



The Town of Hilton Head Island Regular Town Council Meeting

Wednesday, November 3, 2010

4:00 P.M.

AGENDA

As a Courtesy to Others Please Turn Off all Cell Phones and Pagers During the
Town Council Meeting

- 1) **Call To Order**
- 2) **Pledge to the Flag**
- 3) **Invocation**
- 4) **FOIA Compliance** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) **Proclamations and Commendations**
 - a. Tom Seibt
- 6) **Approval of Minutes**
 - a. Regular Town Council Meeting of October 19, 2010
- 7) **Report of the Town Manager**
 - a. Town Manager's Items of Interest
 - b. Proposed 2011 Town Council meeting dates
- 8) **Reports from Members of Council**
 - a. General Reports from Council
 - b. Report of the Intergovernmental Relations Committee – George Williams, Chairman
 - c. Report of the Personnel Committee – Drew Laughlin, Chairman
 - d. Report of the Planning and Development Standards Committee – Bill Ferguson, Chairman
 - e. Report of the Public Facilities Committee – John Safay, Chairman
 - f. Report of the Public Safety Committee – Bill Harkins, Chairman
- 9) **Appearance by Citizens**
- 10) **Unfinished Business - none**

11) New Business

a. Resolution endorsing a Regional Economic Development Plan

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, endorsing the creation of a Regional Economic Development Plan by the Lowcountry Economic Network and Alliance.

b. First Reading of Proposed Ordinance No. 2010-27

First Reading of Proposed Ordinance No. 2010-27 providing for the issuance and sale of not exceeding \$25,000,000 in aggregate principal amount of the Town of Hilton Head Island, South Carolina, Stormwater System Revenue Bonds, in one or more series, for the purpose of financing certain capital improvements and refinancing all or a portion of the \$17,000,000 original principal amount, Town of Hilton Head Island, South Carolina, Stormwater System Revenue Bonds, Series 2002, and other matters related thereto; and providing for severability and an effective date.

c. Recommendation to direct staff to initiate a franchise agreement with Republic Services

Consideration of a recommendation that the Town Council of the Town of Hilton Head Island direct staff to initiate a franchise agreement with Republic Services for island-wide waste and recycling collection and initiate a contract with Sonoco Recycling for processing of recyclables from single family residences and cart-based multi-family properties.

d. First Reading of Proposed Ordinance No. 2010-24

First Reading of Proposed Ordinance No. 2010-24 granting Republic Services, Inc. a non-exclusive franchise for the purpose of conducting waste hauling and recycling collection for single family residential and certain multi-family residential units within the Town of Hilton Head Island; and providing for severability and an effective date.

e. First Reading of Proposed Ordinance No. 2010-25

First Reading of Proposed Ordinance No. 2010-25 to amend Title 9 (Health and Sanitation) of the Municipal Code of the Town of Hilton Head Island, South Carolina by amending Chapter 6 (Recycling) Section 9-6-10, Section 9-6-20, and Section 9-6-30; and providing for severability and an effective date.

12) Executive Session

a. Land Acquisition

13) Adjournment

COMMENDATION

*A Commendation of the Town of Hilton Head Island
Honoring*

Tom Seibt

WHEREAS, the Town of Hilton Head Island is honoring Tom Seibt for his heroic actions during a choking incident

WHEREAS, Tom Seibt is a resident of Hilton Head Island and

WHEREAS, Tom Seibt came to the aid of his neighbor at Paddelboat Lane

WHEREAS, Tom Seibt assessed the situation and determined his neighbor was choking

WHEREAS, Tom Seibt initiated and performed the Heimlich maneuver

WHEREAS, Tom Seibt was able to clear the airway

WHEREAS, Tom Seibt provided heroic actions and life saving care to a member of our community.

NOW, THEREFORE, I, Thomas D. Peeples, Mayor of the Town of Hilton Head Island, South Carolina, on behalf of the Town Council, do hereby commend Tom Seibt for his quick thinking and life saving actions.

Thomas D. Peeples, Mayor

THE TOWN OF HILTON HEAD ISLAND
REGULAR TOWN COUNCIL MEETING

Date: Tuesday, October 19, 2010

Time: 4:00 P.M.

Present from Town Council: Thomas D. Peeples, *Mayor*; Ken Heitzke, *Mayor Pro-Tem*, George Williams, Bill Harkins, Drew Laughlin, Bill Ferguson, *Councilmen*.

Absent from Town Council: John Safay, *Councilman*

Present from Town Staff: Greg DeLoach, *Assistant Town Manager*; Charles Cousins, *Director of Community Development*; Scott Liggett, *Director of Public Projects and Facilities*; Susan Simmons, *Finance Director*; Nancy Gasen, *Director of Human Resources*; Jill Foster, *Deputy Director of Community Development*; Teri Lewis, *LMO Official*; Tom Fultz, *Director of Administrative Services*; Julian Walls, *Facilities Manager*; Brian Hulbert, *Staff Attorney*; Jennifer Lyle, *Assistant Town Engineer*; Anne Cyran, *Senior Planner*; Vicki Pfannenschmidt, *Administrative Assistant*

Present from Media: Tom Barton, *Island Packet*

- 1) **CALL TO ORDER**
- 2) **PLEDGE TO THE FLAG**
- 3) **INVOCATION**
- 4) **FOIA COMPLIANCE** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) **PROCLAMATIONS AND COMMENDATIONS**
- 6) **APPROVAL OF MINUTES**
 - a. **Regular Town Council Meeting of October 5, 2010**

Mr. Harkins moved to approve. Mr. Heitzke seconded. The motion was approved by a vote of 5-0-1. Mr. Williams abstained because he was not present at the October 5, 2010 meeting.
- 7) **REPORT OF THE TOWN MANAGER**
 - a. **Town Manager's Items of Interest**

The Assistant Town Manager reported on some items of interest.
 - b. **Proposed 2011 Town Council meeting dates**

The Mayor asked if they should vote on these meeting dates now and Mr. DeLoach suggested that this was for their review tonight. It would be on the agenda for the Nov. 3rd meeting. The Mayor agreed.
 - c. **October 2010 Quarterly Report**

Mr. DeLoach noted that the quarterly report was included with the agenda package for Town Council's review.
- 8) **REPORTS FROM MEMBERS OF COUNCIL**
 - a. **General Reports from Council**

None.

b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

Chairman Williams observed that the November 16 Town Council had been rescheduled to November 17 in anticipation of a mayoral election run-off and suggested that they also change the date for the Intergovernmental Committee meeting to November 17. The Mayor agreed.

c. Report of the Personnel Committee – Drew Laughlin, Chairman

Mr. Laughlin advised that the person newly appointed to the Design Review Board had to resign for health reasons. The Personnel Committee would be scheduling interviews to fill this vacancy.

d. Report of the Planning and Development Standards Committee – Bill Ferguson, Chairman

They had a meeting yesterday and heard presentations from the City of Greenville and City of Columbia on their economic development programs. There was no action taken. Mr. Ferguson stated he was very impressed with both cities' development programs. He thought Town should review these programs to determine what elements we could use and learn from their strategies.

e. Report of the Public Facilities Committee – John Safay, Chairman

In Mr. Safay's absence, Mr. Williams noted that there were items on this evening's agenda from the Public Facilities Committee.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

The next meeting of the Public Safety Committee will be on November 1st.

9) APPEARANCE BY CITIZENS

None.

10) UNFINISHED BUSINESS

- a. Second Reading of Proposed Ordinance No. 2010-20 authorizing the Town Council for the Town of Hilton Head Island for the issuance and sale of not to exceed \$13,000,000.00 General Obligation Refunding Bonds, Series 2010B, or such other appropriate series designation, of the Town of Hilton Head Island, South Carolina; fixing the form and certain details of the bonds; authorizing the Town Manager or his lawfully authorized designee to determine certain matters relating to the bonds; providing for the payment of the bonds and the disposition of the proceeds thereof; and other matters relating thereto; and providing for severability and an effective date.**

Mr. Heitzke moved to approve. Mr. Williams seconded. Mayor Peebles explained that this was money to be utilized for the renourishment project at the area commonly referred to as "the heel" of the Island. The motion was approved by a vote of 6-0.

- b. Second Reading of Proposed Ordinance No. 2010-21 to amend the budget for the Town of Hilton Head Island, South Carolina, for the fiscal year ending June 30, 2010; to provide for the expenditure of certain funds; and to allocate the sources of revenue for the said funds; and providing for severability and an effective date.**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 6-0.

- c. **Second Reading of Proposed Ordinance No. 2010-22 to amend the budget for the Town of Hilton Head Island, South Carolina, for the fiscal year ending June 30, 2011; to provide for the budget appropriations of prior year encumbrances; to provide for the expenditure of certain funds; and to allocate the sources of revenue for the said funds; and providing for severability and an effective date.**

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 6-0.

- d. **Second Reading of Proposed Ordinance No. 2010-23 to amend the budget for the Town of Hilton Head Island, South Carolina for the fiscal year ending June 30, 2011; to provide for the budgeted appropriations of prior year budget roll-forwards; to provide for the expenditure of certain funds; and to allocate the sources of revenue for the said funds; and providing for severability and an effective date.**

Mr. Heitzke moved to approve. Mr. Harkins seconded. Mr. Williams took issue with some beach renourishment funding that had been rolled forward for several years. He was concerned that Town was simply rolling these unspent funds into a new budget year until the need arose to expend them. He said this was another example of budgeting policies that needed to be addressed at the next Council workshop retreat.

Susan Simmons, Finance Director, responded to Mr. Williams' concerns. She noted that what happened in the Capital Projects funds, particularly in the beach maintenance area, there were a lot of environmental impact issues that could significantly delay a project from its original inception date. Specifically to these items, there will be extra monitoring costs that will be incurred and she believed that this would be the final year that these amounts would be rolled forward. Mr. Williams replied that his point was that if there was an unspent line item not contractually obligated then the line item needed to go away and projected expenditures should be budgeted as a new item. Ms. Simmons agreed with Mr. Williams that there was always room for improvement.

The motion was approved by a vote of 5-1. Mr. Williams was opposed.

11) NEW BUSINESS

- a. **Consideration of a recommendation that the Town Council for the Town of Hilton Head Island approve conveyance of 14.08 acres of land off Marshland Road known as the Patterson Estate Parcels to the Hilton Head Habitat for Humanity in exchange for their pledge to build a road to public standards and to extend all water, sewer and telecommunications utilities to the subdivision in such a way as to benefit all land owners in the subdivision.**

Mr. Heitzke moved to approve. Mr. Ferguson seconded.

Curtis Coltrane made a brief presentation providing the history of this proposal. He noted that this was a neighborhood that had residents living in it now, off an unimproved dirt road, and the utilities did not extend back to the lots where people were currently living. What was being proposed was an exchange of the property for Habitat providing these needed public facilities and a paved road that would serve the subdivision and all the residents in it. All that was before the Council Members today was the concept and whether or not they

wished to go forward with this proposal.

The Mayor added that he and Mr. Ferguson had met with the property owners on Thelma Drive regarding the affordable housing initiative before the Habitat organization was contacted to determine their interest and all but one was in favor of it.

Mayor Peebles asked for comments from the public. Numerous attendees approached the dais to express their opinions regarding this proposal; some of whom were in favor of it and others were opposed.

Mr. Williams noted that they just heard a presentation the day before involving public/private partnerships for economic development. While this proposal was different; it wasn't that much different. He noted that Council over the years has made numerous efforts to find affordable housing opportunities. This was a great chance for the Town to help Habitat accomplish something that everyone could be very proud of.

Mayor Peebles noted that an affirmative vote tonight was basically "to get the ball rolling." The next step would be to consider rezoning of the property, which at that point, they would be reviewing a site plan and how many homes were proposed to be built and everyone would know specifically what it was that the Town was doing. Mr. DeLoach added that the next step, assuming approval tonight, would be to work out the details of a contract with Habitat which would take several weeks. And then, the rezoning hearings would follow.

Mr. Harkins said he thought what they were talking about here was the potential of leveraging a public asset and the question was: would the result be beneficial for the Town and for all the parties concerned. He was very much in favor of this type of project with the understanding that a full economic analysis be done.

Mr. Heitzke added that he agreed with his fellow council members' comments. He recalled that when the property was originally purchased, there were no plans for the non-marsh-side property off Marshland Rd. The marsh-side lots were meant to be developed into a park, but the neighborhood did not want one.

Mr. Ferguson noted that being born on Hilton Head Island and having lived here before the vast majority of the people who moved here; the native islanders welcomed people from various nationalities, ethnic groups and hopefully, one day we would all live in harmony.

Mr. Laughlin commented that he had received a lot of calls and comments from his constituents, on both sides of this issue. The property they were considering has very little value to the town for other purposes; they have an organization with a lot of credibility for helping people develop these kinds of products. At the end of the day, this was an opportunity for our community to demonstrate the generosity of its spirit.

Mayor Peebles believe that this was a great thing for our Town. They have been looking for a long time to try to find a property that could accommodate the needs for a Habitat community on Hilton Head Island. This was a trade: The Habitat group was coming forward to make improvements at a value of a quarter of a million dollars to put in road, water and sewer. It was not a gift. Land values in that area today were nowhere near what they once were and the Mayor felt the value of the land was overstated by those who spoke tonight in opposition to the proposal. He noted that this program was not a hand out but rather a hand up and he was gladly voting in favor of it.

The motion was approved by a vote of 6-0.

b. Consideration of a recommendation that the Town Council for the Town of Hilton Head Island endorse the concept of leasing the old Gullah Flea Market properties to allow the development of a Cancer Survivor Park, with conditions.

The Mayor asked the applicant to provide new information that the Council needed to be made aware of before he asked for a motion. The applicant, Sandy Stern, reported that she regretted to announce that the R.A. Bloch Foundation had notified her by letter dated Oct. 19, 2010 that they were putting a moratorium on the funding of future cancer survivor parks.

Ms. Stern asked the Council to keep a window of opportunity open to perhaps reconsider a future Cancer Survivor park in Hilton Head Island.

Mr. Heitzke moved to defer the item to a future date if and when the Foundation lifted the moratorium on funding of the park. Mr. Ferguson seconded. The motion was approved by a vote of 6-0.

c. Consideration of a recommendation that the Town Council for the Town of Hilton Head Island approve the use of designated Town owned properties, as endorsed by the Disaster Recovery Commission (DRC), for the collection, reduction, storage, and management of disaster related debris.

Mr. Heitzke moved to approve. Mr. Ferguson seconded. The motion was approved by a vote of 6-0.

EXECUTIVE SESSION

Assistant Town Manager Greg DeLoach said that he needed an executive session for contractual matters related to land acquisition and for legal matters related to the Town vs. South Carolina DHEC.

At 5:30 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Williams seconded. The motion was approved by a vote of 6-0.

Mayor Peeples called the meeting back to order at 5:50 p.m. and stated there was no business to take up as a result of executive session.

13) ADJOURNMENT

At 5:51 p.m., Mr. Heitzke moved to adjourn. Mr. Williams seconded. The motion was approved by a vote of 6-0.

Secretary

Approved:

Thomas D. Peeples, Mayor

Items of Interest

November 3, 2010

I. TOWN NEWS

- a) Cary Gaffney was recently elected to the Board of Directors for the Southeastern Storm Water Association (SESWA). Each state has two members who serve a two-year term. The board is primarily responsible for setting broad policies and approving the association's budget. The association promotes the effective management of storm water systems throughout the southeastern United States, shares information and research on storm water issues, and monitors legal and regulatory issues affecting storm water management.

(Contact: Jeff Buckalew, Town Engineer – phone 341-4772)

- b) Senior Firefighter Matt Kabala has completed his Masters in Business Administration degree from the University of SC on August 7, 2010.

(Contact: Lavarn E. Lucas, Fire Chief – phone 681-5153)

- c) Installation has begun on the new ground mounted street signs. Speedi-Signs Hilton Head, Environmental Graphics, Inc, is under contract to install 60 signs for \$28,000 (\$467 per sign). The signs are being installed in the Mathews Drive and Bridge to the Beach corridors. Signs were installed last week along portions of Mathews Drive. In addition to the new decorative style and the use of both upper and lower case letters, the sign lettering exhibits enhanced retro-reflectivity to allow greater visibility at night. Ultimately all of the ground mounted street signs outside of the gated communities will be replaced with this new style.



(Contact: Jeff Buckalew, Town Engineer – phone 341-4772)

II. NOTEWORTHY EVENTS

a) Some of the upcoming meetings at Town Hall:

- Parks & Recreation Commission – November 4, 3:30 p.m.
- Design Review Board – November 9, 1:15 p.m.
- Planning & Development Standards Committee – November 15, 4:00 p.m.
- Intergovernmental Relations Committee – Wednesday, November 17, 2:00 p.m.*
- Town Council – Wednesday, November 17, 4:00 p.m.*

*Rescheduled from Tuesday, Nov. 16 due to potential election run-off.

(Meetings subject to change and/or cancellation. Please visit the Towns' website at www.hiltonheadislandsc.gov for meeting agendas)

2010 Hilton Head Island Events

Date	Time	Event	Location
Sat., Nov. 6, 2010	8:00 am – 10:00 am	Hilton Head Island Bridge Run	Crossings Park / Cross Island Parkway
	9:00 am - 4:00 pm	HHI Concours d'Elegance & Motoring Festival	Honey Horn
Sun., Nov. 7, 2010	9:00 am - 4:00 pm	HHI Concours d'Elegance & Motoring Festival	Honey Horn
Thurs., Nov. 11, 2010	10:00 am - 12:00 pm	Veterans Day Observance	Shelter Cove Veterans Memorial Park
Sat., Nov. 13, 2010	12:00 pm - 5:00 pm	SCBT Oyster Festival	Shelter Cove Community Park
Sun., Nov. 14, 2010	12:00 pm - 5:00 pm	SCBT Oyster Festival	Shelter Cove Community Park



TOWN OF HILTON HEAD ISLAND

2011 TOWN COUNCIL MEETING DATES

January 4	July 5
January 18	July 19 - cancelled
February 1	August 2
February 15 – cancelled*	August 16 - cancelled
March 1	September 6
March 15	September 20 **
April 5	October 4
April 19	October 18
May 3	November 1
May 17	November 15
June 7	December 6
June 21	December 20

Meetings are generally held the 1st and 3rd Tuesday of the month at 4:00 PM, subject to change with notice.

***MASC Legislative Action Day is Feb. 15-16, 2011**

***September 20th meeting will start at 4:30 p.m. because of the Constitution Day Celebration preceding the Town Council meeting.**

MEMORANDUM

TO: Town Council

FROM: Thomas D. Peebles, Mayor

RE: Proposed Resolution regarding the Regional Economic Development Plan for Beaufort and Jasper Counties

DATE: October 29, 2010

CC: Stephen G. Riley, C.M., Town Manager
Gregory D. DeLoach, Assistant Town Manager
Charles Cousins, Community Development Director
Shawn Colin, Comprehensive Planning Manager

Consideration: That Town Council adopt the proposed Resolution (as approved at the October 27, 2010 Town Council Planning and Development Standards Committee Meeting) endorsing the creation of a regional economic development plan by the Lowcountry Economic Network and Alliance.

Summary: This proposed Resolution endorses the creation of a regional economic development plan and will commit appointed Town staff and at least one council member to the regional planning process.

Background: The Lowcountry Economic Alliance met on Wednesday, October 20 from 9-11 a.m. at the Jasper County Council Chambers in Ridgeland. As you recall, Town Council joined the Alliance over a year ago. The Alliance Board of Directors is composed of elected officials and business leaders. The meeting was attended by, among others, our Legislative Delegation, Town and City Mayors and Managers, a few Town and City Council members and the Jasper County Council Chairman. The Lowcountry Economic Alliance is the regional economic development arm of Jasper and Beaufort counties formed by their respective County Councils to create an economic vision for the region, attract new business and diversify the tax base.

The purpose of the meeting was to discuss the merits of establishing, under the auspices of the Lowcountry Economic Network and Alliance, a Regional (Beaufort/Jasper) effort to address and promote Economic Development. Our discussion surfaced the fact that what is often good for one county is good for another and that if we approach e.g. the South Carolina General Assembly or Congress with one voice, then more and better attention will result. The Alliance seeks to create a regional economic development plan (attached is a synopsis of the sections of a proposed Regional Economic Development Plan for Beaufort and Jasper Counties) and by adoption of this Resolution, the Town of Hilton Head Island will be a part of that process.

At the October 27, 2010 Meeting, the Town Council Planning and Development Standards Committee vote to recommend that Town Council adopt the proposed Resolution.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ENDORSING THE CREATION OF A REGIONAL ECONOMIC DEVELOPMENT PLAN BY THE LOWCOUNTRY ECONOMIC NETWORK AND ALLIANCE.

WHEREAS, the Lowcountry Economic Alliance is the regional economic development arm of Jasper and Beaufort counties formed by their respective County Councils to create an economic vision for the region, attract new business and diversify the tax base; and

WHEREAS, one of the Alliance's main goals is to relieve the tax burden on residential property owners by attracting commercial and industrial development; and

WHEREAS, the Lowcountry Economic Network is the nonprofit, public-private economic development arm of Beaufort County; and

WHEREAS, the Network's goal is to diversify the region's tax base in order to relieve the residential tax burden; and

WHEREAS, the Network serves as the staff and implementation arm of the Alliance; and

WHEREAS, the Town of Hilton Head Island is a member of the Network; and

WHEREAS, the S.C. Department of Commerce set aside money in South Carolina's 2008-09 and 2009-10 budgets to support the Alliance; and

WHEREAS, the Alliance's board of directors is made up of elected officials and business leaders from Jasper and Beaufort counties; and

WHEREAS, the board of directors of both the Alliance and Network have endorsed a diversified economic vision for Jasper and Beaufort counties based on the sectors of Aeronautics and Defense, Ports and Logistics, Medical, Green Industry and the Knowledge Intensive Cluster; and

WHEREAS, both Jasper and Beaufort counties have partnered on several Multi-County Industrial Park districts in the two-county region; and

WHEREAS, elected officials in both Jasper and Beaufort counties and their respective municipalities have acknowledged a need and desire to work toward the creation of a regional economic development plan.

NOW THEREFORE, BE IT, AND IT HEREBY RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THAT it endorses the creation of a regional economic development plan and will commit appointed staff and at least one council member or designee to the regional planning process.

MOVED, APPROVED, AND ADOPTED THIS _____ DAY OF _____, 2010.

Thomas D. Peoples, Mayor

ATTEST:

By: _____
Betsy Mosteller, Town Clerk

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

Regional Economic Development Plan for Beaufort and Jasper counties

Section I – Lowcountry Vision Statement

Section II – Regional Conditions

This section will outline the conditions of Beaufort and Jasper counties to include our natural resources, demographics, workforce, transportation, infrastructure and housing. The regional conditions section also will take a comprehensive look at our educational partners on the public school and higher education levels.

Section III – Problems, Needs and Opportunities

A look at the issues that need to be addressed by the region to include economic diversity, workforce, education, government regulations, land-use, infrastructure, financing and regional partnerships.

Section IV – Economic Development Partners

A list of partner organizations and what role they play within the economic development framework of Beaufort and Jasper counties, to include local government, education, utilities, private landowners, nonprofits and the state and federal governments.

Section V – Regional Economic Development Strategy (Sectors)

A look at the four focus groups highlighted for economic development for Beaufort and Jasper counties and the opportunities and challenges of each.

- Economic development goals
- Short-term analysis of sectors
- Long-term analysis of sectors
- Implementation plan to promote sectors
- Implementation barriers and means to overcoming the barriers
- Performance measurement and evaluation plan
- Implementation schedule

Section VI – Regional Economic Development Strategy (Sites)

A comprehensive overview of sites, both publicly and privately held, that have been highlighted as opportunities for economic development.

- Short-term needs for each site
- Long-term needs for each site
- Budget to address needs



MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, CM, Town Manager

VIA: Susan M. Simmons, CPA, Director of Finance

DATE: October 22, 2010

RE: Issuance of Stormwater Bonds

Recommendation: Staff recommends issuing bonds in an amount not to exceed \$25,000,000 to advance refund some or all of the outstanding 2002 stormwater bonds and to provide new money in an amount of at least \$7,500,000 to fund ongoing stormwater projects. The debt service on the bonds would be paid from a pledge of the stormwater fees. The refunding portion of the bonds would have the same maturity as the 2002 stormwater bonds (final maturity in 2026). The new money portion of the bonds would have a maturity of 25 years.

Summary: When Council established the stormwater rate for the Town's fiscal year 2011 (tax year 2010) at \$108.70/SFU, the rate included budgeted lines for operations, Town and County administration, debt service on the 2002 bonds, and \$500,000 for new bond debt service costs.

Additionally, the Town's staff, bond counsel and financial advisors believe there is a savings potential from the refunding of the 2002 bonds and/or savings on the proposed 2010 bonds due to benefits gained from legal impacts of refunding the 2002 bonds. Bond counsel will attend the November 3 meeting to explain these details.

The potential refunding of the 2002 stormwater bonds could provide approximately \$125,000 of debt service savings which could be dedicated to payment of the new money portion of the bond issue. With this additional amount available for debt service on the new money bonds, it may be possible for the Town to obtain more than \$7,500,000 to fund ongoing stormwater projects. The exact amount to be saved and the total amount to be borrowed would be determined after the savings have been quantified.

With this proposed ordinance, Council authorizes the issuance of these bonds (new 2010 bonds and refunding of 2002 bonds in one or more series) and delegates authority to the Town Manager to negotiate the terms and conditions of the sale. Staff plans to issue these bonds in December to hopefully take advantage of current laws and federal interest subsidies which are expected to decrease effective January 1. If the results are not favorable, the Town Manager may cancel or postpone the sale. Upon issuance, the results will be reported to Council.

Background:

Staff has identified many needed stormwater projects throughout the Island in parts of the system long owned and operated by the Town as well as in areas recently brought into the Town's stormwater system. Staff believes that it is in the best interest of the Town to stabilize the rate by budgeting for debt service and using bond proceeds to finance projects over the next few years. With the economy producing historically low interest rates, this is a feasible and favorable approach for the Town and its stormwater system.

PROVIDING FOR THE ISSUANCE AND SALE OF NOT EXCEEDING \$25,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, STORMWATER SYSTEM REVENUE BONDS, IN ONE OR MORE SERIES, FOR THE PURPOSE OF FINANCING CERTAIN CAPITAL IMPROVEMENTS AND REFINANCING ALL OR A PORTION OF THE \$17,000,000 ORIGINAL PRINCIPAL AMOUNT, TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, STORMWATER SYSTEM REVENUE BONDS, SERIES 2002; AND OTHER MATTERS RELATED THERETO.

WHEREAS, the Town of Hilton Head Island, South Carolina (the "Town") has heretofore issued \$17,000,000 original principal amount of its Stormwater System Revenue Bonds, Series 2002 (the "Bonds of 2002"), of which \$14,325,000 are outstanding as of November 1, 2010;

WHEREAS, the Town Council of the Town (the "Council") has been advised that as a result of the current interest rate environment in the municipal bond market, the Town may have an opportunity to refinance all or a portion of the Bonds of 2002 and achieve significant interest costs thereby; and

WHEREAS, the Town is presently contemplating undertaking certain capital improvements to the System (as defined herein), more particularly described herein as the "Projects;" and

WHEREAS, the Council has been advised that in order to take advantage of the opportunity to refinance all or a portion of the Bonds of 2002 and/or to finance the Projects, Town Council must enact an appropriate ordinance authorizing the issuance of stormwater system revenue bonds, in one or more series.

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

ARTICLE I

FINDINGS AND DETERMINATIONS

Section 1.01. Certain Findings and Determinations.

The Council hereby finds and determines:

(a) This Ordinance (the "Second Supplemental Ordinance") constitutes and is a "Supplemental Ordinance" within the meaning of such quoted term as defined and used in Ordinance No. 2002-44 enacted by the Council on December 3, 2002, as amended (as so

amended, the “General Bond Ordinance”), and is enacted under and pursuant to the General Bond Ordinance.

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

(c) The Revenues (as defined in the General Bond Ordinance) pledged under the General Bond Ordinance are not encumbered by any lien and charge thereon or pledge thereof, other than (i) the lien and charge thereon and pledge thereof created by the General Bond Ordinance and the First Supplemental Ordinance (as define herein) for payment and security of the Bonds of 2002 and (ii) the lien and charge thereon and pledge thereof created by the General Bond Ordinance and this Second Supplemental Ordinance for payment and security of the Bonds.

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

(e) The estimated Cost of Acquisition and Construction (as defined in the General Bond Ordinance) of the Projects is \$10,130,000.

(f) The Town has heretofore issued the Bonds of 2002, of which \$14,325,000 are outstanding as of November 1, 2010. The Bonds of 2002 maturing on and after December 1, 2013, are subject to redemption at the option of the Town prior to maturity on and after December 1, 2012, at a redemption price equal to 100% of the principal amount thereof to be redeemed, plus accrued interest to the redemption date.

(g) The Town proposes to issue the Bonds, in one or more Series (as defined in the General Bond Ordinance), for one or more of the principal purposes: (1) financing the Cost of Acquisition and Construction of the Projects, (2) refinancing, together with other available amounts, all or a portion of the outstanding principal amount of the Bonds of 2002 (the “Refunded Bonds”), (3) financing the 2010 Reserve Fund Requirement (if any) through a deposit into the 2010 Debt Service Reserve Fund (if any) of cash, a debt service reserve insurance policy (the “Reserve Policy”), or a combination thereof, and (4) paying the costs of issuing the Bonds.

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

(i) The American Recovery and Reinvestment Act of 2009 (the “ARRA”), Pub.L. 111-5, Feb. 17, 2009, 123 Stat. 115, amends the Code to provide for the issuance of obligations in the form of Build America Bonds (“BABs”) if (a) the interest on such obligations would otherwise be excludable from gross income under Section 103 of the Code (as defined herein); (b) such obligations are issued before January 1, 2011; and (c) the issuer makes an irrevocable election to have Section 54AA of the Code apply to the obligations. BABs are taxable obligations which provide a tax credit in the amount of 35% of the interest payable by the issuer, either as an annual credit to the respective bondholders under Section 54AA(a) of the Code, or, if the bond is qualified

under Section 54AA(g) of the Code, and the issuer so elects, as an annual direct payment to the issuer under Section 6431 of the Code.

(j) It is in the best interest of the Town to authorize the issuance of the Bonds for the purposes set forth in this Second Supplemental Ordinance and for all or a portion (if any) of the Bonds authorized herein to be offered for sale as BABs.

ARTICLE II

DEFINITIONS

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

"2010 Construction Fund" shall mean the fund established pursuant to Section 4.03 hereof to defray the cost of all or a portion of the Projects and to pay all Costs of Acquisition and Construction in connection therewith.

"2010 Debt Service Fund" shall mean the Fund(s) established pursuant to Section 4.01 hereof to provide for the payment of the principal and interest on the Bonds.

"2010 Debt Service Reserve Fund" shall mean the Fund(s) established pursuant to Section 4.02 hereof (i) to insure the timely payment of the principal and interest on the Bonds and (ii) to provide for the redemption of the Bonds.

"2010 Purchaser" shall mean the purchaser of one or more Series of the Bonds, if sold through a private placement or sale. The 2010 Purchaser shall not mean the Underwriter.

"2010 Reserve Fund Requirement" shall mean the amount established pursuant to Section 4.02 hereof.

"Authorized Investments" shall have the meaning set forth in the General Bond Ordinance; provided, however, that if and to the extent an Insurance Policy is in effect with respect to the Bonds, "Authorized Investments" shall mean, with respect to the 2010 Debt Service Fund and 2010 Debt Service Reserve Fund (if any) established for such Bonds, only such Authorized Investments, as defined in the General Bond Ordinance, as also qualify under the following:

1. (a) Cash (fully insured by the Federal Deposit Insurance Corporation); (b) Direct obligations (other than any obligation subject to variation in principal repayment) of the United States of America ("U.S. Treasury Obligations"), (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America; (d) obligations fully and unconditionally guaranteed as to timely

payment of principal and interest by any agency or instrumentality of the United States of America; or (e) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.

2. Federal Housing Administration debentures.

3. The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:

(a) Federal Home Loan Mortgage Corporation (FHLMC) senior debt obligations and Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts).

(b) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) consolidated system-wide bonds and notes.

(c) Federal Home Loan Banks (FHL Banks) consolidated debt obligations.

(d) Federal National Mortgage Association (FNMA) senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts).

4. Unsecured certificates of deposit, time deposits, and bankers' acceptances (having maturities of not more than 365 days) of any bank the short-term obligations of which are rated "A-1+" or better by S&P and "Prime-1" by Moody's.

5. Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation, in banks which have capital and surplus of at least \$15 million.

6. Commercial paper (having original maturities of not more than 270 days) rated "A-1+" by S&P and "Prime-1" by Moody's.

7. Money market funds rated "Aam" or "Aam-G" by S&P, or better and if rated by Moody's rated "Aa2" or better.

8. "State Obligations", which means:

(a) Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the

unsecured general obligation debt of which is rated at least “A3” by Moody’s and at least “A-” by S&P, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated.

(b) Direct general obligations of any state agency or subdivision or agency thereof described in (a) above and rated “A-1+” by S&P and “MIG-1” by Moody’s.

(c) Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state or state agency described in (b) above and rated “AA-” or better by S&P and “Aa3” or better by Moody’s.

9. Pre-refunded municipal obligations rated “AAA” by S&P and “Aaa” by Moody’s meeting the following requirements:

(a) the municipal obligations are (1) not subject to redemption prior to maturity or (2) the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

(b) the municipal obligations are secured by cash or U.S. Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

(c) the principal of and interest on the U.S. Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations (“Verification Report”);

(d) the cash or U.S. Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;

(e) no substitution of a U.S. Treasury Obligation shall be permitted except with another U.S. Treasury Obligation and upon delivery of a new Verification Report; and

(f) the cash or U.S. Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

10. Repurchase agreements: with (1) any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least “A-” by S&P and “A3” by Moody’s; (2) any broker-dealer with “retail customers” or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least “A-” by S&P and “A3” by Moody’s, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or (3) any other entity rated at least “A-” by S&P and “A3” by Moody’s and acceptable to the Bond Insurer

(each an “Eligible Provider”), provided that:

(a) (i) permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers), and (ii) collateral levels must be at least 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMA or 104% of the total principal when the collateral type is FNMA and FHLMC (“Eligible Collateral”);

(b) a third party acting solely as agent for the Town (the “Investment Custodian”) has possession of the collateral or the collateral has been transferred to the Investment Custodian in accordance with applicable state and federal laws (other than by means of entries on the transferor’s books) and such collateral shall be marked to market;

(c) the collateral shall be marked to market on a daily basis and the provider or Investment Custodian shall send monthly reports to the Town and Bond Insurer setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Investment Custodian holding the collateral;

(d) the repurchase agreement (or guaranty, if applicable) may not be assigned or amended without the prior written consent of Bond Insurer;

(e) the repurchase agreement shall state and an opinion of counsel shall be rendered at the time such collateral is delivered that the Investment Custodian has a perfect first priority security interest in the collateral, any substituted collateral and all proceeds thereof;

(f) the repurchase agreement shall provide that if during its term the provider’s rating by either Moody’s or S&P is withdrawn or suspended or falls below “A-” by S&P or “A3” by Moody’s, as appropriate, the provider must, notify the Town and the Bond Insurer within five (5) days of receipt of such notice. Within ten (10) days of receipt of such notice, the provider shall either: (i) provide a written guarantee acceptable to the Bond Insurer, (ii) post Eligible Collateral; or (iii) assign the agreement to an Eligible Provider. If the provider does not perform a remedy within ten (10) Business Days, the provider shall, at the direction of any custodian or trustee (who shall give such direction if so directed in writing by the Bond Insurer) repurchase all collateral and terminate the repurchase agreement, with no penalty or premium to the Town.

11. Investment Agreements: with a domestic or foreign bank or corporation the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least “AA-” by S&P and “Aa3” by Moody’s, and acceptable to the Bond Insurer (each an “Eligible Provider”); provided that:

(a) interest payments are to be made to the Paying Agent at times and in

amounts as necessary to pay debt service (or, if the investment agreement is for the 2010 Construction Fund, to the Custodian for construction draws) on the Bonds;

(b) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven (7) days' prior written notice; the Town and the Paying Agent hereby agree to give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

(c) the provider shall send monthly reports to the Paying Agent, the Town and the Bond Insurer setting forth the balance the Town or Paying Agent has invested with the provider and the amounts and dates of interest accrued and paid by the provider;

(d) the investment agreement shall state that is an unconditional and general obligation of the provider, and is not subordinated to any other obligation of, the provider thereof, or if the provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks *pari passu* with the obligations of the provider to its other depositors and its other unsecured and subordinated creditors;

(e) the investment agreement (or guaranty, if applicable) may not be assigned or amended without the prior written consent of the Bond Insurer;

(f) the Town and the Bond Insurer shall receive an opinion of domestic counsel to the provider that such investment agreement is legal, valid, binding and enforceable against the provider in accordance with its terms;

(g) the Town and the Bond Insurer shall receive an opinion of foreign counsel to the provider (if applicable) that (i) the investment agreement has been duly authorized, executed and delivered by the provider and constitutes the legal, valid and binding obligation of the provider, enforceable against the provider in accordance with its terms, (b) the choice of law of the state set forth in the investment agreement is valid under that country's laws and a court in such country would uphold such choice of law, and (c) any judgment rendered by a court in the United States would be recognized and enforceable in such country;

(h) the investment agreement shall provide that if during its term:

(i) the provider's rating by either S&P or Moody's falls below "AA-" or "Aa3", the provider shall, at its option, within ten (10) days of receipt of publication of such downgrade, either (i) provide a written guarantee acceptable to the Bond Insurer, (ii) post Eligible Collateral with the Town, or a third party acting solely as agent for a custodian (the "Custodian") free and clear of any third party liens or claims, or (iii) assign the agreement to an Eligible Provider, or (iv) repay the principal of and accrued but unpaid interest on the investment;

(ii) the provider's rating by either S&P or Moody's is withdrawn or suspended or falls below "A-" or "A3", the provider must, at the direction of the Town (who shall give such direction if so directed in writing by the Bond Insurer), within ten (10) days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Town.

(i) in the event the provider is required to collateralize, permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers) and collateral levels must be 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMA's and 104% of the total principal when the collateral type is FNMA and FHLMC ("Eligible Collateral"). In addition, the collateral shall be marked to market on a daily basis and the provider or Investment Custodian shall send monthly reports to the Town and the Bond Insurer setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Investment Custodian holding the collateral;

(j) the investment agreement shall state and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof;

(k) the investment agreement must provide that if during its term: (i) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Town (who shall give such direction if so directed by the Bond Insurer), be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Town or the Paying Agent, as appropriate, and (ii) the provider shall become insolvent, not pay its debt as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Town or the Paying Agent, as appropriate.

"Beneficial Owner" shall mean any purchaser who acquires beneficial ownership interest in an Initial Bond (to be defined) held by the Depository. In determining any Beneficial Owner the Town, the Trustee and the Paying Agent may rely exclusively upon written representations made and information given to the Town, the Registrar and the Paying Agent, as the case may be, by the Depository or its Participants with respect to any Series 2010 Bond held by the Depository or its Participants in which a beneficial ownership interest is claimed.

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

with the physical bond certificates "immobilized" in the custody of the Depository. The book-entry maintained by the Depository is the record that identifies the owners of participatory interest in the Initial Bonds, when subject to the Book-Entry System.

"Bond Insurer" shall mean Assured Guaranty Corp. or its successors, as issuer of the Insurance Policy (if any) for one or more Series of the Bonds.

"Bonds" shall mean the Town of Hilton Head Island, South Carolina, Stormwater System Revenue Bonds, in one or more series, in the aggregate principal amount of not exceeding \$25,000,000 authorized to be issued hereunder.

"Bonds of 2002" shall mean the \$17,000,000 original principal amount Town of Hilton Head Island, South Carolina, Stormwater System Revenue Bonds, Series 2002.

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

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

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

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

"Escrow Agent" shall mean Wells Fargo Bank, N.A., as paying agent for the Refunded Bonds and, if applicable, escrow agent under the Refunding Trust Agreement.

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

"First Supplemental Ordinance" shall mean Ordinance No. 2002-45 enacted by the Council on December 3, 2002, authorizing the Bonds of 2002.

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

"Interest Payment Date" shall mean March 1 and September 1 of each year commencing March 1, 2011, or such other dates as may be determined by the Town Manager.

"Insurance Policy" shall mean one or more financial guaranty insurance policies (if any) issued by the Bond Insurer guaranteeing the scheduled payment when due of the principal of and interest on one or more Series of the Bonds (as applicable) as provided therein.

"Paying Agent" shall mean Wells Fargo Bank, N.A., as Paying Agent for the Bonds.

"Projects" shall mean, collectively, any and all replacements, enlargements, improvements, extensions, additions and betterments to the System; engineering legal and other professional services, monitoring permitting and other regulatory requirements, and inventory modeling and master planning related to capital improvement activities and functions; and all appurtenances, facilities, lands, rights in land, water rights, franchises and structures in connection therewith or incidental thereto and including the acquisition of any system which shall be combined with or consolidated into the System, including any one or more of the projects described in Schedule I hereto, and such other improvements as the Town may deem necessary or incidental to the System.

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

"Refunded Bonds" shall mean all or a portion (if any) of the outstanding principal amount of the Bonds of 2002, to be refunded with the proceeds of the Bonds and any other available amounts, as may be determined by the Town Manager.

"Refunding Trust Agreement" shall mean a refunding trust agreement or escrow agreement dated the date of its execution between the Town and the Escrow Agent.

"Refunding Trust Fund" shall mean the fund of that name created pursuant to the Refunding Trust Agreement.

"Registrar" shall mean Wells Fargo Bank, N.A., as Registrar for the Bonds.

"Reserve Policy" shall have the meaning set forth in Section 1.01(g) hereof.

"Second Supplemental Ordinance" means this Ordinance, as it may be amended or supplemented from time to time, authorizing the Bonds.

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

"Trustee" shall mean Wells Fargo Bank, N.A., as Trustee for the Bonds.

"Underwriter" shall mean Merchant Capital, L.L.C.

“Value” or “Values” means, if an Insurance Policy is in effect, with respect to any Authorized Investments for the 2010 Debt Service Fund and 2010 Debt Service Reserve Fund established for the Bonds, the amount calculated under this Second Supplemental Ordinance determined as of any date of calculation as follows:

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

In the event that the Bonds authorized herein are not delivered until 2011, references to 2010 as a series designation in each definition including references to the Series 2010 Bond shall be changed to 2011, with each defined term continuing to have the meaning set forth herein, notwithstanding the change in series designation.

ARTICLE III

THE BONDS

Section 3.01. Authorization of Bonds.

(a) There is hereby authorized to be issued one or more Series of Bonds designated “Town of Hilton Head Island, South Carolina Stormwater System Revenue Bonds” (the “Bonds”), in the aggregate principal amount of not to exceed \$25,000,000. The proceeds of the Bonds will be used for the purposes of providing funds to (1) finance the Cost of Acquisition and Construction of the Projects, (2) refinance, together with other available amounts, the Refunded Bonds, (3) finance the 2010 Reserve Fund Requirement (if any) through a deposit into the 2010 Debt Service Reserve Fund (if any) of cash, the Reserve Policy (if any) or a combination thereof, and (4) pay the costs of issuing the Bonds, including the payment of the premium of the Insurance Policy (if any); provided, however, that if any Series of Bonds is issued after 2010, any references herein to such Series of Bonds, the 2010 Debt Service Fund, the 2010 Debt Service Reserve Fund (if any), the 2010 Reserve Fund Requirement (if any) or otherwise, which is identified by the relevant year of issue, such references may be modified to reflect the actual year in which such Series of Bonds is issued and the Bonds shall bear such further numbers, letters or additional words as determined by the Town Manager in order to identify individual series thereof, to identify the purposes for which such Bonds are being issued and to identify the taxable or tax-exempt status thereof.

The Bonds shall mature on such date in each of the years and in the principal amounts, and bear interest at the rates per annum, as determined by the Town Manager pursuant to Section 3.06 hereof.

(b) Such of the Bonds as the Town Manager shall determine pursuant to Section 3.06 hereof shall be subject to mandatory redemption at a redemption price equal to the principal amount of the Bonds to be redeemed, together with interest accrued from the date of redemption, in the years and in the amounts determined by the Town Manager pursuant to Section 3.06 hereof.

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

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

I The Bonds shall originally be dated the date of delivery thereof, or such other date as the Town Manager shall determine pursuant to Section 3.06 hereof, and shall be issued as fully registered Bonds in the denominations of \$5,000 and integral multiples of \$5,000.

(d) Principal of and redemption premium, if any, on the Bonds shall be payable at the corporate trust office of the Trustee in Jacksonville, Florida. Interest on the Bonds shall be payable semiannually each Interest Payment Date commencing in 2011, in each case to the Holders as of the immediately preceding Record Date, such interest to be paid by check or draft mailed to each Holder at the address as it appears on the Books of Registry maintained at the corporate trust office of the Trustee, in Jacksonville, Florida, or, in the case of a Holder of \$1,000,000 or more in principal amount of Bonds, by wire transfer to an account within the continental United States upon the timely receipt of a written request of such Holder.

(e) The following Statement of Insurance shall be attached to each Bond, for which an Insurance Policy is obtained:

STATEMENT OF INSURANCE

Assured Guaranty Corp. (“Assured Guaranty”), a Maryland-domiciled insurance company, has delivered its financial guaranty insurance policy (the “Policy”) with respect to the scheduled payments of principal of and interest on the Bonds to Wells Fargo Bank, N.A., as paying agent on behalf of the holders of the Bonds (the “Paying Agent”). Such Policy is on file and available for inspection at the

principal office of the Paying Agent and a copy thereof may be obtained from Assured Guaranty or the Paying Agent. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. The owner of this obligation acknowledges and consents to the subrogation rights of Assured Guaranty as more fully set forth in the Policy.

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

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the approving opinion of McNair Law Firm, P.A., Columbia, South Carolina, the original of which was manually executed, dated and issued as of the date of the delivery of and payment for the bonds, and a copy of which is on file with the Town.

THE TOWN OF HILTON HEAD, SOUTH CAROLINA

By: _____
Town Clerk

Section 3.02. Optional Redemption of Bonds. Such of the Bonds as may be determined by the Town Manager pursuant to Section 3.06 hereof shall be subject to redemption prior to maturity, at the option of the Town, in whole or in part at any time in such order of their maturities as the Town shall determine and by lot within a maturity, at the respective redemption prices with respect to each Series 2010 Bond, expressed as a percentage of principal amount of the Bonds to be redeemed, as shall be determined by the Town Manager pursuant to Section 3.06 hereof, together, in each such case, with the interest accrued on such principal amount to the date fixed for redemption.

Section 3.03. Designation of Trustee, Registrar and Paying Agent. The Town hereby designates Wells Fargo Bank, N.A. as Trustee, Registrar and Paying Agent for the Bonds. Wells Fargo Bank, N.A. shall signify its acceptance of its respective duties upon delivery of the Bonds.

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

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

The Initial Bonds will be issued in fully-registered form, as a single Bond or one Bond for each of the maturities and Series of the Initial Bonds, in the name of Cede & Co., as the

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

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

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

The Town, the Paying Agent and the Registrar may treat the Depository (or its nominee) as the sole and exclusive owner of the Initial Bonds registered in its name for the purpose of payment of the principal of, interest or premium, if any, on the Initial Bonds, giving any notice permitted or required to be given to Bondholders under this Second Supplemental Ordinance, registering the transfer of the Initial Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever, and shall not be affected by any notice to the contrary. The Town, the Paying Agent and the Registrar shall not have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Initial Bonds under or through the Depository or any Participant, or any other person which is not shown on the books of registry of the Town maintained by the Registrar as being a Bondholder, with respect to: the accuracy of any records maintained by the Depository or any Participant; the payment by the Depository or any Participant of any amount in respect of the principal of, interest or premium, if any, on the Bonds, any notice which is permitted or required to be given to Bondholders thereunder or under the conditions to transfers or exchanges adopted by the Town or the Registrar; or any consent given or other actions taken by the Depository as a Bondholder.

Section 3.05. Successor Depository.

If (a) the Depository determines not to continue to act as securities depository for the Initial Bonds or (b) the Town has advised the Depository of the Town's determination that the Depository is incapable of discharging its duties, the Town shall attempt to retain another qualified securities depository to replace the Depository. Upon receipt by the Town or the Registrar of the Initial Bonds together with an assignment duly executed by the Depository, the

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

Section 3.06. Sale and Issuance of Bonds; Official Statement.

(a) The Town Manager of the Town is hereby authorized and empowered to determine the aggregate principal amount of the Bonds, if less than authorized by this Second Supplemental Ordinance, and each Series of Bonds, the principal amount of each maturity of each Series of Bonds, the interest rates for each Series of Bonds, the original issue dates, initial Interest Payment Dates and Principal Payment Dates for each Series of Bonds, which Bonds (if any) are Initial Bonds, the Bonds to be subject to mandatory and optional redemption, the redemption prices of the Bonds subject to optional redemption, any Underwriter's, 2010 Purchaser's or original issue discount at which the Bonds will be sold, whether an Insurance Policy will be purchased with respect to each Series of Bonds; whether the 2010 Debt Service Reserve Fund will be established and funded and, if so, the manner in which the 2010 Reserve Fund Requirement will be satisfied, and the portion of the Bonds to be issued as traditional tax-exempt bonds or BABs. If all or a portion of the Bonds will be issued as BABs, the Town Manager is further hereby authorized and directed (1) to determine whether the tax credit shall be provided as a credit to the Bondholders or as a direct payment to the Town, and (2) to make an irrevocable election to have Section 54AA of the Code apply to the Bonds (or if less than all, such portion) which shall be issued as BABs.

(b) Each Series of the Bonds shall either be sold publicly, following a private sale to the Underwriter, or directly to the 2010 Purchaser in a private offering. In connection with a public offering, the Town hereby finds and determines that the Purchase Contract to be dated the date of its execution, submitted by the Underwriter for the purchase of all or a portion (if any) of the Bonds is fair and reasonable and in the best interest of the Town; that, if executed, the Bonds contemplated by the Purchase Contract shall be sold to the Underwriter upon the terms and conditions set forth in the Purchase Contract and upon the basis of the representations therein set forth, and that all conditions precedent to or concurrent with the acceptance of the Purchase Contract by the Town have been met. The Town Manager is hereby authorized and directed to approve the form of Purchase Contract, together with such amendments and modifications to the form thereof as the Town Manager shall negotiate and approve, and to execute the Purchase

Contract, as so modified and amended, and deliver the same to the Underwriter, the Town Manager's execution and delivery of the Purchase Contract constituting conclusive evidence of approval of the matters therein contained. Notwithstanding the foregoing, the Town Manager is hereby authorized to take all actions, including the preparation and dissemination of requests for proposals and the publication and/or distribution of information relating to the Town and the System, to solicit interest and receive offers from financial institutions to purchase one or more Series of the Bonds in a private offering, and to accept such offer which is in the best interest of the Town and execute such documents as may be necessary in connection therewith.

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

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

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

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

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

(h) The Council hereby authorizes the Town Manager to negotiate the terms of, and execute, in the name and on behalf of the Town, and deliver investment agreements, forward delivery agreements, repurchase agreements and other agreements in connection with the Bonds, to prepare and solicit bids for providers of such agreements and to execute, in the name and on behalf of the Town, written confirmations of any such agreements and other documents as may be necessary in connection therewith.

(i) The Council hereby ratifies, confirms and approves the actions of the Town Manager heretofore undertaken with regard to applications for the Insurance Policy, the Reserve Policy relating to the 2010 Reserve Fund Requirement, other credit enhancements, and liquidity arrangements relating to the Bonds from municipal bond insurance companies or financial institutions and to enter into, execute and deliver on behalf of the Town, such loan, insurance, reimbursement or guaranty agreements as shall be necessary and advisable, with advice of counsel, in connection with the transactions and other matters referred to herein.

Section 3.07. Authorization to Effect Refunding; Redemption of the Refunded Bonds. The Town Manager is hereby authorized and directed for and on behalf of the Town to take such actions, including but not limited to the execution of the Refunding Trust Agreement or other agreements, and give such directions as shall be necessary to carry out the provisions of this Second Supplemental Ordinance, including directions to the paying agent and/or registrar of the Refunded Bonds calling all or a portion of the Refunded Bonds for redemption on one or more dates. If executed, the Refunding Trust Agreement shall be dated the date of delivery of the related Series of the Bonds to the initial purchaser thereof, and substantially in the form presented to the meeting of Council at which this Second Supplemental Ordinance was enacted with such modifications thereto as the Manager, upon the advice of counsel to the Town, approves. The execution thereof shall be evidence of the approval of any such modification.

Upon delivery of the Series of Bonds issued for such purposes, a portion of the principal proceeds thereof, together with amounts (if any) deposited in the 2002 Debt Service Fund and 2002 Debt Service Reserve Fund (in each case related to the Refunded Bonds) and other available funds of the Town, shall be used to refinance the Refunded Bonds or, if applicable, be deposited with the Escrow Agent and held by it under the Refunding Trust Agreement and in the Refunding Trust Fund. Subject to the terms of the Refunding Trust Agreement, it shall be the duty of the Escrow Agent to keep such proceeds invested and reinvested to the extent that it shall be practical in Government Obligations and to apply the principal and interest of the trust so established in the manner prescribed in such Refunding Trust Agreement and the General Bond Ordinance.

Section 3.08. Form of Bonds. The Bonds shall be in the form substantially as follows:

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

No. R-____

Interest Rate

Maturity Date

Issue Date

CUSIP

Registered Holder:

Principal Amount:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA (the "Town") a public body corporate and politic and a political subdivision of the State of South Carolina (the "State"), created and existing by virtue of the laws of the State, acknowledges itself indebted and for value received hereby promises to pay, solely as hereinafter provided, to the Registered Owner named above or registered assigns, the Principal Amount set forth above on the Maturity Date stated above, unless this Bond be subject to redemption and shall have been redeemed prior thereto as hereinafter provided, upon presentation and surrender hereof at the corporate trust office of Wells Fargo Bank, N.A. in Jacksonville, Florida, and to pay interest on such Principal Amount at the annual Interest Rate stated above (calculated on the basis of a 360-day year of twelve (12) 30-day months), until the obligation of the Town with respect to the payment of such Principal Amount shall be discharged. Interest on this Bond shall be payable in semiannual installments on _____ 1 and _____ 1 of each year beginning _____, 2011, such installments to be of interest only through _____, and thereafter to consist of installments of interest only on each _____ 1 and principal and interest on each _____ 1. All payments shall be paid to the person in whose name this Bond is registered at the close of business on the fifteenth day of the calendar month preceding each Bond Payment Date (the "Record Date"). The payments shall be payable by check or draft mailed at the times provided herein from the Town (or the Paying Agent or its behalf) to the person in whose name this Bond is registered at the address shown on the registration books. The payments are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

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

THIS BOND HAS BEEN ISSUED UNDER THE PROVISIONS OF TITLE 6, CHAPTER [17][21], CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED AND SECTION 48-14-10 ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED; THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE TOWN WITHIN THE MEANING OF ANY PROVISION, LIMITATION OR RESTRICTION OF THE CONSTITUTION OR THE LAWS OF THE STATE OF SOUTH CAROLINA, OTHER THAN THOSE PROVISIONS AUTHORIZING INDEBTEDNESS PAYABLE SOLELY FROM A REVENUE-PRODUCING PROJECT NOT INVOLVING REVENUES FROM ANY TAX OR LICENSE. THE TOWN IS NOT OBLIGATED TO PAY ANY OF THE BONDS OR THE INTEREST THEREON EXCEPT FROM GROSS REVENUES OF THE SYSTEM. THE BONDS ARE NOT GENERAL OBLIGATIONS OF THE TOWN, THE STATE OF SOUTH CAROLINA, OR ANY POLITICAL SUBDIVISION THEREOF.

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

This Bond is one of an issue of bonds of the Town in the aggregate principal amount of _____ Million Dollars (\$_____) of like tenor, except as to number, rate of interest, date of maturity and redemption provides, issued pursuant to and in accordance with the Constitution and statutes of the State of South Carolina (the "State"), including particularly Chapter [21][17], Title 6, inclusive, Code of Laws of South Carolina, 1976, as amended, Section 48-14-10 et. Seq., Code of Laws of South Carolina, 1976, as amended, Ordinance No. 2002-44

duly enacted by the Town Council of the Town (the "Council") on December 3, 2002, as amended (as so amended, the "General Bond Ordinance"), and Ordinance No. _____ duly enacted by the Council on _____, 2010 (the "Second Supplemental Ordinance") (the General Bond Ordinance and the Second Supplemental Ordinance are herein collectively referred to as the "Ordinances") for the purpose of providing moneys, which together with other moneys made available by the Town shall be sufficient to (i) [make certain repairs, renovations and improvements to the stormwater drainage system of the Town][refinance all or a portion of the Town's \$17,000,000 original principal amount Stormwater System Revenue Bonds, Series 2002], [and] (ii) [satisfy the 2010 Reserve Fund Requirement, and (iii)] pay all costs of issuing the Bonds[, including the premium for a financial guaranty insurance policy].

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

The Ordinances contain provisions defining terms, including the properties comprising the System; set forth the revenues pledged for the payment of the principal of and interest on this Bond and the Bonds of other series herewith which may hereafter be issued on a parity herewith under the Ordinances; set forth the nature, extent and manner of enforcement of the security of this Bond and of such pledge, and the rights and remedies of the Holder hereof with respect thereto; set forth the terms and conditions upon which and the extent to which the Ordinances may be altered, modified and amended; set forth the terms and conditions upon which this Bond is issued upon which other bonds may be hereinafter issued payable as to principal, premium, if any, and interest on a parity with this Bond and equally and ratably secured herewith; sets forth the rights, duties and obligations of the Town thereunder; and set forth the terms and conditions upon which the pledge made in the Ordinances for the security of this Bond and upon which the covenants, agreements and other obligations of the Town made therein may be discharged at or prior to the maturity or redemption of this Bond with provisions for the payment thereof in the manner set forth in the Ordinances. Reference is hereby made to the Ordinances to all of the provisions of which any holder of this Bond by the acceptance hereof thereby assents. The provisions of the Act and the Ordinances shall be a contract with the holder of this Bond.

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

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

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

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

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

[Redemption Provisions]

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

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

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

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

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Mayor

(SEAL)

ATTEST:

By: _____
Town Clerk

FORM OF CERTIFICATE OF AUTHENTICATION

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

Wells Fargo Bank, N.A., as Trustee

By: _____
Authorized Agent

Date: _____

FORM OF ASSIGNMENT

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

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

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

Date: _____

STAMP Language

Signature Guaranteed: _____

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

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

ARTICLE IV

ESTABLISHMENT OF FUNDS; DISPOSITION OF BOND PROCEEDS

Section 4.01. Establishment of 2010 Debt Service Fund. In accordance with Section 7.04 of the General Bond Ordinance, the 2010 Debt Service Fund is hereby directed to be established and held by the Trustee on the date of the original delivery of the Bonds for the benefit of the Holders of the Bonds; provided, however, that upon the issuance of more than one Series of Bonds, separate funds or accounts may be established for the payment of debt service on such Series of Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “2010 Debt Service Fund” with respect to the related Series of Bonds. Payments into the 2010 Debt Service Fund shall be made pursuant to the provisions of Section 7.02 of the General Bond Ordinance.

Section 4.02. Establishment of the 2010 Reserve Fund Requirement and 2010 Debt Service Reserve Fund. In accordance with Section 7.05 of the Ordinance, the Town Manager may determine whether it is necessary or desirable to establish the 2010 Debt Service Reserve Fund for the benefit of the Holders of one or more Series of Bonds (if any) and the amount and timing of funding of the 2010 Reserve Fund Requirement, and, if so, such 2010 Debt Service Reserve Fund shall be established on the date of the original delivery of such Series of Bonds and held by the Trustee with regard to the Bonds, all as provided in the Ordinance; provided, however, that (1) upon the issuance of more than one Series of Bonds, separate funds or accounts may be established (if at all) for each Series of Bonds, with such additional numbers or letters to identify its relevance, but each such separate fund or account will be considered the “2010 Debt Service Reserve Fund” with respect to the related Series of Bonds; and (2) in the event of any full or partial defeasance of a Series of Bonds under Article XVI of the Ordinance, then the 2010 Reserve Fund Requirement established for such Series of Bonds shall be recalculated based on the then Outstanding principal amount of such Series of Bonds. If the 2010 Debt Service Reserve Fund is established, the 2010 Reserve Fund Requirement initially will be satisfied by the Town by the deposit of cash into the 2010 Debt Service Reserve Fund (which may, as designated by the Town Manager, be funded from the proceeds of the Bonds on the date of delivery thereof or from Gross Revenues thereafter), with the purchase of the Reserve Policy, or any combination of the foregoing, in each case for the benefit of the Holders of the Series of the Bonds for which the 2010 Debt Service Reserve Fund (or separate funds or accounts, as applicable) is established.

Section 4.03. Establishment of 2010 Construction Fund. There is hereby created and established the 2010 Construction Fund which fund shall be held by the Town or by one or more banks or other financial institutions designated by the Town. If held by a bank or other financial institution, the Town Manager is authorized and directed to negotiate, execute and deliver such construction fund agreements or other agreements with such bank or other financial institution as may be necessary or desirable in connection therewith. The moneys on deposit in the 2010 Construction Fund shall be used and applied to the payment of the Cost of the Acquisition and Construction of the Projects and to pay all Costs of Issuance incidental to the issuance and sale of the Bonds.

Moneys held for the credit of the 2010 Construction Fund shall be invested to the fullest extent practicable and reasonable, in Authorized Investments, maturing at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such Fund.

Withdrawals from the Construction Fund of 2010 shall be made in the manner withdrawals from other funds of the Town are made.

If after the payment in full of all costs of the Projects or after adequate provision has been made for such payment any moneys remain in the 2010 Construction Fund, such excess shall be paid in to the 2010 Debt Service Fund and shall be used only for the payment of the principal of and interest on the Bonds or, in the alternative, to acquire Outstanding Bonds at a price (exclusive of accrued interest) not to exceed the face amount thereof.

Section 4.04. Disposition of Proceeds of Bonds and Certain Other Moneys.

The proceeds derived from the sale of the Bonds, net of the original issue discount or premium, the Underwriter's or 2010 Purchaser's discount, the premium on the Insurance Policy and Reserve Policy (if any), and accrued interest on the Bonds (if any), shall be deposited with the Trustee and the Town, respectively, and used for one or more of the following purposes:

(a) An amount equal to the interest accrued upon the Bonds from the date thereof to the date of delivery thereof and payment therefor shall be deposited in the Interest Account in the 2010 Debt Service Fund to be applied to the payment of the first installment of interest on the Bonds.

(b) A portion of the proceeds of the Bonds shall be deposited with the Town into the 2010 Construction Fund established in Section 4.03 hereof to be used and applied to the payment Cost of Acquisition and Construction and Cost of Issuance as provided in that Section.

I A portion of the proceeds of the Bonds shall be paid over to the paying agent for the Refunded Bonds or the Escrow Agent (as applicable), an amount which the Town Manager determine to be required, together with amounts (if any) transferred from the 2002 Debt Service Fund and 2002 Debt Service Reserve Fund (in each case related to the Refunded Bonds) and other available moneys of the Town, to provide for the payment of principal of, redemption premium, if any, and interest on the Refunded Bonds upon the redemption thereof.

(d) If the Town Manager determines that a 2010 Debt Service Reserve Fund shall be established for a Series of the Bonds and the 2010 Reserve Fund Requirement shall be funded with a portion of the proceeds of a Series of the Bonds, there shall be deposited with the Trustee for deposit into such 2010 Debt Service Reserve Fund an amount equal to the 2010 Reserve Fund Requirement.

The respective amounts specified in this Section 4.04 shall be determined by the Town upon delivery of the Series of Bonds applicable thereto.

ARTICLE V
COVENANTS AND AMENDMENTS

Section 5.01. Federal Tax Covenant. The Town hereby covenants and agrees with the Holders of any Series of Bonds issued as tax-exempt obligations (the “Tax-Exempt Bonds”) that it will not take any action which will, or fail to take any action which failure will, cause interest on the Tax-Exempt Bonds to become includable in the gross income of the Holders for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Tax-Exempt Bonds; provided, however, that for purposes of this covenant only, the Town shall not be in violation of this covenant solely because it issues a portion of the Bonds as taxable obligations and/or makes the irrevocable election under Section 54AA(d) or (g) (as applicable) of the Code with respect to Bonds to be issued as BABs. The Town further covenants and agrees with the Holders of the Bonds that no use of the proceeds of the Bonds shall be made which, if such use had been reasonably expected on the date of issue of the Bonds would have caused the Bonds to be “arbitrage bonds,” as defined in the Code; and to that end the Town hereby shall:

(a) comply with the applicable provisions of Sections 54AA, 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as any of the Bonds are Outstanding;

(b) establish such funds, make such calculations and pay such amounts, if necessary, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebate of certain amounts to the United States; and

I make such reports of such information at the times and places required by the Code.

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

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

(a) An annual independent audit, within thirty days of the Town’s receipt of the audit; and

(b) Event specific information within thirty (30) days of an event adversely affecting more than five (5%) percent of Revenues or the Town’s tax base.

The only remedy for failure by the Town to comply with the covenant of this paragraph shall be an action for specific performance of this covenant. The Town specifically reserves the right to

amend or delete this covenant to reflect any change in Section 11-1-85, without the consent of any Bondholder.

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

Section 5.03. Modification of General Bond Ordinance. The following provisions of the Ordinance are hereby amended, which amendments to the Ordinance hereinafter set forth shall not become effective until the earlier of the dates on which the following occur: (1) all the Bonds of 2002 shall cease to be Outstanding; or (2) (a) the Holders of 51% in principal amount of all Bonds (as defined in the General Bond Ordinance) then Outstanding and (b) while any of the Bonds of 2002 are Outstanding, MBIA Insurance Corporation, assent to and authorize such amendments to the Ordinance in accordance with Article IX of the Ordinance. Any Bonds (as defined in the General Bond Ordinance), including the Bonds, issued after the date of enactment of this Second Supplemental Ordinance shall contain a reference to the amendments herein made.

(1) The definition of “Annual Principal and Interest Requirement” shall be amended by adding the following text at the end thereof:

; provided, further, that for all purposes hereof, in the case of Bonds which have been or shall be issued as taxable Build America Bonds (“BABs”) pursuant to the authority of the American Recovery and Reinvestment Act of 2009 or other similar federal legislation (the “ARRA”), for which the Town has or shall be entitled to receive a tax credit in the form of a direct payment from the U.S. government (a “Direct Payment”) that effectively reduces the Town’s debt service payment obligation therefor, the amount to be paid or set aside in the applicable Debt Service Fund in each Fiscal Year for such payment of interest thereon shall be reduced by the Direct Payment that the Town has or shall be entitled to receive for such purpose.

(2) The definition of “Gross Revenues” shall be amended by adding the following text at the end thereof:

; provided, further, that for all purposes other than the additional bonds test in Section 4.02 of the General Bond Ordinance and the rate covenant in Section 5.01 of the General Bond Ordinance), the term “Revenues” shall also include, if and to the extent that the Town issues Bonds as taxable BABs pursuant to the authority of the ARRA, for which the Town has or shall be entitled to receive a Direct Payment, the

Direct Payment that the Town has or shall be entitled to receive therefor.

(3) The amendment to Section 5.01(B) of the General Bond Ordinance which was effected pursuant to the First Amending Ordinance shall be revoked and repealed in its entirety. After giving effect to the previous sentence, Section 5.01(B) of the General Bond Ordinance shall read as follows:

(B) The Town covenants and agrees that it will, at all times, prescribe and maintain and thereafter collect rates and charges for the services and facilities furnished by the System which, together with other income, are reasonably expected to yield annual Gross Revenues in the current Fiscal Year equal to at least one hundred ten percent (110%) of the Annual Principal and Interest Requirement in such Fiscal Year for all Bonds Outstanding; and, promptly upon any material change in the circumstances which were contemplated at the time such rates and charges were most recently reviewed, but not less frequently than once in each Fiscal Year, shall review the rates and charges for its services and shall promptly revise such rates and charges as necessary to comply with the foregoing requirement.

ARTICLE VI MATTERS RELATING TO INSURANCE POLICY

Section 6.01. Insurance Policy and Special Provisions Required Thereby. If the Town elects to purchase the Insurance Policy with respect to one or more Series of the Bonds (such Series of Bonds are hereinafter referred to as the “Insured Bonds”), the provisions of this Section 6.01 shall apply; provided, however, that the Bond Insurer (rather than the Bondholders) shall have the exclusive right to enforce the provisions of this Section 6.01 and/or waive any violations thereof, in each case subject to the following provisions. All capitalized terms used in this Section 6.01 but not specifically defined in the General Bond Ordinance or this Second Supplemental Ordinance shall have the meanings assigned such terms in the Insurance Policy.

(1) So long as there shall be Insured Bonds Outstanding and no Insurer Default has occurred and is continuing, the Town will covenant to the Bond Insurer as follows:

A. Notices and Other Information

(i) Any notice that is required to be given to Holders of the Insured Bonds (the “Bondholders”), any entity required pursuant to Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission or to the Trustee pursuant to this Second Supplemental Ordinance or to the General Bond Ordinance shall also be provided to the Bond Insurer, simultaneously with the sending of such notices. In addition, to the extent that the Town has entered into a continuing disclosure agreement, covenant or undertaking with respect to the Insured Bonds, all information furnished pursuant to such agreements shall be provided to the Bond Insurer, simultaneously with the furnishing of such information.

(ii) All demands, notices or other information required to be given to the Bond Insurer shall be in writing and shall be sent by registered or certified mail or personally delivered or telecopied to the recipient as follows:

Assured Guaranty Corp.
31 West 52nd Street
New York, New York 10019
Attention: Risk Management Department – Public Finance Surveillance
(Re: Policy No. _____)
Telecopy No.: (212) 581-3268
Confirmation: (212) 974-0100
Email: riskmanagementdept@assuredguaranty.com

In each case in which notice or other communication refers to an Event of Default, a claim on the Insurance Policy or any event with respect to which failure on the part of the Bond Insurer to respond shall be deemed to constitute consent or acceptance, then such demand, notice or other communication shall be marked to indicate “URGENT MATERIAL ENCLOSED” and shall also be sent to the attention of the General Counsel at the same address and telecopy number above or at generalcounsel@assuredguaranty.com.

(iii) The Bond Insurer shall have the right to receive such additional information as it may reasonably request.

(iv) The Town will permit the Bond Insurer to discuss the affairs, finances and accounts of the Town with respect to the System or any information the Bond Insurer may reasonably request regarding the security for the Insured Bonds with appropriate officers of the Town and will use commercially reasonable efforts to enable the Bond Insurer to have access to the facilities, books and records of the Town on any Business Day upon reasonable prior notice.

(v) The Trustee shall notify the Bond Insurer of any failure of the Town to provide notices, certificates and other information as provided herein or under the General Bond Ordinance.

B. Defeasance

(i) In the event that the principal and/or interest due on the Insured Bonds shall be paid by the Bond Insurer pursuant to the Insurance Policy, the Insured Bonds shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Town, and the pledge of the Revenues and all covenants, agreements and other obligations of the Town to the Bondholders shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Bondholders including, without limitation, any rights that such Bondholders may have in respect of securities law violations arising from the offer and sale of the Insured Bonds.

(ii) In addition to the requirements set forth in the General Bond

Ordinance, the following provisions shall apply with respect to any defeasance of the Insured Bonds:

(a) An opinion of Bond Counsel shall be delivered to the Trustee and the Bond Insurer to the effect that (i) the defeasance will not adversely impact the exclusion from gross income for federal income tax purposes of interest on the Insured Bonds; and (ii) the Insured Bonds are no longer Outstanding under the General Bond Ordinance.

(b) A refunding trust or escrow agreement (the “Escrow Agreement”) shall be executed in connection therewith and there shall be delivered to the Trustee and the Bond Insurer an opinion of counsel regarding the validity and enforceability of the Escrow Agreement.

I The Escrow Agreement shall provide that:

(i) any substitution of securities shall require a verification of an independent certified public accountant and the prior written consent of the Bond Insurer.

(ii) the Town will not exercise any optional redemption of Insured Bonds secured by the Escrow Agreement or any other redemption other than mandatory sinking fund redemption unless (a) the right to make any such redemption has been expressly reserved in the Escrow Agreement and such reservation has been disclosed in detail in the official statement for the Insured Bonds, and (b) as a condition of any such redemption there shall be provided to the Bond Insurer a verification of an Accountant as to the sufficiency of escrow receipts without reinvestment to meet the escrow requirements remaining following such redemption.

(iii) the Town shall not amend the Escrow Agreement or enter into a forward purchase agreement or other agreement with respect to rights in the escrow without the prior written consent of the Bond Insurer.

The documents and opinions referred to in Section 6.01(1)(B)(ii)(a), (b) and (c) above shall be delivered to the Bond Insurer no later than five (5) days prior to the funding of the Escrow Agreement.

C. Trustee

(i) The Trustee shall provide prior written notice of any name change of the Trustee or the resignation or removal of the Trustee to the Bond Insurer.

(ii) To the extent otherwise permitted by the General Bond Ordinance, no removal, resignation or termination of the Trustee or the Paying Agent shall take effect until a successor, acceptable to the Bond Insurer, shall be appointed.

(iii) The Trustee or Paying Agent may be removed at any time, at the

written request of the Bond Insurer, for any breach of its obligations hereunder or under the General Bond Ordinance.

(iv) Notwithstanding any other provision hereof or of the General Bond Ordinance, in determining whether the rights of Bondholders will be adversely affected by any action taken pursuant to the terms and provisions thereof, the Trustee shall consider the effect on the Bondholders as if there were no Insurance Policy.

D. Amendments and Supplements

With respect to amendments or supplements hereto which do not require the consent of the Bondholders, the Bond Insurer must be given prior written notice of any such amendments or supplements. With respect to amendments or supplements to the General Bond Ordinance which do require the consent of the Bondholders, the Bond Insurer's prior written consent is required in connection with any amendment or supplement to this Second Supplemental Ordinance or the General Bond Ordinance; provided no such consent shall be required in connection with the issuance of any bonds under Article III of the General Bond Ordinance. Copies of any amendments or supplements to this Second Supplemental Ordinance which are consented to by the Bond Insurer shall be sent to the rating agencies that have assigned a rating to the Insured Bonds.

E. Bond Insurer as Third Party Beneficiary

The Bond Insurer is explicitly recognized as being a third party beneficiary of this Second Supplemental Ordinance and the General Bond Ordinance and may enforce any such right, remedy or claim conferred, given or granted hereunder.

F. Control Rights

The Bond Insurer shall be deemed to be the Holder of all of the Insured Bonds for purposes of (a) exercising all remedies and directing the Trustee to take actions or for any other purposes following an Event of Default; and (b) granting any consent, waiver, direction or approval or taking any action permitted by or required hereunder or under the General Bond Ordinance to be granted or taken by the Holders of such Insured Bonds.

G. Consent Rights of Bond Insurer

(i) *Consent of Bond Insurer.* Any provision herein expressly recognizing or granting rights in or to the Bond Insurer may not be amended in any manner that affects the rights of the Bond Insurer hereunder without the prior written consent of the Bond Insurer.

(ii) *Consent of Bond Insurer to Bondholder Consent.* Wherever this Second Supplemental Ordinance or the General Bond Ordinance requires the consent of Holders of the Insured Bonds, the Bond Insurer's written consent shall also be required.

(iii) *Consent of Bond Insurer in the Event of Insolvency.* Any reorganization or liquidation plan with respect to the Town must be acceptable to the Bond Insurer. In the event of any reorganization or liquidation, the Bond Insurer shall have the right to vote on behalf of all Bondholders who hold the Insured Bonds guaranteed by the Bond Insurer, absent an Insurer Default under the Insurance Policy.

(iv) *Consent of Bond Insurer upon Default.* Anything in this Second Supplemental Ordinance or the General Bond Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Bondholders or the Trustee for the benefit of the Bondholders under this Second Supplemental Ordinance and the General Bond Ordinance, including, without limitation, (a) the right to accelerate the principal of the Insured Bonds as described in this Second Supplemental Ordinance and (b) the right to annul any declaration of acceleration. The Bond Insurer also shall be entitled to approve all waivers of Events of Default with respect to the Insured Bonds.

(v) *Acceleration Rights.* Upon the occurrence of an Event of Default as defined herein or the General Bond Ordinance, the Trustee shall, at the written direction of the Bond Insurer, by written notice to the Town, declare the principal of the Insured Bonds to be immediately due and payable, whereupon that portion of the principal of the Insured Bonds thereby coming due and the interest thereon accrued to the date of payment shall, without further action, become and be immediately due and payable, anything in this Second Supplemental Ordinance or the Insured Bonds to the contrary notwithstanding.

H. No Purchase by the Town

Without the prior written consent of the Bond Insurer, no Insured Bonds insured by the Bond Insurer shall be purchased by the Town, or any of its affiliates, in lieu of redemption, unless such Insured Bonds are redeemed, defeased or cancelled.

I. Interest Rate Exchange Agreement

Any interest rate exchange agreement (“Interest Rate Exchange Agreement”) entered into by the Town and payable from and secured by the Revenues shall meet the following conditions: (i) the Interest Rate Exchange Agreement must be entered into to manage interest costs related to, or a hedge against (a) assets then held, or (b) debt then outstanding or debt reasonably expected to be issued within the next twelve (12) months after the issuance of the Insured Bonds, and (ii) the Interest Rate Exchange Agreement shall not contain any leverage element or multiplier component greater than 1.0x unless there is a matching hedge arrangement which effectively off-sets the exposure from any such element or component. Unless otherwise consented to in writing by the Bond Insurer, any uninsured net settlement, breakage or other termination amount then in effect shall be subordinate to debt service on the Insured Bonds and on any debt on parity with the Insured Bonds. The Town shall not terminate an Interest Rate Exchange Agreement unless it demonstrates to the satisfaction of the Bond Insurer prior to the payment of any such termination amount that such payment will not cause the Town to be in

Default under the Ordinance, including, but not limited to, any monetary obligations thereunder. All counterparts or guarantors to any Interest Rate Exchange Agreement must have a rating of at least “A-“ and “A3” by S&P and Moody’s, respectively. If the counterparty or guarantor’s rating falls below “A-“ or “A3” by either S&P or Moody’s, the counterparty or guarantor shall execute a credit support annex to the Interest Rate Exchange Agreement, which credit support annex shall be acceptable to the Bond Insurer. If the counterparty or the guarantor’s long term unsecured rating falls below “Baa1” or “BBB+” by either Moody’s or S&P, a replacement counterparty or guarantor, acceptable to the Bond Insurer, shall be required.

J. Reporting Requirements

The Town will furnish or cause to be furnished to the Bond Insurer:

(a) the Annual Budget of the Town within 30 days after the approval thereof; and

(b) Annual audited financial statements of the System within 210 days after the end of the Town’s Fiscal Year (presently June 30), together with a certificate of the Chief Financial Officer that the Town is not in Default under the General Bond Ordinance.

I Notice of any draw upon the 2010 Debt Service Reserve Fund within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the 2010 Reserve Fund Requirement and (ii) withdrawals in connection with a refunding any Insured Bonds;

(d) Notice of any Default known to the Trustee within five Business Days after actual knowledge thereof;

(e) Prior notice of the advance refunding or redemption of any of the Insured Bonds insured by the Bond Insurer, including the principal amount, maturities and CUSIP numbers thereof;

(f) Notice of the commencement of any proceeding by or against the Town commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an “Insolvency Proceeding”);

(g) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the applicable Insured Bonds;

(h) A full original transcript of all proceedings relating to the execution of any amendment or supplement to the General Bond Ordinance;

(i) Prior to issuing additional debt secured on a parity with the Insured Bonds, any disclosure document or financing agreement pertaining to such additional debt, which disclosure document or financing agreement shall include, without limitation, the

applicable maturity schedule, interest rate or rates, redemption and security provisions pertaining to any such additional debt;

(j) within thirty (30) days following any litigation or investigation that may have a material adverse affect on the Revenues of the System, notice of such litigation or investigation; and

(k) All reports, notices and correspondence to be delivered under the terms of the General Bond Ordinance.

(2) The Town has further covenanted to the Bond Insurer as follows:

A. Reimbursement Obligations.

(i) The Town hereby agrees to pay or reimburse the Bond Insurer, but solely from available Revenues, (a) all amounts paid by the Bond Insurer under the Insurance Policy, and (b) to the extent permitted by law, any and all charges, fees, costs and expenses which the Bond Insurer may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, in connection with (i) any accounts established to facilitate payments under the Insurance Policy, (ii) the administration, enforcement, defense or preservation of any rights in respect of this Second Supplemental Ordinance or the General Bond Ordinance, including defending, monitoring or participating in any litigation or proceeding (including any bankruptcy proceeding in respect of the Town or any affiliate thereof) relating to this Second Supplemental Ordinance and the General Bond Ordinance, any party to this Second Supplemental Ordinance and the General Bond Ordinance or the transaction contemplated by this Second Supplemental Ordinance and the General Bond Ordinance, (iii) the foreclosure against, sale or other disposition of any collateral securing any obligations under this Second Supplemental Ordinance and the General Bond Ordinance or any other supplemental ordinance, or the pursuit of any remedies under this Second Supplemental Ordinance and the General Bond Ordinance, to the extent such costs and expenses are not recovered from such foreclosure, sale or other disposition, or (iv) any amendment, waiver or other action with respect to, or related to, this Second Supplemental Ordinance and the General Bond Ordinance whether or not executed or completed; costs and expenses shall include a reasonable allocation of compensation and overhead attributable to time of employees of the Bond Insurer spent in connection with the actions described in clauses (ii), (iii) and (iv) above. In addition, the Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect to this Second Supplemental Ordinance and the General Bond Ordinance or any other supplemental ordinance. To the extent permitted by law but solely from available Revenues, the Town will pay interest on the amounts owed in this paragraph from the date of any payment due or paid, at the per annum rate of interest publicly announced from time to time by JP Morgan Chase Bank, National Association at its principal office in New York, New York as its prime lending rate (any change in such prime rate of interest to be effective on the date such change is announced by JP Morgan Chase Bank, National Association) plus three percent (3%) per annum (the "Reimbursement Rate"). The Reimbursement Rate shall be calculated on the basis of the actual number of days elapsed over a 360-day year. In the event JP Morgan Chase Bank ceases to announce its prime

rate publicly, the prime rate shall be the publicly announced prime rate or base lending rate of such national bank, as the Bond Insurer shall specify.

(ii) In addition to any and all rights of reimbursement, subrogation and any other rights pursuant hereto or under law or in equity, the Town agrees to pay or reimburse the Bond Insurer, to the extent permitted by law but solely from Revenues, any and all charges, fees, costs, claims, losses, liabilities (including penalties), judgments, demands, damages, and expenses which the Bond Insurer or its officers, directors, shareholders, employees, agents and each Person, if any, who controls the Bond Insurer within the meaning of either Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended, may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, of any nature in connection with, in respect of or relating to the transactions contemplated by the Ordinance by reason of:

a. any omission or action (other than of or by the Bond Insurer) in connection with the offering, issuance, sale, remarketing or delivery of the Insured Bonds;

b. the negligence, bad faith, willful misconduct, misfeasance, malfeasance or theft committed by any director, officer, employee or agent of the Town in connection with any transaction arising from or relating to this Second Supplemental Ordinance, the General Bond Ordinance;

c. the violation by the Town of any law, rule or regulation, or any judgment, order or decree applicable to it;

d. the breach by the Town of any representation, warranty or covenant under this Second Supplemental Ordinance and the General Bond Ordinance or the occurrence, in respect of the Town, under this Second Supplemental Ordinance and the General Bond Ordinance of any Event of Default or any event which, with the giving of notice or lapse of time or both, would constitute any Event of Default; or

e. any untrue statement or alleged untrue statement of a material fact contained in the official statement relating to the Insured Bonds, if any, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such claims arise out of or are based upon any untrue statement or omission in information included in an official statement, if any, and furnished by the Bond Insurer in writing expressly for use therein.

(iii) Payments required to be made to the Bond Insurer shall be payable solely from the Revenues of the System and shall be paid (a) prior to an Event of Default, to the extent not paid from the 2010 Debt Service Fund, after required deposits to the 2010 Debt Service Reserve Fund and (b) after an Event of Default, with respect to amounts other than principal and interest on the 2010 of Bonds, on the same priority as payments to the Trustee for expenses. The obligations to the Bond Insurer shall survive discharge or termination of this

Second Supplemental Ordinance.

(iv) This Second Supplemental Ordinance shall not be discharged until all amounts due and owing to the Bond Insurer (including amounts due and owing under any reimbursement agreement related to a Reserve Policy (a “Reimbursement Agreement”)) shall have been paid in full. The Town’s obligation to pay such amounts shall expressly survive payment in full of the applicable Insured Bonds.

B. Payment Procedure Under the Insurance Policy

(i) At least two (2) Business Days prior to each Interest Payment Date and Principal Payment Date on the Insured Bonds, the Trustee will determine whether there will be sufficient funds to pay all principal of and interest on the Insured Bonds due on the related payment date and shall immediately notify the Bond Insurer or its designee on the same Business Day by telephone or electronic mail, confirmed in writing by registered or certified mail, of the amount of any deficiency. Such notice shall specify the amount of the anticipated deficiency, the Insured Bonds to which such deficiency is applicable and whether such Insured Bonds will be deficient as to principal or interest or both. If the deficiency is made up in whole or in part prior to or on the payment date, the Trustee shall so notify the Bond Insurer or its designee.

(ii) The Registrar shall, after giving notice to the Bond Insurer as provided above, make available to the Bond Insurer and, at the Bond Insurer’s direction, to any fiscal agent (the “Fiscal Agent”), the Books of Registry of the Town maintained by the Registrar, and all records relating to the funds maintained pursuant to the Ordinance.

(iii) The Registrar shall provide the Bond Insurer and any Fiscal Agent with a list of registered owners of Insured Bonds entitled to receive principal or interest payments from the Bond Insurer under the terms of the Insurance Policy, and shall make arrangements with the Bond Insurer, the Fiscal Agent or another designee of the Bond Insurer to (i) mail checks or drafts to the registered owners of Insured Bonds entitled to receive full or partial interest payments from the Bond Insurer and (ii) pay principal upon Insured Bonds surrendered to the Bond Insurer, the Fiscal Agent or another designee of the Bond Insurer by the registered owners of Insured Bonds entitled to receive full or partial principal payments from the Bond Insurer.

(iv) The Trustee shall, at the time it provides notice to the Bond Insurer of any deficiency pursuant to clause (i) above, notify registered owners of Insured Bonds entitled to receive the payment of principal or interest thereon from the Bond Insurer (A) as to such deficiency and its entitlement to receive principal or interest, as applicable, (B) that the Bond Insurer will remit to them all or a part of the interest payments due on the related payment date upon proof of its entitlement thereto and delivery to the Bond Insurer or any Fiscal Agent, in form satisfactory to the Bond Insurer, of an appropriate assignment of the registered owner’s right to payment, (C) that, if they are entitled to receive partial payment of principal from the Bond Insurer, they must surrender the Insured Bonds for payment first to the Paying Agent, which will note on such Insured Bonds the portion of the principal paid by the Paying Agent and second to the Bond Insurer or its designee, together with an appropriate assignment, in form

satisfactory to the Bond Insurer, to permit ownership of such Insured Bonds to be registered in the name of the Bond Insurer, which will then pay the unpaid portion of principal, and (D) that, if they are entitled to receive full payment of principal from the Bond Insurer, they must surrender the Insured Bonds for payment to the Bond Insurer or its designee, rather than the Paying Agent, together with an appropriate assignment, in form satisfactory to the Bond Insurer, to permit ownership of such Insured Bonds to be registered in the name of the Bond Insurer.

(v) In addition, if the Trustee has actual knowledge that any holder of the Insured Bonds has been required to disgorge payments of principal or interest on the Insured Bonds previously Due for Payment pursuant to a final non-appealable order by a court of competent jurisdiction that such payment constitutes an avoidable preference to such holder within the meaning of any applicable bankruptcy laws, then the Trustee shall notify the Bond Insurer or its designee of such fact by telephone or electronic notice, confirmed in writing by registered or certified mail.

(vi) The Trustee is hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for Holders of the Insured Bonds as follows:

a. If and to the extent there is a deficiency in amounts required to pay interest on the Insured Bonds, the Trustee shall (a) execute and deliver to the Bond Insurer, in form satisfactory to the Bond Insurer, an instrument appointing the Bond Insurer as agent for the Bondholders in any legal proceeding related to the payment of such interest and an assignment to the Bond Insurer of the claims for interest to which such deficiency relates and which are paid by the Bond Insurer, (b) receive as designee of the respective Bondholders (and not as Trustee) in accordance with the tenor of the Insurance Policy payment from the Bond Insurer with respect to the claims for interest so assigned, and (c) disburse the same to such respective Bondholders; and

b. If and to the extent of a deficiency in amounts required to pay principal of the Insured Bonds, the Trustee shall (a) execute and deliver to the Bond Insurer, in form satisfactory to the Bond Insurer, an instrument appointing the Bond Insurer as agent for the Bondholders in any legal proceeding related to the payment of such principal and an assignment to the Bond Insurer of the Insured Bonds surrendered to the Bond Insurer in an amount equal to the principal amount thereof as has not previously been paid or for which moneys are not held by the Trustee and available for such payment (but such assignment shall be delivered only if payment from the Bond Insurer is received), (b) receive as designee of the respective Bondholders (and not as Trustee) in accordance with the tenor of the Insurance Policy payment therefor from the Bond Insurer, and (c) disburse the same to such Bondholders.

(vii) Payments with respect to claims for interest on and principal of Insured Bonds disbursed by the Trustee from proceeds of the Insurance Policy shall not be considered to discharge the obligation of the Town with respect to such Insured Bonds, and the Bond Insurer shall become the owner of such unpaid Insured Bonds and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of this subsection or otherwise.

(viii) Irrespective of whether any such assignment is executed and delivered, the Town and the Trustee hereby agree for the benefit of the Bond Insurer that:

a. they recognize that to the extent the Bond Insurer makes payments directly or indirectly (e.g. by paying through the Trustee), on account of principal of or interest on the Insured Bonds, the Bond Insurer will be subrogated to the rights of such Holders to receive the amount of such principal and interest from the Town, with interest thereon as provided and solely from the sources stated herein and the Insured Bonds; and

b. they will accordingly pay to the Bond Insurer the amount of such principal and interest, with interest thereon as provided in this Second Supplemental Ordinance and the Insured Bonds, but only from the sources and in the manner provided herein for the payment of principal of and interest on the Insured Bonds to Holders, and will otherwise treat the Bond Insurer as the owner of such rights to the amount of such principal and interest.

(ix) The Bond Insurer shall be entitled to pay principal or interest on the Insured Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Town and any amounts due on the Insured Bonds as a result of acceleration of the maturity thereof in accordance with this agreement, whether or not the Bond Insurer has received a Notice of Nonpayment or a claim upon the Insurance Policy.

(x) In addition, the Bond Insurer shall to the extent it makes any payment of principal or interest on the Insured Bonds become subrogated to the rights of the recipients of such payments in accordance with the terms of the Insurance Policy, and to evidence such subrogation (i) in the case of claims for interest, the Registrar shall note the Bond Insurer's rights as subrogee on the Books of Registry of the Town maintained by the Registrar upon receipt of proof of payment of interest thereon to the registered Bondholders, and (ii) in the case of claims for principal, the Registrar shall note the Bond Insurer's rights as subrogee on the Books of Registry of the Town maintained by the Registrar, upon surrender of the Insured Bonds together with receipt of proof of payment of principal thereof.

Section 6.02. Reserve Policy and Special Provisions Required Thereby. If the Town elects to satisfy the 2010 Reserve Fund Requirement by the purchase of a Reserve Policy the provisions of this Section 6.02 shall apply (any references in this Section 6.02 to “Bonds” shall solely reference the Series of Bonds related to such Reserve Policy, and “2010 Debt Service Reserve Fund” and “2010 Reserve Fund Requirement” shall solely reference such fund and reserve requirement which are related to such Bonds). Notwithstanding anything to the contrary contained in this Second Supplemental Ordinance or in the General Bond Ordinance, so long as a Reserve Policy is in effect and has not been wrongfully dishonored by the Bond Insurer or the Bond Insurer is owed any amounts in connection with a draw on such Reserve Policy and no Insurer Default has occurred and is continuing, the Town shall comply with the provisions of the Reimbursement Agreement; provided, however, that the Bond Insurer (rather than the Bondholders) shall have the exclusive right to enforce the provisions of this Section 6.02 and the Reimbursement Agreement and/or waive any violations thereof, in each case subject to the provisions hereof. The Town Manager is hereby authorized to approve the form of Reimbursement Agreement and execute and deliver the Reimbursement Agreement to the Bond Insurer, the Town Manager’s execution and delivery of the Reimbursement Agreement constituting conclusive evidence of his approval of the matters therein contained.

(a) *Payments Due under Reserve Policy.* All amounts on deposit under this Second Supplemental Ordinance (excluding any amounts not pledged to the Bonds) and lawfully available to pay debt service, shall be used to pay debt service on the Bonds before any drawing may be made on the applicable Reserve Policy or any other liquidity facility (other than the Insurance Policy issued by the Bond Insurer).

(b) *Repayment of Draws Under the Reserve Policy.* Any amounts available for replenishment of withdrawals from the 2010 Debt Service Reserve Fund shall be applied first to reimburse the Bond Insurer for payments under the Reserve Policy (following which the Reserve Policy will be reinstated to the “Policy Limit” (as defined therein) to the extent required thereunder) prior to depositing cash and investments to the applicable 2010 Debt Service Reserve Fund. All draws on the applicable Reserve Policy shall be repaid no later than twelve (12) months of such drawing.

I *Other Provisions Required to be in this Second Supplemental Ordinance.*

(1) The Town shall repay (but solely from available Revenues) any draws under the Reserve Policy and pay all related reasonable expenses incurred by the Bond Insurer. Interest shall accrue and be payable on such draws and expenses from the date of payment by the Bond Insurer at the Late Payment Rate. “Late Payment Rate” means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, N.A., as its principal office in the Town of New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank, N.A.) plus 3%, and (ii) the then applicable highest rate of interest on the Refunding Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank, N.A., ceases

to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such national bank as the Bond Insurer shall specify.

Repayment of draws and payment of expenses and accrued interest thereon on the Late Payment Rate (collectively, "Policy Costs") shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to the Bond Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Bond Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the 2010 Debt Service Reserve Fund shall be transferred to the 2010 Debt Service Fund before any drawing may be made on the Reserve Policy or any other credit facility credited to the 2010 Debt Service Reserve Fund in lieu of cash ("Credit Facility"). Payment of any Policy Costs shall be made prior to replenishment of any such cash amounts. Draws on all Credit Facilities (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the 2010 Debt Service Reserve Fund. Payment of Policy Costs and reimbursement of amounts with respect to other Credit Facilities shall be made on a pro-rata basis prior to replenishment of any cash drawn from the 2010 Debt Service Reserve Fund.

(2) If the Town shall fail to pay any Policy Costs in accordance with the requirements of paragraph I(1) above, the Bond Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under the Bond Ordinance other than (i) acceleration of the maturity of the Bonds or (ii) remedies which would adversely affect owners of the Bonds.

(3) The Ordinance shall not be discharged until all Policy Costs owing to the Bond Insurer shall have been paid in full. The Town's obligation to pay such amounts shall expressly survive payment in full of the Bonds.

(4) The additional bonds test set forth in Section 4.02(A)(7) of the General Bond Ordinance, and the rate covenant set forth in Section 5.01 of the General Bond Ordinance are hereby modified to expressly provide for at least one times coverage of the Town's obligations with respect to Policy Costs then due and owing.

ARTICLE VII
MISCELLANEOUS

Section 7.01. Further Actions. The Mayor, Clerk, Town Manager, Chief Financial Officer and Town Attorney are hereby authorized and directed to take any and all such further actions as shall be deemed necessary or desirable in order to effectuate issuance of the Bonds pursuant to the Purchase Contract, to purchase the Insurance Policy including the execution and delivery of the commitment relating thereto and to carry out the intentions of this Second Supplemental Ordinance.

Section 7.02. Headings. The headings and titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Second Supplemental Ordinance.

Section 7.03. Notices. All notices, certificates or other communications hereunder or under the General Bond Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the Town:

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

If to the Trustee, Registrar or Paying Agent:

Wells Fargo Bank, N.A.
Corporate Trust Department
Vice President
7077 Bonneval Road, Suite 400
Jacksonville, FL 32216

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

Section 7.04. Severability. If any section, phrase, sentence, or portion of this Second Supplemental Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 7.05. Codification. This Second Supplemental Ordinance shall be forthwith codified in the Code of Town Ordinances in the manner required by law.

Section 7.06. Effective Date. This Second Supplemental Ordinance shall be effective upon its enactment by the Council of the Town of Hilton Head Island, South Carolina.

Section 7.07. Repeal of Inconsistent Ordinances. All ordinances of the Town, and any part of any ordinance, inconsistent with this Second Supplemental Ordinance are hereby repealed to the extent of such inconsistency.

Be it Ordered and Ordained by the Town of Hilton Head Island, South Carolina, and it is ordained by the authority of the said Council.

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Mayor

(SEAL)

ATTEST:

Town Clerk

Approved by:

Town Manager

Approved as to form:

Town Attorney

First Reading: _____

Second Reading: _____

Introduced by:

Effective Date: _____

Schedule I

List of the Projects

1. **Miller Pond**
2. **Arrow Road**
3. **US 278 Flooding Abatement in conjunction with separate resurfacing project**
4. **Inventory & Modeling**
 - Port Royal Plantation
 - Hilton Head Plantation (HHP)
 - Jarvis Creek
 - Unaffiliated Watersheds
 - Indigo Run Plantation
 - Palmetto Hall Plantation
 - Sea Pines Plantation
 - Wexford Plantation
 - Palmetto Dunes
 - Long Cove Club
 - Spanish Wells
5. **Other Professional Services**
 - Surveying
 - Environmental
 - Legal
 - Engineering
6. **Infrastructure Upgrades and Improvements**
 - Sea Pines Pump
 - Port Royal - Grasslawn CIPP
 - Port Royal Culvert Upgrades
 - Fish Haul Culverts
 - HHP Pond Control Structures, Dredging & Culvert Upgrades
 - Palmetto Hall Weir and Inlet upgrades
 - Jarvis Bypass Channel
 - Gum Tree Road - South Outfall
 - Bay Pines Point Comfort Outfall
 - Wexford Generator Improvement



TOWN OF HILTON HEAD ISLAND

Community Development Department

To: Steve Riley, *Town Manager*
Cc: Charles Cousins, *Director of Community Development*
From: Sarah Skigen, *Natural Resources Associate*
Date: October 22, 2010
Subject: Recycling and Waste Collection Franchise Agreement and Processing Contract

Recommendation: Staff recommends that the Town Council direct staff to initiate a franchise agreement with Republic Services for island-wide waste and recycling collection and initiate a contract with Sonoco Recycling for processing of recyclables from single family residences and cart-based multi-family properties. On August 26th, 2010 the Public Facilities Committee (PFC) voted unanimously to recommend to Town Council to move forward with a franchise agreement with Republic Services for the island-wide waste and recycling collection and a contract with Sonoco Recycling for the processing of the recyclables.

Summary: At the November 3rd, 2009 Town Council meeting staff was directed to work with a consultant (Resource Recycling Systems) to assist in the formulation of a Request for Proposals (RFP) for recycling and waste services for residential units island-wide. The Public Facilities Committee held a special meeting on February 18th, 2010 to review the elements of the RFP for waste and recycling services. They recommended approval with some slight modifications. At the March 16th, 2010 Town Council meeting staff was directed to move forward with the RFP process to acquire submittals from qualifying vendors for waste and recycling collection and recycling processing services for single family and cart-based multi-family properties.

On June 8th, 2010 the Town received six proposals for recycling and waste collection and two proposals for processing of recyclables. Through extensive analysis of all proposals, including an initial round of clarifying questions, staff shortlisted two vendors for the collection franchise: Waste Pro and Republic Services. For the processing contract staff identified Sonoco Recycling as providing the highest rebate option to the Town, complimented with a service package which meets all Town objectives.

At the August 26th, 2010 PFC meeting a primary concern was related to the incentive program and its ability to remain independent of the chosen collection hauler. The Town's consultant (Resource Recycling Systems) has discussed this situation with RecycleBank representatives and they have assured us of their abilities to serve the Island through any collection vendor the Town may choose. Please see attached letter from RecycleBank.

Following the August 26th, 2010 PFC meeting there were some questions from the public as to the specific attributes of the program. After fielding many inquiries, staff summarized those questions into a comprehensive *Frequently Asked Questions* format to hand out to those interested, in hopes of providing an element of transparency to the proposed program. A copy of the FAQs has also been attached.

Background: The details of the RFP focused on a program description that was developed through input from a prioritization exercise completed by Town Council members. That prioritization exercise highlighted the following goals for Town Council:

- a. Lowering costs to citizens (1st priority)
- b. Lowering road maintenance costs (2nd priority)
- c. Achieving sustainability and “green” town goals (3rd priority)
- d. Increasing public safety (4th priority)
- e. Improving service (5th priority)
- f. Increasing recycling rate (6th priority)

Staff’s goal for this first phase of the program was to bring an affordable, high level of service to single family residences for waste and recycling collection. The total number of single family residences that will qualify under this agreement is approximately 14,011 households. The total number of cart-based multi-family units that will qualify for service under this agreement is approximately 5,592.

The Town’s selection committee reviewed all proposals utilizing the advertised selection criteria. For the collection RFP the criteria consisted of the following elements: Cost (Basic Services Rate, Optional Services Rates, Etc.); Capacity to Provide Services that Meet Town Goals; Experience on Similar Projects and Qualifications; References. For the processing RFP the criteria consisted of the following elements: Rebate (Amount, Risk, Market Index Approach, etc.); Capacity to Provide Services that Meet Town Goals; Experience on Similar Projects and Qualifications; References.

The two shortlisted collection vendors were brought in for interviews on July 22nd, 2010. As a result of those interviews a second round of clarifying questions was issued and the Town requested a best and final price offer from both vendors. The following revised price offers were received:

COST PROPOSAL Household Fee per Quarter	Combined Island- Wide Zone		Zone 1 North Island		Zone 2 South Island	
	WP	REP	WP	REP	WP	REP
2x/wk Trash and 1x/wk Recycling Single Family & Multi-family non-aggregate	\$80.59 Base Price	\$62.40 Base Price	\$ 81.85 Base Price	\$ 69.00 Base Price	\$ 81.43 Base Price	\$ 69.00 Base Price
2x/wk Trash and 1x/wk Recycling Multi-family aggregate	\$48.57 Base Price	\$44.25 Base Price	\$48.57 Base Price	\$ 45.00 Base Price	\$48.57 Base Price	\$ 45.00 Base Price
1x/wk Trash and 1x/wk Recycling Service	\$3.00 Decrease*	\$7.35 Decrease*	\$3.00 Decrease*	\$ 9.00 Decrease*	\$3.00 Decrease*	\$ 9.00 Decrease*
Added Day Trash Service Single Family & Multi- family non-aggregate	\$27.00	\$22.60	\$ 27.00	\$26.25	\$ 27.00	\$26.25
Added Day Trash Service Multi-family aggregate	\$27.00	\$40.75	\$27.00	\$50.25	\$27.00	\$50.25
All Bulky Items	\$20.00	\$ 35.00	\$ 20.00	\$ 35.00	\$ 20.00	\$ 35.00

*Decrease from Base Price

Within the stated selection criteria, under the category of ‘additional services’, the Town gave special consideration to the vendor’s capabilities to initiate and maintain an ongoing education campaign, self-manage and during critical times, such as start-up of the program, actually be capable of providing additional support to the Town. Republic Services provided the best comprehensive package for recycling education and incentives to increase participation. They have also proposed to provide the Town with customer service representatives for the initial roll-out period of the agreement (approximately 8 weeks) to assist the Town staff with inquiries and properly direct new service requests.

Based on the cost of services and overall quality of the service package proposed, staff is recommending initiating a franchise agreement with Republic Services for waste and recycling collection island-wide. Staff is recommending initiating a contract with Sonoco Recycling for recycling processing services.

Please contact me at 341-4682 or sarahs@hiltonheadislandsc.gov if you have any questions.

Frequently Asked Questions:

1. **Can I use my own waste cart?** Yes, you will be able to continue to use your own waste cart. Should you choose to rent one from the franchised hauler that option will be available for a quarterly fee.
2. **Will the franchised hauler put a liner in my waste cart?** Yes, should you want a waste liner put in your cart(s) it will be provided for a quarterly fee.
3. **Where will the franchised hauler pick-up my waste and recyclables?** Your current pick-up location will not change. If your waste and recycling is currently picked up from a service yard this will continue. If you currently have to bring it to the end of your driveway this too will remain the same.
4. **How will I report a missed pick-up or service issue?** The franchised hauler will have both an online service request as well as a call-in customer service line. This advanced reporting system will remedy the majority of service issues within 24hrs. This is your primary method for reporting problems.
5. **What if I need a larger recycling container?** You can use the online service request form or call customer service and the franchised hauler will deliver a larger recycling bin free of charge.
6. **How do I know that prices are not going to go up next year?** The Town is going to negotiate a 5 year contract with the chosen hauler. This 5 year contract will detail all pricing for the entire term length. The only increase in cost will be a 2.25% gas escalation fee/year which is standard for all services of this type. The escalation fee will only apply to the base service fee, not to the add-on services such as waste cart rental or waste container liner.
7. **Are there any discounts if I pre-pay?** Yes, there is a 5% discount off the base service price for annual pre-payment.
8. **Are there any discounts if I complete everything online?** Yes, there is a 3% discount off the base price if you use paperless billing and payment.
9. **What will I be able to put in my recycle bin?** At time of signing up for service you will be furnished with a full list of the single stream recycling items that may be placed in your bin for pick-up.
10. **How will I participate in the recycling incentive program?** Information on how to log your recycling efforts will be well documented in your welcome packet when you sign up for service.
11. **What if I only reside on Hilton Head Island seasonally?** All residents who subscribe to service will be able to turn service on and off if needed to accommodate seasonal residents.
12. **If I choose not to use the franchised hauler will I still be able to use the Beaufort County Convenience Center at 26 Summit Drive?** Yes, this drop-off center will remain open and available for residents and visitors to self-haul waste and recyclables to this location.

RecycleBank®

Scott Lamb
RecycleBank
95 Morton Street, 7th Floor
New York NY, 10014

September 3, 2010

Sarah Skigen, Natural Resources Associate
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

Re: RecycleBank Services for the Town's Proposed Waste/Recycling Franchise

Dear Ms. Skigen:

We are pleased to have been selected as part of the Republic Services Proposal for consideration in the Town's proposed Solid Waste and Recycling Collection Franchise. Thank you for this opportunity!

We are writing to confirm the intent of RecycleBank/Recycling Rewards to be the Town's long term provider of recycling incentive systems, not just during the proposed five year contract via Republic, but also, with the Town's support, after that initial term, even if the Town were to award the collection franchise to a different waste and recycling collection services provider.

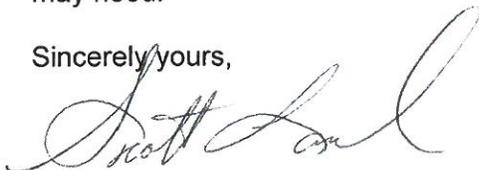
As you know, the Town has already made arrangements in the Town's service specifications for the RFP to have the recycling containers and the container distribution database remain with the Town even after the five year initial franchise ends. This is important as it will help RecycleBank in its role as the long term provider of recycling incentive services for the Town.

As well, we would like to re-assure the Town that the RecycleBank rewards program points that Town residents will earn will remain with those residents, even if they re-locate or the Town changes haulers. Again, this is part of RecycleBank's long term commitment to the Town as the leading provider of recycling incentive systems across the country.

Finally, to clarify another question that we understand has been raised during the approval process, the average RecycleBank Household earns \$130 - \$200 in reward savings annually.

Again, thank you so much for considering RecycleBank as part of your proposed franchise. We are very excited to work with the Town and look forward to providing any further information you may need.

Sincerely yours,



Scott Lamb,
Chief Operating Officer

REWARDS/FOR PEOPLE & PLANET

95 Morton Street 7th Floor, New York, NY 10014 / P: 212.659.9900 / F: 212.504.2838 / info@RecycleBank.com / www.RecycleBank.com

MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, AICP, Town Manager

VIA: Brian Hulbert, Staff Attorney
Gregory D. DeLoach, Assistant Town Manager
Charles Cousins, Director, Community Development
Julian Walls, Facilities Manager

DATE: October 25, 2010

SUBJ: Republic Services, Inc. Franchise and Services Agreements

Recommendation: Staff recommends the approval of Proposed Ordinance 2010-24, granting a non-exclusive Franchise to Republic Services, Inc. for the purpose of conducting waste hauling and recycling collection for single family and cart based multi-family residences within Hilton Head Island. Specifically, staff and Republic Services, Inc. recommend granting a Franchise to Republic Services, Inc. and the approval of the attached Franchise Agreement.

Summary: Approval of Proposed Ordinance 2010-24 would approve the Franchise Agreement for a five year term and grant a Franchise to Republic Services, Inc. for collecting waste and recycling from all single family and all cart based multi-family residences.

Background: On August 26th, 2010 the PFC voted unanimously to recommend to Town Council to move forward with a franchise agreement with Republic Services for the island-wide waste and recycling collection and a contract with Sonoco Recycling for the processing of the recyclables.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2010-

PROPOSED ORDINANCE NO. 2010-24

AN ORDINANCE GRANTING REPUBLIC SERVICES, INC. A NON-EXCLUSIVE FRANCHISE FOR THE PURPOSE OF CONDUCTING WASTEHAULING AND RECYCLING COLLECTION FOR SINGLE FAMILY RESIDENTIAL AND CERTAIN MULTI-FAMILY RESIDENTIAL UNITS WITHIN THE TOWN OF HILTON HEAD ISLAND; AND, PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 5-7-30 of the Code of Laws of South Carolina 1976 (Annotated), as amended, provides that the municipal government within the State of South Carolina may “grant franchises for the use of public streets and make charges for them”; and

WHEREAS, Section 2-7-20 of the Municipal Code of the Town of Hilton Head Island provides that Council grant, renew, or extend franchises, licenses, or rights in public streets or property by ordinance; and

WHEREAS, the Town Council finds that the public health, safety and welfare would be benefitted by the granting of a non-exclusive franchise to Republic Services, Inc. to conduct, within the Town of Hilton Head Island, waste hauling and recycling pick-up for single family residential and cart based multi-family residential properties pursuant to the terms as listed in the Franchise Agreement.

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

NOTE: Underlined and bold-face typed portions indicate additions to the Municipal Code. ~~Stricken~~ portions indicate deletions to the Municipal Code.

Section 1. Amendment. The Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby is amended by adding a section, to be numbered Section 10-5-90, which section reads as follows:

"Section 10-5-90. Waste hauling and recycling collection franchise granted to Republic Services, Inc.

A non-exclusive franchise for the use of the public streets and roads within the town limits is granted to Republic Services, Inc. to conduct waste hauling and recycling collection service to single family and cart based multi-family residences pursuant to the terms and

conditions of the franchise agreement which is attached hereto and made a part hereof by reference.

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

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

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____, 2010.

Thomas D. Peeples, Mayor

ATTEST:

Betsy R. Mosteller, Town Clerk

First Reading: November 3, 2010

Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member:

STATE OF SOUTH CAROLINA,)
)
COUNTY OF BEAUFORT) **RESIDENTIAL WASTE AND RECYCLING
COLLECTION FRANCHISE AGREEMENT**

THIS AGREEMENT is made this _____ day of _____ 2010 between Republic Services of South Carolina, LLC, d.b.a. Republic Services of Hilton Head, (hereinafter called "Franchisee") and the Town of Hilton Head Island, (hereinafter called "Town"), a municipal corporation organized and existing under the laws of the State of South Carolina.

WHEREAS, the Franchisee desires to enter into a franchise agreement with the Town for the purposes of conducting, within the defined service areas, specific residential waste and recycling collection services listed in Exhibit "A" to this Agreement; and

WHEREAS, the Town and the Franchisee desire to enter into an Agreement wherein the Franchisee shall provide such services as set forth herein below.

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 Franchisee, the parties hereto agree as follows:

I. DEFINITIONS

Administering Service Area means the Town of Hilton Head Island, South Carolina.

Franchise Administrator means the Town Manager, acting personally or through any assistants authorized by the Town Manager.

II. DURATION

This agreement shall become effective at time of execution, and shall require the Franchisee to perform those services and tasks pursuant to the terms and conditions of the agreement from April 1, 2011 until March 31, 2016, unless terminated for breach or as provided in this agreement.

III. SERVICES

A. The Franchisee shall perform those services and tasks pursuant to the terms and conditions as listed in the Scope of Services attached as Exhibit A, Fee Schedule attached as Exhibit B, Liquidated Damages as Exhibit C, Waste and Recycling Cart Specifications as Exhibit D, Truck Specifications attached as Exhibit E, Recycling Incentive Program, Outreach and Education as Exhibit F, and Customer Service Standards as Exhibit G.

B. General Scope: The Franchisee agrees to furnish all of the materials, equipment and labor necessary; and to abide by all the duties and responsibilities applicable to it for the franchised services in accordance with the requirements and provisions of the following documents, including all written modifications incorporated into any of the documents, which are incorporated as part of this Agreement.

The Agreement documents are complementary and what is called for by any one shall be binding. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the franchised

services. Materials or work described in words that so applied have a well-known technical or trade meaning have the meaning of those recognized standards.

In case of a conflict among the Agreement documents listed above in any requirement(s), the requirement(s) of the document listed first shall prevail over any conflicting requirement(s) of a document listed later.

- B. Quality of Services: The Franchisee's standard of service under this agreement shall be of the level of quality performed by businesses regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Franchise Administrator, in his or her reasonable judgment.
- C. Compliance with Applicable Law: The Franchisee shall perform its services under this agreement in compliance with all applicable laws, ordinances and regulations.
- D. Location: The Franchisee shall provide all of these services within the Town of Hilton Head Island.
- E. Waste: The waste and recyclable materials collected by Franchisee shall not include any Excluded Waste. Excluded Waste means highly flammable substances, hazardous waste, liquid wastes, special wastes, certain pathological and biological wastes, explosives, toxic materials, radioactive materials, material that the disposal facility is not authorized to receive and/or dispose of, and other materials deemed by state, federal or local law, or in the reasonable discretion of Contractor, to be dangerous or threatening to health or the environment, or which cannot be legally accepted at the applicable disposal facility. Title to and liability for any Excluded Waste shall at no time pass to Contractor and shall remain with the generator of such waste. Title to waste and recyclable materials shall pass to Franchisee when it is loaded into Franchisee's truck or delivered to Franchisee's facility, as appropriate.

IV. RELATIONSHIP OF PARTIES

- A. The parties to this agreement agree that it is not a contract of employment but is a contract to accomplish a specific result. Franchisee is an independent Franchisee performing services for the Town. Nothing contained in this agreement shall be deemed to constitute any other relationship between the Town and the Franchisee.
- B. The Franchisee certifies that it shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance of services under this agreement.
- C. Franchisee does not have any authority to execute any contract or agreement on behalf of the Town, and is not granted any authority to assume or create any obligation or liability on the Town's behalf, or to bind the Town in any way.
- D. Franchisee certifies that it is not, and shall not become, overdue or in default to the Town for any contract, debt, or any other obligation to the Town including real or personal property taxes. Town shall have the right to set off any such overdue debt against compensation awarded for services under this agreement.

V. FRANCHISE CONSIDERATION

- A. Franchise Fee: During the term of the Agreement, including any renewal term, a franchise fee in the amount of 5% percent of the Franchisee's annual gross receipts shall be paid by the Franchisee quarterly to the Town. Said payments shall be made no later than the last day of the following month after the month during which the receipts are received. All amounts paid shall be subject to audit and re-computation by Town and acceptance of payment shall not be construed, as an accord that the amount paid is in fact the correct amount. If any audit reveals an error by Franchisee of five percent (5%) or more during any audit period, Franchisee shall be responsible for Town's reasonable out of pocket costs associated with the audit.
- B. Service Agreement: In addition to the Franchise Fee described above, the Franchisee agrees to execute the "Service Performance Specifications" which is attached hereto and incorporated herein as Exhibit "A" and to perform the obligations thereunder. The "Service Performance Specifications" shall be executed contemporaneously herewith, and any breach of failure to perform by the Franchisee of its obligations under the "Service Performance Specifications" shall be deemed a material breach of this Franchise.
- C. Service Compensation: For services to be rendered as referenced above, the Franchisee shall be paid on the basis of the Fee Schedule shown in Exhibit B, "Franchisee's Compensation". It is understood and agreed between the parties that the compensation stated above is inclusive of any and all remuneration to which the Franchisee may be entitled, except as otherwise expressly authorized under the terms of this agreement.

VI. INSURANCE

- A. The Franchisee shall procure and maintain during the life of this agreement, such insurance policies, including those set forth below, as will protect itself from all claims for bodily injuries, death or property damage which may arise under this agreement; whether the acts were made by the Franchisee or by any sub contractor or anyone employed by them directly or indirectly. The following insurance policies are required:
 - 1. Worker's Compensation Insurance in statutory amounts:
 - 2. Comprehensive Commercial General Liability Insurance endorsed to include product and completed operations and contractual liability in a minimum amount of \$1,000,000 combined single limit.
 - 3. Motor vehicle liability insurance with minimum limits of \$500,000/\$1,000,000 (or \$1,000,000 combined single limit).

Each policy shall provide that it may not be canceled or changed without at least thirty (30) day's prior notice to the Town. The Town of Hilton Head shall be included as a named insured on the comprehensive general liability policy, and the Franchisee shall deliver to the Town, upon request, a copy of the policy and any endorsements there to.

VII. PERFORMANCE BOND

- A. The contractor shall provide a performance bond to the Town in the amount of Seven Hundred and Fifty Thousand dollars (\$750,000.00) within ten (10) days of execution of this agreement.
1. The bond shall be valid and non-cancelable for an initial period not less than five (5) years and, for the duration of the contract.
 2. The bond shall be for the use and benefit of the Town of Hilton Head Island, with a surety company authorized to do business in the State of South Carolina and acceptable to the Town of Hilton Head Island. Said bond shall be conditioned that should such Respondent faithfully perform each and every term, condition, and provision of this Contract, said bond shall remain in effect for the duration of the franchise agreement term and shall not be rendered null and void until prior to the end of this term without the express written permission of the Town Manager. The bond shall be further conditioned to cover any person(s) performing such work or services and said bond shall contain appropriate recitations that it is issued pursuant to this Contract.

VIII. NO AGENCY CREATED

The parties hereto intend that no master/servant, employer/employee, or principal/agent relationship will be created by this Agreement. Nothing contained herein creates any relationship between the Town and the Franchisee other than that which is expressly stated herein. The Town is interested only in the results to be achieved under this Agreement, and the conduct and control of the agents and employees of the Franchisee and the methods utilized by the Franchisee in fulfilling its obligations hereunder shall lie solely and exclusively with the Franchisee and its agents and employees shall not be considered agents or employees of the Town for any purpose. No person employed by the Franchisee shall have any benefits, status, or right of employment with the Town.

IX. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. There shall be no discrimination as to races, sex, color, creed, disability, or national origin in the operations referred to by this Agreement; and further there shall be no discrimination regarding any use, service, maintenance, or operation.
- B. Franchisee acknowledges and agrees that it shall comply with requirements of the Immigration Reform and Control Act of 1986 including the non-discrimination provisions thereof, and shall complete all required I-9 documentation for all workers employed by it.
- C. Franchisee, by signing this Agreement, hereby certifies that Franchisee shall comply with all applicable requirements of the South Carolina Illegal Immigration Reform Act, S.C. Code Ann. §41-8-10 (2007) et seq., (the "Act"), and that Franchisee covenants and agrees as follows:

- a. Franchisee shall not knowingly or intentionally employ any unauthorized alien and, unless excluded from coverage of the "Act", shall verify the work authorization of all new hirers performing work under the contract by either:
 - i. Registering and participating in the Federal Work Authorization Program (E-verify) and verifying the work authorization of every new yearly hired employee within five (5) business days after employing employee; or
 - ii. Employing only workers who, at the time of said employment:
 - 1. Possess a valid South Carolina driver's license or identification card; or
 - 2. Are eligible to obtain a South Carolina driver's license or identification card by providing proof of name, social security number and date and place of birth; or
 - 3. Possess a valid driver's license or identification card from another state deemed by the Executive Director Department of Motor Vehicles to have requirements at least as strict as those in South Carolina.
 - iii. Franchisee may choose either option C.a. (i) or option C.a. (ii) but acknowledges that Franchisee cannot use both.
 - b. Franchisee agrees to provide to the Town all documents requested by it to establish either:
 - i. The applicability of the South Carolina Illegal Immigration Reform Act to Franchisee; or
 - ii. Compliance with the South Carolina Illegal Immigration Reform Act by Franchisee.
 - c. Franchisee agrees to include in any contracts with its sub-contractors language requiring its sub-contractors to:
 - iv. Comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws; and
 - v. Include in their contracts with the sub-contractors language requiring the sub-contractors to comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws.
- D. Franchisee certifies it shall comply with all state, federal, and local laws, rules, regulations and orders applicable to it in performance of work under the contract.

X. WARRANTIES BY FRANCHISEE

- A. The Franchisee warrants that the quality of its services under this agreement shall conform to the level of quality performed by professionals regularly rendering this type of service and shall meet the minimum level described in their proposal.
- B. The Franchisee warrants that it has all the skills, equipment, and experience necessary to perform the services it is to provide pursuant to this agreement. The Franchisee may rely upon the accuracy of reports and surveys provided to it by the Town except when defects should have been apparent to a reasonably competent Franchisee or when it has actual notice of any defects in the reports and surveys.

XI. TERMINATION OF AGREEMENT; RIGHTS ON TERMINATION

- A. The Town Manager may terminate this contract in whole or in part at any time for the convenience of the Town.
- B. The violation of any provision of this Franchise Agreement by the Franchisee and/or its agents or employees may result in termination of this Agreement. If the Franchisee shall fail to fulfill in a timely and proper manner the Franchisee's obligations under this Agreement, or if the Franchisee violates any of the terms and conditions of the Agreement, the Town may give the Franchisee written notice of the violation and an opportunity for corrective action within five (5) consecutive working/collection days or longer period of time decided by the Town. If the Franchisee shall fail to cure the violation within a period of five (5) days or a longer period specified in writing, the Town shall have the right to terminate this Agreement by giving written notice to the Franchisee specifying the effective date of the termination, at least five (5) days before such effective date. Notwithstanding the above, the Franchisee shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of this Agreement by the Franchisee.
- C. Failure of the Franchisee to collect and transport the materials required to be collected pursuant to the contract documents or failure of the Franchisee to perform the work in the manner required to be performed pursuant to the contract documents shall constitute a breach of the agreement, provided such failure is not due to an event of Force Majeure. "Force Majeure" means any event that prevents a party from complying with its obligations under this Agreement, including acts of God (including, without limitation, earthquakes, tornadoes, hurricanes and severe weather events), impassable roadways, industrial disputes or disturbances at designated processing center or landfill, civil disturbances, interruptions by government or court orders, necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction, acts of the public enemy, events affecting facilities or services of non-affiliated third parties, or any other cause of like kind not reasonably within the control of the party claiming Force Majeure and which by the exercise of due diligence such party could not have prevented or is unable to overcome. Except with regard to a party's obligation to make payments due under this agreement, in the event either party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations, then upon a written notice setting forth the specifics within a reasonable time, the obligations of the party giving such notice, insofar as they are affected by such Force Majeure, from its inception, shall be excused during the entire period of any inability so caused but for no longer period.

- D. If the Franchisee fails to collect and transport the materials required to be collected pursuant to the agreement or fails to perform the work in the manner required to be performed pursuant to the Agreement documents, the Town may take the following actions, at its discretion:
1. The Town shall give the Franchisee written notice of the breach and an opportunity for corrective action within five (5) consecutive working/collection days or longer period of time decided by the Town. If the Franchisee fails to correct the breach within the time provided after the written notice, the Town may terminate the agreement for breach of contract by the Franchisee and all liability of the Town under the agreement to the Franchisee shall cease, provided that the Franchisee shall be entitled to collect fees owed for services performed prior to the termination of the agreement from existing customers.
 2. If the Franchisee has repeat violations for which a notice of breach and opportunity to correct has been issued within the previous six months, or if two notifications have been issued for the same violation within the past twelve months, the Town may terminate the agreement immediately.
 3. If the Franchisee has three or more separate violations for which a notice of breach and opportunity to correct has been issued within the past twelve months, the Town may terminate the agreement immediately.
 4. If the Franchisee knowingly collects and transports materials not covered by this agreement with refuse collected and transported under the terms of this agreement, such action shall be a breach of the agreement for which the Town may terminate the agreement immediately.
 5. If the Town terminates the agreement for breach by the Franchisee, the Town may take over refuse collection operations and shall be free to negotiate with other potential Franchisees for the performance of the work. A contract entered into with another Franchisee shall not release the Franchisee of its liability to the Town for breach of this agreement, including any excess costs resulting from the breach.
 6. If the Franchisee fails to collect and transport refuse materials required to be collected pursuant to the agreement, except due to event of Force Majeure, the Town may perform the refuse collection operations that the Franchisee failed to perform and shall be free to negotiate with other potential Franchisees for the performance of the work.
- E. Neither a decision by the Town to not take action nor the failure of the Town to take action in the event of a breach by the Franchisee shall constitute a waiver of the Town's right to take action in the future on said breach in the event of a subsequent breach by the Franchisee.
- F. If contracting services are terminated for reasons other than the breach of the agreement by the Franchisee, the Franchisee shall be compensated for services rendered prior to effective date of the termination. Source of compensation will be generated from the existing customers being serviced as a result of the contract.

XII. LIQUIDATED DAMAGES

- A. The Town and Franchisee agree, in addition to any other remedies available to the Town, the Franchisee will make payments to the Town in the amounts specified in Exhibit C as liquidated damages for failure of the Franchisee to fulfill its obligations as determined by the Town:
- B. The liquidated damages provided for herein are not considered as penalties and were not calculated in contemplation or anticipation that the Franchisee would default. In the event the Franchisee does default or otherwise abandon the project, the Town reserves the right to collect from the Franchisee or its surety, in addition to the liquidated damages, the actual damages incurred by the Town as a result of the default or abandonment.

XIII. OBLIGATIONS OF THE TOWN

- A. The Town agrees to give the Franchisee access to appropriate Town staff and Town owned properties as required to perform the necessary services under the agreement.
- B. The Town shall notify the Franchisee of any defects in the services of which the Town has actual notice.

XIV. NOTICE

All notices and submissions required under the agreement shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in this agreement or such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this agreement when personally delivered to the Contract Administrator or placed in the U.S. mail, postage prepaid to the Administering Service Area/Unit, care of the Contract Administrator.

XV. DISPUTE RESOLUTION PROCESS

The Town and the Contractor agree to first use the following process to resolve disputes about issues related to the performance of this agreement. If an issue arises requiring resolution, either party shall initiate this dispute resolution process by notifying the other party and scheduling a meeting. The meeting shall serve as an opportunity to identify the issue, clarify the problem, review the applicable provisions of the contract documents relating to the issue, discuss alternative remedies, and agree upon a means of dispute resolution. The parties shall make a good faith effort to complete the agreed-upon tasks within 15 days of the initial dispute resolution meeting, or specify an alternative schedule and deadline for resolving the issue. This dispute resolution process shall be considered as one alternative to the Town invoking other available remedies. Nothing in this section, Dispute Resolution Process, shall be construed or implied to reduce, eliminate or otherwise affect the rights of the Town or the Contractor at any time to use any and all other legal remedies.

XVI. General Terms

1. Should any part of this Agreement be rendered void, invalid, or unenforceable by any court of law, such a determination shall not render void, invalid, or unenforceable any other part of this Agreement.
2. This Agreement has been made and entered into in the State of South Carolina, and the laws of South Carolina shall govern the validity and interpretation of this Agreement in the performance due hereunder.
3. The Agreement may not be modified unless such modification is in writing and signed by both parties.
4. The Franchisee may not assign this Agreement without the prior written approval of the Town.
5. The Franchisee shall defend, indemnify, and hold harmless the Town, its officers, directors, agents, and employees from and against any and all actions, costs, claims, losses, expenses, and/or damages, including attorney's fees, whether incurred prior to the institution of litigation, during litigation, or on appeal to the extent arising Franchisee's negligence or willful misconduct in the performance of any requirements imposed pursuant by this Agreement, or a breach of the terms and conditions of this agreement.

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

WITNESSES:

REPUBLIC SERVICES OF SOUTH CAROLINA, LLC

By: _____

Its: _____

WITNESSES:

TOWN OF HILTON HEAD ISLAND

By: _____
Stephen G. Riley, CM

Its: Town Manager

EXHIBIT A:

SCOPE OF WORK &

SERVICE PERFORMANCE SPECIFICATIONS

Section A-1.1: General Service Standards
1.1: Franchise collector will provide waste collection services – year round
1.2: Franchise collector is encouraged to provide recycling collection services same day as waste, year round, except when customer has subscribed to additional refuse collection days beyond 1 time per week service without adding additional recycling collection days.
1.3: Franchise collector will provide all labor, supervision, equipment, materials, supplies, insurance, bonds and all other items required to perform the services specified
1.4: All work to be completed in a thorough and professional manner
1.5: All work to be performed between the hours of 7:00 a.m. and 5:00 p.m. or to be completed in compliance with times designated by the Town of Hilton Head Island, Planned Unit Developments or Property Owner Associations.
1.6: Franchise collector will prevent materials from being spilled, scattered or leaked during the collection process and will promptly clean-up all spilled materials if any are spilled during collection/transportation. Failure to comply will yield a penalty in the form of liquidated damages by schedule to be provided in the franchise agreement.
1.7: Franchise collector will conduct all collection and transport equipment operations as quietly as practical and shall conform to applicable federal, State, County and Town of Hilton Head Island noise level regulations and ordinances as well as private community covenants.
1.8: Franchise collector will return all waste and recycling carts or containers to an upright position with lids left closed and shall exercise due care in preventing damage to any waste and recycling cart or container provided by the service unit or Town.
1.9: Franchise collector shall compensate the service unit or Town for any cart or container that Franchise collector has damaged.
1.10: In case of storm or other disaster, Town may grant the Franchise collector reasonable variances from regular schedules and routes. As soon as practical after such storm or disaster, the Franchise collector shall advise Town of the estimated time required before regular schedules and routes can be resumed.
Section A-1.2: Waste and Recyclables Delivery
2.1: Franchise collector shall deliver all waste to the licensed disposal site designated by Beaufort County or the Town.
2.2: Franchise collector shall not be responsible for paying any disposal costs associated with waste collected under this contract. Beaufort County covers disposal costs for all residential units serviced by this franchise agreement (except for those units determined to not be eligible for the county reimbursement based upon County ordinance).
2.3: Franchise collector shall deliver single stream recyclables to the designated single stream Recycling Processing Center designated by the Town, and not landfill or incinerate recyclables under any circumstances.
Section A-1.3: Basic Waste Service Specifications
3.1: Franchise collector shall collect, within the designated service areas, waste placed in the designated service yard (rear, side or front location to be determined by service unit) by eligible service units who have prepared their waste in compliance with Town rules and regulations.
3.2: Franchise collector shall provide eligible multi-family properties with collection services for associated structures on subject property free of charge, to include pool/recreational areas and/or management offices.

3.3: Franchise collector shall collect waste free of charge from designated Town facilities. A list of properties to be serviced will be provided by the Contract Administrator.
3.4: Franchise collector shall collect and transport all waste (with the exception of hazardous waste) which the service unit may desire to have removed and for which the Town through this agreement and its rules and regulations has authorized the Franchise collector to so collect and transport for the price herein.
3.5: The collection of waste shall be a minimum frequency of once each week, with additional collection provided at service unit request twice, three or four times weekly including Saturday service if desired, all at additional charge.
3.6: For improperly set-out waste, the Franchise collector will affix to non-conforming waste a sticker or tag, approved by the Town, stating the reason for the non-collection and notify the Town if collection is not made, at which time the Town, at the request of the service unit with the tagged waste, shall determine if the waste is collectible, and if so, the Franchise collector will promptly return to the site and collect the waste at the Franchise collector's expense.
Section A-1.4: Basic Single Stream Recycling Service Specifications
4.1: Franchise collector shall collect all recyclables prepared in compliance with Town rules and regulations and placed in the designated service yard by eligible service units.
4.2: Franchise collector shall collect and transport all single stream recyclables which the service unit may desire to have removed and for which the Town through this agreement and its rules and regulations has authorized the Franchise collector to so collect and transport for the agreed upon price.
4.3: Franchise collector shall collect recyclables free of charge from designated Town facilities. A list of properties to be serviced will be provided by the Contract Administrator.
4.4: Contract single stream recyclables shall be collected from carts or containers provided by the Franchise collector, each service unit, the Town, or other providers as determined by the Town.
4.5: The collection of single stream recyclables shall be a minimum frequency of once each week, with additional collection provided at service unit request twice, three or four times weekly including Saturday service if desired, all at additional charge.
4.6: Acceptable Recyclables shall include the following items clean of food and contamination: newspapers, newspaper inserts, cardboard, pizza boxes, magazines, catalogs, phone books, residential mail, junk mail, office paper, paper bags, box board, cereal cartons, beverage cartons, gift wrapping paper, shredded office paper, all closed mouth plastic bottles, #1 through #7 household plastics (no Styrofoam), glass containers of any color, milk/juice cartons and aseptic containers, aluminum cans, other aluminum, aluminum foil, steel cans, tin cans, aerosol cans, and other small household scrap metal.
4.7: The recyclables shall be collected "single stream", compacted as required for efficient transportation, and delivered to the single stream recycling facility designated by the Town.
4.8: Recyclables are not to be mixed with any other trash or yard waste.
4.9: For improperly set-out recyclables, the Franchise collector will affix to non-conforming recyclables a sticker or tag approved by the Town stating the reason for the non-collection and notify the Town if collection is not made, at which time the Town shall determine if the recyclables are collectible, and if so, the Franchise collector will promptly return to the site and collect the recyclables at the Franchise collector's expense.
Section A-1.5: Recycling Containers and Recycling Participation Incentive System
5.2: The Franchise collector will work with a recycling container manufacturer acceptable to the Town, such that all of the requirements of A-2 Section 1, Recycling Container Construction and Warranty and Section 2, Recycling Container Labeling, Identification and Database are met in full.
5.3: Franchise collector will distribute the recycling containers to each service unit following procedures identified below in A-2 Section 3, Recycling Container Distribution, working with subcontractors (e.g. Container manufacturer or recycling incentive system provider) such that all requirements of this section are met in full.
5.4: The Franchise collector shall be encouraged to work with individual properties to accommodate space needs as required through the provision of alternative cart sizes.

5.5: Franchise collector will provide ongoing recycling container service and maintenance following procedures identified below in A-2 specifically Section 4, Ongoing Recycling Container Service and Maintenance, such that all requirements of this section are met in full.
5.6: Franchise collector will work with a recycling participation incentive system service provider (RecycleBank or equivalent) to set up and operate the daily procedures identified below in A-2 Section 4- 5, Recycling Participation Incentive System Data Management, such that all requirements of this section are met in full.
5.7: Franchise collector will work with a recycling participation incentive system service provider (RecycleBank or equivalent) to provide all aspects of the recycling incentive system identified below in A-2 Section 6, Recycling Participation Incentive Accounts and Recycling Rewards such that all requirements of these sections are met in full.
5.8: The recycling containers and container distribution database will become the property of the Town at no additional cost after the end of the term of Franchise collector's Service.
Section A-1.6: Franchise collector's Personnel
6.1: Franchise collector shall furnish two (2) temporary customer service personnel at a Town designated location for an eight (8) week period to help service new customer calls during initial roll-out period of franchise.
6.2: Franchise collector shall furnish qualified drivers in compliance with specifications.
6.3: Franchise collector shall provide, as part of Proposal, company standards for drivers.
6.4: All drivers shall be trained and qualified in the operation of waste/recycling collection vehicles and must have in effect a valid Commercial Drivers License of the appropriate class, issued by the State of South Carolina Department of Motor Vehicles.
6.5: Franchise collector shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of materials under this Contract.
6.6: Franchise collector shall train its employees in waste and recycling collection protocols to identify and prevent the collection of hazardous waste or other prohibited wastes.
6.7: Training shall include customer relations communication skills to assure quality interactions with Town residents in the performance of Franchised Services.
6.8: Franchise collector shall not, nor shall it permit its employees to, demand, solicit or accept, directly or indirectly, any additional compensation or gratuity from members of the public for services provided under the Contract.
6.9: Franchise collector shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner, which shall include regularly training in customer courtesy and prohibitions on the use of loud or profane language and instructions to collection crews to perform the work as quietly as possible.
6.10: Franchise collector will take all appropriate corrective measures If any employee is found not to be courteous or not to be performing services in the manner required by the Contract.
6.11: Franchise collector shall designate qualified employees as supervisors of field operations, who shall be in the field inspecting Franchise collector's work and be available by phone during the Franchise collector's hours of operation to handle calls and complaints from the Town or to follow up on problems and inspect Franchise collector's operations.
6.12: Employees shall wear protective equipment at all times including shirts with company logo and have company identification available on request.
6.13: Franchise collector will train its employees as to the collection rules and regulations of the Town's program being serviced under this contract.
6.14: Franchise collector's employees will leave notices of improperly prepared waste and recyclables.
Section A-1.7: Collection Vehicles and Equipment
7.1: Franchise collector shall be responsible for providing fleet of collection vehicles and equipment of such type and in such quantity and capacity to efficiently fill obligations.
7.2: Franchise collector shall be responsible for vehicle operation, maintenance, fuel, tires, insurance, bonds, traffic tickets and repair of all such vehicles and equipment in a manner sufficient to ensure that such vehicles and equipment are capable of providing all of the required services set forth in the contract including maintenance of all vehicles to State of South Carolina

standards.
7.3: Town shall have right to inspect all vehicles to be used in servicing this Contract before services commence, each year of the Contract and at any other time that the Town determines to be necessary to determine compliance with these requirements and Franchise collector shall immediately repair and/or replace any vehicle that Town determines has failed to meet a requirement of the contract.
7.4: All vehicles used by Franchise collector in providing collection of materials under the Contract shall be designed to prevent leakage, spillage or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise and pollution emission regulations as well as other applicable noise control regulations.
7.5: Franchise collector shall ensure that gross vehicle weight of all vehicles, even when loaded, does not exceed vehicle license limitations to protect the highways and roads of the Town.
7.6: Franchise collector's name, local telephone number and a unique vehicle identification number designed by Franchise collector for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than four (4) inches high.
7.7: Franchise collector shall furnish Town with a written inventory of all vehicles used in providing service, listing all vehicles by manufacturer, ID number, date of acquisition, type and capacity, and shall update the inventory when changes are made or annually, whichever is more frequent.
7.8: Franchise collector shall maintain all of its properties, facilities and equipment used in providing service under the Contract in a safe, neat, clean and operable condition at all times including thoroughly washing all vehicles used in the collection of materials under the contract on a regular basis so as to present a clean appearance.
7.9: Franchise collector shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule and shall keep accurate records of all vehicle maintenance, recorded according to date and mileage and shall make such records available to the Town upon request.
7.10: Franchise collector shall inspect each vehicle and complete a report daily to ensure that all equipment is operating properly, with vehicles that are not operating properly taken out of service until they are repaired and do operated properly.
7.11: Franchise collector shall arrange to store all vehicles and other equipment in safe and secure locations(s), where applicable, in accordance with applicable laws and ordinances.
Section A-1.8: Collection Service Management
8.1: Franchise collector will provide designated contact person for contract management.
8.2: Franchise collector will provide designated on-site field supervisor for day-to-day operations management who will be in constant communication with Town throughout the service period.
8.3: Franchise collector will work with the Town's designated contract administrator.
8.4: Franchise collector will maintain office/call center for contact by phone and email.
8.5: Franchise collector will have phone dispatch system for communicating with all vehicles.
8.6: Franchise collector understands that Franchise collector will handle all service and complaint calls and that Town, should it receive any service or complaint calls, will immediately inform Franchise collector's field representative of any service issues that have been identified as a result of those calls (e.g. missed pickups, damaged containers, etc.).
8.7: Franchise collector will maintain an active log of all calls (missed pickups, service changes, complaints, new container requests, damaged containers, etc.) and close out all received service issues within 24 hours of receipt. Franchise collector will inform the Town via email that provides an active link to an updated version of the log showing resolution of each service issue including description of issue, actions taken, responsible party for Franchise collector and any required follow-up.
8.8: Franchise collector will provide, no later than 12 months after contract award, web accessible service issue tracking for all service units so that the customer can check the status of their account and service issues online.
8.9: Franchise collector will invoice each service unit at the beginning of each quarter of service for services scheduled to be provided for that quarter, with full itemization of services and costs by service type and unit counts, and all costs and charges taken from the current schedule of services and fees established by the Town Franchise agreement.

8.10: Franchise collector will provide a 5% discount for a one-year pre-pay and a 3% discount for paperless invoicing and bill payment.
8.11: Franchise collector will provide monthly and annual reports in a format determined to be acceptable by the Town which shall be transmitted electronically to the Town along with its monthly invoice and shall, at a minimum, include number of units serviced by service type, total waste tons collected, total single stream recycling tons collected, and total bulk waste tons collected.
8.12: Franchise collector will work with the Town to provide recycling containers designed to meet Town specifications and implement recycling participation incentive rewards system (RecycleBank or equivalent as determined by the Town) as required to meet the Town's recycling goals.
8.13: Franchise collector will abide by all administrative procedures required for compliance with these specifications.
8.14: Franchise collector understands the dispute resolution process (included in the Collection Franchise Agreement) and liquidated damages penalties are provided for in the agreement.
Section A-2.1: Recycling Container Construction and Warranty
1.1: Recycling Container Type and Size: 32 gallon injection molded HDPE round recycling container with a reinforced construction on the bottom of the container to prevent wear through and a tight fitting, detachable snap lid. The containers must be nestable and have well rounded handles that are integrally molded into the container with sides and bottom to assist in manual dumping. Container must have a smooth surface area on at least two sides for labeling and a corrugated/channeled body to deter rolling. Acceptable containers would be manufactured by Rehrig Pacific or equivalent.
1.2: Thirty percent minimum recycled content and material must be stabilized to prevent degradation by ultraviolet light with manufacturer's material specification and details of UV stabilization submitted with proposal.
1.3: Recycling container must have a minimum resin weight of 9 lbs. and shall be 100% recyclable.
1.4: The container shall be free from sharp corners, edges, points, or other structures that could represent a hazardous nuisance.
1.5: The body walls shall have a minimum thickness of 0.120" and have a slight taper so that the top of the body is slightly larger than the bottom for nesting during shipment.
1.6: The top of the container shall be molded with a reinforced rim to add structural strength to the container and to provide a adequate handle space for comfortable lifting.
1.7: The container bottom must have drain holes so not to retain water and to prevent recyclables from soaking up moisture from the container bottom.
1.8: Interior surfaces shall be smooth and non-porous, all interior and exterior surfaces shall be uniform in appearance, and free of foreign substances, shrink holes, cracks, blowholes, webs, and other superficial or structural defects that could adversely affect the appearance and performance of the container. It shall not support bacterial growth.
1.9: Minimum five (5) year warranty. The container shall be warranted to be free from manufacturing or materials defects for non-prorated replacement for 60 months from delivery date.
Section A-2.2: Recycling Container Labeling, Identification and Database
2.1: Franchisee shall provide containers with Town of Hilton Head Island private label custom standard and custom logo markings including art work, stamps, etc. on two sides of container.
2.2: Franchisee shall outline the container labeling options and associated costs including in-molded label (IML) options on the lid for recycling instructions. The container must be labeled at the time of manufacture.
2.3: Franchisee shall provide an adhesive bar code/serial number label and a blank address label that will be affixed to the container at the time of manufacture. An acceptable bar code/serial number sequence is 32R000001 in order to classify the container as a 32 gallon recycling container. The bar code must be programmed to be read by a handheld device in Code 128.
2.4: Container shall include easily readable unique serial number.
2.5 At time of manufacture, a data file will be created that will identify the serial number and date of manufacture of each container.
Section A-2.3: Recycling Container Distribution

3.1: Provide distribution services for each recycling container pairing the Bar Code/Serial Number and address for each distributed container and provision of that database to the Town for ownership and use.
3.2: Provide sufficient number of crews and all other required labor, materials, supplies, as required to distribute containers to designated service units. Each container must have a blank address label attached it and the distribution crew will need to write in the unit number (if applicable) for the address that the container is delivered to.
3.3: Review accuracy and completeness of customer address database with Town data.
3.4: Utilize bar code reading handheld recording devices to perform container distributions and associate each container's bar code/serial number to the household that it was delivered to.
3.5: Work with Town and/or Town representative to scrub Town database and prepare for container distribution including downloading of database to scanners, scanning of each bar code and matching to database address at time of distribution and updating database in the field to add any new or revised locations to the database with more accurate field verified information.
3.6: Upload from scanners at the end of each day to the resulting database of all distributed containers including container model, address, serial number and bar code/serial number and any other data fields that the Town deems necessary, creating summary delivery reports and detailed distribution reports to be made available to the Town via e-mail or online after each delivery day is completed.
3.7: Provide the up to date container distribution database to both the Town and the recycling participation incentive system service provider at the end of the initial recycling container distribution as well as at the end of the program, and at any other time that the Town shall request.
3.8: Provide and attach to each container instructions in container use and care – content to be finalized with Town.
3.9: Include instructional/educational materials (provided by the Franchisee) and attached to delivered container.

Section A-2.4: Ongoing Recycling Container Service and Maintenance

4.1: Franchise collector shall have an on-going container maintenance program that meets the Town's need for repair and replacement of damaged containers within one (1) week of customer request.

4.2: After the initial distribution, Franchise collector will provide one additional standard container to any customer that requests it at no additional charge. Franchise collector may be required to provide additional types of recycling containers in larger wheeled rolling cart capacities at pricing and terms to be negotiated.

4.3: Franchise collector will utilize an asset tracking software in conjunction with handheld devices to track all additional recycling containers distributed and all recycling containers exchanged during the program. The software must manage container inventories, repairs, deliveries, swap outs and other service requests in the field in order to maintain an accurate account database that will become the foundation for tracking participation in the recycling program. This software will maintain the proper bar code/serial number for each address and, when the changes are made, the updated information will be sent in electronic format to both the Town and the recycling participation incentive system service provider.

Section A-2.5: Recycling Participation Incentive System Data Management

5.1: Franchise collector will provide each collection worker with a bar code handheld device that is operating the asset tracking software as outlined above. These devices will be used by the collection worker on each route to scan the bar codes on each container that is picked up with recyclables on the day of collection. At the end of the collection day, the handhelds will be docked and synced with the asset tracking software that is managing the container to serial number database. The household participation data (container serial numbers) that are collected by the handhelds during collection and transferred to the asset tracking software will be linked to the appropriate address in the asset tracking software in order to report the recycling participation data from each service unit that has set out recyclables at the time of collection. These reports must be available online and via email so they can be transmitted to the Rewards Provider to manage the rewards program.

5.2: Franchise collector will successfully complete all required data collection tasks in the field during each day of recycling collection including maintaining the required equipment (handheld devices) to enable successful collection of data for the recycling participation incentive system.

5.3: Franchise collector will match data from a specific truck/worker with a specific truck route and route participation (containers serviced) each day and allocate that specific truck payload to each service unit that had recyclables removed from their container that day, providing an average lbs of recyclables per household that participated in the recycling program that day (so called "community based" rewards system).

5.4: Franchise collector will troubleshoot, on a daily basis with all suppliers (container supplier, asset tracking system provider, incentive system provider, etc.) as needed to insure continued successful recording of real participation data on a daily basis.

5.5: Franchise collector shall then manage data as needed to feed the service unit account management and recycling participation incentive systems as provided for below.

5.6: Franchise collector must provide access to weekly and monthly Participation Reports showing total number of households that have put out recyclables in a given month, broken down by route number and day of service.

5.7: Proposer must provide access to on-demand reports via the web. The queries for running these reports will be developed and customized by the Town and the Franchisee (e.g. participation counts for a specific period for a specific neighborhood or block). The Proposer may reserve the right to charge a fee for additional custom reports beyond those described above or originally developed and customized for the Town.

Section A-2.6: Recycling Participation Incentive Accounts & Recycling Rewards Program

6.1: Franchise collector will provide a unique account for each individual service unit (participating households or other similar service units) within the Town. Each account will have the ability to view transaction history including, but not limited to recycling pick up, reward redemption and household environmental footprint calculation or equivalent environmental impact information.

6.2: Each service unit will have access to an e-commerce platform to redeem their rewards.

6.3: Within the individual account page the Franchise collector must provide the Town with the ability to provide the user with an html linking pathway back to any relevant recycling and environmental information the Town may choose to share through that channel.

6.4: Franchise collector must provide call center access to all service units within the Town to handle calls for the recycling participation incentive system, and to enable non-internet users to access the system, with minimum hours of access for the call center being no less than Monday-Friday 8 am to 8 pm, Saturday 8 am to 5 pm EST.

6.5: Franchise collector will provide rewards through the rewards redemption program as the incentive for recycling participation. Upon request the Franchise collector shall make available to the public the details of the rewards program including a) types of local, regional and national rewards; b) provisions for donations of reward points to community cause (e.g. schools); and c) methods Franchise collector will use in recruiting, developing, managing and retaining the rewards partners during the course of the contract.

6.6: Franchise collector will provide a recruitment, engagement and retention campaign targeted at all households that receive the recycling container to encourage their participation in the recycling rewards program. The Franchise collector shall conduct a campaign in cooperation with incentive program to promote and encourage increased recycling including a) initial launch including welcoming kit/invitation to be sent to all service units receiving a recycling container along with all related outreach materials; b) re-marketing initiatives (no less than every six months with at least one cycle at the beginning of the high season), to include a contact mailed to each service unit; and c), for the life of the contract, public education support on use of the rewards program, including ongoing coordination of outreach with the Town, including collaboration with the Town on web based educational content linked with the rewards system. The Franchise collector will provide Town or Town's designee with approved artwork and copy for review prior to its use and for the Town to use in its own communication to service units for outreach regarding the rewards program.

6.7: On a twice yearly basis, the Franchise collector shall report on all marketing, public education and information activities undertaken during the period, including community information and events, and other activities related to the provision of services. This report shall discuss the impact of these activities on recycling program participation and lbs per household diversion including quantification of reward points earned and spent and active/inactive account totals, and provide details of events and activities planned for the next period.

6.8: The Franchise collector will facilitate transition, at the end of the contract term, of the recycling participation incentive system and all of its key components to the next holder of the Town's waste and recycling contract, including transfer of all distributed recycling containers and containers held in inventory and the most current version of the distributed recycling container database – to enable a seamless switch for the Town's service units.

EXHIBIT B:
5 YEAR FEE SCHEDULE

5 Year Pricing Schedule for the Town of Hilton Head Island:					
Price is per quarter based on a 2.25% fuel escalation fee/year					
PER/QTR	Year 1	Year 2	Year 3	Year 4	Year 5
Single Family Base Price (2X per week Trash and 1X per week Recycling Pick-Up)	\$62.40	\$63.80	\$65.24	\$66.71	\$68.21
Multi Family Base Price (2X per week Trash and 1X per week Recycling Pick-Up)	\$44.25	\$45.25	\$46.26	\$47.30	\$48.37
Reduction off Base Price for 1X per wk Trash & Recycling Service	\$7.35	\$7.35	\$7.35	\$7.35	\$7.35
Waste Cart Rental/per cart	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
Added Recycling Cart/per cart	\$2.50	\$2.50	\$2.50	\$2.50	\$2.50
Waste Container Liner	\$2.50	\$2.50	\$2.50	\$2.50	\$2.50
Added Day Trash Service (no SAT)	\$21.60	\$21.60	\$21.60	\$21.60	\$21.60
Added Day Recycling Service (no SAT)	\$12.60	\$12.60	\$12.60	\$12.60	\$12.60
Added Saturday Recycle Service (Min Participation Required)	\$13.60	\$13.60	\$13.60	\$13.60	\$13.60
All Bulky Items	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00

EXHIBIT C:
LIQUIDATED DAMAGES

The Contract Administrator or designee shall notify the Franchisee for each violation of the contract reported to the Town. Failure to remedy the cause of the complaint within the specified time period shall constitute a breach of this contract. The assessment of liquidated damages shall be determined by the Contract Administrator or the designee. The decision of the Contract Administrator or the designee in the matter will be binding. The Contractor may at their option initiate the dispute resolution process included in the service agreement to contest a determination of liquidated damages. For the purpose of computing damages under the provisions of this section, it is agreed that the Town shall have the authority to deduct from payments due the Franchisee, the following amounts as liquidated Damages.

In the event the Franchisee defaults or abandons the project, the Town reserves the right to collect from the Franchisee or its surety, in addition to the liquidated damages, the actual damages incurred by the Town as a result of the default or abandonment.

Section C-1.1: Liquidated Damages		
	Description	Damages
1.1:	Failure to clean up spillage or litter caused by Franchisee by end of work day of the day of notification	\$100 per incident or per customer
1.2:	Failure to repair damage to customer property caused by Franchisee or its personnel within 24 hours	\$250 per incident per location
1.3:	Failure to maintain equipment in a clean, safe, and sanitary manner	\$250 per incident per work day
1.4:	Failure to comply with the hours of operation as required by this agreement	\$100 per incident
1.5:	Failure to return container or cart to the service yard without throwing it	\$100 per incident
1.6:	Failure to repair and/or replace damaged containers and related equipment within one (1) week of service unit request	\$100 per incident
1.7:	Failure to leave a completed informational form in the recycling container explaining the reason the non-recyclable materials were not collected	\$100 per incident

EXHIBIT D:
WASTE AND RECYCLING CART SPECIFICATIONS



Republic Waste Services
Hilton Head, South Carolina

RESIDENTIAL COLLECTION CARTS

Please refer to a detailed description with graphic examples of the proposed carts to be provided by Republic Services of Hilton Head for collection of residential garbage and recyclable commodities.

1. Overall construction, useful life expectancy and warranty.

Residential carts (in all sizes) are constructed of HDPE plastic. They are equipped with a permanently affixed hinged lid and a set of wheels for ease of movement. Excluding deliberate abuse, the useful life expectancy of a cart should exceed ten (10) years. Cart manufacturers generally offer a five (5) year warranty on their products. Cart dimensions are reflected on the following page.

2. Means of mobility including a detailed explanation of the amount of human effort required to reposition or to move the container over grassed areas with a 90% fill capacity (weight and volume).

A fully loaded 95-gallon residential cart can easily be maneuvered simply by placing your foot at the base of the cart (as a stop) and using the hand grips to tilt the cart at a 30-to-45 degree angle. The cart can then be pushed or pulled over a sidewalk, driveway or lawn with minimal effort. Elderly residents generally utilize a smaller cart (65-gallon or 35-gallon capacity).

3. Range or limitations of the compatibility of the proposed cart to multiple manufacturers of collection vehicles.

The two(2) largest manufacturers of automated collection vehicle bodies are Heil and McNeilus. Both of these body types will handle residential carts manufactured by Shaffer, Rherig-Pacific, Toter or Otto in 95, 65 or 35 gallon capacities.

4. Proposed carts are compatible with vehicles proposed to service private roads, dead end streets, mobile home parks, condominiums, or similar difficult pick-up areas.

Residential carts can be used for residents who live on private roads, dead end streets, mobile home parks, condominiums and other difficult access areas. In most cases, the collection vehicle will be a rear-end loading (REL) truck instead of an automated side-loading truck.

5. Inventorizing and maintaining the proposed collection carts.

Once it is determined how many carts (by size and quantity) are required per resident, additional carts will be carried in inventory to cover new residential growth and replacement of carts that have been stolen or severely damaged.

6. Storage site for new carts, replacement carts.

Carts will be stored at the Republic Waste Services facility in Beaufort, South Carolina.

7. Time required from notice of need for repair or replacement of an existing cart, or delivery of a new cart of any of the proposed sizes.

Maximum of 2-work days. This includes carts used for collection of solid waste and recyclable materials.

Reflected below is information about cart dimensions, weight and load ratings. These statistics will vary slightly depending on a specific cart manufacturer.

	<u>32 Gallon</u>	<u>65 Gallon</u>	<u>96 Gallon</u>
Cart Dimensions	28"D x 20.5"W x 37"H	35"D x 28.5"W x 40.5"H	35"D x 28.5"W x 45"H
Cart Weight	19 pounds	32 pounds	43 pounds
Cart Load Capacity	140 pounds	230 pounds	315 pounds

EXHIBIT E:
TRUCK SPECIFICATIONS FOR WASTE AND RECYCLING COLLECTION

Republic Services of Hilton Head, South Carolina

Town of Hilton Head Island, South Carolina

NOTE: The following Republic Services owned equipment will be dedicated to service the Town of Hilton Head Island, South Carolina.

Collection Equipment List

Model Year	Chassis Manufacturer	Body Manufacturer	Body Capacity	Truck No.	Truck Type	Front Line / Reserve	New / Transfer	Owned or Leased	G.P.S. System	Nextel Radios	Vehicle Use
2011	Mack MRU	Heil PT 1000	20 cu. yd.	701	Rear Load	Front Line	New	Owned	Yes	Yes	Solid Waste
2011	Mack MRU	Heil PT 1000	20 cu. yd.	702	Rear Load	Front Line	New	Owned	Yes	Yes	Solid Waste
2011	Mack MRU	Heil PT 1000	20 cu. yd.	703	Rear Load	Front Line	New	Owned	Yes	Yes	Solid Waste
2011	Mack MRU	Heil PT 1000	20 cu. yd.	704	Rear Load	Front Line	New	Owned	Yes	Yes	Solid Waste
2011	Mack MRU	Heil PT 1000	20 cu. yd.	705	Rear Load	Front Line	New	Owned	Yes	Yes	Solid Waste
2011	Mack MRU	Heil PT 1000	20 cu. yd.	706	Rear Load	Front Line	New	Owned	Yes	Yes	Solid Waste
2011	Mack MRU	Heil PT 1000	20 cu. yd.	707	Rear Load	Front Line	New	Owned	Yes	Yes	Solid Waste
2011	Mack MRU	Heil PT 1000	20 cu. yd.	708	Rear Load	Front Line	New	Owned	Yes	Yes	Solid Waste
2007	International	Heil 4300	17 cu. yd.	790	Rear Load	Front Line	New	Owned	Yes	Yes	Recycle
2005	International	Heil 4300	17 cu. yd.	786	Rear Load	Front Line	New	Owned	Yes	Yes	Recycle
2007	International	Heil 4300	14 cu. yd.	788	Rear Load	Reserve	New	Owned	Yes	Yes	Solid Waste & Recycle
2007	International	Heil 4300	14 cu. yd.	789	Rear Load	Reserve	New	Owned	Yes	Yes	Solid Waste & Recycle
2011	Ford F-150	Pick-up Truck	N / A	11	Operations Supervisor	Front Line	New	Owned	Yes	Yes	Route Observation

All Republic Services vehicles are equipped with a Republic Logo, Truck Number and local Telephone Number on the vehicle body and/or cab doors.

Safety Equipment Note: All Republic Services' Collection Vehicles will be equipped with the following safety equipment:

- GPS System
 - LED Lighting System
 - Strobe Lights
 - Back-up Alarm
 - Frequent Stops Decal on Rear
 - 20 lb. Fire Extinguisher
 - First Aid Kit
 - Rear-Mounted Camera
- Boom-up Alarm
 - Fork-up Alarm
 - Triangular Reflectors
 - Emergency Spill Kit
 - Broom
 - Shovel
 - Diesel Engine Idle Inhibitor

EXHIBIT F:
RECYCLING INCENTIVE PROGRAM,
OUTREACH & PUBLIC EDUCATION

Service Overview

A. RecycleBank will reward each participating resident with Points based on the recyclables collected by Republic Services on each collection day.

B. RecycleBank Points are calculated based on a Community Weight Based Model where the system records participation. The truck is weighed at the scale house – the net weight is calculated based on the truck load. The net weight of the recyclables is divided by the number of participants on that load to calculate the average pounds per household.

C. RecycleBank Points are converted to rewards. Each household will have access to the RecycleBank network of national, regional and local partners. Residents can obtain their rewards online or over the phone and redeem the rewards with RecycleBank partners, including Green Schools in the City.

D. RecycleBank will provide customer service for reward redemption & fulfillment:

- RecycleBank will track reward Points and provide member access via RecycleBank’s website and toll free telephone customer service center.
- The experienced RecycleBank Member Care Team will provide customer service to answer any questions which relate to the incentive recycling program Monday through Friday, 8AM -8PM ET, and Saturdays 8AM -3PM ET. E-mails are responded to within 24 hours.
- RecycleBank will manage and fulfill resident reward requests via the RecycleBank website, phone and mail systems.



E. Republic Services to provide the following:

- Address list for each household serviced
- A Welcome Letter to the residents announcing the program
- Daily platform weight of each recycling truck used for the project
- Republic to provide RFID tags in each recycle cart

Supporting the RecycleBank Program

The following components of the RecycleBank program are included:

A. Equipment Category

- RFID tag for each residential household in the City
- Data transfer equipment

B. Rewards Program Category

- Local and regional vendor recruitment and setup for the Town of Hilton Head
- Access to national reward portfolio
- Green Schools donations program
- E-waste rewards
- Individual account creation for all residences
- Dedicated RecycleBank Project Manager
- RecycleBank Member Care (8am-8pm M-F, 8am-3pm Sat., e-mail response within 24 hours)
- Reward fulfillment and redemption
- Constituent Services training
- Monthly reporting suite
- PR and community outreach campaign

Qualifications

RecycleBank currently services over 90 municipalities across 26 states and the United Kingdom, serving millions of people. RecycleBank was honored at the World Economic Forum in Davos, Switzerland as a 2009 Technology Pioneer and in April as a United Nations 2009 “Champion of the Earth” for its leadership in implementing financially sound solutions to environmental problems.



In partnership with RecycleBank, Republic has over two million households under contract in 10 states across the USA. Through this partnership, Republic is on pace to divert nearly one billion pounds of municipal solid waste from landfills to recycling centers every year while also rewarding people for positive green action.

RecycleBank Team to Manage Implementation

- General Manager - Responsible for all accounts in the Region
- Project Manager - The dedicated manager responsible for the implementation process
- Rewards Team - Signs up local and national reward partners
- Brand Design Team - Designs communication materials
- Public Relations Team - Develops PR materials, contacts local and national press
- Data Information Team - Establishes all customer accounts
- Operations Team - Supervises truck technology installs, provides training and tests systems
- Customer Service - Provides training to City staff and responds to all customer inquiries
- Account Manager - Manages on-going activities and requests after program implementation

We are pleased to offer the RecycleBank program to the Town of Hilton Head, and we look forward to having an opportunity to reward its residents for recycling.



RECYCLE FOR THE PLANET

ENVIRONMENT

To date, RecycleBank communities have recycled more than 167,498 tons of materials (over 300 million lbs.) That translates to savings of over:

- 1.6 million trees
- 111 million gallons of oil
- 705 million gallons of water

LOCAL ECONOMIES

Households overwhelmingly choose to redeem their Points for local/regional rewards. That means millions of dollars for Main Streets all over the U.S.

SCHOOLS

Through the RecycleBank Green Schools Program, \$182,000 has been granted to local schools for environmental programming—after all, kids are our future.

"The program is a great incentive to recycle and gives us feedback on our efforts. It's impressive to see how this reduces the regular trash pickup volume. We're hooked!"

Chuck G., Plano, Texas

RecycleBank[®] RECYCLE FOR THE PLANET **REWARDS FOR YOU!**



FIND OUT MORE

RecycleBank is changing the way people view recycling. Our goal is to get as many people to increase their recycling and to reward them for their efforts.

Visit RecycleBank.com to learn how you can participate.

RecycleBank www.RecycleBank.com | 888.727.2978

Printed on 20% Post-Consumer Waste Ink, which is recycled. Please recycle after using. RecycleBank is a subsidiary of RecycleRewards, Inc. and is not a financial institution nor engaged in the banking business.

07/09

REWARDS FOR YOU!

Households can earn hundreds of dollars worth of rewards every year, or choose to donate Points to local schools and charities.

1LB = 2.5 POINTS

- 01 Cardboard Box*
- 02 Glass Bottles*
- 18 Plastic Bottles*
- 32 Soda Cans*



Visit www.RecycleBank.com/my_rewards to see more RecycleBank Reward Partners.

*Value based on size of materials. All recyclables must be empty.

RECYCLE, RECORD, REWARD



Recycle. It's simple. All recyclables go into one cart. No more sorting!

Record. The cart's ID tag tells the truck you participated and recyclables are converted into RecycleBank Points.



Redeem your Points for rewards of your choice. We have something for everyone!

Sample of over 1,500 local and national rewards to choose from...

GROCERY AND RESTAURANTS



APPAREL AND SPORTS



BEAUTY AND HEALTH



HOME AND ELECTRONICS





RECYCLING

PROMOTION AND EDUCATION

Republic Waste Services of Hilton Head shall contribute the following to the promotion and education of recycling systems in order to enhance participation of residents and businesses in the Town of Hilton Head Island:

PowerPoint slides and attractive, informative handouts and other audio-visual aids, will be used to make presentations to Town Residents, such as Homeowners Associations, Churches, Environmental Groups, Schools, Women's Clubs, and to local businesses and civic groups such as the Rotary Club, Kiwanis, Lions Club, Women's Clubs, and other civic organizations.

Submission of written monthly recycling reports, detailing public awareness activities for the previous month and plans for upcoming months, will be coordinated by Republic Services with the Town Staff prior to any press releases.

Press releases applicable to important dates, such as contract award, delivery of recycling collection containers, and start-up of collection services. Town Staff members, local government officials, and prominent civic leaders will be featured in these press releases to promote leadership in recycling participation.

An official start-up celebration will be scheduled at a place and time selected by the Town Staff.

Recycling Enhancement Materials and Services:

- Door hangers and mail-outs will be distributed to residents 3-4 weeks prior to collection service implementation. All literature, which will be approved in advance by the City Staff, will describe the upcoming recycling program and inform residents of the scheduled delivery of recycling containers and implementation of collection service.
- Distribution of instructional pamphlets to single-family and multi-family residential units will accompany delivery of recycling containers. The pamphlets will clearly describe the correct way to prepare recyclables for collection, correct use of the recycling containers, the scheduled collection day, and what not to do.
- Use of notices (tags) will be left to inform residents of materials that are not subject to the curbside recycling program, and that such non-recyclable materials should not be placed in recycling bins or carts for collection.
- A recycling "hot line" telephone number will be provided to enable residents can get answers to questions, voice concerns or complaints, or notify Republic Services of a missed collection from the hours of 8:00 AM to 5:00 PM, Monday through Friday.
- Republic Services will cooperate and coordinate promotional materials and activities about recycling enhancements with the Town of Hilton Head Island Staff.

EXHIBIT G:
CUSTOMER SERVICE STANDARDS

1-4-2010

RESIDENTIAL SERVICE STANDARDS

1. NEW RESIDENTIAL CUSTOMERS

- Collection services (garbage and recyclable commodities) will be picked up from residences on designated collection days.
- Introductory information packets shall be delivered to ALL new residential Customers along with a recycling can within 2-days following a new Customer call. Information packets must include the Customer's specific collection days of the week according to types of waste.

2. RESIDENTIAL ROUTE COLLECTION SERVICE HOURS

- North Hilton Head Island: 7:00 a.m. to 5:00 p.m., Monday thru Saturday.
- South Hilton Head Island: 7:00 a.m. to 5:00 p.m., Monday thru Saturday.
- ALL Republic employees will be courteous to Customers at ALL times.

3. MISSED & DISPUTED PICK-UPS

- Missed & Disputed pick-ups called in by 3:00 p.m. to be completed same day.
- Disputes called in after 3:00 p.m. will be completed on the first load on the following day's route. CSR's must call the customer to confirm pick-up.
- Every effort will be made to complete a missed pick-up the same day regardless of the time the dispute was called in.

4. RESIDENTIAL NEIGHBORHOOD CLEANLINESS

- ALL spilled waste (regardless of type) will be immediately picked up and the affected area thoroughly swept clean if necessary by the applicable route driver. This includes streets, ends of driveways and lawns bordering the street.

5. RE-POSITIONING OF CONTAINERS

- North Hilton Head Island: containers right-side "up" with lids to the side.
- South Hilton Head Island: containers right-side "up" with lids to the side.
- Containers are to be placed back in the same position they were found.
- Containers & lids are not to be thrown or scattered in the street, in front of mail boxes, on driveways, or on the Resident's lawn.

6. NON-CONFORMING WASTE MATERIALS

- The driver is responsible for properly filling out and securing an information tag to any non-conforming waste materials (hazardous, bio-medical, explosive, volatile, overweight, over-size dimension, etc.), detected at any residence. This includes all franchised and subscription areas.

7. SPECIAL PICK-UP REQUESTS

- Residents that request "special" pick-ups (bulky, overweight, large quantity) are to receive a quoted price and pick-up schedule within 24-hours of the call.
- ALL such "special" pick-ups are to be made in accordance with the promised schedule.

ALL DRIVERS MUST CONTACT THEIR IMMEDIATE SUPERVISOR WHEN EXTRA PICK-UPS ARE COMPLETED AND BEFORE RETURNING TO THE DIVISION YARD.

MEMORANDUM

TO: Town Council
FROM: Stephen G. Riley, AICP, Town Manager

RE: Proposed Ordinance Number 2010-25 Amendments to Title 9 (Health and Sanitation) Chapter 6 (Recycling) of the Municipal Code

DATE: October 25, 2010

CC: Gregory D. DeLoach, Esq., Assistant Town Manager for Administration
Charles Cousins, Director Community Development
Brian E. Hulbert, Esq., Staff Attorney

Recommendation: Staff recommends that Town Council approve first reading of Proposed Ordinance Number 2010-25, amending Chapter 6 (Recycling) Title 9 (Health and Sanitation) of the Municipal Code.

Summary: This Ordinance amends Chapter 6 of Title 9 (Recycling) of the Municipal Code. The amendments will require that single family residences and cart based multi-family residences use a designated franchised waste hauler, if they desire to have commercial collection of their solid waste and recyclables. Residents are not mandated to use commercial waste hauling and recycling.

Background: Currently residents may select from several licensed waste haulers to collect their refuse or recycling material. Waste haulers are mandated by Town code to offer recycling services to each customer they service. Residents are not currently required by ordinance to recycle. With the amendments to the code, there will only be one waste hauler authorized to collect recycling from single family residences or cart based multi-family residences.

At the November 3, 2009 Town Council meeting, staff was directed to work with a consultant (Resource Recycling Systems) to assist in the formulation of a Request for Proposals (RFP) for recycling and waste services for residential units island-wide. The Public Facilities Committee held a special meeting on February 18, 2010 to review the elements of the RFP for waste and recycling services. They recommended approval with some slight modifications. At the March 16, 2010 Town Council meeting, staff was directed to move forward with the RFP process to acquire submittals from qualifying vendors for waste and recycling collection and recycling processing services for single family and cart-based multi-family properties.

On August 26, 2010 the Public Facilities Committee voted unanimously to recommend to Town Council to move forward with a franchise agreement with Republic Services for the island-wide waste and recycling collection and with a contract with Sonoco Recycling for the processing of the recyclables.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2010-

PROPOSED ORDINANCE NO. 2010- 25

AN ORDINANCE TO AMEND TITLE 9 (HEALTH AND SANITATION) OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA BY AMENDING CHAPTER 6 (RECYCLING) SECTION 9-6-10, SECTION 9-6-20, AND SECTION 9-6-30; AND PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina previously adopted Ordinance 96-41, Chapter 6 of Title 9 entitled "Recycling" on December 3, 1996; and

WHEREAS, the Town Council now desires to amend various sections of Chapter 6 of Title 9 for the purpose of providing for the health and welfare of the residents and visitors of the Town; and

WHEREAS, the Town Council now desires to provide for the collection of solid waste and recycling services to single family residences and cart based multi- family residences by way of a franchise agreement for the purpose of providing for the health and welfare of the residents and visitors of the Town; and

WHEREAS, the Town Council finds that it is in the best interests of Island residents and visitors to amend certain sections of the Town's Recycling Code; and

WHEREAS, the Town Council now desires to amend Chapter 6 of Title 9, Recycling Code.

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

NOTE: Underlined and bold-face typed portions indicate additions to the Municipal Code. ~~Stricken~~ portions indicate deletions to the Municipal Code.

Section 1. Amendment. That Chapter 6 of Title 9 (Recycling) of the Municipal Code of the Town of Hilton Head Island, South Carolina, is hereby amended as follows:

Chapter 6 COLLECTION OF SOLID WASTE AND RECYCLING

Sec. 9-6-10. Definitions.

[The following definitions shall apply:]

Commercial establishment: Any income-producing establishment, for profit or nonprofit, including, but not limited to, those used for retail, wholesale, industrial, manufacturing, dining,

offices, professional services, automobile services, hotels, motels and restaurants. This definition additionally includes residential properties that consist of dwelling units classified by the county assessor as having more than one dwelling unit per property or parcel, incorporating, but not limited to, apartments and mobile home parks with multiple units where aggregate collection of Municipal Solid Waste is provided as part of a rental agreement.

Franchise collector: The entity that has entered into a franchise agreement with the Town to perform solid waste and recycled materials collection.

Hazardous Materials: Any substance or chemical which is a "health hazard" or "physical hazard," including: chemicals which are carcinogens, toxic agents, irritants, corrosives, sensitizers; agents which act on the hematopoietic system; agents which damage the lungs, skin, eyes, or mucous membranes; chemicals which are combustible, explosive, flammable, oxidizers, pyrophorics, unstable-reactive or water-reactive; and chemicals which in the course of normal handling, use, or storage may produce or release dusts, gases, fumes, vapors, mists or smoke which may have any of the previously mentioned characteristics.

Multi-Family: For the purposes of this title pertaining to collection of solid waste and recycling only, multi-family means a structure containing more than one residential dwelling unit or residential structures clustered in a manner by which waste and recycling collection can be consolidated.

Recyclable materials: Materials, as designated in section 9-6-30 ~~50~~, that would otherwise become solid waste that can be separated, collected, processed and returned to the economic stream in the form of raw materials or products.

Recycling: Any process by which materials that would otherwise become solid waste are separated, collected, processed and returned to the economic stream in the form of raw materials or products.

Recycling collection service: Recycling service offered **provided** by waste haulers or participated in by subscribers.

Refuse: ~~All waste substances, whether recyclable or non-recyclable materials.~~ **Any solid waste, as defined herein, originating from typical household activities.**

Residential dwelling: A building or part of a building designed and occupied exclusively for residential purposes by an individual or family unit.

Single-Stream: A recycling process in which materials are collected all mingled together with no sorting required by individual recyclers. Therefore, all materials listed under section 9-6-30 can be deposited in the same receptacle for pick-up by the hauler.

Solid waste: Garbage, debris, commercial waste, industrial waste, yard waste, white goods, furniture, bedding, ashes, rubbish, paper, junk, building materials, glass or plastic bottles, other glass, cans and any other discarded or abandoned material, including solid, liquid, semisolid or contained gaseous material. For purposes of the chapter, any waste

specifically regulated under any state or federal law shall be excluded from the definition of solid waste.

Subscriber: One who voluntarily participates in a **the waste and** recycling collection service offered by ~~waste haulers~~ **the Town's designated franchised hauler.**

Waste hauler: An individual, corporation, partnership or other legal entity which collects solid waste **and recycling** commercially and hauls it to the designated county landfill **or recycling processing location.**

Sec. 9-6-20. General conditions for granting franchise agreements for solid waste and recycling collection.

(a) The entire incorporated area of the Town shall be subject to the requirements of this ordinance.

(b) Trash, yard trash, household articles, and recyclables shall be collected in the entire incorporated area of the Town under the following conditions: any single family or cart based multi-family residential household shall have the right and option to subscribe to the designated franchised collector's solid waste and recycling collection service and to receive such service, upon payment to the collector of such fee as specified in the franchise agreement approved by the Town Council.

(c) Franchise agreements may be obtained from either competitive bidding through the town procurement process or through negotiations with prospective collectors of solid waste and recycling materials.

(d) Any single family or cart based multi-family residential households which have signed contracts in place for waste or recycling collection services on April 1, 2011 shall have until their existing contract expires, or until September 30, 2012, whichever date is earlier to begin using the collection services of the designated franchised collector.

Sec. 9-6-30. Franchise Agreement.

Upon award by town council, a franchise shall not become effective until the collector has executed a written franchise agreement consistent with the terms of the bid specifications, or such terms as are approved by the town manager.

Sec. 9-6-20 **40. Solid waste and** ~~hauler~~ recycling collection service.

(a) The Town of Hilton Head Island's designated franchise solid waste and recycling collector will ~~Waste haulers shall offer~~ **provide** a reasonable ~~voluntary~~ **waste and** recycling collection service to all **cart-based single family and multifamily residential dwellings,** ~~and commercial establishments.~~

~~(b) The adequacy and reasonableness of the waste hauler recycling collection service shall be determined by the town manager or designee (January 1 through January 15) of each waste hauler's recycling collection program. The recycling collection service offered to subscribers shall be reasonable in cost.~~ **waste and** through an annual review. The franchise collector agreement will be fully evaluated after a 5 year term.

(c) ~~Waste haulers~~ **The Town's franchise collector** shall file a semiannual report (providing information for the six-month period of operation ending December 31 and June 30 of each calendar year) on February 1 and August 1 with the town that shall include the following information:

(1) ~~Waste hauler's fee schedules and frequency of pickup for residential and commercial recycling;~~

(2) ~~Number of residential solid waste customers and the percent using the hauler's recycling service;~~

(3) ~~Number of commercial solid waste customers and the percent that are using the hauler's recycling service; and~~

(4) ~~Tonnage of recycling from residential customers and tonnage of recycling from commercial customers.~~

Sec. 9-6-30 **50**. Recyclable materials.

A waste hauler recycling collection service, at a minimum, shall **will** offer pick-up of the following recyclable materials **clean of food and contamination: (a) newspapers, newspaper inserts, cardboard, pizza boxes, magazines, catalogs, phone books, residential mail, junk mail, office paper, paper bags, box board, cereal cartons, beverage cartons, gift wrapping paper, shredded office paper (b) all closed mouth plastic bottles, #1 through #7 household plastics (no Styrofoam) (c) glass containers of any color (d) milk/juice cartons and aseptic containers (e) aluminum cans, other aluminum, aluminum foil, steel cans, tin cans, aerosol cans, and other small household scrap metal.** ~~(a) aluminum and steel food and beverage containers, including aerosol cans; (b) clear, green and brown food and beverage glass; (c) newspaper ("glossy" inserts may be included); (d) No. 1 (PETE) natural resin plastic (soda bottles only); (e) No. 2 (PETE) natural resin plastic (milk and water jugs only); (f) No. 1 and No. 2 plastics, regardless of color, including, but not limited to, bleach, laundry detergent, fabric softener, shampoo and conditioner bottles, orange juice containers, nonprescription pain reliever bottles; (g) magazines; (h) catalogs; (i) fiberboard/paperboard (cereal, cracker boxes, etc.); and (j) corrugated (cardboard).~~

Sec. 9-6-40 **60**. Collection of recyclable materials.

(a) It shall be unlawful for any person to place any material not designated for recycling in section 9-6-30 **50** in the recyclable material receptacles.

(b) All information on proper procedures for disposal of recyclable materials and collection dates shall be provided by the waste hauler.

(c) All materials listed in section 9-6-50 shall be collected in a manner compliant with a single-stream method.

(d) For improperly set-out recyclables, the franchise collector will affix to non-conforming recyclables a sticker or tag approved by the Town stating the reason for the non-collection and notify the Town if collection is not made.

(e) The Town will provide a recycling receptacle(s) sufficient to serve each single family residence or cart based multi-family dwelling unit. The Town shall retain ownership of all its recycling receptacles and the resident and/or management company shall take proper care to protect such receptacle from loss or damage. Receptacles that are lost or stolen will be replaced one time free of charge. Should repeated loss occur it shall be the responsibility of the resident and/or management company of each property to purchase a replacement from the servicing franchise collector within forty-five days.

(f) All recyclable materials will be transported by the Town's designated franchise collector to a Town designated recycling processing location.

Sec. 9-6-70. Receptacle requirements; placement of receptacles in service yard areas.

(a) Receptacles generally. Every person producing or having refuse collected by the designated franchise collector shall keep, on the premises or property occupied or used by him, recycling carts or bulk containers as specified in this article, in locations accessible using normal collection methods, to handle accumulations of refuse on the premises or property in the interval between collections by the designated franchise collector.

(b) Placement in service yard area. Refuse and recyclables containers are to be placed in the service yard area no later than 7:00 a.m. on the day of the collection.

(c) Refuse carts. ~~One~~ A refuse cart(s) shall may be rented from the designated franchise collector or properties may provide their own suitable refuse cart. Rented carts remain the property of the franchise collector for use of the residences to which they are issued. Residents who damage carts issued to them must pay for repairing the carts or purchasing replacement carts from the franchise collector. Carts that are damaged through normal use as a result of being emptied by designated franchise collector will be repaired or replaced at the franchise collector's expense. Collection may be suspended at any location at which a cart is missing or at which a cart is damaged to such an extent as to interfere with normal collection methods.

(d) Recyclables containers. A recyclables container shall be issued to each requesting household which desires to use the designated franchise collector for the collection of recyclables. The recyclables container(s) shall remain the property of the town for use of the household to which they are issued. Residents who damage or lose the recyclables container(s) issued to them must pay for purchasing a replacement recyclables container(s)

from the town. Recyclables containers that are damaged through normal use as a result of being emptied by designated franchise collector will be replaced at the franchise collector's expense.

Sec. 9-6-70. Placement of waste in receptacles.

(a) Garbage and rubbish must be placed in refuse carts or bulk containers as specified in this article. Recyclable materials, in order to be recycled, must be placed in recyclables container(s). Glass and plastic shall have all lids removed prior to being placed in the recyclables container(s). Other material resulting from normal household use also should be placed in refuse carts, provided the total weight of the filled receptacle shall not exceed 200 pounds.

Sec. 9-6-80. Materials not to be placed in receptacles.

(a) Bulky waste. Appliances, furniture, bedding and other bulky items resulting from normal household use shall be subject to special collection upon call to the designated franchise collector and scheduling a pick-up time for a fee approved in the franchise agreement. These items shall be placed at the service yard area only on the day agreed to for pickup.

(b) Tree trimmings and yard waste. Shrubbery trimmings, tree trimmings, grass clippings, leaves and other outdoor vegetation shall be kept separate from all other garbage, rubbish or other household materials. Residents will be responsible for disposing of this waste separately at approved locations.

(c) Hazardous waste. This collection service does not include collection of waste deemed as hazardous, as established by this ordinance, or state or federal regulations.

Sec. 9-6-90. Enforcement generally; penalty; citations.

It shall be the duty of the Director of Public Projects and Facilities with the assistance of such other persons or code enforcement officials as the town manager may direct, to see that the provisions of this article are enforced except where otherwise specifically provided for by ordinance. Individuals violating the provisions of this article are guilty of a misdemeanor, punishable, upon conviction, in accordance with section 1-5-10. The code enforcement officials, or such other personnel as the town manager may direct shall issue citations to individuals violating the provisions of this article.

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

Section 3. Effective Date. This Ordinance shall become effective on April 1, 2011.

PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA ON THIS ____ DAY OF _____, 2010.

Thomas D. Peeples, Mayor

ATTEST:

By: _____
Betsy Mosteller, Town Clerk

First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____