



The Town of Hilton Head Island

Regular Town Council Meeting

November 17, 2015

4:00 P.M.

BENJAMIN M. RACUSIN COUNCIL CHAMBERS

AGENDA

**As a Courtesy to Others Please Turn Off/Silence All Mobile Devices During
the Town Council Meeting**

- 1) Call to Order**
- 2) Pledge to the Flag**
- 3) Invocation**
- 4) FOIA Compliance** – Public notification of this meeting has been published, posted and distributed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) Proclamations and Commendations**
 - a. Arbor Day
- 6) Approval of Minutes**
 - a. Town Council Meeting, November 3, 2015
- 7) Report of the Town Manager**
 - a. Presentation of Storm Ready Community Designation – Ron Morales, Warning Coordination Meteorologist
 - a. Town Manager's Items of Interest
 - (1) Town News
 - (2) Noteworthy Events
- 8) Reports from Members of Council**
 - a. General Reports from Council
 - b. Report of the Intergovernmental Relations Committee – Bill Harkins, Chairman
 - c. Report of the Community Services Committee – Kim Likins, Chairman
 - d. Report of the Public Planning Committee – Tom Lennox, Chairman
 - e. Report of the Public Facilities Committee – Lee Edwards, Chairman
 - f. Report of the Public Safety Committee - Marc Grant, Chairman
 - g. Report of the Finance and Administrative Committee - John McCann, Chairman
 - h. Report of the Circle to Circle Committee - Tom Lennox, Town Council Liaison
- 9) Appearance by Citizens**

10) Unfinished Business

a. Second Reading of Proposed Ordinance 2015-24

Second Reading of Proposed Ordinance 2015-24 of the Town of Hilton Head, South Carolina, authorizing the execution of a deed for the conveyance of 1.288 acres of real property known as the “Proposed Fifth Street Extension” to Marriott Ownership Resorts, Inc., pursuant to the authority of S.C. Code Ann. § 5-7-40 (supp. 2011), and § 2-7-20, *Code of The Town of Hilton Head Island, South Carolina*, (1983); and providing for severability and an effective date.

11) New Business

a. First Reading of Proposed Ordinance 2015-22

First Reading of Proposed Ordinance 2015-22 to amend the Municipal Code of the Town of Hilton Head Island by creating Chapter 1 of Title 14, establishing regulations and requirements relating to Storm Water Management in the Town of Hilton Head Island; and providing for severability and an effective date.

b. Consideration of granting an exception to allow a helicopter to land at a location other than the Hilton Head Island Airport, pursuant to Sec. 7-5-20(4) of the Municipal Code

c. Consideration of Public Facilities Committee Recommendation regarding Public Dedication of Main Street

d. Consideration of a Request from the Island Beautification Association to rename the Xeriscape Garden to the Betsy Jukofsky Xeriscape Garden.

e. Consideration of Adoption of a Contract for Professional Services with the Hilton Head Island-Bluffton Chamber of Commerce

12) Executive Session

- a.** Discussion of negotiations incident to the proposed sale, lease or purchase of property:
 - 1. related to parcels on Palmetto Bay Road.

13) Possible actions by Town Council concerning matters discussed in executive session

14) Adjournment

Proclamation

BY
THE TOWN OF HILTON HEAD ISLAND

***WHEREAS**, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and*

***WHEREAS**, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and*

***WHEREAS**, 2015 is the 143rd anniversary of the holiday and Arbor Day is now observed throughout the nation and the world; and*

***WHEREAS** trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen and provide habitat for wildlife; and*

***WHEREAS**, trees are a renewable resource, giving us paper, wood for our homes, fuel for our fires and beautify our community; and*

***WHEREAS**, trees, wherever they are planted, are a source of joy and spiritual renewal; and*

***NOW, THEREFORE, I**, David Bennett, Mayor of the Town of Hilton Head Island, hereby proclaim that Friday, **December 4th**, shall be known on Hilton Head Island as*

Arbor Day

and urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands. Further, I encourage all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused this seal of the **Town of Hilton Head Island** to be affixed this **Seventeenth day of November, in the year of our Lord, two thousand and fifteen.

David Bennett

Attest:

Victoria L. Pfannenschmidt, Town Clerk

THE TOWN OF HILTON HEAD ISLAND
REGULAR TOWN COUNCIL MEETING

Date: Tuesday, November 3, 2015

Time: 4:00 P.M.

Present from Town Council: David Bennett, *Mayor* Bill Harkins, *Mayor Pro Tem*; Marc Grant, Tom Lennox, Kim Likins, John McCann, Lee Edwards, *Council Members*

Present from Town Staff: Steve Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Charles Cousins, *Director of Community Development*; Scott Liggett, *Director of Public Projects & Facilities/Chief Engineer*; Joheida Fister, *Fire Marshal*; Brian Hulbert, *Staff Attorney*; Teri Lewis, *LMO Official*; John Valvo, *Systems Analyst*; Vicki Pfannenschmidt, *Executive Assistant/Town Clerk*

Present from Media: Zack Murdock, *Island Packet*

1) CALL TO ORDER

Mayor Bennett called the meeting to order at 4:00 p.m.

2) PLEDGE TO THE FLAG

3) INVOCATION

4) FOIA Compliance – Public notification of this meeting has been published, posted and distributed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

5) Proclamations and Commendations

a. Pancreatic Cancer Awareness Month

Mr. Richard Boccabella was present to accept the proclamation.

b. Port Royal Sound Month

Mr. Tom Henz and Mr. David Harter were present to accept the proclamation.

6) Approval of Minutes

a. Town Council Meeting, October 20, 2015

Mr. Harkins moved to approve. Mr. McCann seconded. The minutes of the October 20, 2015 regular Town Council meeting were unanimously approved by a vote of 7-0.

7) Report of the Town Manager

a. Town Manager's Items of Interest

Mr. Riley reported on some items of interest listed below.

(1) Town News

(2) Noteworthy Events

8) Reports from Members of Council

a. General Reports from Council

Mr. McCann reported the Accommodations Tax Committee continues to review applicants. He commented on the Memory Matters application and the Purple Angel Project noting the good work the agency does on behalf of our community and visitors.

Mr. Grant reported he met with representatives of the community regarding the proposed plaque for the Rowing and Sailing Center at Squire Pope Community Park. He stated they would like the plaque to depict the accomplishments and be created in memory of the Fishing Co-Op, noting the rich history related to the Co-Op and that it existing where the Center is today. He referenced materials with the pertinent information regarding the Co-Op and presented them to Mr. Riley.

b. Report of the Intergovernmental Relations Committee – Bill Harkins, Chairman

No report.

c. Report of the Community Services Committee – Kim Likins, Chairman

Mrs. Likins stated the Arts & Cultural Strategic Planning Committee has completed their recommendations and will present them at the upcoming Town Council Workshop. She expressed her appreciation to the Committee for their hard work. She added that the Community Services Committee will be meeting November 4 to review the applicants for the Heritage Cultural Tourism Task Force.

d. Report of the Public Planning Committee – Tom Lennox, Chairman

Mr. Lennox stated the Committee will meet on November 12 at 3:00 p.m. to have follow-up discussion on the Visioning and Master Planning process.

e. Report of the Public Facilities Committee – Lee Edwards, Chairman

Mr. Edwards said the Committee met to review the public dedication of Main Street and they concluded there is an overarching public benefit to the Town taking over the road and they voted to recommend Council consider doing so. He explained that if Council agrees to move forward, the item would go back to his Committee to review the possibility and work out details.

f. Report of the Public Safety Committee - Marc Grant, Chairman

Mr. Grant reported the Committee met on November 2 to review the 3rd Quarter Crime Statistics provided by the Beaufort County Sheriff's Office and recounted the details for each individual area. He added that they discussed how to improve in each area.

g. Report of the Finance and Administrative Committee - John McCann, Chairman

No report.

h. Report of the Circle to Circle Committee - Tom Lennox, Town Council Liaison

Mr. Lennox said the Committee is scheduled to meet on November 4 to discuss the alternatives to remediation for the Sea Pines Circle and the effect of those alternatives.

9) Appearance by Citizens

Skip Hoagland and Peter Buonaiuto addressed Council regarding the proposed contract between the Town of Hilton Head Island the Hilton Head Island – Bluffton Chamber of Commerce and the need for an investigative audit requirement.

Andy Twisdale addressed Council regarding affordable housing.

Heather Rath addressed Council regarding the timeline for input and review with for the Coligny redevelopment.

Jim Gant addressed Council regarding his support of the redevelopment plan for the Coligny area.

Tom Coyle, Clint Ban Aswegan, Frank Anderson, Jim Thompson, Walt Laun, Kevin Hood, James Daniel, Joe Newton, Ryan McAvoy, Gino Miller, Andrea Miller, Ed Barry, Lorraine Berry, Marek Belka, and Barbara McAvoy addressed Council regarding Legendary Golf remaining on Town property dedicated for the Coligny redevelopment.

Jenny Cerroti addressed Council regarding the timeline for input and review and the benefits of the Sandbox Museum on the property dedicated for the Coligny redevelopment.

10) Unfinished Business

a. Second Reading of Proposed Ordinance 2015-23

Second reading of Proposed Ordinance 2015-23 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance (LMO), Chapters 2, 3, 4, 5, 6 and 10 and Appendices a and d to revise various sections. These amendments, commonly referred to as *2015 LMO Amendments* as noticed in the Island Packet on September 6, 2015, include changes that provide for general amendments to a variety of sections in the LMO, and providing for severability and an effective date.

Mr. Harkins moved to approve. Mr. McCann seconded. The motion was unanimously approved by a vote of 7-0.

11) New Business

a. First Reading of Proposed Ordinance 2015-24

First Reading of Proposed Ordinance 2015-24 of the Town of Hilton Head, South Carolina, authorizing the execution of a deed for the conveyance of 1.288 acres of real property known as the "Proposed Fifth Street Extension" to Marriott Ownership Resorts, Inc., pursuant to the authority of S.C. Code Ann. § 5-7-40 (supp. 2011), and § 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983); and providing for severability and an effective date.

Mr. Harkins moved to approve. Mr. McCann seconded. The motion was unanimously approved by a vote of 7-0.

b. Recommendation from the Finance and Administrative Committee regarding selection of firm for Public Communication Program

Mr. McCann moved that the Town Manager be authorized to enter into a contract with Rawle Murdy and the Committee also recommended that Council Member Kim Likins and Town Manager designee, Greg DeLoach, manage the work of the firm. Mr. Harkins seconded. The motion was unanimously approved by a vote of 7-0.

12) Executive Session

Mr. Riley stated he needed an executive session for land acquisition items related to the proposed sale, lease or purchase of property; potential acquisition of property in the Stoney area; and potential acquisition of property in the Sea Pines Circle area; receipt of legal advice related to a pending litigation concerning appeal of a BZA decision.

At 5:28 p.m. Mr. McCann moved to add to the executive session agenda, under Contractual Matters, discussion of negotiations incident to a proposed contractual arrangement with the Hilton Head Island-Bluffton Chamber of Commerce in addition to the executive session items enumerated by the Town Manager. Mr. Harkins seconded. The motion was unanimously approved by a vote of 7-0.

Mayor Bennett called the meeting back to order at 6:18 p.m. and stated there was no action taken during executive session and asked if there was anything to take up as a result of Executive Session.

Mr. McCann moved that an item of New Business be added to the agenda for the next regular meeting of the Town Council, on November 17, 2015, as follows: Consideration of Adoption of a Contract for Professional Services with the Hilton Head Island-Bluffton Chamber of Commerce; provided that a copy of the contract can be made available to the public yet this week. Mr. Harkins seconded. The motion was unanimously approved by a vote of 7-0.

14) Adjournment

Mayor Bennett adjourned the meeting at 6:19 p.m.

Vicki L. Pfannenschmidt
Executive Assistant/Town Clerk

Approved:

David Bennett, Mayor



ITEMS OF INTEREST

NOVEMBER 17, 2015

Town News

The South Carolina Department of Health and Environmental Control (SCDHEC) has issued Certificate of Coverage SCR0313 under the State of South Carolina NPDES General Permit for the Town of Hilton Head Island effective December 1, 2015.

The Town of Hilton Head Island was designated a Municipal Separate Storm Sewer System (MS4) by SCDHEC in June, 2014 and was required to submit a Notice of Intent for coverage under the permit by December 1, 2014. SCDHEC conducted a review of the Town's Notice of Intent and found it to be in compliance with the General Permit requirements. SCDHEC issued a public notice for the Certificate of Coverage in August, 2015.

In order to maintain compliance with the permit, the Town will be required to develop and implement a comprehensive Storm Water Management Plan that focuses on reducing water quality impacts from storm water discharges. Required components of this program include establishing procedures and ordinances for identifying and eliminating illicit discharges and illicit connections, public education and public involvement, construction site pollution prevention, post-construction runoff and pollution control, and pollution prevention from municipal facilities and operations. Town staff is currently developing and implementing various components of these permit requirements.

Contact: Bryan McIlwee, Asst. Town Engineer / Stormwater Manager –
bryanm@hiltonheadislandsc.gov 843-341-4775 or Jeff Buckalew, Town Engineer –
jeffb@hiltonheadislandsc.gov 843-341-4772

Noteworthy Events

Some of the upcoming meetings at Town Hall:

- Public Facilities Committee – November 23, 2015, 10:00 a.m.
- Community Services Committee – November 24, 2015, 9:00 a.m.
- Construction Board of Adjustments and Appeals – November 24, 2015, 5:30 p.m.
- Town Administrative Offices Closed in observance of Thanksgiving- November 26 & 27, 2015
- Arts & Cultural Strategic Planning Committee – November 30, 2015, 3:00 p.m.
- Finance and Administrative Committee – December 1, 2015, 2:00 p.m.
- Town Council – December 1, 2015, 4:00 p.m.

(Additional meetings may be scheduled and all meetings are subject to change and/or cancellation. Please visit the Town of Hilton Head Island website at www.hiltonheadislandsc.gov for Committee meeting dates and agendas.

2015 Hilton Head Island Events

November 26, 2015 8:00 a.m. – 11:00 a.m.	Hilton Head Island Turkey Trot 5k & 10k	Hilton Head Plantation
November 28, 2015 3:30 p.m. – 5:30 p.m.	Holiday Tree Lighting	Arts Center of Coastal Carolina Parking Lot



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, ICMA – CM, Town Manager

FROM: Charles F. Cousins, AICP, Community Development Director

DATE: November 4, 2015

SUBJECT: Proposed Fifth Street Extension

Town Council made no changes to Proposed Ordinance 2015-24 as a result of the meeting on November 3, 2015.

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A DEED FOR THE CONVEYANCE OF 1.288 ACRES OF REAL PROPERTY KNOWN AS THE “PROPOSED FIFTH STREET EXTENSION” TO MARRIOTT OWNERSHIP RESORTS, INC., PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. § 5-7-40 (SUPP. 2011), AND § 2-7-20, *CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA*, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

WHEREAS, on or about November 14, 2008, Marriott Ownership Resorts, Inc. (“Marriott”) conveyed the following real property to the Town of Hilton Head Island, South Carolina (“Town”):

All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, having and containing 1.288 acres, more or less, shown and designated as the “Proposed Fifth Street Extension” containing 1.288 acres (the “Property”) on that certain plat entitled “Boundary Plat of 1.288 Acres Fifth Street Extension, A Portion of SurfWatch”, dated October 9, 2007, prepared by Surveying Consultants, certified to by Terry G. Hatchell, S.C.R.L.S #11059, and recorded in the Land Records of Beaufort County, South Carolina, in Plat Book 126 at Page 183.

TOGETHER with a perpetual and appurtenant easement for access to and over the twenty foot (20’) setback area depicted on said Plat, said easement expressly and solely for the purpose of landscaping and maintenance of such landscaping.

(the “Property”); and

WHEREAS, in that certain Indenture Title to Real Estate (Quit-Claim Deed with Right of Re-Entry), which conveyed the Property to the Town, dated July 14, 2008 and recorded November 14, 2008 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2783 at Page 1314, the conveyance of the Property was subject to “the right of re-entry running in favor of [Marriott] providing that in the event the property is not developed and used by the [Town] as a public roadway by January 1, 2015, then [Marriott] shall be entitled to enter upon and take possession of the property”; and

WHEREAS, the Property was not developed and used by the Town as a public roadway by January 1, 2015, and therefore the Town desires to work in good faith with Marriott to formally convey the Property back to Marriott by Deed; and

WHEREAS, under the provisions of S.C. Code Ann. § 5-7-40 (SUPP. 2011) and § 2-7-20, *Code of the Town of Hilton Head Island , South Carolina*, (1983), the conveyance or granting of an interest in real property owned by the Town of Hilton Head Island must be authorized by Ordinance.

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

Section 1. Execution and Delivery of Deed.

- (a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the Quit-Claim Deed in a substantially similar form to that attached hereto as Exhibit "A" for the conveyance of Town-owned real property to Marriott Ownership Resorts, Inc.; and
- (b) The Mayor and/or Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the transactions contemplated and authorized hereby, including the execution and delivery of the Deed.

Section 2. Severability.

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

Section 3. Effective Date.

This Ordinance shall become effective upon adoption thereof by the Town Council for the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____ DAY OF _____, 2015.

David Bennett, Mayor

ATTEST:

Victoria L. Pfannenschmidt, Town Clerk

First Reading: _____

Second Reading:_____

Approved as to form: _____
Gregory M. Alford, Town Attorney

Introduced by Council Member:_____



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: October 27, 2015
SUBJECT: Proposed Stormwater Ordinance for NPDES Compliance

Recommendation:

Staff recommends Town Council adopt a storm water ordinance for compliance with the State and Federal storm water permit requirements. On October 26, 2015, the Public Facilities Committee voted unanimously to recommend to Town Council they adopt a Storm Water Ordinance for compliance with the State and Federal storm water permit requirements.

Summary:

This ordinance is critical towards achieving compliance with the National Pollution Discharge Elimination System (NPDES) permit. The ordinance provides the required legal enforcement mechanism to address the impacts on storm water runoff quality and nonpoint source pollution due to improper non-storm water discharges to the municipal separate storm sewer system. Furthermore, it will allow for the better management of the storm water systems and consequently the preservation and protection of the health, safety, and welfare of the general public and our natural environment.

Background:

The Town of Hilton Head Island has been designated a Municipal Separate Storm Sewer System (MS4) and thus is required by federal law [33 U.S.C 1342(p) and 40 CFR 122.26] to obtain an NPDES permit from the South Carolina Department of Health and Environmental Control (SCDHEC). The NPDES permit requires the Town to impose and enforce controls to reduce the discharge of pollutants in storm water to the maximum extent practicable, including the development or adoption of any new ordinances or other regulatory mechanism that provides adequate legal authority to control pollutant discharges into and from their MS4. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the NPDES permit for storm water discharges.

Engineering and Legal/Code Enforcement staff will be responsible for detecting and enforcing this ordinance and it shall be adjudicated through the Town municipal court. No additional staff or resources are recommended at this time.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

PROPOSED ORDINANCE NO. 2015-22

ORDINANCE NO.:

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND BY CREATING CHAPTER 1 OF TITLE 14, ESTABLISHING REGULATIONS AND REQUIREMENTS RELATING TO STORM WATER MANAGEMENT IN THE TOWN OF HILTON HEAD ISLAND; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Town Council now finds that it is in the best interest of the people of this Town to protect the public health, safety, environment and general welfare of the Town of Hilton Head Island and therefore makes the following findings:

- (a) The Town of Hilton Head Island has been designated as a Municipal Separate Storm Sewer System by the South Carolina Department of Health and Environmental Control (SCDHEC) for storm water discharges from the Town of Hilton Head Islands stormwater system. This designation requires the Town to comply with the requirements of the National pollutant Discharge Elimination System (NPDES) permit to reduce the discharge of pollutants in stormwater to the maximum extent practicable using best management practices.
- (b) Discharges to the municipal separate storm sewer system that are not composed entirely of storm water runoff contribute to increased nonpoint source pollution and degradation of receiving waters; and
- (c) These non-storm water discharges occur due to spills, dumping, illegal pollutant discharges and improper connections to the municipal separate storm sewer system from residential, industrial, commercial or institutional establishments; and
- (d) These non-storm water discharges not only impact waterways individually, but geographically dispersed, small volume non-storm water discharges can have cumulative impacts on receiving waters; and
- (e) These non-storm water discharges have significant, adverse impacts on public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters of the Town of Hilton Head Island by transporting pollutants into receiving waters; and
- (f) These impacts can be minimized through the regulation of spills, dumping and discharges into the municipal separate storm sewer system; and

WHEREAS, Town Council now finds that it is in the best interest of the people of this Town to protect the public health, safety, environment and general welfare of the Town of Hilton Head Island. Therefore, Town Council declares that the purpose of this ordinance is to regulate non-storm water discharges to the municipal separate storm sewer system to the maximum extent practicable as required by federal law.

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

Section 1. That Title 14, Chapter 1 – Stormwater Management Ordinance of the Municipal Code of the Town of Hilton Head Island, South Carolina, is hereby created as follows:

Chapter 1 – Stormwater Management

Article 1 – General Provisions

“Sec. 14-1-111. Title.”

This Chapter shall be known as the “Storm Water Management Ordinance of the Town of Hilton Head Island” and may be cited as Title 14, Chapter 1 of the Municipal Code of the Town of Hilton Head Island (1983), as amended.

“Sec. 14-1-112. Authority.”

This chapter is enacted pursuant to the authority of Title 5, Code of the State of South Carolina (1976), including, without limitation, section 5-7-10 of the Code of Laws of South Carolina (Supp. 1992), and section 5-7-30 of the Code of Laws of South Carolina (Supp. 1992), which provide, in relevant part, that municipalities may adopt all ordinances which appear necessary and proper for the security, general welfare and convenience of the municipality and for the preservation of the general health, peace and order in the municipality.

Further, this Ordinance is adopted to ensure compliance with the requirements of the National Pollutant Discharge Elimination System (NPDES) Permit No. **SCR030000** issued in accordance with the Federal Clean Water Act, the South Carolina Pollution Control Act, and regulations promulgated there under.

“Sec. 14-1-113. Declaration of Purpose and Intent.”

(a) This Ordinance is enacted to protect, maintain, and enhance the environment of the Town of Hilton Head Island, South Carolina and to preserve the general health, safety, and welfare of the general public within the Town of Hilton Head Island, South Carolina through the regulation of the non-storm water discharges to the municipal

separate storm sewer system to the maximum extent practicable as required by Federal law.

(b) It is further the purpose of this Ordinance to comply with the Federal and corresponding state stormwater discharge (NPDES) regulations (40 CFR § 122.26 and SC Regulation 61-9.122.26) developed pursuant to the Clean Water Act and to assure the Town of Hilton Head Island has the authority to take any action required by it to obtain and comply with its NPDES permit for stormwater discharges. Among other things, these regulations require the Town of Hilton Head Island to establish legal authority which authorizes or enables the Town, at a minimum, to:

1. Prohibit illicit discharges and illegal connections to the municipal separate storm sewer system and receiving waters.
2. Control the introduction of pollutants to the municipal separate storm sewer system and receiving waters.
3. Address specific categories of non-storm water discharges and similar other incidental non-storm water discharges.
4. Control non-storm water discharges, generated as a result of spills, inappropriate dumping or disposal to the municipal separate storm sewer system and receiving waters.
5. Carry out all inspection, surveillance and monitoring, and enforcement procedures necessary to determine compliance and noncompliance with storm water permit (permit) conditions, including the prohibition of illicit discharges to the municipal separate storm sewer system and receiving waters.
6. Require temporary erosion and sediment controls to protect water quality to the maximum extent practicable during land disturbing activities, in accordance with current state regulations.
7. Ensure the proper installation, operation, and maintenance of construction site Best Management Practices (BMPs).
8. Ensure effective long-term operations and maintenance of best management practices (BMPs).

(c) This Ordinance is to be construed to further its purpose of controlling and reducing pollutant discharges to the municipal separate storm sewer system and to the Waters of the State to assure the obligations under its NPDES permit issued by the SCDHEC as required by 33 USC § 1342 (1251) and 40 CFR § 122.26.

“Sec. 14-1-114. Jurisdiction.”

This Chapter and the provisions contained herein shall apply to all lands within the incorporated areas of the Town of Hilton Head Island, South Carolina, as now or may be hereafter established, together with such adjacent unincorporated areas of Beaufort County which the Town Council and the Beaufort County Council may jointly agree to become governed by this Title.

“Sec. 14-1-115. Definitions.”

- (a) “Accidental Discharge” means a discharge prohibited by this ordinance which occurs by chance and without planning or thought prior to occurrence.
- (b) “Best Management Practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (c) “Clean Water Act (CWA)” means Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117, 33 U.S.C. § 1251 et seq.. Specific references to sections within the CWA will be according to Pub. L. 92-500 notation. Formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972.
- (d) “Construction Activity” as defined at § 122.26(b)(14)(x) of South Carolina Regulation 61-9 and incorporated here by reference. Construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres and, in coastal counties within one-half (1/2) mile of a receiving water body (but not for single-family homes which are not part of a subdivision development), that result in any land disturbance less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
- (e) "Discharge" means any discharge or discharge of any sewage, industrial wastes or other wastes into any of the waters of the State, whether treated or not.
- (f) “Illicit Discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to an NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.

- (g) “Illicit Connection” or “Illegal Connection” means either of the following:
 - a) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or
 - b) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- (h) “Industrial Activity” means activities subject to NPDES Industrial Permits as defined in 40 CFR, § 122.26 (b)(14).
- (i) "Land disturbing activity" means any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography that may cause erosion and contribute to sediment and alter the quality and quantity of storm water runoff. Land disturbing activities include, but are not limited to, development, re-development, demolition, construction, re-construction, clearing, grading, filling and excavation.
- (j) “Municipal Separate Storm Sewer System (MS4)” means a conveyance or system of conveyances owned or operated by the municipality for the collection and transportation of storm water, including roads with drainage systems, municipal streets, catch basins, inlets, curbs, gutters, ditches, channels, creeks and storm drains.
- (k) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of Clean Water Act.
- (l) “Non-Storm water Discharge” means any discharge to the storm drain system that is not composed entirely of storm water.
- (m) “Person” means any individual, public or private corporation, political subdivision, association, partnership, corporation, municipality, State or Federal agency, industry, co-partnership, firm, trust, estate, any other legal entity whatsoever, or an agent or employee thereof.
- (n) “Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous

liquid and solid wastes and yard wastes; sediment; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

- (o) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.
- (p) "Premises" mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (q) "Small Municipal Separate Storm Sewer System" means all separate storm sewers that are Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district, or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States and is not defined as "large" or "medium" municipal separate storm sewer system.
- (r) "State Waters" or "Waters of the State" means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction.
- (s) "Storm water" means storm water runoff, snow melt runoff and surface runoff and drainage.
- (t) "Storm water runoff" means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- (u) "Structural Storm Water BMP" means a structural storm water management facility or device that controls storm water runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

(v) "Watercourse" means a topographic, natural, or manmade feature which conveys stormwater runoff from one property to another separately owned property. This may include, but is not limited to, a pond, lagoon, creek, channel, canal, ditch, swale, pipe, or flume.

(w) "Waters of the United States" or "waters of the U.S." means:

- i. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- ii. All interstate waters, including interstate wetlands;
- iii. The territorial seas;
- iv. All impoundments of a traditional navigable water, interstate water, the territorial seas or a tributary;
- v. All tributaries of a traditional navigable water, interstate water, the territorial seas or impoundment;
- vi. All waters, including wetlands, adjacent to a traditional navigable water, interstate water, the territorial seas, impoundment or tributary; and
- vii. On a case-specific basis, other waters, including wetlands, provided that those waters alone, or in combination with other similarly situated waters, including wetlands, located in the same region, have a significant nexus to a traditional navigable water, interstate water or the territorial seas.

"Sec. 14-1-116. Conflict with Other Laws, Ordinances or Regulations."

Nothing in this section shall be deemed to amend or repeal any other ordinance, rule, regulation, other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

"Sec. 14-1-117. Other Town Requirements"

Whenever this Chapter imposes a more restrictive standard than required by any other Town ordinance or requirement, the provisions of this Chapter shall govern. Whenever any other Town ordinance or requirement imposes a more restrictive standard than required by this Chapter, the provisions of such Town ordinance or requirement shall govern.

Article 2 – Water Quality Regulations

“Sec. 14-1-211. Obstruction of Flows”

No person shall create, cause, or allow to occur the blockage of a watercourse that obstructs or materially impedes the natural flow of water without the written approval of the Town.

“Sec. 14-1-212. Waste Disposal Prohibitions.”

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the municipal separate storm sewer system, or Waters of the State, any refuse, rubbish, garbage, litter, vegetative debris including natural foliage, fecal matter, or other discarded or abandoned objects, articles, and accumulations so that the same may cause or contribute to pollution within the Municipal Separate Storm Sewer System.

“Sec. 14-1-213. Watercourse Protection”

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, and other obstacles that would pollute, contaminate, obstruct, or materially impede the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

“Sec. 14-1-214. Prohibition of Illicit Discharges.”

(a) It is unlawful for any person to throw, drain, run, or otherwise discharge to any component of the Town’s municipal separate storm sewer system or to the Waters of the State, including streets, highways, right-of-ways, or to cause, permit or suffer to be thrown, drain, run, or allow to seep or otherwise discharge into such system, any organic or inorganic matter that shall cause or tend to cause pollution or blockages to such waters, as provided for in this Ordinance.

(b) The Town of Hilton Head Island Engineering Division shall develop procedures for detecting, tracking, and eliminating illicit discharge and improper disposal to the storm water system.

(c) Exceptions. The following discharges are exempt from the prohibition provision above:

- (1) Water line flushing (performed by a government agency)
- (2) Landscape irrigation

- (3) Diverted stream flows
- (4) Rising ground waters
- (5) Uncontaminated ground water infiltration
- (6) Uncontaminated pumped ground water
- (7) Discharges from potable water sources
- (8) Foundation drains
- (9) Air conditioning condensate
- (10) Irrigation water (not consisting of treated, or untreated, waste water)
- (11) Springs
- (12) Water from crawl space pumps
- (13) Footing drains
- (14) Lawn watering
- (15) Individual residential car washing
- (16) Natural flows from riparian habitats and wetlands
- (17) De-chlorinated swimming pool discharges
- (18) Street wash water
- (19) Discharges or flows from firefighting activities
- (20) The prohibition provision above shall not apply to any non-storm water discharge permitted under an NPDES permit or order issued to the discharger and administered under the authority of the State and the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the municipal separate storm sewer system.

(d) The Engineering Division shall take appropriate steps to detect and eliminate improper discharges. These steps may include the adoption of a program to screen illicit discharges and identify their source or sources, perform inspections, provide public education and public information, and issue notice of violations if not removed.

“Sec. 14-1-215. Prohibition of Illicit Connections.”

(a) It is unlawful for any person to connect any pipe, open channel, or any other conveyance system that discharges anything, except storm water or unpolluted water which is approved by the Town of Hilton Head Island, into the municipal separate storm sewer system or Waters of the State.

(b) It is unlawful for any person to continue the operation of any such illicit connection regardless of whether the connection was permissible when constructed. Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to the satisfaction of the Town Engineer or his designee and any other federal, state, or local agencies or department regulating discharge.

(c) The construction, connection, use, maintenance or continued existence of any illegal connection to the municipal separate storm sewer system is prohibited.

- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (2) A person violates this ordinance if the person connects a line conveying sanitary sewage to the municipal separate storm sewer system, or allows such a connection to continue.
- (3) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the appropriate public service district.
- (4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Town requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Town.

(d) The Engineering Division shall take appropriate steps to detect and eliminate prohibited (or unlawful) connections to the municipal storm water system, including the adoption of a program to screen illicit discharges and identify their source or sources, perform inspections, and issue notice of violations if not removed.

“Sec. 14-1-216. Prohibition of Water Pollution

(a) A person must not discharge, cause or allow to flow from a storage system or other container, any pollutant into the municipal separate storm sewer system or Waters of the State except in concentrations or quantities explicitly authorized by an approved National Pollutant Discharge Elimination System discharge permit, or by a plan for compliance, or that are consistent with the utilization of approved best management practices.

(b) A person must not connect any apparatus discharging any pollutant, in any quantity, to any part of the municipal separate storm sewer system or Waters of the State except as explicitly authorized by an approved National Pollutant Discharge Elimination

System discharge permit or by a plan for compliance, or as results from approved best management practices.

(c) A person must not improperly store, handle, or apply any pollutant in a manner that will cause its exposure to rainfall or runoff and discharge as point source pollution or nonpoint source pollution into the municipal separate storm sewer system or Waters of the State except in concentrations and quantities authorized by and approved National Pollutant Discharge Elimination System discharge permit or by a plan for compliance, or as results from approved best management practices.

“Sec. 14-1-217. Industrial or Construction Activity Discharges.”

Any person subject to an industrial or construction activity NPDES Storm Water Discharge Permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town Engineer or his designee prior to allowing discharges to the municipal separate storm sewer system.

“Sec. 14-1-218. Notification of Accidental Discharges and Spills.”

(a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-storm water discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into storm water, the municipal separate storm sewer system, State Waters, or Waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

(b) Immediately upon becoming aware of a discharge or spill, said person shall notify the authorized enforcement agency in person, by telephone, or facsimile within 24 hours of the nature, quantity and time of occurrence of the discharge. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for a minimum of three years. Said person shall also take all necessary immediate steps to ensure there is no recurrence of the discharge or spill.

(c) In the event of such a release of hazardous materials, Town of Hilton Head Island Fire and Rescue, Beaufort County Sheriff’s Office, and South Carolina Department of Health and Environmental Control shall be immediately notified.

(d) Failure to provide notification of a release as provided above is a violation of this ordinance.

“Sec. 14-1-219. Jurisdiction, Enforcement and Penalties.”

(a) The Municipal Court of the Town of Hilton Head Island shall have jurisdiction over the prosecution of violations of the provisions of this chapter.

(b) The Town Engineer, or his designee, and designated code enforcement officers of the Town shall administer, implement, and enforce the provisions of this chapter.

(c) Upon finding a violation of this Article, the Town may issue a notice of violation, stop order, or corrective order to any person causing or permitting the violation.

(d) Any person who violates any portion of this chapter shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to the penalties as set forth in section 1-5-10 of this Code. Each day's continued violation constitutes a separate offense.

(e) In the event the violation constitutes an immediate danger to public health and safety, or the environment, the Town is authorized to enter upon the subject private property without giving prior notice to abate the violation and restore the property. The Town is authorized to assess the costs of the abatement and recover them from the owner and responsible parties or both as outlined in Sections 9-1-115 through 9-1-118 of the Town Code.

(f) In addition to any other remedy allowed by law, the Town may seek injunction or other appropriate judicial relief to prevent or stop any violation of this chapter.

(g) Whenever the Town finds that a violation of this ordinance has occurred, the Town may order compliance by written notice of violation. The notice of violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and,

(h) Such notice of violation may require without limitation:

- (1) That violating discharges, practices, or operations shall cease and desist;
- (2) The performance of monitoring, analyses, and reporting;
- (3) The elimination of illicit discharges and illegal connections;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of costs to cover administrative and abatement costs; and,
- (6) The implementation of pollution prevention practices.

“Sec. 14-1-220. Access and Inspection/Monitoring of Properties and Facilities.”

(a) For the purpose of enforcing the provisions of this chapter, the code enforcement officer or other authorized agent of the Town is empowered to enter upon the premises of any person subject to this chapter and to make regular inspections, periodic investigations, monitoring, observation measurement, enforcement, sampling and testing, to effectuate the provisions of this ordinance. Inspections shall be conducted at reasonable times.

(b) If the code enforcement officer or Town Engineer, or his designee, reasonably believes that discharges from the property may cause an immediate and substantial threat to public health and safety or the environment, the inspection may take place at any time and without notice to the owner of the property or representative of the site. The inspector shall present proper credentials upon reasonable request by the owner or representative.

(c) A person must not hinder, prevent, or unreasonably refuse to permit any inspection, investigation, or monitoring under this Article.

(d) The Town shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Town to conduct monitoring and/or sampling of discharges.

(e) If the Town determines that the property owner or responsible party has an illicit discharge on or originating from their property, the Town may require the owner or responsible party to install monitoring equipment as approved by the Town and perform monitoring as necessary, and make the monitoring data available to the Town. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

“Sec. 14-1-221. Violations Deemed a Public Nuisance”

In addition to the enforcement processes and penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, welfare, and environment and is declared and deemed a public nuisance, and may be abated as set forth in Sections 9-1-115 through 9-1-118 of the Town Code, or by injunctive or other equitable relief as provided by law.

“Sec. 14-1-222. Costs of Abatement of the Violation”

The owner of the property, or responsible party, will be notified of the cost of abatement, including administrative costs. The property owner, or responsible party, may file a written protest with the Town Manager objecting to the assessment or to the amount of the assessment within 10 days of such notice. The property owner or responsible party may appeal a decision of the Town Manager to Town Council within 10 days of receipt of the final assessment by the Town Manager. A hearing by Town Council shall be heard within 45 days of receipt of the appeal. If the amount due is not paid within ten (10) days after receipt of the notice, or if a protest or appeal is taken, within ten (10) days after a decision on said protest or appeal, the charges shall become a special assessment against the property and the Town may file a lien on the property for the amount of the assessment.

“Sec. 14-3-223. Remedies Not Exclusive”

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable Federal, State or local law and the Town may seek cumulative remedies. The Town may seek to recover attorney’s fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Section 2. Severability. If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that **invalidity shall not affect the other provisions of the Ordinance which can be given effect** without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

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

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____, 2015

By:_____

David Bennett, Mayor

ATTEST:

By: _____
Vicki Pfannenschmidt, Town Clerk

First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

MEMORANDUM

TO: Town Council

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

RE: Request by Coligny Plaza to Allow a Helicopter to Land and Take Off on Town Property Located Near Coligny Plaza on November 27, 2015

DATE: November 10, 2015

CC: Gregory D. DeLoach, Esq., Assistant Town Manager for Administration
Scott Liggett, Director Public Projects & Facilities
Brian E. Hulbert, Esq., Staff Attorney

Recommendation: Staff has no recommendation regarding the request. Should town council approve the request, staff recommends requiring the applicant and the Hilton Head Helicopter tour company be required to sign a hold harmless agreement in which they release the Town, its employees, and Town Council members from any liability associated with this event.

Summary: This request is to allow a helicopter to land at and to take-off from the Boneyard area of the Town owned land near Coligny Plaza. The request is made in order to allow Santa Claus to arrive at the Coligny Plaza shopping area by helicopter on Friday November 27, 2015 in order to serve as a kickoff to the “Christmas at Coligny” annual holiday promotion. This was a holiday tradition several years ago and they would like to revive the tradition.

Background: Town code Section 7-5-10 requires that all aircraft taking off from and landing within the boundaries of the Town occur at the Hilton Head Island Airport. There are a few exceptions to the general prohibition from landing or taking off from the Airport. One exception is that Town Council may, in their discretion, grant an exception by Resolution on an individual basis if it is at a safe location and in the best interest of the community.

Memo to Council:

From: Heather Rath, Consultant

On behalf of: JR and Leslie Richardson, Coligny Plaza Limited Partnership

November 10th, 2015

The Background:

Coligny Plaza, Hilton Head's Downtown since 1955, will be hosting a "Local Black Friday" Outdoor Market on Friday, November 27th from 2pm-5pm. The marketing of this event is centered on locals and visitors enjoying a "community based" Black Friday in Coligny Plaza with live music by Cranford Hollow, bounce houses for the kids, local vendors and food trucks.

It will be a great way to get out and enjoy the Island with family after Thanksgiving, while avoiding the big box commercial madness of Black Friday.

This will also serve as a kickoff to "Christmas at Coligny," Coligny's annual December promotion of holiday shopping, specials and of course, pictures with Santa!

Being that 2015 marks Coligny's 60th Birthday, the Richardson family wanted to do something extra special this year to celebrate Christmas at Coligny. After speaking with some long-time Hilton Head Island residents, we were reminded of a Holiday tradition from around 30 years ago.

According to David Lauderdale of The Island Packet, John Curry would fly in on a helicopter to The Sea Pines Circle area, do a few flyovers waving to the children, land in a bank parking lot, hop into a fire truck for an escort to the Sea Pines Circle (some versions of the story have him actually landing in the circle) and then hand out candy to the kids while a Christmas tree in the middle of the circle was lit up.

Everyone I have spoken with about this, whether they were children or adults at the time, has fond memories and felt that it was a joyful community occasion.

The Ask:

Coligny Plaza would like to revamp this Hilton Head Island tradition and have Santa arrive by helicopter to our Local Black Friday Outdoor Market on Friday, November 27th.

Coligny is requesting a waiver by resolution granting individual landing approval to Coligny, who is contracting Hilton Head Heli Tours, a business in good standing with the Town of Hilton Head with a 20 year "zero accident record" to land at the Coligny Beach Parking lot, specifically "The Boneyard" between the hours of 2pm - 3:30pm on Friday, November 27th.

Town Code: Section 7-5-10 - Prohibitions on certain operations of aircraft and helicopters states

Except as provided below, it shall be unlawful for any person owning or operating an aircraft or helicopter from landing or taking off within the boundaries of the town at any location other than at the Hilton Head Island Airport.

(Ord. No. 83-7, 10-3-83)

However, Section 7-5-20, number 4 allows for an *exception if Town Council, by resolution, grants an individual landing approval if at a safe location and when in the best interest of the community.*

Christmas is a time of tradition, and Hilton Head Island is a place of redefining tradition. In that spirit, nothing could suit our island more than greeting the season with something as memorable as Santa Claus touching down in a helicopter right in the heart of Hilton Head's downtown.

The Safety Plan:

Joheida Fister & Fire Chief Tadlock from Hilton Head Island Fire & Rescue & Brian Hulbert, Town Attorney have required and Coligny has provided the following:

1) Landing clearance must be in an area larger than 100 x 100

a) While the helicopter only requires 50 x 50 to land, the Town of Hilton Head requires 100 x 100. The area of the boneyard is 120 x 140 with zero obstructions (no trees) as it is in the former footprint of a hotel.

- 2) Landing must be in a secure location - not accessible to the public.
 - a) The public has general access to the Coligny Beach Parking Lot (general area) but will not have access to the boneyard.
- 3) Fire & Rescue will put an engine on-site for any emergency situations that occur.
 - a) The boneyard is blocked off by an arm gate - currently open - and Fire and Rescue's truck would have clear access.
- 4) Planned road closures for rerouting roads.
 - a) We do not need any road closures to land the helicopter.
- 5) Conversation with Hilton Head Island Airport, Director of Airport, Jon Rembold/FAA
 - a) No problems or concerns from Rembold
- 6) Listing Town of Hilton Head Island as “additionally insured” by both Coligny Plaza and contracted company Hilton Head Heli Tours as we are using Town property to land.
- 7) Coligny Plaza and Hilton Head Heli Tours will sign a hold harmless agreement releasing the Town from liability.
- 8) Security on site to ensure public will not be allowed past the arm gate into the boneyard.

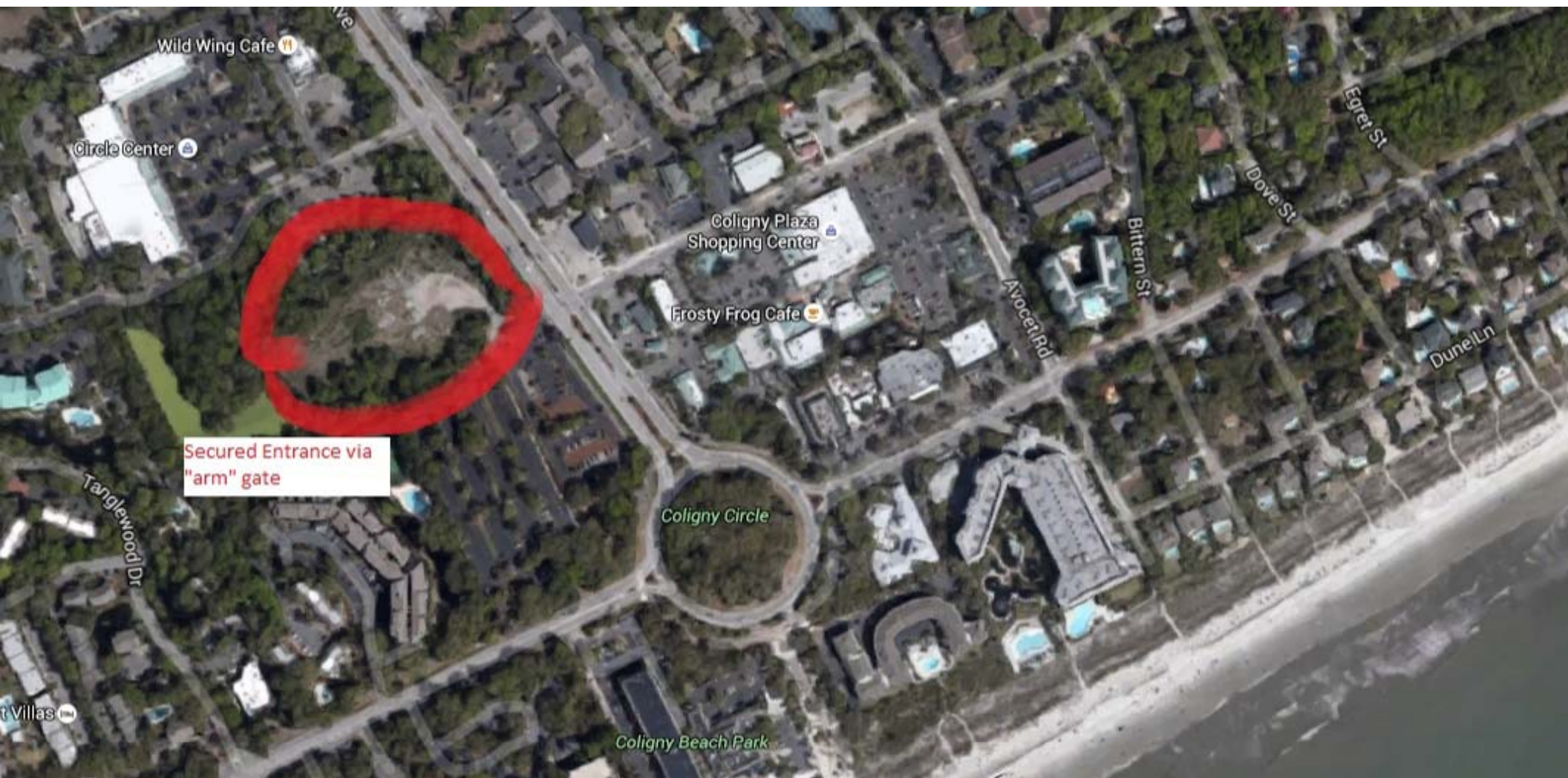
In addition:

- Site visit with Facilities Management (Julian Walls) & Fire & Rescue (Joheida Fister) occurred on November 5th, 2015.
- Visitor numbers from 2014 for the month of November from the Hilton Head Island Chamber of Commerce & VCB (sourced from DestriMetrics & STR - Smith Travel Research) show 44.90% Hotel Occupancy; 28.10% Home & Villa Occupancy and 91.80% Timeshare Occupancy on Hilton Head Island.
- A total of 169,752 visitors for the month of November.
- Santa escort via fire truck across Pope Ave to "arrive" at Coligny Plaza.

- Timeline (all subject to change):
 - 2:20pm (approximately) - Helicopter will leave Hilton Head Island Airport
 - Flight pattern will head down the beach with Santa waving out the window.
 - Pass Mitchelville Beach, Port Royal Beach, Folly Field Beach, Singleton Beach, Palmetto Dunes Beach, Shipyard Beach and Coligny Beach.
 - Helicopter will do a few "flyovers" (meeting FAA compliance) over Coligny Plaza with Santa waving to the crowds at the Outdoor Market.
 - Helicopter will land in the boneyard to drop off Santa.
 - Helicopter will take off - back to HHI Airport.
 - Entire time, from takeoff to landing and back to the airport, total time will be no more than 20-30 minutes.

Respectfully Submitted,

Heather Rath







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
FROM: Jeff Buckalew, PE, Town Engineer

DATE: November 4, 2015
SUBJECT: Public Dedication of Private Roads – Main Street, from Whooping Crane Way to Wilborn Road, Central Avenue, Museum Street, Merchant Street and a portion of Meeting Street

Recommendation:

On October 26, 2015, the Public Facilities Committee voted unanimously to recommend that Town Council direct staff to proceed with the evaluation of the dedication of certain private roads as proposed in Jeff Buckalew's August 28, 2014 Memorandum to the Public Facilities Committee (attached).

Summary:

The owners of these private roads have offered to dedicate the rights of way to the Town. Before proceeding with the formal analysis of the dedication offer, staff seeks direction from Town Council that there is a primary benefit to the community-at-large in accepting these roads, rather than simply relieving the road owner of maintenance responsibilities and shifting the burden to the Town. Upon direction to process the evaluation of the dedication offer, staff will report back to the Public Facilities Committee with their findings and recommendation

Background:

Town Council adopted a revised Policy for the Dedication and Acceptance of Private Road Rights of Way in July, 2014 (see Exhibit A). The owner of these roads, Main Street, from Whooping Crane Way to Wilborn Road, Central Avenue, Museum Street, Merchant Street and a portion of Meeting Street (see Exhibit B), submitted an application for dedication of their right of way to the Town.

Currently, the roads are in poor condition and there are several areas requiring immediate maintenance. If there is interest in acquiring these roads, staff will have to request additional information from the applicant in order to complete the processing of the application, estimate repair and maintenance costs, and make a formal recommendation on acceptance or rejection of these roads.

Furthermore, at their October 21, 2015 meeting and with unanimous support, the Planning Commission moved to ask Town Council to place this issue as one of their priorities moving forward in 2016; to explore opportunities for the acquisition or maintenance and repair of that section of Main Street as it poses a potential threat to residents and visitors (see attached memo). The CIP sub-committee of the Planning Commission has also determined that a public pathway facility along this segment of Main Street should be the highest priority of the Town CIP Pathway category.

Memo



To: Public Facilities Committee

Via: Stephen G. Riley, Town Manager
Scott Liggett, Dir. of PP&F / Chief Engineer

From: Jeff Buckalew, Town Engineer

Subject: Dedication of Private Road Rights of Way -
portion of Main Street, from Whooping Crane Way to Wilborn Road, Central Avenue, Museum Street, Merchant Street and a portion of Meeting Street

Date: August 28, 2014

Staff has been approached by Main Street Realty seeking to dedicate a portion of Main Street, from Whooping Crane Way to Wilborn Road, Central Avenue, Museum Street, Merchant Street and a portion of Meeting Street (see Exhibit B). Additionally, the applicant asserts to have assignable rights within the utility easements “to construct, erect, maintain and use sidewalks and pedestrian pathways, utilities, storm sewers and storm water runoff.” The utility easement is 10 feet wide and adjacent and parallel to the exterior boundary of each parcel. Conceivably these easements could assist in the future development of sidewalks and pathways.

Staff is seeking to determine what, if any, interest the Public Facilities Committee recommends Town Council have in accepting these roads. Currently, the roads are in poor condition. There are immediate maintenance needs including areas full depth pavement replacement, pothole patching, repair of heaved roadway and curb, repair of pavement subsidence plus installation of pavement markings and signage.

In accordance with the Policy for the Dedication and Acceptance of Private Road Rights of Way was revised by Town Council in July, 2014, Staff, in conjunction with the applicant has attempted to assess the following:

- A clear and compelling public purpose achievable through the dedication of right of way to the Town.
- A primary benefit to the community-at-large rather than the primary benefit of simply relieving the road owner of maintenance responsibilities and shifting the burden to the Town.
- The benefit to the public roadway network via interconnection of existing adjacent publicly owned streets.

- The creation of an alternate publicly owned route to William Hilton Parkway and other major and minor arterial streets.
- The provision of access to Town owned property or critical public facilities.

Of the roads in question, only Main Street is classified as a “collector” or higher.

Main Street (from Whooping Crane Way to Wilborn Road)

Clear and compelling public purposes for public acceptance of the Main Street road right of way are to provide consistency of ownership throughout the “Main Street” commercial corridor, provide potential opportunity to enhance pedestrian facilities in this commercial area that is important to the island’s economy and links to the public school campus. Future pathway and sidewalks projects could greatly improve safety conditions where pedestrians, many of which are school children, currently walk in the road or along narrow shoulders. Acquisition of this road may also facilitate a future CIP project to re-align the road to oppose Bus Drive on Wilborn Road and create a safer and more efficient intersection for school traffic. Acquisition of this road right of way would also enhance the publicly owned alternate routes to William Hilton Parkway as a detour or to reduce congestion. The public would also benefit from the upgrades to standard traffic control measures along this road, including edge lines, center lines, and the use of breakaway AASHTO-compliant sign standards. Public ownership would ensure this heavily traveled road is properly maintained.

The road is classified as a minor arterial in the LMO and serves approximately 10,000 vehicles per day. Many of the users are thought to be “through” motorists, using the road as an alternate route to William Hilton Parkway and not necessarily have destinations on Main Street.

At its western terminus, this road connects to Wilborn Road which is owned by the South Carolina Department of Transportation. The Town currently owns the eastern portion of Main Street and is separated from the road in question only by the 200’ wide Whooping Crane Way right-of-way. Acquisition of this road right of way has the potential to enhance access to the Town’s storm water system (Main Street canal, upstream of the Jarvis Creek Pump Station).

There may not be sufficient room to provide a pedestrian facility in this existing right of way, but use of the aforementioned easements could facilitate sidewalk/pathway construction.

Museum Street

Staff finds there is a public benefit in accepting this road given that it includes a signalized connection with William Hilton Parkway, across from the heavily-traveled Pembroke Drive, and it contains access points that serve two high-volume restaurants and a hotel. This road sees more demand than the other side streets roads connecting Main Street to William Hilton Parkway, but the road does not meet the functional classification or right of way requirements of the policy.

If Main Street west of Whooping Crane were publicly owned, then accepting this road would provide a direct benefit to the public roadway network via interconnection of existing adjacent publicly owned streets and this this road would enhance an alternate publicly owned route to William Hilton Parkway.

There is not sufficient room to provide a pedestrian facility in this existing right of way, but use of the aforementioned easements could facilitate sidewalk/pathway construction.

Merchant Street

Staff finds that accepting this road would create an opportunity to rectify some existing traffic control deficiencies that would enhance public safety (i.e. there are no advanced crosswalk warning signs, no edge lines surrounding raised medians).

If Main Street west of Whooping Crane were publicly owned, then accepting this road would provide a direct benefit to the public roadway network via interconnection of existing adjacent publicly owned streets and this this road would enhance an alternate publicly owned route to William Hilton Parkway.

The Merchant Street road infrastructure encroaches upon and extends outside of the western right of way boundary. This is a concern.

There is not sufficient room to provide a pedestrian facility in this existing right of way, but use of the aforementioned easements could facilitate sidewalk/pathway construction.

Central Avenue

Staff finds that accepting this road would create an opportunity to rectify some minor existing traffic control deficiencies that would enhance public safety (i.e. there are no advanced crosswalk warning signs, no edge lines surrounding raised medians).

If Main Street west of Whooping Crane were publicly owned, then accepting this road would provide a direct benefit to the public roadway network via interconnection of existing adjacent publicly owned streets and this this road would enhance an alternate publicly owned route to William Hilton Parkway.

The Central Avenue road infrastructure encroaches upon and extends outside of the western right of way boundary. This is a concern.

There is not sufficient room to provide a pedestrian facility in this existing right of way, but use of the aforementioned easements could facilitate sidewalk/pathway construction.

Meeting Street

Staff finds no public purpose in accepting this road. This dead end road meets none of the subjective criterion of the policy and simply serves as a private driveway to two church properties that generate very little traffic during weekdays.

EXHIBIT A

TOWN OF HILTON HEAD ISLAND POLICY FOR THE DEDICATION AND ACCEPTANCE OF PRIVATE ROAD RIGHTS OF WAY

January 7, 2014

Approved by Town Council July, 2014

The Town desires a policy for the dedication and acceptance of private roads that clearly defines the requirements and procedures for the offer of dedication and further to guide staff and Town Council in the decision to accept or reject the offer. The Town Council of Hilton Head Island has approved the following policy on the management of these dedications and their disposition.

The following definitions are intended for use with this policy:

Town Road – Any road or street, paved or unpaved, improved or unimproved, that is owned and maintained by the Town of Hilton Head Island and available for use by the traveling public.

Public Road – Any road or street, that is owned and maintained by a public or governmental entity and available for use by the traveling public; all Town roads are public roads.

Private Road – Any road or street, that is owned and maintained by a privately-held landowner or multiple landowners, be they an individual, multiple individuals, or a corporation, and that is situated in a dedicated right-of-way recorded with the Beaufort County Register of Deeds, and subdivided from adjoining parcels.

Private Driveway - Any facility providing vehicular access, that is owned and maintained by a privately-held landowner or multiple landowners, be it an individual, multiple individuals, or a corporation, that is not situated within a readily identifiable dedicated right-of-way subdivided from adjoining parcels.

Dwelling Unit – A building, or a portion of a building, providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

ACCEPTANCE CRITERIA

To be considered for acceptance of ownership and perpetual maintenance responsibility by the Town of Hilton Head Island, a private road must:

1. Be situated in a readily identifiable, dedicated right-of-way recorded with the Beaufort County Register of Deeds;
2. Be directly accessible by and connected to a public road;

3. Provide exclusive access to at least six (6) dwelling units or multiple non-residential properties, or have an Annual Average Daily Traffic (AADT) volume of one thousand (1,000) or greater;
4. Be formally proposed for acceptance by the Town of Hilton Head Island via submission of a road dedication application as defined herein by the roadway's owner or owners;
5. Be free of liens against (or other clouds on) title to the road's dedicated right-of-way, and be free of any other covenants, restrictions, or encumbrances substantially affecting the Town's ability to use the road as a Town Road; and
6. Be situated within a dedicated right-of-way of a minimum width that satisfies the requirements of Section 16-5-504 of the Town's Land Management Ordinance.
7. All streets offered for public dedication shall be constructed and surfaced with finished paving in conformance with the latest edition of the Standard Specifications for Highway Construction, South Carolina Department of Transportation (per Section 16-5-504 of the Town's Land Management Ordinance).

ROAD RIGHT OF WAY DEDICATION APPLICATION PROCEDURE

1. A completed Application for Road Right of Way Dedication must be submitted to the Town of Hilton Head Island by the owner(s) of the private road right of way. It will be the applicant's responsibility to have each and every owner sign the application. One hundred percent participation on the part of the right of way (property) owners is required for acceptance consideration.
2. A complete application must include a copy of the deed on file that evidences the applicant's ownership of the road, a survey plat of the road right of way, and a topographic survey of the physical features within the road right of way. This plat and survey shall be certified by a professional land surveyor registered in South Carolina. The Town reserves the right to ask for additional information such as pavement corings and construction reports if deemed necessary for condition assessment and cost-estimating purposes. The Town further reserves the right to require the road owner to make certain repairs if deemed a necessary condition for acceptance. The application shall also include a right of entry to allow Town staff to inspect the right of way.
3. Applications shall be submitted to the Town Manager. The Town Manager will assign review of the application to the Town Engineer and Town Attorney.

4. The submission of a completed application indicates the property owners' willingness to:
 - a. donate that amount of land needed to assemble a dedicated right-of-way of minimum width that satisfies the requirements of 16-5-504 of the Town's Land Management Ordinance,
 - b. donate any existing or proposed drainage easements that the Town Engineer considers necessary for adequate storm drainage conveyance, and
 - c. have the road designated for public use
5. Engineering staff shall assess the existing conditions of the right-of-way and develop an inventory of immediate, short-term, and long-term maintenance needs, as well as a cost estimate associated with each. This information shall include the Town Engineer's estimated costs of any potential rights-of-way and easement acquisition as outlined in the preceding item. This information will be provided to the Town Manager for consideration by Town Council accompanied by a staff recommendation on whether the Town should consider accepting the ownership and perpetual maintenance responsibility for the road. The staff recommendation shall include a discussion on the impacts to existing and future budgets, and whether improvements or compensation to address deficiencies by the roadway owner(s) is recommended.
6. Staff will present the offer of dedication and its recommendation as an item to the Public Facilities Committee and Town Council.
7. The Town Attorney shall advise the Town Manager when the acquisition process has been completed. The road will then be added to the Town's road inventory and the Town shall be responsible for perpetual maintenance, with a level of service based on a prioritization scheme and available funding.

ROADWAY INSPECTION

Once a complete Application for Road Right of Way Dedication is received, the Town Engineer shall determine the length of the road and the number of discrete dwelling units served by the road. The Town Engineer, or their designee, shall conduct an inspection of the existing roadway for the purpose of assessing needed repairs, surface conditions, drainage adequacy, and the estimated cost of bringing the road up to acceptable condition. A summary of these findings, along with staff comments and recommendations shall be documented and attached to the application. The inspection report shall include projected yearly maintenance cost as well as estimated life cycle replacement cost.

PUBLIC FACILITIES COMMITTEE

The Town Engineer shall prepare an agenda item summarizing all of the data regarding the subject road dedication. The agenda item shall include a recommendation of the Engineering Division to accept or reject the dedication. The Public Facilities Committee shall act on the staff recommendation and forward its recommendation to the full council.

TOWN COUNCIL

An affirmative vote by simple majority of Town Council is required for public acceptance of the road right of way.

RIGHT-OF-WAY DEEDS

Once Town Council has approved the acceptance of the dedication, the Town Attorney shall prepare the necessary right-of-way deeds. Each deed will reference the applicant's survey and plat of the proposed road right-of-way. The deeds will be mailed to the property owner(s) at the address used by the County Treasurer for property tax mailings. All deeds must be properly executed and returned to the Town Attorney and the Town Attorney must record the deed(s) with the Beaufort County Register of Deeds to consummate the acceptance of ownership and perpetual maintenance responsibilities.

NOW THEREFORE, BE IT RESOLVED, the Hilton Head Island Town Council does approve this Policy for Dedication and Acceptance of Private Road Rights of Way.

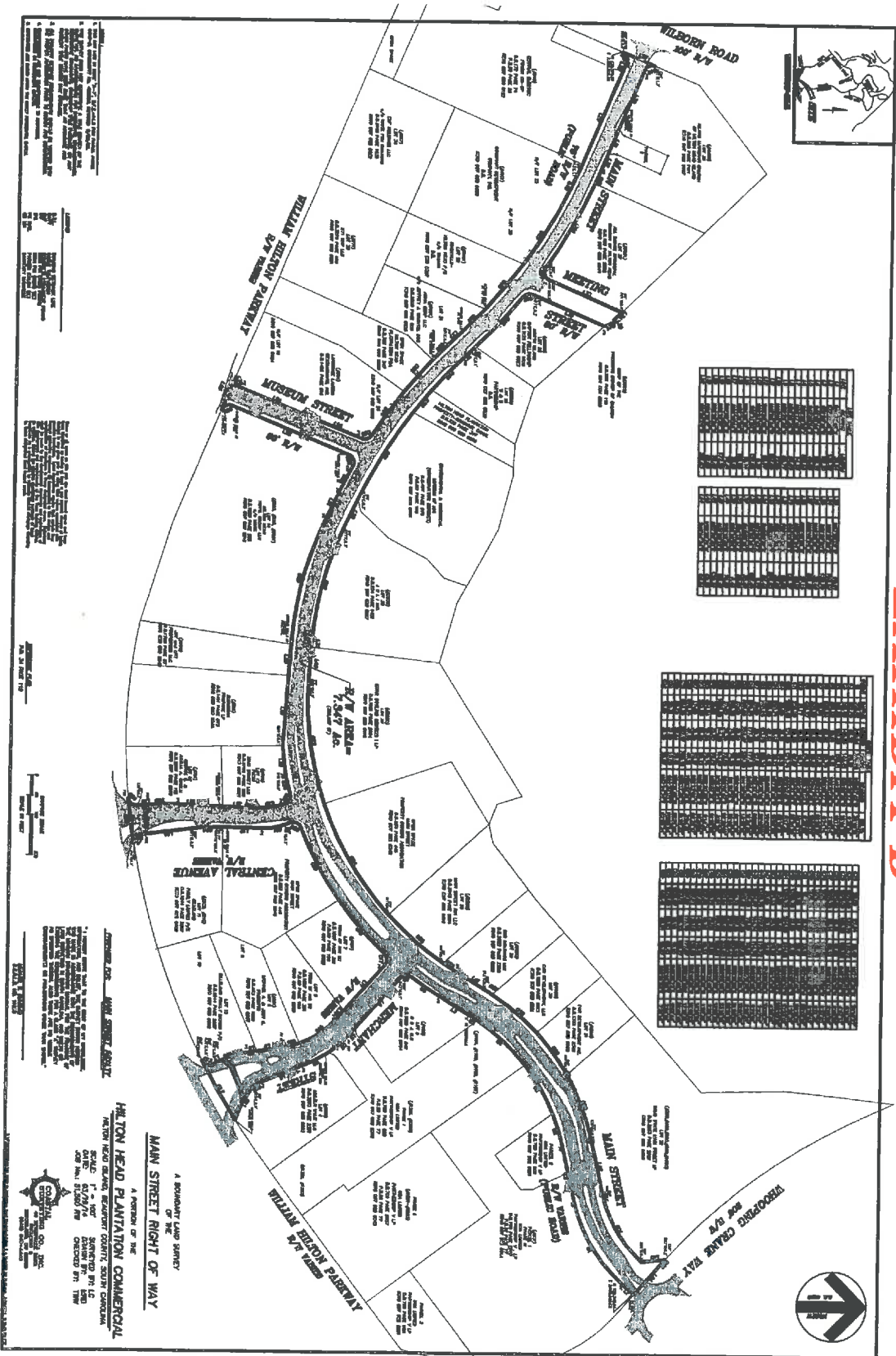
Adopted this 7th day of January, 2014.

TOWN COUNCIL OF HILTON HEAD ISLAND

By: _____
Drew Laughlin, Mayor

ATTEST:

_____, Town Clerk





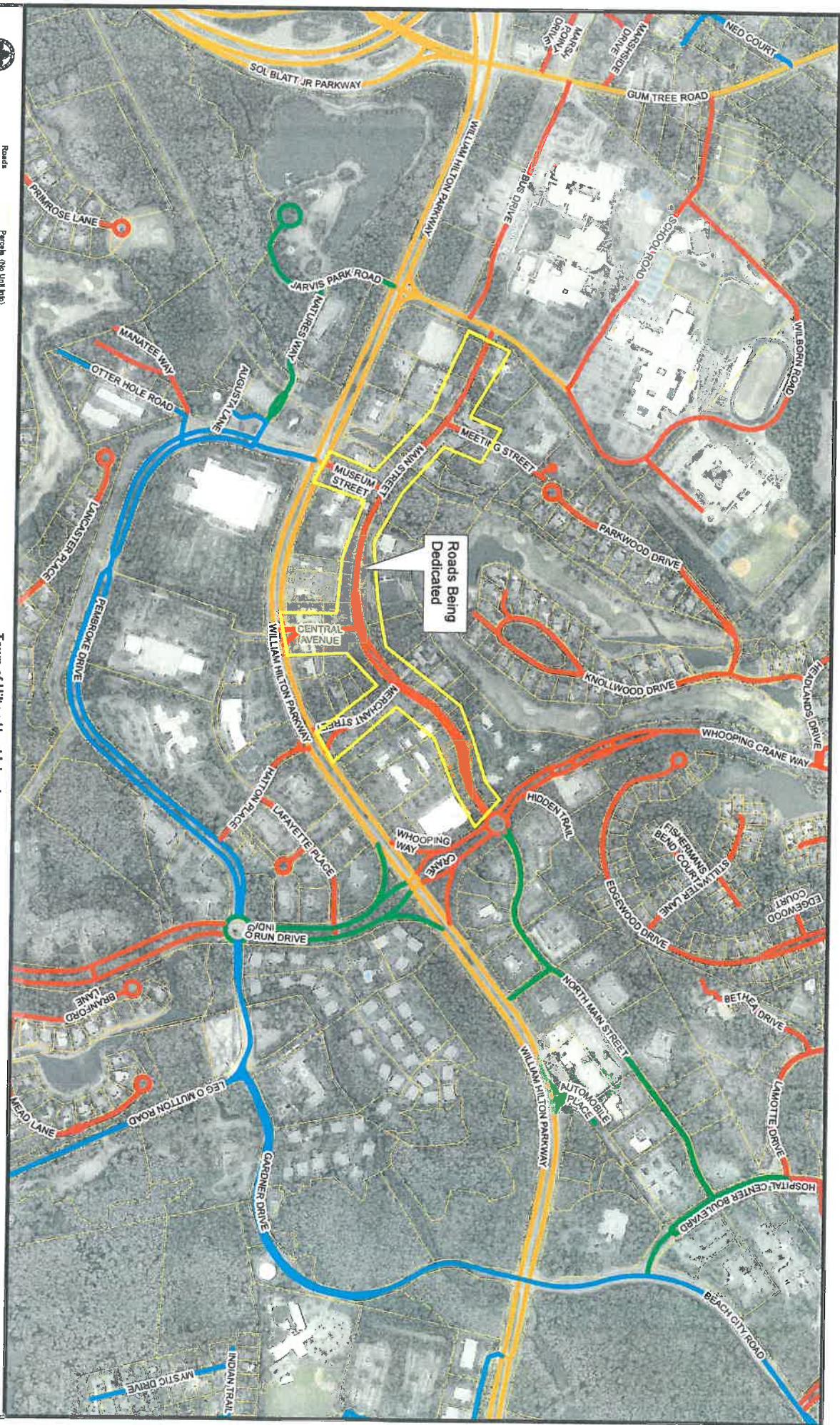
TOWN OF HILTON HEAD ISLAND
 1100 Highway 17, Suite 200
 Hilton Head Island, SC 29928
 Phone: 843/785-1234

Roads

- TOWN
- COUNTY
- STATE
- PRIVATE

Parcels (100 Unit lots)
 1" = 100'

Town of Hilton Head Island
 EXHIBIT B-1 - Public / Private Road Connectivity





TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Town Council
VIA: Jayme Lopko, AICP, *Senior Planner & Planning Commission Coordinator*
FROM: Alex Brown, *Planning Commission Chairman*
DATE: October 30, 2015
SUBJECT: Main Street Maintenance and Repair

The Planning Commission met on October 21, 2015 and discussed the current condition of Main Street between the public school campus and Whooping Crane Circle.

The Planning Commission would like Town Council to place this issue as one of their priorities moving forward in 2016. The Planning Commission gave unanimous support to requesting that Town Council explore opportunities for the acquisition or maintenance and repair of that section of Main Street as it poses a potential threat to residents and visitors.

MEMORANDUM

TO: Town Council
FROM: Stephen G. Riley, Town Manager
DATE: November 12, 2015
RE: Request from Island Beautification Association

Attached please find a detailed letter from members of the Island Beautification Association requesting Town Council to consider renaming the garden located on the property at Town Hall from the Xeriscape Garden to the Betsy Jukofsky Xeriscape Garden.



Island Beautification Association

RECEIVED

OCT 29 2015

BY: _____

October 26, 2015

Dear Town of Hilton Head Island and Steve Riley, Town Manager;

Who Is Betsy Jukofsky? and Why Should We Rename the Xeriscape Garden at HHI Town Hall?

Most of Hilton Head Islanders know Betsy Jukofsky as the regular Sunday columnist of garden-related articles in *The Island Packet* for over 32 years. As an expert on island climate, native plants and their care, she has become a source of valued information and inspiration to many local gardeners.

Betsy and her husband, Larry, moved to the island from New Jersey in 1978, where she soon joined island leaders in working to establish an ecologically healthy environment. In this endeavor, she has been involved for years in the preservation of ponds, trees, wildlife and native plants. As a pioneer environmentalist and horticulturalist, Betsy has served on many committees, for the past thirty-five years, including the Whooping Crane Conservancy, the Hilton Head Island Land Trust, the Island Beautification Association, and the Xeriscape Garden at Town Hall. She was one of the founding members of the Hilton Head Island Garden Club and served as its President for two years; she served as President of the HHI Council of Garden Clubs from 2005-2007; she served on the Board of the Garden Club of South Carolina; and, continues to chair the Horticulture Committee of The Herb Society.

Because of her wealth of information on a variety of topics, Betsy is in demand as a speaker for many gardening groups, and over the years she has spread her extensive knowledge and experience to hundreds of island residents as well as visiting schools to teach children about herbs. Betsy calls herself "a tree lady," and for over 30 years has promoted an official Arbor Day here on Hilton Head Island. As such, every year, she has worked with local schools and organizations to plant a native tree on public property - her favorites being Loblolly Bay, Red Cedar and Grancy Gray Beard. She has also been active in the Garden Club of South Carolina Historic Tress for Historic Places Project, helping to locate and document old trees on the island.

For the past six years, Betsy along with dozens of other Master Gardeners and town personnel, has been instrumental in seeking grant money, purchasing plants, recruiting volunteers, planting native trees, shrubs and flowers and labeling the foliage, all in an effort to rejuvenate the Xeriscape Garden at Town Hall.

To honor her dedication to the preservation of our natural environment, this is a request to officially rename the garden the 'Betsy Jukofsky Xeriscape Garden.'

Our many thanks,
Island Beautification Association

Steve Tennant, Chair
Doris Lindner, Treasurer
Helene Gruber

George Westerfield
Tom Kurtz
Susan Baldwin 843.422.0700

Betsy Jukofsky
Carol Toti

MEMORANDUM

TO: Town Council
FROM: Stephen G. Riley, Town Manager
DATE: November 9, 2015
RE: **Consideration of a Contract for Professional Services with the Hilton Head Island-Bluffton Chamber of Commerce**

Recommendation

That Town Council approve the execution of the proposed Contract for Professional Services with the Hilton Head Island-Bluffton Chamber of Commerce.

Summary

The Town's Finance and Administration Committee has developed the attached Contract for Professional Services in conjunction with Town staff, the Town Attorney, and with the Staff and legal counsel for the Hilton Head Island-Bluffton Chamber of Commerce. The contract will establish a more detailed relationship between the parties for the five year period of the contract.

Background

Key components of this contract as are follows:

- The proposed contract is forward thinking and based on 30+ years of partnership with the Chamber as the Town's designated Destination Marketing Organization (DMO)
- Incorporates the Destination Marketing Association International (DMAI) standards and policies for those seeking accreditation as required performance standards and requires the Chamber to maintain its accreditation. DMAI is the recognized industry leader for marketing organizations.
- Requires the Chamber to maintain a four star accreditation with the United States Chamber of Commerce; which provides criteria for the accrediting of local Chambers
- Incorporates a dozen industry operational metrics into the contract that must be tracked and reviewed, collectively, on a regular basis.
- Establishes a process for addressing and correcting any issues of underperformance and provides for regular inspection of the DMO financial records
- Requires an annual third-party legal opinion that the Chamber is in compliance with State ATAX regulations, the South Carolina Non-Profit Corporation Act
- Provides for Town participation in the process of selecting future auditing firms

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT FOR PROFESSIONAL SERVICES ("Contract") is entered into by and between **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**, a municipal corporation organized and existing under the laws of the State of South Carolina ("Town") and **HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE**, a nonprofit corporation existing under the laws of the State of South Carolina ("Chamber").

WHEREAS, accommodations tax is a state and local tax that is levied on the lodging industry and South Carolina Code Section 6-4-10(3) requires thirty percent of the state received accommodation tax be awarded to a nonprofit corporation and allocated to a special fund used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity ("Promotional Fund").

WHEREAS, the Promotional Fund is not part of the general fund of the Town.

WHEREAS, nonprofit corporations are formed and governed pursuant to the South Carolina Non Profit Act ("Act") and the Act requires the corporation to be governed by a board of directors.

WHEREAS, the Town has determined that entering into a contract with certain non-profit corporations which receive tax funding is in the best interest of the Town so these non-profit corporations will satisfy certain compliance and operating standards.

WHEREAS, the Chamber believes that entering into a contract with the Town is in the best interest of its members and will provide for improved long-term planning.

NOW, THEREFORE, it is hereby agreed to as follows:

1. Mutual Compliance with Laws. The Town and the Chamber agree that each of them shall adhere to all applicable laws which govern their respective entities. These laws include Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act of 1967, Title I of the Americans with Disabilities Act of 1990, the Equal Pay Act of 1963, the Fair Labor Standards Act of 1938, the Immigration Reform and Control Act of 1986, the South Carolina Wage Act, the South Carolina Worker's Compensation Act, all laws related to the South Carolina Accommodation Tax, the South Carolina Non-Profit Corporation Act, and all laws administered and enforced by the South Carolina Department of Revenue and the Internal Revenue Service.

2. Chamber Obligations.

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

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

(a) The audit shall be conducted in conformity with the statements, rules, policies, and procedures set forth by the American Institute of Certified Public Accountants (the "AICPA").

(b) The audit shall be performed in accordance with generally accepted auditing standards (the "GAAS").

(c) The auditor must comply with all applicable statements on auditing standards (the "SAS") that are issued by the Auditor's Standing Board of the AICPA.

(d) The auditor must maintain malpractice insurance in an amount equal to at least One Million and No/100 Dollars (\$1,000,000.00).

(e) The auditor must provide evidence of successful completion of the peer review process approved by the AICPA.

2.2 DMO Report. In addition to the audit, the Chamber shall also produce and deliver to the Town a schedule of revenues and expenses for each fiscal year (the "Report") for the destination marketing organization division of the Chamber ("DMO"). The DMO revenue shall include all accommodation tax revenue received from the Town and/or the State of South Carolina. This Report shall be produced under the standards set forth above in Section 2.1(a), (b), and (c) and by the same auditor that has satisfied the standards set forth above in Section 2.1(d) and (e). The Report shall be delivered to the Town by November 15th after the applicable fiscal year end.

2.3 Auditor. The Chamber agrees that it will cause its finance committee to interview other auditing firms when the existing contract with its auditor expires. A town staff member or a council member, at his/her election, shall participate with the finance committee during this process provided the individual demonstrates sufficient financial acumen (consistent with best practices for nonprofit finance/audit committee members) and agrees to all policies and procedures which apply to the Chamber's board of directors. The Chamber makes no representation or assurance that the individual who participates with the finance committee will be covered with directors and officers liability insurance.

2.4 Tax Returns. The federal and state tax returns shall be prepared and filed by a tax professional that must execute the returns as a tax preparer as defined by the Internal Revenue Code, the South Carolina tax code, and/or their regulations. This requirement will insure that such professional tax return preparer is subject to all penalties set forth in the Internal Revenue Code or the South Carolina code concerning tax preparers.

2.5 Promotional Fund. The Chamber shall manage and direct the expenditure of the Promotional Fund. In addition, the Chamber shall be eligible to apply for annual supplemental grants from the accommodation tax pool and from the emergency reserve fund established by the Town. All public funds received by the Chamber shall be subject to the auditing and reporting requirements of this Contract.

2.6 Process. The Chamber shall submit a budget of planned expenditures for the Promotional Fund ("Budget") and a marketing plan ("MP") for each fiscal year. The MP shall be recommended by the Chamber's marketing council and the MP and the Budget shall be approved by the board of directors of the Chamber. The Town may elect to have a staff

member or council member participate as a member of the marketing council provided the individual agrees to all policies and procedures which apply to the Chamber's board of directors. The Chamber makes no representation or assurance that the individual who participates on the marketing council will be covered with directors and officers liability insurance. The Budget and MP will then be submitted to the Town's accommodations tax ("ATAX") committee for review and recommendation. Upon the recommendation by the ATAX committee, the Budget and MP shall be forwarded for approval by the Town. The ATAX committee and the Town shall make all reasonable efforts to provide review and approval in a timely manner since private funds, state funds and placement of public relations and marketing programs are dependent on meeting deadlines. The Chamber shall submit the Report to the Town by November 15th after the applicable fiscal year end.

2.7 Inspection Rights. The Town Manager (or a designee that satisfies the same standard to interview auditors as set forth in Section 2.3), or a representative from the Town's Finance and Administration Committee (who also satisfies the same standard to interview auditors as set forth in Section 2.3) may, upon reasonable notice, inspect the necessary financial records, including third party invoices, of the Chamber in order to verify compliance of the Report in all material respects. This inspection right shall not be exercised more than twice in each fiscal year, unless otherwise agreed to by the parties.

2.8 Legal Opinion. The Chamber shall select and retain a law firm, with the consent of the Town, to deliver a third party opinion to the Town which opines that all expenditures from the Promotional Fund as set forth in the Report are in compliance with the then current requirements of South Carolina Code Section 6-4-10(3) and the Chamber is validly existing as a non-profit corporation under the laws of South Carolina. The legal opinion shall be addressed to the Town and the cost shall be equally divided by the Town and the Chamber. The legal opinion form and content shall adhere to the guidelines, to the extent applicable, of the South Carolina Third Party Legal Opinion Report approved by the Corporate, Banking and Securities Law Section of the South Carolina Bar on December 10, 2014 and approved by the House of Delegates of the South Carolina Bar on January 22, 2015.

3. Performance Standards.

3.1 DMO Standard. The Chamber and the Town agree that Destination Marketing Association International ("DMAI") is the industry leader in setting standards and accreditations with regard to destination marketing organizations. The Chamber agrees that it shall adopt policies and procedures and operate in a manner which satisfies the applicable standards set forth by DMAI under their categories of governance, finance, human resources, technology, marketing, visitor services, group services, sales, communications, membership, management and facilities, brand management, destination development, research and marketing intelligence, innovation, and stakeholder relationships with the goal of receiving accreditation by DMAI. The Chamber shall maintain accreditation with DMAI.

3.2 Organizational Standard. The United State Chamber of Commerce provides criteria to receive accreditation by a local chamber of commerce. The Chamber shall maintain the four star accreditation by the United States Chamber of Commerce.

3.3 DMO's Industry Metrics. The Chamber shall provide the Finance and Administration committee of the Town ("Committee") with certain tourism metrics and/or

reports such as:

- (a) revenue per available room;
- (b) occupancy rates;
- (c) visitor spending studies;
- (d) return on investment for visitor spending per dollar of investment;
- (e) local tax revenues generated by visitors;
- (f) number of visitors;
- (g) number of referrals made to area businesses and number of website hits and click through(s) made to area businesses;
- (h) numbers related to mail fulfillment and other contacts;
- (i) industry awards received for marketing and public relations efforts;
- (j) number of jobs created by tourism;
- (k) events held and participation in events by Chamber members; and
- (j) update on its public relations efforts to include the number of media impressions and the dollar equivalent for the media impressions.

It is understood and acknowledged that such metrics and/or reports may change from time to time based upon best practices, available funding and the goals set forth in the MP. The Committee shall review the data provided under this Section and evaluate the performance of the DMO. The evaluation shall consider the above metrics and reports, collectively, and shall be compared with peers and other factors that affect the tourism industry such as the state of the economy, weather, condition of the lodging properties, etc. The Committee shall report a summary of its evaluation to the Town Council.

If the Town Council determines that the Chamber has underperformed, it shall retain an industry recognized expert that has been recommended by DMAI ("Expert") to confirm its determination and to recommend strategies and policies to cure the deficiencies which have created the underperformance (the "Cure Plan").

In such an event, the Chamber shall cooperate with the Town Council and the Expert to implement the Cure Plan. If, after one year from the date of the delivery of the Cure Plan, the Town Council, after consultation with the Expert, determines the implementation of the Cure Plan has not occurred, the Town Council shall have the right to terminate this Contract by written notice, said termination to be effective sixty (60) days after said notice is given.

4. Chamber Covenants and Representations.

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

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

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

4.4 The Chamber covenants and represents that the MP shall include a public relations plan and a social media plan.

4.5 The Chamber covenants and represents that the Report shall include as exhibits the prior years' calendar of events and a dashboard of year over year tourism metrics as historically reported.

4.6 The Chamber covenants and represents to maintain www.ThinkHiltonHeadIsland.org and to post five (5) years of audits and tourism metrics as historically been reported.

4.7 The Chamber covenants and represents that it will comply with all state accommodation tax laws in administering the Promotional Fund.

4.8 The Chamber shall cause DMO revenue, less expenses, derived from DMO non programming activities to accrue for the benefit of the DMO.

5. Town Covenants and Representations.

5.1 The Town hereby covenants and represents that it will comply with all state accommodation tax laws in administering all such funds to the Chamber and other non-profit corporations.

5.2 The Town hereby covenants and represents that it shall comply will all such laws and procedures in a manner not to discriminate against one non-profit corporation versus another non-profit corporation.

5.3 The Town covenants and represents that it shall cause the Funding to promptly be paid to the Chamber in order for the Budget and MP to be implemented.

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

5.5 The Town hereby covenants and represents that Town has the lawful authority required under State law and Town's ordinances to enter into and perform this Contract.

6. **Term.** Since the current fiscal year's budget and MP have already been approved, this Contract shall be effective as of the 1st day of December 1, 2015, and shall continue for a period of five (5) years (the "Initial Term"), unless otherwise terminated as herein provided. If, at the expiration of the Initial Term, the Chamber has maintained the Performance Standards set forth in Section 3.1, 3.2, and 3.3 hereof, without interruption, then this Contract shall be extended by an additional five year term. Provided, however, each party shall have the ability to terminate this Contract upon the expiration of the Initial Term by providing the other party written notice during the month of November, 2019.

7. **Termination.**

7.1 If the Performance Standards set forth in Section 3.1 or 3.2 hereof have not been complied with in all material aspects as determined by DMAI, the United States Chamber of Commerce, or the Town, the Town shall provide written notice to the Chamber of the deficiency and the Chamber shall have one hundred eighty days (180) days to cure the deficiency. If the deficiency is not cured, the Town may terminate this Contract by providing ninety (90) day written notice to the Chamber. In addition, the Town shall have the right to terminate the contract by providing ninety (90) day notice if the auditor or DMAI determines fraud has occurred in the operation of the Chamber.

7.2 With respect to the Performance Standard set forth in Section 3.3 above, the termination process set forth in Section 3.3 shall control.

8. **Updates.** The Town acknowledges that the DMO makes a minimum of two public presentations to the ATAX committee each fiscal year. In addition to these appearances, the DMO shall report to the Committee on two other occasions during the fiscal year. These appearances shall be scheduled as to not interfere with any other presentation the DMO is making to a governmental body.

9. **Other Provisions.**

9.1 **Headings.** Headings to paragraphs in this Contract shall not interpret or alter the meaning of the words in the respective paragraph, nor any other provision of this Contract.

9.2 **Notices.** All notices to each party to this Contract shall be in writing, and sent as follows:

Town:

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

Chamber:

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

9.3 **Form of Notice.** All notices required or permitted under this Contract shall be sent certified mail with signature required.

9.4 **Merger, Amendment, and Waiver.** This Contract contains all the terms of all agreements, oral or written, between the parties, and is the only document containing all such terms. This Contract merges all prior discussions, negotiations, contracts, agreements, and understandings between Town and Chamber concerning the subject matter described herein. This Contract may only be amended or varied by a written instrument signed by a

duly authorized signatory of Town and Chamber. Forbearance by Town from enforcing the strict terms of this Contract shall not be a waiver of any other term of this Contract, nor shall such forbearance entitle Chamber to rely upon such forbearance in the future.

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

9.6 Attorney's Fees, Dispute Resolution. In the event of a dispute between the parties, the prevailing party in any dispute shall be entitled to an award of all reasonable attorneys and costs, including the costs of appeal, if any.

The parties have executed this Contract effective as of the date set forth in Section 6 above.

TOWN:

Town of Hilton Head Island, South Carolina

By: _____
Stephen G. Riley, Town Manager

CHAMBER:

Hilton Head Island Bluffton Chamber Of
Commerce, Inc.

By: _____
William G. Miles, President & CEO