



# **The Town of Hilton Head Island Finance & Administrative Committee Meeting**

**Tuesday, December 18, 2018**

**3:00 PM – Conference Room 3**

PLEASE MAKE NOTE  
OF TIME CHANGE.

## **AGENDA**

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

- 1. Call to Order**
- 2. Freedom of Information Act Compliance**  
Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 3. Approval of Minutes**
  - a. Finance and Administrative Committee Meeting, November 7, 2018.
- 4. Unfinished Business**
  - a. Approval of 2019 Finance & Administrative Committee Meeting Dates.
- 5. New Business**
  - a. General Discussion Regarding Revised Stormwater Utility PUD/POA Drainage Agreement.
  - b. General Discussion Regarding the Process for Dedication and Acceptance of New Private POA systems.
  - c. General Discussion Regarding Legal Obligations of the Freedom of Information Act.
- 6. Adjournment**

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

# **TOWN OF HILTON HEAD ISLAND**

## **FINANCE AND ADMINISTRATIVE COMMITTEE MEETING**

**Date:** November 7, 2018 **Time:** 2:00 p.m.

**Members Present:** John McCann, *Chairman*; Kim Likins and Tom Lennox, *Council Members*

**Members Absent:** None

**Staff Present:** Josh Gruber, *Assistant Town Manager*; Brian Hulbert, *Staff Attorney*; John Troyer, *Director of Finance* and Cindaia Ervin, *Finance Assistant*

**Others Present:** David Ames and Bill Harkins, *Council Members*; Ray Deal and Kelly McCallister, *Hilton Head Island-Bluffton Chamber of Commerce*; Carlton Dallas; Chester C. Williams, *Law office of Chester C. Williams LLC*; Skip Hoagland, and other members of the community.

**Media:** Katherine Kokal, *Island Packet*

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**1. Call to Order:**

The meeting was called to order at 2:02 p.m.

**2. FOIA Compliance:**

Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

**3. Approval of Minutes:**

- a. Mr. Lennox moved to revise the draft minutes from the Finance and Administrative Committee Meeting on October 16, 2018 at 2:00 p.m. Mrs. Likins seconded, and the motion passed unanimously.

**4. Unfinished Business:**

None

**5. New Business**

- a. **Discussion regarding transparency of the Hilton Head Island-Bluffton Chamber of Commerce's spending resulting from Accommodations Tax Funds.**

John McCann, Chairman, welcomed back Carlton Dallas, member of the public. He summarized his previous findings for the Committee regarding the current Town and Hilton Head Island-Bluffton Chamber of Commerce's Designated Marketing Organization contract and how to alleviate the current concerns regarding how promotional funds are being expended. He made the following recommendations based on the current Town/HHIBCC Designated Marketing Organization contract; *Section 2.6*: The Town should immediately take advantage of the authorities granted to review the Town policies and procedures to solicit, select and add 1-2 citizens to represent the Town on the Designated Marketing Organization (DMO) Marketing Council; *Section 2.7*: The Town should immediately take advantage to expand the definition contained within this section to include Town of Hilton Head Island citizens who meet the requirement of "financial acumen" and who would become a non-voting member of the Finance & Administrative Committee, which grants the citizens chosen "inspection rights to review DMO

documentation”; *Section 6*: The Town should plan to give notice in November 2019 to end the term of this contract, to create and distribute a Request for Proposal including metrics and audit mechanisms that satisfy the Town’s strategic goals and plans. Mr. Dallas stated that his current findings and recommendations were suggested to nurture and grow the relationship between the Town and DMO, while providing for greater transparency to the voting public of Hilton Head Island.

Josh Gruber, Assistant Town Attorney, clarified for the Committee regarding Mr. Dallas’s recommendation for Section 2.6. Mr. Gruber stated that allowing members of the public invited by the Committee to provide comment during the process of reviewing the DMO could be allowed as they are not actually members of the Committee. However, current Town Council’s Rules & Procedures currently do not allow for citizens to be a part standing Town Council Committees. He also mentioned if this is a desire of the Committee it will need changes outside of the contract to be able to do so. Brian Hulbert, Staff Attorney, can appoint another Committee comprised of Town Council members and citizens to help as a subcommittee. Mr. McCann asked how citizens would direct their questions regarding the DMO and its finances and Mr. Dallas felt they would bring those questions forward to the potential newly formed sub-committee and that Committee would be able to research and bring forward their findings and address any concerns and questions the public may have. Mr. Dallas felt it was important that the sub-committee members have no history and no current affiliation with the Town or the Hilton Head Island-Bluffton Chamber of Commerce VCB/DMO. Per section 6, Mr. Dallas felt it was important that the Town give the Chamber notice that it will not automatically renew its contract in November 2019. This will allow the Town the opportunity to customize a Request for Performance (RFP) for the skills and the type of metrics and marketing believed is best for the Town.

Tom Lennox, Committee Member, posed a few questions to Mr. Dallas regarding the marketing plan, financial disclosure and contract term recommendation. His thoughts if additional members of the public were added to the committee, Council would need to be clear in their direction of what they expect of them. Those individuals selected to participate in the process of developing a marketing plan and corresponding budget to fund for the Town should be knowledgeable in marketing and also the Chambers marketing council. Mr. Dallas stated that those selected should not have any additional rights or authorities; however, the Town is relying on their expertise and ability to be critical in their assessment, which will help to reinforce that the marketing plan meets your targets or does not. He also recommended to not have a member of Town Council a part of this process. Mr. Lennox also asked Mr. Dallas to explain the financial responsibilities of those selected as well. Mr. Dallas suggested that those selected take on the same role that Town staff holds when they review financial documents from the DMO which is, to review the detailed financial general ledger and any and all financial documents.

Brian Hulbert, Staff Attorney, asked how best to solve the concerns of the public seeking transparency as the Town has to comply with the Freedom of Information Act in regards to any document used it has to be provided. Mr. Dallas stated that he views that as legal hurdle that will have to be assessed. Mr. Gruber shared concerned that this process is to alleviate the skepticism that the public has with elected officials however, the criticism could shift of the process itself to the citizens of the public who are selected to serve in these roles as the citizens are selected by the same people who currently do the functions now. So his concern is that it may open up criticism in another way and he is not sure how to get past that. Mr. Dallas stated that it has to be a very objective selection process driven by those elected so they are able to select people with the financial and marketing experience so they are not questioned.

Mr. Lennox's feeling is that overall the DMO is in compliance with the current State Accommodations Tax Regulations due to the findings of the legal opinion and financial audit. Mr. Dallas urged that citizens that are not involved with the Town or the DMO would be beneficial to bridging the gap between the public, the Town and the DMO. Mr. Lennox thought that notifying the DMO that the Town will not automatically renew its contract, allows the Town and the Chamber to resolve some of the issues that have come into question. David Ames, Council Member, had similar thoughts and added that the issue of the Freedom of Information Act needs to be addressed now when there is an opportunity to rewrite the contract rather than later as it is an obligation that both parties have to abide by. Kim Likins, Committee Member, stated that at the previous Finance & Administrative meeting, those present from the DMO were willing to work with the Town and were receptive to finding a solution that both parties could agree upon so it is possible that this could be worked out prior to the contract ending.

David Ames, Council Member, feels that the preservation of the brand has a lot to do with compliance of the vision which is the community speaking on about where it wants to go. The Town owns the brand and it should safe guard it by working through the vision. Mr. Ames stated that if too many other ideas are created then it simply confuses the issue. Mr. McCann asked if anyone had seen the Chambers branding report and those present had not. Mr. McCann stated that given the discussion today, he would like all to consider informing the DMO that the Town will not renew its current contract and start the RFP process to seek a DMO in January 2019 in hopes of working through some of the public issues that have come up in the recent months.

Mr. McCann thanked Mr. Dallas and the Committee members present for the great conversation and discussion regarding the Hilton Head Island-Bluffton Chamber of Commerce. He stated that he would like to continue the conversation and discuss the Chambers branding and the legal obligations of the Freedom of Information Act at the next Finance & Administrative Committee meeting in December.

**b. Approval of 2019 Finance & Administrative Committee Meeting Dates**

Mr. McCann stated that he would like to postpone approving the meeting dates for 2019 as the election is not complete and he thought whomever is the chairman of the Finance & Administrative Committee should have input on the dates.

**6. Adjournment:**

Mr. Lennox made a motion to adjourn and Mrs. Likins seconded. The motion passed with a vote of 3-0 and the meeting was adjourned at 2:55 p.m.

**Approved:**

**Respectfully submitted:**

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**Tom Lennox, Chairman**

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**Cindaia Ervin, Secretary**



## **TOWN OF HILTON HEAD ISLAND**

### **2019 FINANCE & ADMINISTRATIVE COMMITTEE MEETING DATES**

|                    |                     |
|--------------------|---------------------|
| <b>January 2</b>   | <b>June 18</b>      |
| <b>January 15</b>  | <b>July 16</b>      |
| <b>February 19</b> | <b>August 20</b>    |
| <b>March 5</b>     | <b>September 17</b> |
| <b>March 19</b>    | <b>October 1</b>    |
| <b>April 2</b>     | <b>October 15</b>   |
| <b>April 23</b>    | <b>November 5</b>   |
| <b>May 7</b>       | <b>November 19</b>  |
| <b>May 21</b>      | <b>December 3</b>   |
| <b>June 4</b>      | <b>December 17</b>  |

Regular meetings of the Finance & Administrative Committee are held on the first and third Tuesday of each month at 2:00 p.m. in Conference Room #3, unless changed by a majority vote of the members present at any regular or special meeting.

Approved: \_\_\_\_\_



# TOWN OF HILTON HEAD ISLAND

## *Public Projects and Facilities Management Department*

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**TO:** Stephen G. Riley, ICMA-CM, Town Manager  
**VIA:** Josh Gruber, Assistant Town Manager  
Scott Liggett, PE, Director of PP&F/Chief Engineer  
**FROM:** Jeff Buckalew, PE, Town Engineer  
Jeff Netzinger, PE, Storm Water Manager  
**CC:** Gregg Alford, Town Attorney  
Brian Hulbert, Staff Attorney

**DATE:** December 13, 2018  
**SUBJECT:** Updated Standard POA/PUD Drainage Agreement and  
Process for Dedication and Acceptance of New Private POA Systems

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### **Recommendation**

Staff recommends the Finance and Administration Committee and Town Council endorse the following items related to drainage maintenance agreements with Planned Unit Developments (PUD) and Property Owners Associations (POA):

1. Adoption of a revised standard maintenance agreement for PUD / POA (attached as Exhibit 1);
2. Offering the revised agreement as an amendment to supersede all existing agreements to those PUD / POA wishing to continue granting the Town access and maintenance rights to their qualifying drainage systems, as is, with no customization of terms or language; and
3. Acknowledgement of the process by which a PUD, or POA not within a PUD, may dedicate an access and maintenance easement over their qualifying drainage systems and (attached as Exhibit 2).

### **Summary**

The revised standard agreement includes clarifying and specific language defining qualifying and non-qualifying system deficiencies, specific stipulation of responsibilities of both the Town and the PUD / POA, and refinement of terms and process requirements for PUD /POA to receive reimbursement for maintenance work not undertaken by the Town. A table summarizing the revisions is attached as Exhibit 3.

The process document for dedication of a private POA system outlines requirements for consideration and includes a definition of the extents of a qualifying system, documentation requirements, and a checklist.

### **Background**

As these various agreements were strongly negotiated by the different grantors and their attorneys over a long period of time, staff sees benefits of fairness and consistency in updating and

standardizing the eleven current PUD Maintenance Agreements and has worked with the Staff Attorney in updating the agreement. Staff has received POA inquiries regarding dedication of their private storm drainage systems including Spanish Wells, Wells East, Yacht Cove, and Bermuda Point.

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

This Drainage Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between **[insert association name here]**; having an address of **[insert association address here]** (hereinafter “ASSOCIATION”) and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

WITNESSETH

WHEREAS, **[insert development name here]** is a subdivision of land lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina (hereinafter “DEVELOPMENT”); and,

WHEREAS, the ASSOCIATION is the owner of improved and unimproved real property and easements within the DEVELOPMENT, in the Town of Hilton Head Island, South Carolina; and,

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



WHEREAS, the imposition and collection of Storm Water Utility Service Fees results in a fund available to the Town of Hilton Head Island, South Carolina, for the construction and maintenance of existing and planned infrastructure for the collection and conveyance of storm water runoff within the municipal limits of the Town of Hilton Head Island, South Carolina; and,

WHEREAS, the ASSOCIATION desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Utility Service Fees to undertake maintenance of the storm water drainage system within the DEVELOPMENT, conveyance of storm water runoff through the DEVELOPMENT and from areas within the DEVELOPMENT; and,

WHEREAS, the ASSOCIATION has agreed to grant access, drainage and maintenance easements to the Town of Hilton Head Island, South Carolina, in order to facilitate the maintenance of the qualifying storm water drainage system within certain areas of the DEVELOPMENT.

NOW, THEREFORE, know all men by these presents, the ASSOCIATION and the Town of Hilton Head Island, South Carolina, for and in consideration of the sum of One and no/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, the Parties hereto agree as follows:

1. **Defined Terms:** As used herein, the following terms as related to this agreement shall mean:

a. *Agreement:* This “Drainage System Maintenance Agreement”.

- b. *Association:* **[insert association name here]** with the address first above written, a South Carolina not-for-profit corporation.
- c. *Casualty:* The destruction of all or any part of the Drainage System through a natural disaster.
- d. *Covenants:* The Amended Declaration of Covenants, Conditions, and Restrictions for **[insert association name here]** recorded in the Beaufort County Register of Deeds Office on **(date)** in Official Record Book **\_\_\_\_\_** at Page **\_\_\_\_\_**.
- e. *Drainage System:* The existing system of lagoons, ditches, canals, pipes, culverts, catch basins, manholes, junction boxes, weirs, valves, gates, pumps, related equipment and related infrastructure, lying within the limits of the easement areas as depicted on the map attached hereto as **Exhibit "A"** which facilitate the collection, storage and conveyance of storm and surface water runoff through and from within the DEVELOPMENT. For purposes of this Agreement, the Drainage System shall not include any bridges, docks, retaining walls, road or pathway asphalt, road or building gutters, underdrains, sub-drains, structural bulkheads, beaches, tidal banks, estuaries, salt marshes or driveway pipes, unless the Town deems a particular driveway pipe as critical to the function of the Drainage System.
- f. *Emergency:* A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the

Drainage System which results in an imminent peril to life or property.

- g. *Post-construction Structural BMP*: A Post-construction Structural Best Management Practice (BMP) is a facility designed and built to provide treatment of storm water either through storage, filtration or infiltration (i.e. detention basins, retention basins, rain gardens, bioretention cells, sand filters, vegetated filter strips, water quality swales and infiltration trenches).
- h. *Qualifying Drainage System Deficiency*: A Qualifying Drainage System Deficiency is anything that, in the sole interpretation of the Town prevents, impairs or impedes the adequate conveyance or drainage of storm water runoff through the Drainage System or the structural failure of a Drainage System component
- Qualifying Drainage System Deficiencies do not include the following:
- i. The appearance or aesthetic appeal of any part of the Drainage System, including but not limited to lagoons, banks of lagoons, channel banks, landscaping, catch basins, canals, structures, bridges, bulkheads, pipes, culverts, valves gates, debris not impeding conveyance, or other visible components of the Drainage System;
  - ii. The introduction of pollution or pollutants into the Drainage System from any source;

- iii. Lagoon bank erosion that does not have an appreciable adverse impact on conveyance or threaten the integrity of adjacent infrastructure, or vertical structures;
- iv. Tidal erosion or tidal flooding;
- v. Establishment of maintenance access – be it through grading, clearing of vegetation, removal of trees, or removal of other obstructions for the provision of physical access to the drainage system;
- vi. Drainage System damage or deficiencies caused by the actions of others, including utilities and property owners (i.e. bores or cuts into pipes or structures);
- vii. Minor or nuisance flooding that does not adversely affect transportation infrastructure, vertical constructions, hardscape amenities, or conveyance of storm water runoff, including golf course drainage, isolated lawn or yard ponding, roadway shoulders, or drainage of unimproved land;
- viii. Drainage System deficiencies determined by the Town to be caused or exacerbated by the intentional facilitation of tidal backflow and saltwater intrusion into the Drainage System via failure by the ASSOCIATION to monitor and maintain proper functionality of backflow prevention devices

including flaps gates, sluice gates, check valves, or similar devices;

- ix. Damage to, or failure of, Drainage System components situated underneath or within five (5) feet of a building, masonry or other wall, utility vault, dock, pool deck or man-made structures not part of the Drainage System, where difficult access and/or considerable liabilities exist, or within a structure's foundational zone of influence as determined at the sole discretion of the Town;
- x. Accommodation of new development within the limits of the POA via new Drainage Systems or modification of the existing Drainage System;
- xi. Drainage system deficiencies caused by or originating from unauthorized or non-permitted modifications to the Drainage System.

i. **[insert development name here]**: A planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as **Exhibit "B"** hereto.

j. *Storm Water Utility Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by Beaufort County, South Carolina, to the Town of Hilton Head

Island, South Carolina; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town of Hilton Head Island, South Carolina, under the authority of Ordinance Number 2002-43.

- k. *Storm Water Utility Project Prioritization and Annual Budget Process:* The Town shall maintain a current, prioritized list of all known Qualifying Drainage System Deficiencies within the Town limits determined to be eligible for service using Storm Water Fees. Prior to each fiscal year, the Town shall establish an annual Storm Water Utility budget which defines all revenues and expenditures associated with the Storm Water Utility Service Fees. This budget shall include those known projects intended to be completed within that fiscal year.
- l. *Town:* The Town of Hilton Head Island, South Carolina.
2. **Grant of Easements:** Simultaneous and in conjunction with the execution and delivery of this Agreement, the ASSOCIATION shall grant an “Access, Drainage and Maintenance Easement” to the Town to allow the Town to access and maintain, the Drainage System within the DEVELOPMENT, with said easement being in the form attached hereto as **Exhibit “C”**.
3. **Maintenance, Inspection and Operation of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement Agreement, the Town shall be responsible for the maintenance and repairs necessary to correct any Qualifying Drainage System

Deficiency under the terms and conditions of this Agreement. This Agreement does not preclude the ASSOCIATION from repairing or maintaining any component of their Drainage System at their expense. The ASSOCIATION shall be responsible for the following within the DEVELOPMENT:

- a. Normal and emergency operation of Drainage System control structures, including gates, weirs and pumps, and for lowering water levels via such operation per pre-storm preparation protocols.
- b. Maintenance and replacement of weir boards, maintenance of control structure access ways, decking and railings, and maintaining control structure accessibility for inspection and operation by controlling and/or removing vegetation as necessary.
- c. Performing maintenance of work shelves along ditches and canals to provide reasonable and adequate access for inspection, maintenance and repair.
- d. Monitoring the condition of flap gates, sluice gates, check valves, and similar devices intended to prevent the intrusion of tidal backflow and brackish water into the Drainage System to ensure that they are in proper working order and functioning to prevent such intrusion as intended.
- e. Making repairs to any non-integral, ancillary infrastructure or property damage that may be attributed to a past or existing Qualifying Drainage System Deficiency once the deficiency has been addressed and corrected by the Town.

- f. Performing annual inspections of permitted, Post-construction Structural BMPs in order to comply with Stormwater Management Plan obligations, including submittal of inspection documentation to the Town in accordance with LMO Section 16-5-109.H.2.
- 4. **Procedure for Town's Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance of the Drainage System and the repair of identified Qualifying Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Utility Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7 and 8 below, the Parties agree to the following procedure for the Town's improvement, repair and maintenance of the Drainage System:
  - a. *Identifying Qualifying Drainage System Deficiencies:* The ASSOCIATION shall be responsible for identifying any Qualifying Drainage System Deficiencies.
  - b. *Schedule for Submission:* The ASSOCIATION shall submit a written description of each known or perceived Qualifying Drainage System Deficiency to the Town using the service request form provided by the Town, describing the nature, location and cause of each, if known. If a potential solution is identified for any known or perceived deficiency, a description of the solution shall also be submitted, including a preliminary estimation of anticipated costs. Qualifying Drainage System Deficiencies that are reported to the



Town, or which are discovered by the Town but not identified by the ASSOCIATION, by the end of any calendar year will be considered in the development of the Storm Water Utility Project Prioritization and Annual Budget Process for the following fiscal year.

c. *Completion of Maintenance:* The Town shall develop a Storm Water Utility Project Prioritization and Annual Budget Process that will address the identified Qualifying Drainage System Deficiencies as follows:

- i. The Town shall determine the scope and extent of the improvement, repair or maintenance that is necessary to correct any Qualifying Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.
- ii. The Town shall determine the priority of the projects to correct the Qualifying Drainage System Deficiencies and schedule the projects to correct these deficiencies for a specific year within the Storm Water Utility Project Prioritization and Annual Budget Process. The determination of the scheduling and funding for the correction of the Qualifying Drainage System Deficiencies shall be made solely by the Town, taking into account the following:

1. The availability and amount of fund balance, and revenue from bonds or Storm Water Utility Service Fees in any given fiscal year;
  2. Prioritization of all other projects, or qualifying requested improvements, repair and maintenance that are to be funded with Storm Water Utility Service Fees; and
  3. The annual cost required to operate Storm Water Utility, initiatives, and debt services.
- iii. Complete the work necessary to correct the Qualifying Drainage System Deficiencies in the fiscal year as determined by the Town as a part of the Storm Water Utility Project Prioritization and Annual Budget Process, unless emergency projects alter the prioritization such that funds are insufficient to correct all qualifying deficiencies as intended within the same fiscal year.
- d. *Scheduling of Work:* Other than in the case of an Emergency, the Town and the ASSOCIATION shall mutually agree in writing as to the scheduling of any work to be performed hereunder within the DEVELOPMENT in advance of the commencement of the work.
- e. *Resident Notification:* The ASSOCIATION shall be solely responsible for the notification of its owners and guests that may be affected by any Town maintenance or emergency work activities.

- f. *Legal Access to Private Property:* The ASSOCIATION shall be responsible for obtaining access rights as may be deemed necessary by the Town to complete the work.
- g. *Facilitating Physical Access:* The ASSOCIATION shall be responsible for facilitating clear and adequate physical access to each work site at no cost to the Town. If reasonable and adequate physical access to the site cannot be provided sufficient to complete the work without the likelihood of collateral damage to assets and amenities, the repair and/or replacement of any damaged assets and amenities shall be the sole responsibility of the ASSOCIATION, at no additional cost to the Town. Such assets and amenities shall include, but are not limited to, landscaping, flowerbeds, ornamental shrubs and trees, lawns, irrigation systems, boardwalks, cart paths, driveways, and sidewalks. Determination of reasonable and adequate access and the likelihood of collateral damage shall be made at the sole discretion of the Town, either prior to or in the course of undertaking the work. The ASSOCIATION shall retain the right to withdraw the service request if the magnitude of collateral damage is not acceptable. If the service request is withdrawn, completing the associated work will be the sole responsibility of the ASSOCIATION.
- h. *No Guarantees Regarding Schedule:* The Town cannot guarantee that the amount of available Storm Water Utility Service Fees, the

number of projects to be funded with Storm Water Utility Service Fees in any given fiscal year, and events such as weather and weather-related emergencies and drainage system failures in other parts of Hilton Head Island will not cause delays in the correction of Qualifying Drainage System Deficiencies within the DEVELOPMENT and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of the correction of any Qualifying Drainage System Deficiency shall be made at the Town's sole discretion and shall be final.

5. **Further Obligations of the ASSOCIATION:** The ASSOCIATION agrees that during the term, or any renewal term, of this Agreement, it shall take no action which damages the Drainage System, allows damage to the Drainage System, creates a drainage system deficiency, including, but not limited to allowing salt water intrusion or pollutants to enter the Drainage System; provided, however, that to the extent the ASSOCIATION has a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties and/or Recreational Areas (as such terms are defined in the Covenants and which Common Properties and/or Recreational Areas may include lagoons and lagoon banks, ditch maintenance shelves, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the ASSOCIATION from taking reasonable actions to perform said obligations.

6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Storm Water Utility Service Fees as budgeted for by the Town in any given fiscal year. The Town and the ASSOCIATION intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.
7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:
- a. *Responsibilities of the ASSOCIATION:* The ASSOCIATION shall take such steps as may be necessary to secure any area affected by the Emergency. The ASSOCIATION shall notify the Town as soon as is practical after discovery of the Emergency. (The ASSOCIATION may which is addressed in Article 10, below)
  - b. *Town Responsibilities:* Upon receipt of such notification from the ASSOCIATION, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair the damage caused by the Emergency as soon as is practical, taking into account the threat presented by the Emergency, the cause of the

Emergency or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Emergency found to have been caused by the negligence of others.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

- a. *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for any necessary reconstruction of the Drainage System.
- b. *Approval of Plans:* The engineering and design plans must be approved by the ASSOCIATION, prior to any reconstruction of the Drainage System. If the ASSOCIATION chooses not to approve the engineering and design plans prepared by the Town, the ASSOCIATION may reconstruct the Drainage System at its own expense and shall not seek reimbursement from Storm Water Utility Service Fees. In the event such reconstruction by the Town requires work outside of the Easement limits as depicted in **Exhibit "A,"** the ASSOCIATION shall provide temporary right of entry for construction access or, if deemed necessary, the parties agree to modify the Access, Drainage and Maintenance Easement by a written agreement to be recorded in the Office of Register of Deeds for Beaufort County, South Carolina increasing the Easement areas as reasonable and necessary to accommodate such reconstruction

and the ASSOCIATION agrees to grant any temporary license allowing the Town temporary access to those Common Areas of the DEVELOPMENT as are reasonable and necessary to accommodate such reconstruction.

- c. *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the ASSOCIATION, acquiring temporary rights of entry, and/or the completion of an Access, Drainage and Maintenance Easement Amendment and any temporary license agreement as set forth above in subsection (b), the Town shall complete the reconstruction of the Drainage System as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Utility Service Fees, bond, other government aid and assistance programs, or the Association.
9. **Maintenance of Drainage System by the ASSOCIATION:** Nothing herein shall prohibit the ASSOCIATION from performing any improvement, repair or maintenance necessary to correct or repair any Qualifying Drainage System Deficiency in advance of the time that any such work is scheduled as a part of the Town's Storm Water Utility Project Prioritization and Annual Budget Process, in the event that the ASSOCIATION determines that it is in its interest to

do so. Other than in the case of an Emergency (which is addressed in Article 10, below), the ASSOCIATION shall be entitled to reimbursement from Storm Water Utility Service Fees, in the fiscal year that such work is scheduled to be done as a part of Town's Storm Water Utility Project Prioritization and Annual Budget Process, for the cost of any such work upon compliance with the following;

- a. The ASSOCIATION shall submit its plans, quantities, and specifications for any improvement, repair or maintenance necessary to correct or repair any Qualifying Drainage System Deficiency.
- b. The Town, through authorized staff, shall grant its written approval unless it determines that:
  - i. The proposed improvement, repair or maintenance does not correct the Qualifying Drainage System Deficiency; or,
  - ii. The scope of the proposed improvement, repair or maintenance exceeds what is necessary to correct the existing Qualifying Drainage System Deficiency,
- c. Upon receipt of the Town's written authorization and approval, the ASSOCIATION shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time.



- d. Any changes in the agreed scope of work resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.
- e. The ASSOCIATION shall notify the Town at least forty-eight (48) hours prior to the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.
- f. Upon completion of the work the Town shall provide an inspection and written approval or rejection of the work. If approved by the Town, the ASSOCIATION shall submit to the Town its request for reimbursement, which shall include full documentation of the bid and procurement of the work, the contract for the work, construction plans, details and as-built surveys or drawings, measurements, dated inspection reports and photographs of the work done and the payments made, and be accompanied by any required test reports and the ASSOCIATION's written certification that the work was completed in accordance with the approved plans and specifications.
- g. The Town shall thereafter budget funds for reimbursement to the ASSOCIATION from Storm Water Utility Service Fees in the fiscal year that the work was or would have been scheduled in the Town's Storm Water Utility Project Prioritization and Annual Budget Process. The Town shall reimburse the ASSOCIATION for all approved work. The schedule for reimbursement shall depend

upon the project ranking when compared to all other projects as determined in the Town's Storm Water Utility Project Prioritization and Annual Budget Process and might be moved forward into a future budget year as a result.

10. **Emergency Work by the ASSOCIATION:** In the event that the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the ASSOCIATION, the following shall apply:

- a. The ASSOCIATION shall consult with the Town to determine a cost efficient scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town must approve in writing, the scope and plans for the work and procurement of construction services, prior to the commencement of work. The ASSOCIATION shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time.
- b. The ASSOCIATION may complete the work that is necessary to repair or correct the damage caused by the Emergency.
- c. Upon completion of the work that has been authorized and approved by the Town, the ASSOCIATION shall submit to the Town a request for reimbursement, which shall include full documentation of the bid and procurement documents for the

work, the contract for the work, construction plans, details and as-built surveys or drawings, measurements, dated inspection reports and photographs of the work done and the payments made, and be accompanied by any required test reports and the ASSOCIATION's written certification that the work was completed in accordance with the approved plans and specifications.

- d. Within three (3) fiscal years following the completion of the Town authorized and approved work by the ASSOCIATION necessary to repair or correct the damage caused by the Emergency, the Town shall budget funds for payment of the reimbursement to the ASSOCIATION and shall pay the same in accordance with the approved budget.

11. **No Guarantees Regarding Flooding:** The ASSOCIATION acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within the DEVELOPMENT will be free of events of flooding or erosion, and that the Town does not represent or warrant to the ASSOCIATION that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within the DEVELOPMENT.

12. **Waiver of Storm Water Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the ASSOCIATION acknowledges it shall not be entitled to receive and hereby waives any Storm Water Service Fee Credit from Beaufort County or the Town

with respect to any real property located within the limits of the DEVELOPMENT, as indicated on the map attached hereto as **Exhibit "B"**, for and during the term of this Agreement or any renewal of this Agreement.

13. **Term:** This Agreement shall remain in place from date of execution until June 30, 2023 and shall renew automatically for successive one (1) year terms beginning July 1 each year thereafter, unless either Party notifies the other, in writing, of its intention to terminate this Agreement. Any such notice shall be delivered not less than two hundred and seventy (270) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate the Agreement. Upon delivery of such notice, this Agreement shall terminate at midnight on June 30<sup>th</sup> of the fiscal year in which the notice is delivered (for example, if notice is given February 1, 2020, the Agreement would terminate on June 30, 2021). The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance and Construction Easements delivered pursuant to this Agreement.

14. **Representation and Warranties of the ASSOCIATION:**

The ASSOCIATION represents and warrants:

- a. That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance and Construction Easements to be delivered pursuant to this Agreement, and that the individual(s)

executing such documents have full power and authority to bind the ASSOCIATION to the same.

- b. That it is not a party to any litigation affecting the property burdened by the easements herein which could impair the obligations of the ASSOCIATION under this Agreement or the easements, and the ASSOCIATION knows of no litigation or threatened litigation affecting their ability to grant the easements.
- c. That as to any pipes or other portions of the Drainage System as shown on **Exhibit "A"** hereto which are located in whole or in part on private residential lots, the ASSOCIATION has full authority under the Covenants to convey and/or assign the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement Agreement.

15. **Town Representation and Warranties:**

The Town represents and warrants to the ASSOCIATION:

- a. As is shown by the Resolution of the Town that is attached hereto as **Exhibit "D"**, the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,
- b. That it is not a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.

16. **Taxes:** The ASSOCIATION shall ensure payment, prior to delinquency, all taxes on ASSOCIATION properties within the DEVELOPMENT burdened by the easements granted under this Agreement.
17. **Default:** The Town and the ASSOCIATION agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.
18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to seek recovery of its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.
19. **General Provisions:**

- a. *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.
- b. *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be effectively modified, amended, changed or altered without the written consent of the Town and the ASSOCIATION.
- c. *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.
- d. *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.
- e. *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- f. *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.

- g. *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.
- h. *No Third Party Beneficiaries:* The Town and the ASSOCIATION affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. It is the express intent of the Town and the ASSOCIATION that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.
- i. *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town:

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

To the Association:

**[insert association name here]**  
Attn: **[insert association POC here]**  
**[insert association address here]**  
Hilton Head Island, SC 29928



With Copy to: \_\_\_\_\_

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

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

IN WITNESS WHEREOF, The Town of Hilton Head Island, South Carolina; and **[insert association name here]**, by and through their duly authorized officers, have executed and delivered this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2018.

**SIGNATURES BEGIN ON NEXT PAGE**

WITNESSES:

**[insert association name here]**

\_\_\_\_\_

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

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

\_\_\_\_\_

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

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

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

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

####, Mayor

\_\_\_\_\_

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

Stephen G. Riley, Manager

## **List of Exhibits**

- |           |  |
|-----------|--|
| Exhibit A | Map depicting the limits of the easement areas covered by this agreement |
| Exhibit B | Map depicting the planned development covered by this agreement          |
| Exhibit C | Easement Agreement   |
| Exhibit D | Town Resolution  |

DRAFT

## TOWN OF HILTON HEAD ISLAND

# PROCESS FOR DEDICATION OF A PRIVATE POA STORM DRAINAGE SYSTEM TO THE TOWN FOR MAINTENANCE

The following shall be the process whereby a private development property owner's association (POA) not located within a Master PUD / POA with an existing drainage agreement and easement with the Town for maintenance of their storm drainage system, may dedicate its qualifying, private storm drainage systems to the Town for maintenance responsibilities.

- The Town will provide a standard, non-negotiable maintenance agreement to the POA for consideration.
- For the purposes of the agreement and qualification for storm water services by the Town, only communal storm drainage systems offering public benefit shall be considered. These qualifying systems shall be defined as those which convey storm water runoff from a public road right of way, or a platted private road right of way within the POA. The POA shall provide a survey, record plat or exhibit showing the communal storm drainage systems being offered and the proposed access and drainage easement boundaries for those systems. The Town shall verify the qualification of communal systems. The Town Engineer shall make the final determination of drainage patterns and system qualification.
- Easement widths shall comply with minimum requirements of the Land Management Ordinance (LMO), Section 16-5-606. However, exceptions for existing conditions and increased width requirements may be made at the sole discretion of the Town. Reasonable and adequate access to and connectivity of the systems being dedicated must be provided for acceptance.
- The POA shall provide deliverables to the Town – The POA shall identify the systems to be dedicated and provide all available relevant information regarding those systems (digital media preferred), this may include the following:
  - A list of known or perceived deficiencies in the existing storm drainage system – this shall include the location, deficiency, suspected cause, possible remedies, and photographs.
  - Storm Drainage plans
  - Construction as-built survey of the drainage system
  - Storm Drainage infrastructure maintenance records
  - Recorded Plats and/or Exhibits regarding access and drainage
  - Relevant Covenants regarding of access and drainage
  - Sealed construction drawings for original development plans or infrastructure improvements.
- The Town may require additional information, which may include survey data, video inspection of closed systems, etc., if deemed necessary. Furthermore, the Town may exclude certain systems or require the POA to repair pre-existing or imminent severe deficiencies prior to accepting maintenance responsibilities.

- The Town shall create an easement exhibit to define the boundaries of the proposed easement and provide to the POA for review. The POA shall verify that it has the legal authority to grant an easement over the limits as shown on the exhibit. It shall be the responsibility of the POA to coordinate or obtain agreements on private parcels where the POA does not have the existing legal authority to grant an easement.
- The POA shall execute the agreement and submit to the Town for execution.
- Town staff will present the agreement to the Town Manager and Town Council with a recommendation for execution.
- Once executed by both parties, the Town Attorney shall record the easement with the Office of the Register of Deeds for Beaufort County and provide a reference copy to the POA.
- The Town is willing to accept offers of dedication at any time; however the executed easement and agreement must be recorded by December 31 for the actual services to begin the following fiscal year (beginning July 1 of the following calendar year), as the Town must develop a budget for each fiscal year.

# PRIVATE POA DRAINAGE SYSTEM DEDICATION CHECKLIST

*The following is a guide for POA general managers to use in following the process to convey access and maintenance rights of qualifying drainage systems to the Town.*

- ☐ A POA (grantor) desiring to grant access and maintenance rights over its communal storm drainage systems to the Town, shall initially contact the Town (grantee) and meet with staff to discuss the qualification of drainage systems and the easement process. This should be coordinated with the Storm Water Manager/Assistant Town Engineer (Jeff Netzing @ 843-341-4775 or [jeffn@hiltonheadislandsc.gov](mailto:jeffn@hiltonheadislandsc.gov)).
- ☐ The POA shall review the standard easement agreement as provided by the Town.
- ☐ The POA shall provide deliverables to the Town – The POA shall identify the systems to be dedicated and provide all available relevant information regarding those systems (digital media preferred), this may include the following:
  - A list of known or perceived deficiencies in the existing storm drainage system – this shall include the location, deficiency, suspected cause, possible remedies, and photographs.
  - Storm Drainage plans
  - Construction as-built survey of the drainage system
  - Storm Drainage infrastructure maintenance records
  - Recorded Plats and/or Exhibits regarding access and drainage
  - Relevant Covenants regarding of access and drainage
  - Sealed construction drawings for original development plans or infrastructure improvements.
- ☐ Once deliverables are provided to the Town, the review deadline is set. Within 15 business days after receipt, the Town shall offer a response on which systems qualify. The Town may request more information if deemed necessary. This may include survey data, video inspection of closed systems, etc.
- ☐ The Town will create an easement exhibit to define the boundaries of the proposed easement and provide to the POA for review. The POA shall verify that it has the legal authority to grant an easement over the limits as shown on the exhibit. It shall be the responsibility of the POA to coordinate or obtain agreements on private parcels where the POA does not have the existing legal authority to grant an easement.
- ☐ If the POA finds the easement agreement and exhibit (boundaries) acceptable, it shall execute the agreement and submit to the Town for execution.
- ☐ Staff will present the agreement to the Town Manager and Town Council with a recommendation for execution.
- ☐ Once executed by both parties, the Town Attorney shall record the easement with the Office of the Register of Deeds for Beaufort County and provide a reference copy to the POA.
- ☐ The Town is willing to accept offers of dedication at any time; however for all new systems accepted in a calendar year (by December 31), the actual services will not begin until July 1 of the following calendar year, as the Town must develop a budget for each fiscal year.