by Category to PYD

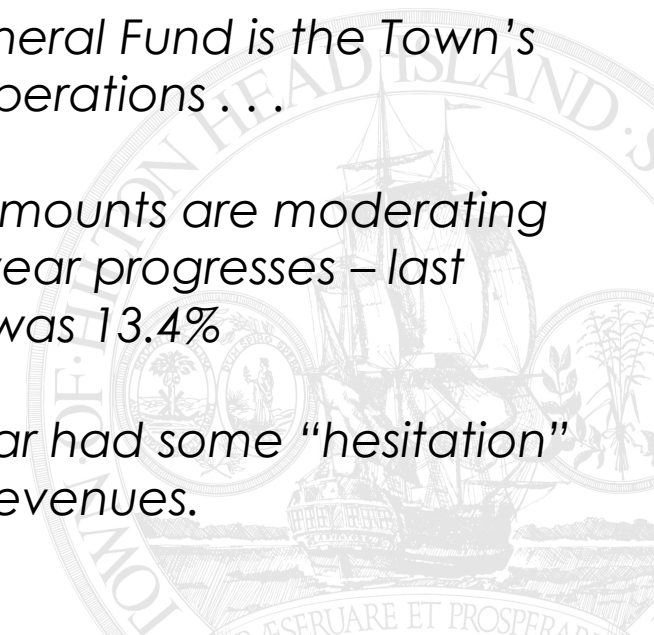
	YTD	YTD	\$	%
	April	April	Increase	Increase
	FY 23	FY 22	(Decrease)	(Decrease)
Town Council/Manager	1,600,186	1,413,828	186,358	13.2%
Administrative/Legal	4,441,429	3,719,428	722,001	19.4%
Finance	1,900,414	1,588,705	311,709	19.6%
Community Development	2,773,683	2,375,150	398,533	16.8%
Public Projects and Facilities	5,959,686	4,990,145	969,541	19.4%
Sheriff and Beach Services	2,269,817	1,995,336	274,481	13.8%
Fire Rescue	14,771,464	13,090,340	1,681,124	12.8%
Townwide	3,835,736	4,065,064	(229,328)	-5.6%
<b>Total General Fund Spending</b>	<b>37,552,415</b>	<b>33,237,996</b>	<b>4,314,419</b>	<b>13.0%</b>



The General Fund is the Town's basic operations . . .

These amounts are moderating as the year progresses – last month was 13.4%

Prior year had some “hesitation” about revenues.



# General Fund Activity

We funded operations and set aside some reserves.

**YTD**

**June**

**FY 22**

Revenues and Transfers In

47,029,868

Expenditures and  
Transfers Out

43,641,527

Net General Fund Activity

**3,388,341**



*Revenue collections continued their strength – but moderated from earlier this year . . .*

*The spending side of the budget was within budget albeit more fully utilized.*

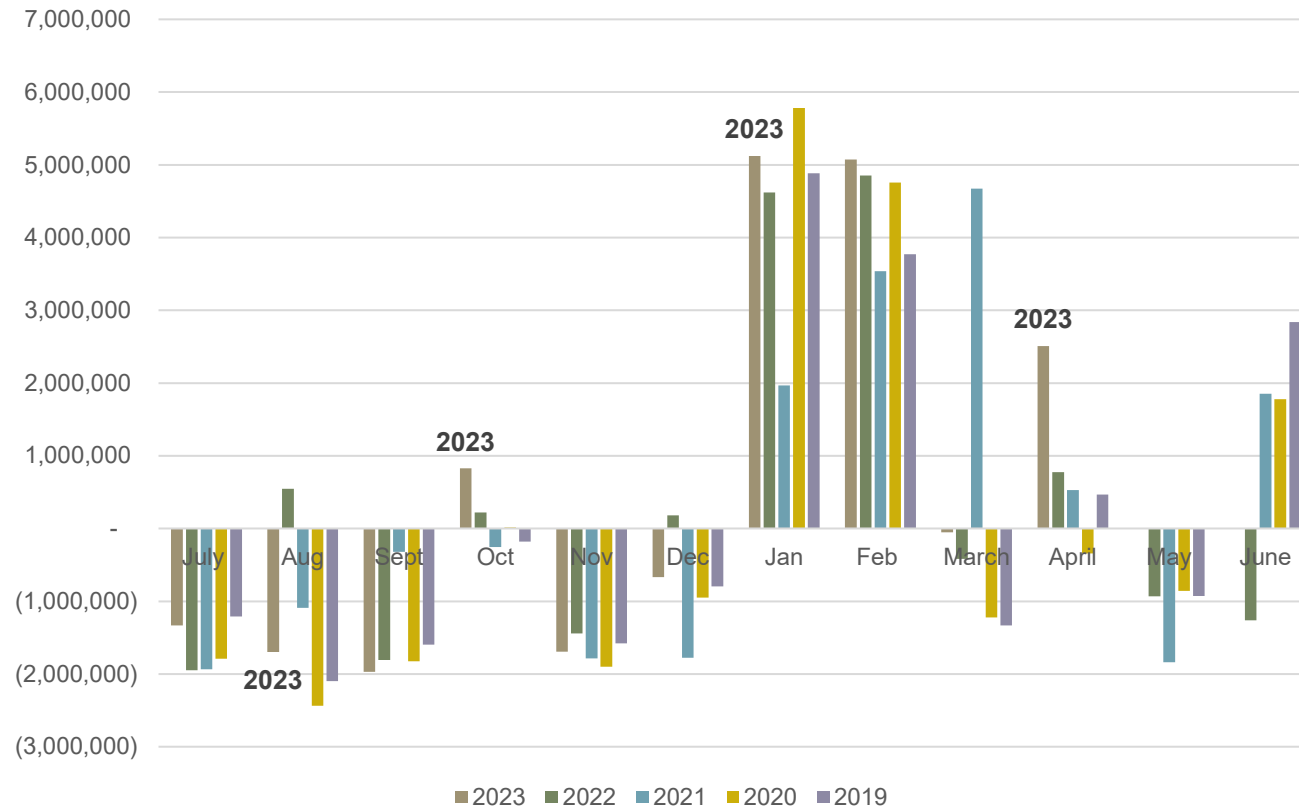
**Another contribution toward:**

- a. readiness for hurricanes, or**
- b. economic downturns, or**
- c. the future of the Town**

**Later, \$1 million set aside by Town Council for housing purposes.**

# General Fund

## Monthly net revenues and expenditures



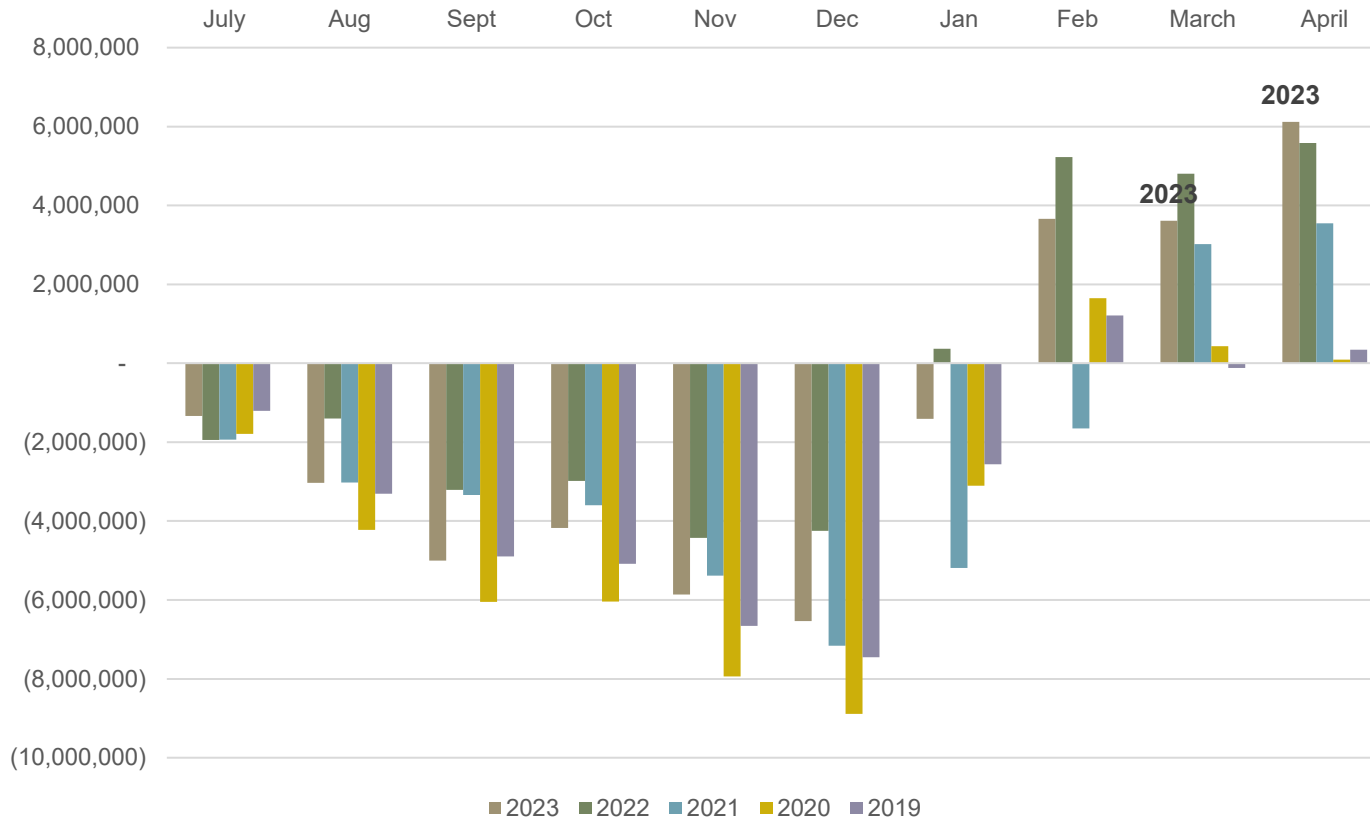
*This schedule shows the traditional temporary draw from reserves until taxes are received.*

*These amounts are consistent with our expectations and the budget.*

*This chart shows the normal reversal to the positive near February.*

# General Fund

## Monthly YTD revenues and expenditures



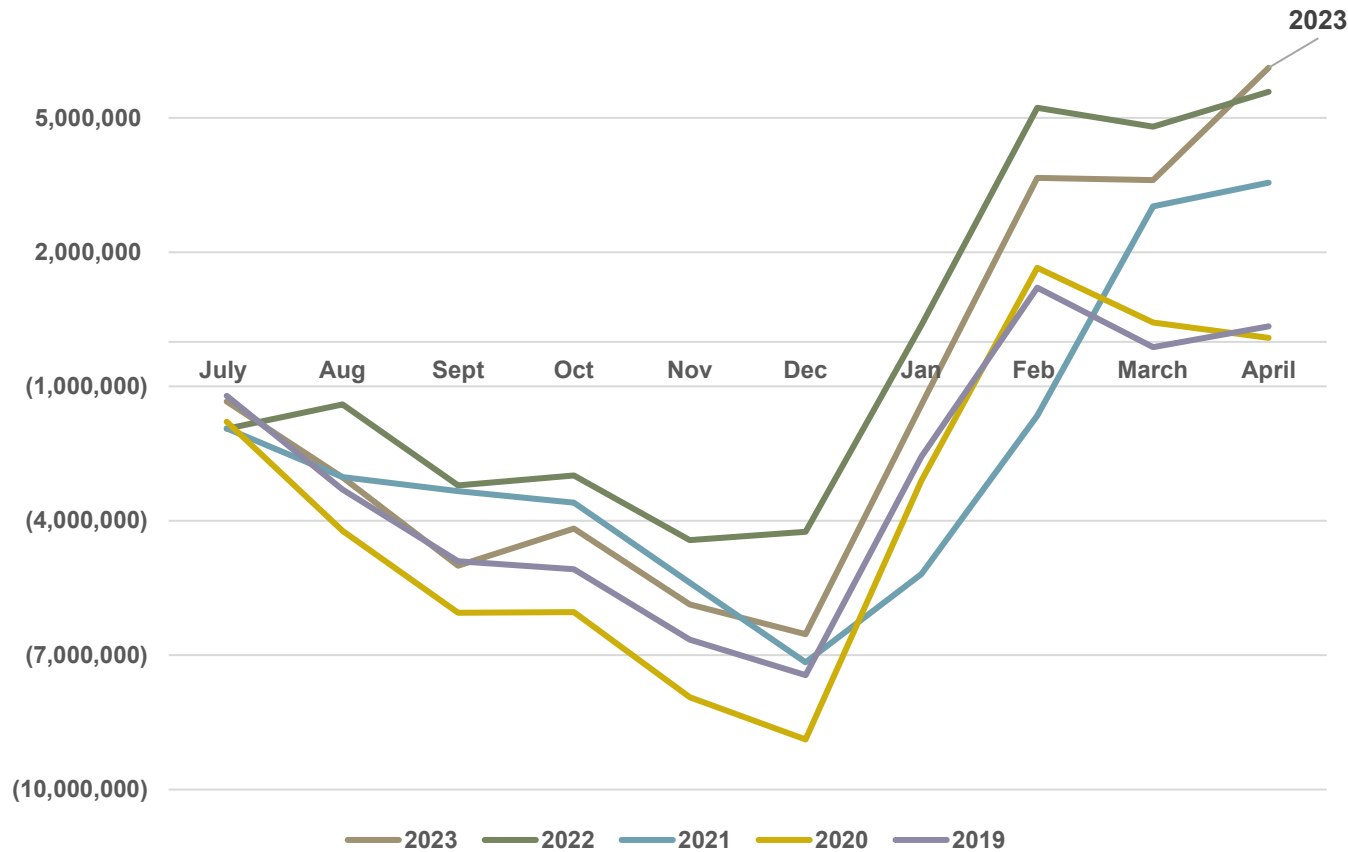
The Town can add to (deduct from) reserves each month depending on collections and operations.

In February, our YTD revenues exceeded expenditures.

This pattern emphasizes one need for fund balances (7 months temporarily in the red)

# General Fund

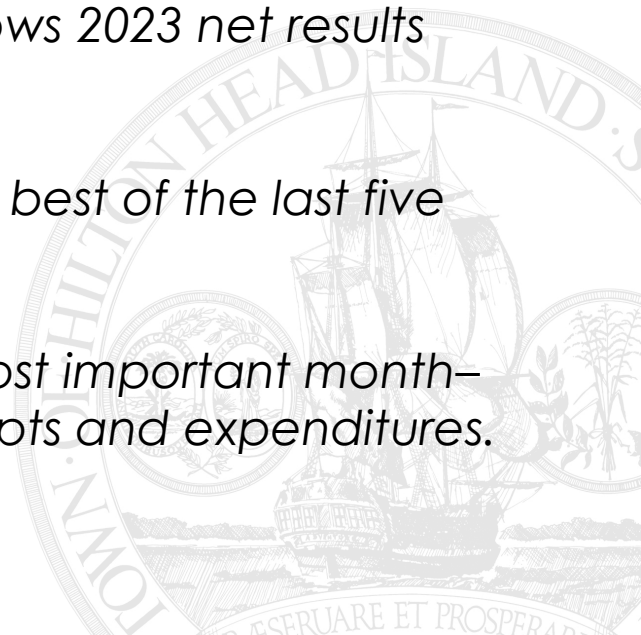
## YTD net revenues and expenditures



*This graph shows 2023 net results through April.*

*YTD, this is the best of the last five years.*

*June is the most important month—both for receipts and expenditures.*



# Debt Service Fund Activity

We have provided for our debt payments.



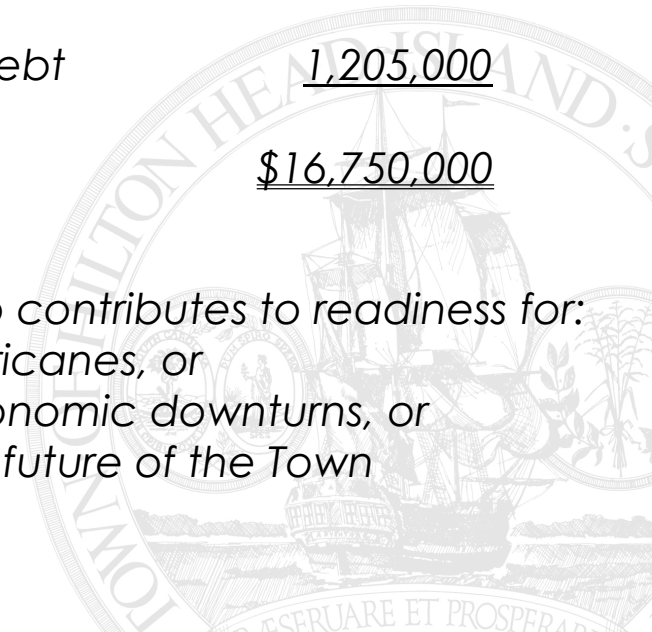
	<b>YTD</b>
	<b>April</b>
	<b>FY 23</b>
Revenues for Debt Payments	14,878,018
Actual Debt Payments	14,227,015
	651,003

The principal scheduled to be paid is:

General Government	\$15,545,000
Stormwater Debt	<u>1,205,000</u>
Total	<u>\$16,750,000</u>

This activity also contributes to readiness for:

- a. hurricanes, or
- b. economic downturns, or
- c. the future of the Town



# Debt Service Fund Activity

We are reducing our debt again this year –



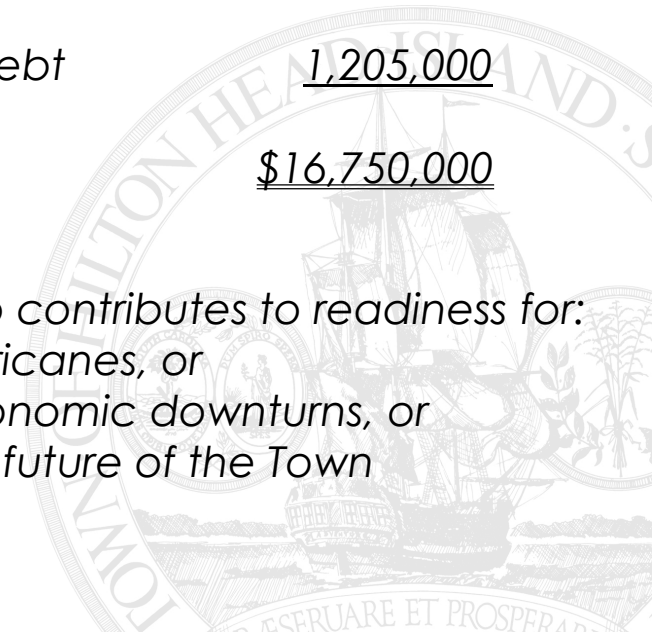
	<b>YTD</b>
	<b>April</b>
	<b>FY 23</b>
Expenditures – for Debt Payments	14,227,015
Budgeted Debt Payments	19,374,081
	<b>73.4%</b>

The principal scheduled to be paid is:

General Government	\$15,545,000
Stormwater Debt	<u>1,205,000</u>
<b>Total</b>	<u><b>\$16,750,000</b></u>

This activity also contributes to readiness for:

- a. hurricanes, or
- b. economic downturns, or
- c. the future of the Town



# We provided Stormwater services



Stormwater Services Fund Activity includes:

**YTD**

**April**

**FY 23**

Revenues and Transfers In

5,136,287

Expenditures and Transfers Out

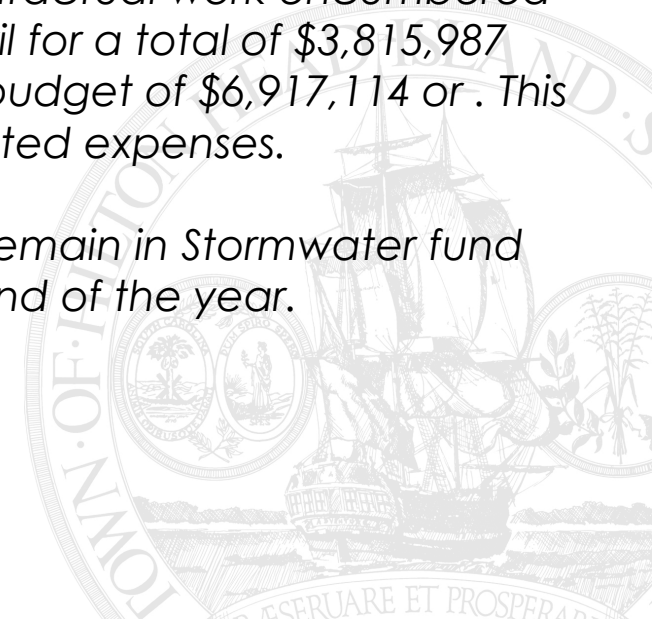
2,227,345

Net SWU Activity

**2,908,942**

The Stormwater fund has a number of projects in the pipeline. There is another \$1,588,641 in contractual work encumbered at the end of April for a total of \$3,815,987 committed of a budget of \$6,917,114 or . This is 55.2% of budgeted expenses.

Funds not spent remain in Stormwater fund balance at the end of the year.





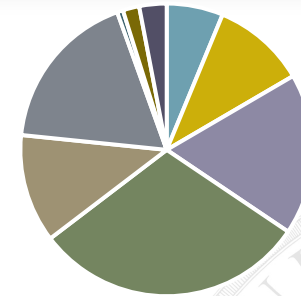
# We made progress on the CIP

For the Capital Improvements Plan



## Budget

Beach Management	2,850,000
Pathway Management	4,724,000
Roadway Management	8,153,842
Park Management	13,795,235
Facility & Equipment Management	5,472,650
Fleet Management	8,166,945
Land Acquisition	300,000
Stormwater	830,000
Housing	1,379,261
<b>Total CIP</b>	<b><u>45,671,933</u></b>



- Beach Management
- Roadway Management
- Facility & Equipment Management
- Land Acquisition
- Housing
- Pathway Management
- Park Management
- Fleet Management
- Stormwater

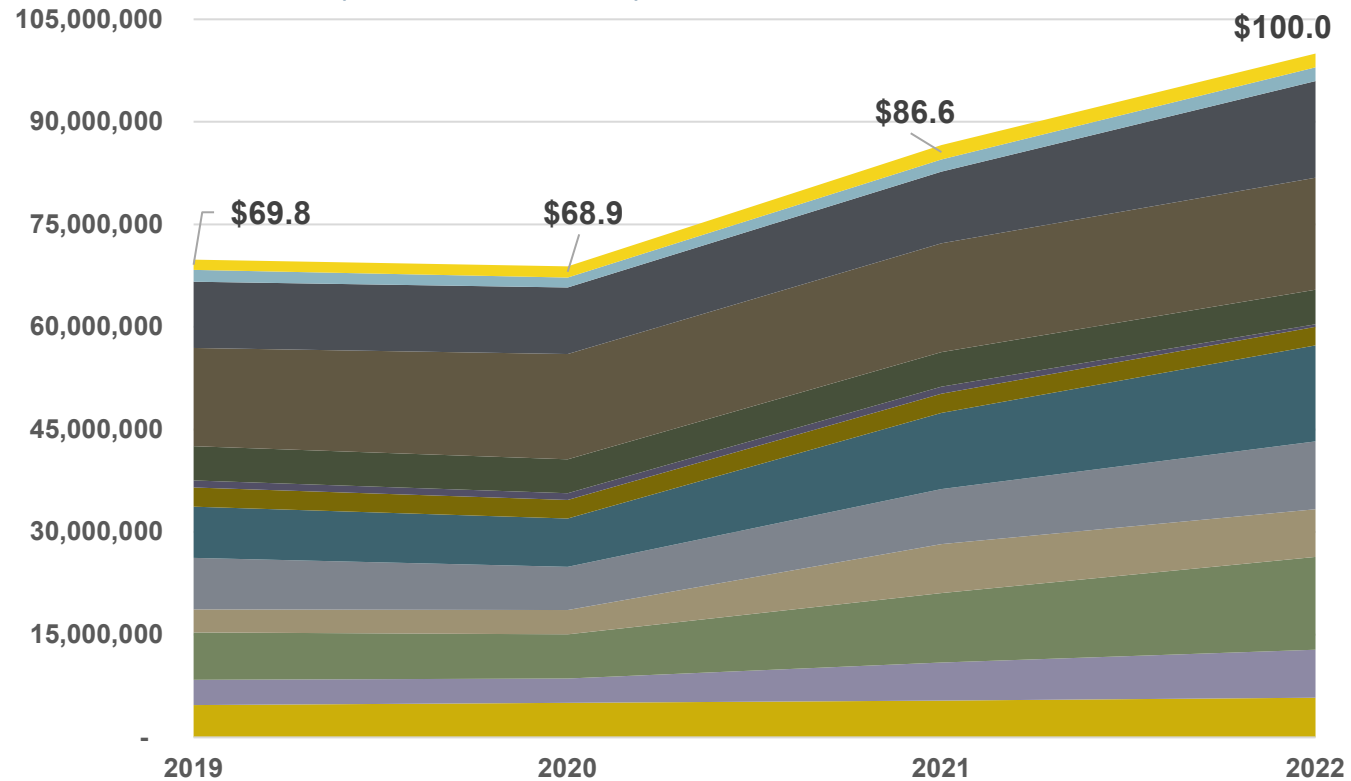
<https://www.hiltonheadislandsc.gov/cip/>



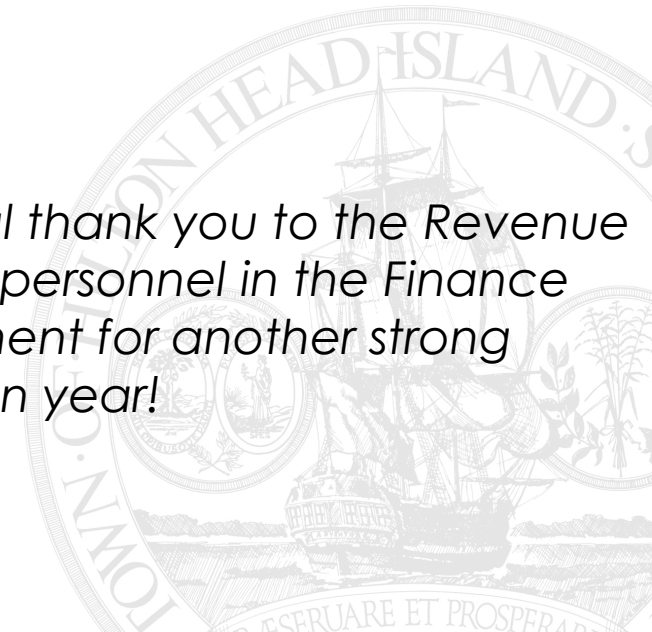
# Revenue Trends (in millions)

Revenues rebounded from initial COVID shutdowns

(selected revenues)

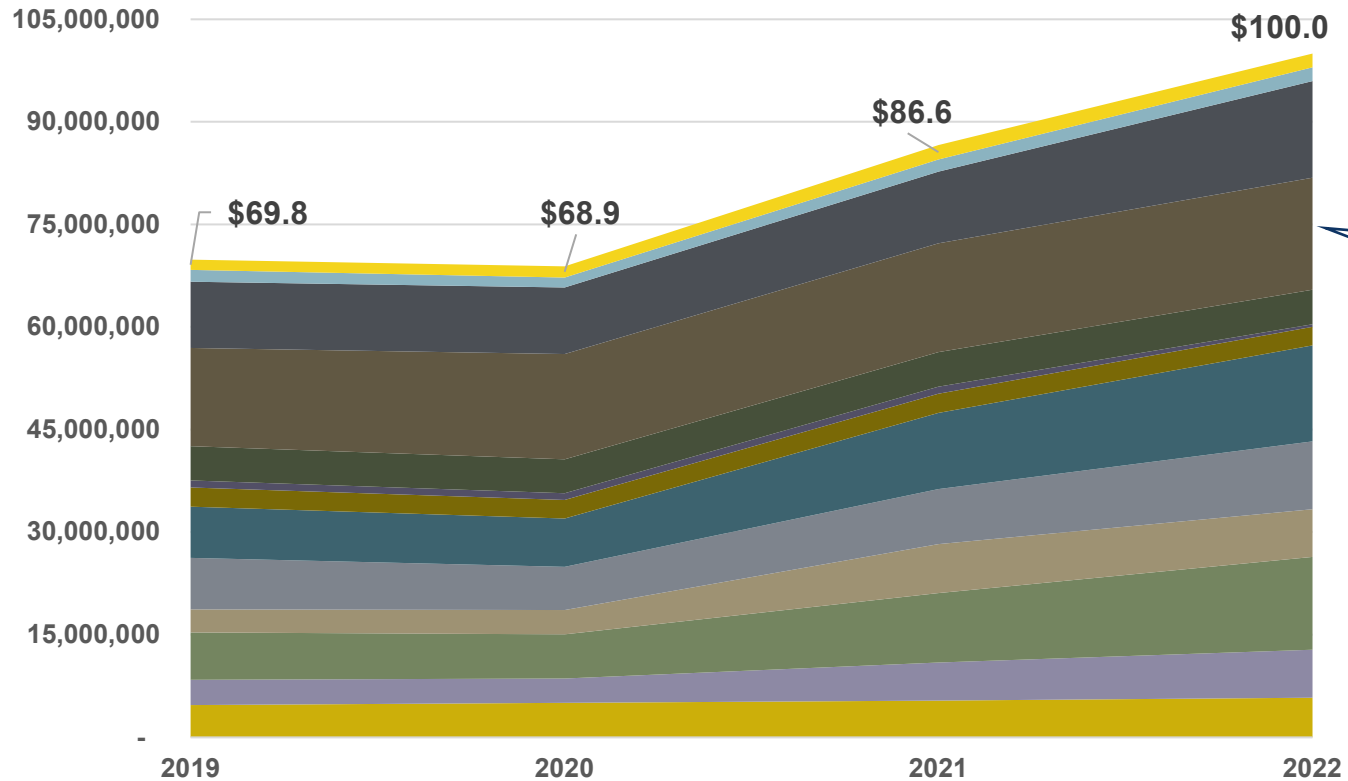


A special thank you to the Revenue Services personnel in the Finance Department for another strong collection year!



# Revenue Trends (in millions)

Revenues rebounded from initial COVID shutdowns



\$73.1 million collected YTD

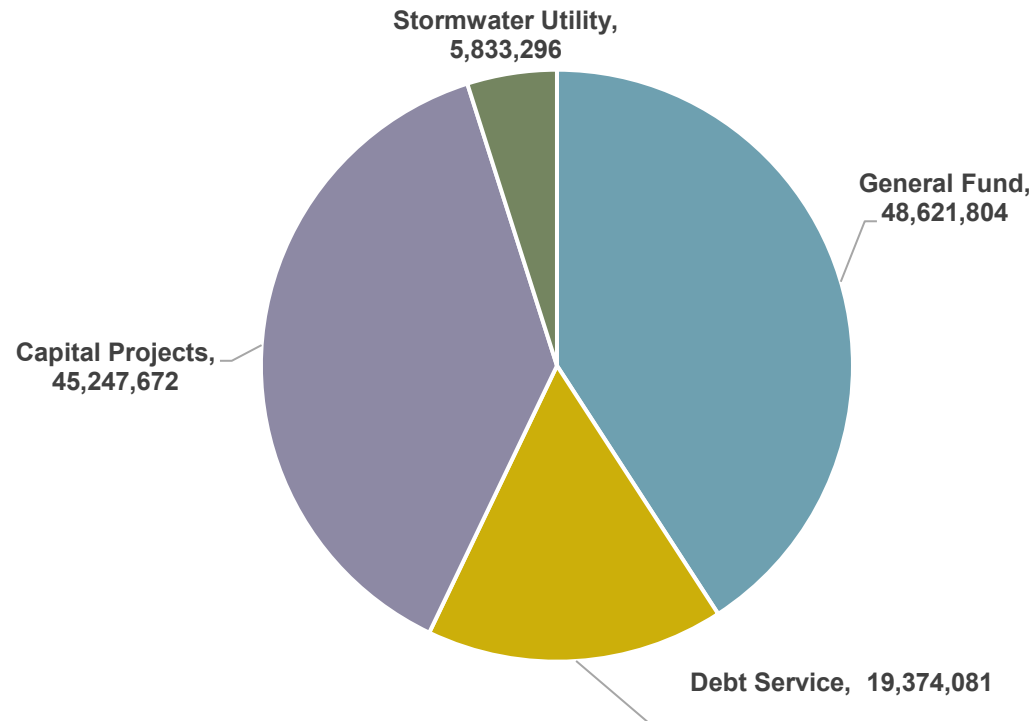
Of these 13 revenues.

*A special thank you to the Revenue Services personnel in the Finance Department for another strong collection year!*

# Budget Summary

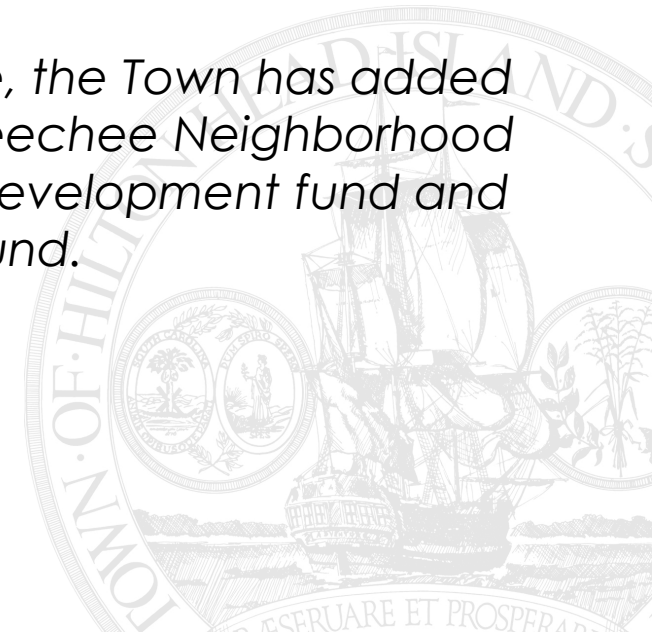
Investing in the Island – through the CIP

Adopted \$119 Million Budget for 2023



*The Debt burden is modest.*

*Since this time, the Town has added the Gullah Geechee Neighborhood Community Development fund and the Housing fund.*



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# In summary:

## Our 2023 results are looking to finish favorably:

1. Revenues seem to **mostly** hold on to 2022 levels
2. Town operations are within budget
3. Capital Plan is moving forward – investing in the Island
4. The Town continues to reduce its debt
5. Temporarily added to fund balance in FY 2022 for CIP investments in 2023 and 2024
6. We should add to the General Fund Balance on June 30, 2023, when all receipts and invoices are in.



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# Key Issues

## **Our financial updates will continue to:**

1. Keep Town Council informed.
2. Facilitate timely responses (if needed).
3. Revenues have provided for operations.
4. Revenues have provided for CIP to move forward.
5. Expenditures are within budget expectations.



## **Looking ahead:**

1. We will continue to monitor FY 2023 spending and revenues.
2. The Town Manager has proposed a FY 2024 budget.
3. We will keep Town Council up-to-date on financial status.

# Comments or Questions?



## For more information

*Be sure to check the monthly financial statements and the Annual Reports on the Town's website!*

