

PUBLIC WORKS COMMITTEE

9:00 a.m., Thursday, March 7, 2019

Council Chambers

1207 Palm Boulevard, Isle of Palms, South Carolina

AGENDA

1. Call to order and acknowledgement that the press and public were duly notified of the meeting in accordance with the Freedom of Information Act
2. **Approval of Previous Meeting's Minutes**
Regular Meeting of February 11, 2019
3. **Citizens' Comments** – Recognition of Bernard Gourdine and 18 years of service to the City
4. **Department Reports for February 2019** – Director Pitts
Vehicle Maintenance and Trash Collection Tracking Reports
5. **Old Business**
 - A. Update on Phase II Drainage project
 - B. Update on ditches and drainage issues
 - C. Update on a proposal from residents to install a flap gate on Tabby Lane
 - D. Update on repairs needed at Marginal Road
 - E. Consideration of Ordinance 2019-04 – An ordinance amending Title 3, Public Works, Chapter 4, Single Use Plastic Bags
6. **New Business**
 - A. Request from 48th Ave LLC to tie into City's drainage system
 - B. Discussion of Dominion Energy's 2019 tree trimming schedule for the Isle of Palms
7. **Miscellaneous Business**
Next Meeting Date: 9:00 a.m., Thursday, April 4, 2019 in the Conference Room
8. **Executive Session in accordance with S.C. Code Section 30-4-70(a)(2)** – if needed
Upon returning to open session, Council may take action on matters discussed in Executive Session.
9. **Adjournment**

Public Works Committee
9:00 a.m., Monday, February 11, 2019

The regular meeting of the Public Works Committee was held at 9:00 a.m., Monday, February 11, 2019 in the City Hall Conference Room, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Kinghorn and Smith, Chair Rice, Interim Administrator Fragoso, Public Works Director Pitts and City Clerk Copeland; a quorum of the Committee was present to conduct business. Councilmember Kinghorn was absent.

1. Chair Rice called the meeting to order and acknowledged that the press and public were duly notified of the meeting in accordance with the Freedom of Information Act.

2. **Approval of Previous Meeting's Minutes**

MOTION: Councilmember Smith moved to approve the minutes of the regular meeting of January 3, 2019 as submitted; Chair Smith seconded and the motion PASSED UNANIMOUSLY.

3. **Citizens' Comments**

Jim Raih, 3904 Cameron Boulevard, praised Director Pitts for the job he does managing the temporary help in his department; he suggested that the role of temporary workers could be expanded in the Public Works Department. He also suggested hiring an entry-level person who could learn and move up the ladder to become a CDL driver. He expressed his support for a trash campaign with a tag line like, "If you bring it, take it home;" if the saying were to become fact, the City would not need to have trash cans or trash removal on the beach or be looking for cans with lids for the beach. He commented that the beach sweeps were doing part of the Schupp contract for him. On item D under Old Business, he was in favor of allowing residents to solve problems in their neighborhoods.

4. **Monthly Reports for January 2019**

Director Pitts stated that household garbage was comparable to the volume in 2018, but debris was higher. Eadie's started another annual cycle of cleaning the island's ditches. The Director reported that the drop inlet at 29th and Palm was lowered and vacuumed on the ocean side; he also noted that the ponding at the beach access path 31A causes the closure of Palm. The drainage issue on 22nd Avenue was checked by SCDOT and vacuumed. Based on the meeting between SCDOT and Directors Kerr and Pitts, they agreed to meet once a quarter to discuss problem areas on the island; from the initial meeting, SCDOT has nine (9) projects which they will address with multiple crews the third week of March. In the month of January, the shoulders of Palm Boulevard were stabilized with ROC, and the municipal parking lot was top dressed with the same product. Although the Public Works trucks incurred some rather substantial repairs, the Director expects to end the year within budget.

5. **Old Business**

A. **Update on Phase II Drainage project**

The Interim Administrator reported that work on 52nd Avenue has been completed, i.e. the infrastructure is in place and the landscaper follows to return the properties to their original

condition. All of the infrastructure is expected to be in the ground by the end of February, but the landscaping and repairs may take longer; therefore, the project should be completed the May, leaving plenty of spare time.

B. Update on trashcans with lids on the beach

Director Pitts reported that he has located the trashcans with lids in Myrtle Beach, but they are not using them; they use the same can IOP does. They recommended to Director Pitts that he use the lidded trashcans with a hole cut into the top for recycling.

C. Update on ditches and drainage issues

- **Marginal Road & 41st Avenue**

According to Director Pitts, SCDOT has been told that the problem is a flap, and they will schedule the repair.

Charleston County has been held up in stabilizing the sides of the Burke ditch at 32 – 32nd Avenue; Frank Pandullo said he will coordinate the work with the property owner.

D. Consideration of a proposal from resident to install a flap gate on Tabby Lane

Interim Administrator Fragoso told the residents present that in order for a flap gate to be installed the City would need a survey and an engineer's drawings and design; the estimate for the work from Civil Site Environmental is ten thousand dollars (\$10,000).

Jameson Howard of 7 Tabby Lane explained that the two (2) drain boxes drain onto 25th Avenue and that he and his neighbors were willing to pay to have the work done to eliminate the back flow of tidal waters that seem to constantly be on the road. He expressed the opinion that ten thousand dollars (\$10,000) was too high to do the surveying and engineering and that he was frustrated that the City was generating a problem in getting the work done.

The Interim Administrator stated that the ten thousand dollars (\$10,000) was a not to exceed amount. She added that Director Kerr has contacted Thomas and Hutton for their recommendation, and they have sent a different proposal. She explained that the City must have a statement from a certified engineer that the work to be done will not impact the surrounding areas and the City's overall drainage system.

Mr. Howard reiterated that they were not changing anything only trying to stop the back flow.

Interim Administrator Fragoso said that the City and the Committee was willing to share in the costs; the funds could come from the Drainage Contingency budget line.

Director Pitts said that this was a small isolated system, and he questioned that there would be enough head pressure to open the flap, plus the fact that they were easily broken. Mr. Howard was told that the City would share the proposal from Thomas and Hutton.

MOTION: Chair Rice moved to re-order the Agenda to discuss Item A under New Business; Councilmember Smith seconded and the motion PASSED UNANIMOUSLY.

A. Discussion of removal and replacement of failed cross-line pipes along Ocean Boulevard

The project to remove and replace the failed cross-line pipes along Ocean Boulevard is estimated to cost one hundred thousand dollars (\$100,000) and to take approximately forty-five (45) days. Frank Pandullo, Deputy Director of Public Works for Charleston County, said that he believes that the cost of the work should be reimbursable by FEMA. In the meantime, Charleston County will appeal the original FEMA decision. Either way, the Isle of Palms will only be responsible for materials that are estimated at twenty-five thousand dollars (\$25,000). The project will begin on March 15th with a competitive bid process.

Chair Rice said that she wanted to hear FEMA's decision on the appeal before anything happens.

The failed cross-lines are located at the following addresses on Ocean Boulevard: 108, 112, 120, 202, 212, and 308. Mr. Pandullo assured the Committee that the work would not be done over the summer months and that they would keep one (1) lane open at all times.

Interim Administrator Fragoso stated that, if the FEMA decision was negative, the City would still be responsible for the materials and that Charleston County and the State would be responsible for the balance.

5. Old Business

E. Consideration of Ordinance 2019-04 – An ordinance amending Title 3, Public Works, Chapter 4, Single Use Plastic Bags

The Interim Administrator reminded the Committee that this amendment adds plastic straws, plastic stirrers and polystyrene to the ban on single-use plastic bags, but omits cutlery, plastic cup lids and condiments packaging. The ordinance was approved for First Reading at the January Council meeting.

When Councilmember Smith asked why these items were excluded, Chair Rice responded that she hoped to encourage people to bring their own containers and to encourage businesses to have the large pump bottles for some condiments.

Interim Administrator Fragoso told the Committee that she was trying to coordinate a meeting with the Front Beach business owners to discuss the public transit initiative and would add the expansion of the plastics ban to the agenda. She anticipated the expansion would go into effect January 1, 2020, giving the businesses time to transition.

Councilmember Smith noted that the plastics ban had not picked up any momentum on the state level.

6. New Business

B. Consideration of an award of a contract to Butler Chrysler Dodge Jeep in the amount of \$50,659.00 for two (2) Pick-Up Trucks (\$25,329.50 each) [Pg. 25, In 120 – Muni ATAX, Public Works Capital Outlay - \$33,500 and pg. 29, In. 281 – State ATAX, Public Works Capital Outlay - \$33,500]

Director Pitts told the Committee that his truck was still at Jones Ford from its being stolen. He also stated that the Dodge truck was on state contract.

MOTION: Chair Rice moved to purchase the 2 Dodge trucks as described above at state contract pricing; Councilmember Smith seconded and the motion PASSED UNANIMOUSLY.

C. Discussion of revenue generating opportunities

1. Consideration of implementation of a 3% franchise fee on IOP Water and Sewer

Interim Administrator Fragoso recalled that this was discussed at the Special Ways and Means Committee meeting on January 31, 2019 and repeated that the City has constitutional approval to charge franchise fees. The fee would appear on the water and sewer bills; the fee would be billed and collected by the Water and Sewer Commission.

Councilmember Smith asked if the franchise fee would be only on the water portion of a bill; she opined that residents who have sewer would be paying twice.

The Interim Administrator was informed by Kristen Champagne that the sewer expansion plan was included in the Master Plan.

Chair Rice said that she would like to see the expansion plan before deciding on a franchise fee; she added that, if the City were to impose a franchise fee that was billed and collected by the Water and Sewer Commission, those collections could be the City's contribution to the expansion project. The Chair noted that Wild Dunes was the Water and Sewer Commission's biggest customer.

2. Consideration of increasing the NPDES stormwater fee

This revenue generator was also discussed at the January 31st meeting, and the consensus was to increase the fee to seventy-two dollars (\$72) per year.

Councilmember Smith said that she did not like applying the fee to every household and business on the island; someone with a small J.C. Long house did not create a stormwater footprint as large as a three (3) story rental property. She thought that the stormwater fee should be based on the square footage of impervious surface as it was for business properties.

The Interim Administrator informed the Committee that staff reached out to the NPDES Stormwater Management Program staff to inquire about whether the residential stormwater fee could be based on impervious surfaces rather than across the board. The NPDES program manager said that it could be done, but it would be a tremendous amount of work to determine how much impervious surface covered each residential lot.

The City would need to build a database and a series of maps that show the coverage of every lot based on aerial photographs and GIS measuring. Then take these maps, field verify the surfaces and correct, if, for instance, the driveway was gravel and not concrete as had been recorded. The process is estimated to cost the City approximately three hundred sixty-six thousand dollars (\$366,000).

MOTION: Councilmember Smith moved to recommend to the Ways and Means Committee to increase the residential stormwater fee to \$72 per year for FY20; Chair Rice seconded and the motion PASSED UNANIMOUSLY.

D. Discussion of FY20 Operating Budget for the Public Works Committee

Interim Administrator Fragoso stated that each department budget has a two and one half percent (2.5%) provision for employee wage increases, and health insurance expenditures are projected with an eight percent (8%) increase.

Eight thousand dollars (\$8,000) of State Accommodations Taxes are being saved by retrofitting the roof of the Public Works Building. Since the roof must be replaced, Councilmember Smith asked if staff had considered a solar roof. Included in the Capital Projects fund for FY20 is the final engineering, design and permitting for Phase II drainage at two hundred thousand dollars (\$200,000).

City-wide landscaping is budgeted with a base price of seventy thousand dollars (\$70,000) and additional funds for improved landscaping and irrigation on City-owned properties.

Contracted Services in the Hospitality Fund covers the street sweeping contract and the commercial dumpster service.

This first version of the Public Works Operating Expenses totals two million one hundred thirty thousand dollars (\$2,130,000).

8. Miscellaneous Business

Next Meeting Date: 9:00 a.m., Thursday, March 7, 2019 in the Conference Room

9. Executive Session – not needed

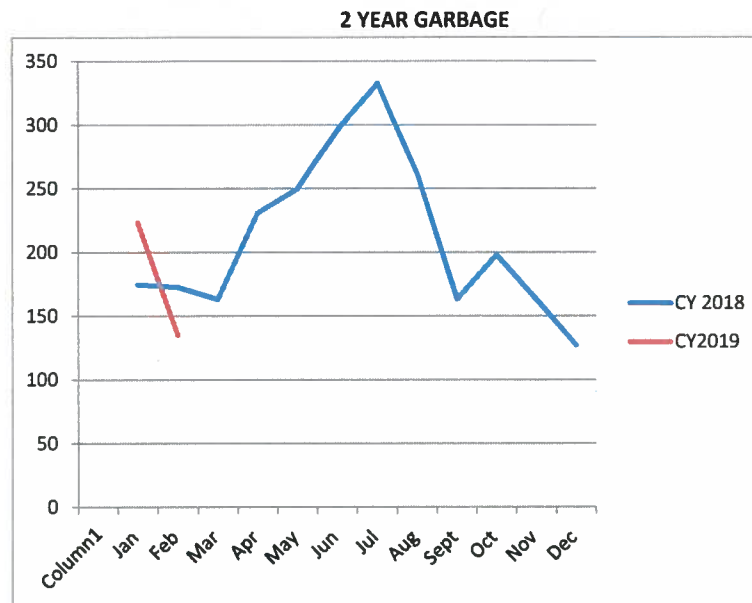
10. Adjournment

MOTION: Councilmember Smith moved to adjourn the meeting at 10:57 a.m.; Chair Rice seconded and the motion PASSED UNANIMOUSLY.

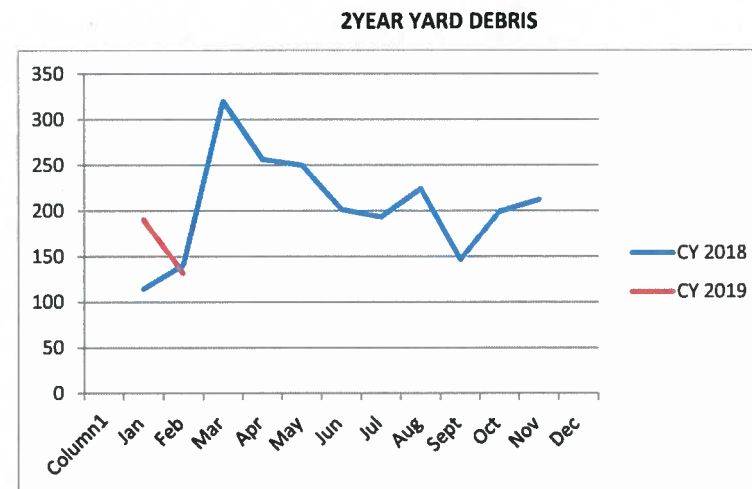
Respectfully submitted:

Marie Copeland
City Clerk

| | CY 2018 | CY2019 |
|---------|---------|--------|
| Column1 | | |
| Jan | 174.69 | 223.61 |
| Feb | 172.71 | 135.17 |
| Mar | 163.25 | |
| Apr | 230.87 | |
| May | 249.85 | |
| Jun | 296.1 | |
| Jul | 332.64 | |
| Aug | 261.2 | |
| Sept | 163.41 | |
| Oct | 198 | |
| Nov | 163.27 | |
| Dec | 127.02 | |



| | CY 2018 | CY 2019 |
|---------|---------|---------|
| Column1 | | |
| Jan | 114.3 | 190.61 |
| Feb | 140.72 | 131.74 |
| Mar | 320.2 | |
| Apr | 256.24 | |
| May | 249.91 | |
| Jun | 201.29 | |
| Jul | 193.36 | |
| Aug | 224.47 | |
| Sept | 146.88 | |
| Oct | 199.28 | |
| Nov | 212.21 | |
| Dec | | |



Action Items

Storm water pipe breach at the marina ust construction zone. Repaired by contractor.
Corrected a contractor error of fuel exhaust pipe location on marina ust project

General duties

Sanitation:

22.68 tons of C&D were transported to the Bees Ferry landfill in February.

Landscaping/Road Maintenance:

Cleaned the IOP connector of heavy debris

Repaired the pot holes in parking area at IOP marina reported by IOPPD.

Pressure washed the Compactor pad 3 times

Cleaned, mowed and edged muni. Parking lot in preparation of March 1st oper

Storm Water:

Eadie's drain and vac continues to clean the drainage systems on the island.

VEHICLE MAINTENANCE Beginning Budget \$85,000.00

| | | |
|-------------------------|------------------------------------|-----------|
| 02/01/2019 10-4620.5017 | VEHICLE MAINTENANCE BEG. BALANCE | 57,864.75 |
| 02/01/2019 CR RCPT | MISCELLANEOUS 8552 | 81.73 |
| 02/01/2019 AP INV | VINYL NUMBERS, NUTS & BOLTS - PWD | 6.59 |
| 02/01/2019 AP INV | PWD - BOND ADHESIVE | 4.35 |
| 02/01/2019 AP INV | SIGNAL LIGHTS PW26 | 9.14 |
| 02/11/2019 AP INV | REAR LENS AI46305 | 31.61 |
| 02/11/2019 AP INV | HYDRAULIC HOSE PW22 | 132.72 |
| 02/12/2019 AP INV | PW-16 2016 MACK SOLENOID VALVE | 1,729.76 |
| 02/14/2019 AP INV | IT14G - TROUBLESHOOT FAULT CODES, | 768.60 |
| 02/20/2019 AP INV | COOLANT HOSE PW1 5023854 | 41.93 |
| 02/20/2019 AP INV | REBUILD HYDRAULIC CYLINDERS PW14 | 598.23 |
| 02/20/2019 AP INV | PW-22 2008 MACK (2) TIRES REPLACED | 1,304.87 |
| 02/25/2019 AP INV | REPAIRS TO 2012 FORD F150 | 2,822.86 |
| 02/28/2019 AP INV | REAR LIGHTS FOR FLAT BED PW 28 | 100.30 |
| 02/28/2019 10-4620.5017 | END BALANCE | 7,550.96 |
| | | 65,333.98 |



THOMAS & HUTTON

682 JOHNNIE DODDS BOULEVARD, SUITE 100 | POST OFFICE BOX 1522
MT. PLEASANT, SC 29464 | 843.849.0200
WWW.THOMASANDHUTTON.COM

February 25, 2019

Mr. Douglas Kerr
City of Isle of Palms
P.O. Drawer 508
Isle of Palms, SC 29451

Re: Tabby Lane Outfall Improvement
City of Isle of Palms, South Carolina
Scope of Services and Fees

Dear Mr. Kerr:

Thank you for requesting our engineering services for the Tabby Lane Outfall Improvement Project. Please find the enclosed Scope of Services and Fee Proposal.

We understand that the Project consists of the following: A study of the existing conditions and proposed drainage improvements to address flooding conditions during high tides on Tabby Lane. The Scope of Services includes:

1. Engineering Analysis and
2. Recommendations.

See the attached Scope of Services for details of the services to be provided. Payment for our services will be as described in the attached General Provisions. You will be billed monthly for our services rendered and for Reimbursable Expenses.

We propose that payment for our services will be as follows:

| Phase | Fee Structure | Fee or Time & Expense Budget |
|-----------------------|-------------------------|---|
| Survey | Lump Sum | \$ 1,500.00 |
| Design Phase | Lump Sum | \$ 5,630.00 |
| Reimbursable Expenses | Time & Expense – Budget | \$ 200.00 |
| TOTAL | | \$ 7,500.00 |

The above fee arrangements are on the basis of prompt payment of our invoices and the orderly and continuous progress of the Project through construction.

We anticipate commencement of our work within 7 calendar days from receipt of your authorization to proceed with completion within 30 calendar days from commencement.

Mr. Douglas Kerr
City of Isle of Palms
Scope of Services and Fees
February 25, 2019
Page 2

This proposal between the City of Isle of Palms (Owner), and Thomas & Hutton Engineering Co. ("Consultant" or "Thomas & Hutton"), consisting of the Scope of Services, Engineering Services Rate Sheet, and this letter with authorized signatures, represents the entire understanding between you and us with respect to the Project. This agreement may only be modified in writing if signed by both of us.

It is our understanding that no work will commence until written authorization is provided to us by you for the Project.

If the arrangements set forth in these documents are acceptable to you, *please sign and initial the enclosed documents in the spaces provided below and return to us.* This proposal will be open for acceptance until March 1, 2019, unless changed by us in writing.

We appreciate the opportunity to prepare this proposal and look forward to working with you on the Project.

The parties agree and acknowledge that any of the parties hereto may execute this agreement by electronic signature, and the other party may rely upon such electronic signature as an original record of signature.

Very truly yours,

THOMAS & HUTTON ENGINEERING CO.

By

Richard P. Karkowski, PE, PH, CPSWQ, D.WRE
Water Resources Department Manager

RPK/ala

Enclosures: Scope of Services
General Provisions
Consulting Services Rate Sheet

INTRODUCTION AND BACKGROUND

The City of Isle of Palms (City) intends to prevent flooding from tidal inundation along Tabby Lane. The area of study will be limited to the alignment of the existing storm drain system located on Tabby Lane that extends west through a drainage easement to its outfall in an existing ditch along 25th Avenue.

SCOPE OF SERVICES

Our proposed Scope of Services includes the following phases and tasks:

1.0 SURVEY

1.1 Field Survey

2.0 DESIGN PHASE

2.1 Engineering Analysis

2.2 Recommendations

2.3 Design Plan

1.0 Survey

1.1 Field Survey

Limited survey data will be collected to augment the available data from T&H's in-house library of GIS mapping data. Some missing data will need to be collected and some "spot" survey data may be collected to confirm the available data. T&H has assumed ½ day of field surveying for this task.

2.0 Design Phase

2.1 Engineering Analysis

An analysis will be performed to determine what level of protection can be provided from the installation of backflow prevention.

2.2 Recommendations

A summary of the engineering analysis and the recommendations for improvements will be provided to the City.

2.3 Design Plan

A single design plan sheet (plan and profile) will be prepared based on the approved recommended plan from the City. The plan sheet will be provided to the City for use in the procurement of construction contractor.

EXCLUSIONS

Items not included in the Scope of Services are as follows:

- Hydrologic and/or Hydraulic modeling.
- Archaeological survey and report.
- Wetland delineation, surveys, or permits.

**SCOPE OF SERVICES AND FEE PROPOSAL BETWEEN
THOMAS & HUTTON ENGINEERING CO. (CONSULTANT) AND THE CITY OF ISLE OF PALMS (OWNER)
TABBY LANE OUTFALL IMPROVEMENT**

FEBRUARY 25, 2019

- Geotechnical investigation or report.
- Phase one or phase two environmental assessments.
- Endangered species survey and report.
- Off-site work, unless specifically covered in the Scope of Services.
- Approvals or permits.
- Act as an expert witness for legal activities.
- Subsurface utility engineering.
- SCDOT encroachment permit
- Project Specifications.
- Construction Services.

These items can be coordinated or provided if requested by the City in writing.

DRAFT

**SCOPE OF SERVICES AND FEE PROPOSAL BETWEEN
THOMAS & HUTTON ENGINEERING CO. (CONSULTANT) AND THE CITY OF ISLE OF PALMS (OWNER)
TABBY LANE OUTFALL IMPROVEMENT**

FEBRUARY 25, 2019

PAYMENT FOR SERVICES

For services rendered, OWNER shall pay CONSULTANT as outlined in the Letter Agreement for Services.

Payment for services on the basis of "Time & Expense" shall be paid in accordance with the schedule of charges attached hereto.

Project related costs for printing, reproductions, materials, and travel will be billed as reimbursable expenses.

Projects will be billed monthly or at the completion of the work, whichever comes sooner, with payment due upon receipt. Payment shall be considered overdue after forty-five (45) days from date of invoice, with interest charged at a monthly rate of 1.5 percent (18 percent annual rate).

CONSULTANT reserves the right to suspend work hereunder or any other work to be performed by CONSULTANT for OWNER or any of its affiliates under a separate agreement or agreements with CONSULTANT in the event of delinquent payment by OWNER to CONSULTANT hereunder or in the event of delinquent payment by OWNER or its affiliates to CONSULTANT under a separate agreement or agreements. For all purposes hereof, affiliate shall mean (i) in the case of an individual, any relative of any person listed among the following; (ii) any officer, director, trustee, partner, manager, employee or holder of 5 percent or more of any class of the voting securities of or equity interest in the OWNER; (iii) any corporation, partnership, limited liability company, trust or other entity controlling, controlled by or under common control with the OWNER; or (iv) any officer, director, trustee, partner, manager, employee or holder of 5 percent or more of the outstanding voting securities of any corporation, partnership, limited liability company, trust or other entity controlling, controlled by, or under common control with the OWNER.

In the event legal action is necessary to enforce the payment terms of this Agreement, the CONSULTANT shall be entitled to collect from the OWNER any judgment or settlement sums due, plus reasonable attorneys' fees, court costs and other expenses incurred by the CONSULTANT for such collection action and, in addition, the reasonable value of the CONSULTANT's time and expenses spent for such collection action, computed according to the CONSULTANT's prevailing fee schedule and expense policies.

ASSIGNMENT

Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by the CONSULTANT as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

OWNER'S RESPONSIBILITIES

A. Access

OWNER shall make provisions for the CONSULTANT to enter upon public and private lands as required to perform such work as surveys and inspections in development of the Project.

B. OWNER's Representative

The OWNER shall designate in writing one person to act as OWNER's Representative with respect to the work to be performed under this Agreement. This Representative shall have complete authority to transmit instructions, receive information, interpret, and define OWNER's policy and decisions, with respect to the product, materials, equipment, elements, and systems pertinent to the work covered by this Agreement.

C. Fees

The OWNER is responsible for payment of fees associated with the project. Such fees include permit review and application fees, impact fees, and capacity fees. The CONSULTANT will notify the OWNER regarding the amount of fees and timing of payment.

CONSULTANT'S RESPONSIBILITIES

In providing services under this Agreement, the CONSULTANT shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. No other representation, expressed or implied, and no warranty or guarantee is included or intended in the Agreement, or in any report, opinion, document, or otherwise.

OWNERSHIP OF INSTRUMENTS OF SERVICE

All reports, drawings, specifications, computer files, electronic files, BIM models, field data, notes and other documents and instruments prepared by CONSULTANT as instruments of service shall remain the property of the CONSULTANT. The CONSULTANT shall retain all common law, statutory, and other reserved rights, including, without limitation, the copyrights thereto. The CONSULTANT shall retain these records for a period of two (2) years following their completion during which period paper copies will be made available to the Project OWNER at reasonable times.

ELECTRONIC FILES

In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by the CONSULTANT, the OWNER agrees that all such electronic files are instruments of service of the CONSULTANT, who shall be deemed the author, and shall retain all common law, statutory law and other rights, without limitation, including copyrights.

The OWNER agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The OWNER agrees not to transfer these electronic files to others without the prior written consent of the CONSULTANT. The OWNER further agrees to waive all claims against the CONSULTANT resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the CONSULTANT.

The OWNER is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the CONSULTANT and electronic files, the signed or sealed hard-copy construction documents shall govern.

In addition, the OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees and subconsultants (collectively, CONSULTANT) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the CONSULTANT or from any reuse of the electronic files without the prior written consent of the CONSULTANT.

Under no circumstances shall delivery of electronic files for use by the OWNER be deemed a sale by the CONSULTANT, and the CONSULTANT makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the CONSULTANT be liable for indirect or consequential damages as a result of the OWNER's use or reuse of the electronic files.

SCOPE OF SERVICES AND FEE PROPOSAL BETWEEN

THOMAS & HUTTON ENGINEERING CO. (CONSULTANT) AND THE CITY OF ISLE OF PALMS (OWNER)

TABBY LANE OUTFALL IMPROVEMENT

FEBRUARY 25, 2019

CERTIFICATIONS, GUARANTEES, AND WARRANTIES

The CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in the CONSULTANT's having to certify, guarantee or warrant the existence of conditions whose existence the CONSULTANT cannot ascertain or any way might, in the sole judgment of the CONSULTANT, increase the CONSULTANT's contractual or legal obligations or risks, or adversely affect the availability or cost of its professional or general liability insurance. The OWNER also agrees not to make resolution of any dispute with the CONSULTANT or payment of any amount due to the CONSULTANT in any way contingent upon the CONSULTANT's signing any such certification.

ACCESSIBILITY

The OWNER acknowledges that the requirements of the Americans with Disabilities Act (ADA), Fair Housing Act (FHA) and other federal, state and local accessibility laws, rules, codes, ordinances and regulations will be subject to various and possibly contradictory interpretations. The CONSULTANT, therefore, will use its reasonable professional efforts and judgment to interpret applicable accessibility requirements in effect as of the date of [the execution of this Agreement, submission to building authorities, or other appropriate date] and as they apply to the Project. The CONSULTANT, however, cannot and does not warrant or guarantee that the OWNER's Project will comply with all interpretations of the accessibility requirements and/or the requirements of other federal, state, and local laws, rules, codes, ordinances, and regulations as they apply to the Project. Any changes in the applicable law or contrary interpretations of existing law subsequent to the issues of permits which requires CONSULTANT to perform redesign will be considered an additional service.

SUBSTITUTIONS

Upon the written request or direction of OWNER, CONSULTANT shall evaluate and advise OWNER with respect to proposed or requested changes in materials, products, or equipment. CONSULTANT shall be entitled to rely on the accuracy and completeness of the information provided in conjunction with the requested substitution. CONSULTANT shall not be responsible for errors, omissions, or inconsistencies in information by others or in any way resulting from incorporating such substitution into the Project. OWNER shall be invoiced for this service on a Time & Expense basis unless both parties mutually agree on a lump sum fee.

OPINIONS OF PROBABLE COSTS

Since the CONSULTANT has no control over the cost of labor, materials, or equipment, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, his opinions of probable construction costs provided for herein are to be made on the basis of his experience and qualifications. These opinions represent his best judgment as a design professional familiar with the construction industry.

However, the CONSULTANT cannot and does not guarantee that proposals, bids, or the construction cost will not vary from opinions of probable construction costs prepared by him.

BETTERMENT

If, due to the CONSULTANT's negligence, a required item or component of the Project is omitted from the CONSULTANT's construction documents, the CONSULTANT shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the CONSULTANT be responsible for any cost or expense that provides betterment, upgrades, or enhances the value of the Project.

CHANGED CONDITIONS

If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the CONSULTANT are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the CONSULTANT may call for renegotiation of appropriate portions of this Agreement. The CONSULTANT shall notify the OWNER of the changed conditions necessitating renegotiation, and the CONSULTANT and the OWNER shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement in accordance with the Termination provision hereof.

CODE COMPLIANCE

The CONSULTANT shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations in effect as of the date of this agreement was written. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the CONSULTANT to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement.

In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over this Project, the CONSULTANT shall notify the OWNER of the nature and impact of such conflict. The OWNER agrees to cooperate and work with the CONSULTANT in an effort to resolve this conflict.

VALUE ENGINEERING

(If) OWNER has elected to engage in value engineering of the Project, OWNER has established cost as a primary project objective over other programming, performance, and aesthetic objectives and recognizes that in doing so, it has limited the available design and product options. These limitations may impact the overall project cost, schedule, and performance. OWNER has accepted these risks and impacts in recognition of the importance it has placed on project cost.

DELEGATED DESIGN

Where any design services are provided by persons or entities not under CONSULTANT's direct control, CONSULTANT's role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT's design and portion of the project. Except to the extent, it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.

LIMITS OF LIABILITY

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or the CONSULTANT. The CONSULTANT's services under this Agreement are being performed solely for the OWNER's benefit, and no other party or entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services hereunder. The OWNER and CONSULTANT agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors, and other entities involved in this Project to carry out the intent of this provision.

To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the CONSULTANT and the CONSULTANT's officers, directors, partners, employees and sub-consultants, and any of them, to the OWNER and anyone claiming by or through the

SCOPE OF SERVICES AND FEE PROPOSAL BETWEEN

THOMAS & HUTTON ENGINEERING CO. (CONSULTANT) AND THE CITY OF ISLE OF PALMS (OWNER)

TABBY LANE OUTFALL IMPROVEMENT

FEBRUARY 25, 2019

OWNER (including, but not limited to construction contractors & subcontractors), for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed \$10,000. **It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. This liability cap may be increased by mutual consent of both parties and in exchange for additional compensation.**

It is our understanding the OWNER has elected to exclude Construction Observation and Monitoring from this contract. Based on this understanding, the OWNER assumes all responsibility for interpretation of the documents and for construction observation and supervision activities and waives any claims against the CONSULTANT that may in any way connected thereto. In addition, the OWNER agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any loss, claim, or cost including reasonable attorneys' fees resulting from the performance of such services by other persons or entities and all claims arising from clarifications, interpretations, or changes made to the contract documents or work specified therein to reflect field or other changes made except for sole negligence or willful misconduct of the CONSULTANT. Any requests for specific construction observation services and agreed to by the CONSULTANT will be paid as Additional Services by the OWNER.

TIME BAR TO LEGAL ACTION

All legal actions by either party against the other arising out of or in any way connected with this Agreement or the services to be performed hereunder shall be barred and under no circumstances shall any such legal action be initiated by either party after five (5) years from the date of Substantial Completion, unless this Agreement shall be terminated earlier, in which case the date of termination of this Agreement shall be the date on which such period shall commence. Nothing in this Agreement is construed to waive any protections granted under existing laws of the state in which the work is performed.

ACTS OF OTHERS

The CONSULTANT shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). CONSULTANT shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents.

The CONSULTANT shall not be responsible for the acts or omissions of any Contractor, or sub-contractor, or any of the Contractor(s)', or sub-contractors' agents, or employees or any other persons (except CONSULTANT's own employees and agents) at the site or otherwise performing any of the Contractor(s)' work. However, nothing contained herein shall be construed to release CONSULTANT from liability for failure to perform properly the duties undertaken by CONSULTANT in the Contract Documents.

The CONSULTANT shall not be responsible for the acts, omissions, means, methods, or specifications of other design professionals not directly retained by CONSULTANT. **Unless specifically stated otherwise, the CONSULTANT's work and responsibility under this Contract terminates at the building pad or within five (5) feet of the building, whichever is greater, for any proposed building shown on the plans. The OWNER/Architect/Contractor is responsible for compliance with codes, regulations, manufacturer specifications, and construction methods related to the building structure. In no circumstance is the CONSULTANT responsible for any portion of the building, especially as it relates to moisture or mold.**

INDEMNIFICATION

The CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and

employees (collectively, OWNER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the CONSULTANT's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the CONSULTANT is legally liable.

The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees and subconsultants (collectively, CONSULTANT) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the OWNER is legally liable.

Neither the OWNER nor the CONSULTANT shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

CONSEQUENTIAL DAMAGES

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the OWNER and the CONSULTANT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

DISPUTE RESOLUTION

Any dispute or claim arising out of or relating to this Agreement shall be determined as follows: CONSULTANT and OWNER will negotiate in good faith to reach agreement. If negotiations are unsuccessful, CONSULTANT and OWNER agree the dispute shall be settled by mediation. In the event the dispute or any issues remain unresolved after the above steps, the disagreement shall be decided by such remedies of law as they are available to the parties. The appointment of a mediator and location will be subject to agreement between CONSULTANT and OWNER with each party being responsible for their portion of those costs.

JOBSITE SAFETY

Neither the professional activities of the CONSULTANT, nor the presence of the CONSULTANT or its employees and subconsultants at a construction/project site, shall impose any duty on the CONSULTANT, nor relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The CONSULTANT and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The OWNER agrees that the General Contractor shall be solely responsible for jobsite and worker safety and warrants that this intent shall be carried out in the OWNER's contract with the General Contractor. The OWNER also agrees that the General Contractor shall defend and indemnify the OWNER, the CONSULTANT and the CONSULTANT's subconsultants. The OWNER also agrees that the OWNER, the CONSULTANT and the CONSULTANT's subconsultants shall be made additional insureds

**SCOPE OF SERVICES AND FEE PROPOSAL BETWEEN
THOMAS & HUTTON ENGINEERING CO. (CONSULTANT) AND THE CITY OF ISLE OF PALMS (OWNER)
TABBY LANE OUTFALL IMPROVEMENT**

FEBRUARY 25, 2019

under the General Contractor's policies of general liability insurance.

HAZARDOUS MATERIAL

Both parties acknowledge that the CONSULTANT's scope of services does not include any services related to the presence of any hazardous or toxic materials and/or mold. In the event the CONSULTANT or any other person or entity involved in the project encounters any hazardous or toxic materials and/or mold, or should it become known to the CONSULTANT that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the CONSULTANT's services, the CONSULTANT may, at its sole option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the OWNER retains appropriate qualified consultants and/or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

APPLICATIONS FOR PERMITS AND CERTIFICATES REQUESTED ON BEHALF OF OWNER

The OWNER shall indemnify and hold the CONSULTANT harmless from and against any and all judgments, losses, damages, and expenses (including attorney fees and defense costs) arising from or related to claims by third parties to challenge the issuance of permits or certificates for the Project by agencies with jurisdiction in the premises. Defense costs shall include the time and expenses of the CONSULTANT's personnel to assist in the defense of the issuance of the permit or certificate.

TERMINATION

In the event of termination of this Agreement by either party, the OWNER shall within fifteen (15) calendar days of termination pay the CONSULTANT for all services rendered and all reimbursable costs incurred by the CONSULTANT up to the date of termination, in accordance with the payment provisions of this Agreement.

Either party may terminate this Agreement for the convenience and without cause upon giving the other party not less than fifteen (15) calendar days' written notice.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar day's written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or the CONSULTANT's services by the OWNER for more than ninety (90) calendar days, consecutive or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of any termination that is not the fault of the CONSULTANT, the OWNER shall pay the CONSULTANT, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the CONSULTANT in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

SIGNAGE

OWNER agrees to allow CONSULTANT to place a sign on the job site during construction. The sign will include general information relative to the CONSULTANT. CONSULTANT shall be responsible for the sign installation and removal.

AMENDMENT

This Agreement for Services can be amended by addenda if agreed to in writing and signed by both parties.



Consulting Services on a Time and Expense Basis

January 1, 2019 – Rev. January 30, 2019

Thomas & Hutton provides services on a time and expense basis as follows:

1. This basis includes allowance for direct salary expenses and for direct non-salary expenses. It also provides for services we may subcontract to others.
2. Direct salary expenses are generally based upon our payroll costs. The payroll costs include the cost of salaries and wages (including sick leave, vacation, and holiday pay) for time directly chargeable to the project; plus, unemployment, excise, payroll taxes, and contributions for social security, employment compensation insurance, retirement benefits, and medical and insurance benefits.

The current hourly rate charges for each skill position for 2019 are as follows:

| Hourly Rate | Engineer | Survey | Landscape | GIS | Quality Control | Business/ Administrative |
|-------------|---|--|---|--------------------|-------------------------------|---|
| \$ 240.00 | Consultant | Consultant | Consultant | Consultant | Consultant | |
| \$ 220.00 | Senior Manager | Senior Manager | Senior Manager | Senior Manager | Senior Manager | Senior Manager |
| \$ 200.00 | Project Manager V Project Engineer V | Survey Manager V Project Surveyor V Survey Party (3–Men) | Landscape Architect V LA Project Manager V | GIS Manager V | | |
| \$ 185.00 | Project Manager IV Project Engineer IV | Survey Manager IV Project Surveyor IV | Landscape Architect IV LA Project Manager IV | GIS Manager IV | | Senior Application Developer IV, Software/Computer Consultant IV |
| \$ 170.00 | Project Manager III Project Engineer III | Survey Manager III Project Surveyor III | Landscape Architect III LA Project Manager III | GIS Manager III | | Senior Application Developer III, Software/Computer Consultant III |
| \$ 160.00 | Project Manager II Project Engineer II | Survey Manager II Project Surveyor II | Landscape Architect II LA Project Manager II | GIS Manager II | Construction Administrator II | Senior Application Developer II, Software/Computer Consultant II |
| \$ 145.00 | Project Manager I Project Engineer I | Survey Manager I Project Surveyor I Survey Party (2–Men) | Landscape Architect I LA Project Manager I | GIS Manager I | Construction Administrator I | Senior Application Developer I, Software/Computer Consultant I |
| \$ 135.00 | Designer IV Engineering Technician IV | Staff Surveyor V Survey Field Supervisor | Landscape Designer IV | GIS Analyst IV | Field Representative V | Application Developer IV |
| \$ 125.00 | Designer III Engineering Technician III | Staff Surveyor IV | Landscape Designer III | GIS Analyst III | Field Representative IV | Application Developer III |
| \$ 115.00 | Designer II Engineering Technician II | Staff Surveyor III | Landscape Designer II | GIS Analyst II | | Application Developer II |
| \$ 105.00 | Designer I Engineering Technician I | Survey Party (1–Man) Staff Surveyor II | Landscape Designer I | GIS Analyst I | Field Representative III | Application Developer I, Permit Coordinator II, Admin IV |
| \$ 95.00 | CADD Technician III | Survey Technician III Staff Surveyor I | Landscape Technician III | GIS Technician III | Field Representative II | Permit Coordinator I |
| \$ 90.00 | CADD Technician II | Survey Technician II | Landscape Technician II | GIS Technician II | | |
| \$ 85.00 | CADD Technician I | Survey Technician I | Landscape Technician I | GIS Technician I | Field Representative I | Admin III |
| \$ 80.00 | | | | | | Admin II |
| \$ 75.00 | | | | | | Admin I |
| \$ 400.00 | Expert Witness | | | | | |

3. When warranted, overtime will be charged for any non-salary employees. Overtime hours will be billed at 1-1/2 times the individuals charge rate.
4. Direct non-salary (reimbursable) expenses, including printing, reproduction, air travel, lodging, and meals are billed at cost. Travel in company or private vehicles will be billed at \$0.55 per mile and may be revised based on fuel pricing. Outside consultant fees will be billed at 1.15 times the cost.
5. All rates and charges are effective through January 1, 2020, including printing, reproductions, materials, and travel and are subject to change at that time. New rates and costs will become immediately effective to contracts in effect at the time of rate changes.

ORDINANCE 2015-

AN ORDINANCE AMENDING TITLE 3, PUBLIC WORKS, OF THE CITY OF ISLE OF PALMS CODE OF ORDINANCES, CHAPTER 4, SINGLE-USE PLASTIC BAGS.

WHEREAS, City Council of the City of Isle of Palms, South Carolina has a duty to protect its natural environment, its economy, and the health of its citizens;

WHEREAS, in an effort to further this goal, the City desires to eliminate the use of plastic straws, plastic stirrers and polystyrene products;

WHEREAS, City Council of the City of Isle of Palms finds that it is in the best interests of the environment, marine life, and residents of the City to reduce the use of plastic straws, plastic stirrers and polystyrene products distributed by business establishments;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE MAYOR AND COUNCIL MEMBERS OF THE CITY OF ISLE OF PALMS, SOUTH CAROLINA, IN CITY COUNCIL ASSEMBLED:

SECTION 1. That Title 3, Public Works, Chapter 4 is hereby amended to state as follows:

“CHAPTER 4. – SINGLE USE PLASTIC BAGS ENVIRONMENTALLY ACCEPTABLE PACKAGING AND PRODUCTS

Sec. 3-4-1. – Purpose.

This chapter is adopted to improve the environment of the City of Isle of Palms by encouraging the use of reusable, recyclable and compostable products and ~~—checkout bags—~~ and banning the use of single-use plastic bags, polystyrene/plastic foam products, plastic straws and stirrers ~~for retail checkout of purchased goods at the point of sale.~~ Business establishments are encouraged to make reusable, recyclable and compostable products—bags available for sale.

Sec. 3-4-2. – Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) ASTM Standard means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for compostable plastics, as those standards may be amended

(2) Business establishment means any commercial enterprise that provides

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the products described herein to its customers through its employees or independent contractors associated with the business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity whether for profit or not for profit. This term is inclusive of any store or business which sells or offers goods or merchandise, located or operating within the City of Isle of Palms, including those referenced in "Food or Grocery Establishment," and "Food Provider." means any commercial enterprise that provides carryout bags to its customers through its employees or independent contractors associated with the business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity whether for profit or not for profit.

(3)(2) Carryout bag means a bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases.

(4) Compostable means all the materials in the product or package, when composted in an industrial or municipal compost operation, will break down, or otherwise become part of, usable compost (e.g. soil-conditioning material, mulch) in a safe and timely manner. Compostable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic. Compostable products are considered compostable under this section only if a Business Establishment or Food or Grocery Establishment using the products is composting them with an industrial or municipal compost operation.

(5) Disposable Food Service Ware is interchangeable with "to go" packaging and "food packaging material" and includes, but is not limited to: all containers, clamshells, bowls, plates, trays, cartons, cups, plastic drink lids, straws, stirrers, to-go condiments and other items designed for one-time use associated with prepared foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Providers.

(6) Food or Grocery Establishment means all sales outlets, stores, shops, vehicles or other places of business located within the Town which operate to sell or convey foods, or beverages, which foods or beverages are predominantly contained, wrapped or held in or on packaging. Food establishment shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant, drive-in, convenience store, coffee shop, cafeteria, short-

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order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, take-out prepared food place, industrial feeding establishment, catering kitchen, mobile food preparation unit, commissary, event, grocery store, public food market, produce stand, food stand, or similar place in or at which food or drink is prepared for sale, or for service, on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served, sold, or provided for the public and any organization, group or individual which provides food as part of its service.

(7) *Food Provider* means any vendor, business, organization, entity, group or individual, including food establishments, as defined herein, located in the City that offers food or beverage to the public.

(8) *Person* means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.

(9) *Polystyrene/Plastic Foam* means blown expanded and extruded polystyrene (sometimes called Styrofoam™) or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, egg cartons, coolers, ice chests, shipping boxes, and packing peanuts. The term "polystyrene also includes clear or solid polystyrene which is known as "oriented polystyrene."

(10) *Prepared Food* means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the City. Prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.

(11) *Polystyrene/plastic foam products* means any item such as coolers, ice chests, cups, bowls, plates, clamshells, shipping boxes, containers, or any other merchandise containing polystyrene/plastic foam that is not wholly encapsulated or encased by a more durable material.

(12) *Recyclable* means any material that is accepted by the Charleston County recycling program, including, but not limited to paper, glass, aluminum, cardboard and plastic bottles, jars and tubs. This also means any approved alternative products which are accepted by the County recycling centers.

(13)

~~(3)~~ *Reusable carryout bag* means a carryout bag that is specifically designed and

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manufactured for multiple reuse, and meets the following criteria:

- (a) displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled;
- (b) has a handle, except that handles are not required for carryout bags constructed out of recyclable paper with a height of less than 14 inches and width of less than 8 inches; and
- (c) is constructed out of any of the following materials:
 - (i) Cloth, other washable fabric, or other durable materials whether woven or non-woven;
 - (ii) Recyclable plastic, with a minimum thickness of 2.25 mils; or
 - (iii) Recyclable paper.

(14) *Single-use plastic carryout bag* means a carryout bag that is not a reusable carryout bag.

Sec. 3-4-3. Single Use Plastic Carryout Bags.

- a) No Business Establishment or Food or Grocery Establishment may provide Single-Use Plastic Carryout Bags at any City facility, City-sponsored event, or any event held on City property.
- a)b) No Business Establishment or Food or Grocery Establishment within the City limits may provide single use plastic bags implements to its customers at point of sale.
- c) Nothing in this Chapter prohibits customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag.

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Sec. 3-4-4. Polystyrene/Plastic Foam Disposable Food Service Ware.

- a) Food Providers within the City may not provide food in any disposable food service ware that contains polystyrene/plastic foam.
- b) Disposable food service ware that contains polystyrene/plastic foam is prohibited from use in all City facilities.

- c) City Contractors in the performance of City contracts and events promoters may not provide food in disposable food service ware that contains polystyrene/plastic foam.

Sec. 3-4-5: Disposable Food Service Ware.

- a) All Food or Grocery Establishments and Food Providers within the City utilizing disposable food service ware shall use recyclable or compostable products, subject to the provisions of Sec. 3-4-7.
- b) City Contractors and events promoters utilizing disposable food service ware shall use recyclable or compostable products while performing under a City contract or permit.

Sec. 3-4-6. Prohibited Sales

- a) No Business Establishment a, or event promoter in the City of Isle of Palms may sell, rent, or otherwise provide any polystyrene/plastic foam product which is not wholly encapsulated or encased within a more durable material, except as exempted in this Ordinance. This specifically includes, but is not limited to cups, plates, bowls, clamshells, and other products intended primarily for food service use.

Sec. 3-4-7. Exemptions for Recyclable or Properly Composted Food Service Ware and Other Polystyrene/Plastic Foam Products.

- a) Products made from polystyrene/plastic foam which is wholly encapsulated or encased by a more durable material are exempt from the provisions of this chapter. Examples include surfboards, boats, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and durable coolers not principally composed of polystyrene/plastic foam.
- b) Construction products made from polystyrene/plastic foam are exempted from this ordinance if the products are used in compliance with Town Code and used in a manner preventing the polystyrene/plastic foam from being released into the environment
- c) Emergency, Hospital, and Medical Supply and Services Procurement: In an emergency situation and for the immediate preservation of the public peace, health or safety, or when a disposable straw is needed by customers due to medical or physical conditions and for whom flexible compostable paper straws are unsuitable, Town facilities, food vendors, Town franchises, contractors and vendors doing business with the Town shall be exempt from the provisions of this Chapter.
- d) Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of

multiple bags intended for use as garbage, pet waste, or yard waste; although the town encourages the use of recyclable or compostable products throughout.

e) Bags provided by physicians, dentists, pharmacists or veterinarians to contain prescription drugs or other medical necessities;

f) Bags used by a customer or an employee of a business establishment to:

i. Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;

ii. Contain or wrap raw or frozen foods, any meat product, whether seasoned or other processed, or any seafood product, whether or not prepackaged;

iii. Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or

iv. Contain unwrapped prepared foods or bakery goods;

g) Bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items; and

h) Bags of any type that the customer brings to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store.

i) Meat trays, plastic lids used to contain foods and liquids, and cutlery (i.e.: forks, spoons, knives) are exempt from the provisions of this Chapter.

j) Any product purchased, prepared or packaged outside the ~~Town of Mount Pleasant~~City of Isle of Palms and sold in or delivered into the ~~Town~~City are exempt from the provisions of this Chapter.

k) Any packaging used by Food or Grocery Establishments that is required in order to comply with South Carolina Department of Health and Environmental Control Retail Food Establishment Regulation 61-25 or similar food safety regulation, or with federal food safety laws or regulations.

l) Packaging used by Food or Grocery Establishments that are predominantly made of paper, including wax paper products, paper products that have a clear plastic window and paper products, like paper cups or soup bowls that are lined in plastic, which are used to package ready-to-eat foods.

City

(5) Customer means a person who purchases merchandise from a business establishment.

Sec. 3-4-3. Regulations:

(1) No person may provide single use carryout bags at any City facility, City-sponsored event, or any event held on City property.

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- (2) ~~No business establishment within the City limits may provide single-use carryout bags to its customers.~~
- (3) ~~Business establishments within the City limits are strongly encouraged to provide prominently displayed signage advising customers of the benefit of reducing, reusing and recycling and promoting the use of reusable carryout bags by customers.~~
- (4) ~~A business establishment within the City limits may provide or sell reusable carryout bags to its customers or any person. Subject to hours of operation and applicable regulations regarding the use of public property, including those pertaining to solicitation and commercial activities on public property, a person may provide or sell reusable carryout bags at any City facility, City sponsored event, or any event held on City property.~~ ^[1] _[SEP]

~~Sec. 3 4 4. Exemptions.~~

~~This chapter shall not apply to:~~ ^[1] _[SEP]

- (1) ^[1] _[SEP] ~~Laundry dry cleaning bags, door hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;~~ ^[1] _[SEP]
- (2) ^[1] _[SEP] ~~Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities;~~ ^[1] _[SEP]
- (3) ^[1] _[SEP] ~~Bags used by restaurants to take away prepared food;~~ ^[1] _[SEP]
- (4) ^[1] _[SEP] ~~Bags used by a customer inside a business establishment to:~~ ^[1] _[SEP]
 - (a) ^[1] _[SEP] ~~Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;~~
 - (b) ^[1] _[SEP] ~~Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;~~
 - (c) ^[1] _[SEP] ~~Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or~~ ^[1] _[SEP]
 - (d) ^[1] _[SEP] ~~Contain unwrapped prepared foods or bakery goods;~~

~~(5) ^{11.1} Bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items; and~~

~~(6) Bags of any type that the customer brings to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store.~~

Sec. 3-4-5. – Enforcement and penalties.

(1) The Police Department has primary responsibility for enforcement of this chapter. The designated Livability Officer is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any business establishment during business hours.

(2) If the Livability Officer determines that a violation of this chapter has occurred, he/she will issue a written warning notice to the owner or operator of the business establishment that a violation has occurred and the potential penalties that will apply for future violations.

(3) Any business establishment that violates or fails to comply with any of the provisions of this chapter after a written warning notice has been issued for that violation shall be deemed guilty of a misdemeanor and shall for each violation, upon conviction thereof, be punished as provided in section 1-3-66. The penalty shall not exceed One Hundred (\$100.00) Dollars for a first violation; Two Hundred (\$200.00) Dollars for a second violation within any twelve (12) month period; and Five Hundred (\$500.00) Dollars for each additional violation within any twelve (12) month period. Each day that a violation continues will constitute a separate offense.

(4) In addition to the penalties set forth in this section, repeated violations of this chapter by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. No City business license shall be issued or renewed until all fines outstanding against the applicant for violations of this chapter are paid in full.

(5) Violation of this chapter is hereby declared to be a public nuisance, which may be abated by the City by restraining order, preliminary and

permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

Sec. 3-4-6. – Effective date and waivers.

All of the requirements set forth in this chapter shall take effect ~~January 1, 2016~~. In the event that compliance with the effective date of this chapter is not feasible for a business establishment because of either unavailability of alternative checkout bags or economic hardship, City Council may grant a waiver of not more than twelve (12) months upon application of the business owner or owner's representative."

SECTION 2. That should any part of this Ordinance be held invalid by a Court of competent jurisdiction, the remaining parts shall be severable therefrom and shall continue to be in full force and effect.

SECTION 3. That all ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as the same affect this Ordinance.

SECTION 4. That this Ordinance take effect and be in full force immediately.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE _____ DAY OF _____, 201~~9~~⁵.

~~Richard F. Cronin~~Jimmy Carroll, Mayor

(Seal)

Attest:

Marie B. Copeland, City Clerk

First Reading: _____
Second Reading: _____
Ratification: _____

February 20, 2019

Ms. Desiree Fragoso
Interim City Administrator
City of Isle of Palms, SC
1207 Palm Boulevard
Isle of Palms, SC 29451

Re: Drainage Connection Request for 48th Avenue

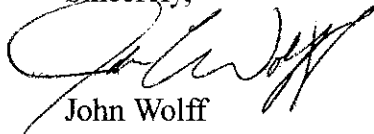
Dear Ms. Fragoso,

As you are aware, 48th Avenue experiences drainage and flooding issues similar to those experienced by other beachfront avenues. In order to resolve these issues we would like to request permission from the City to connect to the City's recently installed drainage line on Palm Blvd.

We have retained Civil Site Environmental to provide engineering design and construction plans so that we may construct a piped drainage system to collect runoff and to connect to the City's system. Additionally, we will obtain all necessary permits for the construction of the system.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Wolff', is written over the printed name.

John Wolff
President/Member
48th Avenue LLC

South Carolina Secretary of State Mark Hammond

Business Entities Online

File, Search, and Retrieve Documents Electronically

48TH AVENUE, LLC

Corporate Information

Entity Type: Limited Liability Company**Status:** Good Standing**Domestic/Foreign:** Domestic**Incorporated State:** South Carolina

Important Dates

Effective Date: 03/14/2013**Expiration Date:** N/A

:

Term End Date: 12/31/2099**Dissolved Date:** N/A

Registered Agent

Agent: CUSTIS M BYARS ESQ**Address:** 435 FRESHFIELD'S VILLAGE DR STE H-200
JOHNS ISLAND, South Carolina 29455

Official Documents On File

| Filing Type | Filing Date |
|--------------|-------------|
| Organization | 03/14/2013 |

For filing questions please contact us at 803-734-2158

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**OPERATING AGREEMENT
OF
48th Avenue, LLC**

This Operating Agreement of 48th Avenue, LLC (the "LLC"), a South Carolina Limited Liability Company organized on the 20th day of March, 2013, is hereby adopted by John C. Wolff, Trustee of the Irrevocable Trust Created By Ann B. Crane, dated December 19, 2012, as its sole member.

**ARTICLE I
ORGANIZATION**

- 1.1 **Formation.** The LLC has been organized as a South Carolina Limited Liability Company by the filing of Articles pursuant to the South Carolina Uniform Limited Liability Act of 1996 (the "Act") and the issuance of a certificate of existence for the LLC by the Secretary of State of South Carolina.
- 1.2 **Name.** The name of the LLC is 48th Avenue, LLC and all LLC business must be conducted in that name or such other names that comply with applicable law as the Member may select from time to time.
- 1.3 **Designated Office.** The designated office of the LLC required by the Act to be maintained in the State of South Carolina shall be the office of the initial registered agent named in the Articles or such other office (which need not be a place of business of the LLC) as the Member may designate from time to time in the manner provided by law.
- 1.4 **Registered Agent.** The registered agent of the LLC in the State of South Carolina shall be the initial registered agent named in the Articles or such other Person or Persons as the Member may designate from time to time in the manner provided by law.
- 1.5 **Term.** The LLC commenced on the date the Articles were filed with the Secretary of State of South Carolina for the LLC and the LLC shall be an at-will Company, as that term is defined in the Act.

**ARTICLE II
MEMBER**

- 2.1 **Additional Members.** Additional Persons may be admitted to the LLC as Members and Memberships may be created and issued to those Persons and to the Member at the direction of the Member and on such terms and conditions as the Member may determine at the time of admission. The

terms of admission or issuance must specify the percentage of Net Profit and Net Loss allocable to such Person and the Capital Contribution applicable thereto, and may provide for the creation of different classes or groups of Members having different rights, powers and duties. The Member shall reflect the creation of any new class or group in an amendment to this Operating Agreement indicating the different rights, powers and duties.

- 2.2 **Liabilities to Third Parties.** Except as otherwise expressly agreed in writing, no Member shall be liable for the debts, obligations or liabilities of the LLC, including under a judgment decree or order of a court.

ARTICLE III CAPITAL CONTRIBUTIONS

The Member's Capital Contribution is described in Exhibit A. No interest shall accrue on any Capital Contribution.

ARTICLE IV MANAGEMENT BY MEMBER

- 4.1 **Management by Member.** The powers of the LLC shall be exercised by or under the authority of, and the business and affairs of the LLC shall be managed under the direction of the Member. The Member may make all decisions and take all actions for the LLC not otherwise provided for in this Operating Agreement, including, without limitation, the following:
- A. entering into, making and performing contracts, agreements and other undertakings binding the LLC that may be necessary, appropriate or advisable in furtherance of the purposes of the LLC and making all decisions and waivers thereunder;
 - B. opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
 - C. maintaining the assets of the LLC in good order;
 - D. collecting sums due the LLC;
 - E. to the extent that funds of the LLC are available therefore, paying debts and obligations of the LLC;
 - F. acquiring, utilizing for LLC purposes, and disposing of any assets of the LLC;

- G. borrowing money or otherwise committing the credit of the LLC for LLC activities and voluntary prepayments or extensions of debt;
- H. selecting, removing and changing the authority and responsibility of lawyers, accountants and other advisors and consultants;
- I. obtaining insurance for the LLC; and
- J. determining distributions of LLC cash and other property.

ARTICLE V INDEMINIFICATION

The LLC shall indemnify the Member and agents for all costs, losses, liabilities and damages paid or accrued by the Member or agents in connection with the business of the LLC to the fullest extent provided or allowed by the laws of this State.

ARTICLE VI DISSOLUTION, LIQUIDATION AND TERMINATION

- 6.1 **Dissolution.** The LLC shall dissolve and its affairs shall be wound up on the first to occur of the following:
- A. the written consent of the Member;
 - B. upon the withdrawal, death, retirement, resignation, expulsion, bankruptcy or dissolution of the Member or the occurrence of any other event which terminates the continued membership of the Member in this Company; or
 - C. administrative dissolution as provided in Section 33-44-809 of the Act.
- 6.2 **Winding up and termination.** On dissolution of the LLC, the Member, or in the event of the death of the Member, the Member's Personal Representative or Executor, will act as liquidator. The liquidator shall proceed diligently to wind up the affairs of the LLC and shall make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a LLC expense. Until final distribution, the liquidator shall continue to operate the LLC properties with all of the power and authority of the Member. The liquidator shall pay, satisfy, or discharge from LLC funds all of the debts, liabilities, and obligations of the LLC or otherwise make adequate provision for payment and discharge thereof. All remaining assets of the LLC shall be distributed to the Member or, in the event of the death of the Member, the Member's estate.

- 6.3 **Articles of Termination.** After the dissolution of the LLC pursuant to Section 33-44-801 of the Act, the Member, or in the event of the death of the Member, the Member's Personal Representative or Executor, shall file Articles of Termination with the Secretary of State of South Carolina and take such other actions as may be necessary to terminate the LLC.

The undersigned, being the sole Member, hereby certifies that the foregoing Operating Agreement was adopted by the Member, effective the date first noted above.



John C. Wolff, Trustee of the Irrevocable
Trust Created By Ann B. Crane, dated
December 19, 2012

EXHIBIT A

| Member | Capital Contribution |
|--|-----------------------|
| John C. Wolff, Trustee of the Irrevocable Trust Created By Ann B. Crane, dated December 19, 2012 | \$ <u>2.2</u> MILLION |