

COUNTY COUNCIL OF BEAUFORT COUNTY
ADMINISTRATION BUILDING
BEAUFORT COUNTY GOVERNMENT ROBERT SMALLS COMPLEX
100 RIBAUT ROAD

POST OFFICE DRAWER 1228
BEAUFORT, SOUTH CAROLINA 29901-1228

TELEPHONE: (843) 255-2180

www.beaufortcountysc.gov

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D. PAUL SOMMERVILLE
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JOSEPH F. PASSIMENT, JR.

ASHLEY M. JACOBS
COUNTY ADMINISTRATOR

SARAH W. BROCK
CLERK TO COUNCIL

AGENDA

FINANCE COMMITTEE

Tuesday, September 3, 2019

1:00 p.m.

Executive Conference Room, Administration Building
Beaufort County Government Robert Smalls Complex
100 Ribaut Road, Beaufort

Committee Members:

Joseph Passiment, Chairman
Chris Hervochon, Vice Chairman
Gerald Dawson
Mark Lawson
Paul Sommerville

Staff Support:

Suzanne Gregory, Employee Service Director
Alicia Holland, CPA,
Assistant County Administrator, Finance

1. CALL TO ORDER – 1:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. INTRODUCTIONS

[Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act]

4. APPROVAL OF AGENDA

5. CITIZEN COMMENTS (Comments regarding agenda items only)

6. EXECUTIVE SESSION

A. Receipt of legal advice regarding application of impact fee credits - Thomas J. Keaveny, II, County Attorney

B. Receipt of legal advice regarding county transportation committee - Thomas J. Keaveny, II, County Attorney

7. MATTERS ARISING OUT OF EXECUTIVE SESSION

8. ACTION ITEMS

A. Consideration of two separate funding Ordinances for the Jenkins Island Safety Improvements project – Robert McFee, PE, Division Director Construction, Engineering and Facilities (backup)



- B. A Resolution authorizing an exemption of property from ad valorem taxation - Thomas J. Keaveny, II, County Attorney (backup)**
- C. A Resolution approving the expenditure of the 2006 1 Cent Transportation Sales Tax Program Remaining Funds - Thomas J. Keaveny, II, County Attorney and Robert McFee, PE, Division Director Construction, Engineering and Facilities (backup)**
- D. A Resolution implementing a Regional Housing Trust Fund and discussion of expending \$65,000 as Beaufort County's share - Eric Greenway, Community Development Director (backup)**
- E. Change Order #1 to Savannah Construction's contract for the relocation of the Historic Latrine for the Fort Fremont Interpretive Center, increasing the current contract price by \$54,603.88 - Stefanie M. Nagid, Passive Parks Manager (backup)**

9. DISCUSSION

- A. An Ordinance authorizing the execution and delivery of a Fee Agreement between Beaufort County and Project Burnt Church Distillery – John O’Toole, Executive Director, Economic Development Corporation (backup)**
- B. An Ordinance establishing the Finance Committee as the Internal Audit Committee – Chris Inglese, Deputy County Attorney (backup)**
- C. An Ordinance to suspend the millage limitation imposed by SC Code section 6-1-320 and increase the millage rate by a surcharge of an additional 3.3 mill based on a request from the Beaufort County School Board – Alicia Holland, Assistant County Administrator, Finance & Tonya Crosby, Beaufort County School District, CFO (backup)**
- D. Rollback Millage Verification status update – Alicia Holland, Assistant County Administrator, Finance**

10. INFORMATIONAL ITEMS

- A. Beaufort County Airport Wetlands Mitigation - FAA Reimbursement – Jon Rembold, Beaufort County Airports Director (backup)**
- B. Act 223 of the 2018 Boat and Watercraft Taxation – Jim Beckert, Beaufort County Auditor**

11. ADJOURNMENT



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Funding Ordinances for Jenkins Island Safety Improvements project

Council Committee:

Joint Committee of Public Facilities and Finance August 19, 2019

Meeting Date:

Finance Committee September 3, 2019

Committee Presenter (Name and Title):

Rob McFee,

Issues for Consideration:

Legal issues to be heard in Executive Session

Points to Consider:

278 Corridor project and its relation to the proposed safety improvements.

Funding & Liability Factors:

2017 GO Bond funds
Proposed impact fee funds from South Beaufort County service area
NEPA liability regarding EIS

Council Options:

To be discussed in Executive Session

Recommendation:

To Be Determined.

2019/ ____

AN ORDINANCE TO APPROPRIATE \$210,381.00 FROM THE BLUFFTON ROAD IMPACT FEE FUND FOR THE US 278 SAFETY IMPROVEMENTS PROJECT ACROSS JENKINS ISLAND.

WHEREAS, the South Carolina Code of Laws, §4-9-130, requires public notice and an ordinance to make appropriations of County funds; and

WHEREAS, Beaufort County Council's Rules and Procedures also require public notice and an ordinance for appropriations of County funds; and

WHEREAS, in recent years, there has been a developing safety concern related to the intersection of Windmill Harbor's neighborhood entrance at US Highway 278 and County staff has been engaged in efforts to address the safety concerns; and

WHEREAS, preliminary design for the Jenkins Island safety improvements was submitted and comments received from SCDOT and the Town of Hilton Head Island; and

WHEREAS, the County received three bids for the Jenkins Island safety improvements and the lowest bid for the project, with an 8% contingency, is a total of \$9,687,431.00, and

WHEREAS, the project is within the bounds of the overall US 278 Corridor Project which is expected to begin construction in 2022 or 2023, however it is not known to what extent the Jenkins Island safety improvements will be incorporated into the US 278 Corridor Project;

WHEREAS, Ordinance 2016/32 provided for \$51,000,000.00 in general obligations for the purposes of: (i) defraying the costs of the County Rural and Critical Land Preservation Program, stormwater utility projects, and public safety capital projects; (ii) paying costs of issuance of the Bonds; and (iii) such other lawful purposes as the County Council shall determine; and

WHEREAS, County Council has previously appropriated up to \$7,400,000.00 to the Jenkins Island roadway improvements as one of the public safety capital projects to be funded from the 2017 General Obligations Bond funds; and

WHEREAS, the current available balance in the 2017 General Obligations bond fund is \$7,181,363.00; and

WHEREAS, the Public Facilities Committee met in a joint committee meeting with the Finance Committee on August 19, 2019 to consider the award of a contract to the lowest bidder, Quality Enterprises; and

WHEREAS, the Public Facilities Committee recommended approval of the award of the contract to Quality Enterprises as recommended by County staff subject to the funding ordinances being approved by Council; and

WHEREAS, County staff recommends \$7,181,363.00 of the project be funded from the 2017 General Obligations Bond fund, \$2,295,688.03 be funded from the Hilton Head Island/Daufuskie Island Road Impact Fees fund, and \$210,380.60 be funded from the Bluffton Impact Fees fund; and

WHEREAS, the available balance in the Bluffton Road Impact Fee fund is \$15,371,337.13; and

WHEREAS, County Council finds that in the interest of public safety, health and welfare that the Jenkins Island safety improvements be funded and scheduled for construction pursuant to the award of the contract to Quality Enterprises.

NOW, THEREFORE, BE IT ORDAINED, by Beaufort County Council, duly assembled, that an amount of \$210,381.00 is hereby appropriated from the Bluffton Road Impact Fee fund to be directed to the cost of the Jenkins Island safety improvements project.

DONE this ___ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____

Stewart H. Rodman, Chairman

ATTEST:

Sarah W. Brock, Clerk to Council.

Chronology

- Third and final reading occurred
- Public hearing occurred
- Second reading occurred
- First reading approval occurred
- Committee discussion and ...

2019/ ____

AN ORDINANCE TO APPROPRIATE \$2,295,688.00 FROM THE HILTON HEAD ISLAND/DAUFUSKIE ISLAND ROAD IMPACT FEE FUND FOR THE US 278 SAFETY IMPROVEMENTS PROJECT ACROSS JENKINS ISLAND.

WHEREAS, the South Carolina Code of Laws, §4-9-130, requires public notice and an ordinance to make appropriations of County funds; and

WHEREAS, Beaufort County Council's Rules and Procedures also require public notice and an ordinance for appropriations of County funds; and

WHEREAS, in recent years, there has been a developing safety concern related to the intersection of Windmill Harbor's neighborhood entrance at US Highway 278 and County staff has been engaged in efforts to address the safety concerns; and

WHEREAS, preliminary design for the Jenkins Island safety improvements was submitted and comments received from SCDOT and the Town of Hilton Head Island; and

WHEREAS, the County received three bids for the Jenkins Island safety improvements and the lowest bid for the project, with an 8% contingency, is a total of \$9,687,431.00, and

WHEREAS, the project is within the bounds of the overall US 278 Corridor Project which is expected to begin construction in 2022 or 2023, however it is not known to what extent the Jenkins Island safety improvements will be incorporated into the US 278 Corridor Project;

WHEREAS, Ordinance 2016/32 provided for \$51,000,000.00 in general obligations for the purposes of: (i) defraying the costs of the County Rural and Critical Land Preservation Program, stormwater utility projects, and public safety capital projects; (ii) paying costs of issuance of the Bonds; and (iii) such other lawful purposes as the County Council shall determine; and

WHEREAS, County Council has previously appropriated up to \$7,400,000.00 to the Jenkins Island roadway improvements as one of the public safety capital projects to be funded from the 2017 General Obligations Bond funds; and

WHEREAS, the current available balance in the 2017 General Obligations Bond fund is \$7,181,363.00; and

WHEREAS, the Public Facilities Committee met in a joint committee meeting with the Finance Committee on August 19, 2019 to consider the award of a contract to the lowest bidder, Quality Enterprises; and

WHEREAS, the Public Facilities Committee recommended approval of the award of the contract to Quality Enterprises as recommended by County staff subject to the funding ordinances being approved by Council; and

WHEREAS, County staff recommends \$7,181,363.00 of the project be funded from the 2017 General Obligations Bond fund, \$2,295,688.03 be funded from the Hilton Head Island/Daufuskie Island Road Impact Fees fund, and \$210,380.60 be funded from the Bluffton Impact Fees fund; and

WHEREAS, the available balance in the Hilton Head Island/Daufuskie Island Road Impact Fee account is \$2,295,688.03; and

WHEREAS, County Council finds that in the interest of public safety, health and welfare that the Jenkins Island safety improvements be funded and scheduled for construction pursuant to the award of the contract to Quality Enterprises.

NOW, THEREFORE, BE IT ORDAINED, by Beaufort County Council, duly assembled, that an amount of \$2,295,688.00 is hereby appropriated from the Hilton head Island/Daufuskie Island Road Impact Fee fund to be directed to the cost of the Jenkins Island safety improvements project.

DONE this ____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____

Stewart H. Rodman, Chairman

ATTEST:

Sarah W. Brock, Clerk to Council.

Chronology

- Third and final reading occurred
- Public hearing occurred
- Second reading occurred
- First reading approval occurred
- Committee discussion and ...

DRAFT



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Resolution Authorizing Exemption of Property from Ad Valorem Taxation

Council Committee:

Finance

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):

Thomas J. Keaveny, II County Attorney

Issues for Consideration:

On April 28, 2014, Beaufort County adopted Ordinance 2014-9. This ordinance approved a Development Agreement between Jaz 278, LLC and Beaufort County. The proposed development was Bluffton Gateway Commercial Center. The area to be developed contained a Brownfield site. Under state law, non-responsible parties who remediate Brownfield sites may, if they satisfy all the requirements imposed by the legislature, qualify for an exemption from ad valorem taxes for a period of five years from the year of completion. Article XI.D. of the Development Agreement, Brownfield Voluntary Cleanup Exemption, provides that upon issuance of the DHEC Certificate of Completion for the Brownfield Voluntary Cleanup Program, Beaufort County shall authorize and approve by resolution the exemption of property from ad valorem taxes as provided by the general laws of the State of South Carolina. DHEC issued the Certificate of Completion in 2015. Jaz 278 LLC is entitled to the exemption under state law and as provided for in the 2014 Development Agreement with Beaufort County.

Points to Consider:

See above.

Funding & Liability Factors:

None

Council Options:

Approval based on contractual obligations.

Recommendation:

Approve

**A RESOLUTION AUTHORIZING
AN EXEMPTION OF PROPERTY FROM
AD VALOREM TAXATION**

WHEREAS, Jaz 278, LLC is a Georgia Limited Liability Company authorized to conduct business in South Carolina and owner of certain Property consisting of sixty-six and 20/100 (66.20) acres of land known as Bluffton Gateway Commercial Center which is located at 34 Bluffton Road, Bluffton, South Carolina; and

WHEREAS, on July 7, 2014 Jaz 278, LLC and Beaufort County entered into an agreement known as Development Agreement for Bluffton Gateway Commercial Center (“Development Agreement”); and

WHEREAS, certain parcels of the Property are subject to a Non-Responsible Party Voluntary Cleanup Agreement (“Brownfield Voluntary Cleanup Agreement”) entered into by Jaz 278, LLC and the South Carolina Department of Health and Environmental Control (“DHEC”) pursuant to South Carolina Code of Laws, Section 44-56-710, et seq. (the “Volunteer Cleanup Program”); and

WHEREAS, the Brownfield Voluntary Cleanup Program provides for the exemption of certain ad valorem taxes pursuant to and as more particularly described in South Carolina Code of Laws, Section 12-37-220 (44) (“Brownfield Voluntary Cleanup Exemption”); and

WHEREAS, the Brownfield Voluntary Cleanup Exemption provides for a five (5) year exemption from certain ad valorem taxes upon the issuance of Certificate of Completion by DHEC (“DHEC Certificate of Completion”) and the subsequent approval by resolution of the appropriate governing body; and

WHEREAS, Beaufort County Council is the governing body contemplated by South Carolina Code of Laws, Section 12-37-220 (44); and

WHEREAS, Jaz 278, LLC has provided Beaufort County with a Certificate of Completion issued by DHEC dated March 16, 2015; and

WHEREAS, Jaz 278, LLC has further provided Beaufort County with copies of Tax Credit Certificates for Expenses Incurred through Brownfield Voluntary Cleanup Program for the years 2013 (\$86,239.94), 2014 (\$105,221.78) and 2015 (\$417,629.29); and

WHEREAS, Section XI.D. of the Development Agreement provides that the exemption shall be in the form of a refund by the County to the owner within ninety (90) days of the County’s receipt of (i) the payment in full of all ad valorem taxes due for the property, (ii) an itemized list with evidence of owner’s payment for costs and fees incurred for permitting and the actual cost of demolition, construction, remediation and testing requires to secure the DHEC Certificate of Completion and (iii) a certified copy of the DHEC Certificate of Completion.

NOW, THEREFORE, BE IT RESOLVED, that upon presentation of the items enumerated above, Jaz 278, LLC is exempt from ad valorem taxes (and ad valorem taxes only) pursuant to the general laws of the state of South Carolina for a period of five (5) years commencing in 2015.

DONE this _____ day of September, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____

Stewart H. Rodman
Chairman

ATTEST:

Sarah Brock
Clerk to Council



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Resolution for 2006 1 Cent Transportation Sales Tax Program Remaining Funds

Council Committee:

Finance

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):

Thomas J. Keaveny, II, County Attorney and Robert McFee, PE, Division Director Construction, Engineering and Facilities

Issues for Consideration:

In 2015 Beaufort County substantially completed its SC 170 Widening project. This project was part of the 2006 sales tax referendum. As part of the project Beaufort County agreed to install water and sewer casing under SC 170. These casings were not installed and need to be installed now. BJWSA has agreed to perform the work at a cost of approximately \$200,000.

Points to Consider:

The casings were intended to be installed but were omitted.

Funding & Liability Factors:

Remaining 2006 1 Cent Transportation Sales Tax Funds

Council Options:

Approve or disapprove the request.

Recommendation:

Staff recommends Council approve the request.

RESOLUTION

WHEREAS, on August 14, 2006, Beaufort County Council adopted a Sales Tax Ordinance which identified ten (10) infrastructure projects with an estimated completion cost of One Hundred Fifty-Two Million Dollars (\$152,000,000) and which called for a voter Referendum on whether the County should proceed with the projects; and

WHEREAS, a Referendum to approve the expenditure of One Hundred Fifty-Two Million Dollars (\$152,000,000) by implementation of a one percent (1%) sales tax was held and approved by Beaufort County voters in November 2006; and

WHEREAS, construction of the projects is complete and a remainder of approximately \$2,272,000.00 exists which must be programmed and expended on the approved projects; and

WHEREAS, on May 13, 2019, Council adopted Resolution 2019-20 which authorizes the County to use the remaining funds to complete several projects which are a part of, and incidental to, the ten (10) projects approved by the voters in November 2006; and

WHEREAS, Council now wishes to add to that list of projects which were previously approved by Resolution 2019-20, the installation of water and sewer casings under the newly widened SC 170 at an anticipated cost of approximately \$200,000.

NOW, THEREFORE, IT IS HEREBY RESOLVED that County Council authorizes the expenditure of \$200,000 for water and sewer casings incidental to the widening of SC 170 and further authorizes the County Administrator to execute any and all documents necessary for the completion of the same.

Adopted this _____ day of September, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Stewart H. Rodman,
Chairman, Beaufort County Council

Attest:

Sarah Brock
Clerk to Council



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Housing Trust Fund Resolution Consideration

Council Committee:

Natural Resources

Meeting Date:

August 19, 2019

Committee Presenter (Name and Title):

Eric Greenway, Community Development Director

Issues for Consideration:

The SoLoCo Sub-committee on Housing Trust Funds has recommended a process for implementing a Regional Housing Trust Fund (see attached) which lays out a proposed amount for each jurisdiction to contribute toward the hiring and payment of a consultant who will work with an appointed Steering Committee to implement an HTF framework in order to establish the fund. Since Beaufort County has taken the lead on the Attainable Housing issue, our procurement and contract process will be used to authorize and hire the consultant.

Points to Consider:

Consider adopting the SoLoCo resolution to commit Beaufort County's share of the funding for the consultant.

Funding & Liability Factors:

Beaufort County's share is proposed to be an amount not to exceed \$65,000.

Council Options:

1. Adopt the resolution to commit the funding.
2. Reject the resolution.

Recommendation:

Staff recommends that the resolution be adopted to commit the funding for the HTF.

Process for Establishing the SoLoCo Regional Housing Trust Fund

1. Secure funding from each jurisdiction through IGAs for the consultant based on the following population based formula:

A. Beaufort County:	50%	65K*
B. Hilton Head Island:	20%	25K
C. Bluffton	12%	15K
D. Jasper County	08%	10K
E. Hardeeville	04%	5K
F. Beaufort City	04%	5K
G. Port Royal	04%	5K

*based on Greenville's 130K costs

2. Develop and distribute a Request for Qualifications using the Beaufort County Procurement process to hire a consultant to set-up and organize the HTF.
 - A. SoLoCo HTF sub-committee will obtain the blessing of the SoLoCo Board once the RFQ scope draft is completed.
 - B. Beaufort County Purchasing will coordinate the distribution and collection of submittals.
 - C. The SoLoCo HTF sub-committee will serve as the RFQ review team
 - D. Each jurisdiction's HTF Sub-committee representative will update their respective Administrators and Council on progress.
 - E. SoLoCo HTF sub-committee will obtain the blessing of the SoLoCo Board for the HTF Consultant selection recommendation.
3. The respective jurisdictions will begin their internal process for appointing the Steering Committee representatives while the HTF Sub-committee works with the NGOs to select their representative:
 - A. 2 Representatives from each jurisdiction
 - B. 1 Representative from each: Home Builders Association, Realtors Association, Habitat for Humanity, Jasper Neighbors United, Housing Authority, & Financial Industry.
 - C. HTF Sub-committee members serve as Advisory Committee to HTF Consultant and Steering Committee.
4. Consultant contract in place through Beaufort County and Steering Committee work will commence.

RESOLUTION No.

A RESOLUTION OF BEAUFORT COUNTY, SOUTH CAROLINA, COUNTY COUNCIL AUTHORIZING THE COUNTY ADMINISTRATOR TO EXPEND FUNDS FOR THE PURPOSES OF COST SHARING FOR CONTRACTING FOR CONSULTING SERVICES TO DEVELOP A REGIONAL AFFORDABLE HOUSING TRUST FUND.

WHEREAS, Beaufort County, SC is currently involved with and is a part of the Southern Lowcountry Regional Board (SOLOCO); and

WHEREAS, SOLOCO has recognized the need for housing that is attainable for all and particularly for those in the service industries and entry-level professional occupations; and

WHEREAS, SOLOCO has prioritized the need for a regional approach for attainable housing; and

WHEREAS, the SOLOCO members designated staff from each jurisdiction involved to serve on a Affording Housing Trust Fund Sub-committee to research and evaluate the feasibility of a regional affordable housing trust fund; and

WHEREAS, the Affordable Housing Trust Fund Sub-committee met on multiple occasions and determined that an outside independent contractor with specific expertise was needed to design the framework of such an organization and determine funding requirements and coordinate with the individual jurisdictions involved; and

WHEREAS, the Affordable Housing Trust Fund Sub-committee has drafted an RFP for consultant services; and

WHEREAS, the Affordable Housing Trust Fund Sub-committee will review responses to the RFP and provide a recommendation to SOLOCO; and

WHEREAS, the Affordable Housing Trust Fund Sub-committee developed a structure for cost sharing for each jurisdiction based on population.

NOW, THEREFORE, BE IT RESOLVED by the County Council of Beaufort County, SC:

The County Administrator is authorized to expend funds in an amount not to exceed \$65,000 as the County's portion of the contract.

PASSED AND ADOPTED by the County Council of Beaufort County, SC this ____ day of _____ 2019.

BEAUFORT COUNTY COUNCIL, SC

By: STEWART H. RODMAN, CHAIRMAN

ATTEST:

**APPROVED AS TO FORM
AND CORRECTNESS:**

CLERK TO COUNCIL

COUNTY ATTORNEY



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Fort Fremont - Savannah Construction Change Order #1

Council Committee:

Finance

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):

Stefanie M. Nagid, Passive Parks Manager

Issues for Consideration:

Change Order #1 to Savannah Construction's contract for the relocation of the historic latrine at Fort Fremont.

Points to Consider:

- 1) Spanish-American War era latrine is within the footprint of the interpretive center construction.
- 2) Friends of Fort Fremont and Council supported the relocation of the latrine in lieu of destruction.
- 3) Savannah Construction is currently under contract for construction of the interpretive center and can conduct the latrine relocation.
- 4) Cost increase only requires Committee level approval.

Funding & Liability Factors:

Change Order #1 will increase the current contract by \$54,603.88 for a total project cost of \$1,084,358.88 (5.3% increase).

Council Options:

- 1) Approve Change Order #1 or 2) Do not approve Change Order #1

Recommendation:

Approve Change Order #1 to Savannah Construction's contract for the relocation of the historic latrine for the Fort Fremont interpretive center construction project.

Mark Roseneau, Director
Facility Management
120 Shanklin Road
Beaufort, South Carolina 29906

August 20, 2019

Dear Mr. Roseneau,

Thank you for the opportunity to submit this proposal for providing our construction services. Our proposed scope of services and associated fee is detailed below.

Project: Ft. Fremont Interpretive Center - Historic Latrine Foundation Relocation
Scope of Services: Relocate Slab of Historic Latrine to New Foundation.

Proposal includes all labor, equipment, materials, supervision, insurance and bond fees to complete the scope of work.

Relocation of Historic Latrine Slab to a New Foundation at New Location.

Total: \$54,603.88

Notes:

- All work to be completed in a workmanlike manner according to the standard practices.
- Any alteration or deviation from above specifications involving extra costs will be executed only upon written change orders, and will become an extra charge over and above the proposal.
- Anything not explicitly included in this proposal is explicitly excluded.
- If roofing repairs are selected rather than replacement, then we can provide such pricing upon review of the structure.
- Price will expire in 30 days.

We look forward to the opportunity to work with you on this project. If you have any concerns about any part of this proposal, please contact me at your convenience.

Eric Davenport

CFO | Sr. Project Manger | Estimator
Savannah Construction & Preservation, LLC.
200 Blue Fin Circle, Suite 3 | Savannah, Georgia 31410
C: 910-373-8734 | eric@savannah-construction.com

Mark Roseneau
Facility Management
120 Shanklin Road
 Beaufort, South Carolina 22906

August 27, 2019

Dear Mark,

Project: FT. FREMONT INTERPRETIVE CENTER
Scope of Services: LATRINE RELOCATION SOV

Proposal includes all insurance, labor, equipment, materials, travel, and supervision to complete the scope of work.

SCHEDULE OF VALUES

• DEMO WALLS	\$ 7,519.98
• STEEL (LABOR & MATERIALS) {\$14,573.06}	\$ 14,573.06
• EXCAVATION (LABOR & MATERIALS)	\$ 8,130.00
• FOUNDATION MASONRY (LABOR & MATERIALS)	\$ 8,591.65
• RELOCATE WALLS (LABOR)	\$ 2,634.00
• CONCRETE	\$ 5,363.54
• LIFTING EQUIPMENT	<u>\$ 7,791.65</u>

Total: \$ 54,603.88

Notes:

- All work to be completed in a workmanlike manner according to the standard practices.
- While Savannah Construction & Preservation, LLC. has had great success with similar projects and will take every precaution to move the Latrine Foundation without incident, as with any project that involves moving a Historic Structure, there is always a chance that it will not survive the move and therefore Savannah Construction and Preservation cannot guarantee that it will.
- Any alteration or deviation from above specifications involving extra costs will be executed only upon written change orders, and will become an extra charge over and above the proposal.
- Anything not explicitly included in this proposal is excluded.
- Price will expire in 30 days.

We look forward to the opportunity to work with you on this project. If you have any concerns about any part of this proposal, please contact me at your convenience.

Eric Davenport



CFO | Sr. Project Manager | Estimator
 Savannah Construction & Preservation, LLC.
 200 Blue Fin Circle, Suite 3 | Savannah, Georgia 31410
 C: 910-373-8734 | eric@savannah-construction.com



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Discussion regarding the execution and delivery of a Fee Agreement between Beaufort County and Project Burnt Church Distillery

Council Committee:

Finance Committee

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):**Issues for Consideration:****Points to Consider:**

Backup items include:
Ordinance
Inducement Resolution that was adopted on July 22, 2019
Fee agreement

Funding & Liability Factors:

None.

Council Options:

Approve, Modify or Reject

Recommendation:

Approve

NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. It is hereby found, determined, and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.
- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) The Project gives rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either.
- (e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official’s execution thereof to constitute conclusive evidence of

such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 5. The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 6. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)

made using an appropriate cost-benefit analysis); and (iv) it has evaluated the Project considering all relevant and required factors, including, but not limited to, the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County, and all other criteria prescribed by law.

Section 2. The County hereby agrees to enter into a fee in lieu of tax arrangement with the Company under the Act. The County agrees to provide for a fee in lieu of *ad valorem* taxes (“FILOT”) for a period of 20 years for each component of the Project placed in service during the investment period (the “FILOT Term”) under the Act. The FILOT shall be calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 20 years for each component of the Project placed in service during the investment period.

Section 3. The further details of the FILOT shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute “preliminary approval” pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

Adopted this 22nd day of July, 2019.

BEAUFORT COUNTY, SOUTH CAROLINA

Signature:  _____

Name: Stewart H. Rodman,

Title: Chairman Beaufort County Council

(SEAL)
ATTEST:

Signature:  _____

Name: Sarah W. Brock

Title: Clerk to County Council

FEE AGREEMENT

Between

BEAUFORT COUNTY, SOUTH CAROLINA

and

PROJECT BURNT CHURCH

Dated as of _____, 2019

RECAPITULATION OF CONTENTS OF
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of _____, 2019 by and between BEAUFORT COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina (the “State”), acting by and through the Beaufort County Council (the “County Council”) as the governing body of the County, and PROJECT BURNT CHURCH (the “Company”).

RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) authorizes the County (i) to induce industries to locate in the State; (ii) to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property.

2. Pursuant to Section 12-44-40(H)(1) of the Act, the County finds that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted contemporaneously with the execution of this Fee Agreement (the “Fee Ordinance”) authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company enter into this Fee Agreement.

“Company” shall mean PROJECT BURNT CHURCH and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Beaufort County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Beaufort County Council, the governing body of the County.

“Department” shall mean the South Carolina Department of Revenue.

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2019 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 234.3 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2019, as provided under Section 12-44-50(A)(1)(d) of the Act. **COUNTY, PLEASE CONFIRM MILLAGE RATE FOR 7/1/18-6/30/19 FISCAL YEAR.**

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of _____, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to operate the Project as a manufacturing facility, and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of Payments-in-Lieu-of-Taxes to be made under Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Company's assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Manager, after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall constitute a part of the Project for all purposes of this Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company's liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, if the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents. In the event of a failure or refusal of the Company to comply with this provision, within 30 days after presentation of a statement by the County, the Company shall pay the attorney's fees the County incurs in producing and filing such documents and any fees, penalties, assessments, or damages that the law imposes upon the County by reason of its failure duly to file or produce such documents.

ARTICLE IV

PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty

assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2019, which is 234.3 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments. **[COUNTY: PLEASE CONFIRM MILLAGE.]**

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development

Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(c) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the

Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

- (i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and
- (ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however,* that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the

incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a

portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company’s employees and also upon the County. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such

disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses.

(a) The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorney's fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence.

ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be "Events of Default" under this Fee Agreement, and the term "Events of Default" shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however*, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company which is deemed materially incorrect when deemed made; or

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

(d) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action; or

(f) A cessation of operations at the Project by the Company.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company's failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (1) bring an action for specific enforcement;
- (2) terminate the Fee Agreement; or

- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred. The Company further agrees to pay reasonable legal fees and expenses and other expenses of the County.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE COMPANY:

Project Burnt Church

Attn: _____

IF TO THE COUNTY:

Beaufort County, South Carolina
Attn: County Administrator
P.O. Box 1228
Beaufort, SC 29901-1228

WITH A COPY TO:

Haynsworth Sinkler Boyd, P.A.
Attn: William R. Johnson
P.O. Box 11889
Columbia, SC 29211

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.5 Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company with the benefits of such change in the Act or South Carolina laws.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however,* that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following

business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

ARTICLE VII

INDEMNIFICATION, INDIVIDUAL LIABILITY

Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the “Indemnified Parties”), harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done on the Project during the Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees, or licensees of any assignee or sublessee of Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or the operation of the Project by the Company, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County, its agents, officers, or employees should incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm, or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to

(i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. All covenants, stipulations, promises, agreements, and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the County and shall be binding upon any member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**BEAUFORT COUNTY,
SOUTH CAROLINA**

Signature: _____
Name: _____
Title: _____

ATTEST:

Signature: _____
Name: _____
Title: Clerk to County Council

PROJECT BURNT CHURCH

Signature: _____
Name: _____
Title: _____

**EXHIBIT A
LEGAL DESCRIPTION**

[COMPANY: PLEASE PROVIDE LEGAL DESCRIPTION.]



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Audit Committee

Council Committee:

Finance Committee

Meeting Date:

March 4, 2019

Committee Presenter (Name and Title):

Christopher Inglese, staff attorney and Alicia Holland, CFO

Issues for Consideration:

1. how many and type of members
2. how often to meet or at election of committee chair
3. purpose and duties of committee

Points to Consider:

Timeline for reports and recommendations

Funding & Liability Factors:

no source of funding or amounts have been identified

Council Options:

continue to deliberate the details of a finance committee especially funding the activities of the committee; approve the ordinance establishing the Audit Committee; deny the ordinance; approve with amendments

Recommendation:

Once funding amounts and source are identified, move forward with approval of the ordinance establishing an Audit Committee.

ORDINANCE 2019/ ____

AN ORDINANCE ESTABLISHING THE FINANCE COMMITTEE AS THE INTERNAL AUDIT COMMITTEE AND PROVIDING FOR THE PURPOSES, POWERS, DUTIES AND FUNCTIONS AS SET FORTH BELOW FOR INTERNAL AUDITS.

WHEREAS, the County finds that establishing an Audit Committee will provide for additional oversight and opportunities for transparency in government accounting; and

WHEREAS, the public interest is served when there are appropriate procedures and policies for assuring the continued success of County government financial practices; and

WHEREAS, the Beaufort County Finance Department was recently awarded the Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting and County Council desires to provide support to staff to continue to improve the County's finance policies and procedures; and

WHEREAS, the Beaufort County Code of Ordinances provides Section 2-402 for the establishment of an internal audit unit with reporting duties directly to the Administrator, however the Audit Unit has not been active for the past several years; and

WHEREAS, County Council finds that it is in the best interest of taxpayers, and indeed a duty of the elected members of County Council, to have direct involvement in financial oversight of the County operating budget; and

WHEREAS, the Finance Committee did discuss and unanimously approved moving forward with establishing the Finance Committee as the Internal Audit Committee to provide oversight, direction, priorities, and overall guide the internal audit process; and

WHEREAS, the Finance Committee met September ____, 2019 and did discuss and voted to approve moving forward with establishing the Finance Committee as the Internal Audit Committee; and

WHEREAS, County Council finds that it is in the best interest of the citizens and residents of Beaufort County to establish the Finance Committee as the Internal Audit Committee that will report directly to the County Council from time to time and as needed.

NOW, THEREFORE, BE IT ORDAINED that Beaufort County Council, duly assembled, does hereby delete in its entirety "Section 2-402 Establishment of internal audit unit" and insert in its place and stead the following:

“Section 2-402 Finance Committee of County Council is the Internal Audit Committee.

(1) *Creation.* The Finance Committee of County Council is hereby established as the Internal Audit Committee (the “Committee”) which shall have the purposes, powers, duties and functions established below.

(2) *Membership; terms.* The Committee shall be comprised of all members of the Finance Committee. Other members of Council may participate as ex-officio members. Ex-officio members shall have the same privileges as committee members with respect to making motions, debates and votes, however ex-officio members need not be counted for establishing a quorum.

(3) *Internal Audit* shall mean a review of the County’s mechanisms, rules, and procedures implemented to ensure the integrity of financial and accounting information, to promote accountability and prevent fraud. Internal audits are intended to ensure compliance with laws and regulations and provide timely financial reporting and data collection. Internal audits may result in recommendations for improving operational efficiency and effectiveness of financial processes and procedures.

(4) *Duties, Purpose and responsibilities.*

a. The Committee shall develop a proposed internal audit schedule and shall have the authority, within its budgeted allocation, to move forward with internal audit projects. The purpose of the internal audits shall be to identify opportunities for improving efficiency and effectiveness in the County’s financial practices.

b. The audit schedule shall include areas of interest to be reviewed, their priority, and the timelines for completion. The audit schedule shall also include interim audit progress updates, audit follow-ups, and address special needs for audits of specific areas requiring additional resources or extended timelines.

c. The Committee shall oversee the internal audit process. The Committee’s oversight shall include, among other things, selection of independent consultants for performing internal audits, directing the consultants, establishing timelines for consultant reviews, establishing the framework for internal audit projects, and overseeing implementation of recommendations from any reports. The Committee shall be responsible for coordinating between the work of the Administrator’s staff, contractually hired consultants and any other party as necessary to fulfill the duties, purpose and responsibilities of the Committee.

d. The Committee shall review organizational policies and procedures regarding all areas of County operations for which County funds are levied, collected, expended, or otherwise used, and make recommendations to Council for approval by majority vote. The Committee review shall include departments or offices reporting to the County Administrator, departments or offices headed by elected or appointed

officials, millage agencies, legislatively appointed Commissions receiving County funding, nonprofit organizations receiving funds from the County, and any other organization receiving any type of funding for any purpose from the County.

e. The Committee shall oversee the responsibilities of the independent consultants hired by the County for assisting with Internal Audits. The Committee shall work closely with the independent consultant selected, the Administrator, and appropriate staff for review and recommendations regarding all aspects of the County's financial practices.

f. The Committee shall provide an annual report to full Council after the completion of each fiscal year budget but no later than an October meeting of the Finance Committee. The report shall summarize the findings of the independent consultant's internal audits and identify any recommendations to be brought forward to Council. The report shall include a detail plan for implementing the recommendations including costs of implementation.

g. The Committee shall annually review the Financial Policies and Procedures manual and the practices of the County departments, and make recommendations for updates and improvements. Any recommendations made shall include a detail plan for implementing the recommendations including costs of implementation.

(5) Every three years, the Administrator shall cause a Request for Proposal/Qualifications to be publicly advertised. Respondents meeting the minimum requirements of the RFP/RFQ shall be pre-qualified and available to the Committee for Internal Audits as needed. The Committee shall select an independent consultant based on a number of factors including but not limited to: the special needs of the particular project; any specialized knowledge or experience of a pre-qualified consultant; the ability to complete the project in a desired timeline or other factors. The Committee shall establish selection criteria with input from the Administrator and appropriate staff.

(6) In the performance of these duties, the Committee and the selected independent consultant, shall have access to all such information and records regarding the financial activities and transactions of all departments or offices reporting to the County Administrator, departments or offices headed by elected or appointed officials, millage agencies, legislatively appointed Commissions receiving County funding, nonprofit organizations receiving funds from the County, and any other organization receiving any type of funding for any purpose from the County.

(7) Effective date. This Ordinance No. 2019/___ shall become effective immediately upon its adoption.

Adopted this _____ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: _____
Stewart H. Rodman, Chairman
Beaufort County Council

ATTEST:

Sarah W., Clerk to Council

Chronology

- Third and final reading occurred
- Public hearing occurred
- Second reading occurred
- First reading approval occurred
- Finance Committee discussion and recommendation

AIKEN COUNTY

Sec. 2-50 - Audit committee charter.

- (a) *Purpose.* The purpose of this audit committee charter is to assist the council in fulfilling its fiduciary oversight responsibilities for the:
- (1) Financial reporting process;
 - (2) System of risk management;
 - (3) System of internal control;
 - (4) Internal audit process;
 - (5) External audit of the financial statements;
 - (6) Engagements with other external audit firms;
 - (7) Organization's Processes for Monitoring Compliance with Laws and Regulations and the Ethics Policy, Code of Conduct and Fraud Policy;
 - (8) Special investigations and whistleblower mechanism;
 - (9) Audit committee management and reporting responsibilities; and
 - (10) Comprehensive communication responsibility.
- (b) *Authority.* The audit committee has authority, vested by Aiken County Council, to conduct or authorize investigations into any matters within its scope of responsibility. At the beginning of each fiscal year, the audit committee shall create an audit plan for the fiscal year and submit it to the county council for approval. The plan shall be carried out unless other matters of concern, brought to the attention of the committee, divert audit staff onto engagements outside the scope of the original plan. Any engagement not included in the yearly audit plan shall be submitted to council for approval prior to commencing unless time limitations would make it necessary to begin the engagement prior to the next county council meeting; at which time written justification must be submitted to the full Council for the reason(s) for the time sensitivity of the engagement and council approval must be obtained to continue the engagement. The Aiken County Council may also refer items directly to the retained audit staff by majority vote.
- (1) *Financial reporting process.*
 - a. Oversee the reporting of all financial information.
 - b. Resolve any disagreements between management, the external auditor and/or the internal auditor regarding financial reporting.
 - (2) *System of risk management.*
 - a. Provide the policy and framework for an effective system of risk management, and provide the mechanisms for periodic assessment of the system of risk management, including risks of the information systems, and risks of business relationships with significant vendors and consultants.
 - b. Oversee all consultants and experts that make recommendations concerning the risk management structure and internal control structure.
 - (3) *System of internal control.*
 - a. Provide the policy and framework for an effective system of internal controls, and provide the mechanisms for periodic assessment of the system of internal controls, including information systems, and internal control over purchases from significant vendors and consultants.
 - b. Ensure that contracts with external service providers contain appropriate record-keeping and audit language.

- c. Seek any information it requires from employees-all of whom are directed to cooperate with the committee's requests, or the requests of internal or external parties working for the audit committee. These parties include the internal auditors, all external auditors, consultants, investigators and any other specialists working for the audit committee.
- (4) *Internal audit process.*
- a. Procure, select, and oversee the work of the internal audit contract subject to the review and approval of county council.
 - b. Serve as the primary liaison and provide the appropriate forum for handling all matters related to audits, examinations, investigations or inquiries of the state auditor and other appropriate state or federal agencies.
 - c. The term of the audit engagement shall be for a period not to exceed five (5) years and shall be subject to annual review based on then existing conditions. Successful completion of an engagement shall not preclude the audit firm from consideration for the next audit engagement.
 - d. The auditor shall be selected and recommended to county council by the audit committee on the primary basis of matching the auditor's qualifications to the needs of the county. Qualifications being approximately equal, proposed audit fees will be the secondary consideration.
 - e. The agreement between the county and the audit firm shall be in the form of a written contract. The contract shall include the request for proposal as an appendix to the written contract, and all issues addressed in the request for proposal are required as part of the contract.
 - f. Change in leadership of any county department, constitutional office, or elected official will require an internal audit.
- (5) *External audit of the financial statements.*
- a. Appoint, compensate, and oversee the work of the certified public accounting firm employed by the organization to audit the financial statements.
 - b. Pre-approve all auditing, other attest and non-audit services performed by the external financial statement audit firm prior to additional charges, outside of the original engagement subject to the review and approval of county council.
 - c. The term of the audit engagement shall be for a period not to exceed five (5) years and shall be subject to annual review based on then existing conditions. Successful completion of an engagement shall not preclude the audit firm from consideration for the next audit engagement.
 - d. The auditor shall be selected and recommended to county council by the audit committee on the primary basis of matching the auditor's qualifications to the needs of the county. Qualifications being approximately equal, proposed audit fees will be the secondary consideration.
 - e. The agreement between the county and the audit firm shall be in the form of a written contract. The contract shall include the request for proposal as an appendix to the written contract, and all issues addressed in the request for proposal are required as part of the contract.
- (6) *Engagements with other external audit firms.* Appoint, compensate, and oversee subject to the review and approval of county council the work of any other certified public accounting firm employed by the organization to perform any audits or agreed-upon-procedures other than the audit of the financial statements.
- (7) *Organization's processes for monitoring compliance with laws and regulations and the ethics policy, code of conduct and fraud policy.*

- a. Provide the policy and framework for compliance with laws and regulations, and provide the mechanisms for periodic assessment of compliance, including compliance by significant vendors and consultants.
 - b. Communicate with the council regarding the organization's policy on ethics, code of conduct and fraud policy as it relates to internal control, financial reporting and all auditing activities.
- (8) *Special investigations and whistleblower mechanism.*
- a. Subject to review and approval by county council, retain independent counsel, accountants, or other specialists to advise the committee or assist in the conduct of an investigation.
 - b. Ensure creation of and maintenance of an appropriate whistleblower mechanism for reporting of financial statement fraud and other fraud and inappropriate activities.
- (9) *Audit committee management and reporting responsibilities.*
- a. Receive and review reports on all public disclosures related to the purpose, authority and responsibilities of the audit committee.
 - b. Report to the council on the activities, findings and recommendations of the audit committee.
- (10) *Comprehensive communication responsibility.* Meet with the organization's officers, external auditors, internal auditors, outside counsel and/or specialists, as necessary.
- (c) *Composition.* The audit committee shall consist of three (3) members of county council approved by the chairman, with the county council chairman, county administrator, and the finance director serving as ex-officio.
- (d) *Meetings.* The committee will meet at least four (4) times a year, with authority to convene additional meetings, as circumstances require. All committee members are expected to attend each meeting, in person. Meeting notices will be provided to interested parties in conformance with applicable laws, regulations, customs and practices. The committee will invite members of management, external auditors, internal auditors and/or others to attend meetings and provide pertinent information, as necessary. It may hold executive sessions as provided by law. Meeting agendas will be prepared and provided in advance to members, along with appropriate briefing materials. Minutes will be prepared and maintained.
- (e) *Procurement.* All procurements initiated or recommended by the audit committee are subject to the applicable provisions of Article VIII, Purchasing and Contracting, of the County Code, including section 2-707.5

(Ord. No. 09-06-13, § 1, 6-16-09)



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

An Ordinance to suspend the millage limitation imposed by SC Code section 6-1-320 and increase the millage rate by a surcharge of an additional 3.3 mill based on a request from the Beaufort County School Board

Council Committee:

Finance Committee

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):

Alicia Holland, Assistant County Administrator, Finance & Tonya Crosby, Beaufort County School District, CFO

Issues for Consideration:

Points to Consider:

Funding & Liability Factors:

None.

Council Options:

Approve, Modify or Reject

Recommendation:

Approve

ORDINANCE NO. ____
FY 2019-2020 Beaufort County School District Millage Surcharge

AN ORDINANCE BASED ON THE REQUEST FROM THE BEAUFORT COUNTY BOARD OF EDUCATION TO SUSPEND THE MILLAGE LIMITATION IMPOSED BY SC CODE SECTION 6-1-320 AND INCREASE THE MILLAGE RATE BY A SURCHARGE OF AN ADDITIONAL 3.3 MILLS BECAUSE OF THE DEFICIENCY OF THE PRECEDING YEAR, AND DECLARE INTENTION TO LEVY AN ADDITIONAL SURCHARGE IN 2020-2021 TO CURE THE BALANCE OF THE DEFICIENCY.

BE IT ORDAINED BY COUNTY COUNCIL OF BEAUFORT COUNTY:

WHEREAS, the 2018-2019 fiscal year was a year of reassessment and the property tax millage rate for school operations was rolled back from 113.5 mills in the prior year of 2017-2018 to 104.6 mills for 2018-2019;

WHEREAS, the County Council of Beaufort County appropriated property tax funds for school operations for the 2018-2019 fiscal year in the amount of \$143,707,242;

WHEREAS, it is now understood that the rollback millage levied of 104.6 mills was too low to generate the funds appropriated and resulted in property tax collections of approximately \$134,937,820, resulting in a deficiency of property tax revenue for school operations for the 2018-2019 fiscal year in the approximate amount of \$8,769,422;

WHEREAS, the Beaufort County Board of Education has requested in its budget for 2019-2020 that the County Council increase the property tax millage rate by a surcharge for one year, 2019-2020, to provide the funds to cure the deficiency from 2018-2019;

WHEREAS, this request is being made in accordance with Section 6-1-320(B)(1) of the Code of Laws of South Carolina whereby the millage rate limitation may be suspended for the purpose of curing a deficiency of the preceding year;

WHEREAS, the County Council of Beaufort County intends to cure the deficiency over two (2) fiscal years rather than one (1) as requested by the Beaufort County Board of Education, as authorized by Section 6-1-320(B) of the Code of Laws of South Carolina, providing “[t]he surcharge must be continued only for the years necessary to pay for the deficiency”;

WHEREAS, the levy of the surcharge and the amount for each taxpayer shall be listed on the tax statement as a separate surcharge and shall not be included with a general millage increase. The surcharge shall have an explanation of the reason which shall state: “surcharge to cure the deficiency from fiscal year 2018-2019.”

NOW, THEREFORE, the County Council of Beaufort County agrees to establish and hereby levies 3.3 mills as a surcharge for the 2019-2020 fiscal year to fund part of the deficiency from the 2018-2019 fiscal year and appropriates all funds from the millage surcharge to fund

school operations, and declares its intention to cure the balance of the deficiency by levying an additional surcharge for the 2020-2021 fiscal year.

Adopted this ___ day of _____, 2019.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: _____
Stewart H. Rodman, Chairman

ATTEST:

_____, Clerk to Council

First Reading:

Second Reading:

Public Hearing:

Third and Final Reading:



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Beaufort County Airport Wetlands Mitigation - FAA Reimbursement

Council Committee:

Finance Committee

Meeting Date:

September 3, 2019

Committee Presenter (Name and Title):

Jon Rembold, Airports Director

Issues for Consideration:

DISCUSSION: Wetlands Mitigation - FAA Reimbursement

Points to Consider:

FAA may have some amount of discretionary funds to support a portion of Beaufort County Airport's Wetlands Mitigation. This is a discussion relative to FAA's ability to support the mitigation required by the 2002 permit that was associated with the construction of the partial parallel taxiway.

Funding & Liability Factors:

Potential funding limitations

Council Options:

Information only

Recommendation:

Information only