



The Town of Hilton Head Island Finance & Administrative Committee Meeting

Tuesday, January 15, 2019

3:00 PM – Conference Room 3

PLEASE MAKE NOTE
OF TIME CHANGE.

AGENDA

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

1. **Call to Order**
2. **Freedom of Information Act Compliance**
Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
3. **Approval of Minutes**
 - a. Finance and Administrative Committee Meeting, December 18, 2018.
4. **Unfinished 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.
5. **New Business**
 - a. General Discussion Regarding Fiscal Year 20 Budget process and schedule
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: December 18, 2018 **Time:** 3:00 p.m.

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

Members Absent: None

Staff Present: Josh Gruber, *Assistant Town Manager*; Brian Hulbert, *Staff Attorney*; John Troyer, *Director of Finance*, Jeff Buckalew, *Town Engineer*, Jeff Netzinger, *Assistant Town Engineer/SWU Manager*, Alexis Cook, *Storm Water Engineer* and Cindaia Ervin, *Finance Assistant*

Others Present: Danny Crowe, *Crowe LaFave, LLC*; Tamara Becker, David Ames and Bill Harkins, *Council Members*; Chester C. Williams, *Law office of Chester C. Williams LLC*; Walter Nester, *Burr Forman McNair*, Skip Hoagland, Risa Prince, Eleanor Lightsey, *Lowcountry Inside Track* and other members of the community.

Media: Katherine Kokal, *Island Packet*

1. Call to Order:

The meeting was called to order at 3:00 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. McCann moved to approve the draft minutes from the Finance and Administrative Committee Meeting on November 7, 2018 at 2:00 p.m. Mr. Lennox seconded, and the motion passed unanimously.

Mr. Lennox stated that Town Council's newest member, Tamara Becker, would be the 3rd member of the Finance & Administrative Committee per the Mayor's request starting January 2019.

4. Unfinished Business:

- a. Mr. McCann moved to approve the proposed 2019 Finance and Administrative Committee meeting dates. Mr. Lennox seconded, and the motion passed unanimously.

5. New Business

Mr. Lennox made a motion to move the new business agenda item "C" to item "A" out of courtesy to the guest speaker present. Mr. McCann moved to approve the motion and Mr. Lennox seconded, and the motion passed with a vote of 2-0.

- a. **General Discussion Regarding Legal Obligations of the Freedom of Information Act.**

Josh Gruber, Assistant Town Manager, gave the Committee and Council Members present a brief background of guest speaker Danny Crowe. Danny Crowe, Crowe LaFave, LLC, spoke with the

Committee members and Council present regarding if the Town is under any affirmative obligation to request documents from the Hilton Head Island-Bluffton Chamber of Commerce. He simply stated, “no” based on the DomainNewsMedia case as it did not address to what extent a city should obtain documents from a party with which it contracts or the party specifically that the chosen Destination Marketing Organization. Mr. Crowe explained that the DomainNewsMedia did not change the law, so municipalities are not required to create documents that do not already exist. Also, municipalities responding to Freedom of Information Act (FOIA) requests are not conduits for other requesters of FOIA information, nor are they collectors of information that does not already exist. Mr. Crowe said that he would rely on the definition of public record in the Freedom of Information Act in Section 30-4-20 (c), which is unchanged by the DomainNewsMedia case. He stated if the public body, “the Town” does not have the documentation in its possession, it is not required to retrieve or produce from a third party. His view was information or documentation that the Town has obtained in the course of its relationship with the DMO are subject to FOIA.

Tom Lennox, Chairman, opened the floor to questions and Mayor McCann asked if a member of Council or Town staff obtained notes as part of a meeting with the current DMO, if those were subject to FOIA. Mr. Crowe responded that FOIA is addressed to the council as a body and if the individual has such documents in his or her possession, unless they are doing it on behalf of the public body, the fact that the individual member has documents in his possession would not make it subject to FOIA. Plainly, if a Council Member viewed documents and does not possess them they are not required to recreate a document based on a FOIA request. David Ames, Council Member asked, “does the reverse apply if the Town were to take the position that it wanted information, would the DMO then have the ability to say no?” Mr. Crowe replied that if the Town requested specific information, that would depend on the contractual agreement between both parties. However, it is up to the DMO to release the requested information as they could decline as the request could be unrelated to the agreement. Based on recent Supreme Court rulings, the Hilton Head Island-Bluffton Chamber of Commerce is not subject to FOIA in its role as a DMO. Mr. Ames asked how best the Town could take a stance on transparency and Mr. Crowe replied that the Town could negotiate terms within the contract and that would provide clear expectations, obligations and responsibilities of both parties on certain matters. Mr. Ames shared with the Committee that when the Town initiates the Request for Proposal (RFP) for the Towns’ DMO, it could include a policy regarding FOIA and requested information and at that time, and the responding parties could at that time chose to submit a bid or not. Mr. Lennox’s views were based on not if the DMO is performing well under the contract rather than if they are compliant with the State Accommodations Tax Regulations. He believes that transparency is difficult to argue against but the important part of this relationship is compliance of the DMO with the contract.

Mr. Lennox opened the floor for public comment.

Skip Hoagland: Addressed the Committee on how important it is to demand the compliance of FOIA and transparency of the Hilton Head Island-Bluffton Chamber of Commerce’s spending when they are an agency that has received public funding.

Mr. Lennox thanked Mr. Crowe for his time and comments regarding the legal obligations of the Freedom of Information Act.

b. General Discussion Regarding Revised Stormwater Utility PUD/POA Drainage Agreement.

Jeff Netzinger, Assistant Town Engineer/SWU Manager, explained to the Committee the proposed revised stormwater utility PUD/POA drainage agreement. He stated that there are benefits of standardizing the current agreement to allow for uniform terms and expectations for both the Town and the local PUDs. Mr. Netzinger also outlined the notable changes and clarifications that the Town will provide to the PUDs for their review. This process will allow the Town to hear any concerns and provide feedback with resolutions if needed. He also gave a history of some matters that have come up regarding deficiencies that the Town has made on behalf of the PUD and has found that they have been caused by contractors or normal wear and tear. Standardizing the current stormwater utility drainage agreement will address these matter and clearly define who is responsible and how the PUD will go about seeking reimbursement from the Town if requested. The Stormwater department will hold a public discussion regarding the proposed changes in the coming weeks and from those meeting they will consider any possible changes that may need to be implemented and ultimately send a final draft for adoption to Town Council for their approval.

Mr. Lennox stated that this revised agreement has been talked about for several years now and he is glad to see it come forward as it clearly defines that work can be done with available funding and it is not a future liability of the town if the project makes the priority list. There has been a general misconception that if a deficiency is identified that it automatically will be maintained by the Town. However, it determines how much of a priority it truly is and if there is funding available. David Ames, Council Member, stated that this revised agreement will allow for the Town to look at the magnitude of the liability. He gave an example of the Town wanting to provide adequate drainage to the Forest Beach area. This project turned an agreement that looks similar to what is in place today. His concern is that the Town should deal with the larger community infrastructure of the Island for adequate drainage. He also feels that decisions made 20 years ago takes funding from the ability to improve drainage infrastructure of those outside the gates and this changes the initial responsibility and liability of those buying homes inside the gates years ago.

Mr. Lennox opened the floor for public comment.

Skip Hoagland: His recollection regarding a court case in Greenville against a private a community using public funds to repair a bridge within the community that is not used by the general public. The Supreme Court decided it is unconstitutional to use public funds for private purposes when it is not in the interest of the public.

Risa Prince: Address the Committee regarding the current stormwater agreement termination date and the burden if implemented.

Walter Nester: Addressed the Committee regarding the stormwater ordinance and the overall plan to move forward. He also stated that he would like Town Staff consider a reasonable standard for qualifying deficiencies within the proposed agreement.

Mayor McCann made a motion to move forward the proposed revised stormwater utility agreement to the local PUDs for further consideration. Mr. Lennox seconded and the motion passed with a vote of 2-0.

Mr. Lennox thanked Mr. Netzinger for his time and the informative discussion.

c. General Discussion Regarding the Process for Dedication and Acceptance of New Private POA Systems.

The Committee was not able to reach this agenda topic due to time and Chairman Lennox asked to resume this topic at the Committees next scheduled meeting in January.

6. Adjournment:

Mr. McCann made a motion to adjourn and Mr. Lennox seconded. The motion passed with a vote of 2-0 and the meeting was adjourned at 4:02 p.m.

Approved:

Respectfully submitted:

Tom Lennox, Chairman

Cindaia Ervin, Secretary

DRAFT



TOWN OF HILTON HEAD ISLAND

Public Projects and Facilities Management Department

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

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 30th 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: _____

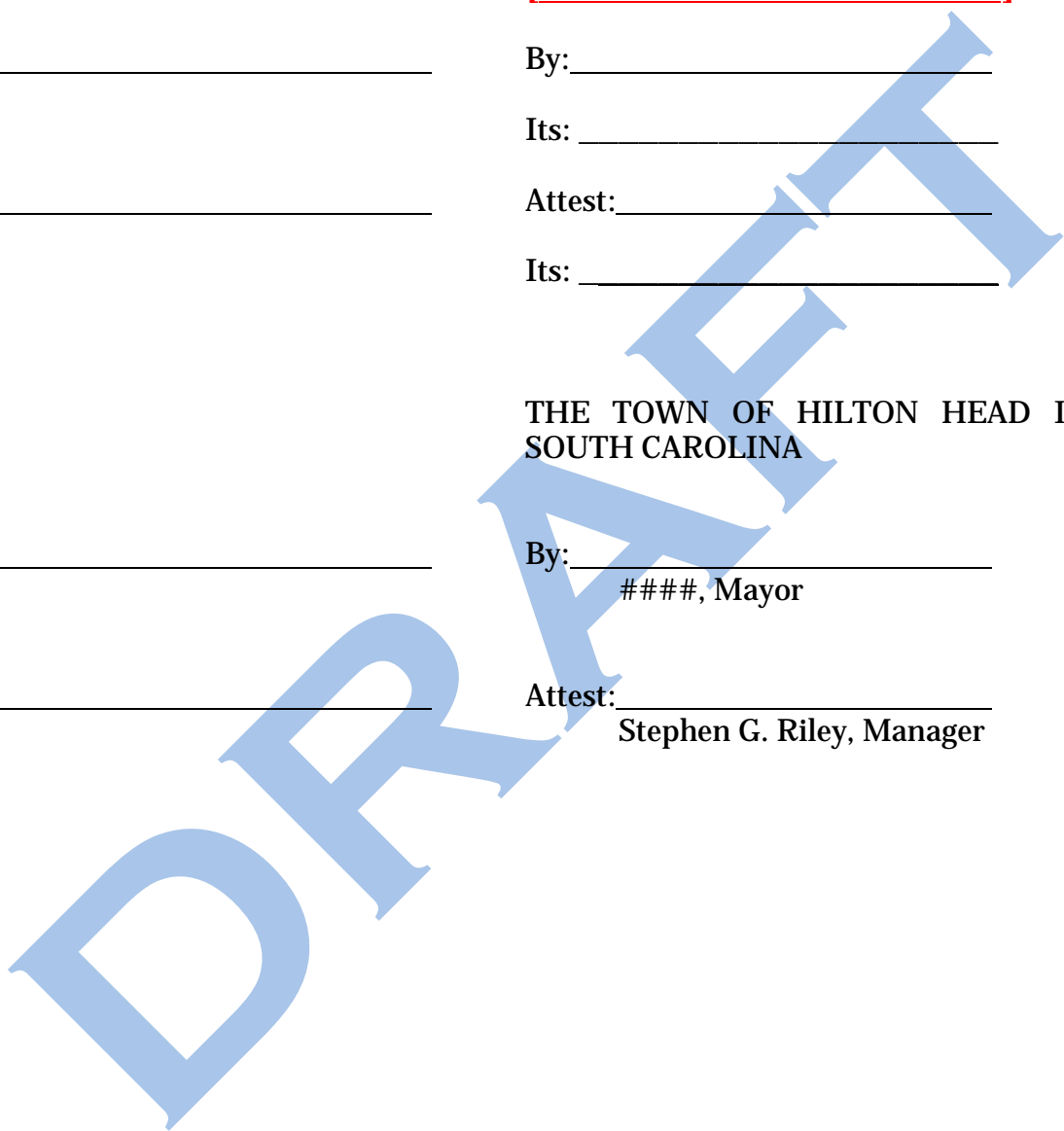
THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

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 Netzinger @ 843-341-4775 or jeffn@hiltoneheadislandsc.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.