The Town of Hilton Head Island
Intergovernmental Relations Committee
Regular Meeting

Tuesday, May 17, 2011
2:30 p.m. – Conference Room 3

AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting

1. **Call to Order**
2. **Freedom of Information Act 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.
3. **Approval of Minutes**
   a. Regular Intergovernmental Relations Committee Meeting of April 19, 2011
4. **Chairman's Report**
5. **Unfinished Business**
   a. Status of 2011 General Assembly Issues
   b. Revisions to the Storm Water Management and Utility Agreement between Beaufort County and the Town of Hilton Head Island
6. **New Business**
   a. Review of H.3918 – Aeronautics Bill
7. **Adjournment**

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

TOWN OF HILTON HEAD ISLAND

INTERGOVERNMENTAL RELATIONS COMMITTEE

Minutes of the Tuesday, April 19, 2011
Regular Meeting

Members Present:	George Williams, *Chairman;* Ken Heitzke, Lee Edwards, *Council Members*
Members Absent:	None
Others Present:	Bill Harkins, Kim Likins, Bill Ferguson, *Council Members*, Joe Croley, *Hilton Head Area Association of Realtors*, Marshall Stone, *Sea Pines Resident*, Natalie Hefter, *Coastal Discovery Museum*, Charlie Calvert, *Professor and Department Chair, Hospitality Management, USC-Beaufort*, Carrie Olivetti, *Adjunct Professor of Events Management & Law, USC-Beaufort*
Staff Present:	Stephen Riley, *Town Manager*, Greg DeLoach, Esq., *Assistant Town Manager;* Faidra Smith, *Administration Manager/Public Information;* Scott Liggett, *Director of Public Projects & Facilities;* Jeff Buckalew, *Town Engineer, Public Projects & Facilities;* Cary Gaffney, *Storm Water Administrator, Public Projects & Facilities;* Kimberly Kominski, *Administrative Assistant*
Media Present:	Tom Barton, *Island Packet*

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1. Call to Order

The meeting was called to order at 2:30 p.m.

2. **Freedom of Information Act 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.

3. Approval of Minutes

February 22, 2011 Regular Meeting
Mr. Heitzke moved to approve and Mr. Williams seconded. The motion was approved by a vote of 2-0. (Mr. Edwards was not a committee member.)

4. Chairman's Report

Chairman Williams welcomed new Committee member Lee Edwards.

5. Unfinished Business

a. Status of 2011 General Assembly Issues

Greg DeLoach updated the Committee on activities since the last meeting. He stated that Mayor Laughlin sent letters expressing the Town's opposition to proposed legislation reducing the Local Government Fund and the proposed cuts in the CDBG program. The Mayor also sent a letter of thanks to Representative Herbkersman for introducing the Heritage Golf Tournament Preservation Act and his continued support of the tournament.

Mr. DeLoach stated that Bobby Bowers, Director of S.C. Office of Research and Statistics is available to meet with the committee regarding the redistricting process and that it would be beneficial to do so. As there currently is no meeting scheduled for July, the committee is flexible and will meet with him at his convenience.

6. New Business

a. Proposed Collaboration Between the Town and USC-Beaufort (USC-B)

Town Manager Steve Riley stated that conversations have been going on for several months with representatives of USC-B and Town Staff to find a way to create greater cooperation and to enhance our special events and festivals, while also improving training opportunities for the hospitality industry. He explained that money to implement this proposal would come from both the University and the Town, and Town Funding would come from the festival and event fund that is a part of our 1% local ATAX ordinance, which had been flowing to the Hospitality Association to assist with festivals and training. He stated the Hospitality Association no longer meets the criteria for continued funding. He also said that staff believes collaboration with USC-B is our best solution for the long-term and addresses several of the issues identified in Council's goals and by the Mayor's Task Force, and that staff and University officials see this as a first step in a more ambitious effort to bring a university presence back to the Island.

Charles Calvert, Ed.D, Professor and Department Chair, Hospitality Management, USC-B, stated that the USC-B Hospitality Management program would support special events on the Island as well as offer hospitality training programs. He gave an overview of the program and stated that the University is very excited with the potential of this collaboration as enrollment has been steadily increasing. He stated that the Island's reputation as an international destination offers a unique opportunity for students to gain practical experience in the field of Hospitality Management. Carrie Olivetti, Adjunct Professor of Events Management and Law, reiterated that interest in the program has increased and combining resources of the University and Town will be beneficial.

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The Committee discussed the following:

- Location – Many buildings are available;
- Funding Options – 1% local ATAX ordinance, transfer funds from General Fund or Public Safety, include in Town budget;
- Criteria for Participating Organizations – All organizations considered, look to match student interest with organization/event;
- Time Frame to Implement – USC-B would like program up and running in time to offer in fall semester.

Motion was made by Mr. Heitzke to recommend to full Town Council that we enter into an agreement with USC-Beaufort to enhance hospitality and tourism training and special events management on Hilton Head Island. Motion seconded by Mr. Edwards. The motion was approved by a vote of 3 - 0.

b. Verbal Staff Report on Town/Beaufort County Storm Water Utility Intergovernmental Agreement – Jeff Buckalew, Town Engineer, Public Projects & Facilities

Jeff Buckalew explained that the existing Agreement has been in place since September, 2001 and is due to expire September, 2011. All of the municipalities within the County have similar agreements with the County, and they have agreed to let Hilton Head Island take the lead on revising the agreement.

On March 6th, the Town forwarded a proposed Agreement to the County and municipalities for consideration. A meeting of the County and all of the municipalities was held on March 18th to discuss the Agreement, and the County submitted the following comments on April 6th:

1. Change term from 10 years to 1 year – The Town does not feel this is practical, as it would create a need for constant negotiation. The Town recommends the ten-year term be kept because the Agreement provides that it can be amended at any time during this term. There exists a Storm Water Implementation Committee, which consists of representatives of the County and the municipalities and meets monthly. The Town has recommended that this group bring recommendations for amendments to the Agreement to their respective managers and councils, if necessary, before the term expires.

2. The Agreement should identify baseline water quality standards to be followed. The Town should agree to regulate minimum water quality controls protective enough to reach and maintain State designated water uses. This is an acceptable standard for the Town.

3. The management cost of the storm water utility borne by the County needs to be allocated equitably between the County and the four municipalities. The County does not believe the one percent administrative fee proposed by the Town is sufficient to cover these costs. For the past ten years, in accordance with the current agreement, the Town has paid a flat 5% administrative fee to the County each year. The original annual storm water fee for single family unit was $40.00 and is now $108.00. The County's cost to collect and distribute the funds is no different for either rate. Therefore, the Town has asked the County to provide a budget for the deliverables and services provided to the Town, in order that the fee schedule can be changed from a flat percentage to actual cost basis.

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Town staff will continue to work with the County and will be present at the May 17, 2011 Committee meeting to provide a status update.

H.4033 Widening and Dredging Waterways/Municipal Improvement Districts (MID)

Chairman Williams explained that in the near future, CSA will be forwarding a resolution to the Town, supporting the establishment of an MID to assist in financing dredging in the Sea Pines area. Legislation has been proposed by Representative Patrick which adds the word "waterways" to existing MID legislation specific to widening and dredging canals.

He further explained the reason behind establishing an MID is that master covenants are difficult to change, property owner assessments are not tax deductible, and an MID, which is considered a tax, is deductible. He stated that he is concerned that if the legislation passes, and the Town chooses to set up an MID, there will not be enough time to do so. Therefore, he would like to request that staff be directed to begin the process of establishing an MID for dredging in the Sea Pines area, in order to avoid a delay in implementation, should the proposed legislation be adopted.

After discussion, the committee concurred with Mr. Williams' request.

7. Adjournment

At 3:30 p.m., Mr. Heitzke moved to adjourn and Mr. Edwards seconded. The motion was approved by a vote of 3-0.

Respectfully submitted:

_____

Kimberly A. Kominski,
Administrative Assistant

Approved:

_____

George Williams, Chairman

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Town of Hilton Head Island and Beaufort County
Revised Storm Water Management and Utility Agreement
General Summary of Changes
05/11/11

EXISTING AGREEMENT [2001]	PROPOSED AGREEMENT [2011]
ARTICLE 1 - TITLE AND PURPOSE	
	• Updated ordinance references
ARTICLE 2 – DEFINITIONS	
	• Updated ordinance references • Added definition for Public Storm Water - Storm water runoff which is conveyed through a public drainage easement or public road right of way, and/or which some portion is generated from a public road right of way.
ARTICLE 3 - TERM OF THIS AGREEMENT	
• Deleted two sections pertaining to specific termination during the contract's first three years.	• Added that Storm Water Implementation Committee shall conduct periodic reviews of this Agreement and provide recommendations for updates as necessary. • Added that if contract is terminated, the County would convey its rights to the infrastructure and easements within the Town to the Town, with the exception of County Parcels or Right of Ways.
ARTICLE 4 – INITIAL FUNDING OF STORM WATER UTILITY & RATE & DRAINAGE STUDIES *becomes* **ARTICLE 4 - FINANCE AND FUNDING**	
• Entire original 2001Article deleted as it is now obsolete.	• Added that the Town shall provide the County with the fiscal year's Single family Unit (SFU) collection rate prior to August 15th each year. • Added that the administrative fee is to be calculated as a fixed dollar amount for each single family unit (SFU) billed by the Storm Water Utility. The Utility shall define its administrative costs each year during the annual budget process. For fiscal year 2012 the fee would be $2.80 per Single Family Unit (SFU) base rate applied to the fee paying lands within the limits of the Town. After FY-12, the Storm Water Implementation Committee shall conduct annual reviews of the Utility's administrative budget and recommend any changes to the amount billed per SFU. • Clarified that Town has right of non exclusive use of County maintenance services and no annual

	minimum amount of work will be required by the County. • Further clarification on Town uses of revenue • Added that SWU fees may be used for payment of bond indebtedness or repayment of general fund. • Added that the Town and County may share mutually beneficial costs and responsibilities related to NPDES compliance, but such agreements must be authorized by the Town Manager and County Administrator • Added that the Town shall not be required to reimburse the County for work without prior written approval
ARTICLE 5 –FINANCE AND FUNDING *becomes* **ARTICLE 5 - ADMINISTRATION OF STORM WATER UTILITY**	
• Deleted first section pertaining to setting initial rate within the contract's first three years. • Deleted "priority" use of revenue section.	• Applicable sections (00- 03) from old ARTICLE 7 "ESTABLISHMENT OF STORM WATER UTILITY" were inserted here. • County responsibilities regarding fee collection and disbursement were further defined. • Required County SWU financial accounting and reporting for HHI fees as annual deliverables to the Town. • Added that County storm water service within the Town limits shall only be compensated per the direction and approval of the Town. • Added Job Order process for County to perform work for Town. • Added statement that road owners are responsible for maintaining the storm water infrastructure within their rights of way (County and SCDOT should maintain their own R/W). • Added Town has sole authority to approve storm water utility fee credits within Town limits. • Added mutual transfer of easement rights.
ARTICLE 6 – STANDARDS AND WATER QUALITY *becomes* **ARTICLE 6 – STORM WATER ORDINANCES AND DEVELOPMENT STANDARDS**	
• Original 2001Article deleted after 6.01 • Removed language that would require the Town to adopt storm water management standards at least as stringent as County standards. Town may set own standards within limits of State and Federal Laws.	• Revised agreement divides original into two Articles: "STORM WATER ORDINANCES AND DEVELOPMENT STANDARDS" and "NPDES MS4 PHASE II PERMIT COMPLIANCE" • Requires Town compliance with applicable State and Federal storm water management standards and

	adopt ordinances as required. Establishes that minimum water quality controls shall be protective enough to reach and maintain state designated water uses. • States that the Town will be responsible for all regulatory development review and inspections within Town limits
ARTICLE 7 – ESTABLISHMENT OF STORM WATER UTILITY *becomes* **ARTICLE 7 – NPDES MS4 PHASE II PERMIT COMPLIANCE**	
• Original sections (00- 03) defining storm water utility, management plan, and user fess moved to the new ARTICLE 5, "ADMINISTRATION OF STORM WATER UTILITY" • Balance of old ARTICLE 7 deleted.	• Established that the Town and County shall apply for separate NPDES MS4 permits and shall each be responsible for maintaining compliance with their respective permit. • Established that any the sharing of funds or responsibilities between the Town and County regarding NPDES permit requirements shall be established by a separate agreement.
ARTICLE 8 – MISCELLANEOUS *becomes* **ARTICLE 8- DATA ACQUISITION AND MANAGEMENT**	
• Moved to ARTICLE 10 • No significant changes	• Establishes Town and County responsibilities for maintaining storm water management data and information for their own jurisdictions. • Town and County may coordinate on specific projects. The details of project coordination would be established in a separate agreement • Town and County shall share data at the request of the other, according to respective data distribution policies
New **ARTICLE 9- OTHER AGREEMENTS**	
	• Defines process for project specific agreements between the Town and County. The Storm Water Implementation Committee will review proposals and make recommendations when multiple municipalities are involved. • Other agreements between the County and the Town must be approved by the Town Council and the County Council or their designees.
ARTICLE 10 – MISCELLANEOUS	
• Moved from ARTICLE 8	• No significant changes

C38-2001
EXP.
9-4-2011

A STORMWATER MANAGEMENT AND UTILITY AGREEMENT

BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA, AND

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

DATED: September 4, 2001

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WHEREAS, this Agreement is made on this 4th day of September, 2001, by and between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina, for the purpose of establishing the terms and conditions of the participation by the Town in a county-wide stormwater utility, which utility shall be operated by the County.

ARTICLE 1 - TITLE AND PURPOSE

1.0 *Title:* This intergovernmental agreement between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina, shall be known as the "Stormwater Management And Utility Agreement Between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina."

1.01 *Purpose:* This Agreement is made for the purpose of defining the roles, responsibilities and financial relationship between the County and the Town with respect to the establishment, administration and operation of the Beaufort County Stormwater Utility, which includes the following:

(a) establishment of rates;

(b) use of revenue;

(c) acquisition of existing stormwater infrastructure;

(d) construction of new stormwater infrastructure;

(e) maintenance of stormwater infrastructure;

(f) operation of stormwater infrastructure;

(g) regulation and use of stormwater infrastructure; and,

(h) enhancement of water quality.

1.02 *References to County Ordinances:* This Agreement hereby incorporates by reference

Beaufort County, South Carolina, Ordinances 2001-22 and 2001-23, regarding the establishment of a Stormwater Utility. In the case of any conflict between the provisions of the Ordinances and this Agreement, the provisions of this Agreement shall control.

ARTICLE 2 - DEFINITIONS

2.0 *Definitions:* When used in this "Stormwater Management And Utility Agreement Between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina," the following words shall have the meaning set forth in this Article 2.

2.01 *Agreement:* This Stormwater Management And Utility Agreement Between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina.

2.02 *County:* Beaufort County, South Carolina.

2.03 *County Wide Stormwater Management Study*: A study to be conducted by the County to determine the drainage infrastructure and maintenance needs within the various watersheds within the County.

2.04 *Cost of Service Analysis and Rate Study:* A study to be conducted by the County to determine an equitable and appropriate rate structure for Stormwater Utility Fees within all areas of the County, so that fees charged by the Stormwater Utility will be in compliance with provisions of S. C. Code Ann. 48-14-120(C)(Supp. 2000), and S. C. Regs. 72-310 (Supp. 2000).

2.05 *Equivalent Residential Unit:* As is set forth in Beaufort County Ordinance 2001-23, an Equivalent Residential Unit shall mean fifteen thousand (15,000) square feet of total property area with a development intensity factor of 0.31. The equivalent residential unit shall be used as the basis for determining stormwater service charges to dwelling unit properties or classes of dwelling unit properties and other properties.

2.06 *NPDES:* The National Pollutant Discharge Elimination System stormwater regulatory program established by the United States Environmental Protection Agency to address pollutants in stormwater discharged to waters of the United States. Phase II of this regulatory program impacts communities under 100,000 population, small constructions sites between one acres and five acres, and industrial sites owned and operated by communities under 100,000 population.

2.07 *Stormwater Infrastructure:* Real property, interests in real property, improvements to real property such as ditches, drains, pipes, culverts, catch basins, pumps, or the like, or any combination of them, used or useful in the collection and disbursement of storm and surface water, or the control of flooding. As used herein, Stormwater Infrastructure does not include drainage systems or facilities that are not publicly owned, or which do not carry public stormwater.

2.08 *Stormwater Management:* Control of storm and surface water, erosion, storm water quality protection and flooding through the use of Stormwater Infrastructure, and the creation and enforcement of development standards related to storm and surface water.

2.09 *Stormwater Management Plan:* A plan to be developed by the County that shall include, but not be limited to, planning, design and construction of capital improvements to the Stormwater Infrastructure; acquisition of real property or interests in real property for the purposes of Stormwater Management; maintenance and repair of Stormwater Infrastructure; regulation of the use of Stormwater Infrastructure; acquisition of equipment and other assets; regulation of impacts including any that may be mandated under the NPDES Phase II regulations, contracting with engineering, financial, legal, construction and other professionals for services in support of the Stormwater Utility, emergency preparedness related to storms and hurricanes, acquisition or construction of Stormwater Infrastructure, or any other functions required, useful or prudent for a program of

Stormwater Management.

2.10 *Stormwater Utility User Fees:* Fees charged by the Beaufort County Stormwater Utility to residents of Beaufort County for the purposes of Stormwater Management, Administration of the Stormwater Utility and acquisition and/or creation of Stormwater Infrastructure, pursuant to the provisions hereof and Beaufort County Ordinance 2001-23.

2.11 *Stormwater Utility:* The administrative organization created for the purposes of planning, designing, overseeing, funding, building, and maintaining Stormwater Infrastructure, either directly or through cooperative arrangements with other governmental bodies; and for administering and managing Stormwater Management throughout Beaufort County.

2.12 *Town:* The Town of Hilton Head Island, South Carolina.

ARTICLE 3 - TERM OF THIS AGREEMENT

3.0 *Term of This Agreement:* The term and duration of this Agreement shall be as follows in this Article 3.

3.01 *Initial Term of this Agreement:* The Initial Term of this Agreement shall be for a period of ten (10) years, commencing on the date of the execution hereof.

3.02 *Extension of this Agreement:* The term of this Agreement may be extended at any time by the mutual agreement of the parties hereto, or upon the expiration of the initial ten (10) year term set forth in Article 3.01 above.

3.03 *Termination of this Agreement:* This Agreement may be terminated in accordance with this Article 3.

3.04 *Termination During First Three Years:* During the first three (3) years of the Initial Term of this Agreement, or upon completion of the County Wide Stormwater Management Study

and the Cost of Service Analysis and Rate Study described in Article 4.02, below, whichever shall first occur, this Agreement may be terminated by mutual agreement of the parties hereto.

3.05 *Termination After First Three Years:* After the first three (3) years of the Initial Term of this Agreement, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, below, whichever shall first occur, this Agreement may be terminated by either party hereto, by delivering written notice of the termination to the other party. Termination under this Article 3.05 shall only be effective on the final day of any given County fiscal year. The written notice of termination shall be provided by the party terminating the Agreement no less than one hundred eighty days prior to the date the termination will be effective.

3.06 *Effect of Termination:* Upon termination of this Agreement under any provision of this Article 3, or otherwise, all rights and obligations of any party hereto, specifically including but not limited to the right of the County to charge Stormwater Utility Fees to property owners in the Town, shall immediately end.

3.07 *Conveyance of Assets:* Upon termination of this Agreement under any provision of this Article 3, the County shall convey to the Town all of its right, title and interest in any Stormwater Infrastructure, including any easements or other interests in real property, within the municipal limits of the Town.

3.08 *Rebate of User Fees:* Upon termination of this Agreement under any provision of this Article 3, the County shall return to the Town any collected but unspent or unobligated Stormwater Utility User Fees collected from within the Town Limits.

ARTICLE 4 - INITIAL FUNDING OF STORMWATER UTILITY AND RATE AND DRAINAGE STUDIES

4.0 *Initial Funding of Stormwater Utility:* For a period of not more than three (3) years from the date of this Agreement, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, below, which ever shall first occur, the Stormwater Utility shall charge and collect Stormwater Utility User Fees at an annual rate of no more than Forty and 03/100 ($40.03) Dollars for each "Equivalent Residential Unit" within the County, and shall calculate all Stormwater Utility User Fees as set forth in Section 9 of County Ordinance 2001- 23.

4.01 *Relief from Fees:* For a period of not more than three (3) years, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, below, relief from payment of the Stormwater Utility User Fees as described in Article 4.0 above, shall be granted by the County only in accordance with its adopted Ordinance Number 2001-22, entitled "An Ordinance Regarding Relief From Beaufort County Stormwater Management Charges For Impoverished Residential Property Owners And Private Non-Profit Organizations, Government Agencies and Religious Organizations"; provided, however, that Beaufort County Ordinance 2001-22 shall be amended to provide relief for "tax-exempt" organizations as opposed to "non-profit" organizations, before any such relief is granted. All other property owners shall be required to pay Stormwater Utility User Fees as set forth in Article 4.0 above.

4.02 *County to Undertake Studies:* The County shall, within a period not to exceed three (3) years from the date of this Agreement:

(a) Conduct a County Wide Stormwater Management Study to determine the drainage infrastructure and maintenance needs within the various watersheds within the County; and,

(b) Conduct a Cost of Service Analysis and Rate Study to determine an equitable and appropriate rate structure for Stormwater Utility Fees within all areas of the County, so that fees charged by the Stormwater Utility will be in compliance with provisions of S. C. Code Ann. 48-14-120(C)(Supp. 2000), and S. C. Regs. 72-310 (Supp. 2000).

4.03 *Initial Funding Relationship:* For a period of not more than three (3) years from the date of this Agreement, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, above, which ever shall first occur, the Stormwater Utility User Fees shall be charged and collected in accordance with Article 4.0 above, and such Stormwater Utility User Fees collected within the Town shall be disbursed in accordance with this Article 4.

(a) A sum not to exceed five (5%) per cent of the amount collected within the Town to the Stormwater Utility for Administrative Costs of the Stormwater Utility;

(b) A sum not to exceed thirty eight (38%) per cent of the cost of the studies to be undertaken under Article 4.02 above, shall be disbursed to the Stormwater Utility to be applied to the cost of such studies; provided, however, that this amount shall in no event exceed thirty eight (38%) per cent of the amount collected within the Town without the prior consent of the Town.; and,

(c) The balance of the amount collected within the Town shall be returned to the

Town to be utilized for the purposes set forth in Articles 5.01, 5.02 and 5.03, below.

ARTICLE 5 - FINANCE AND FUNDING

5.0 *Financial and Funding Relationship:* When the studies described in Article 4.02 above have been completed, or three (3) years from the date of this Agreement, whichever shall first occur, the Stormwater Utility User Fees charged and collected pursuant to Article 4.0 above shall cease, and the rates for Stormwater Utility User Fees shall then be set in accordance with the findings contained in the studies; provided, however, that the County shall first obtain the Town's approval for the amount of Stormwater Utility User Fees. From that point forward, Stormwater Utility Fees collected within the Town shall be disbursed in accordance with this Article 5.

5.01 In accordance with the provisions of S. C. Code Ann. 48-14-120(C)(Supp. 2000), and S. C. Regs. 72-310 (Supp. 2000), Stormwater Utility Fees collected within the Town, less an amount not to exceed five (5%) per cent of the Stormwater Utility Fees collected within the Town to be applied to the County's administrative cost in collecting the Stormwater Utility Fees and administering the Stormwater Utility, shall be returned to the Town in the form of:

(a) Transfers of money to the Town for the construction of Stormwater Infrastructure, or for repayment of bonded indebtedness issued to fund construction of Stormwater Infrastructure, in so far as the law and covenants of the bonds allow, or for repayment to the Town for general fund or other funds spent by the Town to fund construction of Stormwater Infrastructure pursuant to agreements between the Town and the Stormwater Utility;

(b) Acquisition of Stormwater Infrastructure, including any easements or other interests in real property which shall be held in the name of Beaufort County

Stormwater Utility unless this Agreement is terminated, at which point in time they would revert back or be conveyed to the Town;

(c) Maintenance of Stormwater Infrastructure by direct services of the Stormwater Utility; provided, however, that the amount to be spent on maintenance shall be negotiated by and between the County and the Town each fiscal year, as is provided in Article 5.05(a), below.

(d) Reimbursement to the Town for plan review and site inspections related to compliance with stormwater ordinances and standards for development within the Town as set forth in Articles 5.05, 5.06 and 5.07 below; and,

(e) Provision of services related to Stormwater Management.

5.02 *Priority of Use of Revenue:* Subject to the provisions of Article 5.04 below, Stormwater Utility User Fees collected within the Town, less the pro-rata portion of the Stormwater Utility's administrative costs attributable to the Town, which shall not exceed five (5%) per cent of the Stormwater Utility Fees collected within the Town, shall be returned to the Town in services and revenue in the following order of priority:

(a) Transfers of funds to the Town to be utilized by the Town for the completion of the Town's drainage capital improvements program. The Town's drainage capital improvements plan shall be planned and built by the Town, or to pay the cost of debt service on bonds issued or to be issued by the Town or the Stormwater Utility for the purpose of building Stormwater Infrastructure, in so far as the law and covenants of the bonds allow, or for repayment to the Town for general funds or other funds spent by the Town to fund construction of Stormwater Infrastructure pursuant to

agreements between the Town and the Stormwater Utility;

(b) Acquisition by the County of existing drainage ditches or other Stormwater Infrastructure that does not require major or material improvements, and for which no drainage easements favoring the public currently exist. Such property shall be held as assets of the Stormwater Utility, unless this Agreement is terminated, at which point in time they would revert back or be conveyed to the Town;

(c) Long term operation and maintenance of all Stormwater Infrastructure acquired and/or built by the Town or the County. The Stormwater Utility shall provide such services;

(d) Reimbursement to the Town for plan review and site inspections related to compliance with stormwater ordinances and standards for development within the Town as set forth in Articles 5.05, 5.06 and 5.07 below; and,

(e) Provision of services related to Stormwater Management.

5.03 *Further Agreements Authorized:* The Town and the Stormwater Utility and the County may enter into agreements whereby the Town will build Stormwater Infrastructure within the Town prior to the time that the Stormwater Utility is able to do so. Such agreements shall provide for the reimbursement to the Town of funds expended for the construction of Stormwater Infrastructure or for the repayment of debt service incurred by the Town for the construction of Stormwater Infrastructure, and for the conveyance of Stormwater Infrastructure to the Stormwater Utility.

5.04 *Cost of Services:* Stormwater Utility User Fees that are returned to the Town in the form of County services, however described, shall be accounted for at the County's actual cost of the equipment and personnel utilized in the delivery of the services.

5.05 *Short Term and Long Range Planning:* The Town and the County shall cooperate in developing short term and long range plans for Stormwater Management within the Town.

(a) *Short Term Planning:* For each fiscal year that this Agreement is in effect, the Town and the County shall develop a plan to meet the Stormwater Management needs of the Town. The plan shall determine the combination of funds and services to be returned to the Town each fiscal year. The priorities set forth in Article 5.02 above, shall guide the development of the plan, but the Town and the County acknowledge that a combination of funding for the drainage capital improvements plan, acquisition of Stormwater Infrastructure and maintenance and operation of existing Stormwater Infrastructure is necessary to achieve a comprehensive plan of Stormwater Management within the Town.

(b) *Long Range Planning:* The Town and County will jointly develop a long range Stormwater Management plan to provide for the acquisition, construction, improvement, maintenance, and regulation of Stormwater Infrastructure, to include planning, development of system inventory, facilities design, major and minor system improvements and maintenance, development and implementation of water quality programs, system development and expansion and other program elements affecting Stormwater Management within the Town.

The planning described in this Article 5.05 may be consolidated with Countywide planning efforts, to ensure that all issues are addressed to the extent possible with the resources of the Stormwater Utility.

5.06 *Plan Review and Site Inspection:* For all activities that constitute development within

Town limits, the Town will continue to provide review of plans and site inspections to ensure compliance with laws, ordinances and regulations related to storm and surface water, erosion control and flooding. The Town will be reimbursed for such services, from the Stormwater Utility User Fees collected within the Town, based upon a budget negotiated between the County and the Town as a part of the annual plan to be developed pursuant to the provisions of Article 5.05(a) above. The County will provide services as identified in Article 6.02 and 6.03 including but not limited to oversight, review of plans, site inspections, enforcement or maintenance action as may be required by or consistent with any County or Town NPDES Phase II permit.

5.07 *Coordination of Services:* The Town shall identify a representative of its staff to serve as the contact person and coordinator with the County for Stormwater Management Services, including services provided by the County within the Town, long range planning and water quality initiatives such as the NPDES Phase II requirements compliance, notification of problems, facilitating access within any planned or future Planned Unit Developments within the Town, and advising the County on site-specific conditions within the Town.

ARTICLE 6- STANDARDS AND WATER QUALITY

6.0 *Applicable Standards:* The current planning, engineering and design standards relating to storm and surface water, erosion control, pollution and flooding within the Town shall prevail in the design, construction, operation and maintenance of any portion of the Stormwater Infrastructure within the Town. In the event that the County adopts planning, engineering and design standards relating to storm and surface water, erosion control and flooding that are more stringent that those in effect within the Town, then the Town shall have a period of six months to adopt planning, engineering and design standards relating to storm and surface water, erosion control, pollution and

flooding at least as stringent as those adopted by the County.

6.01 *State or Federal Laws or Regulations:* The Town and the County shall at all times comply with any applicable State or Federal Laws or regulations relating to Stormwater Management, Stormwater Infrastructure, erosion control or pollution.

6.02 *NPDES II Compliance:* The County shall oversee compliance with the NPDES Phase II water quality program throughout the County. The cost of such oversight shall be included in, and as a part of, the administrative expenses of the Stormwater Utility, as set forth in Article 5.01 and 5.02 above.

6.03 *NPDES II Program:* Should all or any part of the County be designated by the State of South Carolina, for compliance with the NPDES program, the County shall be responsible for the development of the NPDES permit application, the development of Best Management Practices required by the permit, and the implementation of the program of Best Management Practices set forth in the permit. The cost of such oversight shall be an Administrative expense of the Stormwater Utility, the cost of which shall be pro-rated as provided in Article 5.01 above.

ARTICLE 7 - ESTABLISHMENT OF STORMWATER UTILITY

7.0 *Stormwater Utility:* The County shall establish a Stormwater Utility that will administer, fund and conduct a Stormwater Management program throughout the County.

7.01 *Stormwater Management Plan:* The County shall have the responsibility to develop a Stormwater Management Plan to be administered by the Stormwater Utility.

7.02 *Relationship of Plan to Agreement:* The Stormwater Management Plan developed by the Stormwater Utility shall incorporate the obligations of the County and Town under this Agreement. In the case of any conflict between the provisions of the Stormwater Management Plan and this

Agreement, the provisions of this Agreement shall control.

7.03 *Stormwater Utility User Fees:* The Stormwater Utility shall bill and collect Stormwater Utility User Fees from property owners, tenants, or other appropriate parties, pursuant to its authority and subject to the provisions of any intergovernmental agreements, including this Agreement, and may also apply for, acquire and use any other funding from any public or private source in support of the Stormwater Management Program as allowed by law.

7.04 *County Responsibilities:* The County, through the Stormwater Utility, shall have the following responsibilities:

(a) *Initial Setting of Fees:* For a period not to exceed three (3) years from the date of this Agreement, the Stormwater Utility User Fee shall be charged and collected in accordance with the provisions of Article 4.0 of this Agreement;

(b) *Amendments to Fees:* Not more than three (3) years from the date of this Agreement, the Stormwater Utility User Fees to be charged and collected pursuant to Article 4.0 of this Agreement shall terminate, and the County, with the prior consent of the Town, shall set the fees in accordance with the findings of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study. The Stormwater Utility User Fees shall be in accordance with the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study required in Article 4 hereof, S. C. Code Ann. 48-14-120(C)(Supp. 2000), and S. C. Regs. 72-310(G)(Supp. 2000), or any other applicable law or regulation, and shall not include provisions for relief from the payment of the Stormwater Utility User Fees;

(c) *Provision of Services:* Provision of the services, or disbursement of the funding as required under the provisions of this Agreement.

(d) *Budgeting and Expenditure:* Setting the budget for the Stormwater Utility, and spending the revenues in accordance with any applicable ordinances or agreements, including this Agreement;

(e) *Administrative Activities:* Managing all administrative activities of the Stormwater Utility;

(f) *Accounting:* Maintaining an accounting of revenues and expenditures on a jurisdictional or geographic basis, as may be set or described under any applicable ordinance or agreement, including this Agreement;

(g) *Operation and Maintenance:* Provide for the operation and maintenance of Stormwater Infrastructure. The Town and County will negotiate transfers of existing Town contracts, easements and other rights between the Town and Planned Unit Developments within the Town, to enable the County to provide operation and maintenance services to Stormwater Infrastructure within the Planned Unit Developments. Where such transfers cannot be negotiated, the Town will continue to provide the operation and maintenance, and will be reimbursed by the County based upon a budget negotiated between the County and the Town as a part of the annual plan to be developed pursuant to the provisions of Article 5.05(a) above; and,

(h) *Planned Unit Developments:* The Stormwater Utility shall extend to all Planned Unit Developments located within the Town an offer to assume the ownership and maintenance of Stormwater Infrastructure within the Planned Unit

Development, and to fund the maintenance of the same through Stormwater Utility Fees.

7.05 *Delivery of Services:* The County shall coordinate the delivery of services hereunder through the Town Manager or his designee.

7.06 *Coordination with Other Jurisdictions:* From time to time a need for coordination between all incorporated jurisdictions within the County and the County may occur, and it shall be the responsibility of the County to facilitate such coordination. The County will work with designated representatives from all jurisdictions within the County to ensure effective communication regarding issues impacting the Stormwater Infrastructure and the Stormwater Management Plan.

ARTICLE 8 - MISCELLANEOUS

8.0 *Provisions Applicable to This Agreement:* The following general provisions are applicable to this agreement:

8.01 *Binding Effect:* This Agreement shall inure to the benefit of and shall be binding upon the Town and County and their respective successors and assigns, if any are permitted hereunder.

8.02 *Amendment, Changes and Modifications:* Except as otherwise provided herein, this Agreement may not be effectively amended, changed, modified or altered without the written consent of the Town and the County.

8.03 *Severability:* In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8.04 *Execution in Counterparts:* This Agreement may be simultaneously executed in several

counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

8.05 *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

8.06 *Captions:* The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

8.08 *Plural/Singular:* Where appropriate, the use of the singular herein shall include and be deemed to be the plural, and the use of the plural herein shall be deemed to include the singular.

8.09 *No Third Party Beneficiaries:* The Town and the County hereto affirmatively represent that this Agreement is made solely for the benefit of the parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. No party other than the signature parties and their respective successors and assigns hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

8.10 *Notices:* All notices, applications, requests, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person, or mailed by regular first class mail, postage prepaid (in such case, delivery shall be deemed complete upon mailing), addressed as follows, or to such other place as may be designated in writing by the parties:

To the Town: THE TOWN OF HILTON HEAD ISLAND
Stephen G. Riley, Manager
One Town Center Court
Hilton Head Island, SC 29928

To the County: BEAUFORT COUNTY, SOUTH CAROLINA
John J. Kachmar, Administrator
Post Office Box 1128
Beaufort, SC, 29902

8.11 *No Waiver:* No failure of either party hereto to exercise any power or right given to such party hereunder, or to insist on strict compliance by any other party to its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any party's right to thereafter demand strict compliance with the terms of this Agreement.

8.12 *Further Assurances and Corrective Documents:* The Town and the County agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the provisions hereof. The Town and the County agree that each shall, upon request, execute and deliver such other or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the provisions hereof.

In Witness Whereof, The Town of Hilton Head Island, South Carolina, and Beaufort County, South Carolina, by and through their duly authorized officers, have set their hands and seals on this 4th day of September, 2001.

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

By: _____
Thomas D. Peeples, Mayor

Attest: _____
Stephen G. Riley, Town Manager

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

By: _____
Thomas C. Taylor, Chairman

Attest: _____

A STORMWATER MANAGEMENT AND UTILITY AGREEMENT

BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA, AND

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

DATED: 5-11-11

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WHEREAS, this Agreement is made on this ___ day of _____, 2011, by and between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina, for the purpose of establishing the terms and conditions of the participation by the Town in a county-wide stormwater utility, which utility shall be operated by the County.

ARTICLE 1 - TITLE AND PURPOSE

1.00 *Title:* This intergovernmental agreement between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina, shall be known as the "Storm Water Management and Utility Agreement Between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina."

1.01 *Purpose:* This Agreement is made for the purpose of defining the roles, responsibilities and financial relationship between the County and the Town with respect to the establishment, administration and operation of the Beaufort County Stormwater Utility, which includes the following:

(a) Establishment of rates;

(b) Use of revenue;

(c) Acquisition of existing storm water infrastructure;

(d) Construction of new storm water infrastructure;

(e) Maintenance of storm water infrastructure;

(f) Operation of storm water infrastructure;

(g) Regulation and use of stormwater infrastructure; and,

(h) Enhancement of water quality.

1.02 *References to County Ordinances:* This Agreement hereby incorporates by reference Beaufort County, South Carolina, Ordinances 2005-33 2008-29, and 2009-21 regarding the establishment of a Stormwater Utility. In the case of any conflict between the provisions of the Ordinances and this Agreement, the provisions of this Agreement shall control.

ARTICLE 2 - DEFINITIONS

2.00 *Definitions:* When used in this "Stormwater Management and Utility Agreement between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina," the following words shall have the meanings set forth in this Article 2:

2.01 *Agreement:* This Stormwater Management and Utility Agreement between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina.

2.02 *County:* Beaufort County, South Carolina.

2.03 *County Wide Stormwater Management Study:* The study conducted by the County to determine the drainage infrastructure and maintenance needs within the various watersheds within the County. This became the Beaufort County Stormwater Master Plan dated February 20, 2006.

2.04 *Cost of Service Analysis and Rate Study:* The study conducted by the County which was adopted by County Council August 22, 2005 to determine an equitable and appropriate rate structure for Stormwater Utility User Fees within all areas of the County, so that fees charged by the Stormwater Utility will be in compliance with provisions of S. C. Code Ann. 48-14-120(C)(Supp. 2010), and S. C. Regs. 72-310 (Supp. 2010).

2.05 *Stormwater Utility User Fee; Single Family Unit Rate (SFU).* The single-family unit fee

rate shall be defined as the impervious area measurements obtained from a statistically representative sample of all detached single-family structures within Beaufort County. The representative value will be 4,906 square feet.

2.06 *NPDES:* The National Pollutant Discharge Elimination System stormwater regulatory program established by the United States Environmental Protection Agency to address pollutants in stormwater discharged to waters of the United States. Phase II of this regulatory program impacts communities under 100,000 population, small construction sites between one acres and five acres, and industrial sites owned and operated within communities under 100,000 population.

2.07 *Public Stormwater*: Stormwater runoff which is conveyed through a public drainage easement or public road right of way, and/or which some portion is generated from a public road right of way.

2.08 *Stormwater Infrastructure:* Real property, interests in real property, improvements to real property such as ditches, drains, pipes, culverts, catch basins, pumps, or the like, or any combination of them, used or useful in the collection and disbursement of storm and surface water, or the control of flooding. As used herein, Stormwater Infrastructure does not include drainage systems or facilities that are not publicly owned, and which do not carry public stormwater.

2.09 *Stormwater Management:* Control of storm and surface water, erosion, storm water quality protection and flooding through the use of Stormwater Infrastructure, and the creation and enforcement of development standards related to storm and surface water.

2.09 *Stormwater Management Plan:* The plan developed by the County that addresses

planning, design and construction of capital improvements to the Stormwater Infrastructure; acquisition of real property or interests in real property for the purposes of Stormwater Management; maintenance and repair of Stormwater Infrastructure; regulation of the use of Stormwater Infrastructure; acquisition of equipment and other assets; regulation of impacts including any that may be mandated under the NPDES Phase II regulations, contracting with engineering, financial, legal, construction and other professionals for services in support of the Stormwater Utility, emergency preparedness related to storms and hurricanes, acquisition or construction of Stormwater Infrastructure, or any other functions required, useful or prudent for a program of Stormwater Management.

2.10 *Stormwater Utility User Fees:* Stormwater Utility User Fees shall mean the service fee imposed pursuant to this article for the purpose of funding costs related to stormwater programs, services, systems, and facilities. These fees will be calculated based upon the residential category for a parcel and/or the nonresidential parcel's impervious area and/or the vacant/undeveloped land category, as pursuant to the provisions of Beaufort County Ordinance 2005-33.

2.11 *Stormwater Utility:* The administrative organization created for the purposes of planning, designing, overseeing, funding, building, and maintaining Stormwater Infrastructure, either directly or through cooperative arrangements with other governmental bodies; and for administering and managing Stormwater Management throughout Beaufort County.

2.12 *Town:* The Town of Hilton Head Island, South Carolina.

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ARTICLE 3 - TERM OF THIS AGREEMENT

3.00 *Term of This Agreement:* The term and duration of this Agreement shall be as follows in this Article 3.

3.01 *Initial Term of this Agreement:* The Initial Term of this Agreement shall be for a period of ten (10) years, commencing on the date of the execution hereof.

3.02 *Periodic Review of this Agreement:* The Storm Water Implementation Committee shall conduct periodic review of this Agreement to insure that it remains current with the state of the art storm water management and practices and shall provide recommendations for updates to the agreement if necessary.

3.03 *Extension of this Agreement:* The term of this Agreement may be extended at any time by the mutual agreement of the parties hereto, or upon the expiration of the initial ten (10) year term set forth in Article 3.01 above.

3.04 *Termination of this Agreement:* This Agreement may be terminated by either party hereto, by delivering written notice of the termination to the other party. Termination under this Article shall only be effective on the final day of any given County fiscal year. The written notice of termination shall be provided by the party terminating the Agreement no less than one hundred eighty days prior to the date the termination will be effective.

3.05 *Effect of Termination:* Upon termination of this Agreement under any provision of this Article 3, or otherwise, all rights and obligations of any party hereto, specifically including but not limited to the right of the County to charge Stormwater Utility User Fees to property owners in the Town, shall immediately end.

3.06 *Conveyance of Assets:* Upon termination of this Agreement under any provision of

this Article 3, the County shall convey to the Town all of its right, title and interest in any Stormwater Infrastructure, including any storm water easements, within the municipal limits of the Town. However, this shall not include Stormwater Infrastructure on County owned parcels or County road rights of way within the limits of the Town.

3.07 *Rebate of User Fees:* Upon termination of this Agreement under any provision of this Article 3, the County shall return to the Town any collected but unspent or unobligated Stormwater Utility User Fees collected from within the Town Limits.

ARTICLE 4 – FINANCE AND FUNDING

4.00 *Financial and Funding Relationship:* The Town shall provide the County with its Stormwater Utility User Fee collection Rate for its fiscal year prior to August 15 each year of this Agreement. This will be in the form of a letter to the County Administrator from the Town Manager. The Town shall also provide to the County an annual report of its storm water fee expenditures for each fiscal year. This report shall be delivered by September 1 each year this Agreement is in effect.

4.01 *Use of Revenue:* In accordance with the provisions of S. C. Code Ann. 48-14-120(C) (Supp. 2010), and S. C. Regs. 72-310 (Supp. 2010), all Stormwater Utility User Fees collected within the Town, less an administrative fee , shall be returned to the Town. The administrative fee is to be calculated as a fixed dollar amount for each single family unit (SFU) billed by the Storm Water Utility. The Utility shall define its administrative costs each year during the annual budget process. For fiscal year 2012 the fee shall be $2.80 per Single Family Unit (SFU) base rate applied to the fee paying lands within the limits of the Town. After FY-12, the Storm Water Implementation Committee shall conduct annual reviews of the Utility's administrative budget and recommend any changes to the amount billed per SFU and the Utility shall provide the Town an itemized proposal for the administrative services and deliverables to be received by the Town in the coming fiscal year. This proposal shall be submitted to the Town by April 1 of each calendar year. The Town shall provide written acceptance to the Utility and this shall serve as the basis for the annual administrative fee to be calculated per Town SFU.

(a) The administrative fee shall be used by the County to defray the County's administrative cost in collecting and distributing Stormwater Utility User Fees.

(b) The Town shall use Stormwater Utility User Fees to provide Stormwater Management within the Town, including, but not limited to:

(i) The acquisition, design, construction, and maintenance of Stormwater Infrastructure, or repayment of bonded indebtedness issued to fund construction of Stormwater Infrastructure, in so far as the law and covenants of the bonds allow, or for repayment to the Town for general fund or other funds spent by the Town to fund Stormwater Management activities;

(ii) Acquisition of Stormwater Infrastructure, including any easements or other interests in real property which shall be held in the name of the Town;

(iii) Maintenance of Stormwater Infrastructure by the Town and its contractor(s,) or by direct services of the Stormwater Utility. Charges for services by the Stormwater Utility; shall be negotiated and approved by the County and the Town, as is provided in Articles 4.03, 4.05(a), 5.05, and 5.07 below; The Town shall have the right of non exclusive use of direct maintenance services, and there shall be no minimum dollar amount required to be spent annually by the Town on any services provided by the Stormwater Utility;

(iv) Plan review and site inspections related to compliance with stormwater ordinances and standards for development within the Town as set forth in Articles 4.05, 4.06 and 4.07 below;

(v) NPDES Phase II permit compliance;

(vi) Payment of bond indebtedness or repayment of funds borrowed from the general fund or any other fund; and,

(vii) Any other services related to Stormwater Management.

4.02 *Further Agreements Authorized:* The Town and the County may negotiate and enter into agreements to share costs and responsibilities related to NPDES permit compliance. Such agreements and cost allocations shall be reflected in each entities annual budget and must be authorized by the Town Council and County Council.

4.03 *Cost of Services:* If the Town chooses to utilize the direct services of the Stormwater Utility, however described, they shall be accounted for at the County's actual cost of the equipment, materials, and personnel utilized in the delivery of the services.

4.04 *Setting of Stormwater Utility User Fee Rate (SFU's):* The Town shall be responsible each year for setting the Storm Water Utility User Fee Rate to be assessed on parcels within the Town. The Stormwater Utility User Fee rate shall be set in accordance with S. C. Code Ann. 48-14-120(C) (Supp. 2010), and S. C. Regs. 72-310(G) (Supp. 2010), or any other applicable law or regulation.

4.05 *Plan Review and Site Inspection:* For all activities that constitute development within Town limits, the Town will provide review of plans and site inspections to ensure compliance with applicable laws, ordinances and regulations related to storm and surface water, erosion control and flooding

4.06 *Coordination of Services:* The Town shall identify a representative of its staff to serve as the contact person and coordinator for Stormwater Management Services, including services provided by the County within the Town, long range planning and water quality initiatives such as the NPDES Phase II requirements compliance, notification of problems, facilitating access

within any planned or future Planned Unit Developments within the Town, and advising the County on site-specific conditions within the Town.

ARTICLE 5 – ADMINISTRATION OF STORMWATER UTILITY

5.00 *Stormwater Utility:* The County has established a Stormwater Utility that administers funds and conducts a Stormwater Management program throughout the County.

5.01 *Stormwater Management Plan:* The County shall have the responsibility to develop and maintain a Stormwater Management Plan to be administered by the Stormwater Utility.

5.02 *Relationship of Plan to Agreement:* The Stormwater Management Plan developed and maintained by the Stormwater Utility shall incorporate the obligations of the County and Town under this Agreement. In the case of any conflict between the provisions of the Stormwater Management Plan and this Agreement, the provisions of this Agreement shall control.

5.03 *Stormwater Utility User Fees:* The Stormwater Utility shall bill and collect parcel based Stormwater Utility User Fees from property owners, tenants, or other appropriate parties, pursuant to its authority and subject to any intergovernmental agreements, including this Agreement, and may also apply for, acquire and use any other funding from any public or private source in support of the Stormwater Management Plan as allowed by law.

5.04 *County Responsibilities:* The County, through the Stormwater Utility, shall have the following responsibilities:

(a) *Collection and Distribution of Fees:* Stormwater Utility User Fees within

the Town limits shall be charged and collected by the County in accordance with the provisions of Article 4.0 of this Agreement; the Stormwater Utility User Fees shall be collected in accordance with S. C. Code Ann. 48-14-120(C) (Supp. 2010), and S. C. Regs. 72-310(G) (Supp. 2010), or any other applicable law or regulation, and shall not include provisions for relief from the payment of the Stormwater Utility User Fees; the County shall distribute the Town's Stormwater Utility User Fees less the County administrative costs as defined in Article 4.01, in the same manner as ad valorem taxes are distributed for each year this Agreement is in effect;

(b) *Provision of Services:* Provision of the services required under this Agreement.

(c) *Budgeting and Expenditure:* Setting the budget for the Stormwater Utility, and spending the revenues in accordance with any applicable ordinances or agreements, including this Agreement;

(d) *Administrative Activities:* Managing all administrative activities of the Stormwater Utility, including but not limited to, fee assessment, collection and distribution, maintenance of accounting records, maintenance of storm water data, implementation of the master plan, acquisition of easements, coordination with other agencies, reporting to the storm water utility board;

(e) *Accounting:* Maintaining an accounting of revenues and expenditures on a jurisdictional or geographic basis, as may be set or described under any applicable ordinance or agreement, including this Agreement, the County shall

provide the Town with an itemized annual accounting of all Stormwater Utility User Fees within the Town limits in the form of a budget report, including but not limited to: how parcel fees were determined, calculated, and assessed; total fees collected; total Administrative costs retained by the County; total fees in arrears, on which parcels and the status of the collection attempt(s) on such parcels; fee credits applied for; fee credits paid; and fees that required adjustment since the last billing. This budget report shall be parcel based and provided to the Town annually prior to February 15 throughout the term of this agreement as a electronic document compatible with the most current version of Microsoft Office. The County shall also maintain an annual accounting of all administrative costs associated with operating the Utility. Either the Town or County, at the sole expense of the requesting jurisdiction, may request a professional audit of any of the budget reports;

(f) *Operation and Maintenance:* At the direction and approval of the Town, provide for the operation and maintenance of Stormwater Infrastructure within the Town; and,

5.05 *Delivery of Services:* The County shall coordinate the delivery of services hereunder through the Town Manager or his designee, via a Job Order Process as agreed to by the Town and County. All delivery of County services upon parcels within the Town limits shall be approved in writing by the Town before any work is performed or any funds may be returned to the County, and all delivery of storm water infrastructure services within County Rights of Ways shall be coordinated with the Town.

5.06 *Coordination with Other Jurisdictions:* From time to time a need for coordination between all incorporated jurisdictions within the County and the County may occur, and it shall be the responsibility of the County to facilitate such coordination. The County will work with designated representatives from all jurisdictions within the County to ensure effective communication regarding issues impacting the Stormwater Infrastructure and the Stormwater Management Plan.

5.07 *Qualifications and Extents of Service:* Stormwater infrastructure in public road Rights of Ways, whether State, County or Municipal, shall be maintained by the road owner, as these areas are exempt from Stormwater Utility User Fees per Section 99-109 (b) of County Ordinance 2005-33. The Town shall retain the right to determine the qualifications for, extent of, and level of service required to maintain the Stormwater Infrastructure within the limits of the Town, with the exception of County and State road Rights of Way, which shall be designed and maintained in accordance with their current standards.

5.08 *Fee Credits:* The Town shall have the authority to review and comment on all County stormwater fee credit applications requested upon parcels within the Town limits.

5.09 *Easements:* The Town and County will allow mutual blanket encroachments upon each other's existing easements, but only to enable the Town and/or County to perform stormwater utility related work within the limits of the Town.

ARTICLE 6: STORMWATER ORDINANCES AND DEVELOPMENT STANDARDS

6.00 *Applicable Standards:* The current hydrologic and hydraulic engineering and design standards of the Town shall prevail in the design, construction, operation and

maintenance of any portion of the Stormwater Infrastructure within the Town, unless superseded by the hydrologic and hydraulic engineering and design standards of the County or State, as may be required for specific work performed in County or State rights of way. 6.01 *State or Federal Laws or Regulations:* The Town and the County shall at all times comply with any applicable State or Federal Laws or regulations relating to Stormwater Management, Stormwater Infrastructure, erosion control or pollution.6.02 *Regulatory Obligations of the Town:*

The Town shall adopt and enforce ordinances and development standards as necessary to comply with State and Federal standards regarding storm water management, erosion and sedimentation, pollution control, and flooding. Minimum water quality controls shall be protective enough to reach and maintain state designated water uses.

6.03 *Plan Review and Site Inspection:* The Town shall be responsible for the review and approval of all development plans within the Town, to ensure that all applicable regulations pertaining to construction site erosion, sedimentation, and pollution control as well to post-construction stormwater quantity and quality control are met. The Town shall be responsible for providing inspections during construction to ensure that construction is following the approved development plan.

ARTICLE 7 – NPDES MS4 PHASE II PERMIT COMPLIANCE

7.00 *NPDES Compliance*: Should the Town be designated by the State of South Carolina for compliance with the NPDES program, the Town shall be responsible for the development of the NPDES MS4 Phase II permit application, the development of Best Management Practices required by the permit, and the implementation of the program of Best Management Practices set

forth in the permit.

7.01 *Roles and Responsibilities:* The Town and County shall hold separate NPDES MS4 Phase II permits and shall each be responsible for maintaining compliance with their respective permit requirements.

7.02 *Coordination of Activities:* It is expected that some aspects of NPDES MS4 Phase II requirements will lend themselves to coordination and cooperation between the Town and the County. In such instances, coordination between the Town and the County shall be on the basis of a specific Minimum Control Measure (MCM) and shall be established by a separate written agreement that specifies the objectives, product deliverables, schedules, funding distribution, and the roles and responsibilities of each party in addressing these measures.

7.03 *Annual Reporting:* The Town and County will each be responsible for preparing an annual report documenting the activities undertaken in support of NPDES MS4 Phase II permit requirements during the previous year and submitting the report to the South Carolina Department of Health and Environmental Control.

7.04 *Permit Related Costs:* All costs related to the NPDES MS4 Phase II permit shall be borne by the permit holder. In instances where the Town and County coordinate to meet permit requirements, costs may be shared on a basis that is detailed in a separate written agreement.

ARTICLE 8 – DATA ACQUISITION AND MANAGEMENT

8.00 *Roles and Responsibilities:* The Town and County shall each be responsible for acquiring and maintaining data sets that are relevant to Stormwater Management in their respective jurisdictions.

8.01 *Cost Sharing:* Cost sharing agreements for data acquisition may be made between the Town and County on a project-specific basis. The terms and details of any cost sharing agreement shall be detailed in a separate written agreement between the Town and County.

8.02 *Data Sharing*: The Town and County shall share acquired data at the request of the other. In such instances the Town and County will agree to abide by each entity's current data distribution policy.

8.03 *Data Types:* Types of data that the Town and County will acquire, maintain, and may share include but are not limited to, GIS data, aerial photography, LIDAR data, water quality monitoring data, stream gage data, financial and accounting data.

ARTICLE 9 – OTHER AGREEMENTS

9.00 *Scope and cost sharing:* From time to time various projects may be shared in scope and/or cost between the County and the Town, or the County and multiple Municipalities within the County via Memos of Understanding, Contracts, and/or Joint Resolutions.

9.01 *Agreement Recommendations:* The Stormwater Implementation Committee shall be the vehicle whereby agreements of project scope and cost sharing between the County and multiple Municipalities within the County are reviewed and recommended to the Municipalities and County. For agreements solely between the Town and the County, the Stormwater Implementation Committee Review is not required.

9.02 *Agreement approvals:* Other agreements between the County and the Town must be approved by the Town Council and the County Council or their designees.

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ARTICLE 10 - MISCELLANEOUS

10.00 *Provisions Applicable to This Agreement:* The following general provisions are applicable to this Agreement:

10.01 *Binding Effect:* This Agreement shall inure to the benefit of and shall be binding upon the Town and County and their respective successors and assigns, if any are permitted hereunder.

10.02 *Amendment, Changes and Modifications:* Except as otherwise provided herein, this Agreement may not be effectively amended, changed, modified or altered without the written consent of the Town and the County.

10.03 *Severability:* In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

10.04 *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

10.05 *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

10.06 *Captions:* The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

10.08 *Plural/Singular:* Where appropriate, the use of the singular herein shall include and be deemed to be the plural, and the use of the plural herein shall be deemed to include the singular.

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10.09 *No Third Party Beneficiaries:* The Town and the County hereto affirmatively represent that this Agreement is made solely for the benefit of the parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. No party other than the signature parties and their respective successors and assigns hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

10.10 *Notices:* All notices, applications, requests, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person, or mailed by regular first class mail, postage prepaid (in such case, delivery shall be deemed complete upon mailing), addressed as follows, or to such other place as may be designated in writing by the parties

To the Town: THE TOWN OF HILTON HEAD ISLAND
Stephen G. Riley, Manager
One Town Center Court
Hilton Head Island, SC 29928

To the County: BEAUFORT COUNTY, SOUTH CAROLINA
Gary Kubic, Manager
Post Office Box 1128
Beaufort, SC, 29902

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10.11 *No Waiver:* No failure of either party hereto to exercise any power or right given to such party hereunder, or to insist on strict compliance by any other party to its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any party's right to thereafter demand strict compliance with the terms of this Agreement.

10.12 *Further Assurances and Corrective Documents:* The Town and the County agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the provisions hereof. The Town and the County agree that each shall, upon request, execute and deliver such other or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the provisions hereof.

In Witness Whereof, The Town of Hilton Head Island, South Carolina, and Beaufort County, South Carolina, by and through their duly authorized officers, have set their hands and seals on this ___ day of _____, 2011.

DRAFT

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

_____

By:_____

Drew Laughlin, Mayor

_____

Attest:_____

Stephen G. Riley, Town Manager

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

_____

By:_____

Westin Newton, Chairman

_____

Attest:_____

DRAFT

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO:	Intergovernmental Relations Committee
VIA:	Charles Cousins, *Director of Community Development*
VIA:	Shawn Colin, *Comprehensive Planning Manager*
FROM:	Shea Farrar, *Senior Planner*
DATE	May 11, 2011
SUBJECT:	**Pending State Aeronautics Legislation Review**

Summary

Two bills have been proposed in this legislative session that could limit the Town's ability to adopt and enforce regulations related to the airport. Proposed Bills, H3918 and S707 will relocate the Division of Aeronautics ("Division") within the State to the Department of Transportation and will substantially increase the authority of the Division to regulate land use in the vicinity of public airports and to abate imminent or foreseeable hazards to aviation safety among other things. The Municipal Association of South Carolina is advocating amendments to the bill; however, these do not fully address the potential concerns for the Island.

Background

Restructuring efforts have continued at the State level with the intent of reducing costs by reducing duplications in services. This bill proposes to relocate the Division of Aeronautics from the Department of Commerce to the Department of Transportation. However, changes are also proposed that will substantially impact the ability of municipalities to regulate airports and the lands surrounding airports. Changes are also proposed that will allow the Division of Aeronautics to define and identify airport hazards and give the Division the ability to abate or require abatement of such airport hazards.

The following highlights sections of proposed Bill H3918 that are of concern to the Town:

Section 55-5-70 gives the Division an "interest in the maintenance and enhancement of aeronautical activities and facilities within the State". In addition, the Division "shall adopt

reasonable rules and promulgate regulations as it deems necessary and advisable in conjunction with Federal Aviation Administration (FAA) regulations, for the public safety and for promotion of aeronautics governing the design, laying out, location, building, equipping, operation and use of all airports." The existing law specifies that the Division shall provide "supervision over the aeronautical activities and facilities within the State." This change significantly strengthens the statutory powers and duties of the Division by allowing it to regulate airports and surrounding lands.

Section 55-5-80 (K) gives the Division the authority to remove or abate any imminent or foreseeable hazard to aviation safety, a public use airport or in the vicinity of a public use airport. The proposed language states that the Division shall have the "authority to take action to abate any imminent or foreseeable hazard" and defines a hazard as including conditions that would cause aircraft takeoff, landing or approach criteria to be adversely impacted; or the existence of a condition that would constitute a nuisance to aircraft operation. Hazardous conditions include "obstructions such as towers, trees or manmade structures." In addition, a nuisance to aircraft operation is also a condition that adversely affects FAA or industry criteria for safe approach, landing, takeoff and departure profiles." This could potentially create a conflict with existing Town ordinances that limit runway length.

Section 55-5-80 (L) states that the legal action to remove such a hazard "may include the issuance of an order directing the abatement or removal of the hazard, an action in circuit court or the Administrative Law Court to enjoin the construction or maintenance of a hazard, or the removal and abatement of a hazard." This further increases the authority of the Division to abate or require abatement of airport hazards, whereas the Division does not currently have that authority.

Section 55-5-140 is proposed for deletion. This change would delete the exemption of airports owned by governmental agencies from regulations enacted by the Division.

Section 55-5-150 requires the approval of the Division to close an airport runway and which includes the requirement for an airport closing plan that is to be approved by the Division, limiting local control over such matters.

Section 55-9-250 defines airport hazards to include obstruction types that may "in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft." The concern here is that it could imply that the Town's ordinance restricting runway length is

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actually an obstruction and no longer valid.

Section 55-9-270 provides that the Division may require municipalities to adopt land use rules and regulations for airport hazards. It also allows the Division to file a petition in circuit court if such regulations are not adopted within 60 days to require their adoption.

Section 5-9-330 (C) gives the Division the authority to adopt regulations that "may require a property owner to permit the governmental entity *at its own expense* to install, operate, and maintain on the property markers and lights as necessary, to indicate to operators of aircraft in the presence of the airport hazard." This gives the Division the authority to actually resolve or require the resolution of hazards, as they define, without any approvals from local governing bodies.

Section 5-9-330 (D) states that all regulations adopted by the Division "may provide that a preexisting nonconforming structure, tree or use, shall not be replaced, rebuilt, altered, allowed to grow higher, or replanted, so as to constitute a greater airport hazard than it was when the airport zoning regulations or amendments to the regulations were adopted." Again, this strengthens the regulatory authority of the Division.

Sections 55-13-5 requires that the Division create a map of the public use airports in the State that is to include airport safety zones and airport land use zones, which are defined in the chapter. These zones include the airport and surrounding areas that could be negatively affected by the existence of a hazard or areas that have incompatible land uses. These maps, once created, must be provided to respective planning agencies. This section would also require that the Town submit any plans that might impact these areas to the Division for approval.

MASC Revised Legislation

The Municipal Association of South Carolina has submitted a revised proposal that addresses the issues identified below. Although these revisions do address some Town concerns, others remain outstanding.

- Removes the proposed authority of the Division that would allow them to "approve" airport closure plans.

- Allows the Division and the local government to seek cost recovery from the person

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responsible for an airport hazard or obstruction rather than the governing body.

- Removes the authority of the Division to approve development and subdivision plans in the airport land use and airport safety zones and revises it to state that local governments can consult with the division "when possible" on such plans.

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