



**The Town of Hilton Head Island
Regular Public Facilities Committee Meeting**

**Monday, June 27, 2016
10:00 a.m.**

Benjamin M. Racusin Council Chambers

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. Committee Business**
 - Approval of Minutes:
 - May 23, 2016
- 4. Unfinished Business**
- 5. New Business**
 - Stormwater Utility – Intergovernmental Agreement Amendment
- 6. 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 PUBLIC FACILITIES COMMITTEE

Date: May 23, 2016

Time: 10:00 A.M.

Members Present: David Ames, Kim Likins, Tom Lennox

Members Absent: None

Staff Present: Shawn Colin

Others Present: Eleanor O'Key, *Low Country Inside Track*

Media Present: None

1. Call to Order:

The meeting was called to order at 10:00 a.m.

2. 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.

3. Committee Business:

Approval of Minutes: Mr. Ames asked Mrs. Likins and Mr. Lennox if there were any additions or changes to the Minutes. No changes were indicated and the Minutes of February 22, 2016 were approved as presented.

4. Unfinished Business:

None

5. New Business

• **Islander's Beach Park Tower Conceptual Location**

Shawn Colin stated it was staff's recommendation the Public Facilities Committee forward a recommendation to Town Council on the request from AT&T to locate a telecommunications tower on the Town's Islander's Beach Park property.

Should the Committee recommend approval of the concept, it is recommended Town Council approve an ordinance to authorize the execution and delivery of a long term lease for a portion of the Town's property located at Islander's Beach Park for use as a communications tower site along with easements for access and utilities to serve the site with the following conditions:

- The site is limited to the area shown on Attachment "A", Islander's Tower Location, included in the Agenda Packet.
- The tower is a monopole style tower with a maximum height of 140'.
- The antenna space from 120' to 130" is reserved for the Town's use at no charge.
- No parking is removed as a result of the tower.

Mr. Ames inquired what the dimensions of the area of the easement are. Mr. Colin said it is generally 100 x 100.

Mr. Colin stated they asked the tower provider to look at other structures, other areas that could be used for co-location and none were deemed suitable.

Mrs. Likins asked if other carriers would take advantage of this. Mr. Colin advised we do not have any solid information that another carrier will use it. It has been the case with the Station 7 tower and the Jenkins Island tower. AT&T had been the carrier that had driven those installations. The hope and thought would have been there would be co-locations that follow on. They run at different frequencies and we hope down the road that they use them as co-locations. Because it may be a viable location for Verizon or Sprint we will require that they co-locate rather than site a tower in the vicinity of one of these that had been installed. We also have required that the second space on these towers be reserved for Fire Rescue for their emergency communication.

Mr. Lennox said from a competitive standpoint do we open this up to more than one bidder or Contract? Mr. Colin said the way we have approached this in the past is typically when a municipality would want to use their land for a certain use they would probably go through an RFP and say they want bids on this. With what we have done with Station 7 and Jenkins Island is that we have been approached by tower companies for other properties as you are well aware and we have decline using those properties for this use. We have only made considerations with requests that are solid and will lead to installation and delivery of service. We have an offer from this tower company to site it, to supply AT&T a site and expand their network and we wouldn't go back out in a competitive nature to open it up. It doesn't preclude Verizon, Sprint or one of the other carriers to locate on this tower but we are just facilitating that. As I mentioned before, we asked them to look at all other possibilities before utilizing Town owned property. We have always thought of Town property as a last resort in an area but if we have a solid lead we will bring it forward to Town Council for consideration, execution of the Lease and Easement to allow it to happen.

Mr. Ames said by recommending the approval, do we put the Town in a place where we have given AT&T an unfair advantage by not going out to bid? Mr. Colin advised he does not believe so. If the market would drive Verizon to locate a tower to serve their customers in this location, they had every opportunity to knock on our door to locate a tower on this site. They still have the opportunity to locate their antenna on this tower. It is at a position less advantageous. The higher on the tower you go the better.

Mr. Ames said there is someone on the Island that approached him over the last year or two who is interested in building towers on the Island. I don't know how they operate and enough detail to know exactly how their operation would compare to AT&T's, but what I am trying to get at is are we opening ourselves to a situation where another tower construction company will say hey you didn't allow us to do a bid on this piece of group because it is Town owned property and I have been talking to you over the last couple of years of trying to do that on Town owned property. Mr. Colin said there have been requests in the past from other tower providers to sort of have exclusive rights on Town

owned land and Council in the past has decided not to go in that direction because it is speculative. You would be precluding this tower company or others from being competitive. Council considers each request on an individual basis. Obviously this site has been there for some time. It didn't preclude any other tower provider from approaching Town Council on this particular site. I think if a tower company came forward and had a plan with sites picked out with the documentation in hand that would say AT&T has committed to these sites and we want to implement this strategy, then Council might want to consider that, but not on a speculative basis.

Mr. Lennox said there are two types of users here – AT&T is building the tower at their expense to provide for their customer service. Then there is the tower company like American Tower that will come and build the tower for profit and they will hang AT&T, Verizon and whoever else they can hang on the tower. The chicken and the egg comparison is the Tower Contractor will say I can't get AT&T or Verizon to commit until I have a site specific deal and we are saying we can't give you a site specific deal until you have AT&T and Verizon committed.

In the coverage map from the RF Engineers it shows the need for additional service in this area. AT&T has committed to spend money to install the antenna on the Tower. I think this a real lead and not speculative.

Mr. Ames asked if the chicken or egg solution were solved, would that put the Town in a more competitive position and perhaps be able to strike better deals with a tower provider and AT&T and anyone else. Mr. Colin said it might. We have worked with the Telecommunications Task Force for five or six years now and even before that we asked the carriers to provide these coverage maps. They are not very willing to share that because they do not want something to get in the paper here is AT&T's coverage vs. Verizon locally because it will shift potential customers. We tried to approach it in that direction. Where is there a need for additional towers and antenna and then that would help you as a community identify the strategic locations or Town holdings that might make sense to site.

Mr. Ames said it is his sense that we can come to an agreement today to push this forward, but there seems to be some either ambiguity or opportunity for us to look at this. Mr. Ames thanked Mr. Colin for taking the time to fill him in and getting him up to speed on this. Mr. Ames said there are two issues – sort of broad principals. 1) I believe strongly that we need to encourage the development of towers on the Island so that we are covered. I am very much in support of this. 2) I think in some cases in the minds of some people the esthetics of towers will have to be reconsidered. I think they are in fact an infrastructure essential and we probably have to learn to accept them to the best degree we can hide them. I think that when I look at these photographs I do not see a problem in how it is sited.

Mr. Ames stated he was a pilot and flies approaches into this area and also departures. Has this been approved or in any way reviewed by the FAA or is that something that would follow once the conceptual approval had been taken. Mr. Colin said the tower providers has look at this from a preliminary standpoint. They haven't submitted anything officially to FAA but we feel it is outside of the slope restrictions from the Airport.

Mr. Ames said something that we have to be careful with is the parking capacity of this Beach. As Coligny fills out (Circle to Circle) what happens at Chaplin, etc. I think more and more people on the Island are going to want to go to this park. Is there any way that staff can look at a future parking plan to maximize parking spaces in this area and see how the tower siting area might impact that. Mr. Colin said certainly.

Mrs. Likins said this is very much in line with what the Telecommunications Task Force has continued to recommend and encourage us to do as a Council motioned that we should move the conceptual design for the AT&T Tower at the Islander's Beach Park forward to Town Council for consideration. Mr. Lennox seconded.

Mr. Ames asked if there was any public comment. Eleanor O'Key asked if you can go up to 149 feet, why doesn't this one. Mr. Colin said they have looked at the other Towers and because of the lightening rod antenna goes above the monopole, I think they go with 140 in case the lightning rod or anything extends up. They want to have that gap between 140 and 150. They locate the actual antenna right at the 140 mark.

With no further discussion, Mrs. Likins' motion passed unanimously.

6. **Adjournment**

Mr. Lennox moved to adjourn. Mrs. Likins seconded. The meeting was adjourned at 10:22 a.m.

Respectfully Submitted,

Karen D. Knox
Senior Administrative Assistant



TOWN OF HILTON HEAD ISLAND

Public Projects and Facilities Management Department

TO: Stephen G. Riley, ICMA-CM, Town Manager
VIA: Scott Liggett, PE, Dir. of Public Projects & Facilities / Chief Engineer
Jeff Buckalew, PE, Town Engineer
FROM: Bryan McIlwee, PE, Asst. Town Engineer / Stormwater Manager
CC: Brian Hulbert, Staff Attorney

DATE: June 3, 2016
SUBJECT: Stormwater Utility - Intergovernmental Agreement Amendment

Recommendation:

Staff recommends Town Council amend the Town's Storm Water Management and Utility Intergovernmental Agreement (IGA Agreement) with Beaufort County.

Summary:

Intergovernmental Agreement - This agreement must be amended to reference the current Beaufort County Stormwater Rate Study report, adjust scheduling deadlines related to the change in the date of the annual tax billing by the County Assessor's office, as well as the County's desire to have a uniform agreement between itself and each of the municipalities.

Background:

The Town of Hilton Head Island entered a Storm Water Management and Utility Intergovernmental Agreement with Beaufort County since 2001 and amended in 2011. The agreement defines 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.

On September 28, 2015, the Beaufort County Council approved and adopted the recommendations of the Beaufort County Stormwater Rate Study. This impacts the current Intergovernmental Agreement as it makes specific reference to the new Rate Study, the Town's chosen rate structure, the dates, and the method in which the management fee is determined. Per the attached letter, the County has requested changes to the IGA become effective prior to June 30, 2016.

A STORMWATER MANAGEMENT AND UTILITY -

INTERGOVERNMENTAL AGREEMENT -

BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA, AND -

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA -

DATED: _____ -

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WHEREAS, this Agreement is made on this ___ day of _____, 2016, 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 “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, Ordinance 2015-24 regarding the establishment of a Stormwater Utility. The Beaufort County Stormwater Implementation Committee (SWIC) will review this Agreement for any needed revisions upon future amendments to *Chapter 99* of the County Ordinance. Amendments to *Chapter 99* shall become binding to this Agreement upon SWIC review and revisions to this Agreement, if deemed necessary. 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 (and Implementation Guide):* 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. In 2016, the County and Town of Hilton Head Island entered into agreement to update the Master Plan, said document being referred to as the “Beaufort County Stormwater Management Implementation Guide”. Future amendments of the

Plan/Guide shall be incorporated by reference once agreed upon by the Beaufort County Stormwater Implementation Committee (SWIC).

2.04 *Cost of Service Analysis and Rate Study:* The study was conducted by the County and Town which was adopted by County Council on August 24, 2015 and submitted by the Study consultant to the Town of Hilton Head Island on April 20, 2016 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 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 a parcel's gross area and an administrative fee, depending on the applicable Utility Rate Structure, as pursuant to the provisions of the Beaufort County Ordinance listed in Section 1.02.

2.06 *Stormwater Utility User Fee; Single Family Unit Rate (SFU).* Per "Option A" of the 2015 Utility Rate Study, 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

2.07 *Stormwater Utility User Fee; Administrative fee.* For "Option A" rate structures, the Administrative fee is a portion of the SFU and determined per Section 4.01 of this Agreement. Per "Option C or E" of the 2015 Utility Rate Study, the Administrative fee is a fixed cost per billable account and includes costs to the Utility not directly applicable to the improvements of

the property, such as administrative costs, public education and outreach, and water quality monitoring. For “Option C or E” rate structures, the Administrative fee is determined per Section 4.01 of this Agreement.

2.08 *Stormwater Utility User Fee; Countywide Infrastructure Fee (CWI)*. Per the 2015 Utility Rate Study, the countywide infrastructure fee is based on GIS data obtained per Article 8 herein. It is a fee applicable to each Town for the operation and maintenance cost of the county owned infrastructure defined in Section 5.07, collected and paid directly to the County.

2.09 *Stormwater Utility User Fee; Gross Area fee (GA)*. Per “Option C or E” of the 2015 Utility Rate Study, the Gross Area fee is calculated from the area in acres of a parcel of land as measured from GIS data obtained per Article 8 herein.

2.10 *Stormwater Utility User Fee; Impervious Area fee (IA)*. Per “Option C or E” of the 2015 Utility Rate Study, the Impervious Area fee is based on impervious area measurements calculated in the same manner as the SFU.

2.11 *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 in population, small construction sites between one acre and five acres, and industrial sites owned and operated within communities under 100,000 population.

2.12 *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.

2.13 *Stormwater Infrastructure:* Real property, interests in real property, improvements to real property such as ditches, drains, pipes, culverts, catch basins, pumps, post-construction best management practices (BMPs), 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.

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

2.15 *Stormwater Management Plan:* The plan(s) developed by the County and Town 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.

2.16 *Stormwater Utility:* The administrative section of the County's Stormwater Department 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.

2.17 *Town:* Town of Hilton Head Island, South Carolina.

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 the Agreement is signed by both the Town and the County, whichever comes last.

3.02 *Periodic Review of this Agreement:* The Beaufort County Stormwater Implementation Committee (SWIC) shall conduct periodic review of this Agreement to insure that it remains current with the state of the art stormwater management and practices applicable to coastal areas 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 (180) 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 stormwater 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 (otherwise known as Countywide Infrastructure, CWI, as defined in Section 5.07) 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 Rate for its upcoming fiscal year prior to June 30 each year of this Agreement. This will be in the form of a letter to the County Administrator from the Town Manager.

In the event the Town fails to submit this letter in accordance with Article 4 of this Agreement, the previous year's rate shall apply. The Town shall also provide to the County an annual report of its stormwater fee expenditures from the previous fiscal year. This report shall be delivered

by September 30, or as soon as the previous fiscal year's financial records are complete, 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 unit billed and collected by the Stormwater Utility. The billable unit shall be either a Per Account charge or a charge per SFU, depending on the applicable Utility Rate Structure. The Utility shall define its administrative costs each year during the annual budget process. The Beaufort County Stormwater Implementation Committee (SWIC) shall conduct annual reviews of the Utility's administrative budget and recommend to the municipalities and County any changes to the amount billed per Account or SFU and the SWIC and Utility shall provide the Town an itemized proposal and a written explanation for adjustments for the administrative services and deliverables to be provided in the coming fiscal year. This proposal shall be submitted to the Town by February 15 of each calendar year. The Town shall provide a written recommendation of acceptance to the Utility by April 1 of the same year. Once agreed upon, this shall serve as the basis for the annual administrative fee to be calculated per Town Account or SFU, and included in each entity's annual budget.

- (a) The administrative fee shall be used by the County to defray the County's administrative costs in managing the Stormwater Utility.
- (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 for the purpose of funding Stormwater Management projects or activities; 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 (Per Account, IA, GA, and SFU's):* The Town shall be responsible each year for setting the Stormwater 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 and Town shall have the responsibility to develop and maintain a Stormwater Management Plan to be administered by the Beaufort County Stormwater Implementation Committee (SWIC).

5.02 *Relationship of Plan to Agreement:* The Stormwater Management Plan developed and maintained by the Beaufort County Stormwater Implementation Committee (SWIC) 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 stormwater data, implementation of the master plan, acquisition of easements, coordination with other agencies, reporting to the Stormwater 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 1st throughout the term of this agreement as an 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 stormwater 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 the County Ordinance. 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 prior to such adjustments being made.

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 County and Town shall prevail in the design, construction, operation and maintenance of any portion of the Stormwater Infrastructure within the County and Town, respectively, unless superseded by the hydrologic and hydraulic engineering and design standards of the State, as may be required for specific work performed in State rights of way. In all cases, the County or Town standards shall prevail within the applicable jurisdiction unless determined to be less stringent than State standards. -

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 County and Town:* -

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

6.03 *Plan Review and Site Inspection:* The Town and County shall be responsible for the review and approval of all development plans within their respective jurisdictions, 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 County and Town shall be responsible for providing inspections during construction of all County and Town owned stormwater systems, respectively. The County and Town will continue its practice of inspection and review of privately owned stormwater systems during construction and upon completion to ensure that construction conforms with the approved development stormwater plan.

ARTICLE 7 – NPDES MS4 PHASE II PERMIT COMPLIANCE

7.00 *NPDES Compliance:* In 2015, Beaufort County, the Town of Hilton Head Island, and the Town of Bluffton were designated by the State of South Carolina for compliance with the NPDES Program. the County and 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. Should the Town of Port Royal or the City of Beaufort be designated by the State of South Carolina for compliance with the NPDES program, the provisions of this section shall also apply to the Town.

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. The Town may request to “co-permit” or share MS4 Phase II permitting with the County or another Town or City, as allowed by Article 9 of this Agreement, as allowed by State law, and as encouraged in the State of South Carolina General Permit for MS4 Phase II communities.

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 Agreement, Memos of Understanding, Contracts, and/or Joint Resolutions.

9.01 *Agreement Recommendations:* The Beaufort County Stormwater Implementation Committee (SWIC) 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. It is understood that the Beaufort County Stormwater Implementation Committee shall have no authority to financially commit the Town or County to any project of any type and only will provide technical recommendations for such projects. For agreements solely between the Town and the County, the Beaufort County Stormwater Implementation Committee (SWIC) 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.

9.03 *Funds Distribution:* These Agreements will define how funds are distributed, either by invoice or as part of the Per Account Administrative fee collected by the County.

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.

10.07 *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.

10.08 *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.

10.09 *Notices:* All notices, applications, requests, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person, via electronic mail, 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 -

10.10 *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.

10.11 *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 _____, 2016.

WITNESSES: -

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____

_____, Mayor

Attest: _____

_____, Town Manager

WITNESSES: -

BEAUFORT COUNTY, SOUTH CAROLINA

By: _____

Paul Sommerville, Chairman

Attest: _____

Gary Kubic, County Administrator