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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY

IN THE COURT OF COMMON PLEAS

HON. H. STEVEN DEBERRY, IV, CIRCUIT COURT JUDGE

CASE NUMBER 2025 - 001773

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, JOHN J. MCCANN AND
STEPHEN G. RILEY.....APPELLANTS,

vs.

BEAUFORT COUNY, SOUTH CAROLINA.....RESPONDENT.

RECORD ON APPEAL VOLUME 1

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Case Number 2025 – 001773

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The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley,

Plaintiffs

VS.

Beaufort County, South Carolina,

Defendant.

**ORDER GRANTING DEFENDANT
BEAUFORT COUNTY'S CROSS
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

On March 10, 2025, Plaintiffs Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley (collectively “Plaintiffs”) filed their Notice of Motion and Motion for Summary Judgment. On March 12, 2025, Defendant Beaufort County, South Carolina (“Beaufort County”) filed its Cross Motion for Summary Judgment. On June 9, 2025, Plaintiffs filed their Reply to Beaufort County’s Motion for Summary Judgment. The parties agreed that this matter should be decided as a matter of law upon an agreed record comprising stipulated facts, depositions, and documentary evidence. On June 10, 2025, the undersigned heard the Motions for Summary Judgment via WebEx. Attorney Curtis L Coltrane appeared for Plaintiffs, and Attorney M. Dawes Cooke, Jr. appeared for Defendant Beaufort County.

Having considered the parties' filings, oral arguments and the governing law, it is hereby ORDERED, ADJUDGED and DECREED that Defendant Beaufort County's March 12, 2025 Cross Motion for Summary Judgment be, and hereby is, GRANTED. It is further ORDERED, ADJUDGED, and DECREED that Plaintiffs' Motion for Summary Judgment be, and hereby is, DENIED.

FINDINGS OF FACT

The following facts are not disputed:

1. The Contract for Primary Law Enforcement Services

Plaintiff Town of Hilton Head Island ("Town") is a municipality in Beaufort County. Plaintiffs John J. McCann and Stephen G. Riley are taxpayers and property owners in the Town. This lawsuit involves an August 24, 2020 Beaufort County Ordinance that created a uniform service charge ("LESC") on real property in the Town for primary police services.

Because of its large population (including a massive seasonal tourist population), the Town's law enforcement demands exceed those of other parts of Beaufort County. Despite this, the parties stipulate, the Town does not have a municipal police department and has never had one. The parties further stipulate:

All other municipalities in Beaufort County (including the City of Beaufort, the Town of Port Royal, the Town of Bluffton, and the Town of Yemassee) have municipal police departments. All of those municipalities pay for the maintenance and operation of police departments as a part of their municipal budgets.

To provide competent primary police services to its taxpayers, residents, and visitors, the Town has contracted with Beaufort County over the years for the Beaufort County Sheriff's Office ("BCSO") to act as its police department. In fact, the Town has paid Beaufort County for BCSO to serve as its police department since its incorporation in 1983.¹ It has done so through a series of contracts with Beaufort County.

In January, 2015, Town and Beaufort County entered into an Agreement for Police Services ("2015 Agreement"), under which BCSO would provide the Town with "professional police service."² Specifically, BCSO agreed to provide primary police services to the Town and do so over and above what it provides other municipalities. On October 7, 2019, the Town's then-

¹ A 1983 Town ordinance provides: "in order to provide the necessary police protection to protect the health, safety, welfare and property of [Hilton Head] and its citizens, the town shall enter into an intergovernmental service contract with the county sheriff's department." See Town of Hilton Head Island Code of Ordinances § 7-1-10.

² The 2015 Agreement expired on January 31, 2018, but the parties continued on a monthly basis until 2020, when the LESC was enacted.

Mayor (Plaintiff McCann) wrote to the Chairman of Beaufort County Council, stating that, starting in 2021, the Town would only pay Beaufort County \$300,000 per year for BCSO acting as its police department.

2. Statistical Data Regarding Law Enforcement Services Provided in Municipalities

The Town consumes more BCSO resources than other municipalities. BCSO dispatch receives calls for assistance from throughout Beaufort County and directs those calls to the appropriate responding agency. In the year before the LESC, BCSO provided the primary response for all 97,336 calls for service in the Town that would normally have been handled by a municipal police department, if one existed. Comparatively, BCSO responded to far fewer primary service calls in other municipalities:

<u>MUNICIPALITY</u>	<u>RESPONSES BY TOWN POLICE DEPARTMENT</u>	<u>RESPONSES BY BCSO</u>
Beaufort (98,558 total calls for service)	86,623 (88% of total calls for service)	11,935 (12% of total calls for service)
Bluffton (70,688 total calls for service)	64,778 (92% of total calls for service)	5,890 (8% of total calls for service)
Port Royal (37,083 total calls for service)	33,699 (91% of total calls for service)	3,384 (9% of total calls for service)
Hilton Head Island (97,366 total calls for service)	0 (0% of total calls for service)	97,366 (<u>100%</u> of total calls for service)

Based on these statistics, if the Town had a police department, BCSO would likely have only responded to about 10% of its primary service calls, rather than all of them.

3. Costs to Provide Law Enforcement Services

BCSO provides "secondary" and "primary" law enforcement services in Beaufort County. "Secondary" law enforcement services include service of process, warrant service, bomb squad services, disaster services, emergency management, multi-agency violent crime task force,

helicopter services, marine services, *etc.* BCSO provides secondary services equally on an as-needed basis everywhere in Beaufort County. BCSO's 2020 budgeted costs for providing such "secondary" services was \$29,663,512.00.

On the other hand, "primary" law enforcement services are those that a municipal police department would normally handle, such as patrol and responding to citizen calls. In every municipality except the Town, police departments provide nearly all primary law enforcement services, with BCSO servicing a minority of calls and patrols. Because the Town does not have a police department, BCSO provides 100% of its "primary" law enforcement services. It does not do so for any other municipality. As a result, the Town consumes far more resources than other municipalities, where BCSO primarily provides only secondary services.

Under the Town's agreement with Beaufort County, BCSO has more than 40 employees who provide the Town's primary law enforcement services. TischlerBise estimated that the permanent population of Hilton Head would be 40,035 and its seasonal population would be 70,046 in 2020. At the time of the LESC (discussed below), the annual cost and value of primary services that BCSO provided the Town was at least \$4,383,257.00. The actual cost of providing *both* primary and secondary law enforcement services would have been substantially greater. If BCSO did not provide primary police services, the Town would have likely spent much more operating and setting up its own police department than it pays Beaufort County to provide those services.³ The total fees that Hilton Head property owners pay under the LESC are less than what any other municipality in Beaufort County pays for its police force, yet the Sheriff serves a much larger population in Hilton Head than any municipal police force serves in the other municipalities. The parties have stipulated to the costs incurred by other municipalities annually for the operation of their police departments. These are annual operating costs, which do not include the cost of setting up the police force:

³ Sheriff Tanner testified that "The Town of Hilton Head saves millions and has over the past 40 years.... I would, knowing what I know about law enforcement and knowing what I know about recruiting and retention, it would – it would be a very difficult task for them to start their own police force, and it would be extremely expensive."

		BLUFFTON	BEAUFORT	PORT ROYAL
2020				
	Population	27,716	13,607	14,220
	P.D. Budget	\$7,270,955.00	\$4,688,073.00	\$2,349,405.00
2021				
	Population	32,191		14,753
	P.D. Budget	\$7,102,892.00	\$4,504,976.00	\$2,496,796.00
2022				
	Population	34,493		15,585
	P.D. Budget	\$7,727,168.00	\$4,783,813.00	\$2,705,235.00
2023				
	Population	35,243		16,287
	P.D. Budget	\$8,552,719.00	\$5,320,754.00	\$2,862,950.00
2024				
	Population	40,000		16,881
	P.D. Budget	\$10,272,435.00	\$6,054,894.00	\$3,183,400.00

Thus, as Sheriff Tanner testified, Hilton Head has saved a tremendous amount of money by having the Sheriff provide its police force, compared to the cost of setting up and maintaining its own police force.

4. The LESC Ordinance

Although the Town expressed that it would not pay Beaufort County more than \$300,000 for primary law enforcement, BCSO continued to provide those services to the Town. To underwrite the costs of those services, Beaufort County considered a uniform service charge on properties in the Town, the LESC at issue. Beaufort County retained the fiscal, economic, and planning consulting firm TischlerBise—which has prepared over 900 impact fees and 800 fiscal impact analyses nationwide—to study BCSO's provision of police services to the Town. TischlerBise developed a methodology intended to fairly and uniformly apply a LESC to the Town based upon the historical utilization of police services by different categories of properties. TischlerBise was informed that the annual cost of primary law enforcement services to the Town

was \$4,383,257. It calculated the LESC so as to generate sufficient revenue to pay the cost of primary law enforcement services. TischlerBise noted that those services are in lieu of the Town “providing its own police force *and is above the base level of law enforcement service* provided to incorporated places in the County.”

On August 24, 2020, County Council passed Ordinance 2020/29 (“Ordinance”), which created the LESC. Plaintiffs do not dispute that Beaufort County enacted the Ordinance in procedural compliance with the law and TischlerBise’s recommendations. The LESC is “charged to properties in the Town to cover the cost of law enforcement services provided within the Town by the Sheriff’s Office over and beyond the level of services provided in the incorporated municipalities which provide their own law enforcement services.”

The parties have stipulated that there are no genuine issues of material fact for a jury to decide and that this matter should be decided as a matter of law. For the following reasons, the Court determines that the LESC is a valid uniform service fee and not an unlawful tax. The Court therefore grants Beaufort County’s motion for summary judgment and denies Plaintiffs’ Motion for Summary Judgment.

STANDARD OF REVIEW

As the parties claiming entitlement to relief from the Court, Plaintiffs bear the burden of proving their claims. “The burden of proof in a declaratory judgment action rests on the plaintiff[s].” *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 411 S.C. 506, 520, 769 S.E.2d 453, 460 (Ct. App. 2015); *accord Vermont Mut. Ins. Co. v. Singleton by & ex rel. Singleton*, 316 S.C. 5, 10, 446 S.E.2d 417, 421 (1994) (“Where an action is filed for declaratory judgment seeking affirmative relief, the movant must prove his material allegations by a preponderance of the evidence.”); *Martin v. Cantrell*, 225 S.C. 140, 144, 81 S.E.2d 37, 38-39 (1954) (“The plaintiff seeks affirmative relief under the declaratory judgment act, and of course the burden of proof rests upon her in this action, as well as in other actions, to prove the material allegations of her complaint by the greater weight or preponderance of the testimony.”).

The standards governing a motion for summary judgment are well-settled in South Carolina:

Rule 56(c), SCRCP, provides that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

An adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth specific facts showing there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994).

See Paine Gayle Props., LLC v. CSX Transp., Inc., 400 S.C. 568, 576, 735 S.E.2d 528, 532-33 (Ct. App. 2012) (affirming grant of summary judgment).

"Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law.' *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)." *Buonaiuto v. Town of Hilton Head Island*, 440 S.C. 144, 150, 889 S.E.2d 625, 628-29 (Ct. App. 2023). The parties in this case have stipulated that there are no genuine issues of material fact to be decided and that the validity of the LESC should be decided as a matter of law.

CONCLUSIONS OF LAW

The Home Rule Act vests legislative power in county governments. *See* § 4-9-120 ("[C]ouncil shall take legislative action by ordinance"); *North Charleston Land Corporation v. City of North Charleston*, 281 S.C. 470, 474, 316 S.E.2d 137, 139 (1984) ("An ordinance is a legislative enactment and is presumed to be constitutional"). "The courts should not and will not interfere in the administration of the internal domestic affairs of the counties and cities, unless there is a manifest disregard or abuse of power or discretion." *See State ex rel. Edwards v. Osborne*, 193 S.C. 158, 7 S.E.2d 526, 533 (1940). A court's analysis of a local ordinance must be "exercised carefully and cautiously, as it is not the function of the Court to pass upon the wisdom

or expediency of municipal ordinances or regulations.'" *See McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 504-05, 719 S.E.2d 660, 663 (2011) (citation omitted); *accord Dunes West Golf Club, LLC v. Town of Mt. Pleasant*, 401 S.C. 280, 300, 737 S.E.2d 601, 611 (2013) ("It is not the function of the courts to pass upon the wisdom or folly of municipal ordinances.").

Plaintiffs assert that the LESC is illegal because Beaufort County may not impose new taxes unless the General Assembly authorizes it. *See* S.C. Code § 6-1-310. Beaufort County contends that the LESC is not a tax, but a "uniform service charge" or "service or user fee."⁴ The General Assembly has authorized Beaufort County to assess "uniform service charges." *See* S.C. Code § 4-9-30(5)(a); *accord* S.C. Code § 6-1-330(A) ("A local governing body . . . is authorized to charge and collect a service or user fee."). The General Assembly defines "service or user fee" and "uniform service charge" as follows:

"Service or user fee" means a charge required to be paid in return for a particular government service or program. "Service or user fee" also includes "uniform service charges". The revenue generated from the fee must: (a) be used to the benefit of the payers, even if the general public also benefits; (b) only be used for the specific improvement contemplated; (c) not exceed the cost of the improvement; and (d) be uniformly imposed on all payers.

S.C. Code § 61-1-300(6); *accord C.R. Campbell Const. Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 437, 438 (1997) (citing *Brown v. Cty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992)). For the reasons that follow, the Court determines that, under the undisputed facts, the LESC satisfies the statutory definition of a service or user fee.

1. The LESC Benefits Payers.

The first statutory requirement is that the "revenue generated from the [LESC] must . . . be used to the benefit of the payers, even if the general public also benefits." S.C. Code § 61-1-300(6). The statute does not require that the benefits to those taxpayers be unique or different from the benefits to other taxpayers. It does not require that the services paid by the LESC accrue

⁴ "Generally, a tax is an enforced contribution to provide for the support of government, whereas a fee is a charge for a particular benefit to the payer." *BellSouth Telecommunications, Inc. v. City of Orangeburg*, 337 S.C. 35, 39-40, 522 S.E.2d 804, 806 (1999).

only to the payers. It simply requires that those who pay the LESC receive some benefit. The record is undisputed that the LESC benefits paying property owners in the Town. The BCSO provides significantly more primary law enforcement services to the Town compared to other municipalities. BCSO responds to *all* calls for assistance in the Town, totaling nearly one hundred thousand in 2019. This allows the Town to avoid the much greater expense of creating and maintaining its own police department at taxpayer expense. There is no doubt that the payers of the LESC—property owners in the Town—receive a benefit.

Plaintiffs focus on the statutory definition of the Sheriff's responsibilities as "the chief law enforcement officer of the county" *See* S.C. Att. Gen. Op., 2002 WL 31958840, at *2 (Dec. 20, 2002), and the Sheriff's own pronouncements that he must provide law enforcement services to the entire county. However, the Sheriff's role as chief law enforcement officer does not mandate that he act in lieu of a municipal police department or be the exclusive provider of primary law enforcement in a municipality. The only statutory duty on the BCSO is that "deputy sheriffs shall patrol the entire county at least twice a week by sections assigned to each by the sheriff, remaining on duty at night when occasion or circumstances suggest the propriety thereof to prevent or detect crime or to make an arrest." *See* S.C. Code § 23-13-70. BCSO is required to fulfill this statutory duty in both towns with police departments and unincorporated areas. BCSO has always fulfilled this duty in the entire County.

However, the Town is the only municipality that asks the BCSO to serve as its primary police department. The law does not require that BCSO serve as the Town's police department without the Town paying the additional costs for it to do so. The Office of the Attorney General "has advised it appears that while a sheriff, as chief law enforcement officer of a county, is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, is not generally considered to be obligated to provide specific services within a municipality." *See* S.C. Att. Gen. Op., 2011 WL 1740740, at *7 (Apr. 20, 2011) (emphasis added). The Office of the Attorney General has confirmed that a sheriff may contract with a municipality to provide primary police services:

[I]t appears that while a sheriff, as chief law enforcement officer of a county is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, is not generally considered to be obligated to provide specific services within a municipality.

However, a sheriff could offer contract law enforcement services to a municipality.

See S.C. Att. Gen. Op. 92-67 (Nov. 6, 1992) (emphasis added); *accord* S.C. Att. Gen. Op., 2018 WL 1557222, at *1 (Mar. 16, 2018) (permitting "a sheriffs (sic) department to contract with a municipality to provide law enforcement services"); S.C. Att. Gen. Op., 2011 WL 1740740, at *7 (Apr. 20, 2011) (sheriff "could offer contract law enforcement services to a municipality.").

That is precisely what Beaufort County had traditionally done with the Town. Under a series of agreements, BCSO performed the services a Town police department would do (if one existed) and the Town paid for those services. As the TischlerBise report observed, "[t]hese law enforcement services are provided to [the Town] in lieu of the Town providing its own police force and is above the base level of law enforcement service provided to incorporated places in the County." There is no dispute that the LESC has provided a benefit to the Town taxpayers.

The Court finds that the residents of Hilton Head significantly benefit by having a full range of police services provided by the Beaufort County Sheriff, at a much lower cost per resident than any other municipality in Beaufort County pays for its police services.

2. The LESC Is Used Only for Law Enforcement in the Town and Does Not Exceed the Cost of the Improvement.

The record further shows that the second and third requirements for a service charge—*i.e.*, that the LESC only be used for the contemplated purpose and not exceed the cost—have been satisfied.

It is undisputed that Tischler Bise calculated the amount of the LESC with the intention that it would equal the anticipated costs of primary law enforcement costs for the Town. Beaufort County has taken care to determine a fair and accurate allocation of the costs of primary law enforcement services. There is no evidence that the LESC has been utilized to give a windfall to Beaufort County or to fund other expenses. The Ordinance itself provides, in Section 3, that "All

proceeds derived from the law enforcement service charge and uniform user fee authorized hereby shall be recorded in a separate fund within the County's accounts. Such proceeds shall be used for law enforcement and related administrative services to be provided by the Beaufort County Sheriff's Office in the Service Area, in lieu of the applicable municipality providing its own law enforcement force at a level above the base level of law enforcement services provided by the Sheriff's Office in the unincorporated County."

The parties have stipulated that the available complete data for the years during which the LESC was collected shows that the amount of fees collected correlates closely with the amounts expended for providing primary law enforcement services to the Town:

<u>FY 2020/2021</u>	Sheriff HHI Services Fee Expenditures \$ 4,255,542.00
	LESC Collected \$ 4,647,365.00
<u>FY 2021/2022</u>	Sheriff HHI Services Fee Expenditures \$ 5,095,848.00
	LESC Collected \$ 4,828,652.00
<u>FY 2022/2023</u>	Sheriff HHI Services Fee Expenditures \$ 5,127,555.00
	LESC Collected \$ 5,081,214.75

While there has been some minor variation from year to year due to uncertainties in budgeting, collection, and expenditure, the amounts collected have closely tracked actual expenditures. For the three years above, the total amount expended to provide primary law enforcement service to the Town was \$14,478,945, while the amount of LESC collected was \$14,557,231.

Plaintiffs presented no evidence that the LESC has been used for any purpose other than providing primary law enforcement services in the Town. As a result, the Court determines that the second and third elements of the statute have been satisfied.

3. **The LESC Is Uniformly Imposed on All Pavers.**

Finally, the LESC is imposed on a uniform basis among similarly-situated property owners. The TischlerBise firm was retained specifically to assure that the LESC would be imposed uniformly based upon anticipated consumption of law enforcement services by each different

category of property in Hilton Head. The Ordinance provides a procedure by which a fee payer may appeal the assessment of the User Fee on a parcel of property. Plaintiffs have not argued, or presented any evidence, that the LESC is not uniformly imposed on properties that benefit from the police services provided by the Sheriff's Office.

CONCLUSION

For the foregoing reasons, the Court hereby GRANTS Defendant's Cross-Motion for Summary Judgment and DENIES Plaintiffs' Motion for Summary Judgment.

[JUDGE'S SIGNATURE ON FOLLOWING PAGE]



Beaufort Common Pleas

Case Caption: Hilton Head Town South Carolina , plaintiff, et al VS Beaufort
County South Carolina , defendant, et al
Case Number: 2020CP0701840
Type: Order/Summary Judgment

H. Steven DeBerry, IV

Circuit Court Judge 2771

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
THE TOWN OF HILTON HEAD	)	
ISLAND, SOUTH CAROLINA; JOHN	)	
J. MCCAN, and STEPHEN G. RILEY,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER
	)	Case No.: 2020-CP-07-01840
	)	
BEAUFORT COUNTY, SOUTH	)	
CAROLINA	)	
	)	
Defendant.	)	
	)	
	)	

The Plaintiff, Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley, requests the Court to reconsider the Order dated August 7, 2025 and in the Florence County Clerk of Court's office.

Having duly considered the motion of the Plaintiff, this Court has determined that its original ruling of August 7, 2025 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion is therefore DENIED.

AND IT IS SO ORDERED.

Dated: _____

H. Steven DeBerry, IV
Judge, Twelfth Judicial Circuit



Beaufort Common Pleas

Case Caption: Hilton Head Town South Carolina , plaintiff, et al VS Beaufort
County South Carolina , defendant, et al
Case Number: 2020CP0701840
Type: Order/Other

H. Steven DeBerry, IV

Circuit Court Judge 2771

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2020-CP-07-01840
The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley,	)	
	)	
Intervenors/Plaintiffs	)	ORDER DENYING PLAINTIFFS'
	)	THIRD NOTICE OF MOTION
vs.	)	AND MOTION FOR SUMMARY
	)	JUDGMENT
Beaufort County, South Carolina,	)	
	)	
Defendant/Plaintiff	)	
	)	
vs.	)	
	)	
James Beckert,	)	
	)	
Defendant.	)	

This matter came before the Court via Webex on August 18, 2023, on behalf of Plaintiffs The Town of Hilton Head Island ("Town"), John J. McCann and Stephen G. Riley's (collectively "Plaintiffs") May 1, 2023, Notice of Motion and Motion for Summary Judgment ("Third Motion"). Attorney Curtis Coltrane argued on behalf of Plaintiffs, and Attorney M. Dawes Cooke, Jr. argued on behalf of Defendant Beaufort County ("County").

Having considered the parties' filings, oral arguments and the governing law, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion for Summary Judgment be DENIED.

This lawsuit involves an August 24, 2020, Beaufort County Ordinance, which imposed a uniform service charge on the owners of real property in the Town ("Law Enforcement Service Charge") for primary police services provided by the Beaufort County Sheriff's Office ("BCSO"). The Law Enforcement Service Charge compensates the County for work performed by the BCSO that allows the Town to avoid the extreme expense and burden of creating and maintaining a Town Police Department. Plaintiffs' Third Motion argues that the Ordinance is invalid because it is not

a uniform service charge.

The General Assembly authorizes the County to assess "uniform service charges." *See* S.C. Code § 4-9-30(5)(a); S.C. Code § 6-1-330(A). The General Assembly defines "service or user fee" and "uniform service charge" as follows:

"Service or user fee" means a charge required to be paid in return for a particular government service or program. "Service or user fee" also includes "uniform service charges." The revenue generated from the fee must: (a) be used to the benefit of the payers, even if the general public also benefits; (b) only be used for the specific improvement contemplated; (c) not exceed the cost of the improvement; and (d) be uniformly imposed on all payers.

S.C. Code § 6-1-300(6). Plaintiffs' Third Motion asserts that the Law Enforcement Service Charge does not fit within this definition. However, because there are genuine issues of material fact as to whether the Law Enforcement Service Charge is a "service or user fee" or "uniform service charge" under the statute, the Court must DENY Plaintiffs' Third Motion. *See Kitchen Planners v. Friedman*, No. 28173, 2023 S.C. LEXIS 164, at *9 (Aug. 23, 2023) ("[T]he proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule. . . . [I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.").

Under the first requirement of Section 6-1-300, the revenue generated from the Law Enforcement Service Charge must be used to the benefit of its payers, even if the public also benefits. The face of the Ordinance states in its findings of fact that the purpose of the Law Enforcement Service Charge is to pay for the law enforcement services to the Town that are above and beyond what the BCSO provides other municipalities. The County has presented evidence that BCSO provides more primary law enforcement services to the Town compared to other municipalities. There is at least a genuine issue of material fact as to whether payers of the Law Enforcement Service Charge receive a benefit from the fee.

Plaintiffs argue that the Law Enforcement Service Charge reflects "one hundred percent of the cost of the delivery of service by the BCSO in the Town, not the cost of any claimed enhanced level of service." Section 6-1-300 does not require that the benefit be at an "enhanced level." Further, there is evidence that the Law Enforcement Service Charge enables the Town and its taxpayers to avoid the much higher expense of having a municipal police department. The Affidavit of Sheriff P.J. Tanner states in his affidavit that the figure that was used to calculate the Law Enforcement Service Charge relates *only* to the provision of primary law enforcement services in the Town and does not encompass providing secondary law enforcement services that the BCSO already provides throughout the County. In other words, there is a genuine issue of material fact as to whether the Law Enforcement Service Charge is limited to creating revenue to compensate the County for the primary law enforcement services that BCSO performs in the Town that it does not perform in other municipalities.

As to the second element under Section 6-1-300(6), there is a genuine issue of material fact as to whether the Law Enforcement Service Charge is utilized only for the specific use set forth in the Ordinance. The County has presented evidence in the record that the amount of the Law Enforcement Service Charge was calculated to provide sufficient revenue to pay for "primary" law enforcement in the Town.

Similarly, as to the third requirement of Section 6-1-300(6), the County presented evidence that TischlerBise, Inc. calculated the Law Enforcement Service Charge to produce revenue in the amount required just to pay for primary law enforcement services.

Finally, as to the fourth requirement of Section 6-1-300(6), I find that there is evidence creating a genuine issue of material fact that the Law Enforcement Service Charge is uniformly applied among payers. There is evidence that the Law Enforcement Service Charge is imposed on all Town taxpayers. The County relied on TischlerBise, Inc. to calculate a fair and uniform Law Enforcement Service Charge, assessing all residential property owners at the same rate and all commercial property owners at the same rate.

CONCLUSION

For the foregoing reasons, the Court hereby DENIES Plaintiffs' third Notice of Motion and Motion for Summary Judgment.

Carmen T. Mullen
Fourteenth Judicial Circuit

September __, 2023
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Hilton Head Town South Carolina VS Beaufort County South Carolina
Case Number: 2020CP0701840
Type: Order/Summary Judgment

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2023-10-01 13:48:55 page 5 of 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER: 2020-CP-07-1840
	)	
THE TOWN OF HILTON HEAD	)	
ISLAND, SOUTH CAROLINA, JOHN	)	
J. MCCANN and STEPHEN G. RILEY,	)	
	)	
Interveners/Plaintiffs,	)	
	)	
vs.	)	CONSENT ORDER TO AMEND
	)	
BEAUFORT COUNTY, SOUTH	)	
CAROLINA,	)	
	)	
Defendant/Plaintiff	)	
	)	
vs.	)	
	)	
JAMES BECKERT,	)	
	)	
<u>Defendant.</u>	)	

This case is before the undersigned on the Motion to Amend filed by the Plaintiffs on September 15, 2023. Beaufort County, South Carolina, consents to the Motion. Accordingly, it is Ordered that the Plaintiffs shall file their Amended Complaint within two days from the date of the filing of this order.

WE MOVE:

COLTRANE & WILKINS, LLC

By: s/Curtis L. Coltrane
Curtis L. Coltrane
S. C. Bar Number 1344
Post Office Box 6806
Hilton Head Island, SC 29938
Attorneys for The Plaintiffs

WE CONSENT:

BARNWELL, WHALEY, PATTERSON
& HELMS, LLC

By: s/John W. Fletcher
John W. Fletcher
M. Dawes Cooke, Jr.
Post Office Drawer H
Charleston, SC 29402
Attorneys for Beaufort County,
South Carolina

(Judge's Signature on Following Page)



Beaufort Common Pleas

Case Caption: Hilton Head Town South Carolina VS Beaufort County South Carolina
Case Number: 2020CP0701840
Type: Order/Consent Order

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2023-09-19 11:12:53 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP0701840

Hilton Head Town South Carolina et al
PLAINTIFF(S)

Beaufort County South Carolina et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

With regard to the Plaintiff's Motion for Summary Judgment the court makes the following findings;

I find that the question as to whether the Law Enforcement Service Charge is valid and enforceable depends on whether S.C. Code Ann. S. 6-1-300(6) is complied with, specifically whether or not the "fee is paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee."

I also find that the third and fourth factors in Brown v. County of Horry, 308 S.C. 180 (1992) should be considered as indicated in the concurring opinion of Justice Kittredge in Burns v. Greenville County, 433 S.C. 583 (2021), as to whether the revenue generated by the fee exceeds the cost of the service and whether the fee is uniformly imposed on all the payers.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/26/2022 .

Stephen G Riley
John J Mccann

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

I find that on the face of the ordinance it is clearly stated in the findings of fact that the purpose of the fee is to pay for the law enforcement services to the Town that are above and beyond what the BCSO provides to other municipalities within the county.

I further find that it is certainly plausible that the payers of this fee are receiving a benefit in the form of primary police services, that are different from the members of the general public that are not paying the fee, although some members of the general public that do not pay the fee may from time to time benefit from these services as well.

I further find that a question of fact remains as to exactly what the dollar value of the services that are above and beyond are. It is clear that the Plaintiff contends that the fee being charged is for 100% of the police services and if this is the case then the fee would violate the factors stated above and would be invalid. However, the Defendants contend the opposite and that the fee is only for that portion of police services that goes above and beyond what is being rendered to the other municipalities that have their own police force as contained in the study. This question of fact is not made any more clear when considering the affidavit of the County Sheriff.

I also find that a genuine issue of material fact exists as to whether the fee is uniformly imposed on all payers.

These facts have to be determined in order to apply the law in this matter in order for the court to make a decision as to the validity and legality of this fee. Because genuine issues exist with regards to the above stated material facts then I would deny Plaintiff's motion for summary judgement.



Beaufort Common Pleas

Case Caption: Hilton Head Town South Carolina VS Beaufort County South Carolina
Case Number: 2020CP0701840
Type: Order/Electronic Form 4

H. Steven DeBerry, IV

Circuit Court Judge 2771

Electronically signed on 2022-01-26 11:31:15 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT,	)	CASE NUMBER: 2020-CP-07-1840
THE TOWN OF HILTON HEAD ISLAND,	)	
SOUTH CAROLINA; JOHN J. MCCANN and	)	
STEPHEN G. RILEY,	)	
	)	
Plaintiffs,	)	NOTICE OF MOTION AND
	)	TO ALTER OR AMEND
vs.	)	(Rule 59, SCRCP)
	)	
BEAUFORT COUNTY, SOUTH CAROLINA,	)	
	)	
<u>Defendant.</u>	)	

TO: BEAUFORT COUNTY, SOUTH CAROLINA:

Please take notice that the Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley (collectively, the "Town"), shall move before the Hon. H. Stephen DeBerry, IV, at the Beaufort County Courthouse, 102 Ribaut Road, Beaufort, South Carolina, at 10:00 o'clock, A. M., on the 10th Day following the service hereof, or at such other time and place as the Court may direct, as follows:

For an Order, pursuant to Rule 59, SCRCP, altering or amending its Order filed on August 7, 2025 (herein, the "Order") denying the Town's Motion for Summary Judgment, and Granting Beaufort County, South Carolina's (herein, "Beaufort County") Motion for Summary Judgment on the following Grounds.

1. Beaufort County argued, and the Order includes findings that the Town does not have a municipal police department, that other municipalities in Beaufort County do, and that such justifies the LESC imposed by Ordinance 2020-29. Beaufort County argued,

and the Order includes findings that the “benefit” the Town receives is that it would pay more if the Town funded a municipal police department.¹

The Town is the only municipality in Beaufort County with its own Emergency Medical Services (EMS) Department, and EMS services are delivered in every other municipality in Beaufort County by Beaufort County.² Beaufort County has not imposed a user fee on real property taxpayers in other municipalities to cover the cost of the delivery of EMS services.³

Beaufort County Ordinance 2020-29 creates a classification based on the claim that property taxpayers in the Town receive a benefit because they do not fund a municipal police department, but real property taxpayers in the other municipalities receive a benefit because they do not fund municipal EMS departments. Beaufort County treats them differently because they are not charged a user fee for EMS services.

Because Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and all persons similarly situated are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV and S.C. Const. art. I, § 3.

The Order does not include findings of fact or conclusions on the Town’s equal protection claim, and the Town urges the Court to alter or amend the Order to find in the

¹ The classification is not reasonable, because the only evidence in the record does not support it. As was shown in the Town’s May 1, 2025, Motion for Summary Judgment and herein, the only evidence is that the BSCO does not deliver any enhanced level of service in the municipal limits of the Town, and the only evidence is that the real property taxpayers in the Town contribute more to the BSCO’s budget than the value of the services delivered by the BCSO in the municipal limits of the Town.

² See Stipulation Numbers 8 and 9.

³ See Stipulation Number 11.

Town's favor based on denial of equal protection that Ordinance 2020-29 imposed on real property tax payers in the Town.

2. The Order includes findings to the effect that real property taxpayers in the Town receive a benefit because the Law Enforcement Service Charge (the "LESC") imposed by Beaufort County Ordinance 2020-29 costs them less than funding a municipal police department. This analysis misses the point. In *Burns, et al. v. Greenville County Council, et al.*, 433 S. C. 583, 861 S.E.2d 31 (2021), the South Carolina Supreme Court stated that when a user fee is charged to real property taxpayers, the benefit that must be realized is increased property values. In the case of Beaufort County Ordinance 2020-29, the effect of the LESC on property values was not a consideration of Beaufort County when it adopted Beaufort County Ordinance 2020-29 which imposed the LESC.⁴

Beaufort County argued that the amendment to S. C. Code § 6-1-300(6)(Supp. 2025), removed the requirement for an exclusive benefit to the payer of the fee.⁵ Beaufort

⁴ See Stipulation Exhibit 3, p. 24, l. 21 to p. 25, l. 20, which reads:

Error! Main Document Only.

Q. Since we're talking, based on your last answer of yes, whether or not this was real property, structures, what have you, did Beaufort County provide you with any evidence that the services described in your report of April 17 that is marked as Exhibit 8 enhanced the value of property within the Town of Hilton Head Island?

A. Can you clarify what you mean by "enhanced the value of the property"?

Q. Does it raise the monetary value of the property?

A. And your question is, did they provide me evidence to that effect?

Q. Yes.

A. Okay. No.

Q. Was the effect of the services described in your preliminary report of April 17, marked as Exhibit 8 – did the effect of those services on the monetary value of property within the Town, was that even part of the discussion with, between TischlerBise and the County?

A. No.

⁵ Even with the amendments to S. C. Code Ann. § 6-1-300(6)(Supp. 2025), there still must be some benefit accruing to the payer of the fee other than what every other member of the general public receives. In the absence of such, the user fee is a tax. See *BellSouth Telecommunications, Inc. v. City of Orangeburg*, 337 S.C. 35, 522 S.E.2d 804 (1999).

County failed to address the fact that the payer must still derive a benefit that is different from what everyone else receives, even though the benefit does not have to be exclusive, and because the payers of the LESC are real property tax payers, the benefit must be an increase in property values under *Burns, supra*.

The Order does not include any findings or conclusions on the requirements in *Burns, supra*, or address the fact that the payers of the LESC do not receive a benefit different from any other member of the public, and the Town urges the Court to alter or amend the Order to find in the Town's favor based the only evidence in the record being that there is no benefit because, among other things, the LESC does not increase property values as required by *Burns, supra*.

3. The Order includes findings and conclusions that the LESC is a valid service or user fee based on an invalid comparison and which are contrary to the only direct evidence related to the level and type of service delivered in the Town by the Beaufort County Sheriff's Office (herein, the "BCSO"). The finding in the Order that the BCSO serves as the Town's police department is without support in the record. The finding in the Order's that the BSCSO delivers an enhanced level of service in the Town is without support in the record. The only evidence in the record related to the level and type of law enforcement services delivered in the Town is the testimony of the Sheriff of Beaufort County, which is:

Q. Okay. And so do you – does the Sheriff's Office provide essentially police department -like services to Hilton Head?

A. You can compare to some degree the level of service we provide. The definition, of course, is a lot different. We're not a municipal police department and the Town of Hilton Head doesn't have one. The operation of a police force or police department is quite different, and our service that we provide Hilton Head is a service that is in line and alike to the

unincorporated areas of Beaufort County. We treat Hilton Head no different when it comes to providing service.⁶

The Sheriff's testimony is clear that police services and law enforcement services are different and that police services are not delivered by the BCSO in the Town. The Sheriff's testimony is also clear that, compared to any like area, there is no difference in the level of service delivered by the BCSO in the Town.⁷ The Order does not address the Sheriff's testimony, which is the only evidence in the record that addresses the level and type of service delivered in the Town by the BCSO. The Town urges the Court to alter or amend the Order to find in the Town's favor based the only evidence in the record being that there is no enhanced level of service delivered in the Town, and the payers of the LESC receive no benefit.

4. The Order includes findings and conclusions that the amount collected by the LESC under Ordinance 2020-29 is not the total cost of the delivery of the services, and not a cost connected with an enhanced lever of services, even though the only evidence in the record is that the calculation of the fee was based on the total cost of the delivery of the services. Julie Herlands, a representative of the firm "TischlerBise," testified as to the preparation of the study and report upon which Ordinance 2020-29 is based.⁸

Julie Herter testified that the LESC was designed to collect the entire cost of delivery of law enforcement services by the BCSO in the Town. Exhibit 11 to Julie

⁶ See Stipulation Exhibit 5, p. 17, l. 11-25.

⁷ The findings in the Order are focused on the gross number of telephone calls to the dispatch center and cost of a municipal police force paid by other municipalities, neither of which address the actual question which is whether the Town receives a level of services over and above what it pays for.

⁸ See Stipulation Number 14 and Stipulation Exhibit 12, which is the deposition of Julie Herlands.

Herland's deposition is a document from the BCSO identifying the total cost of law enforcement services in the Town to be \$4,383,257.00.⁹ Ms. Herlands delivered an explanatory presentation to Beaufort County in support of Ordinance 2020-29.¹⁰ On page 4 of the presentation, the total cost for delivery of the BCSO's services in the municipal limits of the Town is stated to be 4,383,257.00.¹¹ The text of Ordinance 2020-29 states that the amount sought to be collected is \$4,383,257.¹²

The Order does not address Julie Herland's testimony and includes findings that are contrary to it, which is the only evidence in the record that addresses amount of the LESC and the basis on which it is calculated.¹³ The Town urges the Court to alter or amend the Order to find in the Town's favor based the only evidence in the record being that the LESC is not a valid service or user fee because it is designed to collect the total

⁹ See Exhibit 11 to Stipulation Exhibit 5.

¹⁰ See Exhibit 14 to Stipulation Exhibit 5.

¹¹ See page 4 of Stipulation Exhibit 2. The text and data in the study reflect that the fee imposed by Ordinance 2020-29, is designed to collect one hundred percent of the cost of delivery of law enforcement services in the municipal limits of the Town.

(i) Figure 2, page 4, reflecting the "Total HHI Cost" at \$4,383,257.

(ii) The text following Figure 2 reads, in relevant part: "The above calculated cost of \$4,383,257 is used to determine the proposed Law Enforcement Service Charge and Uniform User Fee. This figure can be adjusted as the budget changes.

(iii) Figure 8, page 10, shows that the fee is designed to collect the total cost of delivery of law enforcement services in the municipal limits of the Town.

¹² See Stipulation Exhibit 1, Ordinance 2020-29, Page 1, subparagraph g.

¹³ The findings in the Order that discuss "primary" and "secondary" law enforcement services miss the point. The data on which Beaufort County relied in adopting Beaufort County Ordinance 2022-29 state that the figures used were the total of the delivery of the law enforcement services in the Town.

cost of the delivery of the services, and not the cost of any claimed enhanced level of service.¹⁴

6. The Order includes findings and conclusions that the payers of the LESC receive a benefit because the LESC is less than the cost of a municipal police department. There is no authority cited in the Order that such is a valid basis for the conclusion. The only evidence in the record is that real property taxpayers in the Town contributed between 37% and 40% of the General Fund Budget Revenues for Beaufort County for fiscal years 2020/2021 through 2022/2023.¹⁵ In Fiscal Year 2021/2021, the real property tax payers in the Town contributed 38% of Beaufort County's General Fund Budget.¹⁶ In Fiscal Year 2021/2022, real property taxpayers in the Town contributed 37% of Beaufort County's General Fund Budget. In Fiscal Year 2022/2023, real property taxpayers in the Town contributed 40% of Beaufort County's General Fund Budget.¹⁷

The General Fund Budget of the BCSO is not a separate budget, but is a part of the General Fund Budget for Beaufort County.¹⁸ Thus, for Fiscal Years 2020/2021, 2021/2022 and 2022/2023, the real property taxpayers in the Town contributed between 37 and 40% of the BCSO's General Fund Budget.

¹⁴ There is no evidence in the record that quantifies the claimed enhanced level of service, and the testimony of the Sheriff is that there is no enhanced level of service.

¹⁵ See Stipulation Number 9.

¹⁶ The real property taxpayers are property tax payers who are also charged the LESC. See Stipulation Number 10 and Stipulation Exhibit 1.

¹⁷ These Beaufort County and BCSO budget numbers from which these percentages are derived appear in Stipulation Number 9.

¹⁸ See Stipulation Number 8.

The only evidence in the record is that for the same period, services delivered by the BCSO in the municipal limits Town account for approximately 16% to 22% for the BCSO's budget.¹⁹

Real property taxpayers in the Town have paid double or nearly double do the cost of the delivery of services by the BCSO in the Town in each year that the LESC has been in effect.²⁰ The stipulated facts regarding the Beaufort County and BCSO budgets reveal that there is no special benefit conferred on the real property taxpayers in the Town by the LESC, because the real property taxpayers in the Town already contribute more to the budget of the BCSO than the total cost of delivery of services by the BCSO in the municipal limits of the Town. Not only do the real property taxpayers in the Town not receive an enhanced level of service over that which they already pay, but the real property taxpayers in the Town are donors to the rest of Beaufort County with respect to the payment of the BCSO's budget. There is no evidence that the real property taxpayers receive any distinct benefit as a result of the payment of the LESC. The Order does not address the stipulated facts which show that the payers of the LESC pay more than the cost of the delivery of law enforcement services in the Town. Because the payers of the LESC pay more than the cost of the services in the absence of the LESC, the LESC is not a valid user fee. The Town urges the Court to alter or amend the Order to find in the Town's favor based the only evidence in the record being that the payers of the LESC receive no benefit and pay more than the cost of the delivery of law enforcement services in the Town.

¹⁹ See Stipulation Number 9.

²⁰ It is actually more than that, because the real property tax collections do not include the funds generated by the LESC. The real property taxpayers in the Town are actually being charged twice for the services of the BCSO.

CONCLUSION

For the reasons stated above and in the Town's May 1, 2025, Motion for Summary Judgment, the Town urges the Court to alter or amend the Order to find in the Town's favor and grant the Town's Motion for Summary Judgment, and deny Beaufort County's Motion for Summary Judgment.

Respectfully Submitted:

COLTRANE & WILKINS, LLC

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Hilton Head Island, South Carolina

This 15th day of August, 2025.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CASE NUMBER: 2020-CP-07-1840
THE TOWN OF HILTON HEAD	)	
ISLAND, SOUTH CAROLINA, JOHN	)	
J. MCCANN and STEPHEN G. RILEY,	)	
Intervenors/Plaintiffs,	)	
vs.	)	
BEAUFORT COUNTY, SOUTH	)	AMENDED COMPLAINT
CAROLINA,	)	
Defendant/Plaintiff	)	
vs.	)	
JAMES BECKERT,	)	
Defendant.	)	

The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley, complaining of Beaufort County, South Carolina, allege as follows:

1. The Town of Hilton Head Island, South Carolina (hereinafter, the "Town"), is a municipality and political subdivision of the State of South Carolina, organized and existing under the Constitution and statutes of the State of South Carolina.
2. John J. McCann (hereinafter, "McCann") is a citizen, resident and property owner in the municipal limits of The Town of Hilton Head Island, South Carolina.
3. Stephen G. Riley (hereinafter, "Riley") is a citizen, resident and property owner in the municipal limits of The Town of Hilton Head Island, South Carolina.
4. Beaufort County, South Carolina (hereinafter, "Beaufort County"), is a county and political subdivision of the State of South Carolina, organized and existing under the Constitution and statutes of the State of South Carolina.
5. The Town lies within and is a part of Beaufort County.
6. The Town, McCann and Riley, as property owners in the Town, and pay the Beaufort County Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29.

7. The Hon. P. J. Tanner (hereinafter, the “Sheriff”) is the duly elected Sheriff of Beaufort County and he heads the Beaufort County Sheriff’s Office (hereinafter, the “BCSO”).
8. The Town has an interest in the health and well-being, both physical and economic, of its residents, property owners and taxpayers and the Town owns real property situate in the Town. McCann and Riley are freeholders and taxpayers. The Plaintiffs have standing to bring this suit.
9. Under S.C. Const. art. V, § 24, the Sheriff is a constitutional officer, whose duties are described in S. C. Code Ann. § 23-13-10 *et seq.* (Supp. 2023), and § 23-15-10 *et seq.* (Supp. 2023).
10. Among the statutory duties of Sheriff is the duty to patrol the entire county under the Sheriff’s jurisdiction. See: S. C. Code Ann. 23-13-70 (Supp. 2023).
11. The BCSO, under the direction of the Sheriff, patrols the entirety of Beaufort County, including areas within the municipal limits of every city or town in Beaufort County.
12. The BCSO, under the direction of the Sheriff, provides a uniform level of service throughout the County, and the personnel and assets of the BCSO are utilized throughout the entirety of Beaufort County, as the Sheriff determines the needs of any particular time and place require.
13. The Town does not have a municipal police department.
14. There is no statutory or other requirement for the Town to have a police department.
15. Enforcement of Town ordinances is a separate and distinct function from the Sheriff’s duty to patrol the entirety of Beaufort County.
16. On August 24, 2020, Beaufort County adopted Ordinance 2020-29 entitled: “Establishing a Beaufort County Law Enforcement Service Charge and Uniform User Fee” (hereinafter the “Law Enforcement Service Charge”). A true and accurate copy of Beaufort County Ordinance 2020-29 is attached as Exhibit “A.” Beaufort County Ordinance 2020-29

incorporated the text of a report of TischlerBise, entitled “Law Enforcement User Fee Study Approach and Findings,” dated July 13, 2020. A copy of the report is attached as Exhibit “B.”

18. The Law Enforcement Service Charge, as described in text of Beaufort County Ordinance 2020-29 and the Tischler Bise Study show that Ordinance 2029-29 is designed to recoup the entire cost of the delivery of primary law enforcement services by the BCSO in the municipal limits of the Town.

19. The Law Enforcement Service Charge is paid only by real property owners including the owners of property that is otherwise exempt from the payment of *ad valorem* property taxes to Beaufort County, South Carolina, which includes the Town.

20. S. C. Code Ann. § 6-1-300(6)(Supp. 2023), as amended in 2022, reads:

- (6) “Service or user fee” means a charge required to be paid in return for a particular government service or program. “Service or user fee” also includes “uniform service charges”. The revenue generated from the fee must:
 - (a) be used to the benefit of the payers, even if the general public also benefits;
 - (b) only be used for the specific improvement contemplated;
 - (c) not exceed the cost of the improvement; and
 - (d) be uniformly imposed on all payers.

21. The text of S. C. Code Ann. § 6-1-300(6)(Supp. 2023) requires a benefit to the payer of the fee. This text does not authorize charging a fee to offset the cost of a mandated or any other county-wide service.

22. The text of S. C. Code Ann. § 6-1-300(6)(Supp. 2023) requires that funds collected through the device of any service or user fee can only be used for the specific improvement contemplated, and that fee cannot exceed the cost of the improvement.

23. The text of Beaufort County Ordinance 2020-29 is based on a study prepared by TischlerBise attached hereto as Exhibit “B.”

24. The calculation of the Law Enforcement Service Charge is based on the total of the cost of the BCSO to delivery of primary law enforcement services in the Town. The TischlerBise study does not quantify any level of enhanced level of service delivered by the BSCO to the Town that is not delivered in any like area. Because the improvement necessary to justify a fee under S. C. Code Ann. § 6-1-300(6)(Supp. 2023) is neither identified nor quantified in Beaufort County Ordinance 2020-29, the Law Enforcement Service Charge imposed by it does not meet the requirements of S. C. Code Ann. § 6-1-300(6)(Supp. 2023).

25. Because the amount of the Law Enforcement Service Charge is based on the total of the cost of the BCSO to deliver primary law enforcement services in the Town and not the amount of any claimed improvement or enhancement of services delivered by the BCSO to any like area, the Law Enforcement Service Charge exceeds the cost of the improvement. Because the Law Enforcement Service Charge exceeds the cost of any claimed improvement or enhancement of services. Beaufort County Ordinance 2020-29, and the Law Enforcement Service Charge imposed by it do not meet the requirements of S. C. Code Ann. § 6-1-300(6)(Supp. 2023) for a valid service or user fee.

26. The Sheriff has testified that the Town is similarly situated to unincorporated Beaufort County, and there is no difference in the level of primary law enforcement service delivered to the Town over the unincorporated Beaufort County. Secondary law enforcement services is that secondary services are things such as the crime lab, hostage negotiator, SWAT team and similar, not deputy sheriffs on patrol and are not part of the Law Enforcement Service Charge.

27. The effect of the Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29 on property values in the Town was not considered by Beaufort County in the adoption of Beaufort County Ordinance 2020-29.

28. Neither the text of Beaufort County Ordinance 2020-29 nor the text of the

TischlerBise study show that the imposition of the Law Enforcement Service Charge cause an increase in property values to increase an any significant or meaningful way.

29. Prior to the adoption of Beaufort County Ordinance 2020-29, and currently, revenue from the Town to Beaufort County equals approximately forty (40%) of the total revenue raised by Beaufort County each calendar year. For the years 2020 and 2021:

- (a) The annual Budget for Beaufort County for fiscal year 2020 was \$135,162,698.00;
- (b) Revenue from taxpayers in the Town totaled \$53,255,174.00, which represented 39% of the total annual budget for Beaufort County for fiscal year 2020;
- (c) The annual budget for the BCSO for fiscal year 2020 was \$33,399,342.00;
- (d) Ordinance 2020-29 includes text stating that the cost of delivery of the uniform level of service by the Sheriff within the municipal limits of the Town was \$4,383,257.00, for Fiscal Year 2020;
- (e) The cost of delivery of the uniform level of service by the Sheriff in the Town as stated in Ordinance 2020-29 is approximately 13.01% of the total annual budget for the BCSO for fiscal year 2020;
- (f) The fee imposed by Ordinance 2029-29 equals the entire cost of the delivery of law enforcement services by the BCSO in the Town;
- (g) The annual Budget for Beaufort County for fiscal year 2021 is \$130,300,431.00;
- (h) Revenue from taxpayers in the Town were approximately \$53,787,726.00, and will represented approximately 41% of the total annual budget for Beaufort County for fiscal year 2021;
- (i) The annual budget of the BCSO is a part of the annual budget for Beaufort County. There is no separate millage stated to fund the operations of the BCSO, it is a part of the overall Beaufort County budget;
- (j) For fiscal year 2020, revenue from taxpayers in the Town equaled approximately 39% of the budget of the BSCO, and for fiscal year 2021, it is anticipated that taxpayers in the Town contributed approximately 41% of the budget of the BCSO;
- (k) In both cases, revenue from taxpayers hin the Town exceed the stated cost of delivery of services in the Town in Ordinance 2020-29 because revenue from taxpayers in the Town contributed more than 39 % of the total budget of the BCSO.

Because property owners in the Town pay more than the cost of delivery of direct law enforcement services of the BCSO in the Town, there is no special benefit to property owners in the Town as is required by S. C. Code Ann. § 6-1-300(6)(Supp. 2023).

30. The only municipality in Beaufort County that funds its own municipal EMS Department is the Town. No other municipality maintains an EMS Department, and Beaufort County delivers EMS services to the other municipalities without a charging any fee property owners or anyone else in the other municipalities.

BY WAY OF A FIRST CAUSE OF ACTION

31. Each and every allegation of paragraphs 1 through 30 is re-alleged, as if fully repeated.

32. The Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29 is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6)(Supp. 2023), because property owners in the municipal limits of the Town do not receive a distinct or special benefit from the BCSO that is different from any like area in Beaufort County. The services of the BCSO are delivered to the Town are the same as in any like area of Beaufort County.

33. The Law Enforcement Service Charge is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6)(Supp. 2023), because text of Beaufort County Ordinance 2020-29 and the text of the TischlerBise study on which Ordinance 2020-29 is based do not show that the imposition of the Law Enforcement Service Charge will cause property values to increase. The legislative history of Beaufort County Ordinance 2020-29 shows that a purported increase in property values was not a rationale for the enactment of Beaufort County Ordinance 2020-29.

34. Because the Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29 is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6)(Supp. 2023), it is an illegal tax that is prohibited by S. C. C § 6-1-310 (Supp. 2023).

35. Neither the text of Ordinance 2020-29 nor the TischlerBise study state that the Law Enforcement Service Charge will result in an increased level of service to the Town over that delivered by the BCSO in any like area.

36. Neither the text of Ordinance 2020-29 nor the TischlerBise study state that the Law

Enforcement Service Charge will result in an increased level of service in the Town over that which existed prior to the adoption of Ordinance 2020-29. Rather, the Law Enforcement Service Charge imposes a new charge for a service that was already being delivered and which does not differ from the mandated county-wide service delivered to any like area or in the Town prior to the adoption of Ordinance 2020-29.

37. The Town, John J. McCann and Stephen G. Riley are entitled an Order of the Court of Common Pleas declaring that the Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29 is an illegal tax, and that the taxpayers who paid it are entitled to a refund.

BY WAY OF A SECOND CAUSE OF ACTION

38. Each and every allegation of paragraphs 1 through 37 is re-alleged, as if fully repeated.

39. The Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29 is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6)(Supp. 2023), because property owners in the municipal limits of the Town do not receive a distinct or special benefit from the BCSO that is different from any like area in Beaufort County. The services of the BCSO are delivered to the Town are the same as in any like area of Beaufort County and are the same as the services delivered by the BCSO in the Town prior to the adoption of Ordinance 2020-29.

40. The classification created by Ordinance 2020-29 is arbitrary, and does not treat the Plaintiffs in the same manner as others who are similarly situated.

41. Further evidence that the classification created by Ordinance 2020-29 is this: the only municipality in Beaufort County that funds its own municipal EMS Department is the Town. No other municipality maintains an EMS Department, and Beaufort County delivers EMS services to the other municipalities without a charging any fee property owners or anyone else in the other municipalities.

42. Beaufort County Ordinance 2020-29 does not apply and is not applied equally to persons similarly situated.

43. Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and as a result, all persons similarly circumstanced are not treated alike.

44. Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and as a result, all persons similarly circumstanced are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV; S.C. Const. art. I, § 3.

BY WAY OF A THIRD CAUSE OF ACTION

45. Each and every allegation of paragraphs 1 through 44 is re-alleged, as if fully repeated.

46. Neither the text of Ordinance 2020-29 nor the TischlerBise study state that the Law Enforcement Service Charge will result in an increased level of service to the Town over that delivered by the BCSO in any like area. Rather, the Law Enforcement Service Charge imposes a new charge for a service that is already being delivered and which does not differ from the mandated county-wide service delivered to any like area.

47. The Law Enforcement Service Charge is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6)(Supp. 2023), because tax payers in the municipal limits of the Town do not receive a distinct or special benefit from the BCSO that is different from that delivered in any like area.

48. The Law Enforcement Service Charge is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6)(Supp. 2023), because text of Beaufort County Ordinance 2020-29 and the text of the TischlerBise study on which Ordinance 2020-29 is based do not show that the

imposition of the Law Enforcement Service Charge will cause property values to increase. The legislative history of Beaufort County Ordinance 2020-29 shows that a purported increase in property values was not a rationale for the enactment of Beaufort County Ordinance 2020-29.

49. Because the Law Enforcement Service Charge because it does not comply with the requirements S. C. Code Ann. § 6-1-300(6)(Supp. 2023), is an illegal tax, and violates their right to equal protection under the law, The Town, John J. McCann and Stephen G. Riley are entitled an Order of the Court of Common Pleas granting a temporary and permanent injunction, enjoining collection of and requiring Beaufort County to refund the Law Enforcement Service Charges collected by it to date.

50. No adequate remedy at law exists to halt the illegal and unconstitutional imposition of the Law Enforcement Service Fee in the Town. Because it is characterized as a fee and is not an assessment of real property taxes, no method exists for a taxpayer to appeal the imposition of the fee. There are approximately 40,965 tax parcels in the Town, and thus 40,695 payments under protest and lawsuits would be required for the taxpayers to defend against this illegal tax. That is not a practical or adequate remedy.

BY WAY OF A FOURTH CAUSE OF ACTION

51. Each and every allegation of paragraphs 1 through 50 is re-alleged, as if fully repeated.

52. On information and belief, Beaufort County collected approximately 4.6 million dollars through the Law Enforcement Service Charge in calendar year 2020 and thereafter.

53. Because Beaufort County collected this money through an illegal tax, the taxpayers who paid it are entitled to a refund.

54. Because the amount of money collected is a fixed sum capable of determination, Beaufort County must also pay pre-judgment interest on the amounts wrongfully collected at the statutory rate of eight and three-quarters percent, under S. C. Code Ann. § 34-31-

20(A)(Supp. 2023).

BY WAY OF A FIFTH CAUSE OF ACTION

55. Each and every allegation of paragraphs 1 through 54 is re-alleged, as if fully repeated.

56. Beaufort County Ordinance 2020-29 violates the plain language of S. C. Code Ann. § 6-1-300(6)(Supp. 2023), and Beaufort County has acted without substantial justification in pressing its claim in this case.

57. Under S. C. Code Ann. § 15-77-300 (Supp. 2023), the Town is entitled to an award of its reasonable attorney's fees incurred in this case.

CONCLUSION

Wherefore, The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley pray that this Court inquire into the matters set forth herein, and that it enter its Order as follows:

1. Finding that the Beaufort County, South Carolina, Law Enforcement Service Charge, is not a valid service or user fee under S. C. Code Ann. § 6-1-300(6)(Supp. 2023), and Ordering Beaufort County, South Carolina, to refund the amounts collected to date, with interest thereon at the statutory rate of eight and three quarters per cent;
2. Finding that Ordinance 2020-29 violates their right to equal protection under U.S. Const. amend. XIV; S.C. Const. art. I, § 3, and requiring Beaufort County, South Carolina to refund the Law Enforcement Service Charge collected by it to date.
3. Granting a temporary and permanent injunction, enjoining the collection of the Beaufort County, South Carolina, Law Enforcement Service Charge, and requiring Beaufort County, South Carolina to refund the Law Enforcement Service Charge collected by it to date.
4. Awarding pre-judgment interest and reasonable attorney's fees against Beaufort County as authorized by S. C. Code Ann. § 15-77-300 (Supp. 2023); and,

5 For all other and further relief as this Court may deem just and proper.

Respectfully Submitted:

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Hilton Head Island, South Carolina

September 15, 2023.

EXHIBIT "A" TO AMENDED COMPLAINT
CASE NUMBER 2020-CP-070-1840

Certified True Copy
Clerk to Council
Beaufort County, SC
By: Sarah W. Brock
Sarah W. Brock, JD
Date: 1.13.2023

ORDINANCE 2020/29

ESTABLISHING A BEAUFORT COUNTY LAW ENFORCEMENT SERVICE CHARGE AND UNIFORM USER FEE

WHEREAS, Beaufort County Council and Beaufort County (the "County") is a body politic and political subdivision of the State of South Carolina; and

WHEREAS, under SC Code Ann. Section 4-9-10 et seq. and other applicable law, specifically including Section 4-9-25 and 4-9-30(5)(a), Beaufort County Council is empowered to act in the interests of public safety, and in matters involving the health and welfare of its citizens; and

WHEREAS, law enforcement services are critical to the health and welfare of the citizens of the County; and

WHEREAS, the expenses of the County involving law enforcement are significant aspects of the County's financing and operations; and

WHEREAS, Beaufort County Council has, after extensive study and consideration, determined that it is in the best interest of the citizens and taxpayers of Beaufort County, South Carolina, that an Ordinance Establishing a Law Enforcement Service Charge and Uniform User Fee for portions of Beaufort County South Carolina should be enacted;

NOW, THEREFORE, IT IS RESOLVED AND ORDAINED AS FOLLOWS:

Section 1. FINDINGS OF FACT:

- a. Since its incorporation in 1983, the Town of Hilton Head Island (The "Town") has contracted with and otherwise received certain law enforcement services from the Beaufort County Sheriff (the "Sheriff") and the County, in exchange for annual payments.
- b. Counties are specifically authorized by Section 4-9-30(5) of the Code of Laws of South Carolina "...to assess property and levy...uniform service charges, ... and make appropriations for functions and operations of the county, including, but not limited to... public safety, including police and fire protection... ."
- c. The health, order, general welfare, and convenience of the County and the County's citizens within the town limits of Hilton Head Island will be served by the enactment of this ordinance.
- d. The Town has chosen not to create and maintain its own police force, instead relying on the contract and the services provided by the County and the Sheriff's Office.
- e. In the most recent year of analysis, there have been 97,335 calls for service for the Sheriff's Office within the Town.
- f. The Sheriff's Office provides law enforcement services to the Town, above and beyond what the Sheriff's Office provides to other incorporated municipalities in the County.
- g. The estimated most recent annual cost to provide services within the Town of Hilton Head Island is \$4,383,257.
- h. The Law Enforcement Service Charge and Uniform User Fee is to be charged to properties in the Town to cover the cost of law enforcement services provided within the Town by the Sheriff's Office over and beyond the level of services provided in the incorporated municipalities which provide their own law enforcement services.

- i. It is fair and reasonable to assess the Law Enforcement Service Charge and Uniform User Fee to the areas within the Town.
- j. The fiscal, economic, and planning consulting firm TischlerBise has prepared over 900 impact fees and over 800 fiscal impact analyses for clients across the United States and Canada.
- k. TischlerBise is well qualified to have studied the relevant issues surrounding the provision of law enforcement services by the Sheriff's Office in the Town.
- l. The detailed approach, methodology, narrative and findings of that certain study report and findings of TischlerBise entitled "Law Enforcement User Fee Study Approach and Findings" dated July 13, 2020 are appropriate, thorough, and complete.
- m. The findings and recommendations of the TischlerBise report are hereby incorporated by reference and included as a basis for the implementation of the Law Enforcement Service Charge and Uniform User Fee imposed herein.

Section 2. ESTABLISHMENT OF LAW ENFORCEMENT SERVICE CHARGE AND UNIFORM USER FEE

A law enforcement service charge and uniform user fee in the amounts set forth in Section 4 hereof shall be levied annually upon all parcels of real property located within the municipal boundaries of the Town of Hilton Head Island (all such parcels being collectively referred to herein as the "Service Area"). The law enforcement service charge and uniform user fee authorized hereby shall be included on real property tax notices for all such parcels. For such parcels that are exempt from ad valorem taxes, the law enforcement service charge and uniform user fee authorized hereby shall be billed by the County as a separate invoice to be mailed to applicable property owners on or about the time that real property tax notices are mailed, and will be due on January 15 of each succeeding year.

Section 3. RECORDING AND USE OF PROCEEDS

All proceeds derived from the law enforcement service charge and uniform user fee authorized hereby shall be recorded in a separate fund within the County's accounts. Such proceeds shall be used for law enforcement and related administrative services to be provided by the Beaufort County Sheriff's Office in the Service Area, in lieu of the applicable municipality providing its own law enforcement force at a level above the base level of law enforcement services provided by the Sheriff's Office in the unincorporated County.

Section 4. TABLE OF CHARGES; EXCEPTIONS

The law enforcement service charge and uniform user fee shall be charged to each applicable parcel based on use and size as set forth in the following table. The types of "land use" in the following table are defined as provided for in the Beaufort County Community Development Code.

Except as provided for in this section, no public or private property shall be exempt from the law enforcement service charge and uniform user fee. No exemption, offset, or reduction shall be granted based on the age, tax, economic status, race, or religion of the property owner.

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88

Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

Section 5. PAYMENT AND COLLECTION

The law enforcement service charge and uniform user fee shall be due, payable and to be collected in the same manner as real property taxes and shall be subject to the same penalties and interest as overdue real property taxes.

Section 6. APPEAL AND ADJUSTMENT

A fee payer may appeal the assessment of the User Fee on a parcel of property at any time. The appeal must be submitted in writing to the law enforcement service charge and uniform user fee appeal officer(s), as may be appointed from time to time by the County Administrator. An appeal submitted before the January 15th due date shall be considered for the current year owed. An appeal submitted on or after January 15th shall only apply to the succeeding year.

An appeal must be submitted in writing to the appeal officer c/o county administrator, and shall contain the reason for appeal and required supporting documents. Required documents may include, but are not limited to, a survey prepared by a registered land surveyor or professional engineer containing information on the size and type of the property, business license or other license documentation, utility bills, company registration from the SC Secretary of State's Office, or other verifiable documentation which may tend to establish the use(s) to which the property is put, and/or the size or other relevant information. Using the information provided by the appellant, the appeal officer shall conduct a review of the property and fee assessment. The appeal officer may also request reasonable additional documentation pertinent to the appeal. The appeal officer shall respond to an appeal in writing within thirty (30) days. In response to an appeal, the appeal officer may adjust the fee applicable to the property in conformance with Section 4.

A decision of the appeal officer which is adverse to the appellant may be further appealed to the Beaufort County Administrator or his/her designee within thirty (30) days of the adverse decision. The appellant, stating the grounds for further appeal, shall deliver notice of the appeal to the County Administrator or his/her designee. The County Administrator or his/her designee shall issue a written decision on the appeal within thirty (30) days. All decisions by the County Administrator or his/her designee shall be served on the appellant personally or by registered or certified mail to the billing address of the property owner. All decisions of the County Administrator or his/her designee shall be final.

Section 7. LIABILITY; NO HINDRANCE OF SHERIFF'S DISCRETION

This chapter does not imply that a benefitted property will be free from criminal activity, and does not create additional duties on the part of the County or Sheriff's Office. This chapter does not waive the County's or Sheriff's Office's immunity or limited liability under any law. Nothing herein shall serve to hinder the exercise of law enforcement and other discretion held by the Sheriff's Office under the South Carolina Constitution and applicable law.

Section 8. LEGISLATIVE INTENT; SEVERABILITY

It is, inter alia, the legislative intent of the County that a law enforcement service charge and uniform user fee be levied under the terms described herein. The County asserts that this legislative intent must prevail if it can be reasonably discovered in the language used, and such language must be construed in light of the ordinance's intended purpose. To the extent any portion of this ordinance should be found illegal or unenforceable by a court of competent jurisdiction, the offending portion shall be void and of no effect, and is deemed severable from the remainder. The rest of the ordinance shall remain in force and of effect and shall be interpreted according to the findings and express and implied legislative intent to be operative and enforceable to the fullest extent.

Section 9. REPEALER, EFFECTIVE DATE

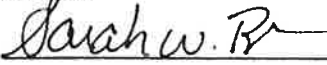
All ordinances or parts of ordinances in conflict with this ordinance or inconsistent with its provisions are hereby repealed or superseded to the extent necessary to give this ordinance full force and effect. This ordinance shall take effect upon final approval.

ADOPTED IN MEETING DULY ASSEMBLED this 24th day of August 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: 
Joseph Passiment, Chairman

ATTEST:



Sarah W. Brock, Clerk to Council

Third and Final Reading: August 24, 2020 / Vote: 9-2

Public Hearing: August 24, 2020

Second Reading: August 10, 2020/ Vote: 6-3

First Reading by Title Only: July 13, 2020/ Vote: 7-3

EXHIBIT "B" TO AMENDED COMPLAINT
CASE NUMBER 2020-CP-070-1840



Law Enforcement Service Charge and Uniform User Fee Study Approach and Findings

Prepared for:

Beaufort County, South Carolina

July 13, 2020

Prepared by:



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Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
Beaufort County, South Carolina

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EXECUTIVE SUMMARY

Beaufort County, South Carolina, retained TischlerBise to develop a methodology for a Law Enforcement Service Charge and Uniform User Fee to be implemented in the Town of Hilton Head Island. The Law Enforcement Service Charge and Uniform User Fee would cover the cost for law enforcement services provided by the Beaufort County Sheriff's Office (BCSO) to the Town of Hilton Head Island.

The BCSO provides law enforcement services in the Unincorporated County and supports municipal police departments. Although the Town of Hilton Head Island is an incorporated municipality in Beaufort County it does not have its own police force. Instead, the Town contracts with the BCSO for Law Enforcement Services.

The Law Enforcement Service Charge and Uniform User Fee is calculated to reflect the direct cost for services provided by the BCSO to the Town of Hilton Head Island. The report sets out a methodology to allocate those costs to the user of the services. The process is as follows:

- First, the total cost for BCSO law enforcement services provided to the Town of Hilton Head Island is documented. This cost reflects the actual cost for law enforcement services provided per the contract between BCSO and the Town.
- Second, the cost is allocated to residential and nonresidential land uses. This reflects the demand for law enforcement services from different users of the service.
- Finally, a service charge schedule is developed by type of land use. The summary schedule is shown below in Figure 1.

Figure 1. Beaufort County Law Enforcement Service Charge and Uniform User Fee Schedule

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88
Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

OVERVIEW

Several incorporated jurisdictions in Beaufort County have municipal police departments (e.g., cities of Beaufort and Bluffton; town of Port Royal). In incorporated places with municipal police departments in Beaufort County, the Beaufort County Sheriff's Office (BCSO) assists on calls for service but is not the primary responder.

BCSO is the main law enforcement agency in Unincorporated Beaufort County and provides support to incorporated localities with law enforcement agencies. BCSO also provides law enforcement services directly to the Town of Hilton Head Island via a contract for services executed between Beaufort County and the Town. These law enforcement services are provided to the Town in lieu of the Town providing its own police force and is above the base level of law enforcement service provided to incorporated places in the County.

Prior to Fiscal Year 2021, the Town of Hilton Head Island paid Beaufort County directly for the contracted services. As of FY2021, the Town has indicated it will stop paying the contracted amount yet expects continuation of law enforcement services.

To recoup direct costs for law enforcement services provided by the BCSO to the Town of Hilton Head Island, the County is exploring a Law Enforcement Service Charge and Uniform User Fee District. The Law Enforcement Service Charge and Uniform User Fee District is calculated to allocate costs to different types of land uses based on a commensurate demand for services.

The BCSO responded to over 320,000 law enforcement calls for service in Beaufort County in calendar year 2019. Of those calls, approximately 97,000 were in the Town of Hilton Head Island, or 30 percent of total County law enforcement calls. The BCSO FY2021 budget is approximately \$32 million.

APPROACH AND METHODOLOGY

Approach

The approach to calculate the Law Enforcement Service Charge and Uniform User Fee is:

- Identify and quantify law enforcement costs provided by the BCSO to the Town of Hilton Head Island. This reflects the actual costs for law enforcement services consumed by the Town.
- Develop the Service Charge and Uniform User Fee methodology to allocate costs to land uses on the Town of Hilton Head Island.
- Calculate the Service Charge and Uniform User Fee and schedule based on the methodologies developed.

Methodology

The following is a summary of steps used to calculate the Law Enforcement Service Charge and Uniform User Fee reflecting the services provided by BCSO in the Town of Hilton Head Island. Each step is discussed in further detail in this section.

1. Calculate the cost for Law Enforcement Services provided in Town of Hilton Head Island. This is separate from countywide services provided in both the unincorporated and incorporated County (such as Civil Processing, Court Security, Forensics Services Lab, Bomb Squad).
2. Allocate BCSO law enforcement costs serving Hilton Head Island to residential and nonresidential development using functional population split (i.e., demand from residential versus nonresidential development).
3. Calculate costs per service unit for residential (per person) and nonresidential (per nonresidential vehicle trip) development.
4. Calculate service charge for residential and nonresidential land uses and produce a schedule of charges by type of land use.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
Beaufort County, South Carolina

Cost for Law Enforcement Services provided in Town of Hilton Head Island

BCSO is a countywide agency. The range of services provided include Victims Advocate, School Resource Officers, Administration, Enforcement, Forensics Laboratory, Crime Suppression, Emergency Management, Communications, and Traffic Management. The total BCSO budget for FY21 is \$32 million. Of that amount, approximately \$4.4 million is spent on law enforcement services to the Town of Hilton Head Island. Detail is provided below.

Figure 2. FY2021 BCSO Budget for Town of Hilton Head Island Law Enforcement Services

	FY2021
Base Budget Positions^	\$3,704,257
Victim Advocate Officer	\$100,000
Benefits	\$504,000
Hilton Head Bar Patrol Overtime	\$75,000
Total HHI Cost	\$4,383,257
RBC Heritage Golf Tournament*	\$26,500

^ Reflects 41 positions

* Town of Hilton Head Island reimburses Beaufort County

As identified above, costs for services to Hilton Head Island reflect personnel (authorized at 41 positions), employee benefits, Victim Advocate Officer, and Hilton Head Bar Patrol Overtime. (BCSO also provides law enforcement services for the RBC Heritage Golf Tournament held on the Island. The Town reimburses the County for those services.)

The above calculated cost of \$4,383,257 is used to determine the proposed Law Enforcement Service Charge and Uniform User Fee. This figure can be adjusted as the budget changes.

BCSO Law Enforcement Costs for Hilton Head Island Allocated to Residential and Nonresidential Development

To allocate costs to land uses, functional population is used. Functional population is a standard methodology to apportion costs between residential and nonresidential development. Further detail is provided below.

Functional Population

Both residential and nonresidential development place demand on law enforcement services. To calculate the proportionate share between residential and nonresidential demand for a particular service or facility, a "functional population" approach is used. The functional population approach allocates the cost of law

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
Beaufort County, South Carolina

enforcement services to residential and nonresidential development based on the activity of residents and workers in the Town of Hilton Head Island over a 24-hour time period.

Residents that do not work are assigned 20 hours per day to residential development and 4 hours per day to nonresidential development (annualized averages). Residents that work in Hilton County are assigned 14 hours to residential development and 10 hours to nonresidential development. Residents that work outside the Town are assigned 14 hours to residential development, the remaining hours in the day are assumed to be spent outside of the Town working. Inflow commuters are assigned 10 hours to nonresidential development. Based on 2017 data (the latest Origin-Destination data available from U.S. Census Bureau), residential development accounts for 75 percent of the functional population, while nonresidential development accounts for 25 percent.

Figure 3. Town of Hilton Head Island Functional Population

Hilton Head Town, SC (2017)				
Residential			Demand Hours/Day	Person Hours
Population*	76,698			
Residents Not Working	61,816		20	1,236,320
Employed Residents	14,882			
Employed in Hilton Head	8,898	14		124,572
Employed outside Hilton Head	5,984	14		83,776
Residential Subtotal				1,444,668
Residential Share =>				75%
Nonresidential				
Non-working Residents	61,816	4		247,264
Jobs Located in Hilton Head	23,471			
Residents Employed in Hilton Head	8,898	10		88,980
Non-Resident Workers (inflow commuters)	14,573	10		145,730
Nonresidential Subtotal				481,974
Nonresidential Share =>				25%
TOTAL				1,926,642

Source: U.S. Census Bureau, OnTheMap 6.1.1 Application and LEHD Origin-Destination Employment Statistics.

* Seasonal/peak population; TischlerBise calculation from housing unit estimate and U.S. Census household size

The cost for the Beaufort County Sheriff's Office services provided in the Town of Hilton Head Island is allocated to residential and nonresidential development using the above proportionate share factors. Results are shown below.

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Figure 4. Town of Hilton Head Island BCSO Law Enforcement Cost Allocated to Residential and Nonresidential Development

Hilton Head BCSO Law Enforcement Cost Allocated to Residential / Nonresidential		
	<i>Functional Population*</i>	
Residential Proportionate Share	75%	\$3,287,443
Nonresidential Proportionate Share	25%	\$1,095,814
TOTAL COST	100%	\$4,383,257

* Functional population (see supporting figure)

Costs per Service Unit

Appropriate service units are identified for Law Enforcement Services. For residential development, population is the driver and is reflected in household size (i.e., persons per household) by type of housing unit. This captures demand from both year-round and seasonal housing units. Population is the appropriate service unit.

For nonresidential development, the appropriate service unit is vehicle trips. Vehicle trip rates are typically used for public safety-related fees and charges to reflect the relative demand for public safety services from nonresidential development. That is, vehicle trip rates are highest for commercial/retail development—reflecting demand from all activity (workers, shoppers, visitors) at a retail establishment. Conversely, industrial development has the lowest nonresidential trip rates and office development rates fall between the other two categories reflecting the level of activity at each type of facility.

BCSO Law Enforcement costs allocated between residential and nonresidential development are then divided by the applicable base year demand factors to determine a cost per demand factor—for residential, a cost per capita and for nonresidential, a cost per nonresidential vehicle trip.

Seasonal population in housing units is calculated to account for both year-round and seasonally-occupied housing units in Hilton Head Island. Nonresidential vehicle trips are calculated based on applicable vehicle trip rates and adjustment factors per the Institute of Transportation Engineers (ITE) applied to nonresidential land uses in Hilton Head Island. Data is based on the Beaufort County Development Impact Fee Study conducted by TischlerBise in 2019-2020. Detail is provided in Appendix A.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
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Figure 5. Town of Hilton Head Island BCSO Law Enforcement Cost per Service Unit

Hilton Head BCSO Law Enforcement Cost	\$4,383,257	
	Residential	Nonresidential
Proportionate Share %	75%	25%
Proportionate Share \$	\$3,287,443	\$1,095,814
Service Unit	Seasonal Population in Hsg Units	Nonresidential Vehicle Trips
Current Service Units (2020)*	79,046	64,997
Cost per Service Unit (rounded)	\$41.59	\$16.86

* See Appendix A for supporting detail.

As shown, the calculated cost per person is \$41.59 and the cost per nonresidential vehicle trip is approximately \$16.86.

Service Charges and Uniform User Fees for Residential and Nonresidential Land Uses

Using the above factors, Law Enforcement Service Charges and Uniform User Fees for the Town of Hilton Head Island are calculated. The service charges are based on household size for residential development and vehicle trips per 1,000 square feet or hotel room for nonresidential development. Differentiating the service charge by housing type allows the results to reflect the level of demand (persons per household) from residential land uses. For residential development, the cost per person (\$41.59) is multiplied by household size to calculate the proposed service charge by type of unit. For nonresidential development, the cost per vehicle trip (\$16.86) is multiplied by trips per demand unit (either 1,000 square feet or lodging room) to calculate the proposed fee.

The schedule presented is meant to provide broad-based land use categories to capture the majority of types of land uses in the Town. Using ITE trip rates for nonresidential development allows additions to the schedule, as necessary.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
Beaufort County, South Carolina

Figure 6. Law Enforcement Service Charge and Uniform User Fee Proposed Schedule

Residential

Service Charge Component	Cost per Person
Hilton Head BCSO Law Enforcement Cost	\$41.59
Total	\$41.59

Housing Type	Persons per Household [^]	Service Charge per Housing Unit
Single Family	2.42	\$101
Multifamily	2.11	\$88

[^] Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Nonresidential

User Fee Component	Cost per Trip
Hilton Head BCSO Law Enforcement Cost	\$16.86
Total	\$16.86

Development Type	Demand Unit	Vehicle Trip Ends per Demand Unit*	Trip Adj. Factor*	Service Charge per Demand Unit
Retail	1,000 sq. ft.	37.75	38%	\$242
Office/Service	1,000 sq. ft.	9.74	50%	\$82
Industrial	1,000 sq. ft.	3.93	50%	\$33
Institutional	1,000 sq. ft.	10.72	50%	\$90
Lodging	Room	8.17	50%	\$69

* Source: Trip Generation, Institute of Transportation Engineers, 10th Edition (2017)

SUMMARY: LAW ENFORCEMENT SERVICE CHARGE AND UNIFORM USER FEE SCHEDULE

The figure below summarizes the proposed Law Enforcement Service Charge and Uniform User Fee schedule calculated to cover the costs incurred by BCSO to serve the Town of Hilton Head Island.

Figure 7. Proposed Law Enforcement Service Charge and Uniform User Fee Schedule

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88
Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

Given the above schedule and estimated base year development in the Town of Hilton Head Island, an estimate of revenue can be provided. Please note, cost factors have been rounded in the analysis and therefore the total revenue calculated does not equal the total cost.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
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Figure 8. Law Enforcement Service Charge and Uniform User Fee Estimated Revenue

Land Use	Demand Unit	Service Charge per Demand Unit	Base Year Development	Estimated Revenue
Residential				
Single Family	Housing Unit	\$101	20,075	\$2,027,597
Multifamily	Housing Unit	\$88	14,438	\$1,270,525
			<i>Subtotal</i>	<i>\$3,298,122</i>
Nonresidential				
Retail	1,000 sq. ft.	\$242	2,724	\$659,168
Office/Service	1,000 sq. ft.	\$82	3,340	\$273,881
Industrial	1,000 sq. ft.	\$33	2,515	\$82,979
Institutional	1,000 sq. ft.	\$90	880	\$79,204
			<i>Subtotal</i>	<i>\$1,095,231</i>
			GRAND TOTAL*	\$4,393,353

* Does not equal total cost due to rounding.

APPENDIX A: DEMOGRAPHIC ASSUMPTIONS

Population and Housing Characteristics

Per capita standards and persons per housing unit or persons per household are used to derive proportionate service charge amounts. Household sizes vary by housing unit type and, consequently, demand for services vary. Thus, it is important to differentiate between housing types and size.

When persons per housing unit (PPHU) is used in service charge calculations, infrastructure standards are derived using year-round population. In contrast, when persons per household (PPHH) is used in the calculations, the service charge methodology assumes all housing units will be occupied, thus requiring seasonal population to be used when deriving infrastructure standards.

According to the state of South Carolina's Department of Parks, Recreation, and Tourism, Beaufort County is the third most visited county in the state. Infrastructure and services are sized to accommodate not just permanent residents, but seasonal residents and workers as well. Therefore, TischlerBise recommends that service charges for residential development be calculated according to persons per household.

Based on housing characteristics, TischlerBise recommends using two housing unit categories for the service charges: (1) Single Family and (2) Multifamily. Each housing type has different characteristics resulting in a different demand for Law Enforcement services. Figure 9 shows the U.S. Census American Community Survey 2017, 5-Year Estimates data for the Town of Hilton Head Island. Single family units have a household size of 2.42 persons and multifamily units have a household size of 2.11 persons.

Figure 9. Town of Hilton Head Island Persons per Household

HILTON HEAD						
Housing Type	Persons	Housing Units	Persons per Housing Unit	Households	Persons per Household	Housing Unit Mix
Single Family [1]	29,905	19,771	1.51	12,341	2.42	58%
Multifamily [2]	9,570	14,219	0.67	4,527	2.11	42%
Total	39,475	33,990	1.16	16,868	2.34	

[1] Includes attached and detached single family homes

[2] Includes structures with 2+ units

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Base Year Population and Housing Units

As noted above, the Town of Hilton Head Island has permanent and short-term (i.e., seasonal) residents. The current estimate of population, on which the service charge is based, accounts for full occupancy of residential units. Population estimates are based on assumptions in TischlerBise's Development Impact Fee Study (with data from the Beaufort County Transportation Model at the Traffic Analysis Zone (TAZ) level) and population estimates for the Town of Hilton Head Island from the U.S. Census.

Town of Hilton Head Island Housing Unit and Population Estimate (2020)

Current housing units by type of unit are estimated and used to derive current estimated seasonal population in the Town of Hilton Head Island. First, permanent population for the Town of Hilton Head Island is obtained from the U.S. Census for 2019 and updated to 2020 using growth rate assumptions from TischlerBise's Development Impact Fee Study. Next, the permanent population estimate is used to determine the estimated number of housing units in the Town. Then, persons per household (i.e., population in an occupied housing unit) is applied to the estimated number of housing units to calculate seasonal population in 2020. Detail is provided in the following two figures.

Figure 10. Town of Hilton Head Island Housing Unit Estimate (2020)

Hilton Head Permanent Population Estimate 2019 [1]	39,639
Estimated Growth 2019 to 2020 [2]	1.0%
2020 Hilton Head Permanent Population Estimate	40,035
Average Persons per Housing Unit [3]	1.16
Hilton Head Housing Unit Estimate 2020 [4]	34,513

[1] U.S. Census in Town of Hilton Head Island CAFR FY2019

[2] Beaufort County TAZ Transportation Model in TischlerBise Development Impact Fee Study (2020)

[3] U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

[4] Calculated. Permanent population / persons per housing unit

Figure 11. Town of Hilton Head Island Seasonal Population Estimate (2020)

Town of Hilton Head Island Housing Unit Estimate 2020	34,513			
	% Distr. [1]	# by Type	PPHH [2]	Seasonal Pop. Est.
Single Family Units	58%	20,075	2.42	48,582
Multifamily Units	42%	14,438	2.11	30,464
Total	100%	34,513		79,046

[1] U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

[2] Persons per Household; U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Base Year Employment and Nonresidential Floor Area

The Law Enforcement Service Charge and Uniform User Fee is also applied to nonresidential development as discussed in the body of this report. Nonresidential vehicle trips are calculated for the base year using employment and nonresidential square footage in the Town of Hilton Head Island.

Figure 12 provides detail on base year employment and nonresidential square footage in the Town of Hilton Head Island. Nonresidential square footage is estimated based on number of jobs by type of industry and square feet per employee factors derived from the Institute of Transportation Engineers (ITE).

As shown below, it is estimated that there are 22,780 jobs in the Town of Hilton Head Island as of 2020. The estimate is from Traffic Analysis Zone (TAZ) data, provided in the Beaufort County Transportation Model for TischlerBise's Development Impact Fee Study (2020). Jobs are converted to nonresidential square footage with factors shown in Figure 13.

Figure 12. Town of Hilton Head Island Employment and Nonresidential Square Footage by Industry (2020)

Industry	Employment (2020)*	%	Sq. Ft./Emp [^]	Nonres. Sq. Ft. (2020)*
Retail	6,379	28%	427	2,723,833
Office	9,911	44%	337	3,340,007
Industrial	4,004	18%	628	2,514,512
Institutional	2,486	11%	354	880,044
Total	22,780	100%		9,458,396

* Beaufort County TAZ Transportation Model in TischlerBise Development Impact Fee Study (2020)

[^] Trip Generation, Institute of Transportation Engineers (ITE), 10th Edition (2017)

Square feet per employee conversion factors (indicated above) along with weekday trip rates (referenced in Figure 14) per demand unit are shown below in Figure 13.

Figure 13. Institute of Transportation Engineers Nonresidential Factors

ITE Code	Land Use	Demand Unit	Wkdy Trip Ends Per Dmd Unit	Wkdy Trip Ends Per Employee	Emp Per Dmd Unit	Sq Ft Per Emp
820	Shopping Center (avg size)	1,000 Sq Ft	37.75	16.11	2.34	427
710	General Office (avg size)	1,000 Sq Ft	9.74	3.28	2.97	337
140	Manufacturing	1,000 Sq Ft	3.93	2.47	1.59	628
610	Institutional/Hospital	1,000 Sq Ft	10.72	3.79	2.83	354

Source: Trip Generation, Institute of Transportation Engineers, 10th Edition (2017)

Nonresidential Vehicle Trips

Vehicle trip generation for nonresidential land uses are calculated using average daily (weekday) trip end rates and adjustment factors from the Institute of Transportation Engineers in *Trip Generation*, 10th edition. To estimate base year nonresidential vehicle trips in Town of Hilton Head Island, weekday trip ends per 1,000 square feet factors shown in Figure 13 are used.

For nonresidential land uses, a standard 50 percent adjustment is applied to Office, Industrial, and Institutional to allocate trips to the nonresidential (destination) land use (with the other trip end allocated to the originating land use). A lower vehicle trip adjustment factor is used for Retail because this type of development attracts vehicles as they pass-by on arterial and collector roads. For example, when someone stops at a convenience store on their way home from work, the convenience store is not their primary destination.

In Figure 14, the Institute for Transportation Engineers' land use code, daily vehicle trip end rate, and trip adjustment factor is listed for each nonresidential land use.

Figure 14. Town of Hilton Head Island Average Daily Nonresidential Vehicle Trips (2020)

Industry	Nonres. Sq. Ft. (2020)*	Vehicle Trip Ends per 1,000 Sq. Ft.^	Trip Adj. Factor^	Vehicle Trip Ends (2020)
Retail	2,723,833	37.75	38%	39,073
Office	3,340,007	9.74	50%	16,266
Industrial	2,514,512	3.93	50%	4,941
Institutional	880,044	10.72	50%	4,717
Total	9,458,396			64,997

* Beaufort County TAZ Transportation Model in TischlerBise Development Impact Fee Study (2020)

^ Trip Generation, Institute of Transportation Engineers (ITE), 10th Edition (2017)

APPENDIX B: LAND USE DEFINITIONS

Residential Development

As discussed below, residential development categories are based on data from the U.S. Census Bureau, American Community Survey. It is anticipated that Beaufort County will collect the Law Enforcement Service Charge and Uniform User Fee from all residential units.

Single Family:

1. Single family detached is a one-unit structure detached from any other house, that is, with open space on all four sides. Such structures are considered detached even if they have an adjoining shed or garage. A one-family house that contains a business is considered detached as long as the building has open space on all four sides.
2. Single family attached (townhouse) is a one-unit structure that has one or more walls extending from ground to roof separating it from adjoining structures. In row houses (sometimes called townhouses), double houses, or houses attached to nonresidential structures, each house is a separate, attached structure if the dividing or common wall goes from ground to roof.
3. Mobile home includes both occupied and vacant mobile homes, to which no permanent rooms have been added, are counted in this category. Mobile homes used only for business purposes or for extra sleeping space and mobile homes for sale on a dealer's lot, at the factory, or in storage are not counted in the housing inventory.
 - Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 210

Multifamily:

1. 2+ units (duplexes and apartments) are units in structures containing two or more housing units, further categorized as units in structures with "2, 3 or 4, 5 to 9, 10 to 19, 20 to 49, and 50 or more apartments."
2. Boat, RV, Van, Etc. includes any living quarters occupied as a housing unit that does not fit the other categories (e.g., houseboats, railroad cars, campers, and vans). Recreational vehicles, boats, vans, railroad cars, and the like are included only if they are occupied as a current place of residence.
 - Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 220, 221, 222

Nonresidential Development

Nonresidential development categories represent general groups of land uses that share similar average weekday vehicle trip generation rates and employment densities (i.e., jobs per thousand square feet of floor area).

Retail: Establishments primarily selling merchandise, eating/drinking places, and entertainment uses. By way of example, *Retail* includes shopping centers, supermarkets, pharmacies, restaurants, bars, nightclubs, automobile dealerships, and movie theaters.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 820, 815, 823, 850, 875, 880

Office/Service: Establishments providing management, administrative, professional, or business services; By way of example, *Office/Service* includes banks, business offices, headquarter buildings, business parks, and research and development centers.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 710, 712, 714, 720, 750, 770

Industrial: Establishments primarily engaged in the production, transportation, or storage of goods. By way of example, *Industrial* includes manufacturing plants, distribution warehouses, trucking companies, utility substations, power generation facilities, and telecommunications buildings.

- Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 110, 130, 150, 154, 160, 170

Institutional: Establishments providing management, administrative, professional, or business services; By way of example, *Institutional* includes assisted living facilities, nursing homes, hospitals, medical offices, veterinarian clinics, schools, universities, churches, daycare facilities, government buildings, and prisons.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 520, 560, 565, 575, 580, 590

Lodging: Establishments that provide sleeping accommodations and supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or other retail and service shops.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 310, 311, 312, 320, 330.

APPENDIX C: COMPARISON LOCALITIES

Below is a list of communities with seasonal population demands and their respective Law Enforcement agency budgets. This is provided for comparison purposes only, at a high level, and is not meant to be exhaustive or reflective of a recommended level of service.

	Year Round Population	FY19 Police Budget (rounded)
City of Bluffton, SC	19,000	\$6,600,000
City of Beaufort, SC	13,357	\$4,500,000
Rehoboth Beach, DE	1,520	\$3,700,000
Gulf Shores, AL	12,517	\$6,200,000

Source: TischlerBise research from publicly available sources.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-07-01840

The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley,

Plaintiffs

VS.

Beaufort County, South Carolina,

Defendant.

ANSWER TO PLAINTIFFS' [THIRD] AMENDED COMPLAINT

AND NOW COMES Defendant Beaufort County ("County"), by and through its undersigned counsel, and files the following Answer to the Amended Complaint ("Third Amended Complaint")¹ filed by Plaintiffs The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley on or about September 20, 2023:

FOR A FIRST DEFENSE, AND BY WAY OF ANSWER

1. The County admits the allegations of Paragraph 1 of Plaintiffs' Third Amended Complaint.
2. The County admits the allegations of Paragraph 2 of Plaintiffs' Third Amended Complaint.
3. The County admits the allegations of Paragraph 3 of Plaintiffs' Third Amended Complaint.
4. The County admits the allegations of Paragraph 4 of Plaintiffs' Third Amended Complaint.

¹ Although not specified as such in the caption, this is would be the Third Amended Complaint in this case. On September 17, 2020, Plaintiff Town of Hilton Head Island, South Carolina filed the original Complaint. On October 25, 2020, Plaintiffs filed their first Amended Complaint. On April 26, 2022, Plaintiffs filed their second Amended Complaint.

5. The County admits the allegations of Paragraph 5 of Plaintiffs' Third Amended Complaint.

6. The County admits the allegations of Paragraph 6 of Plaintiffs' Third Amended Complaint.

7. The County admits the allegations of Paragraph 7 of Plaintiffs' Third Amended Complaint.

8. The allegations of Paragraph 8 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 8 of Plaintiffs' Third Amended Complaint.

9. The allegations of Paragraph 9 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 9 of Plaintiffs' Third Amended Complaint.

10. The allegations of Paragraph 10 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 10 of Plaintiffs' Third Amended Complaint.

11. The County admits the allegations of Paragraph 11 of Plaintiffs' Third Amended Complaint.

12. The County admits in part and denies in part the allegations of Paragraph 12 of Plaintiffs' Third Amended Complaint. The County denies Paragraph 12, to the extent it alleges or suggests that the Beaufort County Sheriff's Office only provides a uniform level of service throughout the county. The County admits the remaining allegations of Paragraph 12 of Plaintiffs' Third Amended Complaint.

13. The County admits the allegations of Paragraph 13 of Plaintiffs' Third Amended Complaint.

14. The allegations of Paragraph 14 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 14 of Plaintiffs' Third Amended Complaint.

15. The County admits the allegations of Paragraph 15 of Plaintiffs' Third Amended Complaint. By way of further answer, the contract between the parties is not limited to enforcement of Town ordinances.

16. Ordinance 2020/29 and the "Law Enforcement User Fee Study Approach and Findings" (Exhibits A and B to Plaintiffs' Third Amended Complaint) are written documents that speak for themselves and are the best, and only, evidence of their contents. Any attempt to characterize the contents of Ordinance 2020/29 or the "Law Enforcement User Fee Study Approach and Findings" is improper. For this reason, the County denies Paragraph 16 of Plaintiffs' Third Amended Complaint.

17. Plaintiffs' Third Amended Complaint does not have a Paragraph 17.

18. Ordinance 2020/29 is a written document that speaks for itself and is the best, and only, evidence of its contents. Any attempt to characterize the contents of Ordinance 2020/29 is improper. For this reason, the County denies Paragraph 18 of Plaintiffs' Third Amended Complaint.

19. Ordinance 2020/29 is a written document that speaks for itself and is the best, and only, evidence of its contents. Any attempt to characterize the contents of Ordinance 2020/29 is improper. For this reason, the County denies Paragraph 19 of Plaintiffs' Third Amended Complaint.

20. The allegations of Paragraph 20 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 20 of Plaintiffs' Third Amended Complaint.

21. The allegations of Paragraph 21 of Plaintiffs' Third Amended Complaint

constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 21 of Plaintiffs' Third Amended Complaint.

22. The allegations of Paragraph 22 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 22 of Plaintiffs' Third Amended Complaint.

23. The allegations of Paragraph 23 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 23 of Plaintiffs' Third Amended Complaint.

24. The allegations of Paragraph 24 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 24 of Plaintiffs' Third Amended Complaint.

25. The allegations of Paragraph 25 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 25 of Plaintiffs' Third Amended Complaint.

26. Sheriff P.J. Tanner's deposition in this matter is a written document that speaks for itself and is the best, and only, evidence of its contents. Any attempt to characterize Sheriff Tanner's deposition is improper. For this reason, the County denies Paragraph 26 of Plaintiffs' Third Amended Complaint.

27. The County denies Paragraph 27 of Plaintiffs' Third Amended Complaint.

28. Ordinance 2020/29 and the "Law Enforcement User Fee Study Approach and Findings" (Exhibits A and B to Plaintiffs' Third Amended Complaint) are written documents that speak for themselves and are the best, and only, evidence of their contents. Any attempt to

characterize the contents of Ordinance 2020/29 or the "Law Enforcement User Fee Study Approach and Findings" is improper. For this reason, the County denies Paragraph 28 of Plaintiffs' Third Amended Complaint.

29. Ordinance 2020/29, the "Law Enforcement User Fee Study Approach and Findings" (Exhibits A and B to Plaintiffs' Third Amended Complaint), and the County's budget are written documents that speak for themselves and are the best, and only, evidence of their contents. Any attempt to characterize the contents of Ordinance 2020/29, the "Law Enforcement User Fee Study Approach and Findings," or the County's budget is improper. For this reason, the County denies Paragraph 29 of Plaintiffs' Third Amended Complaint.

30. The County denies Paragraph 30 of Plaintiffs' Third Amended Complaint.

FIRST CAUSE OF ACTION

31. The County incorporates by reference, as if set forth at length, the allegations of Paragraphs 1 through 30 of this Answer, *supra*.

32. The allegations of Paragraph 32 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 32 of Plaintiffs' Third Amended Complaint.

33. The allegations of Paragraph 33 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 33 of Plaintiffs' Third Amended Complaint.

34. The allegations of Paragraph 34 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 34 of Plaintiffs' Third Amended Complaint.

35. Ordinance 2020/29 and the "Law Enforcement User Fee Study Approach and Findings" (Exhibits A and B to Plaintiffs' Third Amended Complaint) are written documents that

speak for themselves and are the best, and only, evidence of their contents. Any attempt to characterize the contents of Ordinance 2020/29 or the "Law Enforcement User Fee Study Approach and Findings" is improper. For this reason, the County denies Paragraph 35 of Plaintiffs' Third Amended Complaint.

36. Ordinance 2020/29 and the "Law Enforcement User Fee Study Approach and Findings" (Exhibits A and B to Plaintiffs' Third Amended Complaint) are written documents that speak for themselves and are the best, and only, evidence of their contents. Any attempt to characterize the contents of Ordinance 2020/29 or the "Law Enforcement User Fee Study Approach and Findings" is improper. For this reason, the County denies Paragraph 36 of Plaintiffs' Third Amended Complaint.

37. The allegations of Paragraph 37 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 37 of Plaintiffs' Third Amended Complaint.

SECOND CAUSE OF ACTION

38. The County incorporates by reference, as if set forth at length, the allegations of Paragraphs 1 through 37 of this Answer, *supra*.

39. The allegations of Paragraph 39 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 39 of Plaintiffs' Third Amended Complaint.

40. The allegations of Paragraph 40 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 40 of Plaintiffs' Third Amended Complaint.

41. The allegations of Paragraph 41 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a

response is deemed necessary or appropriate, the County denies the allegations of Paragraph 41 of Plaintiffs' Third Amended Complaint.

42. The allegations of Paragraph 42 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 42 of Plaintiffs' Third Amended Complaint.

43. The allegations of Paragraph 43 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 43 of Plaintiffs' Third Amended Complaint.

44. The allegations of Paragraph 44 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 44 of Plaintiffs' Third Amended Complaint.

THIRD CAUSE OF ACTION

45. The County incorporates by reference, as if set forth at length, the allegations of Paragraphs 1 through 44 of this Answer, *supra*.

46. Ordinance 2020/29 and the "Law Enforcement User Fee Study Approach and Findings" (Exhibits A and B to Plaintiffs' Third Amended Complaint) are written documents that speak for themselves and are the best, and only, evidence of their contents. Any attempt to characterize the contents of Ordinance 2020/29 or the "Law Enforcement User Fee Study Approach and Findings" is improper. For this reason, the County denies Paragraph 46 of Plaintiffs' Third Amended Complaint.

47. The allegations of Paragraph 47 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 47 of Plaintiffs' Third Amended Complaint.

48. The allegations of Paragraph 48 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 48 of Plaintiffs' Third Amended Complaint.

49. The allegations of Paragraph 49 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 49 of Plaintiffs' Third Amended Complaint.

50. The allegations of Paragraph 50 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 50 of Plaintiffs' Third Amended Complaint.

THIRD² CAUSE OF ACTION

51. The County incorporates by reference, as if set forth at length, the allegations of Paragraphs 1 through 50 of this Answer, *supra*.

52. The County admits the allegations of Paragraph 52 of Plaintiffs' Third Amended Complaint.

53. The allegations of Paragraph 53 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 53 of Plaintiffs' Third Amended Complaint.

54. The allegations of Paragraph 54 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 54 of Plaintiffs' Third Amended Complaint.

² Plaintiffs' Third Amended Complaint has two "Third" Causes of Action.

FOURTH CAUSE OF ACTION

55. The County incorporates by reference, as if set forth at length, the allegations of Paragraphs 1 through 54 of this Answer, *supra*.

56. The allegations of Paragraph 56 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 56 of Plaintiffs' Third Amended Complaint.

57. The allegations of Paragraph 57 of Plaintiffs' Third Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, the County denies the allegations of Paragraph 57 of Plaintiffs' Third Amended Complaint.

CONCLUSION

58. The County denies that Plaintiffs are entitled to any of the relief stated in its "WHEREFORE" clause (including subparagraphs (1) through (5) thereto) of the Third Amended Complaint. By way of further answer, this Court should dismiss Plaintiffs' Third Amended Complaint with prejudice and enter judgment in favor of the County.

FOR A SECOND DEFENSE

59. Plaintiffs' Third Amended Complaint fails to state a claim upon which relief may be granted.

FOR A THIRD DEFENSE

60. Plaintiffs lack standing to prosecute the claims asserted in this matter.

61. As a political subdivision of the State of South Carolina, Plaintiff Town of Hilton Head Island, South Carolina may not assert claims on behalf of its taxpayers as *parents patriae*.

FOR A FOURTH DEFENSE

62. Plaintiff Town of Hilton Head Island, South Carolina is not a real party in interest that may bring this action.

FOR A FIFTH DEFENSE

63. Plaintiffs' claims should be dismissed pursuant to the equitable doctrines of waiver, laches and estoppel.

FOR A SIXTH DEFENSE

64. Plaintiffs' claims should be dismissed due to a lack of a justiciable controversy.

FOR A SEVENTH DEFENSE

65. The County is immune from suit and/or protected from liability pursuant to the South Carolina Tort Claims Act. The County does affirmatively plead the South Carolina Tort Claims Act, as well as its rights privileges, limitations and immunities as a full and complete defense to all causes of action asserted by the Plaintiff, including but not limited to §15-78-60.

FOR AN EIGHTH DEFENSE

66. To the extent Plaintiffs seek to recover them, the South Carolina Tort Claims Act expressly precludes the recovery of punitive or exemplary damages.

FOR A NINTH DEFENSE

67. The County reserves the right to supplement or amend this Answer to include any additional defenses which may develop during the discovery and to include additional party(ies) by way of a third-party Complaint should evidence and testimony developed during the course of discovery so warrant.

WHEREFORE, Defendant Beaufort County, having fully answered Plaintiffs' Third Amended Complaint, prays:

- (a) That the Third Amended Complaint against it be dismissed with prejudice at the cost of the Plaintiffs;
- (b) That it recover costs, attorneys' fees and expenses herein incurred;
- (c) For leave to amend its pleadings to include any and all additional defenses that may arise and become applicable during the course and development of the lawsuit; and
- (d) For any and all other proper relief to which it may be entitled.

Respectfully submitted,

BARNWELL, WHALEY, PATTERSON, AND
HELMS, LLC

By: s/ John W. Fletcher

M. Dawes Cooke, Jr., Esq.

John W. Fletcher, Esq.

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*Attorneys for Defendant Beaufort County, South
Carolina*

September 27, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT,) IN THE COURT OF COMMON PLEAS
)
) CASE NUMBER: 2020-CP-07-1840

THE TOWN OF HILTON HEAD ISLAND,)
 SOUTH CAROLINA; JOHN J. MCCANN and)
 STEPHEN G. RILEY,)
)
) Plaintiffs, NOTICE OF MOTION AND
) MOTION FOR
 vs.) SUMMARY JUDGMENT
)
 BEAUFORT COUNTY, SOUTH CAROLINA,)
)
) Defendant.)

TO: BEAUFORT COUNTY, SOUTH CAROLINA:

Please take notice that The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley (hereinafter, collectively, the “Town”), by and through their undersigned counsel, shall move before the Presiding Judge of the Beaufort County Court of Common Pleas, at the Beaufort County Court House, 102 Ribaut Road, Beaufort, South Carolina, on the 10th day following the service hereof, at 10:00 o'clock, A. M., or at such other time and place as is set by the Court, for an Order granting Summary Judgment in their favor and against Beaufort County, South Carolina (hereinafter, “Beaufort County”).

This motion is made under the authority of Rule 56, SCRCF, on the grounds that there is no genuine issue as to any material fact and the Town is entitled to judgment as a matter of law.

This motion is based on the pleadings, Stipulation of Facts filed by the Parties¹, other evidence that is of record in this case, and all applicable law.

¹ On March 7, 2025, the Parties filed a Stipulation of Facts in this case. Herein, the Stipulation of Facts will be referred to as the “Stipulation.”

SUMMARY JUDGMENT STANDARD

Under Rule 56, SCRCP, summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.² Under Rule 56, SCRCP, summary judgment must be granted:

[I]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In determining whether any material issue of fact exists, the evidence and all inferences that can be drawn from the evidence must be viewed in the light most favorable to the non-moving party, or the party resisting the motion.³ The purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact-finder.⁴ For purposes of summary judgment, an issue is ‘material’ if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action.⁵ Once the moving party has met its burden of demonstrating that no genuine issue of material fact exists, a party defeats summary judgment by affirmatively demonstrating the presence of a genuine issue of material fact.⁶

² *Café Associates Limited v. Gengross*, 305 S.C. 6, 406 S.E.2d 162 (1991).

³ *Redwend Limited Partnership v. Edwards*, 354 S.C. 58, 581 S.E.2d 496 (Ct.App. 2003).

⁴ *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

⁵ *P.P.G. Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 375 S.E.2d 331 (Ct. App., 1988).

⁶ Rule 56, SCRCP.

SUMMARY

In this case the Town challenges the “Law Enforcement Service Charge and Uniform User Fee” (herein, the “LESC”) imposed on real property owners in the Town. under Beaufort County, South Carolina (herein “Beaufort County”) Ordinance 2020-29.⁷ The Town, John J. McCann and Stephen G. Riley are property owners in the municipal limits of the Town, and each pays the LESC imposed by Ordinance 2020-29.⁸

S. C. Code Ann. § 6-1-300(6)(Supp. 2024) authorizes service or user fees as follows:

(6) “Service or user fee” means a charge required to be paid in return for a particular government service or program. “Service or user fee” also includes “uniform service charges”. The revenue generated from the fee must:

- (a) be used to the benefit of the payers, even if the general public also benefits;
- (b) only be used for the specific improvement contemplated;
- (c) not exceed the cost of the improvement; and
- (d) be uniformly imposed on all payers.

⁷ See Stipulation Number 10, and also Stipulation Exhibit 1 which reads, in relevant part:

A law enforcement service charge and uniform user fee in the amounts set forth in Section 4 hereof shall be levied annually upon all parcels or real property located within the municipal boundaries of the Town of Hilton Head Island (all such parcels being collectively referred to herein as the “Service Area”). The law enforcement service charge and uniform user fee authorized hereby shall be included on real property tax notices for all such parcels. For such parcels that are exempt from real property taxes, the law enforcement service charge and user fee authorized hereby shall be billed by the County as a separate invoice to be mailed to applicable property owners on or about the time that real property tax notices are mailed, and will be due on January 15 of each succeeding year.

Ordinance 2020-29 imposed the fee on all real property, including real property that is otherwise exempt, such as property owned by The Town of Hilton Head Island, South Carolina.

⁸ See Stipulation Number 13.

Ordinance 2020-29 imposes the LESC on the owners of real property in the municipal limits of the Town. In order for the LESC to be valid, it must:

- (a) provide a benefit to the payers of the fee.
- (b) covers only the cost of the additional service that is provided.
- (c) not exceed the cost of the additional service that is provided.

The LESC fails to meet the requirements of S. C. Code Ann. § 6-1-300(6) (Supp. 2024):

- (a) as a matter of fact, because the only evidence in the record is that the Beaufort County Sheriff's Office (herein, the "BCSO") does not deliver any enhanced level of service in the Town and there is no benefit to owners of real property in the Town⁹; and,
- (b) as a matter of fact, because there is no benefit to the payers of the fee in the form of increased property values as required under *Burns v. Greenville County Council, et al., supra.*¹⁰; and,

⁹ See Stipulation Exhibit 5, **Error! Main Document Only.**p. 11, l. 10 to p. 12, l. 4.. The Hon. P. J. Tanner, Sheriff of Beaufort County stated that no enhanced level of service is delivered in the municipal limits of the Town. The Sheriff's testimony on this point is unequivocal.

¹⁰ Prior to the Supreme Court's decision in *Burns, et al. v. Greenville County Council, et al.*, 433 S. C. 583, 861 S.E.2d 31 (2021), the text of S. C. Code Ann. § 6-1-300(6) required that the payer of a user fee receive a distinct benefit separate from a non-payer. Following the decision in *Burns*, S. C. Code Ann. § 6-1-300(6) was amended to read that a benefit could also be realized by members of the general public. The change to the text of S. C. Code Ann. § 6-1-300(6) does not affect the outcome in this case, for this reason: In *Burns*, the Supreme Court stated that when a fee is charged to property owners, the benefit that must be realized is increased property values. See also: *C.R. Campbell Construction Co., Inc. v. City of Charleston*, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997).

(c) as a matter of fact, because the LESC is not limited to the cost of any enhanced level of service, but rather is calculated to collect the entire cost of the delivery of all services by the BCSO in the Town¹¹; and,

(d) as a matter of law, because under S. C. Code Ann. § 6-1-300(6) (Supp. 2024), a valid fee must: provide a benefit to the payer, be used only for the specific service contemplated and not exceed the cost of the specific service contemplated.

THE PAYERS OF THE LESC DO NOT RECEIVE A BENEFIT

The only evidence in the record is that no benefit justifying the LESC is delivered to the Town by the BSCO, because the BCSO does not deliver any enhanced level of service in the municipal limits of the Town. On May 8, 2019, the Hon. P. J. Tanner corresponded with the County Administrator and advised that he did not deliver any enhanced level of service in the municipal limits of the Town. In the May 8, 2019, correspondence, Sheriff Tanner wrote:

The 42 personnel routinely deployed on HHI are supported by additional assets of my office. in the April 5, 2019, email from John Weaver, these personnel was referred to as “ENHANCED” law enforcement presence on HHI. However, to the contrary **the basic coverage on HHI is those 42 personnel.** (emphasis in the original).¹²

Sheriff Tanner testified that the statement in the May 8, 2019, correspondence was accurate when he wrote it, and nothing had changed as of the date of his deposition:

¹¹ See pages 7 and 8 below. The LESC was designed to collect the *entire* cost of the delivery of service by the Beaufort County Sheriff’s Office on Hilton Head Island. No effort was made to define any additional or enhanced level of service or to limit the LESC to the cost of any enhanced level of service.

¹² See Stipulation Exhibit 5 is the Deposition of the Hon. P. J. Tanner, Sheriff of Beaufort County, South Carolina. Exhibit 2 to the Deposition is the Sheriff’s May 8, 2019 correspondence quoted above.

Q. Sheriff Tanner, are the statements in your correspondence of May 8, 2019, now marked as Exhibit 2, to Ms. Jacobs, were they accurate at the time you made them?

A. At the time on May 8th, 2019 they were.

Q. Has anything changed from and after May 8, 2019, that would change the responses in your correspondence that is now marked as Exhibit 2?

A. Having the ability to remember 2019 is – is one thing that we can do, but also, unless I were to read through this document, I could only fairly respond to any changes. And that's kind of a broad question, whatever changes may be considered not in comparison to 2019, but I don't recall that there would be any changes. I mean, I could go through it line by line, paragraph by paragraph, to see if there's any changes no in 2023 in comparison to that, but I don't believe there is.¹³

Beaufort County argues that other municipalities in Beaufort County, South Carolina, have police forces, and that because the Town does not have a police force, it receives a benefit. Sheriff Tanner testified that this is not a like to like comparison. The like to like comparison is the Town and the unincorporated areas of Beaufort County, which also do not have a police force.¹⁴ On questioning by Beaufort County's lawyer on this point, Sheriff Tanner testified:

Q. Okay. And so do you – does the Sheriff's Office provide essentially police department -like services to Hilton Head?

A. You can compare to some degree the level of service we provide. The definition, of course, is a lot different. We're not a municipal police department and the Town of Hilton Head doesn't have one. The operation of a police force or police department is quite different, and our service that we provide Hilton Head is a service that is in line and alike to the unincorporated areas of Beaufort County. We treat Hilton Head no different when it comes to providing service.¹⁵

¹³ See Stipulation Exhibit 5, p. 11, l. 10 to p. 12, l. 4.

¹⁴ There is no statutory requirement for the Town to have a police department. There is, however, a requirement for the BCSO to patrol the entire County, which includes the municipal limits of the Town. See: S. C. Code Ann. § 23-13-70 (Supp. 2024).

¹⁵ See Stipulation Exhibit 5, p. 17, l. 11-25. Beaufort County will argue that "Agreements for Police Services" previously entered into by the Town are significant. See Stipulation Exhibit 4. These agreements

Because the BCSO does not deliver any enhanced level of service in the Town, there is no basis for the LESC. It is not a valid user fee; it is an illegal tax. *Burns, supra*.

As was stated in note 10 above, the Supreme Court has held that when a user fee is charged to real property tax payers the benefit to the taxpayer is increased property values. In *Burns*, the Supreme Court found that Greenville County's ordinance did not address property values in any. The same applies in this case. Ordinance 2020-29 does not include any findings to the effect that payers of the LESC will see the benefit of increased property values.¹⁶ Ms. Julie Herlands of the TischerBise firm that prepared the study on which Ordinance 220-29 was based, testified that the effect of the LESC on property values in the Town was not part of the discussion with the County, and that the County did not provide any evidence that the LESC would enhance property values in the Town.¹⁷

were for police services and not law enforcement services. The Sheriff's testimony is clear that police services and law enforcement services are different. The Agreements for Police Services are not relevant to this case.

¹⁶ See Stipulation Exhibit 1.

¹⁷ See Stipulation Exhibit 3, p. 24, l. 21 to p. 25, l. 20, which reads:

Error! Main Document Only.

Q. Since we're talking, based on your last answer of yes, whether or not this was real property, structures, what have you, did Beaufort County provide you with any evidence that the services described in your report of April 17 that is marked as Exhibit 8 enhanced the value of property within the Town of Hilton Head Island?

A. Can you clarify what you mean by "enhanced the value of the property"?

Q. Does it raise the monetary value of the property?

A. And your question is, did they provide me evidence to that effect?

Q. Yes.

A. Okay. No.

Q. Was the effect of the services described in your preliminary report of April 17, marked as Exhibit 8 – did the effect of those services on the monetary value of property within the Town, was that even part of the discussion with, between TischlerBise and the County?

A. No.

Because there is no evidence that the LESC enhances property values in the municipal limits of the Town, it is not a valid user fee, it is an illegal tax. *Burns, supra*.

THE FEE IMPOSED BY ORDINANCE 2020-29 IS NOT FOR THE COST OF ANY CLAIMED ENHANCED LEVEL OF SERVICE, RATHER IT IS FOR 100% OF THE COST OF LAW ENFORCEMENT SERVICES IN THE TOWN

The only evidence in the record is that the LESC is calculated to collect one hundred percent of the cost of the delivery of service by the BCSO in the Town, not the cost of any claimed enhanced level of service.¹⁸ The only evidence in the record is:

1. Ordinance 2020-29 includes this finding of fact: "The estimated most recent annual cost to provide services within The Town of Hilton Head Island is \$4,383,257."¹⁹
2. Julie Herlands, a representative of the firm "TischlerBise," testified as to the preparation of the study and report upon which Ordinance 2020-29 is based.²⁰ Julie Herter testified that the LESC was designed to collect the entire cost of delivery of law enforcement services by the BCSO in the Town. Exhibit 11 to Julie Herland's deposition is a document from the BCSO identifying the total cost of law enforcement services in the Town to be \$4,383,257.00.²¹ Ms. Herlands delivered an explanatory presentation to Beaufort County in support of Ordinance 2020-29.²² On page 4 of the presentation, the

¹⁸ For all intents and purposes, the LESC has collected one hundred percent of the cost of the delivery of law enforcement services in the Town since it was adopted. See Stipulation Number 9.

¹⁹ See Stipulation Exhibit 1, Page 1, subparagraph "g," and Stipulation Number 9. Although Ordinance 2020-29 sets the amount to be collected, Beaufort County has collected more than that each year, even though Ordinance 2020-29 has never been amended to authorize a higher collection amount. See Stipulation Number 12.

²⁰ See Stipulation Number 14 and Stipulation Exhibit 12, which is the deposition of Julie Herlands.

²¹ See Exhibit 11 to Stipulation Exhibit 5.

²² See Exhibit 14 to Stipulation Exhibit 5.

total cost for delivery of the BCSO's services in the municipal limits of the Town is stated to be 4,383,257.00.²³ The text of Ordinance 2020-29 states that the amount sought to be collected is \$4,383,257.²⁴

3. See Stipulation Exhibit 5. Sheriff Tanner testified that the BCSO does not deliver any enhanced level of service in the municipal limits of the Town.

Neither the text of Ordinance 2020-29, the testimony of the Sheriff nor the testimony of Julie Herter identify or quantify any enhanced level of service delivered to the Town or any increased property values to the payers of the fee. Rather, the text of Ordinance 2020-29 and the testimony of Julie Herter show that the LESC is calculated to collect one hundred percent of the cost of a mandated county wide service that the BCSO must provide under S. C. Code Ann. § 13-23-70 (Supp, 2024), and do not address increased property values in any way.²⁵

²³ See page 4 of Stipulation Exhibit 2. The text and data in the study reflect that the fee imposed by Ordinance 2020-29, is designed to collect one hundred percent of the cost of delivery of law enforcement services in the municipal limits of the Town.

(i) Figure 2, page 4, reflecting the "Total HHI Cost" at \$4,383,257.

(ii) The text following Figure 2 reads, in relevant part: "The above calculated cost of \$4,383,257 is used to determine the proposed Law Enforcement Service Charge and Uniform User Fee. This figure can be adjusted as the budget changes.

(iii) Figure 8, page 10, shows that the fee is designed to collect the total cost of delivery of law enforcement services in the municipal limits of the Town.

²⁴ See Stipulation Exhibit 1, Ordinance 2020-29, Page 1, subparagraph g.

²⁵ See Stipulation Exhibit 5, p. 24, l. 20 to p. 25, l. 13. Whether the LESC would have any effect on property values in the municipal limits of the Town was not considered in the TischlerBise study (Stipulation Exhibit 2).

SEPARATE AND APART FROM THE LESC, THE REAL PROPERTY TAX PAYERS ON
HILTON HEAD ISLAND CONTRIBUTE MORE TO THE BUDGET OF THE BCSO
THAN THE COST OF THE DELIVERY OF SERVICES BY THE BCSO IN THE
MUNICIPAL LIMITS OF THE TOWN

The only evidence in the record is that real property taxpayers in the Town contributed between 37 and 40% of the General Fund Budget Revenues for Beaufort County for fiscal years 2020/2021 through 2022/2023.²⁶ In Fiscal Year 2021/2021, the real property tax payers in the Town contributed 38% of Beaufort County's General Fund Budget.²⁷ In Fiscal Year 2021/2022, real property taxpayers in the Town contributed 37% of Beaufort County's General Fund Budget. In Fiscal Year 2022/2023, *real property* taxpayers in the Town contributed 40% of Beaufort County's General Fund Budget.²⁸

The General Fund Budget of the BCSO is not a separate budget, but is a part of the General Fund Budget for Beaufort County.²⁹ Thus, for Fiscal Years 2020/2021, 2021/2022 and 2022/2023, the real property taxpayers in the Town contributed between 37 and 40% of the BCSO's General Fund Budget.

The only evidence in the record is that for fiscal year 2020, services delivered by the BCSO in the municipal limits Town account for approximately 22% for the BCSO's budget and in fiscal year 2023, services delivered in the municipal limits of the Town account for approximately 17% of the BCSO's budget.³⁰

²⁶ See Stipulation Number 9.

²⁷ The real property taxpayers are property tax payers who are also charged the LESC. See Stipulation Number 10 and Stipulation Exhibit 1.

²⁸ These Beaufort County and BCSO budget numbers from which these percentages are derived appear in Stipulation Number 9.

²⁹ See Stipulation Number 8.

³⁰ See Stipulation Number 9.

The math reveals that real property taxpayers in the Town have paid double or nearly double do the cost of the delivery of services by the BCSO in the Town in each year that the LESC has been in effect. The stipulated facts regarding the Beaufort County and BCSO budgets reveal that there is no special benefit conferred on the real property taxpayers in the Town by the LESC, because the real property taxpayers in the Town already contribute more to the budget of the BCSO than the total cost of delivery of services by the BCSO in the municipal limits of the Town. Not only do the real property taxpayers in the Town not receive an enhanced level of service over that which they already pay, but the real property taxpayers in the Town are donors to the rest of Beaufort County with respect to the payment of the BCSO's budget.³¹ There is no evidence that the real property taxpayers receive any special benefit as a result of the payment of the LESC. In the absence of a special benefit, there is no statutory authorization for a user fee. S. C. Code Ann. § 6-1-300(6) (Supp. 2024), *Burns, supra*.

³¹ Note that the real property tax collections do not include the funds generated by the LESC. The real property taxpayers in the Town are actually being charged twice for the services of the BCSO.

THE CLASSIFICATION CREATED IN ORDINANCE 2020-29 IS ARBITRARY AND DOES NOT TREAT THE PLAINTIFFS AS OTHERS WHO ARE SIMILARLY SITUATED

Beaufort County has argued and will argue that the Town does not have a municipal police department, that other municipalities in Beaufort County do and that such justifies the LESC imposed by Ordinance 2020-29. Beaufort County has and will argue that the “benefit” that the Plaintiffs receive is that they would pay more if the Town had a municipal police department.³²

The Town is the only municipality in Beaufort County with its own Emergency Medical Services (EMS) Department, and those services are delivered in every other municipality in Beaufort County by Beaufort County.³³ Beaufort County has not imposed a user fee on real property taxpayers in other municipalities to cover the cost of the delivery of EMS services.³⁴

Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and as a result, all persons similarly circumstanced are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV; S.C. Const. art. I, § 3.

³² This argument is backwards. The fact that other municipalities have a municipal police department says nothing about whether the real property taxpayers of the Town receive a benefit. The question does not turn on what other municipalities do, it turns on what Beaufort County and the BSCO do. The only evidence is that the BSCO does not deliver any enhanced level of service in the municipal limits of the Town, and the only evidence is that the real property taxpayers in the Town contribute more to the BSCO’s budget than the value of the services delivered by the BSCO in the municipal limits of the Town.

³³ See Stipulation Numbers 8 and 9.

³⁴ See Stipulation Number 11.

CONCLUSION

1. Because the only evidence in the record is:
 - (a) the BCSO does not deliver any enhanced level of service in the Town; and,
 - (b) there is no benefit to owners of real property in the Town in the form of increased property values; and,
 - (c) the LESC is not limited to the cost of any claimed enhanced level of service (there is none) but rather is calculated to collect the entire cost of the delivery of all law enforcement services delivered by the BCSO in the Town,

all in contravention of S. C. Code Ann. § 6-1-300(6) (Supp. 2024), under which a valid fee must: provide a benefit to the payer, be used only for the specific service contemplated and not exceed the cost of the specific service contemplated, the LESC does not meet the requirements for a valid uniform service charge or user fee under S. C. Code Ann. § 6-1-300(6)(Supp. 2024) and is an illegal tax.

For these reasons, under the authority of Rule 56, SCRPC, the Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley move for Summary Judgment on their claims as follows:

- (a) Ordinance 2020-29 and LESC be declared invalid as a user fee under S. C. Code Ann. § 6-1-300(6) (Supp. 2024), and an illegal tax; and
- (b) Ordinance 2020-29 and LESC be declared denial of the Plaintiffs' right of equal protection as guaranteed in U.S. Const. amend. XIV; S.C. Const. art. I, § 3.

- (c) All funds collected by Beaufort County under Ordinance 2020-29 and the LESC be refunded to the payers of the fee from the year 2020 forward; and,
- (c) Attorney's fees under S. C. Code Ann. § 15-77-300 (Supp. 2024).

Respectfully Submitted:

COLTRANE & WILKINS, LLC

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Curtis L. Coltrane
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Hilton Head Island, South Carolina

This 10th day of March, 2025.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-07-01840

The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley,

Intervenors/Plaintiffs

VS.

Beaufort County, South Carolina,

Defendant/Plaintiff

VS.

James Beckert,

Defendant.

**DEFENDANT BEAUFORT COUNTY'S CROSS
MOTION FOR SUMMARY JUDGMENT**

AND NOW COMES Defendant Beaufort County ("County"), by and through its undersigned counsel, and files the following Cross Motion for Summary Judgment¹:

INTRODUCTION

Unlike other municipalities in Beaufort County, Hilton Head does not have a police department. Since its incorporation, Hilton Head has contracted for the Beaufort County Sheriff's Office ("BCSO") to be its police department and has compensated the County for the cost of acting as its police department. Hilton Head has saved its taxpayers many millions of dollars over the years by using BCSO in this way rather than setting up and maintaining its own police force. Nevertheless, after several decades the Town decided that, while it wanted to continue to use

¹ The parties have agreed to submit this case to the Court for decision on cross motions for summary judgment upon a stipulated set of facts. *See Wiegand v. United States Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011) (“Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law”); *accord*, *Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 796 S.E.2d 165 (Ct. App. 2016).

BCSO as its only police department, it would stop paying for that service. In response, in 2020, the County enacted a law enforcement service charge to reimburse it for the cost of providing Hilton Head's police department.

Hilton Head wants its residents to receive the benefit of a police department without paying for one. Instead, Hilton Head asks all County taxpayers—including those who also pay for their own municipalities' police departments—to underwrite its choice not to have a police department. The law enforcement service charge seeks only to have the most direct beneficiaries of primary² police services provided in Hilton Head pay for them. Plaintiffs contend that the law enforcement service charge violates South Carolina law because it is a "tax," as it pays for services that BCSO provides the entire county. As will be shown below, it is not a tax, but a valid service charge that charges the residents of Hilton Head for police services that are provided in Hilton Head. BCSO expends vastly more resources providing services to Hilton Head than it does to municipalities that have police departments. In fact, Hilton Head saves millions of dollars annually by having the BCSO serve as its police force. Even with the service charge that Beaufort County imposes, the police services that BCSO provides to Hilton Head are far more cost efficient than a stand-alone police department would be.

A. The Contract for Primary Law Enforcement Services

Hilton Head is a municipality in Beaufort County, and Plaintiffs McCann and Riley are taxpayers and property owners in Hilton Head. This lawsuit involves an August 24, 2020 Beaufort County Ordinance, a copy of which is Exhibit 1 to the March 7, 2025 Stipulation of Facts ("Stipulation") between the parties. That ordinance created a uniform service charge ("LESC") on

² "Primary" law enforcement services are those such as primary patrol and responding to calls for service. In every municipality except for [Hilton Head], nearly all primary law enforcement services are provided by municipal police departments." (See Ex. A ¶ 10). "Secondary" law enforcement services, by contrast, "are those such as service of process, warrant service, bomb squad services, disaster services, emergency management, multi-agency violent crime task force, helicopter service, marine services, etc. Secondary law enforcement services are provided equally on an as-needed basis throughout all of Beaufort County, South Carolina (in both municipalities and unincorporated areas)." (See *id.* ¶ 8).

real property in Hilton Head for primary police services.

Because of its large population (including a massive tourist population), Hilton Head's law enforcement demands far exceed those of other parts of the County. (See Ex. D ¶ 8; Ex. D-2). Despite this, Hilton Head “does not have a municipal police department and has never had a municipal police department.” (See Stip. ¶ 6). The parties have stipulated that:

All other municipalities in Beaufort County (including the City of Beaufort, the Town of Port Royal, the Town of Bluffton, and the Town of Yemassee) have municipal police departments. All of those municipalities pay for the maintenance and operation of police departments as a part of their municipal budgets.

(See *id.* ¶ 7). Hilton Head has not explained why—unlike other municipalities—it chooses not to have its own police department, but it is reasonably inferable that the reason is that it is much less expensive to do it this way. To provide competent primary police services to its taxpayers, Hilton Head has historically contracted with the County over the years for BCSO to act as its police department. (See Ex. B and Ex. C). In fact, a 1983 Hilton Head ordinance has required that it enter into such agreements: “In recognition of the expertise and quality of the county sheriff's department and *in order to provide the necessary police protection* to protect the health, safety, welfare and property of [Hilton Head] and its citizens, the town *shall enter* into an intergovernmental service contract with the county sheriff's department, pursuant to article 13, section VIII of the South Carolina Constitution.”³ See Town of Hilton Head Island Code of Ordinances § 7-1-10 (emphasis added). Hilton Head ordinance authorizes council to appropriate “town funds for the acquisition of additional services from the sheriff's department.” See Town of Hilton Head Island Code of Ordinances § 7-1-20. Hilton Head has paid the County for BCSO to serve as its police department since its incorporation in 1983. (See Ex. C ¶ 6; Ex. D ¶ 5).

In January, 2015, Town and the County entered into an Agreement for Police Services (“2015 Agreement”), under which the BCSO would provide Town with a “high level of

³ Article VII, Section 13 of the South Carolina Constitution provides that: “Any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.”

professional police service." (*See* Stipulation Ex. 5). The 2015 Agreement expired on January 31, 2018, but the parties continued on a monthly basis. Under the 2015 Agreement, BCSO agreed to provide primary police services to Hilton Head. Under that agreement, BCSO provides services to Hilton Head over and above what it provides other municipalities. (*See* Ex. C ¶ 8). On October 7, 2019, Hilton Head's then-Mayor (Plaintiff McCann) wrote to the Chairman of County Council:

Town of Hilton Head Island has long made voluntary annual payments to the County for the services rendered by the BCSO, it was with the misplaced understanding that we were compensating the County and therefore the BCSO for services above and beyond the base level of services made available to all citizens of Beaufort County. Sheriff Tanner made clear, earlier this year, that this is in fact not an accurate reflection of his providing of such services. He affirmatively stated that he will provide the same level of law enforcement services here on the Island that he does to all other parts of the County and that he will shift his personnel and equipment as necessary to address issues and concerns as they arise regardless of geographic location. Therefore, we have learned there are only minimal direct services provided to the town, in the form of enforcement of municipal codes, which the Town remains committed to funding.

(*See* Ex. C-3). Mayor McCann stated that, starting in 2021, Hilton Head would only pay the County \$300,000 per year. (*See id.* (emphasis added)).

B. Statistical Data Regarding Law Enforcement Services Provided in Municipalities

It is undisputed that Hilton Head consumes far more BCSO resources than other municipalities. BCSO dispatch receives calls for assistance from throughout the County and directs those calls to the appropriate responding agency (to municipal police departments where applicable). (*See* Ex. D ¶ 9). In 2019⁴, BCSO provided the primary response for all 97,336 calls for service in Hilton Head. (*See id.* ¶ 12). These are calls that would "normally be handled by a municipal police department, if one existed." (*See id.*). BCSO responds to far fewer primary service calls in other municipalities:

⁴ For purposes of this Motion, the County will focus on 2019 statistics and 2020 budgets, since 2019 was the year prior to the 2020 LESC.

<u>MUNICIPALITY</u>	<u>RESPONSES BY TOWN POLICE DEPARTMENT</u>	<u>RESPONSES BY BCSO</u>
Beaufort (98,558 total calls for service)	86,623 (88% of total calls for service)	11,935 (12% of total calls for service)
Bluffton (70,688 total calls for service)	64,778 (92% of total calls for service)	5,890 (8% of total calls for service)
Port Royal (37,083 total calls for service)	33,699 (91% of total calls for service)	3,384 (9% of total calls for service)
Hilton Head Island (97,366 total calls for service)	0 (0% of total calls for service)	97,366 (<u>100%</u> of total calls for service)

(See *id.* ¶¶ 9-15; Ex. D-2). Based on these statistics, if Hilton Head had a police department, BCSO would have only responded to about 10% of its primary service calls, rather than all 97,366.

C. Costs to Provide Law Enforcement Services

BCSO provides "secondary" and "primary" law enforcement services. (See Ex. A ¶ 7). "Secondary" law enforcement services include service of process, warrant service, bomb squad services, disaster services, emergency management, multi-agency violent crime task force, helicopter services, marine services, *etc.* (See *id.* ¶ 8). BCSO provides secondary services equally on an as-needed basis everywhere in Beaufort County. (See *id.*). BCSO's 2020 budgeted costs for providing such "secondary" services was \$29,663,512.00. (See *id.* ¶ 9).

"Primary" law enforcement services are those that a municipal police department would normally handle, such as patrol and responding to citizen calls. (See *id.* ¶ 10). In every municipality except Hilton Head, police departments provide nearly all primary law enforcement services, with BCSO responding to only a small minority of calls and patrols. (See *id.* ¶¶ 10-11). Because Hilton Head does not have a police department, BCSO provides 100% of its "primary" law enforcement services. (See *id.* ¶ 12). It does not do so for any other municipality. Hilton Head consumes far more resources than other municipalities, where BCSO mainly provides secondary services. (See *id.* ¶ 13).

Under Hilton Head's agreement with the County, BCSO has more than 40 employees who provide Hilton Head's primary law enforcement services. (*See id.* ¶ 14). At the time of the LESC, the annual cost and value of primary services that BCSO provided Hilton Head was at least \$4,383,257.00: (a) \$3,704,257 (operating expenditures for those employees); (b) \$504,000 (fringe benefits); (c) \$100,000 (Victim Advocate Officer); (d) \$75,000 (bar patrol overtime). (*See id.* ¶ 15). The actual cost of providing *both* primary and secondary law enforcement services in Hilton Head was substantially greater. (*See id.*). If BCSO did not provide its primary services, Hilton Head would have been forced to spend *much* more operating its own police department than it pays for BCSO to provide the services. In fact, the parties have stipulated that as to the costs incurred by other municipalities annually for the operation of their police departments:

		BLUFFTON	BEAUFORT	PORT ROYAL
2020				
	Population	27,716	13,607	14,220
	P.D. Budget	\$7,270,955.00	\$4,688,073.00	\$2,349,405.00
2021				
	Population	32,191		14,753
	P.D. Budget	\$7,102,892.00	\$4,504,976.00	\$2,496,796.00
2022				
	Population	34,493		15,585
	P.D. Budget	\$7,727,168.00	\$4,783,813.00	\$2,705,235.00
2023				
	Population	35,243		16,287
	P.D. Budget	\$8,552,719.00	\$5,320,754.00	\$2,862,950.00
2024				
	Population	40,000		16,881
	P.D. Budget	\$10,272,435.00	\$6,054,894.00	\$3,183,400.00

(*See Stip.* ¶ 10).⁵

⁵ Sheriff Tanner testified without contradiction, "I would – I would – without doing the numbers, but knowing after – I've been in office now for – I'm in my 25th year. The Town of Hilton Head saves millions and has over the past 40 years.... I would, knowing what I know about law enforcement and knowing what I know about recruiting and retention, it would – it would be a very difficult task for them to start their own police force, and it would be extremely expensive."

D. The LESC Ordinance

Although Hilton Head expressed that it would no longer honor its decades-old agreements with the County, BCSO continued to provide the professional primary services to Hilton Head. (See Ex. C ¶ 8). To equitably underwrite the costs of those services, the County considered a uniform service charge on properties in Hilton Head. (See *id.* ¶ 15; Ex. G ¶ 8). The County retained the fiscal, economic, and planning consulting firm TischlerBise — which has prepared over 900 impact fees and 800 fiscal impact analyses nationwide — to study BCSO's provision of police services to Hilton Head. (See Ex. C ¶ 16; Ex. G ¶¶ 9-10).

TischlerBise prepared a "Law Enforcement User Fee Study Approach and Findings" setting forth its approach, methodology, narrative, and findings. (See Ex. G-1). TischlerBise developed a methodology to fairly apply a LESC to Hilton Head:

- Documenting the total cost of BCSO primary law enforcement services provided to Hilton Head;
- Allocation of that cost to residential and nonresidential land uses, reflecting the demand for law enforcement services from different users;
- Developing a service charge schedule by type of land use.

(See *id.*). TischlerBise was informed that the annual cost of primary law enforcement services to Hilton Head was \$4,383,257. (See Ex. E ¶ 13). It proposed a fair LESC based on the value of property in Hilton Head designed to create revenue sufficient to pay the cost of primary law enforcement services. (See Ex. C ¶ 17; Ex. G ¶¶ 14-15). TischlerBise noted that law enforcement services are provided in lieu of Hilton Head "providing its own police force *and is above the base level of law enforcement service* provided to incorporated places in the County." (See Ex. G-1).

(See Stip Ex. 5, at 20-22). This is confirmed by the actual costs of municipal police departments in the County. For example, the Town of Bluffton — with a population of 23,000 — spent \$6.4 million in 2019 with 64,778 calls for service (and \$6.7 million in 2018). (See Exs. D-2 and E). In 2019, the Town of Beaufort spent approximately \$4 million for 86,623 calls for service, with a population of just over 13,000. (See Exs. D-2 and F). On the other hand, under the LESC, Hilton Head received primary law enforcement services for \$4.38 million with a population of 39,639 (150,000 during tourist season, with 2.6 million annual visitors).

On August 24, 2020, County Council passed Ordinance 2020/29 ("Ordinance") (Stip. Ex. 1), creating the LESC on real property in Hilton Head. It enacted the Ordinance in accordance with governing laws and in compliance with legal requirements and complied with TischlerBise's independent recommendations. (See Ex. C ¶¶ 19-21). The LESC is "charged to properties in the Town to cover the cost of law enforcement services provided within the Town by the Sheriff's Office over and beyond the level of services provided in the incorporated municipalities which provide their own law enforcement services." (See Stip. Ex. 1 § 1(h) (emphasis added)). The LESC is payable and collected in the same manner as real property taxes. (See *id.* § 5).

E. Procedural History

Plaintiffs filed three Motions for Summary Judgment in this matter. On December 1, 2020, Plaintiff Hilton Head—then the only Plaintiff—filed its first Notice of Motion and Motion for Summary Judgment ("First Motion"). Hilton Head filed a Memorandum in Support of its first summary judgment motion, arguing that the LESC is not a "service or user fee" because: (a) it recoups one hundred percent of the cost of the delivery of services by the BCSO in Hilton Head, rather than the cost of any special benefit; (b) Hilton Head taxpayers do not receive special benefit because they contribute an amount to the budget of the BCSO that exceeds the cost of delivery of all services by the BCSO. (See *id.*, at 5-6). The County filed an Opposition to the First Motion, supported by affidavits and other evidence, detailing the value of "primary" police department services that BCSO provided Hilton Head. The evidence demonstrated that Hilton Head received a special benefit from BCSO and that the LESC was a reasonable method to compensate the County for providing primary police services. Hilton Head withdrew its First Motion.

On September 7, 2021, Plaintiffs filed their Motion for Summary Judgment ("Second Motion"), focusing on *Burns v. Greenville Cty. Council*, 433 S.C. 583, 861 S.E. 2d 31 (2021).⁶ On

⁶ *Burns* did not support Plaintiff's motion for summary judgment then. In any event, it is no longer applicable. *Burns* considered a prior version of Section 6-1-300(6), which required that a uniform service charge relate to a benefit that "benefits the payer in some manner different from the members of the general public not paying the fee." See 1997 Act No. 138 § 7, repealed by 2022 Act No. 236 (S.233) § 2.A (eff. June 22, 2022). *Burns* stated that "when a local government

January 26, 2022, the Honorable H. Steven Deberry, IV denied Plaintiffs' Second Motion. (See Jan. 26, 2022 Form 4 Order, at 2). Finally, on May 1, 2023, Plaintiffs filed a Notice of Motion and Motion for Summary Judgment ("Third Motion"), which reiterated the arguments Hilton Head made in its First Motion as to why the Ordinance is not a uniform service charge. (See Pls.' Third Mot., at 5). On October 2, 2023, the Honorable Carmen T. Mullen denied Plaintiffs' Third Motion.

For the following reasons, there are no factual issues that remain in this case, and the County is entitled to summary judgment in its favor as to all claims asserted against it.

ARGUMENTS

The Home Rule Act vests legislative power in county governments. See § 4-9-120 ("[C]ouncil shall take legislative action by ordinance"); *North Charleston Land Corporation v. City of North Charleston*, 281 S.C. 470, 474, 316 S.E.2d 137, 139 (1984) ("An ordinance is a legislative enactment and is presumed to be constitutional"). "The courts should not and will not interfere in the administration of the internal domestic affairs of the counties and cities, unless there is a manifest disregard or abuse of power or discretion." See *State ex rel. Edwards v. Osborne*, 193 S.C. 158, 7 S.E.2d 526, 533 (1940); accord *Dunes West Golf Club, LLC v. Town of Mt. Pleasant*, 401 S.C. 280, 300, 737 S.E.2d 601, 611 (2013) ("It is not the function of the courts to pass upon the wisdom or folly of municipal ordinances or regulations."); *City of Charleston v. Roberson*, 275 S.C. 285, 288, 269 S.E.2d 772, 774 (1980) ("We hold the county court erred in . . . substituting its own judgment as to the wisdom of the ordinance for that of appellant's governing body."); *Griggs v. Hodge*, 229 S.C. 245, 251, 92 S.E.2d 654, 657 (1956) ("[T]he courts will not attempt to interfere with the exercise of discretionary powers by a public board or subordinate governmental agency"). The power of a court to analyze a local ordinance must be "exercised carefully and cautiously, as it is not the function of the Court to pass upon the wisdom or

imposes a charge it contends is not a tax, the charge arguably must meet the requirements we set forth in *Brown* [v. *Cty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992),] but *certainly must* meet the requirements the General Assembly set forth in subsection 6-1-300(6)." See *Burns*, 433 S.C. at 587, 861 S.E.2d at 32. In 2022, the General Assembly abrogated *Burns* and codified the *Brown* elements for a uniform service charge.

expediency of municipal ordinances or regulations." *See McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 504-05, 719 S.E.2d 660, 663 (2011) (citation omitted).

Plaintiffs assert that the LESC is improper because the County may not impose a new tax unless authorized by the General Assembly to do so. *See* S.C. Code § 6-1-310. They argue that the LESC is only valid if it is a "uniform service charge" or "service or user fee" rather than a "tax."⁷ The General Assembly has authorized the County to assess "uniform service charges." *See* S.C. Code § 4-9-30(5)(a); *accord* S.C. Code § 6-1-330(A) ("A local governing body . . . is authorized to charge and collect a service or user fee.").

The General Assembly has defined "service or user fee" and "uniform service charge" as follows:

"Service or user fee" means a charge required to be paid in return for a particular government service or program. "Service or user fee" also includes "uniform service charges". The revenue generated from the fee must: (a) be used to the benefit of the payers, even if the general public also benefits; (b) only be used for the specific improvement contemplated; (c) not exceed the cost of the improvement; and (d) be uniformly imposed on all payers.

S.C. Code § 61-1-300(6); *accord* *C.R. Campbell Const. Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 437, 438 (1997) (*citing* *Brown v. Cty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992)). For the reasons that follow, the evidence clearly shows that the LESC is a service or user fee under the statute.

A. The LESC Benefits Payers.

The first statutory requirement for a service or user fee is that the "revenue generated from the [LESC] must . . . be used to the benefit of the payers, even if the general public also benefits." S.C. Code § 61-1-300(6). The statute does not require that the benefits to those taxpayers be unique or different from the benefits to other taxpayers. It does not require that the services paid by the LESC accrue only to the payers. It simply requires that those who pay the LESC receive

⁷ "Generally, a tax is an enforced contribution to provide for the support of government, whereas a fee is a charge for a particular benefit to the payer." *BellSouth Telecommunications, Inc. v. City of Orangeburg*, 337 S.C. 35, 39-40, 522 S.E.2d 804, 806 (1999).

some benefit. Plaintiffs cannot seriously dispute that the LESC benefits paying property owners in Hilton Head. The evidence is clear that the BCSO provides significantly more primary law enforcement services to Hilton Head compared to other municipalities. BCSO responds to all calls for assistance in Hilton Head, totaling nearly 100,000 in 2019. Doing so allows Hilton Head to avoid the (much greater) expense of maintaining its own police department at taxpayer expense. There is no doubt that the payers of the LESC receive a benefit.

Plaintiffs focus on the statutory definition of the Sheriff's authority and responsibilities. The County recognizes the "Sheriff [i]s the chief law enforcement officer of the county." *See* S.C. Att. Gen. Op., 2002 WL 31958840, at *2 (Dec. 20, 2002). However, this does not mandate that the Sheriff act in lieu of a municipal police department or be the exclusive law enforcement entity in a municipality. The only statutory duty on the BCSO is that "deputy sheriffs shall patrol the entire county at least twice a week by sections assigned to each by the sheriff, remaining on duty at night when occasion or circumstances suggest the propriety thereof to prevent or detect crime or to make an arrest." *See* S.C. Code § 23-13-70. As set forth in Sheriff Tanner's May 8, 2019 letter to the Beaufort County Administrator, BCSO is required to fulfill this statutory duty in both towns with police departments and unincorporated areas. (*See* Ex. M ("An agreement with the town or the creation of a special tax district for police protection or the Town of Hilton Head having its own Police Department does not relieve the county Sheriff of his duty to patrol and to provide Law Enforcement service to its citizens.")). BCSO has always fulfilled this duty in the entire County. No municipality other than Hilton Head asks the BCSO to serve as its police force or seeks to have other taxpayers underwrite its consumption of BCSO resources.

However, the law also recognizes that municipal police officers can perform law enforcement services: a "municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties." *See* S.C. Code § 5-7-110. Such "[p]olice officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality." *See id.* The General Assembly has defined the

duties and powers of a constable as follows:

[A]ll of the rights and powers prescribed by law for magistrates' constables and deputy sheriffs and powers usually exercised by marshals and policemen of towns and cities. He shall act as a conservator of the peace, take into custody and carry before the nearest magistrate any person who commits any misdemeanor or felony in his presence or any felony if he reasonably believes upon prompt information or complaint the person has committed the felony and carry him before a court of competent jurisdiction, and execute any criminal process from magistrates' courts relating to offenses committed upon any of the lands and premises within his jurisdiction

See S.C. Code § 23-7-50. In other words, Hilton Head is statutorily authorized to operate its own police department.

The law does not require that the BCSO serve as Hilton Head's exclusive police agency at the expense of taxpayers outside of Hilton Head. In fact, the Office of the Attorney General "has advised it appears that while a sheriff, as chief law enforcement officer of a county, is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, is not generally considered to be obligated to provide specific services within a municipality. See S.C. Att. Gen. Op., 2011 WL 1740740, at *7 (Apr. 20, 2011) (emphasis added) (Ex. H). Recognizing that Hilton Head's taxpayers should bear the responsibility for paying for municipal police services, the Office of the Attorney General has confirmed that a sheriff may contract with a municipality to provide primary police services:

[I]t appears that while a sheriff, as chief law enforcement officer of a county is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, is not generally considered to be obligated to provide specific services within a municipality. However, a sheriff could offer contract law enforcement services to a municipality.

See S.C. Att. Gen. Op. 92-67 (Nov. 6, 1992) (Ex. I) (emphasis added); accord S.C. Att. Gen. Op., 2018 WL 1557222, at *1 (Mar. 16, 2018) (Ex. J) (permitting "a sheriffs department to contract with a municipality to provide law enforcement services"); S.C. Att. Gen. Op., 2011 WL 1740740, at *7 (Apr. 20, 2011) (Ex. H) (sheriff "could offer contract law enforcement services to a municipality.").

That is precisely what the County had traditionally done with Hilton Head. Under a series of agreements, BCSO performed all the services a Hilton Head police department would do (if one existed) and Hilton Head paid for those services. As the TischlerBise report observed, "[t]hese law enforcement services are provided to [Hilton Head] in lieu of the Town providing its own police force and is above the base level of law enforcement service provided to incorporated places in the County." (See Ex. G-1). There is no dispute that the LESC has provided a benefit to Hilton Head taxpayers.

B. The LESC Is Used Only for Law Enforcement in Hilton Head and Does Not Exceed the Cost of the Improvement.

It is further undisputed that the amount of the LESC was calculated by Tischler Bise with the intention that it would equal the anticipated costs of primary law enforcement costs for Hilton Head. Great care was taken under the circumstances to calculate an accurate and fair allocation of the costs of those services. There is no evidence that the LESC has been utilized to give a windfall to the County or to fund other expenses.

The parties have stipulated that the available complete data for the years during which the LESC was collected shows that the amount of fees collected correlates closely with the amounts expended for providing primary law enforcement services to Hilton Head:

<u>FY 2020/2021</u>	Sheriff HHI Services Fee Expenditures \$ 4,255,542.00
	LESC Collected \$ 4,647,365.00
<u>FY 2021/2022</u>	Sheriff HHI Services Fee Expenditures \$ 5,095,848.00
	LESC Collected \$ 4,828,652.00
<u>FY 2022/2023</u>	Sheriff HHI Services Fee Expenditures \$ 5,127,555.00
	LESC Collected \$ 5,081,214.75

(See Stip. ¶ 9).

While there has been some minor deviation from year to year due to the uncertainties of amounts that will ultimately be collected and spent, the amounts collected have very closely

tracked actual expenditures. For the three years above, the total amount expended to provide primary law enforcement service to Hilton Head was \$14,478,945, while the amount of LESC collected was \$14,557,231. While the amount collected was less than 1% higher than expenditures, the County respectfully submits that this amount is immaterial and merely the product of having to estimate the LESC and the impact of intervening changes concerning the value of assessed properties and other issues.

There is no evidence that amounts collected for the LESC have been used for any other purpose.

For the foregoing reasons, the County submits that this element of the statute is satisfied.

D. The LESC Is Uniformly Imposed on All Payers.

Finally, the LESC is imposed on a uniform basis among similarly situated property owners. Plaintiffs cannot refute that this element has been satisfied in this case.

CONCLUSION

For the foregoing reasons, the Court should enter summary judgment in favor of Defendant Beaufort County and dismiss all claims against it with prejudice.

Respectfully submitted,

BARNWELL, WHALEY, PATTERSON, AND
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Dated: March 11, 2025
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-07-01840

The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley,

Intervenors/Plaintiffs

VS.

Beaufort County, South Carolina,

Defendant/Plaintiff

VS.

James Beckert,

Defendant.

AFFIDAVIT OF P.J. TANNER IN RESPONSE TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

1. I am an adult citizen over the age of 18, and I am competent to testify in this matter. The information in this Affidavit is true and correct based upon my knowledge, information, and belief. If called to testify, I could and would testify consistently with the statements in this Affidavit.

2. I am a resident and domiciliary of Beaufort County, South Carolina.

3. I am the duly elected Sheriff of Beaufort County, South Carolina.

4. On October 15, 2020, I executed an Affidavit of P.J. Tanner ("First Affidavit"), which was attached as Exhibit C to Beaufort County's Memorandum in Opposition to Plaintiff's Amended Notice of Motion and Motion for Temporary Injunction in this matter.

5. I incorporate my First Affidavit herein by reference, as if set forth at length.

Exhibit A to County's Motion for Summary Judgment

6. This Affidavit is intended to supplement and clarify certain matters set forth in my First Affidavit concerning the nature and costs of law enforcement services provided within the boundaries of Hilton Head Island, South Carolina (the "Town").

7. The Beaufort County Sheriff's Office ("BCSO") provides various types of services within the boundaries of Beaufort County, South Carolina. The services that BCSO provides can be roughly divided into "primary" law enforcement and "secondary" law enforcement services.

8. "Secondary" services are those such as service of process, warrant service, bomb squad services, disaster services, emergency management, multi-agency violent crime task force, helicopter services, marine services, etc. Secondary law enforcement services are provided equally on an as-needed basis throughout all of Beaufort County, South Carolina (in both municipalities and unincorporated areas).

9. The BCSO's 2020 budgeted costs for providing "secondary" services was as follows:

<u>ITEM</u>	<u>AMOUNT</u>
General (10001200)	\$195,196.00
Administrative Division (10001201)	\$9,393,670.00
Special Operations Division (10001202)	\$9,838,650.00
DNA Lab (10001203)	\$1,666,817.00
Multi-Agency Violent Crime Force (10001205)	\$820,355.00
Emergency Management (10001210)	\$932,388.00
Communications (10001220)	\$5,116,214.00
Traffic Management	\$1,700,222.00
<u>TOTAL</u>	\$29,663,512.00

10. On the other hand, "primary" law enforcement services are those such as primary patrol and responding to calls for service. In every municipality *except for the Town*, nearly all primary law enforcement services are provided by municipal police departments.

11. In municipalities with police departments, BCSO responds to only a small fraction of all calls for service. Additionally, in those municipalities, police departments conduct the vast majority of patrols.

12. Because the Town, unlike other municipalities in Beaufort County, does not have a police department, the BCSO must provide 100% of the "primary" law enforcement services in the Town.

13. As a result, BCSO devotes far more resources to providing primary law enforcement services in the Town than it does to municipalities with police departments.

14. Under the Town's agreement with the County, the BCSO employs 42 personnel to provide primary law enforcement services in the Town.

15. In my First Affidavit I correctly stated that "[t]he BCSO budget includes the annual cost and value of the services that BCSO provides to the Town which is approximately \$4,383,257.00," itemized as follows:

- \$3,704,257 (Operating expenditures for 41 personnel)
- \$504,000 (Fringe Benefits for 41 personnel)
- \$100,000 (Victim Advocate Officer)
- \$75,000 (Bar patrol overtime in the Town)

16. The \$3,704,257 cost budgeted for 41 personnel for the Town can be broken down as follows:

BCSO ENFORCEMENT DIVISION	
GEN FUND	
SALAR ES AND WAGES	2,411,355.00
OVERT ME	243,996.00
OVERT METRA N NG SCHOOL	23,025.00
EMPLOYER FICA	161,303.00
EMPLOYER MEDICARE	37,724.00
EMPLOYER SO RETIREMENT	24,338.00
EMPLOYER PO RET REMENT	409,783.00
EMPLOYEE RECOGNITION AWRD	-
PR NTING	200.00
TELEPHONE	13,525.00
ELECTRICITY/NAT'L GAS	27,000.00
WATER/SEWER	1,400.00
MAINTENANCE CONTRACTS	575.00
REPAIRS TO EQUI PMENT	-
EQUIPMENT RENTALS	-
OFFICE SPACE RENTALS	-
PROFESSIONAL SERVICES	2,400.00
NON-PROFESSIONAL SERVICES	2,300.00
MEDICAL/DENTAL SERVICES	5,110.00
OTHER VEHICLE OPER COSTS	15,000.00
GARAGE REPAIRS & MAINT	53,303.00
INSURANCE REIMB (CR)	-
BOOKS,SUBS,MEMBERSHIPS	1,000.00
TRAINING AND CONFERENCES	18,000.00
VEHICLE INSURANCE	26,800.00
BONDING (ALL)	-
INSURANCE - OTHER	400.00
INSURANCE - PREPAID	-
UNCLASSIFIED OPERATING	-
UNCLASSIFIED-K-9 UNIT	500.00
SUPPL ES	4,000.00
DATA PROCESS NG SUPPLIES	-
UN FORMS	25,000.00
UN FORMS-BODY ARMOR	5,000.00
AV/EDUC/TRAINING AIDS	-
OTHER SUPPLIES	2,700.00
FUELS/LUBRICANTS	155,116.00
MINOR OFF FURN/EQP (NON-CAP)	3,400.00
TECHNOLOGY EQUI P (NON-CAP)	5,000.00
VEHICLE PURCHASES	24,000.00
DATA PROCESS NG EQUI PMENT	-
SPECIALIZED CAPITAL EQUI P	-
Subgroup None	3,794,257.00

17. The \$4,383,257.00 that was used to calculate the Law Enforcement Service Charge relates only to the provision of *primary* law enforcement services in the Town.

18. In reality, the actual cost of providing both primary *and* secondary law enforcement services in the Town is substantially greater than \$4,383,257.00.

19. The Law Enforcement Service Charge does not encompass the cost of providing secondary law enforcement services in the Town.

20. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

FURTHER AFFIANT SAYETH NOT!



P.J. Tanner

SWORN TO before me this

26th day of January, 2021

Michael M. Hatfield

Notary Public for

South Carolina

My commission expires

6/5/2029

Hilton Head Island COVID-19 Hub

Individuals Required to Wear Face Coverings in Commercial Business Establishments**Town of Hilton Head Island Municipal Government Website**

Text Size: A A A

Law Enforcement

The Town of Hilton Head Island does not have its own police force. The Town contracts with the Beaufort County Sheriff's Office (BCSO) for its law enforcement services. In addition to the contract with BCSO, SLED certified private security officers have law enforcement authority within the planned unit developments (PUD's) throughout the Island.

Beaufort County Sheriff's Office - Hilton Head Location (non-emergency)

(843)255-3300 - day time
(843)524-2777 - night time

70 Shelter Cove Lane
Hilton Head Island, SC 29928

**Exhibit B to County's Motion for
Summary Judgment**

ELECTRONICALLY FILED -- 2025 Aug 12 9:08AM -- BEAUFORT -- COMMONPLEAS -- CASE#2020CF0701840

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-07-01840

THE TOWN OF HILTON HEAD)
ISLAND, SOUTH CAROLINA,)
Plaintiff,)
- vs-)
BEAUFORT COUNTY, SOUTH)
CAROLINA)
Defendant.)

AFFIDAVIT OF JOSEPH PASSIMENT

1. I am an adult citizen over the age of 18, and I am competent to testify in this matter. The information in this declaration is true and correct based upon my knowledge, information, and belief. If called to testify, I could and would testify consistently with the statements in this declaration.

2. I am a resident and domiciliary of Beaufort County, South Carolina ("County").

3. I am the duly elected Chairman of the Beaufort County, South Carolina County Council.

4. The Town of Hilton Head Island, South Carolina is located entirely within the geographical boundaries of Beaufort County, South Carolina.

5. The Town of Hilton Head Island, South Carolina ("Town") has chosen not to create and maintain its own municipal police department, instead relying on contracts and services provided by the County and the Beaufort County Sheriff's Office ("BCSO").

6. The Town has contracted with the County/BCSO for police services since its incorporation in 1983, in exchange for annual payments.

7. As a result, the Town has never operated its own police department. It is the only incorporated municipality in Beaufort County without a police department.

Exhibit C to County's Motion for Summary
Judgment

8. The police services that BCSO has contractually provided to the Town are over and above the general services that the BCSO provides throughout all of Beaufort County. Those services are certainly above and beyond what BCSO provides in other incorporated municipalities in Beaufort County.

9. Attached hereto as Exhibit 1 is a January, 2015 Agreement for Police Services ("2015 Agreement") between the Town, the County and BCSO, under which the BCSO agreed to provide Town with a "high level of professional police service."

10. The Town has paid the County the following amounts in the past several fiscal years for services provided by BCSO:

<u>FISCAL YEAR (July 1-June 30)</u>	<u>AMOUNT</u>
2014-15	\$2,683,883.00
2015-16	\$2,814,593.00
2016-17	\$3,043,963.00
2017-18	\$3,050,137.07
2018-19	\$3,195,769.44
2019-20	\$3,195,769.44

11. On September 6, 2018, Stephen G. Riley, Town Manager, wrote to Beaufort County Sheriff P.J. Tanner. A true and correct copy of this letter is attached hereto as Exhibit 2.

12. Attached hereto as Exhibit 3 is a true and correct copy of an October 7, 2019 letter that my predecessor received from John J. McCann, Mayor of the Town of Hilton Head Island.

13. In this letter, Mayor McCann states that the Town will reduce its payments to the County for services provided by BCSO by \$3 million beginning in fiscal year 2021.

14. Notwithstanding the Town's intention to stop paying for the full value of police services, the County has continued to provide the same professional police services to the Town's citizens.

15. In light of the Town's indication that it will no longer compensate Beaufort County for additional police services performed by BCSO, the county considered the possibility of a uniform service charge to be charged to properties in the Town to cover the cost of law enforcement services provided within the Town by the BCSO over and beyond the level of services provided in the incorporated municipalities which provide their own police departments (the "Law Enforcement Service Charge").

16. Beaufort County retained TischlerBise in 2020 to study this option and to analyze the most appropriate manner in which to determine the Law Enforcement Service Charge.

17. TischlerBise determined that the Law Enforcement Service Charge should be imposed as follows:

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88
Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

18. On August 24, 2020, the Beaufort County Council enacted Ordinance 2020/29 ("Ordinance"), attached hereto as Exhibit 4.

19. The Ordinance was duly enacted in accordance with all requirements of governing laws.

20. The County complied with all legal requirements for the passage and adoption of the Ordinance, which the law presumes to be valid.

21. The County relied upon the independent recommendations provided by TischlerBise in determining the amount of the Law Enforcement Service Charge.

FURTHER AFFIANT SAYETH NOT!

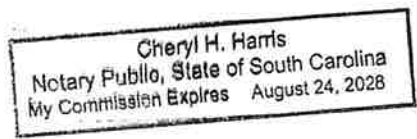

Joseph Passiment

SWORN TO before me this
12th day of October, 2020

Cheryl H. Harris

Notary Public for Beaufort, South Carolina

My commission expires 8/24/2028



AGREEMENT FOR POLICE SERVICES

THIS AGREEMENT FOR POLICE SERVICES, dated the ____ day of January, 2015, is made by and between the Town of Hilton Head Island (Town) and Beaufort County (County) and the Beaufort County Sheriff's Office (BCSO).

WITNESSETH:

WHEREAS, the Town has heretofore maintained a level of professional police protection for the benefit of the citizenry thereof through a law enforcement services contract with Beaufort County and the Sheriff's Office, and

WHEREAS, the Town is desirous of maintaining a high level of competent professional police service in conjunction and harmony with its fiscal policies of sound, economical management; and

WHEREAS, BCSO has agreed to render to the Town a high level of professional police service, and the Town is desirous of contracting for such service upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

- 1.1 **DEFINED TERMS.** The following terms when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):
 - 1.1.1 **AGREEMENT.** "Agreement" shall mean this Agreement for Police Services between the Town, County and the BCSO.
 - 1.1.2 **ANCILLARY SERVICES.** "Ancillary Services" shall mean those other services listed on the attached Schedule "2" under heading "Ancillary Services" that BCSO shall provide within the Town Boundaries during the Term.
 - 1.1.3 **APPLICABLE LAWS.** "Applicable Laws" shall mean, with respect to any Person, all provisions of constitutions, statutes, rules, ordinances, regulations, charters, and orders of governmental bodies or regulatory agencies applicable to such Person, and all orders or decrees of all courts and arbitrators in proceedings or actions to which the Person in question is a party or by which it or any of its property may be bound.

EXHIBIT 1 TO PASSIMENT AFFIDAVIT

- 1.1.4 **BASIC LAW ENFORCEMENT SERVICES.** "Basic Law Enforcement Services" shall mean the basic contract of law enforcement services to be provided by BCSO pursuant to this Agreement as more particularly described on the attached Schedule "1".
- 1.1.5 **BCSO.** "BCSO" shall mean the duly elected and qualified Sheriff of Beaufort County, South Carolina and the staff of the Sheriff's Office in its entirety.
- 1.1.6 **BCSO'S ADDRESS.** "BCSO's address" shall mean Beaufort County Sheriff's Office, 2001 Duke Street, Beaufort, South Carolina 29902.
- 1.1.7 **BEAUFORT COUNTY.** "County" shall mean Beaufort County, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina and consisting of the geographical location with borders as prescribed by statute and including the municipalities of Beaufort, Port Royal, Bluffton and the Town of Hilton Head Island, South Carolina.
- 1.1.8 **COMMAND OFFICER.** "Command Officer" shall mean the Sheriff or his designee who will be deemed to be the officer responsible for the actions of the BCSO employees who provide the Services to the Town of Hilton Head Island.
- 1.1.9 **CONSIDERATION.** "Consideration" shall mean the quarterly payment and other amounts payable by the Town hereunder in consideration of the Services performed by BCSO.
- 1.1.10 **COUNTY'S ADDRESS.** "County's Address" shall mean Beaufort County, 100 Ribant Road, Beaufort, South Carolina 29902
- 1.1.11 **DEPUTY SHERIFF.** "Deputy Sheriff" shall mean any person certified by the South Carolina Criminal Justice Academy as a law enforcement officer and commissioned by the Sheriff of Beaufort County to enforce the law in Beaufort County.
- * 1.1.12 **EFFECTIVE DATE.** "Effective Date" shall mean January 18, 2015.
- 1.1.13 **EQUIPMENT.** "Equipment" shall mean all equipment owned by the Town.
- 1.1.14 **MARINE/BEACH PATROL.** "Marine/Beach Patrol" shall mean the deployment of officers to repress and prevent criminal activities, investigate offenses, apprehend offenders, and furnish day to day law enforcement services to the waterways and beaches within the Town Boundaries as defined in Exhibit "A." The BCSO shall provide and maintain a Marine/Beach Patrol Team consisting of at least two (2) designated uniformed deputy sheriffs. The Marine/Beach patrol shall patrol as deemed necessary to provide specialized enforcement on the beaches and waterways within the Town Boundaries.

- 1.1.15 **PATROL UNIT.** "Patrol Unit" shall mean one uniformed officer and all standard police support equipment.
- 1.1.16 **SHERIFF'S OFFICE ENFORCEMENT DIVISION/ SOUTHERN ENFORCEMENT BRANCH.** Shall mean all deputy sheriffs assigned to enforcement duties within the Town Boundaries.
- 1.1.17 **SHERIFF'S OFFICE JURISDICTION.** "Sheriff's Office Jurisdiction" shall mean all land and waterways lying within the boundaries established by statute and known as the Town as specified in Municipal Code *Section 2-1-20 Corporate Boundaries* and in Exhibit "A."
- 1.1.18 **SHERIFF'S PATROL.** "Sheriff's Patrol" shall mean the deployment of deputy sheriffs to repress and prevent criminal activities, investigate offenses, apprehend offenders and furnish day to day law enforcement services within the Town Boundaries.
- 1.1.19 **SHERIFF'S SUBSTATION.** "Sheriff's Substation" shall mean that facility referred to as the "Hilton Head Office" on Hilton Head Island, SC.
- * 1.1.20 **TERM.** "Term" shall mean three (3) years commencing on the Effective Date and expiring on the Termination Date and any extensions thereto.
- * 1.1.21 **TERMINATION DATE.** "Termination Date" shall mean January 31, 2018.
- 1.1.22 **TOWN.** "Town" shall mean the Town of Hilton Head Island, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina and located within the boundaries of Beaufort County, South Carolina.
- 1.1.23 **TOWN ADDRESS.** "Town Address" shall mean 1 Town Center Court, Hilton Head Island, South Carolina 29928.
- 1.1.24 **TOWN BOUNDARIES.** "Town Boundaries" shall mean the area within the municipal corporate boundaries of the Town as specified in Municipal Code *Section 2-1-20 Corporate Boundaries* and in Exhibit "A."
- 1.1.25 **TOWN MANAGER.** "Town Manager" shall mean the duly appointed Town Manager of the Town, who, on the effective date of this Agreement is Stephen G. Riley. In the absence of the Town Manager, the Assistant Town Manager or person acting in the capacity of the Town Manager shall have the same authority as that of the Town Manager.
- 1.1.26 **TRAFFIC UNIT.** "Traffic Unit" shall mean one uniformed deputy sheriff and all standard police support equipment assigned to a special team and shift to accomplish traffic patrol, auto accident investigation and traffic control.

- 1.1.27 UNIFORMED OFFICER.** "Uniformed Officer" shall mean a uniformed deputy sheriff employed by BCSO.

ARTICLE II

GENERAL AGREEMENT TERMS

- 2.1 **INTERPRETATION.** Each definition in this Agreement shall, unless otherwise specified, include such agreement as modified, amended, restated or supplemented from time to time, and except where the context otherwise requires, reference to a party to this Agreement includes that party and its permitted successors and assigns. The captions or headings in this Agreement are for convenience only and in no way limit the scope or intent of any provision of this Agreement.
- 2.2 **ACCOUNTING TERMS.** All references in this Agreement to generally accepted accounting principles shall be to such principles as in effect from time to time in the United States of America. All accounting terms used herein without definition shall be used as defined under such generally accepted accounting principles.
- 2.3 **CROSS REFERENCES.** Unless otherwise specified, references in this Agreement to any Article or Section are references to such Article or Section of this Agreement, and unless otherwise specified, references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition. The words "hereof", "hereby", "hereto", "herein", "hereunder" and the like refer to this Agreement in its entirety.
- 2.4 **CONTRACTOR RELATIONSHIP.** Town hereby retains County and the BCSO as an independent contractor to provide the Services within the Town Boundaries subject to the terms and conditions contained herein. In addition, County and the BCSO shall also provide the Ancillary Services for the benefit of the Town, subject to availability, when County and the BCSO deems same necessary or desirable. This is inclusive of Basic and Ancillary Services listed under Schedule "1" and "2".
- 2.5 **NO PARTNERSHIP.** The relationship between the Town, County and the BCSO shall be solely as set forth herein. No party shall be deemed the employee, agent, partner or joint venture of the other, nor have, or represent to have, any authority or capacity to make or alter any agreement on behalf of the other, to legally bind the other, to credit or receive money due on behalf of the other or to do any other thing on behalf of the other, except as specifically set forth herein. Neither the Town nor County and the BCSO will have or attempt to exercise any control or direction over the methods used by the other to perform its work, duties and obligations under this Agreement except as specifically set forth herein. The respective employees, agents and representatives of each of the Town, County and the BCSO shall remain their own employees, agents or representatives, and

shall not be entitled to employment benefits of any kind from the other, except as specifically set forth herein. The Town, County and the BCSO shall assume full responsibility for their own compliance with any and all Applicable Laws.

ARTICLE III TERM & TRANSITION PERIOD

- 3.1 **TERM.** This Agreement shall commence on the Effective Date and shall continue thereafter for the Term, unless otherwise extended or terminated as set forth herein. The Town shall have the option to extend the Term upon the same terms and conditions contained herein.
- 3.2 **TERMINATION OF CONTRACT.** Should the Town determine that it desires to provide police services through its own police force, the Town shall notify Beaufort County and the BCSO, within 10 days of formal Town Council Action.
- 3.3 **TRANSITION PERIOD.** A transition period of not more than eighteen months (18) shall commence upon the County's receipt of formal notification of termination of this Agreement, for any reason by the Town. The County and the BCSO shall be bound by the same terms and conditions set forth herein during the transition period, unless the Town hires a number of BCSO deputy sheriffs that would significantly impact the ability of the BCSO to meet the terms of this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF TOWN

- 4.1 **REPRESENTATIONS AND WARRANTIES OF TOWN.** The Town represents, warrants and covenants to County and the BCSO as of the date hereof and throughout the Term of this Agreement that:
 - 4.1.1 **EXISTENCE.** The Town is and will remain duly organized, validly existing and in good standing under the laws of the State of South Carolina, has and will retain the requisite power and authority to conduct its business, to enter into this Agreement and to perform the terms hereof and by proper action on behalf of the Town has duly authorized, executed and delivered this Agreement and any and all instruments in connection herewith.
 - 4.1.2 **BREACH.** Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby nor the fulfillment of or compliance with the terms and provisions hereof (a) conflicts with, or result in a material default under or breach of or grounds for termination of, any material agreement or any license, permit or other governmental authorization to which Town is a party or by which Town is bound, (b) result in the violation by the Town of any provision of any Applicable Law applicable to Town or to which Town may be subject, (c) violate or conflict with any charter or other document

governing the actions of Town, or (d) require Town to obtain or make any consent, authorization, approval, registration or filing under Applicable Law or order of any court or governmental agency, board, bureau, body, department, authority or any other person which has not already been obtained. The Town is not in default with respect to any order, judgement, ordinance, award or decree of any governmental agency or instrumentality affecting this Agreement or the transactions contemplated hereby.

4.2 **REPRESENTATIONS AND WARRANTIES OF COUNTY AND THE BCSO.** County and the BCSO represents, warrants and covenants as of the date hereof and throughout the term of this Agreement that:

4.2.1 **DULY ELECTED.** P.J. Tanner is the duly elected Sheriff of Beaufort County, South Carolina, has and will retain the requisite power and authority pursuant to the power so vested in him under Applicable Law to conduct its business, to enter into this Agreement and to perform the terms hereof and by proper action has duly authorized, executed and delivered this Agreement and any and all instruments in connection herewith;

4.2.2 **ENFORCEABLE.** This Agreement has been duly executed and delivered to County and the BCSO and constitutes the valid and legally binding obligation of County and the BCSO enforceable in accordance with its terms.

4.2.3 **BREACH.** Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby nor the fulfillment of or compliance with the terms and provisions hereof (a) conflicts with, or result in a material agreement or any license, permit or other governmental authorization to which County and the BCSO is a party or by which County and the BCSO is bound, (b) result in the violation by the County and the BCSO of any provision of any Applicable Law applicable to the County and the BCSO or to which County and the BCSO may be subject, (c) violate or conflict with any charter or other document governing the actions of County and the BCSO, or (d) require County and the BCSO to obtain or make any consent, authorization, approval, registration or filing under Applicable Law or order of any court or governmental agency, board, bureau, body, department, authority or any other person which has not already been obtained. County and the BCSO is not in default with respect to any order, judgement, ordinance, award or decree of any governmental agency or instrumentality affecting this Agreement or the transactions contemplated hereby.

ARTICLE V STAFFING AND LEVELS OF SERVICE

5.1 **STAFFING.** Commencing on the Effective Date, BCSO shall schedule, provide and employ the personnel necessary to provide the services within the Town Boundaries in accordance with the articles of this Agreement and outlined in the Description of Services and Ancillary Services attached hereto as Schedule "1"

and "2". BCSO shall have the sole responsibility and control over setting Policy, Procedures and Standards and, provided BCSO complies with the Basic Service requirements set forth in Article V of this Agreement, all other matters related to performing the Services and Ancillary deployment within the Town Boundaries of BCSO deputy sheriffs.

- 5.2 **SOUTHERN ENFORCEMENT BRANCH ASSIGNMENT CHANGES.** The BCSO shall maintain duty assignments in accordance with existing command and control structure of the Sheriff's Office, as well as established policies and procedures.
- 5.3 **DISTRICT COVERAGE.** Two (2) geographical divisions are currently established as Patrol Areas on Hilton Head Island known as 5A and 5B. These two areas shall be maintained in accordance with established procedures of the BCSO.
- 5.4 **NO EMPLOYMENT RESPONSIBILITY.** All BCSO employees shall not be considered employees of the Town for purposes of pension benefits, insurance benefits, compensation and/or any status or right. Accordingly, the Town shall not be called upon to assume any liability for or direct payment of any salaries, wages, or other compensation, contributions to pension funds, insurance premiums, workmen's compensation, vacation or compensatory time, sick leave benefits or any other amenities of employment to any BCSO employee whatsoever arising out of BCSO's employment of such Deputy Sheriffs and such Deputy Sheriff's performance of the services.
- 5.5 **ASSIGNMENT OF POLICE POWERS.** As sworn, certified, commissioned deputy sheriffs, each deputy sheriff assigned to duties within the Town Boundaries shall be vested with the authority by the Town to enforce such municipal ordinances as may be necessary in the performance of their duties under the Terms of this Agreement.

ARTICLE VI SOUTHERN ENFORCEMENT BRANCH COMMAND

- 6.1 **COMMAND OFFICER.** At all times during the Term, BCSO shall employ a Command Officer to exercise authority over the Southern Enforcement Branch of the Enforcement Division. The Command Officer shall meet and confer with the Town Manager or his designee as needed, for the purpose of maintaining the viability and vitality of this Agreement.
- 6.2 **LOCATION OF COMMAND OFFICER.** The Command Officer of the Southern Enforcement Branch shall maintain his or her principal office at the Sheriff's Substation located on Hilton Head Island, South Carolina.

ARTICLE VII DISPATCHING SERVICES

- 7.1 **RADIO PROCEDURES.** All radio traffic generated by BCSO personnel shall take place on "channels" and "talk groups" as prescribed in existing BCSO standardized Policies and Procedures.
- 7.2 **EMERGENCY RESPONSE GRID SYSTEM.** The Grid system established by the Beaufort County Communications Center shall be utilized for all reporting and call tracking conducted by the BCSO.
- 7.3 **DISPATCHING SERVICES.** All calls for Sheriff's emergency services placed to Hilton Head Island Communications Center will be transferred to Beaufort County Communications Center using a "One Button" transfer system. All calls for service for Hilton Head Island for other than Sheriff's services placed to Beaufort County Communications Center will be transferred to Hilton Head Island Communications Center using a "One Button" transfer system. The Beaufort County Communications Center will serve as a back-up for the Hilton Head Island Communications Center 24 hours a day and seven days a week. The Hilton Head Island Communications Center will serve as a back-up for the Beaufort County Communications Center 24 hours a day and seven days a week. To insure that each Communications Center has the resources necessary to perform the back-up function for the other center, the following types of information will be shared between the centers: (1) geographic and address data relative to the territory being backed-up; (2) operational procedures which have been mutually agreed to by the management of each center relative to providing the back-up function; and (3) sharing of planning information so that each center may properly equip itself to perform the back-up function.

ARTICLE VIII MUNICIPAL COURT

- 8.1 **DEPUTY APPEARANCE AT COURT.** All deputy sheriffs appearing in Municipal Court shall adhere to Uniform Standards as set forth in the BCSO Policies and Procedures Manual. All deputy sheriffs shall make every reasonable effort to notify the Court in the event of their delay, absence or request for continuance of a pending case.
- 8.2 **OFFENSES TO BE HEARD IN MUNICIPAL COURT.** All municipal level, traffic, and boating related offenses occurring within the Town Boundaries of Hilton Head Island shall be scheduled before the Municipal Court by Deputy Sheriffs assigned to the Southern Enforcement Branch; except where there is a conflict of interest, in which case, the matter shall be assigned to the Magistrate's Court.

ARTICLE IX CONSIDERATION

- 9.1 **CONSIDERATION.** In consideration of the services provided hereunder, the Town agrees to pay BCSO the Consideration in equal quarterly installments commencing at the end of the first full quarter after the Effective Date of this agreement. Should the term commence or end on other than the first or last day respectively of a calendar quarter, the quarterly installment due for said quarter shall be prorated accordingly. BCSO shall provide the Town with written documentation to support any percentage rate increase or other change impacting the Consideration amount. The increase shall be calculated on the total consideration paid in the prior year. BCSO and Town agree and understand that BCSO shall make every reasonable effort to limit the annual increase in the Consideration, and shall consider an increase only when other alternatives are insufficient to meet the needs of the Town and BCSO under the terms and conditions of this agreement.
- 9.2 **SERVICE CREDITS.** The above stated Consideration for services to be provided is agreed to based on BCSO providing the services at the levels stated within this agreement. The Town shall be entitled to a credit for each level of service not attained for that quarter and shall be deducted from the Consideration payment. Any level not attained or maintained for a period of three (3) consecutive months shall constitute a breach of this agreement. Said credit shall be calculated using the actual cost of providing that annual level of service divided by 12, times the percent of service not provided then times the number of months the service was not provided.
- 9.3 **ANNUAL REVIEW.** On an annual basis, the Town and BCSO will review current service levels and proposed service level alterations. The proposed Consideration shall be determined after the completion of the Annual Review that will occur simultaneous to the Annual Proposed Budget Process.
- 9.4 **SERVICES RENDERED STATEMENT.** The BCSO shall provide to the Town, on a quarterly basis, a bill for services budgeted for annually. A monthly report (Exhibit "C") for each month in the quarter shall be provided to support the billing detailing the percentage of time spent by each position identified in the contract for services rendered. Positions are billed based on the entry level salary for each classification.

ARTICLE X REPORTS

- 10.1 BCSO shall deliver reports as outlined in Exhibit "B" according to schedule contained therein.

ARTICLE XI GRANTS AND FUNDS

- 11.1 **GRANT FUNDS AND MISCELLANEOUS REVENUES.** The BCSO shall seek grant funding as deemed appropriate under direction from the Sheriff. The BCSO shall retain all funds and equipment gained through grant awards as established in existing BCSO policies.

ARTICLE XII INSURANCE

- 12.1 **BCSO OBLIGATIONS.** BCSO shall maintain general liability and tort insurance policies in the amounts as established by state statute and county policy. BCSO shall maintain these insurance policies throughout the Term. BCSO shall provide the Town with copies of the insurance policies required hereunder and all renewals thereof. The Costs of these insurance policies shall be the sole obligation of the County and the BCSO.

ARTICLE XIII DEFAULT

- 13.1 **DEFAULTS.** The occurrence of any one or more of the following shall constitute a "Default" by the party causing same (the "Defaulting Party").
- 13.2 **PAYMENT.** Failure of the Defaulting Party to pay any amount required hereunder, whether for Consideration, insurance or any other obligations, within thirty (30) days after such is due hereunder; or
- 13.3 **PERFORMANCE OF SERVICES.** Failure of BCSO to perform the Services as required herein at any time during the Term; or
- 13.4 **OTHER PERFORMANCE.** Failure of the Defaulting Party to perform any other covenant, condition, agreement or provision contained herein (other than the Services) or to cure any misrepresentation or breach of any representation or warranty herein thirty (30) days after receipt by the Defaulting Party of written notice of such failure, misrepresentation or breach; or
- 13.5 **DEFAULT.** Failure of the Defaulting Party to perform any covenant, condition, agreement or provision contained in any other agreement or to cure any misrepresentation or breach of any representation or warranty in any other agreement between the parties hereto within any applicable grace period provided in such agreement.
- 13.6 **REMEDIES.** Upon the occurrence and continuance of a Default by the Defaulting Party, the party not in Default (the "Non-Defaulting Party") may, at its option and without any obligation to do so and in addition to any other remedies

otherwise set forth in this Agreement, elect any one or more of the following remedies:

- 13.6.1 Terminate and cancel this Agreement; or
- 13.6.2 Withhold payment or performance under this Agreement until such time as such Default is cured; or
- 13.6.3 Seek injunctive relief to enjoin any act of the Defaulting Party in violation hereof; or
- 13.6.4 Seek specific performance of any covenant or obligation of the Defaulting party hereunder; or
- 13.6.5 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the State of South Carolina
- 13.7 **SEPARABILITY.** Each and every covenant and agreement herein shall be separate and independent from any other and the breach of any covenant or agreement shall in no way or manner discharge or relieve the performance of any other covenant or agreement. Each and all of the rights and remedies given to the Non-Defaulting Party by this Agreement or by law or equity are cumulative and the exercise of any such right or remedy by the Non-Defaulting party shall not impair the Non-Defaulting Party's right to exercise any other right or remedy available to the Non-Defaulting Party under this Agreement or by law or equity.
- 13.8 **WAIVER.** No delay in exercising or omission of the right to exercise any right or power by any party hereto shall impair any such right or power, or shall be construed as a waiver of any breach or default or as acquiescence thereto. One or more waivers of any covenant, term or condition of this Agreement by either party shall not be construed by the other party as a waiver of a continuing or subsequent breach of the same covenant, provision or condition. The consent or approval by either party to or of any act of the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. Payment or receipt of a lesser amount than that due hereunder shall not be deemed to be other than on account of the earliest amount due hereunder.
- 13.9 **FORCE MAJEURE.** If the performance of any covenant, agreement, obligation or undertaking (exclusive of payment or monetary obligations of either party hereunder) required hereunder is delayed, hindered or prevented by reason of strikes, lock-outs, labor troubles, wars, civil commotion's, Acts of God, governmental restrictions or regulations or interference's, fires or other casualty, the performance of such covenant, agreement, obligation or undertaking shall be excused and extended and shall not be a Default for the period of such delay, hindrance or prevention.

13.10 **ATTORNEY'S FEES.** In the event of any controversy arising under or relating to the interpretation or implementation of this Agreement or any breach thereof, the prevailing party shall be entitled to seek payment for all costs and attorney's fees (both trial and appellate) incurred in connection therewith.

13.11 **COUNTY AND BCSO ACKNOWLEDGMENT.** County and the BCSO do hereby acknowledge that the Town is entering into this Agreement in reliance upon County's and the BCSO's obligations herein imposed for the Term. Accordingly, County and the BCSO agree that it shall have the right to terminate this Agreement only as permitted in this Section.

ARTICLE XIV INDEMNIFICATION

14.1 The County and the BCSO shall assume liability for, defend against, and secure the Town from all costs or damages for injury to persons or property caused by the negligence or intentional misconduct of the Sheriff's personnel in providing or failing to provide general law enforcement services, as outlined in this Agreement, to the Town provided the liability is not the result of Town policy.

ARTICLE XV MISCELLANEOUS

15.1 **NOTICE.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been given three (3) business days after deposit in the mail, designated as certified mail, return receipt requested, postage-prepaid, or one (1) business day after being entrusted to a reputable commercial overnight delivery service, or when sent by telex or telecopy on a business day addressed to the party to which such notice is directed at its address determined in accordance with this Section with customary confirmation of receipt of such telex or telecopy received. All notices and other communications under this Agreement shall be given to the parties hereto at the following addresses: If to Town, to it at Town's address; if to BCSO, at BCSO's address and to the County at its address. Any party hereto may change the address to which notices shall be directed under this Section by giving ten (10) days written notice of such change to the other parties.

15.2 **NON-ASSIGNABILITY.** Neither party shall assign any of its obligations or benefits imposed hereby or contained herein, except upon the other party's prior written approval.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures hereto the date first written hereinabove.

Suzanne Cook
WINNERS

BEAUFORT COUNTY
By: Gary Kubic
Gary Kubic, Beaufort County
Administrator

Suzanne Cosh
WITNESS

BEAUFORT COUNTY SHERIFF'S
OFFICE

By: 
P. J. Tanner, Beaufort County
Sheriff

WITNESS

TOWN OF HILTON HEAD ISLAND
By: Stephen G. Riley, ZMA-CM,
Town Manager

AGREEMENT FOR POLICE SERVICES

EXHIBIT "A"

Municipal boundaries:

The municipal corporate boundaries of the Town of Hilton Head Island, SC are specified in Municipal Code Section 2-1-20, *Corporate boundaries*

Statutory Provisions:

Section 5-7-140. Extension of police jurisdiction and authority of municipalities bordering on high tide line or high water mark of navigable body of water.

- (A) The corporate limits of any municipality bordering on the high-tide line of the Atlantic Ocean are extended to include all that area lying between the high-tide line and one mile seaward of the high-tide line. These areas are subject to all the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal ordinances where the misdemeanor occurred in the area defined in this section.
- (B) The corporate limits of any municipality bordering on the high-water mark of a navigable body of water, other than the Atlantic Ocean, are extended to include all that area lying between the high-water mark and the low-water mark. These areas are subject to all of the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal courts have jurisdiction to punish individuals violating the provisions of the municipal ordinances where the misdemeanor occurred in the areas defined in this section.

Section 5-7-150 Coastal municipalities' criminal jurisdiction over piers and other structures and waters of the ocean.

Every coastal municipality has criminal jurisdiction over piers and other structures and the waters of the ocean, a sound, or an inlet within one mile of those portions of the strand within the corporate limits. The corporate limits of the municipality are extended in a straight line from the strand into the ocean, inlet, or sound from the point where the corporate limits of the municipality reach the high-water mark of the strand. If an extension overlaps with the criminal jurisdiction of another political subdivision, the jurisdiction of each political subdivision extends to the equidistant point from the high-water mark of each strand.

AGREEMENT FOR POLICE SERVICES

Exhibit "B"

Reports

Crime Statistics (Due Annually)

SLED "Crime in South Carolina" annual report

FBI "National Trends" annual report

Victims/Witness Advocacy Program (Due Annually)

Number of victims served

Police Patrol (Due Annually)

Calls for Police Patrol Services

Calls for Service per Patrol Unit

Average Response Time in Minutes from Dispatch to Scene (Citizen Generated)

Dispatched Calls

Criminal Investigation (Due Annually)

Number of Cases Assigned per Investigator

Number of Cases Cleared per Investigator

Quarterly Report

Crimes Against Persons

Crimes Against Property

Vehicle Collisions

Offense Clearances

Drug Violations

Tickets Written for Municipal Court

Additional Offenses

UCR Reports

AGREEMENT FOR POLICE SERVICES

EXHIBIT "C"

AREA ASSIGNMENT FORM

ELECTRONICALLY FILED -- 2025 Aug 12 10:08 AM -- FEDERAL COURT -- COMMON PLEAS -- CASE#2022CF0701840

AGREEMENT FOR POLICE SERVICES

SCHEDULE "1"

BASIC LAW ENFORCEMENT SERVICES

1. SHERIFFS PATROL. The BCSO shall provide a minimum of four (4) staffed patrol units on duty 24 hours a day, seven days a week to provide basic sheriffs patrol within the Town Boundaries.
2. PATROL UNIT SUPERVISOR. In addition to the minimum staffing requirements above, staffing shall consist of not less than one (1) "Patrol Unit Supervisor" on duty at all times, responsible for basic law enforcement patrol activities within the Town boundaries 24 hours per day, seven days a week.
3. MARINE/BEACH PATROL. The BCSO shall provide and maintain a Marine/Beach Patrol Team consisting of at least two (2) designated uniformed deputy sheriffs. The Marine/Beach patrol shall patrol as deemed necessary to provide specialized enforcement on the beaches and waterways within the Town Boundaries.
4. EVIDENCE TECHNICIAN. The BCSO shall provide one deputy sheriff whom is tasked primarily with the collection, cataloging, custody and preservation of evidence collected at crime scenes within the Town Boundaries.
5. CRIMINAL INVESTIGATORS. The BCSO shall provide three (3) deputy sheriffs assigned to investigate major criminal incidents occurring within the Town Boundaries.
6. DRUG INVESTIGATORS. The BCSO shall provide two (2) deputy sheriffs assigned to enforce narcotics laws within the Town Boundaries.
7. CLERK. The BCSO shall provide three (3) clerks assigned to the Sheriff's Substation on Hilton Head Island for the purpose of performing administrative duties such as correspondence and record keeping.
8. VICTIM'S ADVOCATE. The BCSO shall provide one deputy sheriff who is assigned as the Victim's Advocate to work with victims of crimes occurring within the Town Boundaries in compliance with state statutes.
9. COMMAND OFFICER. At all times during the Term, BCSO shall employ a Command Officer to exercise authority over the Southern Enforcement Branch of the Enforcement Division. The Command Officer shall meet and confer with the Town Manager or his designee as needed, for the purpose of maintaining the viability and vitality of this Agreement.

AGREEMENT FOR POLICE SERVICES

SCHEDULE "2"

DESCRIPTION OF ANCILLARY SERVICES

As indicated under definition 1.1.2 *Ancillary Services* any and all auxiliary and support services to include:

- Lab services
- K-9 support
- Special Response Team (SWAT)
- Crisis Negotiations
- Animal Control
- Airport Security
- School Resource Officer
- Civil Service
- Warrant Service
- Records Management
- Command
- Bomb Team
- ICE Enforcement
- DNA Lab
- Sex Offender Registry
- AFIS System

And other support services as currently provided to the Town of Hilton Head Island.



TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928

(843) 341-4600 Fax (843) 842-7728

www.hiltonheadislandsc.gov

David Bennett
Mayor

September 6, 2018

Kim W. Lids
Mayor Pro Tem

Sheriff P.J. Tanner
2001 Duke St
Beaufort, South Carolina 29902

Council Members

David Ames
Marc A. Grant
William D. Harkins
Thomas W. Lenoir
John J. McCann

RE: Law Enforcement Services on Hilton Head Island, Enforcement of Town Ordinances

Dear Sheriff Tanner:

Stephen G. Riley
Town Manager

Hilton Head Island has a long history of contracting with your office to provide law enforcement services on the Island as well as enforcing the Town's lawfully adopted Ordinances. As you are aware, the Town has been undertaking a performance audit of those services for some time now. As a result of these action, the decision has been made not to enter into any long-term contractual relationships with the Sheriff's Office in order to allow for the incorporation of any findings or other recommendations that may be mutually agreed upon by the parties as a result of receiving this final audit report.

However, during this period of time, it is the desire of the Town to continue its agreement with the Sheriff's Office for law enforcement services and enforcement of Town Ordinances on a month-to-month basis taking into account any additional funding that may become available as a result of the Town's annual budget process. As such, the Town will continue to make quarterly payments to the Beaufort County Treasurer in equal quarterly installments as outlined in the adopted budget Ordinance. In return, we would respectfully request that you continue to provide the same level of services both in terms of law enforcement and in enforcement of the Town's Ordinances as was provided for under the most recently executed agreement between our respective organizations.

It is my hope that upon the conclusion of discussions related to the performance audit, both the Town and the Sheriff's Office will be in a position to discuss appropriate long-term agreements that will include both the operational activities on the island and the leasing of Town owned property for use by the Sheriff's Office

Sincerely,

Stephen G. Riley
Town Manager

SGR/jag

EXHIBIT 2 TO PASSIMENT AFFIDAVIT

RECEIVED FROM OFFICE OF THE TOWN MANAGER - 2018 SEP 12 10:08 AM - BEAUFORT - COMMUNICATIONS - CASE#20180000000000000000

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928

(843) 341-4600 Fax (843) 842-7728

www.hiltonheadislandsc.gov



John J. McCann
Mayor

William D. Harkins
Mayor ProTem

Council Members

David Ames
Tamara Becker
Marc A. Grant
Thomas W. Lennox
Glenn Stanford

Stephen G. Riley
Town Manager

October 7, 2019

Stuart Rodman, Chair
Beaufort County Council
27 Baynard Park
Hilton Head Island, SC 29928

Re: Beaufort County Sheriff's Office ("BCSO") Funding Agreement

Dear Stu,

As you and I have discussed, and as our Town Manager has conveyed to the County Administrator, while the Town of Hilton Head Island has long made voluntary annual payments to the County for the services rendered by the BCSO, it was with the misplaced understanding that we were compensating the County and therefore the BCSO for services above and beyond the base level of services made available to all citizens of Beaufort County. Sheriff Tanner made clear, earlier this year, that this is in fact not an accurate reflection of his providing of such services. He affirmatively stated that he will provide the same level of law enforcement services here on the Island that he does to all other parts of the County and that he will shift his personnel and equipment as necessary to address issues and concerns as they arise regardless of geographic location. Therefore, we have learned there are only minimal direct services provided to the town, in the form of enforcement of municipal codes, which the Town remains committed to funding.

As you well know, the Town's citizens are also tax payers of the County. To continue to send millions of dollars annually to the County for services that we now know ought to be covered through our citizens' property tax contributions to the County is offensive and must end.

At the same time, we recognize the difficulty with which the County can readily remedy this long-standing situation given the limitations imposed on each of our jurisdictions as a result of Act 388. An Act that embodies the indignities foisted upon us by the Legislature in its ongoing efforts to undermine Home Rule. In our view, there is a reassignment of funding that would serve both our interests and resolve multiple issues that have been lingering between our two organizations for some time.

EXHIBIT 3 TO PASSIMENT AFFIDAVIT

FILED FOR RECORDING - 2019 OCT 12 10:08 AM - BEAUFORT COUNTY - COMMONS FILES - CASE#2019001840

We propose that the Town of Hilton Head Island reduce its funding for the BCSO services beginning in FY 2021 by the amount of \$3.0 million. Simultaneously, the Town would contractually agree to undertake the following responsibilities:

1. Accept titled ownership as well as all corresponding operational and maintenance related responsibilities for county-owned parks within the Town Limits of the Town of Hilton Head Island.
2. Relieve the County of continuing contributions to the operations, maintenance and programming at the Island Recreation Center
3. Accept ownership and responsibility for County-owned roads within the Town Limits of the Town of Hilton Head Island.

The Town will continue to contribute \$300,000 towards the funding of the BCSO in recognition of the modest additional services our citizens enjoy. And of course the Town recently agreed to provide office space on the Island for the BCSO's Southern Command at no cost to the County.

The Town considers the above to be a very equitable arrangement and certainly hopes the County agrees. Not only would the County enjoy direct cost savings from no longer having to provide funding for these particular services, it would also enjoy significant indirect savings by greatly reducing the number of times that it would need to send personnel and equipment onto the Island. This would allow the County staff to then focus its efforts on other County properties thereby increasing its efficiency and indirectly lowering the operational costs for those facilities as well.

But I must also make it clear that the Town intends to end its subsidization of the BCSO budget at the conclusion of the current fiscal year (FY 2020). We can certainly put these funds to many other uses if the County cannot see clear to an agreement regarding the long-standing issues of parks and road maintenance. I look forward to reaching a timely agreement with the County.

Sincerely,



John J. McCann
Mayor

cc: Hilton Head Island Town Council Member
Stephen G. Riley, Town Manager
Ashley Jacobs, County Administrator

RECEIVED FROM COMMUNICATIONS FILED - 202025/AM/12:30 (08/AM) - BECAUSE OF THE - COMMUNICATIONS FILED - 202025/AM/12:30 (08/AM) - BECAUSE OF THE

- i. It is fair and reasonable to assess the Law Enforcement Service Charge and Uniform User Fee to the areas within the Town.
- j. The fiscal, economic, and planning consulting firm TischlerBise has prepared over 900 impact fees and over 800 fiscal impact analyses for clients across the United States and Canada.
- k. TischlerBise is well qualified to have studied the relevant issues surrounding the provision of law enforcement services by the Sheriff's Office in the Town.
- l. The detailed approach, methodology, narrative and findings of that certain study report and findings of TischlerBise entitled "Law Enforcement User Fee Study Approach and Findings" dated July 13, 2020 are appropriate, thorough, and complete.
- m. The findings and recommendations of the TischlerBise report are hereby incorporated by reference and included as a basis for the implementation of the Law Enforcement Service Charge and Uniform User Fee imposed herein.

Section 2. ESTABLISHMENT OF LAW ENFORCEMENT SERVICE CHARGE AND UNIFORM USER FEE

A law enforcement service charge and uniform user fee in the amounts set forth in Section 4 hereof shall be levied annually upon all parcels of real property located within the municipal boundaries of the Town of Hilton Head Island (all such parcels being collectively referred to herein as the "Service Area"). The law enforcement service charge and uniform user fee authorized hereby shall be included on real property tax notices for all such parcels. For such parcels that are exempt from ad valorem taxes, the law enforcement service charge and uniform user fee authorized hereby shall be billed by the County as a separate invoice to be mailed to applicable property owners on or about the time that real property tax notices are mailed, and will be due on January 15 of each succeeding year.

Section 3. RECORDING AND USE OF PROCEEDS

All proceeds derived from the law enforcement service charge and uniform user fee authorized hereby shall be recorded in a separate fund within the County's accounts. Such proceeds shall be used for law enforcement and related administrative services to be provided by the Beaufort County Sheriff's Office in the Service Area, in lieu of the applicable municipality providing its own law enforcement force at a level above the base level of law enforcement services provided by the Sheriff's Office in the unincorporated County.

Section 4. TABLE OF CHARGES; EXCEPTIONS

The law enforcement service charge and uniform user fee shall be charged to each applicable parcel based on use and size as set forth in the following table. The types of "land use" in the following table are defined as provided for in the Beaufort County Community Development Code.

Except as provided for in this section, no public or private property shall be exempt from the law enforcement service charge and uniform user fee. No exemption, offset, or reduction shall be granted based on the age, tax, economic status, race, or religion of the property owner.

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88
Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

Section 5. PAYMENT AND COLLECTION

The law enforcement service charge and uniform user fee shall be due, payable and to be collected in the same manner as real property taxes and shall be subject to the same penalties and interest as overdue real property taxes.

Section 6. APPEAL AND ADJUSTMENT

A fee payer may appeal the assessment of the User Fee on a parcel of property at any time. The appeal must be submitted in writing to the law enforcement service charge and uniform user fee appeal officer(s), as may be appointed from time to time by the County Administrator. An appeal submitted before the January 15th due date shall be considered for the current year owed. An appeal submitted on or after January 15th shall only apply to the succeeding year.

An appeal must be submitted in writing to the appeal officer c/o county administrator, and shall contain the reason for appeal and required supporting documents. Required documents may include, but are not limited to, a survey prepared by a registered land surveyor or professional engineer containing information on the size and type of the property, business license or other license documentation, utility bills, company registration from the SC Secretary of State's Office, or other verifiable documentation which may tend to establish the use(s) to which the property is put, and/or the size or other relevant information. Using the information provided by the appellant, the appeal officer shall conduct a review of the property and fee assessment. The appeal officer may also request reasonable additional documentation pertinent to the appeal. The appeal officer shall respond to an appeal in writing within thirty (30) days. In response to an appeal, the appeal officer may adjust the fee applicable to the property in conformance with Section 4.

A decision of the appeal officer which is adverse to the appellant may be further appealed to the Beaufort County Administrator or his/her designee within thirty (30) days of the adverse decision. The appellant, stating the grounds for further appeal, shall deliver notice of the appeal to the County Administrator or his/her designee. The County Administrator or his/her designee shall issue a written decision on the appeal within thirty (30) days. All decisions by the County Administrator or his/her designee shall be served on the appellant personally or by registered or certified mail to the billing address of the property owner. All decisions of the County Administrator or his/her designee shall be final.

Section 7. LIABILITY; NO HINDRANCE OF SHERIFF'S DISCRETION

This chapter does not imply that a benefitted property will be free from criminal activity, and does not create additional duties on the part of the County or Sheriff's Office. This chapter does not waive the County's or Sheriff's Office's immunity or limited liability under any law. Nothing herein shall serve to hinder the exercise of law enforcement and other discretion held by the Sheriff's Office under the South Carolina Constitution and applicable law.

Section 8. LEGISLATIVE INTENT; SEVERABILITY

It is, inter alia, the legislative intent of the County that a law enforcement service charge and uniform user fee be levied under the terms described herein. The County asserts that this legislative intent must prevail if it can be reasonably discovered in the language used, and such language must be construed in light of the ordinance's intended purpose. To the extent any portion of this ordinance should be found illegal or unenforceable by a court of competent jurisdiction, the offending portion shall be void and of no effect, and is deemed severable from the remainder. The rest of the ordinance shall remain in force and of effect and shall be interpreted according to the findings and express and implied legislative intent to be operative and enforceable to the fullest extent.

Section 9. REPEALER, EFFECTIVE DATE

All ordinances or parts of ordinances in conflict with this ordinance or inconsistent with its provisions are hereby repealed or superseded to the extent necessary to give this ordinance full force and effect. This ordinance shall take effect upon final approval.

ADOPTED IN MEETING DULY ASSEMBLED this 24th day of August 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By:



Joseph Passiment, Chairman

ATTEST:



Sarah W. Brock, Clerk to Council

Third and Final Reading: August 24, 2020 / Vote: 9-2

Public Hearing: August 24, 2020

Second Reading: August 10, 2020 / Vote: 6-3

First Reading by Title Only: July 13, 2020 / Vote: 7-3

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-07-01840

THE TOWN OF HILTON HEAD)
ISLAND, SOUTH CAROLINA,)
Plaintiff,)
- vs -)
BEAUFORT COUNTY, SOUTH)
CAROLINA)
Defendant.)

AFFIDAVIT OF P.J. TANNER

1. I am an adult citizen over the age of 18, and I am competent to testify in this matter. The information in this declaration is true and correct based upon my knowledge, information, and belief. If called to testify, I could and would testify consistently with the statements in this declaration.

2. I am a resident and domiciliary of Beaufort County, South Carolina.

3. I am the duly elected Sheriff for Beaufort County, South Carolina.

4. The Town of Hilton Head Island ("Town") does not pay for, maintain or operate a municipal police department. It is the only incorporated municipality in Beaufort County without a police department.

5. The Town has contracted with Beaufort County and the Beaufort County Sheriff's Office ("BCSO") for police services since its incorporation in 1983, in exchange for annual payments. [Contract was reduced to an MOU July 2019]

6. Attached hereto as Exhibit 1 is a January, 2015 Agreement for Police Services ("2015 Agreement") between the Town, the County and BCSO, under which the BCSO agreed to provide Town with a professional level of police service."

Exhibit D to County's Motion for Summary Judgment

7. As a result of its agreements with the County and BCSO, the Town has never operated its own police department.

8. Attached hereto as Exhibit 2 are documents showing 2019 calls for service and personnel assignments for BCSO. That document was prepared in the ordinary course of business of the BCSO.

9. All 911 and other calls for assistance from first responders in Beaufort County go to the BCSO's dispatch, which then directs the call the appropriate law enforcement or emergency agency. [Except for Hilton Head Fire & Rescue]

10. As a result, the BCSO is familiar with the number of calls for services that it responds to, as well as the number of calls directed to municipal police departments in Beaufort County.

11. In 2019, the Beaufort Police Department responded to 86,623 calls for service, the Bluffton Police Department responded to 64,778 calls for service, and the Port Royal Police Department responded to 33,699 calls for service. The Sheriff's Office responded to 206,702 calls for service within the unincorporated area of the county.

12. The Beaufort County Sheriff's Office responded to 97,336 calls for service within the Town of Hilton Head. These were calls that would normally be handled by a municipal police department, if one existed.

13. In 2019, BCSO responded to and/or assisted in 11,935 calls in the City of Beaufort, 5,890 calls in the Town of Bluffton, and 3,384 calls in the Town of Port Royal.

14. In order to provide this level of service to the citizens of the Town of Hilton Head Island, the BCSO has numerous officers assigned to patrolling within the boundaries of the Town.

15. The BCSO budget includes the annual cost and value of the services that BCSO provides to the Town which is approximately \$4,383,257.00, comprised of the following:

- \$3,704,257 (Operating expenditures)
- \$504,000 (Approximately \$12,000 per employee for health, workers compensation, tort liability and unemployment insurance)

- SELECT FROM CDALLY_FILLED -- 2025 Aug 16 00:08 AM -- EEE-ALPHORT -- CCOMWCONPLEANS -- CCHH#2020C#P0707640

FURTHER AFFIANT SAYETH NOT!

SWORN TO before me this
5th day of October, 2020

SWORN TO before me this
5th day of October 2020
Michael M. Hatfield

Notary Public for

My commission expires 6/5/2029

AGREEMENT FOR POLICE SERVICES

THIS AGREEMENT FOR POLICE SERVICES, dated the ____ day of January, 2015, is made by and between the Town of Hilton Head Island (Town) and Beaufort County (County) and the Beaufort County Sheriff's Office (BCSO).

WITNESSETH:

WHEREAS, the Town has heretofore maintained a level of professional police protection for the benefit of the citizenry thereof through a law enforcement services contract with Beaufort County and the Sheriff's Office, and

WHEREAS, the Town is desirous of maintaining a high level of competent professional police service in conjunction and harmony with its fiscal policies of sound, economical management; and

WHEREAS, BCSO has agreed to render to the Town a high level of professional police service, and the Town is desirous of contracting for such service upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

- 1.1 **DEFINED TERMS.** The following terms when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):
 - 1.1.1 **AGREEMENT.** "Agreement" shall mean this Agreement for Police Services between the Town, County and the BCSO.
 - 1.1.2 **ANCILLARY SERVICES.** "Ancillary Services" shall mean those other services listed on the attached Schedule "2" under heading "Ancillary Services" that BCSO shall provide within the Town Boundaries during the Term.
 - 1.1.3 **APPLICABLE LAWS.** "Applicable Laws" shall mean, with respect to any Person, all provisions of constitutions, statutes, rules, ordinances, regulations, charters, and orders of governmental bodies or regulatory agencies applicable to such Person, and all orders or decrees of all courts and arbitrators in proceedings or actions to which the Person in question is a party or by which it or any of its property may be bound.

EXHIBIT 1 TO TANNER AFFIDAVIT

- 1.1.4 **BASIC LAW ENFORCEMENT SERVICES.** "Basic Law Enforcement Services" shall mean the basic contract of law enforcement services to be provided by BCSO pursuant to this Agreement as more particularly described on the attached Schedule "1".
- 1.1.5 **BCSO.** "BCSO" shall mean the duly elected and qualified Sheriff of Beaufort County, South Carolina and the staff of the Sheriff's Office in its entirety.
- 1.1.6 **BCSO'S ADDRESS.** "BCSO's address" shall mean Beaufort County Sheriff's Office, 2001 Duke Street, Beaufort, South Carolina 29902.
- 1.1.7 **BEAUFORT COUNTY.** "County" shall mean Beaufort County, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina and consisting of the geographical location with borders as prescribed by statute and including the municipalities of Beaufort, Port Royal, Bluffton and the Town of Hilton Head Island, South Carolina.
- 1.1.8 **COMMAND OFFICER.** "Command Officer" shall mean the Sheriff or his designee who will be deemed to be the officer responsible for the actions of the BCSO employees who provide the Services to the Town of Hilton Head Island.
- 1.1.9 **CONSIDERATION.** "Consideration" shall mean the quarterly payment and other amounts payable by the Town hereunder in consideration of the Services performed by BCSO.
- 1.1.10 **COUNTY'S ADDRESS.** "County's Address" shall mean Beaufort County, 100 Ribaut Road, Beaufort, South Carolina 29902
- 1.1.11 **DEPUTY SHERIFF.** "Deputy Sheriff" shall mean any person certified by the South Carolina Criminal Justice Academy as a law enforcement officer and commissioned by the Sheriff of Beaufort County to enforce the law in Beaufort County.
- * 1.1.12 **EFFECTIVE DATE.** "Effective Date" shall mean January 18, 2015.
- 1.1.13 **EQUIPMENT.** "Equipment" shall mean all equipment owned by the Town.
- 1.1.14 **MARINE/BEACH PATROL.** "Marine/Beach Patrol" shall mean the deployment of officers to repress and prevent criminal activities, investigate offenses, apprehend offenders, and furnish day to day law enforcement services to the waterways and beaches within the Town Boundaries as defined in Exhibit "A." The BCSO shall provide and maintain a Marine/Beach Patrol Team consisting of at least two (2) designated uniformed deputy sheriffs. The Marine/Beach patrol shall patrol as deemed necessary to provide specialized enforcement on the beaches and waterways within the Town Boundaries.

- 1.1.15 **PATROL UNIT.** "Patrol Unit" shall mean one uniformed officer and all standard police support equipment.
- 1.1.16 **SHERIFF'S OFFICE ENFORCEMENT DIVISION/ SOUTHERN ENFORCEMENT BRANCH.** Shall mean all deputy sheriffs assigned to enforcement duties within the Town Boundaries.
- 1.1.17 **SHERIFF'S OFFICE JURISDICTION.** "Sheriff's Office Jurisdiction" shall mean all land and waterways lying within the boundaries established by statute and known as the Town as specified in Municipal Code *Section 2-1-20 Corporate Boundaries* and in Exhibit "A."
- 1.1.18 **SHERIFF'S PATROL.** "Sheriff's Patrol" shall mean the deployment of deputy sheriffs to repress and prevent criminal activities, investigate offenses, apprehend offenders and furnish day to day law enforcement services within the Town Boundaries.
- 1.1.19 **SHERIFF'S SUBSTATION.** "Sheriff's Substation" shall mean that facility referred to as the "Hilton Head Office" on Hilton Head Island, SC.
- * 1.1.20 **TERM.** "Term" shall mean three (3) years commencing on the Effective Date and expiring on the Termination Date and any extensions thereto.
- * 1.1.21 **TERMINATION DATE.** "Termination Date" shall mean January 31, 2018.
- 1.1.22 **TOWN.** "Town" shall mean the Town of Hilton Head Island, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina and located within the boundaries of Beaufort County, South Carolina.
- 1.1.23 **TOWN ADDRESS.** "Town Address" shall mean 1 Town Center Court, Hilton Head Island, South Carolina 29928.
- 1.1.24 **TOWN BOUNDARIES.** "Town Boundaries" shall mean the area within the municipal corporate boundaries of the Town as specified in Municipal Code *Section 2-1-20 Corporate Boundaries* and in Exhibit "A."
- 1.1.25 **TOWN MANAGER.** "Town Manager" shall mean the duly appointed Town Manager of the Town, who, on the effective date of this Agreement is Stephen G. Riley. In the absence of the Town Manager, the Assistant Town Manager or person acting in the capacity of the Town Manager shall have the same authority as that of the Town Manager.
- 1.1.26 **TRAFFIC UNIT.** "Traffic Unit" shall mean one uniformed deputy sheriff and all standard police support equipment assigned to a special team and shift to accomplish traffic patrol, auto accident investigation and traffic control.

AGREEMENT FOR POLICE SERVICES

THIS AGREEMENT FOR POLICE SERVICES, dated the ____ day of January, 2015, is made by and between the Town of Hilton Head Island (Town) and Beaufort County (County) and the Beaufort County Sheriff's Office (BCSO).

WITNESSETH:

WHEREAS, the Town has heretofore maintained a level of professional police protection for the benefit of the citizenry thereof through a law enforcement services contract with Beaufort County and the Sheriff's Office, and

WHEREAS, the Town is desirous of maintaining a high level of competent professional police service in conjunction and harmony with its fiscal policies of sound, economical management; and

WHEREAS, BCSO has agreed to render to the Town a high level of professional police service, and the Town is desirous of contracting for such service upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

- 1.1 **DEFINED TERMS.** The following terms when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):
 - 1.1.1 **AGREEMENT.** "Agreement" shall mean this Agreement for Police Services between the Town, County and the BCSO.
 - 1.1.2 **ANCILLARY SERVICES.** "Ancillary Services" shall mean those other services listed on the attached Schedule "2" under heading "Ancillary Services" that BCSO shall provide within the Town Boundaries during the Term.
 - 1.1.3 **APPLICABLE LAWS.** "Applicable Laws" shall mean, with respect to any Person, all provisions of constitutions, statutes, rules, ordinances, regulations, charters, and orders of governmental bodies or regulatory agencies applicable to such Person, and all orders or decrees of all courts and arbitrators in proceedings or actions to which the Person in question is a party or by which it or any of its property may be bound.

EXHIBIT 1 TO TANNER AFFIDAVIT

- 1.1.4 **BASIC LAW ENFORCEMENT SERVICES.** "Basic Law Enforcement Services" shall mean the basic contract of law enforcement services to be provided by BCSO pursuant to this Agreement as more particularly described on the attached Schedule "1".
- 1.1.5 **BCSO.** "BCSO" shall mean the duly elected and qualified Sheriff of Beaufort County, South Carolina and the staff of the Sheriff's Office in its entirety.
- 1.1.6 **BCSO'S ADDRESS.** "BCSO's address" shall mean Beaufort County Sheriff's Office, 2001 Duke Street, Beaufort, South Carolina 29902.
- 1.1.7 **BEAUFORT COUNTY.** "County" shall mean Beaufort County, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina and consisting of the geographical location with borders as prescribed by statute and including the municipalities of Beaufort, Port Royal, Bluffton and the Town of Hilton Head Island, South Carolina.
- 1.1.8 **COMMAND OFFICER.** "Command Officer" shall mean the Sheriff or his designee who will be deemed to be the officer responsible for the actions of the BCSO employees who provide the Services to the Town of Hilton Head Island.
- 1.1.9 **CONSIDERATION.** "Consideration" shall mean the quarterly payment and other amounts payable by the Town hereunder in consideration of the Services performed by BCSO.
- 1.1.10 **COUNTY'S ADDRESS.** "County's Address" shall mean Beaufort County, 100 Ribaut Road, Beaufort, South Carolina 29902
- 1.1.11 **DEPUTY SHERIFF.** "Deputy Sheriff" shall mean any person certified by the South Carolina Criminal Justice Academy as a law enforcement officer and commissioned by the Sheriff of Beaufort County to enforce the law in Beaufort County.
- * 1.1.12 **EFFECTIVE DATE.** "Effective Date" shall mean January 18, 2015.
- 1.1.13 **EQUIPMENT.** "Equipment" shall mean all equipment owned by the Town.
- 1.1.14 **MARINE/BEACH PATROL.** "Marine/Beach Patrol" shall mean the deployment of officers to repress and prevent criminal activities, investigate offenses, apprehend offenders, and furnish day to day law enforcement services to the waterways and beaches within the Town Boundaries as defined in Exhibit "A." The BCSO shall provide and maintain a Marine/Beach Patrol Team consisting of at least two (2) designated uniformed deputy sheriffs. The Marine/Beach patrol shall patrol as deemed necessary to provide specialized enforcement on the beaches and waterways within the Town Boundaries.

- 1.1.15 **PATROL UNIT.** "Patrol Unit" shall mean one uniformed officer and all standard police support equipment.
- 1.1.16 **SHERIFF'S OFFICE ENFORCEMENT DIVISION/ SOUTHERN ENFORCEMENT BRANCH.** Shall mean all deputy sheriffs assigned to enforcement duties within the Town Boundaries.
- 1.1.17 **SHERIFF'S OFFICE JURISDICTION.** "Sheriff's Office Jurisdiction" shall mean all land and waterways lying within the boundaries established by statute and known as the Town as specified in Municipal Code Section 2-1-20 Corporate Boundaries and in Exhibit "A."
- 1.1.18 **SHERIFF'S PATROL.** "Sheriff's Patrol" shall mean the deployment of deputy sheriffs to repress and prevent criminal activities, investigate offenses, apprehend offenders and furnish day to day law enforcement services within the Town Boundaries.
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- 1.1.25 **TOWN MANAGER.** "Town Manager" shall mean the duly appointed Town Manager of the Town, who, on the effective date of this Agreement is Stephen G. Riley. In the absence of the Town Manager, the Assistant Town Manager or person acting in the capacity of the Town Manager shall have the same authority as that of the Town Manager.
- 1.1.26 **TRAFFIC UNIT.** "Traffic Unit" shall mean one uniformed deputy sheriff and all standard police support equipment assigned to a special team and shift to accomplish traffic patrol, auto accident investigation and traffic control.

- 1.1.27 **UNIFORMED OFFICER.** "Uniformed Officer" shall mean a uniformed deputy sheriff employed by BCSO.

ARTICLE II GENERAL AGREEMENT TERMS

- 2.1 **INTERPRETATION.** Each definition in this Agreement shall, unless otherwise specified, include such agreement as modified, amended, restated or supplemented from time to time, and except where the context otherwise requires, reference to a party to this Agreement includes that party and its permitted successors and assigns. The captions or headings in this Agreement are for convenience only and in no way limit the scope or intent of any provision of this Agreement.
- 2.2 **ACCOUNTING TERMS.** All references in this Agreement to generally accepted accounting principles shall be to such principles as in effect from time to time in the United States of America. All accounting terms used herein without definition shall be used as defined under such generally accepted accounting principles.
- 2.3 **CROSS REFERENCES.** Unless otherwise specified, references in this Agreement to any Article or Section are references to such Article or Section of this Agreement, and unless otherwise specified, references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition. The words "hereof", "hereby", "hereto", "herein", "hereunder" and the like refer to this Agreement in its entirety.
- 2.4 **CONTRACTOR RELATIONSHIP.** Town hereby retains County and the BCSO as an independent contractor to provide the Services within the Town Boundaries subject to the terms and conditions contained herein. In addition, County and the BCSO shall also provide the Ancillary Services for the benefit of the Town, subject to availability, when County and the BCSO deems same necessary or desirable. This is inclusive of Basic and Ancillary Services listed under Schedule "1" and "2".
- 2.5 **NO PARTNERSHIP.** The relationship between the Town, County and the BCSO shall be solely as set forth herein. No party shall be deemed the employee, agent, partner or joint venture of the other, nor have, or represent to have, any authority or capacity to make or alter any agreement on behalf of the other, to legally bind the other, to credit or receive money due on behalf of the other or to do any other thing on behalf of the other, except as specifically set forth herein. Neither the Town nor County and the BCSO will have or attempt to exercise any control or direction over the methods used by the other to perform its work, duties and obligations under this Agreement except as specifically set forth herein. The respective employees, agents and representatives of each of the Town, County and the BCSO shall remain their own employees, agents or representatives, and

shall not be entitled to employment benefits of any kind from the other, except as specifically set forth herein. The Town, County and the BCSO shall assume full responsibility for their own compliance with any and all Applicable Laws.

ARTICLE III **TERM & TRANSITION PERIOD**

- 3.1 **TERM.** This Agreement shall commence on the Effective Date and shall continue thereafter for the Term, unless otherwise extended or terminated as set forth herein. The Town shall have the option to extend the Term upon the same terms and conditions contained herein.
- 3.2 **TERMINATION OF CONTRACT.** Should the Town determine that it desires to provide police services through its own police force, the Town shall notify Beaufort County and the BCSO, within 10 days of formal Town Council Action.
- 3.3 **TRANSITION PERIOD.** A transition period of not more than eighteen months (18) shall commence upon the County's receipt of formal notification of termination of this Agreement, for any reason by the Town. The County and the BCSO shall be bound by the same terms and conditions set forth herein during the transition period, unless the Town hires a number of BCSO deputy sheriffs that would significantly impact the ability of the BCSO to meet the terms of this Agreement.

ARTICLE IV **REPRESENTATIONS AND WARRANTIES OF TOWN**

- 4.1 **REPRESENTATIONS AND WARRANTIES OF TOWN.** The Town represents, warrants and covenants to County and the BCSO as of the date hereof and throughout the Term of this Agreement that:
 - 4.1.1 **EXISTENCE.** The Town is and will remain duly organized, validly existing and in good standing under the laws of the State of South Carolina, has and will retain the requisite power and authority to conduct its business, to enter into this Agreement and to perform the terms hereof and by proper action on behalf of the Town has duly authorized, executed and delivered this Agreement and any and all instruments in connection herewith.
 - 4.1.2 **BREACH.** Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby nor the fulfillment of or compliance with the terms and provisions hereof (a) conflicts with, or result in a material default under or breach of or grounds for termination of, any material agreement or any license, permit or other governmental authorization to which Town is a party or by which Town is bound, (b) result in the violation by the Town of any provision of any Applicable Law applicable to Town or to which Town may be subject, (c) violate or conflict with any charter or other document

governing the actions of Town, or (d) require Town to obtain or make any consent, authorization, approval, registration or filing under Applicable Law or order of any court or governmental agency, board, bureau, body, department, authority or any other person which has not already been obtained. The Town is not in default with respect to any order, judgement, ordinance, award or decree of any governmental agency or instrumentality affecting this Agreement or the transactions contemplated hereby.

4.2 REPRESENTATIONS AND WARRANTIES OF COUNTY AND THE BCSO. County and the BCSO represents, warrants and covenants as of the date hereof and throughout the term of this Agreement that:

4.2.1 DULY ELECTED. P.J. Tanner is the duly elected Sheriff of Beaufort County, South Carolina, has and will retain the requisite power and authority pursuant to the power so vested in him under Applicable Law to conduct its business, to enter into this Agreement and to perform the terms hereof and by proper action has duly authorized, executed and delivered this Agreement and any and all instruments in connection herewith;

4.2.2 ENFORCEABLE. This Agreement has been duly executed and delivered to County and the BCSO and constitutes the valid and legally binding obligation of County and the BCSO enforceable in accordance with its terms.

4.2.3 BREACH. Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby nor the fulfillment of or compliance with the terms and provisions hereof (a) conflicts with, or result in a material agreement or any license, permit or other governmental authorization to which County and the BCSO is a party or by which County and the BCSO is bound, (b) result in the violation by the County and the BCSO of any provision of any Applicable Law applicable to the County and the BCSO or to which County and the BCSO may be subject, (c) violate or conflict with any charter or other document governing the actions of County and the BCSO, or (d) require County and the BCSO to obtain or make any consent, authorization, approval, registration or filing under Applicable Law or order of any court or governmental agency, board, bureau, body, department, authority or any other person which has not already been obtained. County and the BCSO is not in default with respect to any order, judgement, ordinance, award or decree of any governmental agency or instrumentality affecting this Agreement or the transactions contemplated hereby.

**ARTICLE V
STAFFING AND LEVELS OF SERVICE**

5.1 STAFFING. Commencing on the Effective Date, BCSO shall schedule, provide and employ the personnel necessary to provide the services within the Town Boundaries in accordance with the articles of this Agreement and outlined in the Description of Services and Ancillary Services attached hereto as Schedule "1"

and "2". BCSO shall have the sole responsibility and control over setting Policy, Procedures and Standards and, provided BCSO complies with the Basic Service requirements set forth in Article V of this Agreement, all other matters related to performing the Services and Ancillary deployment within the Town Boundaries of BCSO deputy sheriffs.

- 5.2 **SOUTHERN ENFORCEMENT BRANCH ASSIGNMENT CHANGES.** The BCSO shall maintain duty assignments in accordance with existing command and control structure of the Sheriff's Office, as well as established policies and procedures.
- 5.3 **DISTRICT COVERAGE.** Two (2) geographical divisions are currently established as Patrol Areas on Hilton Head Island known as 5A and 5B. These two areas shall be maintained in accordance with established procedures of the BCSO.
- 5.4 **NO EMPLOYMENT RESPONSIBILITY.** All BCSO employees shall not be considered employees of the Town for purposes of pension benefits, insurance benefits, compensation and/or any status or right. Accordingly, the Town shall not be called upon to assume any liability for or direct payment of any salaries, wages, or other compensation, contributions to pension funds, insurance premiums, workmen's compensation, vacation or compensatory time, sick leave benefits or any other amenities of employment to any BCSO employee whatsoever arising out of BCSO's employment of such Deputy Sheriffs and such Deputy Sheriff's performance of the services.
- 5.5 **ASSIGNMENT OF POLICE POWERS.** As sworn, certified, commissioned deputy sheriffs, each deputy sheriff assigned to duties within the Town Boundaries shall be vested with the authority by the Town to enforce such municipal ordinances as may be necessary in the performance of their duties under the Terms of this Agreement.

ARTICLE VI SOUTHERN ENFORCEMENT BRANCH COMMAND

- 6.1 **COMMAND OFFICER.** At all times during the Term, BCSO shall employ a Command Officer to exercise authority over the Southern Enforcement Branch of the Enforcement Division. The Command Officer shall meet and confer with the Town Manager or his designee as needed, for the purpose of maintaining the viability and vitality of this Agreement.
- 6.2 **LOCATION OF COMMAND OFFICER.** The Command Officer of the Southern Enforcement Branch shall maintain his or her principal office at the Sheriff's Substation located on Hilton Head Island, South Carolina.

ARTICLE VII DISPATCHING SERVICES

- 7.1 **RADIO PROCEDURES.** All radio traffic generated by BCSO personnel shall take place on "channels" and "talk groups" as prescribed in existing BCSO standardized Policies and Procedures.
- 7.2 **EMERGENCY RESPONSE GRID SYSTEM.** The Grid system established by the Beaufort County Communications Center shall be utilized for all reporting and call tracking conducted by the BCSO.
- 7.3 **DISPATCHING SERVICES.** All calls for Sheriff's emergency services placed to Hilton Head Island Communications Center will be transferred to Beaufort County Communications Center using a "One Button" transfer system. All calls for service for Hilton Head Island for other than Sheriff's services placed to Beaufort County Communications Center will be transferred to Hilton Head Island Communications Center using a "One Button" transfer system. The Beaufort County Communications Center will serve as a back-up for the Hilton Head Island Communications Center 24 hours a day and seven days a week. The Hilton Head Island Communications Center will serve as a back-up for the Beaufort County Communications Center 24 hours a day and seven days a week. To insure that each Communications Center has the resources necessary to perform the back-up function for the other center, the following types of information will be shared between the centers: (1) geographic and address data relative to the territory being backed-up; (2) operational procedures which have been mutually agreed to by the management of each center relative to providing the back-up function; and (3) sharing of planning information so that each center may properly equip itself to perform the back-up function.

ARTICLE VIII MUNICIPAL COURT

- 8.1 **DEPUTY APPEARANCE AT COURT.** All deputy sheriffs appearing in Municipal Court shall adhere to Uniform Standards as set forth in the BCSO Policies and Procedures Manual. All deputy sheriffs shall make every reasonable effort to notify the Court in the event of their delay, absence or request for continuance of a pending case.
- 8.2 **OFFENSES TO BE HEARD IN MUNICIPAL COURT.** All municipal level, traffic, and boating related offenses occurring within the Town Boundaries of Hilton Head Island shall be scheduled before the Municipal Court by Deputy Sheriffs assigned to the Southern Enforcement Branch; except where there is a conflict of interest, in which case, the matter shall be assigned to the Magistrate's Court.

ARTICLE IX CONSIDERATION

- 9.1 **CONSIDERATION.** In consideration of the services provided hereunder, the Town agrees to pay BCSO the Consideration in equal quarterly installments commencing at the end of the first full quarter after the Effective Date of this agreement. Should the term commence or end on other than the first or last day respectively of a calendar quarter, the quarterly installment due for said quarter shall be prorated accordingly. BCSO shall provide the Town with written documentation to support any percentage rate increase or other change impacting the Consideration amount. The increase shall be calculated on the total consideration paid in the prior year. BCSO and Town agree and understand that BCSO shall make every reasonable effort to limit the annual increase in the Consideration, and shall consider an increase only when other alternatives are insufficient to meet the needs of the Town and BCSO under the terms and conditions of this agreement.
- 9.2 **SERVICE CREDITS.** The above stated Consideration for services to be provided is agreed to based on BCSO providing the services at the levels stated within this agreement. The Town shall be entitled to a credit for each level of service not attained for that quarter and shall be deducted from the Consideration payment. Any level not attained or maintained for a period of three (3) consecutive months shall constitute a breach of this agreement. Said credit shall be calculated using the actual cost of providing that annual level of service divided by 12, times the percent of service not provided then times the number of months the service was not provided.
- 9.3 **ANNUAL REVIEW.** On an annual basis, the Town and BCSO will review current service levels and proposed service level alterations. The proposed Consideration shall be determined after the completion of the Annual Review that will occur simultaneous to the Annual Proposed Budget Process.
- 9.4 **SERVICES RENDERED STATEMENT.** The BCSO shall provide to the Town, on a quarterly basis, a bill for services budgeted for annually. A monthly report (Exhibit "C") for each month in the quarter shall be provided to support the billing detailing the percentage of time spent by each position identified in the contract for services rendered. Positions are billed based on the entry level salary for each classification.

ARTICLE X REPORTS

- 10.1 BCSO shall deliver reports as outlined in Exhibit "B" according to schedule contained therein.

ARTICLE XI

GRANTS AND FUNDS

- 11.1 **GRANT FUNDS AND MISCELLANEOUS REVENUES.** The BCSO shall seek grant funding as deemed appropriate under direction from the Sheriff. The BCSO shall retain all funds and equipment gained through grant awards as established in existing BCSO policies.

ARTICLE XII

INSURANCE

- 12.1 **BCSO OBLIGATIONS.** BCSO shall maintain general liability and tort insurance policies in the amounts as established by state statute and county policy. BCSO shall maintain these insurance policies throughout the Term. BCSO shall provide the Town with copies of the insurance policies required hereunder and all renewals thereof. The Costs of these insurance policies shall be the sole obligation of the County and the BCSO.

ARTICLE XIII

DEFAULT

- 13.1 **DEFAULTS.** The occurrence of any one or more of the following shall constitute a "Default" by the party causing same (the "Defaulting Party").
- 13.2 **PAYMENT.** Failure of the Defaulting Party to pay any amount required hereunder, whether for Consideration, insurance or any other obligations, within thirty (30) days after such is due hereunder; or
- 13.3 **PERFORMANCE OF SERVICES.** Failure of BCSO to perform the Services as required herein at any time during the Term; or
- 13.4 **OTHER PERFORMANCE.** Failure of the Defaulting Party to perform any other covenant, condition, agreement or provision contained herein (other than the Services) or to cure any misrepresentation or breach of any representation or warranty herein thirty (30) days after receipt by the Defaulting Party of written notice of such failure, misrepresentation or breach; or
- 13.5 **DEFAULT.** Failure of the Defaulting Party to perform any covenant, condition, agreement or provision contained in any other agreement or to cure any misrepresentation or breach of any representation or warranty in any other agreement between the parties hereto within any applicable grace period provided in such agreement.
- 13.6 **REMEDIES.** Upon the occurrence and continuance of a Default by the Defaulting Party, the party not in Default (the "Non-Defaulting Party") may, at its option and without any obligation to do so and in addition to any other remedies

otherwise set forth in this Agreement, elect any one or more of the following remedies:

- 13.6.1 Terminate and cancel this Agreement; or
- 13.6.2 Withhold payment or performance under this Agreement until such time as such Default is cured; or
- 13.6.3 Seek injunctive relief to enjoin any act of the Defaulting Party in violation hereof; or
- 13.6.4 Seek specific performance of any covenant or obligation of the Defaulting party hereunder; or
- 13.6.5 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the State of South Carolina
- 13.7 **SEPARABILITY.** Each and every covenant and agreement herein shall be separate and independent from any other and the breach of any covenant or agreement shall in no way or manner discharge or relieve the performance of any other covenant or agreement. Each and all of the rights and remedies given to the Non-Defaulting Party by this Agreement or by law or equity are cumulative and the exercise of any such right or remedy by the Non-Defaulting party shall not impair the Non-Defaulting Party's right to exercise any other right or remedy available to the Non-Defaulting Party under this Agreement or by law or equity.
- 13.8 **WAIVER.** No delay in exercising or omission of the right to exercise any right or power by any party hereto shall impair any such right or power, or shall be construed as a waiver of any breach or default or as acquiescence thereto. One or more waivers of any covenant, term or condition of this Agreement by either party shall not be construed by the other party as a waiver of a continuing or subsequent breach of the same covenant, provision or condition. The consent or approval by either party to or of any act of the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. Payment or receipt of a lesser amount than that due hereunder shall not be deemed to be other than on account of the earliest amount due hereunder.
- 13.9 **FORCE MAJEURE.** If the performance of any covenant, agreement, obligation or undertaking (exclusive of payment or monetary obligations of either party hereunder) required hereunder is delayed, hindered or prevented by reason of strikes, lock-outs, labor troubles, wars, civil commotion's, Acts of God, governmental restrictions or regulations or interference's, fires or other casualty, the performance of such covenant, agreement, obligation or undertaking shall be excused and extended and shall not be a Default for the period of such delay, hindrance or prevention.

13.10 ATTORNEY'S FEES. In the event of any controversy arising under or relating to the interpretation or implementation of this Agreement or any breach thereof, the prevailing party shall be entitled to seek payment for all costs and attorney's fees (both trial and appellate) incurred in connection therewith.

13.11 COUNTY AND BCSO ACKNOWLEDGMENT. County and the BCSO do hereby acknowledge that the Town is entering into this Agreement in reliance upon County's and the BCSO's obligations herein imposed for the Term. Accordingly, County and the BCSO agree that it shall have the right to terminate this Agreement only as permitted in this Section.

ARTICLE XIV INDEMNIFICATION

14.1 The County and the BCSO shall assume liability for, defend against, and secure the Town from all costs or damages for injury to persons or property caused by the negligence or intentional misconduct of the Sheriff's personnel in providing or failing to provide general law enforcement services, as outlined in this Agreement, to the Town provided the liability is not the result of Town policy.

ARTICLE XV MISCELLANEOUS

15.1 NOTICE. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been given three (3) business days after deposit in the mail, designated as certified mail, return receipt requested, postage-prepaid, or one (1) business day after being entrusted to a reputable commercial overnight delivery service, or when sent by telex or telecopy on a business day addressed to the party to which such notice is directed at its address determined in accordance with this Section with customary confirmation of receipt of such telex or telecopy received. All notices and other communications under this Agreement shall be given to the parties hereto at the following addresses: If to Town, to it at Town's address; if to BCSO, at BCSO's address and to the County at its address. Any party hereto may change the address to which notices shall be directed under this Section by giving ten (10) days written notice of such change to the other parties.

15.2 NON-ASSIGNABILITY. Neither party shall assign any of its obligations or benefits imposed hereby or contained herein, except upon the other party's prior written approval.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures
hereto the date first written hereinabove.

Suzanne Cook
WITNESS

BEAUFORT COUNTY
By: Gary Kubic
Gary Kubic, Beaufort County
Administrator

Suzanne Cook
WITNESS

BEAUFORT COUNTY SHERIFF'S
OFFICE
By: P. J. Tamm
P. J. Tamm, Beaufort County
Sheriff

P. C. Hulbert
WITNESS

TOWN OF HILTON HEAD ISLAND
By: Stephen G. Riley
Stephen G. Riley, TMA-CM,
Town Manager

AGREEMENT FOR POLICE SERVICES

EXHIBIT "A"

Municipal boundaries:

The municipal corporate boundaries of the Town of Hilton Head Island, SC are specified in Municipal Code Section 2-1-20, Corporate boundaries

Statutory Provisions:

Section 5-7-140. Extension of police jurisdiction and authority of municipalities bordering on high tide line or high water mark of navigable body of water.

- (A) The corporate limits of any municipality bordering on the high-tide line of the Atlantic Ocean are extended to include all that area lying between the high-tide line and one mile seaward of the high-tide line. These areas are subject to all the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal ordinances where the misdemeanor occurred in the area defined in this section.
- (B) The corporate limits of any municipality bordering on the high-water mark of a navigable body of water, other than the Atlantic Ocean, are extended to include all that area lying between the high-water mark and the low-water mark. These areas are subject to all of the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal courts have jurisdiction to punish individuals violating the provisions of the municipal ordinances where the misdemeanor occurred in the areas defined in this section.

Section 5-7-150 Coastal municipalities' criminal jurisdiction over piers and other structures and waters of the ocean.

Every coastal municipality has criminal jurisdiction over piers and other structures and the waters of the ocean, a sound, or an inlet within one mile of those portions of the strand within the corporate limits. The corporate limits of the municipality are extended in a straight line from the strand into the ocean, inlet, or sound from the point where the corporate limits of the municipality reach the high-water mark of the strand. If an extension overlaps with the criminal jurisdiction of another political subdivision, the jurisdiction of each political subdivision extends to the equidistant point from the high-water mark of each strand.

AGREEMENT FOR POLICE SERVICES

Exhibit "B"

Reports

Crime Statistics (Due Annually)

SLED "Crime in South Carolina" annual report
FBI "National Trends" annual report

Victims/Witness Advocacy Program (Due Annually)

Number of victims served

Police Patrol (Due Annually)

Calls for Police Patrol Services
Calls for Service per Patrol Unit
Average Response Time in Minutes from Dispatch to Scene (Citizen Generated)
Dispatched Calls

Criminal Investigation (Due Annually)

Number of Cases Assigned per Investigator
Number of Cases Cleared per Investigator

Quarterly Report

Crimes Against Persons
Crimes Against Property
Vehicle Collisions
Offense Clearances
Drug Violations
Tickets Written for Municipal Court
Additional Offenses
UCR Reports

AGREEMENT FOR POLICE SERVICES

EXHIBIT "C"

AREA ASSIGNMENT FORM

AGREEMENT FOR POLICE SERVICES

SCHEDULE "1"

BASIC LAW ENFORCEMENT SERVICES

1. SHERIFFS PATROL. The BCSO shall provide a minimum of four (4) staffed patrol units on duty 24 hours a day, seven days a week to provide basic sheriffs patrol within the Town Boundaries.
2. PATROL UNIT SUPERVISOR. In addition to the minimum staffing requirements above, staffing shall consist of not less than one (1) "Patrol Unit Supervisor" on duty at all times, responsible for basic law enforcement patrol activities within the Town boundaries 24 hours per day, seven days a week.
3. MARINE/BEACH PATROL. The BCSO shall provide and maintain a Marine/Beach Patrol Team consisting of at least two (2) designated uniformed deputy sheriffs. The Marine/Beach patrol shall patrol as deemed necessary to provide specialized enforcement on the beaches and waterways within the Town Boundaries.
4. EVIDENCE TECHNICIAN. The BCSO shall provide one deputy sheriff whom is tasked primarily with the collection, cataloging, custody and preservation of evidence collected at crime scenes within the Town Boundaries.
5. CRIMINAL INVESTIGATORS. The BCSO shall provide three (3) deputy sheriffs assigned to investigate major criminal incidents occurring within the Town Boundaries.
6. DRUG INVESTIGATORS. The BCSO shall provide two (2) deputy sheriffs assigned to enforce narcotics laws within the Town Boundaries.
7. CLERK. The BCSO shall provide three (3) clerks assigned to the Sheriff's Substation on Hilton Head Island for the purpose of performing administrative duties such as correspondence and record keeping.
8. VICTIM'S ADVOCATE. The BCSO shall provide one deputy sheriff who is assigned as the Victim's Advocate to work with victims of crimes occurring within the Town Boundaries in compliance with state statutes.
9. COMMAND OFFICER. At all times during the Term, BCSO shall employ a Command Officer to exercise authority over the Southern Enforcement Branch of the Enforcement Division. The Command Officer shall meet and confer with the Town Manager or his designee as needed, for the purpose of maintaining the viability and vitality of this Agreement.

AGREEMENT FOR POLICE SERVICES

SCHEDULE "2"

DESCRIPTION OF ANCILLARY SERVICES

As indicated under definition 1.1.2 *Ancillary Services* any and all auxiliary and support services to include:

- Lab services
- K-9 support
- Special Response Team (SWAT)
- Crisis Negotiations
- Animal Control
- Airport Security
- School Resource Officer
- Civil Service
- Warrant Service
- Records Management
- Command
- Bomb Team
- ICE Enforcement
- DNA Lab
- Sex Offender Registry
- AFIS System

And other support services as currently provided to the Town of Hilton Head Island.



Calls for Service Data 2019

Total Calls for Service by Municipality in Beaufort County

Beaufort Police Department	86,623
Bluffton Police Department	64,778
Port Royal Police Department	33,699
Beaufort County Sheriff's Office for Town of Hilton Head	97,336

Beaufort County Sheriff's Office Assisting Other Agencies Calls for Service

City of Beaufort	11,935
Town of Bluffton	5,890
Town of Port Royal	3,384
Marine Corps Air Station	116
Outside Beaufort County	888
Total:	22,213

**Total Beaufort County Sheriff's
Office Calls for Service: 321,439**

EXHIBIT 2 TO TANNER AFFIDAVIT

RECEIVED ELECTRONICALLY FILED - 2023 AUG 12 10:08 AM - BEAUFORT - COMMONS FILED - CASE#20230701840

Northern Enforcement Personnel Assignments

Filled Positions	61
Vacancies	5
Total	66

Enforcement Command North	
105	Major Bukoffsky
A1	Captain Purdy
A2	VACANT
A5	MSgt Malphrus

A-Team	
A13	SSgt Robbins
A21	Sgt Guise
A24	Sgt Perkins
A27	Sgt Light
A39	Cpl Gracia
A44	Cpl Driscoll
A47	LCpl Domino
A50	LCpl Green
A58	PFC Collette
A71	D/S Ainsworth
A73	D/S Locandro

B-Team	
A11	SSgt Lamb
A22	Sgt Krapf
A23	Sgt Mankin
A32	Sgt Tafoya
A42	Cpl Arcuri
A46	Cpl Noack
A49	LCpl Hewitt
A57	PFC Ireland
A68	D/S Mosier
A69	D/S Oelschlager
	VACANT

C-Team	
A12	SSgt DiFalco
A26	Sgt Armstead
A28	Sgt King
A30	Sgt Kline
A36	Cpl O'Neal
A38	Cpl Lewis
A59	PFC Anderson
A60	PFC Ahrens
A66	D/S Miles
A74	D/S Huston
	VACANT

D-Team	
A10	SSgt Hovest
A25	Sgt Tunis
A29	Sgt Capps
A31	Sgt Thomas
A37	Cpl Keener
A41	Cpl Swalm
A48	LCpl Gargiulo
A51	LCpl Schelske
A52	LCpl Kremer
A67	D/S Perlow
A72	D/S Decker

Reserves	
V62	Jezewski

Northern Enforcement Areas	
Area 1	Beaufort/Port Royal
Area 2	North of Whale Branch
Area 3	Lady's Island to Fripp Island

Investigations North	
D3	Lt Chapman
D5	MSgt Draisen
D11	SSgt Duncan
D25	Sgt Garst
D26	Sgt Snider
D27	Sgt DuHamel
D28	Sgt Seronka
D34	Cpl Sosa
D40	LCpl Abell
D42	LCpl Byrd

Victim's Advocates	
D12	SSgt
D22	Sgt

Traffic Team/SEU	
	VACANT
	VACANT

Desk Sgt LEC	
A20	Sgt Parnell

New Hires/Trainees	
A75	D/S Imbert
A76	D/S Lewis
A77	D/S Allison

BEH/EC/IRON/COALTY/FILLED--2025/May/12 10:08:AM--BEE/AL/PORT--COM/COMM/FLEAS--CASE#2102103/PTD/1840

ELI ECORONICA CALL CENTER 2125 AUG 15 13:48 AM BIRNBOURG CO WWW.BIRNBOURG.CO.US 6034

Southern Enforcement Areas	
Area 4	Bluffton
Area 5	Hilton Head

Clerks	
ST III	Morris
ST III	Bonner
ST III	Rule

Patrol B-Team	
B13	SSgt Angstadt
B21	Sgt Stuckey
B25	Sgt Scheemaker
B42	Cpl Costabile
B53	LCpl Meehan
B55	LCpl Crowley
B59	LCpl Carder
B64	PFC Harris
B68	PFC Laudato
B69	PFC Hewitt
B74	D/S Graham
	VACANT

Investigations South	
D4	Lt Florencio
D6	MSgt Crumpton
D10	SSgt Calendine
D21	Sgt Seifert
D25	Sgt Reynells
D32	Cpl Calore
D33	Cpl Weich
D35	Cpl Johnson
D41	LCpl Cushman
	VACANT

Victim's Advocates	
D20	Sgt Adams
D24	Sgt Albertin

Patrol D-Team	
B14	SSgt Cooler
B24	Sgt Greninger
B28	Sgt Kaase
B29	Sgt McIntosh
B38	Cpl Swinehamer
B40	Cpl LeVan
B52	LCpl Hunt
B56	LCpl Entrup
B58	LCpl Aaron
B62	PFC Cochenour
B67	PFC Matynka
B72	D/S Partridge

Traffic Team/SEU	
B12	SSgt Lauver
B22	Sgt Paul
B35	Cpl Aroneck
	VACANT
	VACANT

Environmental Crimes	
M20	Sgt Gobel
M21	Sgt Riccobene

Marine Patrol	
	VACANT

Special Operations	
S1	Name Withheld
S2	Name Withheld
S3	Name Withheld
S5	Name Withheld
S10	Name Withheld
S11	Name Withheld
S20	Name Withheld
S21	Name Withheld
S22	Name Withheld
S32	Name Withheld
S33	Name Withheld
KY20	Name Withheld
	VACANT

Administrative Personnel Assignments

Filled	73	Administrative Command	
Vacancies	10	104	Maj Roper
Total	82	107	Maj Bromage

Special Services		Administrative		Headquarters	
E1	Capt Givens	C1	Capt Mattox	Z1	Capt Angelo
E2	Lt Calhoun	C2	Lt Vido	Z2	Lt Thomas
E5	MSgt Moreno	C5	MSgt Light	Z21	Sgt Rowell

Courthouse		Civil		Warrants	
E11	SSgt Winston	C10	SSgt Hoyt	C12	SSgt Wilson
E20	Sgt Heroux	C11	SSgt Stettmier	C21	Sgt Malphrus
E24	Sgt Williams	C20	Sgt Hall	C28	Sgt Merrill
E26	Sgt Hardy	C22	Sgt Calandra	C40	Cpl De Simone
E29	Sgt Cajigas	C23	Sgt Vaughn	C41	Cpl Saunders
E34	Cpl Kelleher	C27	Sgt Herlong	C50	LCpl Kaiser
E51	D/S Cucinella	C29	Sgt Seronka		VACANT
E52	D/S Criscuolo	C32	Cpl Ferguson		VACANT
E53	D/S Freeman	C33	Cpl Tannuzzi		
E54	D/S Stevens		VACANT		

Memorandum Enforcement		Airport		Evidence	
E12	SSgt Denham	C30	Cpl Korinek	L3	Lt Legree
		C34	Cpl Lear	L10	SSgt Jensen
		C35	Cpl Musser	L56	D/S Krapf
		C38	Cpl Mankarios		VACANT

SRO		Support Services		Forensic Laboratory	
E14	SSgt Webb	X2	Lt Langford	L2	Lt Berry
E21	Sgt Sooknanan	X10	SSgt McIntosh	L50	D/S Donahue
E22	Sgt Fripp	X20	Sgt Townsend	L51	D/S French
E25	Sgt Bilcze	X49	D/S Brookins	L52	D/S Mills
E27	Sgt Prusinowski	X50	D/S Holloway	L53	D/S Garinger
E28	Sgt Able		VACANT	L54	D/S Zeipfel
E31	Cpl Cleveland		VACANT	L57	D/S Kolat
E33	Cpl Mowery				
E35	Cpl Garst				

CRO		CALEA		Training	
E13	SSgt Washington	X1	Capt Averill	Z5	MSgt Jennings
E23	Sgt Shea		VACANT	Z20	Sgt Allen
E32	Cpl Smith				VACANT
E36	Cpl Priest				
	VACANT				
	VACANT				

ELECTRONICALLY FILED -- 2025 Mar 12 10:08 AM -- EEAUHQRT -- COMMUNION PLEASES -- CSMH#2022UCFUYOI1B40

EMD	
901	VACANT
902	Lt Runnion
903	Lt Tuten
904	MSgt Zsamar

Civilian Personnel Assignments

Filled	86
Vacancies	9
Total	95

Records	
SUP	Rodriguez
ST III	Bishop
ST III	Burns
ST III	Burns
ST III	Givens
ST III	Hansen
ST III	Hughes
ST III	Johnson
ST III	Tuten
ST III	Moreira
ST III	Thomas
ST II	Bibbins
ST I	Averill
ST	Standiford
ST	Smith
ST	Swinton

HAZMAT	
LaShawn Jefferson	

Communications A-Team	
SUP	Washington
ASUP	Zeman
ESD III	Davis
ESD III	Nix
ESD II	Mervin
ESD II	Green
ESD I	Robinson
ESD	Brower
ESD	Corlett
	VACANT
	VACANT

Communications C-Team	
SUP	Mowery
ASUP	VACANT
ESD III	Christian
ESD II	Lallemont
ESD I	Hinson
ESD	Lara Espinoza
ESD	Moore
ESD	Compton
	VACANT
	VACANT

UCR Stats	
ST III	McCarthy
ST III	Seder
ST III	Williams

Evidence	
Pam Burries	

Executive Assistants	
907	Funk
	Chaplin

Finance	
Sharon Chavis	

Communications Manager	
905	McLellan

Communications B-Team	
SUP	Charlton
ASUP	Bristow
ESD III	Wells
ESD III	Avery
ESD III	Flack
ESD II	Akins
ESD	Jambriska
	VACANT
	VACANT

Communications D-Team	
SUP	Rowe
ASUP	Metcalfe
ESD I	Frazier
ESD I	Trout
ESD I	Jambriska
ESD	Williams
ESD	Thomas
	VACANT
	VACANT

Support Services	
X21	Stormer
X51	Alderman
X54	Trezevant
X57	Martinez
X59	Madlinger
ST	Townsend

EMD Administrative	
910	French

Supply Manager	
Bonnie Kizer-Cooler	

Communications Training Officer	
ESD III	King

TMC	
TMC 1	Spencer
TMC 2	Hook
TMC 3	Griffin
TMC 4	Bailey
TMC 5	Mossberg
TMC 6	Thompson
TMC 7	Weller
TMC 8	Gilbert
TMC 9	Aldhizer

E911 System Administrator	
Curtis Young	

Emergency Comm Data Manager	
Nichole Breton	

NCIC	
906	Smith
909	Todd
	Cheek



Town of
BLUFFTON
South Carolina



Photo courtesy of Brett Lance Photography

COMPREHENSIVE ANNUAL FINANCIAL REPORT

For the Fiscal Year Ended June 30, 2019

bluffton
HEART OF THE LOWCOUNTRY

www.TownofBluffton.sc.gov

Exhibit E to County's
Motion for Summary
Judgment

TOWN OF BLUFFTON
Management's Discussion and Analysis
June 30, 2019

The following table presents the Town's changes in net position for the fiscal years ending June 30, 2019 and 2018.

Statement of Activities
Figure 2

	Governmental Activities		% Change
	2019	2018	
Revenues:			
Program revenues:			
Charges for services	\$ 13,673,343	\$ 12,106,692	13%
Operating grants and contributions	508,799	639,252	-20%
Capital grants and contributions	525,985	457,773	15%
General revenues:			
Property taxes	8,734,446	7,666,528	14%
Accommodations taxes	1,232,302	1,214,284	1%
Hospitality taxes	2,246,188	1,972,006	14%
Interest	50,675	40,103	26%
Unrestricted intergovernmental revenue	1,012,759	904,018	12%
Miscellaneous	469,858	277,018	70%
Total revenue	<u>28,454,355</u>	<u>25,277,674</u>	<u>13%</u>
Expenses:			
Current:			
Administrative	6,273,450	4,980,875	26%
Judicial	408,166	349,155	17%
Planning	1,269,985	950,748	34%
Building safety	924,154	1,057,626	-13%
Police department	6,471,843	6,720,974	-4%
Public works	1,606,484	1,111,464	45%
Stormwater management	923,714	826,253	12%
Project management	1,376,125	1,359,728	1%
Community development	3,074,469	5,537,698	-44%
Interest on long-term debt	460,301	495,484	-7%
Total expenses	<u>22,788,691</u>	<u>23,390,005</u>	<u>-3%</u>
Change in net position	5,665,664	1,887,669	200%
Net position beginning	30,120,085	28,232,416	7%
Net position, ending	<u>\$ 35,785,749</u>	<u>\$ 30,120,085</u>	<u>19%</u>

Governmental Activities – Governmental activities increased the Town's net position by \$5,665,664. This increase is attributable to better than expected revenue increases, with the continued growth of the Town evident in the increase in property tax revenue, which is 31% of total revenue. Interest income was enhanced with the move of funds to higher interest bearing vehicles. These factors combined with the Town's efforts to control General Fund spending resulted in an increase in net position of over \$5.6 million. Charges for services account for 48% of total revenue and include business licenses, franchise fees, permit fees, and development fees. Hospitality taxes are almost 8% of total revenue with accommodations taxes remaining steady at approximately 4%, and all other revenue sources comprising 9% of all funds received by the Town.

TOWN OF BLUFFTON, SOUTH CAROLINA

Schedule 17 Demographic and Economic Statistics Last Ten Calendar Years

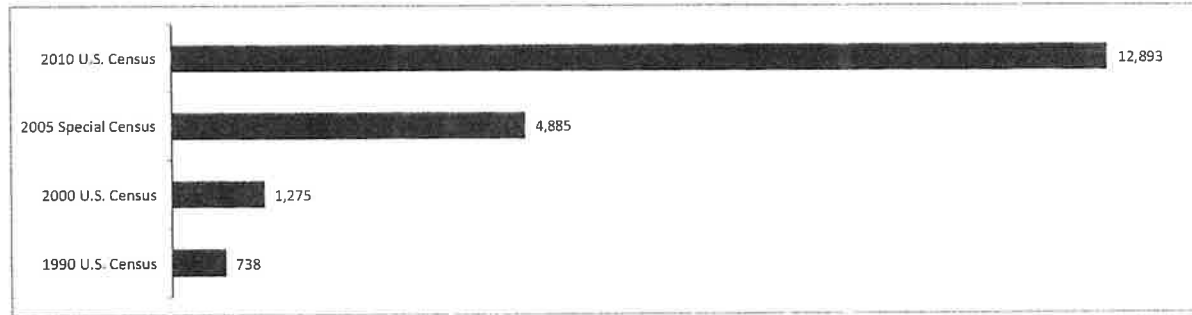
Calendar Year	Population	Personal Income	Per Capita Personal Income	Town of Bluffton School Enrollment	Beaufort County School Enrollment	Annual Unemployment Rate*
2009	12,519	\$ 535,600,377	42,783	5,256	19,525	8.7%
2010	12,893	374,000,144	29,008 **	5,345	19,626	8.7%
2011	12,734	346,963,298	27,247	4,913	19,953	8.7%
2012	12,932	373,773,596	28,903	5,245	20,852	7.6%
2013	13,606	354,218,604	26,034	5,912	20,285	6.4%
2014	15,199	391,009,474	25,726	6,262	20,622	5.7%
2015	16,728	469,906,248	28,091	6,642	21,120	5.5%
2016	18,897	584,465,313	30,929	7,149	21,439	4.6%
2017	20,126	662,608,298	32,923	8,208	21,952	3.3%
2018	23,097	n/a	n/a	8,000	22,014	3.9%

*Town of Bluffton data not available due to low population; Beaufort County data provided alternatively.

**Town of Bluffton data beginning in 2010.

n/a - not available at time of printing.

Sources: Population for 2005 and 2010 provided by U.S. Census Bureau; Population for remaining years are estimates only as provided by the Census Bureau's Population Division; Personal Income provided by U.S. Census Bureau, American Fact Finder; Unemployment rate provided by U.S. Department of Labor, Bureau of Labor and Statistics.



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2020-CP-07-01840

THE TOWN OF HILTON HEAD)
ISLAND, SOUTH CAROLINA,)

Plaintiff,)

-vs-)

BEAUFORT COUNTY, SOUTH)
CAROLINA)

Defendant.)

AFFIDAVIT OF JULIE HERLANDS

1. I am an adult citizen over the age of 18, and I am competent to testify in this matter. The information in this declaration is true and correct based upon my knowledge, information, and belief. If called to testify, I could and would testify consistently with the statements in this declaration.

2. I am a Principal in the consulting firm TischlerBise, located in Bethesda, Maryland.

3. I have nineteen years of planning, fiscal, and economic development experience. Prior to joining TischlerBise, I worked in the public sector in Fairfax County, Virginia, for the Office of Community Revitalization and for the private sector for the International Economic Development Council (IEDC) in their Advisory Services and Research Department.

4. I have led a number of consulting projects including impact fee and user fee studies, fiscal impact analyses, economic and market feasibility analyses, and economic development assessments and plans. My economic and fiscal impact experience includes a wide range of assignments in over fifteen states including impact fees, fiscal impact analysis of growth scenarios and development projects, and incentive analysis. I have calculated impact fees and developed fiscal models for over 120 clients.

Exhibit G to County's Motion for Summary
Judgment

5. The Town of Hilton Head Island, South Carolina is located entirely within the geographical boundaries of Beaufort County, South Carolina.

6. The Town of Hilton Head Island, South Carolina has chosen not to create and maintain its own police force, instead relying on contracts and the services provided by the County and the Beaufort County Sheriff's Office ("BCSO").

7. The Town of Hilton Head Island has apparently indicated that it will no longer fully compensate Beaufort County for police services.

8. Beaufort County wished to consider the possibility of a uniform service charge to be charged to properties in the Town of Hilton Head Island to cover the cost of law enforcement services provided within the Town by the BCSO over and beyond the level of services provided in the incorporated municipalities which provide their own police departments (the "Law Enforcement Service Charge").

9. Beaufort County retained TischlerBise in 2020 to study this option and to analyze the most appropriate manner in which to determine the Law Enforcement Service Charge.

10. TischlerBise has prepared over 900 impact fees and over 800 fiscal impact analyses for clients across the United States and Canada.

11. TischlerBise is well qualified to have studied the relevant issues surrounding the provision of law enforcement services by the BCSO in the Town of Hilton Head Island.

12. Attached hereto as Exhibit A is the "Law Enforcement Service Charge and Uniform User Fee Study Approach and Findings" dated July 13, 2020, which TischlerBise created for Beaufort County.

13. TischlerBise discovered that the annual cost to BCSO to provide police services to the Town of Hilton Head Island is \$4,383,257.

14. In the "Law Enforcement Service Charge and Uniform User Fee Study Approach and Findings" (attached hereto as Exhibit A), TischlerBise documented the Law Enforcement Service Charge and Uniform User Fee. The approach was as follows:

(a) The cost for direct law enforcement services provided by BCSO to the Town of Hilton Head Island was obtained and documented. The cost reflects BCSO's actual cost for law enforcement services provided per the previous agreement between BCSO and the Town.

(b) The total cost for direct law enforcement services was allocated to residential and nonresidential land uses in the Town of Hilton Head Island using well-established and accepted methodologies to reflect demand for law enforcement services.

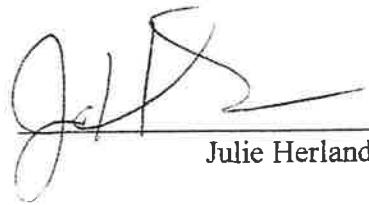
(c) Service Charge and Uniform User Fees were calculated for residential and nonresidential land uses and a schedule of Service Charges by type of land use was produced.

15. In the "Law Enforcement Service Charge and Uniform User Fee Study Approach and Findings" (attached hereto as Exhibit A), TischlerBise calculated the Law Enforcement Service Charge and Uniform User Fee to be as follows:

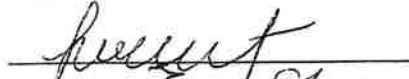
Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88
Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

16. I was directly involved in the analysis, preparation and drafting of the "Law Enforcement User Fee Study Approach and Findings" attached hereto as Exhibit A.

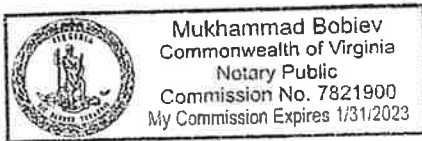
FURTHER AFFIANT SAYETH NOT!


Julie Herlands

SWORN TO before me this
14 day of OCT, 2020


Notary Public for State of Virginia, County of Fairfax

My commission expires 01/31/2023.





Law Enforcement Service Charge and Uniform User Fee Study Approach and Findings

Prepared for:

Beaufort County, South Carolina

July 13, 2020

Prepared by:



4701 Sangamore Road
Suite S240

Bethesda, Maryland 20816

800.424.4318

www.tischlerbise.com

EXHIBIT A TO HERLAND AFFIDAVIT



TischlerBise
4701 Sangamore Road
Suite S240
Bethesda, Maryland 20816
800.424.4318

www.tischlerbise.com

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EXECUTIVE SUMMARY

Beaufort County, South Carolina, retained TischlerBise to develop a methodology for a Law Enforcement Service Charge and Uniform User Fee to be implemented in the Town of Hilton Head Island. The Law Enforcement Service Charge and Uniform User Fee would cover the cost for law enforcement services provided by the Beaufort County Sheriff's Office (BCSO) to the Town of Hilton Head Island.

The BCSO provides law enforcement services in the Unincorporated County and supports municipal police departments. Although the Town of Hilton Head Island is an incorporated municipality in Beaufort County it does not have its own police force. Instead, the Town contracts with the BCSO for Law Enforcement Services.

The Law Enforcement Service Charge and Uniform User Fee is calculated to reflect the direct cost for services provided by the BCSO to the Town of Hilton Head Island. The report sets out a methodology to allocate those costs to the user of the services. The process is as follows:

- First, the total cost for BCSO law enforcement services provided to the Town of Hilton Head Island is documented. This cost reflects the actual cost for law enforcement services provided per the contract between BCSO and the Town.
- Second, the cost is allocated to residential and nonresidential land uses. This reflects the demand for law enforcement services from different users of the service.
- Finally, a service charge schedule is developed by type of land use. The summary schedule is shown below in Figure 1.

Figure 1. Beaufort County Law Enforcement Service Charge and Uniform User Fee Schedule

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88
Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

OVERVIEW

Several incorporated jurisdictions in Beaufort County have municipal police departments (e.g., cities of Beaufort and Bluffton; town of Port Royal). In incorporated places with municipal police departments in Beaufort County, the Beaufort County Sheriff's Office (BCSO) assists on calls for service but is not the primary responder.

BCSO is the main law enforcement agency in Unincorporated Beaufort County and provides support to incorporated localities with law enforcement agencies. BCSO also provides law enforcement services directly to the Town of Hilton Head Island via a contract for services executed between Beaufort County and the Town. These law enforcement services are provided to the Town in lieu of the Town providing its own police force and is above the base level of law enforcement service provided to incorporated places in the County.

Prior to Fiscal Year 2021, the Town of Hilton Head Island paid Beaufort County directly for the contracted services. As of FY2021, the Town has indicated it will stop paying the contracted amount yet expects continuation of law enforcement services.

To recoup direct costs for law enforcement services provided by the BCSO to the Town of Hilton Head Island, the County is exploring a Law Enforcement Service Charge and Uniform User Fee District. The Law Enforcement Service Charge and Uniform User Fee District is calculated to allocate costs to different types of land uses based on a commensurate demand for services.

The BCSO responded to over 320,000 law enforcement calls for service in Beaufort County in calendar year 2019. Of those calls, approximately 97,000 were in the Town of Hilton Head Island, or 30 percent of total County law enforcement calls. The BCSO FY2021 budget is approximately \$32 million.

APPROACH AND METHODOLOGY

Approach

The approach to calculate the Law Enforcement Service Charge and Uniform User Fee is:

- o Identify and quantify law enforcement costs provided by the BCSO to the Town of Hilton Head Island. This reflects the actual costs for law enforcement services consumed by the Town.
- o Develop the Service Charge and Uniform User Fee methodology to allocate costs to land uses on the Town of Hilton Head Island.
- o Calculate the Service Charge and Uniform User Fee and schedule based on the methodologies developed.

Methodology

The following is a summary of steps used to calculate the Law Enforcement Service Charge and Uniform User Fee reflecting the services provided by BCSO in the Town of Hilton Head Island. Each step is discussed in further detail in this section.

1. Calculate the cost for Law Enforcement Services provided in Town of Hilton Head Island. This is separate from countywide services provided in both the unincorporated and incorporated County (such as Civil Processing, Court Security, Forensics Services Lab, Bomb Squad).
2. Allocate BCSO law enforcement costs serving Hilton Head Island to residential and nonresidential development using functional population split (i.e., demand from residential versus nonresidential development).
3. Calculate costs per service unit for residential (per person) and nonresidential (per nonresidential vehicle trip) development.
4. Calculate service charge for residential and nonresidential land uses and produce a schedule of charges by type of land use.

Cost for Law Enforcement Services provided in Town of Hilton Head Island

BCSO is a countywide agency. The range of services provided include Victims Advocate, School Resource Officers, Administration, Enforcement, Forensics Laboratory, Crime Suppression, Emergency Management, Communications, and Traffic Management. The total BCSO budget for FY21 is \$32 million. Of that amount, approximately \$4.4 million is spent on law enforcement services to the Town of Hilton Head Island. Detail is provided below.

Figure 2. FY2021 BCSO Budget for Town of Hilton Head Island Law Enforcement Services

	FY2021
Base Budget Positions^	\$3,704,257
Victim Advocate Officer	\$100,000
Benefits	\$504,000
Hilton Head Bar Patrol Overtime	\$75,000
Total HHI Cost	\$4,383,257
RBC Heritage Golf Tournament*	\$26,500

^a Reflects 41 positions

* Town of Hilton Head Island reimburses Beaufort County

As identified above, costs for services to Hilton Head Island reflect personnel (authorized at 41 positions), employee benefits, Victim Advocate Officer, and Hilton Head Bar Patrol Overtime. (BCSO also provides law enforcement services for the RBC Heritage Golf Tournament held on the Island. The Town reimburses the County for those services.)

The above calculated cost of \$4,383,257 is used to determine the proposed Law Enforcement Service Charge and Uniform User Fee. This figure can be adjusted as the budget changes.

BCSO Law Enforcement Costs for Hilton Head Island Allocated to Residential and Nonresidential Development

To allocate costs to land uses, functional population is used. Functional population is a standard methodology to apportion costs between residential and nonresidential development. Further detail is provided below.

Functional Population

Both residential and nonresidential development place demand on law enforcement services. To calculate the proportionate share between residential and nonresidential demand for a particular service or facility, a “functional population” approach is used. The functional population approach allocates the cost of law

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enforcement services to residential and nonresidential development based on the activity of residents and workers in the Town of Hilton Head Island over a 24-hour time period.

Residents that do not work are assigned 20 hours per day to residential development and 4 hours per day to nonresidential development (annualized averages). Residents that work in Hilton County are assigned 14 hours to residential development and 10 hours to nonresidential development. Residents that work outside the Town are assigned 14 hours to residential development, the remaining hours in the day are assumed to be spent outside of the Town working. Inflow commuters are assigned 10 hours to nonresidential development. Based on 2017 data (the latest Origin-Destination data available from U.S. Census Bureau), residential development accounts for 75 percent of the functional population, while nonresidential development accounts for 25 percent.

Figure 3. Town of Hilton Head Island Functional Population

Hilton Head Town, SC (2017)			
Residential		Demand Hours/Day	Person Hours
Population*	76,698		
Residents Not Working	61,816	20	1,236,320
Employed Residents	14,882		
Employed in Hilton Head		8,898 14	124,572
Employed outside Hilton Head		5,984 14	83,776
		Residential Subtotal	1,444,668
		Residential Share =>	75%
Nonresidential			
Non-working Residents	61,816	4	247,264
Jobs Located in Hilton Head	23,471		
Residents Employed in Hilton Head		8,898 10	88,980
Non-Resident Workers (inflow commuters)		14,573 10	145,730
		Nonresidential Subtotal	481,974
		Nonresidential Share =>	25%
		TOTAL	1,926,642

Source: U.S. Census Bureau, OnTheMap 6.1.1 Application and LEHD Origin-Destination Employment Statistics.

* Seasonal/peak population; TischlerBise calculation from housing unit estimate and U.S. Census household size

The cost for the Beaufort County Sheriff's Office services provided in the Town of Hilton Head Island is allocated to residential and nonresidential development using the above proportionate share factors. Results are shown below.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
Beaufort County, South Carolina

Figure 4. Town of Hilton Head Island BCSO Law Enforcement Cost Allocated to Residential and Nonresidential Development

Hilton Head BCSO Law Enforcement Cost Allocated to Residential / Nonresidential		
	<i>Functional Population*</i>	
Residential Proportionate Share	75%	\$3,287,443
Nonresidential Proportionate Share	25%	\$1,095,814
TOTAL COST	100%	\$4,383,257

* Functional population (see supporting figure)

Costs per Service Unit

Appropriate service units are identified for Law Enforcement Services. For residential development, population is the driver and is reflected in household size (i.e., persons per household) by type of housing unit. This captures demand from both year-round and seasonal housing units. Population is the appropriate service unit.

For nonresidential development, the appropriate service unit is vehicle trips. Vehicle trip rates are typically used for public safety-related fees and charges to reflect the relative demand for public safety services from nonresidential development. That is, vehicle trip rates are highest for commercial/retail development—reflecting demand from all activity (workers, shoppers, visitors) at a retail establishment. Conversely, industrial development has the lowest nonresidential trip rates and office development rates fall between the other two categories reflecting the level of activity at each type of facility.

BCSO Law Enforcement costs allocated between residential and nonresidential development are then divided by the applicable base year demand factors to determine a cost per demand factor—for residential, a cost per capita and for nonresidential, a cost per nonresidential vehicle trip.

Seasonal population in housing units is calculated to account for both year-round and seasonally-occupied housing units in Hilton Head Island. Nonresidential vehicle trips are calculated based on applicable vehicle trip rates and adjustment factors per the Institute of Transportation Engineers (ITE) applied to nonresidential land uses in Hilton Head Island. Data is based on the Beaufort County Development Impact Fee Study conducted by TischlerBise in 2019-2020. Detail is provided in Appendix A.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
Beaufort County, South Carolina

Figure 5. Town of Hilton Head Island BCSO Law Enforcement Cost per Service Unit

Hilton Head BCSO Law Enforcement Cost	\$4,383,257	
	Residential	Nonresidential
Proportionate Share %	75%	25%
Proportionate Share \$	\$3,287,443	\$1,095,814
Service Unit	Seasonal Population in Hsg Units	Nonresidential Vehicle Trips
Current Service Units (2020)*	79,046	64,997
Cost per Service Unit (rounded)	\$41.59	\$16.86

* See Appendix A for supporting detail.

As shown, the calculated cost per person is \$41.59 and the cost per nonresidential vehicle trip is approximately \$16.86.

Service Charges and Uniform User Fees for Residential and Nonresidential Land Uses

Using the above factors, Law Enforcement Service Charges and Uniform User Fees for the Town of Hilton Head Island are calculated. The service charges are based on household size for residential development and vehicle trips per 1,000 square feet or hotel room for nonresidential development. Differentiating the service charge by housing type allows the results to reflect the level of demand (persons per household) from residential land uses. For residential development, the cost per person (\$41.59) is multiplied by household size to calculate the proposed service charge by type of unit. For nonresidential development, the cost per vehicle trip (\$16.86) is multiplied by trips per demand unit (either 1,000 square feet or lodging room) to calculate the proposed fee.

The schedule presented is meant to provide broad-based land use categories to capture the majority of types of land uses in the Town. Using ITE trip rates for nonresidential development allows additions to the schedule, as necessary.

Figure 6. Law Enforcement Service Charge and Uniform User Fee Proposed Schedule

Residential

Service Charge Component	Cost per Person
Hilton Head BCSO Law Enforcement Cost	\$41.59
Total	\$41.59

Housing Type	Persons per Household [^]	Service Charge per Housing Unit
Single Family	2.42	\$101
Multifamily	2.11	\$88

[^] Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Nonresidential

User Fee Component	Cost per Trip
Hilton Head BCSO Law Enforcement Cost	\$16.86
Total	\$16.86

Development Type	Demand Unit	Vehicle Trip Ends per Demand Unit*	Trip Adj. Factor*	Service Charge per Demand Unit
Retail	1,000 sq. ft.	37.75	38%	\$242
Office/Service	1,000 sq. ft.	9.74	50%	\$82
Industrial	1,000 sq. ft.	3.93	50%	\$33
Institutional	1,000 sq. ft.	10.72	50%	\$90
Lodging	Room	8.17	50%	\$69

* Source: Trip Generation, Institute of Transportation Engineers, 10th Edition (2017)

SUMMARY: LAW ENFORCEMENT SERVICE CHARGE AND UNIFORM USER FEE SCHEDULE

The figure below summarizes the proposed Law Enforcement Service Charge and Uniform User Fee schedule calculated to cover the costs incurred by BCSO to serve the Town of Hilton Head Island.

Figure 7. Proposed Law Enforcement Service Charge and Uniform User Fee Schedule

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88
Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

Given the above schedule and estimated base year development in the Town of Hilton Head Island, an estimate of revenue can be provided. Please note, cost factors have been rounded in the analysis and therefore the total revenue calculated does not equal the total cost.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
Beaufort County, South Carolina

Figure 8. Law Enforcement Service Charge and Uniform User Fee Estimated Revenue

Land Use	Demand Unit	Service Charge per Demand Unit	Base Year Development	Estimated Revenue
Residential				
Single Family	Housing Unit	\$101	20,075	\$2,027,597
Multifamily	Housing Unit	\$88	14,438	\$1,270,525
			<i>Subtotal</i>	<i>\$3,298,122</i>
Nonresidential				
Retail	1,000 sq. ft.	\$242	2,724	\$659,168
Office/Service	1,000 sq. ft.	\$82	3,340	\$273,881
Industrial	1,000 sq. ft.	\$33	2,515	\$82,979
Institutional	1,000 sq. ft.	\$90	880	\$79,204
			<i>Subtotal</i>	<i>\$1,095,231</i>
			GRAND TOTAL*	\$4,393,353

* Does not equal total cost due to rounding.

APPENDIX A: DEMOGRAPHIC ASSUMPTIONS

Population and Housing Characteristics

Per capita standards and persons per housing unit or persons per household are used to derive proportionate service charge amounts. Household sizes vary by housing unit type and, consequently, demand for services vary. Thus, it is important to differentiate between housing types and size.

When persons per housing unit (PPHU) is used in service charge calculations, infrastructure standards are derived using year-round population. In contrast, when persons per household (PPH) is used in the calculations, the service charge methodology assumes all housing units will be occupied, thus requiring seasonal population to be used when deriving infrastructure standards.

According to the state of South Carolina's Department of Parks, Recreation, and Tourism, Beaufort County is the third most visited county in the state. Infrastructure and services are sized to accommodate not just permanent residents, but seasonal residents and workers as well. Therefore, TischlerBise recommends that service charges for residential development be calculated according to persons per household.

Based on housing characteristics, TischlerBise recommends using two housing unit categories for the service charges: (1) Single Family and (2) Multifamily. Each housing type has different characteristics resulting in a different demand for Law Enforcement services. Figure 9 shows the U.S. Census American Community Survey 2017, 5-Year Estimates data for the Town of Hilton Head Island. Single family units have a household size of 2.42 persons and multifamily units have a household size of 2.11 persons.

Figure 9. Town of Hilton Head Island Persons per Household

HILTON HEAD

Housing Type	Persons	Housing Units	Persons per Housing Unit	Households	Persons per Household	Housing Unit Mix
Single Family [1]	29,905	19,771	1.51	12,341	2.42	58%
Multifamily [2]	9,570	14,219	0.67	4,527	2.11	42%
Total	39,475	33,990	1.16	16,868	2.34	

[1] Includes attached and detached single family homes

[2] Includes structures with 2+ units

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

As noted above, the Town of Hilton Head Island has permanent and short-term (i.e., seasonal) residents. The current estimate of population, on which the service charge is based, accounts for full occupancy of residential units. Population estimates are based on assumptions in TischlerBise's Development Impact Fee Study (with data from the Beaufort County Transportation Model at the Traffic Analysis Zone (TAZ) level) and population estimates for the Town of Hilton Head Island from the U.S. Census.

Current housing units by type of unit are estimated and used to derive current estimated seasonal population in the Town of Hilton Head Island. First, permanent population for the Town of Hilton Head Island is obtained from the U.S. Census for 2019 and updated to 2020 using growth rate assumptions from TischlerBise's Development Impact Fee Study. Next, the permanent population estimate is used to determine the estimated number of housing units in the Town. Then, persons per household (i.e., population in an occupied housing unit) is applied to the estimated number of housing units to calculate seasonal population in 2020. Detail is provided in the following two figures.

Hilton Head Permanent Population Estimate 2019 [1]
 Estimated Growth 2019 to 2020 [2]
 2020 Hilton Head Permanent Population Estimate
 Average Persons per Housing Unit [3]
 Hilton Head Housing Unit Estimate 2020 [4]

39,639
1.0%
40,035
1.16
34,513

[4] Calculated. Permanent population / persons per housing unit

Town of Hilton Head Island Housing Unit Estimate 2020	34,513
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	% Distr. [1]	# by Type	PPHH [2]	Seasonal Pop. Est.
Single Family Units	58%	20,075	2.42	48,582
Multifamily Units	42%	14,438	2.11	30,464
Total	100%	34,513		79,046

[2] Persons per Household; U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

The Law Enforcement Service Charge and Uniform User Fee is also applied to nonresidential development as discussed in the body of this report. Nonresidential vehicle trips are calculated for the base year using employment and nonresidential square footage in the Town of Hilton Head Island.

As shown below, it is estimated that there are 22,780 jobs in the Town of Hilton Head Island as of 2020. The estimate is from Traffic Analysis Zone (TAZ) data, provided in the Beaufort County Transportation Model for TischlerBise's Development Impact Fee Study (2020). Jobs are converted to nonresidential square footage with factors shown in Figure 13.

Industry	Employment (2020)*	%	Sq. Ft./Emp^	Nonres. Sq. Ft. (2020)*
Retail	6,379	28%	427	2,723,833
Office	9,911	44%	337	3,340,007
Industrial	4,004	18%	628	2,514,512
Institutional	2,486	11%	354	880,044
Total	22,780	100%		9,458,396

[^] *Trip Generation*, Institute of Transportation Engineers (ITE), 10th Edition (2017)

Figure 13. Institute of Transportation Engineers Nonresidential Factors

ITE Code	Land Use	Demand Unit	Wkdy Trip Ends Per Dmd Unit	Wkdy Trip Ends Per Employee	Emp Per Dmd Unit	Sq Ft Per Emp
820	Shopping Center (avg size)	1,000 Sq Ft	37.75	16.11	2.34	427
710	General Office (avg size)	1,000 Sq Ft	9.74	3.28	2.97	337
140	Manufacturing	1,000 Sq Ft	3.93	2.47	1.59	628
610	Institutional/Hospital	1,000 Sq Ft	10.72	3.79	2.83	354

Nonresidential Vehicle Trips

Vehicle trip generation for nonresidential land uses are calculated using average daily (weekday) trip end rates and adjustment factors from the Institute of Transportation Engineers in *Trip Generation*, 10th edition. To estimate base year nonresidential vehicle trips in Town of Hilton Head Island, weekday trip ends per 1,000 square feet factors shown in Figure 13 are used.

For nonresidential land uses, a standard 50 percent adjustment is applied to Office, Industrial, and Institutional to allocate trips to the nonresidential (destination) land use (with the other trip end allocated to the originating land use). A lower vehicle trip adjustment factor is used for Retail because this type of development attracts vehicles as they pass-by on arterial and collector roads. For example, when someone stops at a convenience store on their way home from work, the convenience store is not their primary destination.

In Figure 14, the Institute for Transportation Engineers' land use code, daily vehicle trip end rate, and trip adjustment factor is listed for each nonresidential land use.

Figure 14. Town of Hilton Head Island Average Daily Nonresidential Vehicle Trips (2020)

Industry	Nonres. Sq. Ft. (2020)*	Vehicle Trip Ends per 1,000 Sq. Ft.^	Trip Adj. Factor^	Vehicle Trip Ends (2020)
Retail	2,723,833	37.75	38%	39,073
Office	3,340,007	9.74	50%	16,266
Industrial	2,514,512	3.93	50%	4,941
Institutional	880,044	10.72	50%	4,717
Total	9,458,396			64,997

* Beaufort County TAZ Transportation Model in TischlerBise Development Impact Fee Study (2020)

^ Trip Generation, Institute of Transportation Engineers (ITE), 10th Edition (2017)

APPENDIX B: LAND USE DEFINITIONS

Residential Development

As discussed below, residential development categories are based on data from the U.S. Census Bureau, American Community Survey. It is anticipated that Beaufort County will collect the Law Enforcement Service Charge and Uniform User Fee from all residential units.

Single Family:

1. Single family detached is a one-unit structure detached from any other house, that is, with open space on all four sides. Such structures are considered detached even if they have an adjoining shed or garage. A one-family house that contains a business is considered detached as long as the building has open space on all four sides.
2. Single family attached (townhouse) is a one-unit structure that has one or more walls extending from ground to roof separating it from adjoining structures. In row houses (sometimes called townhouses), double houses, or houses attached to nonresidential structures, each house is a separate, attached structure if the dividing or common wall goes from ground to roof.
3. Mobile home includes both occupied and vacant mobile homes, to which no permanent rooms have been added, are counted in this category. Mobile homes used only for business purposes or for extra sleeping space and mobile homes for sale on a dealer's lot, at the factory, or in storage are not counted in the housing inventory.
 - Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 210

Multifamily:

1. 2+ units (duplexes and apartments) are units in structures containing two or more housing units, further categorized as units in structures with "2, 3 or 4, 5 to 9, 10 to 19, 20 to 49, and 50 or more apartments."
2. Boat, RV, Van, Etc. includes any living quarters occupied as a housing unit that does not fit the other categories (e.g., houseboats, railroad cars, campers, and vans). Recreational vehicles, boats, vans, railroad cars, and the like are included only if they are occupied as a current place of residence.
 - Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 220, 221, 222

Nonresidential Development

Nonresidential development categories represent general groups of land uses that share similar average weekday vehicle trip generation rates and employment densities (i.e., jobs per thousand square feet of floor area).

Retail: Establishments primarily selling merchandise, eating/drinking places, and entertainment uses. By way of example, *Retail* includes shopping centers, supermarkets, pharmacies, restaurants, bars, nightclubs, automobile dealerships, and movie theaters.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 820, 815, 823, 850, 875, 880

Office/Service: Establishments providing management, administrative, professional, or business services; By way of example, *Office/Service* includes banks, business offices, headquarter buildings, business parks, and research and development centers.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 710, 712, 714, 720, 750, 770

Industrial: Establishments primarily engaged in the production, transportation, or storage of goods. By way of example, *Industrial* includes manufacturing plants, distribution warehouses, trucking companies, utility substations, power generation facilities, and telecommunications buildings.

- Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 110, 130, 150, 154, 160, 170

Institutional: Establishments providing management, administrative, professional, or business services; By way of example, *Institutional* includes assisted living facilities, nursing homes, hospitals, medical offices, veterinarian clinics, schools, universities, churches, daycare facilities, government buildings, and prisons.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 520, 560, 565, 575, 580, 590

Lodging: Establishments that provide sleeping accommodations and supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or other retail and service shops.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 310, 311, 312, 320, 330.

APPENDIX C: COMPARISON LOCALITIES

Below is a list of communities with seasonal population demands and their respective Law Enforcement agency budgets. This is provided for comparison purposes only, at a high level, and is not meant to be exhaustive or reflective of a recommended level of service.

	<i>Year Round Population</i>	<i>FY19 Police Budget (rounded)</i>
City of Bluffton, SC	19,000	\$6,600,000
City of Beaufort, SC	13,357	\$4,500,000
Rehoboth Beach, DE	1,520	\$3,700,000
Gulf Shores, AL	12,517	\$6,200,000

Source: TischlerBise research from publicly available sources.

2011 WL 1740740 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 20, 2011

*1 Daniel L. Draisen, Esquire
Law Offices of Krause
Moorhead and Draisen
P.A.
207 East Calhoun Street
Anderson, SC 29621

Exhibit H to County's Motion for
Summary Judgment

Dear Mr. Draisen:

You represent the Town of Pendelton ("Town"), a municipality chartered in Anderson County. Your letter provides the following background:

[o]ver the past several years, the Town has contracted with the County of Anderson to provide law enforcement services to it at a sizable cost (over \$600,000/yr.). The Town believes the County has not been providing the minimum level of services required by the contract, and the Town now wishes to terminate the contract with the County.

You request this office to address the following issues:

1. Is the Town required to provide at least a minimum level of law enforcement services?
2. If the Town is required to provide a minimum level of law enforcement services, how is the "minimum level" determined for an existing municipality?
3. If the Town is not required to provide a minimum level of law enforcement services, is the County in which the municipality is located required to provide minimum law enforcement services to the municipality?

Law/Analysis

In your letter, you reference S.C. Code Ann. §5-1-30, which provides, in part:

(A) Before issuing a corporate certificate to a proposed municipality, the Secretary of State shall determine based on the filing submitted and the recommendation of the Joint Legislative Committee on Municipal Incorporation whether the proposed municipality meets the following requirements:

(5) the area seeking to be incorporated has filed a proposal for providing either directly or indirectly a substantially similar level of law enforcement services to the area's existing law enforcement coverage prior to seeking incorporation . . . [Emphasis added].

Prior to the 2006 amendment, §5-1-30(A)(5) stated that a proposal had to be filed for providing either directly or by contract a minimum level of law enforcement services as required in regulations promulgated by the State Law Enforcement Division ("SLED"). 2005 Acts No. 77, §1. The 2006 amendment deleted "as required in regulations promulgated by the State Law Enforcement Division" and added the current language. In the comments to the Act it was noted: "By passing this act, the General Assembly intends and declares that any regulations passed by the State Law Enforcement Division to comply with the requirements of Act 77 of 2005 do not for any past, present, or future time represent or establish any minimum level of

law enforcement service requirements for existing municipalities or towns or areas seeking to incorporate as municipalities or towns.” However, §5-1-30(A)(5) applies only to proposed municipalities and does not address existing municipalities. See State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999)[holding all rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and such language must be construed in light of the statute's intended purpose].

*2 In an opinion of this office dated August 2, 2005, we discussed whether SLED should issue emergency regulations to carry out its regulatory responsibilities under the 2005 Act. Relevant to the issues presented in your request, we addressed the importance of law enforcement protection when considering any new incorporation.

The reason for this emphasis is fundamentally important. As our Supreme Court recognized in Tovey v. City of Chas., 237 S.C. 475, 117 S.E.2d 872, 874 (1961), a municipal corporation “is the body politic and corporate constituted by the incorporation of the inhabitants of a city or town for the purpose of local government thereof.” (emphasis added). The provision of adequate law enforcement services is typically an important reason - sometimes, the most important reason - justifying municipal incorporation. As you note in your letter, many times, Sheriff's offices in the more rural counties are underfunded and, through no fault of the Sheriff, lack sufficient manpower. This problem was illustrated for example, in Boling v. City of Jackson, 279 So.2d 590 (Miss. 1973), the Mississippi Supreme Court reversed the lower court's denial of incorporation to the town of Pearl, Mississippi. The Supreme Court found as important to its decision that incorporation was mandated was that, among other immediate needs of the 15,000 person community of Pearl, “[t]here are only three constables and three justices of the peace and six deputy sheriffs for the entire County of Rankin, the result being that there is no concentration of law officers in Pearl. On the average, it takes forty-five minutes to get someone from the Sheriff's office in Brandon.” 279 So.2d at 592. In concluding that the community had met the requirements of incorporation, the Court concluded that

[t]he record shows without dispute that there is an urgent need for the incorporation of the Pearl area into a municipality so that the community can cope with the problems of police protection, garbage, fire protection, drug control, health hazards, recreation, sanitation, street improvement and zoning In our opinion, the law does not require that this large and growing community, beset by so many problems that could be alleviated at least in part within a reasonable time if allowed to incorporate, should be denied the right to incorporate until some indefinite time in the future when it may be annexed by the City of Jackson.

Id. at 593. (emphasis added). The problems facing Sheriffs in rural counties in South Carolina - one of the principal ones, that of being underfunded - is recognized in a study conducted by Clemson University which states that “... law enforcement coverage over large rural areas is inadequate.” See, Ransom, “Planning for Development In Rural Areas: An Assessment of the Strategic Plans for South Carolina's Enterprise and Champion Communities.” found at www.strom.clemson.edu/opinion/ransom/rural.html.

*3 We further noted in the 2005 opinion that it is evident “the formation and operation of a municipal police department is an important focus of the establishment of a municipality in South Carolina.” Indeed, §5-7-30 grants every municipality in the State the power to “enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it” We have previously stated that “[a] primary function of a municipal corporation is the preservation of public peace and order. In keeping with such is the authority of a municipality to establish a police force.” Ops. S.C. Atty. Gen., August 2, 2005; November 6, 1992 [citing 62 C.J.S. Municipal Corporations §134, p. 279]. Pursuant to §5-7-110, a municipality may “appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties. Such officers are bestowed “all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality.” We have previously observed that §5-7-110 gives ““broad authority”” with respect to a municipal police department.” Op. S.C. Atty. Gen., April 28, 1998.

Prior opinions of this office also recognize that, pursuant to §§ 23-13-50 et seq., and 23-15-40 et seq.: “[t]he general law in this State presently requires a sheriff and his deputies to patrol their county and provide law enforcement services to its citizens.” Ops. S.C. Atty. Gen., November 6, 1992; April 11, 1985. Such is consistent with opinions of this office recognizing the status of a sheriff as the chief law enforcement officer of a county. Ops. S.C. Atty. Gen., March 16, 2011; September 10, 2010; April 20, 2006. As noted in an opinion dated March 1, 2005, a sheriff’s jurisdiction encompasses the entire county. Section 23-13-70 requires deputy sheriffs to “patrol the entire county” where they serve as deputies. Such enactment obligates deputies “to prevent or detect crime or to make an arrest . . . for the violation of every law which is detrimental to the peace, good order and morals of the community.” Moreover, §23-13-20 prescribes the oath of office of a deputy sheriff to be “alert and vigilant to enforce the criminal laws of the State.” [Emphasis added].

In an opinion dated May 20, 1996, we noted the decision by the Missouri Supreme Court in McKittrick v. Williams, 346 Mo. 1003, 144 S.W.2d 98 (1940), which discussed the duties and responsibilities of a sheriff as compared to other law enforcement officials in the county. The court wrote with respect to the sheriff’s powers:

*4 [h]is authority is county wide. He is not restricted by municipal limits. For better protection and for the enforcement of local ordinances the cities and towns have their police departments or their town marshals. Even the state has its highway patrol. Still the authority of the sheriff with his correlative duty remains. It has become the custom for the sheriff to leave local policing to local enforcement officers but this practice cannot alter his responsibility under the law. . . . There is no division of authority into those of the sheriff and the police. Each is a conservator of the peace possessing such power as the statutes authorize . . . In every county there are a number of peace officers of varying authority. They and the sheriff must work in harmony.

McKittrick, 144 S.W.2d at 104. The Virginia Supreme Court also recognized in Commonwealth ex rel. Davis v. Malbon, 195 Va. 368, 78 S.E.2d 683, 686 (1953), that the creation of two separate and distinct police departments in a county, one in a municipality and the other in the county, did not relieve the county sheriff of his duty to enforce the criminal laws of the state within the county.

The referenced 1985 opinion of this office indicated that as a matter of public policy, a county is prohibited from contracting with a residential subdivision to provide additional law enforcement protection and services to that subdivision for a fee. The opinion cited the decision of the South Carolina Supreme Court in Green v. City of Rock Hill, 149 S.C. 234, 147 S.E.2d 346, 360 (1929), where it was stated “[a]s a general rule . . . [a governmental body] . . . may not contract with . . . the public to discharge a purely public duty owed to the public generally.”

However, the 1985 opinion further commented:

. . . while a county and county officials are not as a general matter obligated to perform services within the corporate limits of a city, the General Assembly has provided by statute for municipal residents to contract for county services in certain situations. Section 4-9-40 of the Home Rule Act authorizes a county to “perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters.” Such services cannot be provided, however where the service “is being provided by the municipality or has been budgeted or funds have been applied for” unless permission is given by the municipal governing body. See also, §23-27-10 et seq. and §4-9-30(5) [authorizes county to create special districts for police protection]. . . .

Another opinion of this office dated May 17, 1978, stated

[t]here are currently no state statutes which would prevent . . . [a sheriff’s department] . . . from offering contract law enforcement services to municipalities . . . [within that same county] . . . Both counties and incorporated municipalities have the ability to contract, a power given them by Sections 4-9-30(3) and 5-7-60 of the Code . . . The ability of political subdivisions to enter into an agreement for the joint administration, responsibility and sharing of the costs of services with other political subdivisions is granted by Article VIII, Section 13 of the South Carolina Constitution and §6-1-20, Code. . . .

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*5 The 1985 opinion concluded that such statutes enable an incorporated municipality to contract with a county to provide law enforcement services to the municipality. The opinion further stated:

[t]here are currently no state statutes which would preclude a municipality from making an appropriation in its budget for payment of law enforcement services to the county general fund with later disbursement to the sheriff's department. . . [However] . . . [e]nabling legislation would be necessary in order for the municipality to pay the same funds directly into the Sheriff's Department County budget account.

Another opinion of this office dated June 13, 1985, indicated that a county could create a special tax district for police protection. Citing a opinion from May, 1978, the opinion further indicated that a county and a political subdivision could contract with one another to provide for the joint administration of services such as law enforcement. The opinion stated:

[w]e could caution . . . that any contract between the county and a special tax district created for law enforcement purposes should take into account §23-13-70 which mandates that sheriff's deputies patrol the entire county. Thus, even where the county decides to contract with a separate political subdivision . . . care should be taken in drafting any such contract, not to limit the sheriff's discretion in the placement of his deputies or the providing of adequate personnel in other areas of the county. In short, any such contract must be consistent with the terms of Section 23-13-70.

On another point, opinions of this office, again referencing §23-13-70, commented that "[t]he assignment of deputies within the county remains within the sheriff's discretion." Ops. S.C. Atty. Gen., November 6, 1992; June 13, 1985.

We would further note our opinion dated September 29, 2006, where the Town of Gray Court requested whether it could contract with a private security company for law enforcement purposes. Gray Court explained the agreement with the Laurens County Sheriff's Department for the services of a deputy was not working out and, because of the costs involved there was no present consideration to Gray Court having its own police department. Citing to our previous opinions, we reiterated that while a municipality is authorized to employ police officers, it has no authority to contract with a private security agency for law enforcement purposes. See Ops. S.C. Atty. Gen., April 7, 2008; March 1, 1989; March 6, 1980.

This office advised the Town of Gray Court, however:

one alternative that may be considered is allowing deputy sheriffs to "moonlight" and provide law enforcement services to the Town as authorized by S.C. Code Ann. §§23-24-10 et seq. Section 23-24-10 states that

[u]niformed law enforcement officers, as defined in Section 23-6-400(D)(1), and reserve police officers, as defined in Section 23-28-10(A), may wear their uniforms and use their weapons and like equipment while performing private jobs in their off duty hours with the permission of the law enforcement agency and government body by which they are employed.

*6 Section 23-24-20 provides that

[e]ach agency head shall determine before such off-duty work is approved that the proposed employment is not of such nature as is likely to bring disrepute on the agency, the officer, or the law enforcement profession, and that the performance of such duties and the use of such agency equipment is in the public interest.

As to off duty work by a deputy sheriff in the same county in which he is employed, an opinion of this office dated April 18, 1995 stated that

[a]s long as law enforcement officers are moonlighting within their jurisdiction, they possess complete law enforcement authority while working off-duty pursuant to Section 23-24-10 et seq. With respect to deputy sheriffs, this jurisdiction includes the entire county.

Another opinion of this office dated December 7, 1994 concluded that [d]eputy sheriffs are given law enforcement authority throughout the county, including sites within incorporated town limits. They are allowed to work off duty performing private jobs in uniform and armed under . . . (Section) . . . 23-24-10 with the permission of the enforcement agency and governing body by which they are employed.

Consistent with such, the Town could consider allowing deputy sheriffs to “moonlight” and provide law enforcement services to the Town in the manner referenced.

Op. S.C. Atty. Gen., September 29, 2006.

Conclusion

We are cognizant that “the desire for adequate law enforcement services is most often an impetus, if not the driving force, behind the formation of a municipal corporation.” Op. S.C. Atty. Gen., August 2, 2005. We have also stated there is an absence of authority requiring a municipality to establish a police force. Op. S.C. Atty. Gen., November 6, 1992. We adhere to that opinion today. A municipality is granted broad authority to provide for the proper law enforcement in such municipality, but we are unaware of any State statute or case law in this State defining such. In the April 7, 2008, opinion, we addressed the responsibility of the sheriff’s department to maintain patrols and provide law enforcement services to a special tax district, and how these patrols relate to “police protection” as provided in the county ordinance establishing the special tax district. Therein, we noted an Ohio Attorney General opinion dated December 21, 1993, which defined “police protection” as “. . . services and programs that protect the public by preventing crimes.” We further cited to a Texas appeals court which defined such term as “. . . the prevention of crime and the apprehension, punishment and rehabilitation of criminals.” Alvarado v. City of Brownsville, 865 S.W.2d 148, 157 (Tex. App. 1993), *rev’d on other grounds*, 897 S.W.2d 750 (Tex. 1995). As to your specific question regarding the minimum level of law enforcement, we refer to a Michigan Attorney General Opinion dated September 5, 1980, stating the following:

*7 [i]nasmuch as no definition of the term ‘police protection’ appears in [the statute] nor in the other authorities above cited, it must be concluded that the legislature, in enacting [the statute], intended that the term ‘police protection’, and the minimum number of peace officers required in a charter township, be they full-time or otherwise, would be variable and dependent on particular characteristics of the charter township in question (eg, population, geographic size, proximity to cities, et alia). Accordingly, the number of police officers which may be deemed necessary by a charter township board to afford police protection will vary in each charter township, and the township board is provided discretion in making the determination. [Citation omitted].

As stated above, this office has advised it appears that while a sheriff, as chief law enforcement officer of a county, is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, is not generally considered to be obligated to provide specific services within a municipality and could offer contract law enforcement services to a municipality. Ops. S.C. Atty. Gen., September 10, 2010; August 25, 2006; November 6, 1992. However, consistent with a sheriff’s duties to provide law enforcement services to his citizens and “to prevent or detect crime or to make an arrest . . . for the violation of every law which is detrimental to the peace, good order and morals of the community,” we advise that intergovernmental cooperation is necessary to provide law enforcement services to the Town.

However, it is not the province of this office to make factual determinations, so we are unable to render an opinion on the adequacy of law enforcement services provided to the Town pursuant to the agreement.¹ As to any specific question regarding this matter, we would refer you to the county attorney concerning these issues. We advise, however, that any determination regarding law enforcement services should be based on the particular characteristics of the Town, in light of the level of law enforcement services already provided by the County of Anderson by agreement and/or established by the Town.²

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

Footnotes

- 1 We note that “public policy is against the forfeiture of a charter of a municipal corporation if it can be sustained within the law and a presumption will be indulged in its behalf. . .,” particularly since no steps have apparently been taken by the State (*i.e.*, through the General Assembly or the Secretary of State) to cancel the charter of incorporation. Op. S.C. Atty. Gen., February 12, 1996. [citing §5-1-100(B), which provides, *inter alia*, “[i]f the Secretary of State determines that any previously incorporated municipality is neither performing municipal services nor collecting taxes or other revenues and has not held an election during the past four years, he shall cancel the certificate of the municipality”].
- 2 We note the request letter provided to us neither the specific terms of the agreement with County of Anderson nor the level of law enforcement services provided by it.

2011 WL 1740740 (S.C.A.G.)

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The Honorable J. Al Cannon, Jr.
Page 2
November 6, 1992

As to your question regarding what obligation is there for a sheriff to provide police services if the city chooses not to provide such services, an opinion of this Office dated April 11, 1985, a copy of which is enclosed, recognized that pursuant to S.C. Code Ann. §§ 23-13-50 et seq. and 23-15-40 et seq.

The general law in this State presently requires a sheriff and his deputies to patrol their county and provide law enforcement services to its citizens.

Such is consistent with an opinion of this Office dated May 8, 1989 which recognized the status of a sheriff as the chief law enforcement officer of a county. The referenced 1985 opinion indicated that as a matter of public policy, a county is prohibited from contracting with a residential subdivision to provide additional law enforcement protection and services to that subdivision for a fee. The opinion cited the decision of the State Supreme Court in Green v. City of Rock Hill, 149 S.C. 234, 147 S.E.2d 346, 360 (1929) where it was stated "(a)s a general rule ... (a governmental body) ... may not contract with ... the public to discharge a purely public duty owed to the public generally."

However, the 1985 opinion further commented:

... while a county and county officials are not as a general matter obligated to perform services within the corporate limits of a city, the General Assembly has provided by statute for municipal residents to contract for county services in certain situations. Section 4-9-40 of the Home Rule Act authorizes a county to "perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters." (emphasis added). Such services cannot be provided, however where the service "is being provided by the municipality or has been budgeted or funds have been applied for" unless permission is given by the

¹(...continued)

without authority to contract with a private security agency for law enforcement purposes. See also: Opin. of the Atty. Gen. dated March 1, 1989.

Another opinion of this Office dated May 17, 1978, a copy of which is also enclosed, stated

(t)here are currently no state statutes which would prevent ... (a sheriff's department) ... from offering contract law enforcement services to municipalities ... (within that same county) ... Both counties and incorporated municipalities have the ability to contract, a power given them by Sections 4-9-30(3) and 5-7-60 of the Code ... The ability of political subdivisions to enter into an agreement for the joint administration, responsibility and sharing of the costs of services with other political subdivisions is granted by Article VIII, Section 13 of the South Carolina Constitution and § 6-1-20, Code

The opinion concluded that such statutes enable an incorporated municipality to contract with a county to provide law enforcement services to the municipality.² The opinion further stated

(t)here are currently no state statutes which would preclude a municipality from making an appropriation in its budget for payment of law enforcement services to the county general fund with later disbursement to the sheriff's department ... (However) ... (e)nabling legislation would be necessary in order for the municipality to pay the same funds directly into the Sheriff's Department County budget account.

An opinion of this Office dated June 13, 1985, a copy of which is also enclosed, indicated that a county could create a special tax district for police protection. Citing the May, 1978 opinion, the opinion further indicated that a county and a political subdivision

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The Honorable J. Al Cannon, Jr.
Page 4
November 6, 1992

could contract with one another to provide for the joint administration of services such as law enforcement. However, the opinion further stated:

We could caution ... that any contract between the county and a special tax district created for law enforcement purposes should take into account § 23-13-70 which mandates that sheriff's deputies patrol the entire county. Thus, even where the county decides to contract with a separate political subdivision ... care should be taken in drafting any such contract, not to limit the sheriff's discretion in the placement of his deputies or the providing of adequate personnel in other areas of the county. In short, any such contract must be consistent with the terms of Section 23-13-70.

On another point, the opinion again referencing Section 23-13-70 commented that "(t)he assignment of deputies within the county remains within the sheriff's discretion."

Referencing the above, it appears that while a sheriff, as chief law enforcement officer of a county is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, is not generally considered to be obligated to provide specific services within a municipality. However, a sheriff could offer contract law enforcement services to a municipality.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

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2018 WL 1557222 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 16, 2018

Exhibit J to County's Motion for
Summary Judgment

*1 The Honorable John E. Elkin
Chief of Police
The Foxville & Northern Railroad Co., LLC
PO Box 577
Pelion, SC 29123

Dear Chief Elkin:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:
Routinely municipal police departments will initiate either a Memorandum of Understanding or contract with a sheriff's department to allow a deputy sheriff to be hired as a municipal employee to work as a patrol officer. A Railroad Special Agent holds a commission in this state as a "Special State Constable" and as such they have the same power, duties, and responsibilities as a Deputy Sheriff and other Police Officers. (Ref SC 58-13-920).

In the opinion of your office, may a Special State Constable commissioned in this state work in a part-time capacity for a municipal police department the same as any other deputy sheriff?

Law/Analysis

It is this Office's opinion that a special officer or constable commissioned in South Carolina as provided in Article 13, Chapter 13 of Title 58 may be hired to work in a part-time capacity for a municipal police department. Municipalities are authorized to appoint municipal police officers as follows:

Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties.

Police officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality.

Any such police officers shall exercise their powers on all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated; provided, that the municipality may contract with any public utility, agency or with any private business to provide police protection beyond the corporate limits. Should the municipality provide police protection beyond its corporate limits by contract, the legal description of the area to be served shall be filed with the State Law Enforcement Division, the office of the county sheriff and the Department of Public Safety.

S.C. Code Ann. § 5-7-110 (Supp. 2017). This Office's May 17, 1978 opinion to Greenville County Sheriff, Johnny Mack Brown, concluded that Section 5-7-110 allows a sheriff's department to contract with a municipality to provide law enforcement services: There are currently no state statutes which would prevent the Greenville County Sheriff's Department from offering Contract Law Enforcement services to municipalities within Greenville County. Both counties and incorporated municipalities have the ability to contract, a power given them by sections 4-9-30(3) and 5-7-60 of the CODE OF LAWS OF SOUTH CAROLINA, 1976, respectively. Section 5-7-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, grants a municipality the power to

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appoint as many police officers as are necessary for the proper law enforcement of the municipality. The ability of political subdivisions to enter into an agreement for the joint administration, responsibility and sharing of the costs of services with other political subdivisions is granted by Article VIII, Section 13, of the SOUTH CAROLINA CONSTITUTION, and section 6-1-20, CODE OF LAWS OF SOUTH CAROLINA, 1976. I believe reading these above sections in conjunction enables an incorporated municipality to enter into a contractual arrangement with a county to provide law enforcement services to the municipality.

*2 Op. S.C. Atty. Gen., 1978 WL 34915, at *1 (May 17, 1978); see also Op. S.C. Atty. Gen., 2008 WL 1960276 (April 7, 2008) (opining that a special tax district may contract with a county sheriff for police protection); 2006 WL 2849806 (September 29, 2006) (“[T]he Town could consider allowing deputy sheriffs to ‘moonlight’ and provide law enforcement services to the Town”); 1992 WL 575673 (November 6, 1992) (“[A] sheriff could offer contract law enforcement services to a municipality.”).

Your letter asks whether a special state constable can provide law enforcement services to a municipality in a similar manner as a deputy sheriff as described above. In order to address the validity of such an agreement to provide law enforcement services, consideration must be given to such a special officer's or constable's authority and jurisdiction. S.C. Code Ann. § 58-13-910 establishes the circumstances by which a special officer or constable for a railway or other common carrier may be appointed as follows:

Upon the application of the superintendent or manager of a railway or other common carrier doing business in this State, the Governor shall certify special officers or constables for the protection and safety of all property and interest of the common carrier, if the officers and constables are paid by the common carrier applying for their certification. Special officers or constables appointed pursuant to the laws of another state for protection of interstate shipments, passengers, and employees of railroad companies commissioned as railroad police officers in another state in which the common carrier operates and who meet all law enforcement training standards required in this State must be certified under the doctrine of full faith and credit with capacity in this State to enforce the laws for the protection of interstate shipments, passengers, and employees of railroad companies. The capacity may not be interpreted as a state commission but exists by virtue of the State of South Carolina under the doctrine of full faith and credit recognizing and giving full force and effect under our laws to the legal capacity created in the complying state.¹

Section 58-13-920 describes the terms, powers, duties, and responsibilities of such special officers or constables as follows: Such special officers or constables shall have all the powers, duties and responsibilities of deputy sheriffs and other police officers, and their commissions shall continue so long as they are employed in such capacity by the railway or other common carrier. But the Governor shall revoke their commissions upon request of the superintendent or manager of the railway or other common carrier upon whose application they were appointed and the Governor may also at any time revoke such commissions for cause.

S.C. Code Ann. § 58-13-920. The South Carolina Supreme Court interpreted the various state constables offices' authority and jurisdiction in Richardson v. Town of Mount Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002). The Court explained state constables generally have state-wide jurisdiction, but such jurisdiction can be limited:

*3 South Carolina statutes create additional constable's offices, which are generally filled by the governor's appointment or commission. Under S.C. Code Ann. § 23-1-60 (1976), the governor “may ... appoint such additional deputies, constables, security guards, and detectives as he may deem necessary to assist in the detection of crime and the enforcement of any criminal laws” See also S.C. Code Ann. § 1-3-220 (Supp. 2001) (providing for the governor's appointment of a “chief constable”). State constables appointed by the governor have state-wide jurisdiction. See Power v. McNair, 255 S.C. 150, 177 S.E.2d 551 (1970).

Matthew Houck

Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

Footnotes

- 1 This Office's March 11, 1998 opinion interpreted a prior version of this statute to prohibit an out-of-state resident from appointment as a special officer or constable. Op. S.C. Attv. Gen., 1988 WL 383507 (March 11, 1988). Section 58-13-910 was subsequently amended to allow special officers or constables who have been appointed pursuant to the laws of another state to be certified under the doctrine of full faith and credit to enforce the laws for the protection of interstate shipments, passengers and employees of railroad companies. 1989 Act No. 146, § 1. As amended, Section 58-13-910 does specify, however, that such special officers and constables recognized according to the full faith and credit doctrine do not hold a state commission. It is this Office's opinion that special officers and constables recognized under this doctrine do not hold an office due to the occasional or intermittent nature of their exercise of law enforcement authority. See Edge v. Town of Cayce, 187 S.C. 171, 197 S.E.216 (1938).

2018 WL 1557222 (S.C.A.G.)

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**COMPREHENSIVE
ANNUAL
FINANCIAL
REPORT**

**City of Beaufort
South Carolina**

June 30, 2019

**CITY OF BEAUFORT, SOUTH CAROLINA
BUDGETARY COMPARISON SCHEDULE
GENERAL FUND
FOR THE YEAR ENDED JUNE 30, 2019**

	Budgeted Amounts		Actual	Variance with Final Budget Positive (Negative)
	Original	Final		
Revenues:				
Property taxes	\$ 7,028,088	\$ 7,028,088	\$ 6,913,981	\$ (114,107)
Other taxes	279,222	279,222	-	(279,222)
Franchise fees	2,230,243	2,230,243	2,070,518	(159,725)
Fines and forfeitures	278,000	278,000	169,793	(108,207)
Licenses and permits	3,973,150	3,973,150	4,447,687	474,537
Intergovernmental	2,285,000	2,285,000	2,447,713	162,713
Charges for services	1,381,133	1,381,133	1,319,387	(61,746)
Investment earnings	20,000	20,000	132,271	112,271
Miscellaneous	134,269	134,269	98,308	(35,961)
Total revenues	17,609,105	17,609,105	17,599,658	(9,447)
Expenditures:				
Current:				
General government				
City council	159,000	178,065	178,065	-
City manager	498,973	556,151	556,151	-
Finance	781,178	851,509	851,509	-
Human resources	177,440	214,587	214,587	-
Information technology	470,729	456,964	452,464	4,500
Court and legal	526,806	461,680	461,680	-
Non-departmental	138,279	116,101	116,101	-
	2,752,405	2,835,057	2,830,557	4,500
Law enforcement				
Police	4,041,005	3,958,175	3,633,049	325,126
School resource officers	281,501	303,614	303,614	-
Crossing guards	27,376	27,376	26,586	790
Victims rights	83,503	83,503	81,221	2,282
	4,433,385	4,372,668	4,044,470	328,198
Fire and emergency				
City of Beaufort fire	5,208,177	5,124,346	5,122,518	1,828
	5,208,177	5,124,346	5,122,518	1,828
Public works				
Administration	417,354	417,354	323,825	93,529
Maintenance	557,424	580,690	544,506	36,184
Solid waste	736,067	740,863	740,863	-
	1,710,845	1,738,907	1,609,194	129,713

**CITY OF BEAUFORT, SOUTH CAROLINA
BUDGETARY COMPARISON SCHEDULE
GENERAL FUND
FOR THE YEAR ENDED JUNE 30, 2019**

	Budgeted Amounts		Actual	Variance with Final Budget Positive (Negative)
	Original	Final		
Streets				
Streets	906,333	1,067,097	923,912	143,185
	906,333	1,067,097	923,912	143,185
Community and economic development				
Planning	909,922	904,584	789,239	115,345
	909,922	904,584	789,239	115,345
Total current	15,921,067	16,042,659	15,319,890	722,769
Debt service:				
Principal	1,276,801	1,364,198	1,357,709	6,489
Interest	462,453	462,453	465,160	(2,707)
Total debt service	1,739,254	1,826,651	1,822,869	3,782
Total expenditures	17,660,321	17,869,310	17,142,759	726,551
Excess (deficiency) of revenues over (under) expenditures	(51,216)	(260,205)	456,899	717,104
Other financing sources (uses):				
Transfers in	51,216	51,216	55,076	3,860
Transfers out	-	(1,035,102)	(1,035,102)	-
Total financing sources (uses)	51,216	(983,886)	(980,026)	3,860
Net change in fund balance	-	(1,244,091)	(523,127)	720,964
Fund balance, beginning of year (as restated)	8,362,130	8,362,130	8,362,130	-
Fund balance, end of year	\$ 8,362,130	\$ 7,118,039	\$ 7,839,003	\$ 720,964

FILED FOR RECORDATION BY THE CLERK OF THE COURT, BEAUFORT COUNTY, SOUTH CAROLINA, ON JUNE 20, 2019, AT 10:00 AM. THE AMOUNT PAID FOR RECORDATION IS \$15.00. THE AMOUNT PAID FOR THE CLERK'S FEE IS \$15.00. THE AMOUNT PAID FOR THE CLERK'S FEE IS \$15.00.

**CITY OF BEAUFORT, SOUTH CAROLINA
DEMOGRAPHIC AND ECONOMIC STATISTICS
LAST TEN FISCAL YEARS**

Fiscal Year	Population^a	Personal Income^b	Per Capita Personal Income^a	Unemployment Rate^a
2019	13,357	\$ 375,518,698	28,114	3.30%
2018	13,729	327,917,165	23,885	3.40%
2017	13,445	334,941,840	24,912	3.90%
2016	13,306	350,613,100	26,350	4.50%
2015	13,130	363,950,470	27,719	6.00%
2014	12,967	360,352,930	27,790	6.90%
2013	12,788	372,667,896	29,142	7.90%
2012	12,534	366,707,238	29,257	8.80%
2011	12,361	339,606,114	27,474	8.80%
2010	12,120	307,872,240	25,402	6.20%

Sources:

a Obtained from U.S. Census Bureau, Quick Facts

b Personal income is calculated by multiplying population by per capita personal income

BEAUFORT/FRONT/NO/CA/LL/RY/FILED -- 2/20/25 AM 9:12 -- 123038/ANW -- BEAUFORT -- COM/NO/NO/FILE/AS -- CONS#202003/PRO/01/840

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT,	)	CASE NUMBER: 2020-CP-07-1840
THE TOWN OF HILTON HEAD ISLAND,	)	
SOUTH CAROLINA; JOHN J. MCCANN and	)	
STEPHEN G. RILEY,	)	
	)	
Plaintiffs,	)	REPLY TO BEAUFORT
	)	COUNTY'S MOTION FOR
vs.	)	SUMMARY JUDGMENT
	)	
BEAUFORT COUNTY, SOUTH CAROLINA,	)	
	)	
<u>Defendant.</u>	)	

TO: BEAUFORT COUNTY, SOUTH CAROLINA:

In this case the Town of Hilton Head Island (the "Town") challenges the "Law Enforcement Service Charge and Uniform User Fee" imposed on real property owners in the Town by Beaufort County, South Carolina (herein "Beaufort County") Ordinance 2020-29 (herein, "LESC").¹

In its Motion for Summary Judgment filed on March 12, 2025, Beaufort County argues that the LESC is a valid user fee, and makes the following arguments, all of which are refuted by the evidence in the record, and law governing this case:

- a. The LESC is a valid user fee because the Town does not have a municipal police force.
- b. The LESC is a valid user fee because its cost to taxpayers in the Town less than the cost to taxpayers of a municipal police force.
- c. The LESC is a valid user fee because the Municipal Code of the Town requires the Town to contract for municipal police services.

¹ See Town's Motion for Summary Judgment filed on March 10, 2025.

- d. The LESC is a valid user fee because the BCSO delivers more services in the Town than it does in municipalities that maintain a municipal police force.
- e. The LESC is a valid user fee because the it covers only the cost of “primary” law enforcement services.
- f. The LESC is a valid user fee because the amendment to S. C. Code Ann. § 6-1-300 (Supp. 2024) abrogated the Supreme Court’s decision in *Burns v. Greenville County*, 433 S.C. 583, 861 S.E.2d 31 (2021).
- g. The LESC is a valid user fee because the payers of the fee receive some benefit.
- h. The LESC is a valid user fee because the BCSO serves as a police force in the municipal limits of the Town.

The Town responds to these arguments as follows:

a. The LESC is not a valid user fee because the BCSO’s services delivered in the Town are the same as in any like area; the BCSO does not deliver police services in the Town and the real property tax payers in the Town already pay more into the BCSO’s budget than the cost of the services delivered. (Beaufort County Arguments a – d, h)

This argument fails because the existence or non-existence of a municipal police force in the Town has no bearing on the validity of the LESC.² The County’s argument is two-fold: (a) that the cost of a municipal police force would exceed the cost of the LESC;

² Beaufort County also points to a section of the Town’s municipal code adopted in 1983, which reads:

In recognition of the expertise and quality of the county sheriff’s department and in order to provide the necessary police protection to protect the health, safety, welfare and property of the town and its citizens, the town shall enter into an intergovernmental service contract with the county sheriff’s department, pursuant to article 13, section VIII of the South Carolina Constitution. The terms and conditions of such contract shall be as directed by the council.

First, the County has no standing to complain about whether the Town follows this ordinance. Second, this ordinance is vague and does not state what the proposed intergovernmental agreement would cover. Third, the ordinance presumes a contract which requires agreement from future councils and the Sheriff of Beaufort County, both of which would have to agree to the terms of any agreement. This ordinance is of no benefit to Beaufort County’s argument.

and, (b) the Beaufort County Sheriff's Office (herein "BCSO") delivers a higher level of service in the municipal limits of the Town than it does in municipalities with a police force.

This argument fails for these reasons:

1. The testimony of the Sheriff of Beaufort County was that the "like to like" comparison for service levels is the Town and the unincorporated county, and between the two, the service level is the same. The Sheriff testified:

Q. Okay. And so do you – does the Sheriff's Office provide essentially police department -like services to Hilton Head?

A. You can compare to some degree the level of service we provide. The definition, of course, is a lot different. We're not a municipal police department and the Town of Hilton Head doesn't have one. The operation of a police force or police department is quite different, and our service that we provide Hilton Head is a service that is in line and alike to the unincorporated areas of Beaufort County. We treat Hilton Head no different when it comes to providing service.³

2. The real property taxpayers in the Town already pay more than the total cost of the delivery of the BCSO's services in the Town. The General Fund Budget of the BCSO is not a separate budget, but is a part of the General Fund Budget for Beaufort County.⁴ The only evidence in the record is that real property taxpayers in the Town contributed between 37 and 40% of the General Fund Budget Revenues for Beaufort County for fiscal years 2020/2021 through 2022/2023. In Fiscal Year 2021/2021, the real property tax

³ See Stipulation Exhibit 5, p. 17, l. 11-25. Beaufort County will argue that "Agreements for Police Services" previously entered into by the Town are significant. See Stipulation Exhibit 4. These agreements were for police services and not law enforcement services. The Sheriff's testimony is clear that police services and law enforcement services are different, and that the Sheriff determined that he would not enter into such agreements with the Town. See: March 7, 2025, Stipulation of Facts, Exhibit 5, Tanner Deposition, p. 12, l. 13 – 19, p. 26, l. 25 to p. 27, l. 12. The Agreements for Police Services are not relevant to this case. Beaufort County also argues the BCSO serves as a police force in the Town, and the Sheriff's testimony is clear that the BCSO does not.

⁴ See Stipulation Number 8.

payors in the Town contributed 38% of Beaufort County's General Fund Budget. In Fiscal Year 2021/2022, real property taxpayers in the Town contributed 37% of Beaufort County's General Fund Budget. In Fiscal Year 2022/2023, real property taxpayers in the Town contributed 40% of Beaufort County's General Fund Budget.⁵

Thus, for Fiscal Years 2020/2021, 2021/2022 and 2022/2023, the real property taxpayers in the Town contributed between 37 and 40% of the BSCO's General Fund Budget. The only evidence in the record is that for fiscal year 2020, services delivered by the BCSO in the municipal limits Town account for approximately 22% for the BCSO's budget and in fiscal year 2023, services delivered in the municipal limits of the Town account for approximately 17% of the BSCO's budget.⁶

The evidence shows that real property taxpayers in the Town have paid double or nearly double do the cost of the delivery of services by the BCSO in the Town in each year that the LESC has been in effect. There is no evidence supporting Beaufort County's argument that the cost of the services BCSO delivers in the Town exceeds what the real property taxpayers pay.

b. The LESC is not a valid user fee because it is designed to collect the entire cost of the BSCO's services, not the cost of any claimed enhanced level of service. (Beaufort County Arguments d – e)

The only evidence in the record is that the LESC is calculated to collect one hundred percent of the cost of the delivery of service by the BCSO in the Town, not the

⁵ These Beaufort County and BCSO budget numbers from which these percentages are derived appear in Stipulation Number 9.

⁶ See Stipulation Number 9.

cost of any claimed additional or enhanced level of service.⁷ The only evidence in the record is:

1. Ordinance 2020-29 includes this finding of fact: “The estimated most recent annual cost to provide services within The Town of Hilton Head Island is \$4,383,257.”⁸
2. Julie Herlands, a representative of the firm “TischlerBise,” testified as to the preparation of the study and report upon which Ordinance 2020-29 is based.⁹ Julie Herter testified that the LESC was designed to collect the entire cost of delivery of law enforcement services by the BCSO in the Town.¹⁰ Exhibit 11 to Julie Herland’s deposition is a document from the BCSO identifying the total cost of law enforcement services in the Town to be \$4,383,257.00.¹¹ Ms. Herlands delivered an explanatory presentation to Beaufort County in support of Ordinance 2020-29.¹² On page 4 of the presentation, the total cost for delivery of the BCSO’s services in the municipal limits of the Town is stated

⁷ For all intents and purposes, the LESC has collected one hundred percent of the cost of the delivery of law enforcement services in the Town since it was adopted. See Stipulation Number 9 (on page 4 of 5).

⁸ See Stipulation Exhibit 1, Page 1, subparagraph “g,” and Stipulation Number 9. Although Ordinance 2020-29 sets the amount to be collected, Beaufort County has collected more than that each year, even though Ordinance 2020-29 has never been amended to authorize a higher collection amount. See Stipulation Number 12.

⁹ See Stipulation Number 14 and Stipulation Exhibit 12, which is the deposition of Julie Herlands.

¹⁰ Beaufort County relies on an affidavit of the Sheriff dated January 26, 2021, to argue that the figure in the LESC is only for “primary” law enforcement services. The text in the January 26, 2021, is directly contrary to the October 15, 2025, affidavit of the Sheriff in which he states that the “annual cost of the services that BCSO provides to the Town which is approximately \$4,383,257,00”. This is the same figure used in the LESC; it is described the cost of the delivery of services in the Town by Julie Herlands. See Stipulation Exhibit 3, p. 48 l. 19 to p. 49, l. 5; p. 49, l. 13 - 22.

¹¹ See Exhibit 11 to Stipulation Exhibit 5.

¹² See Exhibit 14 to Stipulation Exhibit 5.

to be 4,383,257.00.¹³ The text of Ordinance 2020-29 states that the amount sought to be collected is \$4,383,257.¹⁴

3. See Stipulation Exhibit 5. Sheriff Tanner testified that the BCSO does not deliver any enhanced level of service in the municipal limits of the Town.

Neither the text of Ordinance 2020-29, the testimony of the Sheriff nor the testimony of Julie Herter identify or quantify any enhanced level of service delivered to the Town or any increased property values to the payers of the fee. Rather, the text of Ordinance 2020-29 and the testimony of Julie Herter show that the LESC is calculated to collect one hundred percent of the cost of delivery of services in the Town by BCSO.

c. The LESC is not a valid user fee under the text of S. C. Code Ann. § 6-1-300 (Supp. 2024) or *Burns v. Greenville County*, 433 S.C. 583, 861 S.E.2d 31 (2021). (Beaufort County Arguments f – g)

In its motion, Beaufort County argues that the amendment to § 6-1-300 (Supp. 2024) abrogated *Burns v. Greenville*, *supra*. While the amendment to S. C. Code Ann. § 6-1-300 (Supp. 2024) did change the law regarding user fees to remove the requirement that only the payer of the fee can receive a benefit, it did not alter the law to say that the payer of the fee can only receive “some” benefit, and that benefit can be the same as the

¹³ See page 4 of Stipulation Exhibit 2. The text and data in the study reflect that the fee imposed by Ordinance 2020-29, is designed to collect one hundred percent of the cost of delivery of law enforcement services in the municipal limits of the Town.

(i) Figure 2, page 4, reflecting the “Total HHI Cost” at \$4,383,257.

(ii) The text following Figure 2 reads, in relevant part: “The above calculated cost of \$4,383,257 is used to determine the proposed Law Enforcement Service Charge and Uniform User Fee. This figure can be adjusted as the budget changes.

(iii) Figure 8, page 10, shows that the fee is designed to collect the total cost of delivery of law enforcement services in the municipal limits of the Town.

¹⁴ See Stipulation Exhibit 1, Ordinance 2020-29, Page 1, subparagraph g.

benefit received by any other person who does not pay the fee. Beaufort County's interpretation makes user fees a tax.¹⁵ Beaufort County's interpretation also renders the first phrase in S. C. Code Ann. § 6-1-300(6)(a)(Supp. 2024), meaningless. If a valid user fee requires only that the payer of the user fee receive the same benefit as any member of the general public, then the first phrase "be used to the benefit of the payers" has no meaning.¹⁶ Beaufort County's interpretation would permit any local government to shift all of its costs of operations to "user fees."

This interpretation is also in direct conflict with the text of S. C. Code Ann. § 6-1-310 (Supp. 2024), which reads: "A local governing body may not impose a new tax after December 31, 1996, unless specifically authorized by the General Assembly." Beaufort County's interpretation also results in an implied repeal of S.C. Code Ann. § 6-1-310

¹⁵ The text of *Casey v. Richland County Council*, 282 S.C. 387, 389, 320 S.E.2d 443, 444 (1984), is instructive. *Casey, supra.*, stated the difference between "assessments" and taxes as follows:

Taxes are imposed on all property for the maintenance of government while assessments are placed only on the property to be benefited by the proposed improvements.

Although *Casey, supra.*, did not address a user fee, the analysis is exactly the same. Under Beaufort County's interpretation, the LESC can be used to maintain the government because the payer of the fee receives the same benefit as all others. Under the text of *Casey, supra.*, this makes the LESC a tax.

¹⁶ See: *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 365, 798 S.E.2d 555, 559 (2017), where the Supreme Court's opinion reads, in relevant part:

It is clear the Act concerns more than property tax disputes with the SCDOR. Therefore, limiting the Act's application to property tax disputes with the SCDOR would effectively render the remaining provisions under the Act concerning, *inter alia*, the adjudication of disputes over the licensing of beer, wine, and liquor superfluous and meaningless.

"This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless." *Florence County Democratic Party v. Florence County Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012).

(Supp. 2024), and there is no evidence that the General Assembly intended to do such a thing.

The change to the text of S. C. Code Ann. § 6-1-300(6)(a)(Supp. 2024) does not affect the outcome in this case, for this reason: In *Burns, supra.*, the Supreme Court stated that when a fee is charged to property owners, the benefit that must be realized is increased property values. See also: *C.R. Campbell Construction Co., Inc. v. City of Charleston*, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997).

The only evidence in the record is that there is no evidence that the LESC has any effect on property values, and the effect on property values was not a consideration when the LESC was drafted. Julie Herlands testified that the effect of the LESC on property values in the Town was not part of the discussion with the County, and that the County did not provide any evidence that the LESC would enhance property values in the Town.¹⁷

CONCLUSION

1. Because the only evidence in the record is:
 - (a) the BCSO does not deliver any enhanced level of service in the Town;
 - and,

¹⁷ See Stipulation Exhibit 3, p. 24, l. 21 to p. 25, l. 20, which reads:

Error! Main Document Only.

Q. Since we're talking, based on your last answer of yes, whether or not this was real property, structures, what have you, did Beaufort County provide you with any evidence that the services described in your report of April 17 that is marked as Exhibit 8 enhanced the value of property within the Town of Hilton Head Island?

A. Can you clarify what you mean by "enhanced the value of the property"?

Q. Does it raise the monetary value of the property?

A. And your question is, did they provide me evidence to that effect?

Q. Yes.

A. Okay. No.

Q. Was the effect of the services described in your preliminary report of April 17, marked as Exhibit 8 – did the effect of those services on the monetary value of property within the Town, was that even part of the discussion with, between TischlerBise and the County?

A. No.

(b) there is no benefit to owners of real property in the Town in the form of increased property values; and,

(c) the LESC is not limited to the cost of any claimed enhanced level of service (there is none) but rather is calculated to collect the entire cost of the delivery of all law enforcement services delivered by the BCSO in the Town,

all in contravention of S. C. Code Ann. § 6-1-300(6) (Supp. 2024), and *Burns, supra.*, under which a valid fee must: provide a benefit to the payer, be used only for the specific service contemplated and not exceed the cost of the specific service contemplated, the LESC does not meet the requirements for a valid uniform service charge or user fee under S. C. Code Ann. § 6-1-300(6)(a)(Supp. 2024) and is an illegal tax.

For these reasons, under the authority of Rule 56, SCRPC, the Town of Hilton Head Island, South Carolina, John J. McCann, and Stephen G. Riley to deny Beaufort County's Motion for Summary Judgment.¹⁸

Respectfully Submitted:

COLTRANE & WILKINS, LLC

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Curtis L. Coltrane
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Hilton Head Island, SC 29938
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Hilton Head Island, South Carolina

This 9th day of June, 2025.

¹⁸ The Town John J. McCann and Stephen G. Riley also urge the Court to grant their Motion for Summary Judgement filed on March 10, 2025, for the reasons stated therein.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER: 2020-CP-07-1840
	)	
THE TOWN OF HILTON HEAD	)	
ISLAND, SOUTH CAROLINA, JOHN	)	
J. MCCANN and STEPHEN G. RILEY,	)	
	)	
Plaintiffs,	)	STIPULATION OF FACTS
	)	
vs.	)	
	)	
BEAUFORT COUNTY, SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	

Plaintiffs The Town of Hilton Head Island, South Carolina, John J. McCann, and Stephen G. Riley, and Defendant Beaufort County, South Carolina, stipulate the following to be relevant facts in this case which are not in dispute.

1. The Town of Hilton Head Island, South Carolina is a municipality and a political subdivision of the State of South Carolina.
2. Beaufort County is a County and a political subdivision of the State of South Carolina.
3. The municipal boundaries of the Town of Hilton Head Island, South Carolina, are within Beaufort County, South Carolina.
4. John J. McCann is a citizen and resident of the Town of Hilton Head Island, South Carolina, and owns real property in the Town of Hilton Head Island, South Carolina.
5. Stephen G. Riley is a citizen and resident of the Town of Hilton Head Island,

South Carolina, and owns real property in the Town of Hilton Head Island, South Carolina.

6. The Town of Hilton Head Island, South Carolina, does not have a municipal police department and has never had a municipal police department.

7. All other municipalities in Beaufort County (including the City of Beaufort, the Town of Port Royal, the Town of Bluffton, and the Town of Yemassee) have municipal police departments. All of those municipalities pay for the maintenance and operation of police departments as a part of their municipal budgets.

8. The Town of Hilton Head Island, South Carolina, has an Emergency Medical Services Department.

9. No other municipality in Beaufort County (the City of Beaufort, the Town of Port Royal, the Town of Bluffton, and the Town of Yemassee) has an emergency medical transport services department. Emergency medical transport services are provided in those municipalities by Beaufort County.

10. On August 24, 2020, Beaufort County Adopted Beaufort County Ordinance 2020-29, establishing a "Law Enforcement Service Charge and Uniform Service Fee" ("LESC"). Ordinance 2020-29 imposed the LESC on all parcels of real property located within the municipal boundaries of the Town of Hilton Head Island, South Carolina, including parcels of real property that are exempt from the payment of *ad valorem* real property taxes. A copy of Ordinance 2020-29 is attached as Exhibit 1.

11. Beaufort County has not adopted an ordinance imposing a fee on property

owners in the City of Beaufort, the Town of Port Royal, the Town of Bluffton, and the Town of Yemassee for emergency medical services.

12. Ordinance 2020-29 has not been amended.

13. The Town, John J. McCann, and Stephen G. Riley each own real property upon which the LESC is imposed by Ordinance 2020-29, and each has paid the LESC to Beaufort County.

14. Ordinance 2020-29 was based, in part, on a "Law Enforcement Service Charge Study" dated July 13, 2020, and prepared by Tischler Bise. A copy of the Law Enforcement Service Charge Study is attached as Exhibit 2.

15. Julie Herlands, a principal of Tischler Bise testified via deposition in this case. Ms. Herlands' deposition and the exhibits to it are attached hereto as Exhibit 3.

16. Prior to January 31, 2018, and extending back for many years, the Town had entered into a series of "Agreements for Police Services" with Beaufort County. The last of these agreements, attached hereto as Exhibit 4, was made on or about January 31, 2015 and expired on January 31, 2018.

6. Under the "Agreements for Police Services" in existence from 2014 through 2018, the Town made paid Beaufort County as follows: FY 2014-15: \$2,683,883.00; FY 2015-16: \$2,814,593.00; FY 2016-17: \$3,043,963.00; FY 2017-18: \$3,050,137.07; FY 2018-19: \$3,195,769.44; and FY 2019-20: \$3,195,769.44.

7. The Hon. P. J. Tanner, Sheriff of Beaufort County has testified via deposition in

this case. Sheriff Tanner's deposition and the exhibits to it are attached hereto as Exhibit

5.

8. The budget for the BCSO is part of the Beaufort County General Fund Budget.

9. Beginning with Fiscal Year 2020/2021, the record of the budget and receipts for Beaufort County shows the following for each fiscal year:

FY 2020/2021 – General Fund Budget Revenues	\$128,722,625.00
FY 2020/2021 - General Fund Budget Expenditures	\$129,669,366.00
FY 2020/2021 – BCSO General Fund Budget	\$ 26,568,325.00
FY 2020/2021 – Actual General Fund BCSO Expenditures	\$ 20,173,515.00
FY 2020/2021 – Sheriff HHI Services Fee Expenditures	\$ 4,255,542.00
FY 2020/2021 – LESC Collected	\$ 4,647,365.00
FY 2020/2021 – Ad Valorem Tax Collections from the Town	\$ 49,531,722.00
 FY 2021/2022 – General Fund Budget Revenues	 \$136,554,650.00
FY 2021/2022 - General Fund Budget Expenditures	\$139,363,350.00
FY 2021/2022 – BCSO General Fund Budget	\$ 22,176,969.00
FY 2021/2022 – Actual General Fund BCSO Expenditures	\$ 21,360,463.00
FY 2021/2022 – Sheriff HHI Services Fee Expenditures	\$ 5,095,848.00
FY 2021/2022 – LESC Collected	\$ 4,828,652.00
FY 2021/2022 – Ad Valorem Tax Collections from the Town	\$ 50,884,591.00
 FY 2022/2023 – General Fund Budget Revenues	 \$132,662,999.00
FY 2022/2022 - General Fund Budget Expenditures	\$132,402,978.00
FY 2022/2023– BCSO General Fund Budget	\$ 29,553,279.00
FY 2022/2023 – Actual General Fund BCSO Expenditures	\$ 29,280,585.00
FY 2022/2023 – Sheriff HHI Services Fee Expenditures	\$ 5,127,555.00
FY 2022/2023– LESC Collected	\$ 5,081,214.75
FY 2022/2023– Ad Valorem Tax Collections from the Town	\$ 53,635,604.00

10. The parties stipulate to the following data for population and annual police department budgets for the following municipalities in Beaufort County:

		BLUFFTON	BEAUFORT	PORT ROYAL
2020				

		BLUFFTON	BEAUFORT	PORT ROYAL
	<i>Population</i>	27,716	13,607	14,220
	<i>P.D. Budget</i>	\$7,270,955.00	\$4,688,073.00	\$2,349,405.00
2021				
	<i>Population</i>	32,191		14,753
	<i>P.D. Budget</i>	\$7,102,892.00	\$4,504,976.00	\$2,496,796.00
2022				
	<i>Population</i>	34,493		15,585
	<i>P.D. Budget</i>	\$7,727,168.00	\$4,783,813.00	\$2,705,235.00
2023				
	<i>Population</i>	35,243		16,287
	<i>P.D. Budget</i>	\$8,552,719.00	\$5,320,754.00	\$2,862,950.00
2024				
	<i>Population</i>	40,000		16,881
	<i>P.D. Budget</i>	\$10,272,435.00	\$6,054,894.00	\$3,183,400.00

COLTRANE & WILKINS, LLC

BARNWELL, WHALEY, PATTERSON
& HELMS, LLC

By: s/Curtis L. Coltrane
 Curtis L. Coltrane
 Attorneys for The Town
 of Hilton Head Island,
 South Carolina, John J.
 McCann and Stephen G. Riley

By: s/John W. Fletcher
 M. Dawes Cooke, Jr.
 John W. Fletcher
 Attorneys for Beaufort County,
 South Carolina

EXHIBIT 1 TO STIPULATION OF FACTS

CASE NUMBER 2020-CP-07-1840

Certified True Copy
 Clerk to Council
 Beaufort County, SC
 By: Sarah W. Brock
 Sarah W. Brock, JD
 Date: 1.13.2023

ORDINANCE 2020/29

ESTABLISHING A BEAUFORT COUNTY LAW ENFORCEMENT SERVICE CHARGE AND UNIFORM USER FEE

WHEREAS, Beaufort County Council and Beaufort County (the "County") is a body politic and political subdivision of the State of South Carolina; and

WHEREAS, under SC Code Ann. Section 4-9-10 et seq. and other applicable law, specifically including Section 4-9-25 and 4-9-30(5)(a), Beaufort County Council is empowered to act in the interests of public safety, and in matters involving the health and welfare of its citizens; and

WHEREAS, law enforcement services are critical to the health and welfare of the citizens of the County; and

WHEREAS, the expenses of the County involving law enforcement are significant aspects of the County's financing and operations; and

WHEREAS, Beaufort County Council has, after extensive study and consideration, determined that it is in the best interest of the citizens and taxpayers of Beaufort County, South Carolina, that an Ordinance Establishing a Law Enforcement Service Charge and Uniform User Fee for portions of Beaufort County South Carolina should be enacted;

NOW, THEREFORE, IT IS RESOLVED AND ORDAINED AS FOLLOWS:

Section 1. FINDINGS OF FACT:

- a. Since its incorporation in 1983, the Town of Hilton Head Island (The "Town") has contracted with and otherwise received certain law enforcement services from the Beaufort County Sheriff (the "Sheriff") and the County, in exchange for annual payments.
- b. Counties are specifically authorized by Section 4-9-30(5) of the Code of Laws of South Carolina "...to assess property and levy...uniform service charges, ... and make appropriations for functions and operations of the county, including, but not limited to... public safety, including police and fire protection..."
- c. The health, order, general welfare, and convenience of the County and the County's citizens within the town limits of Hilton Head Island will be served by the enactment of this ordinance.
- d. The Town has chosen not to create and maintain its own police force, instead relying on the contract and the services provided by the County and the Sheriff's Office.
- e. In the most recent year of analysis, there have been 97,335 calls for service for the Sheriff's Office within the Town.
- f. The Sheriff's Office provides law enforcement services to the Town, above and beyond what the Sheriff's Office provides to other incorporated municipalities in the County.
- g. The estimated most recent annual cost to provide services within the Town of Hilton Head Island is \$4,383,257.
- h. The Law Enforcement Service Charge and Uniform User Fee is to be charged to properties in the Town to cover the cost of law enforcement services provided within the Town by the Sheriff's Office over and beyond the level of services provided in the incorporated municipalities which provide their own law enforcement services.

- i. It is fair and reasonable to assess the Law Enforcement Service Charge and Uniform User Fee to the areas within the Town.
- j. The fiscal, economic, and planning consulting firm TischlerBise has prepared over 900 impact fees and over 800 fiscal impact analyses for clients across the United States and Canada.
- k. TischlerBise is well qualified to have studied the relevant issues surrounding the provision of law enforcement services by the Sheriff's Office in the Town.
- l. The detailed approach, methodology, narrative and findings of that certain study report and findings of TischlerBise entitled "Law Enforcement User Fee Study Approach and Findings" dated July 13, 2020 are appropriate, thorough, and complete.
- m. The findings and recommendations of the TischlerBise report are hereby incorporated by reference and included as a basis for the implementation of the Law Enforcement Service Charge and Uniform User Fee imposed herein.

Section 2. ESTABLISHMENT OF LAW ENFORCEMENT SERVICE CHARGE AND UNIFORM USER FEE

A law enforcement service charge and uniform user fee in the amounts set forth in Section 4 hereof shall be levied annually upon all parcels of real property located within the municipal boundaries of the Town of Hilton Head Island (all such parcels being collectively referred to herein as the "Service Area"). The law enforcement service charge and uniform user fee authorized hereby shall be included on real property tax notices for all such parcels. For such parcels that are exempt from ad valorem taxes, the law enforcement service charge and uniform user fee authorized hereby shall be billed by the County as a separate invoice to be mailed to applicable property owners on or about the time that real property tax notices are mailed, and will be due on January 15 of each succeeding year.

Section 3. RECORDING AND USE OF PROCEEDS

All proceeds derived from the law enforcement service charge and uniform user fee authorized hereby shall be recorded in a separate fund within the County's accounts. Such proceeds shall be used for law enforcement and related administrative services to be provided by the Beaufort County Sheriff's Office in the Service Area, in lieu of the applicable municipality providing its own law enforcement force at a level above the base level of law enforcement services provided by the Sheriff's Office in the unincorporated County.

Section 4. TABLE OF CHARGES; EXCEPTIONS

The law enforcement service charge and uniform user fee shall be charged to each applicable parcel based on use and size as set forth in the following table. The types of "land use" in the following table are defined as provided for in the Beaufort County Community Development Code.

Except as provided for in this section, no public or private property shall be exempt from the law enforcement service charge and uniform user fee. No exemption, offset, or reduction shall be granted based on the age, tax, economic status, race, or religion of the property owner.

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88

Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

Section 5. PAYMENT AND COLLECTION

The law enforcement service charge and uniform user fee shall be due, payable and to be collected in the same manner as real property taxes and shall be subject to the same penalties and interest as overdue real property taxes.

Section 6. APPEAL AND ADJUSTMENT

A fee payer may appeal the assessment of the User Fee on a parcel of property at any time. The appeal must be submitted in writing to the law enforcement service charge and uniform user fee appeal officer(s), as may be appointed from time to time by the County Administrator. An appeal submitted before the January 15th due date shall be considered for the current year owed. An appeal submitted on or after January 15th shall only apply to the succeeding year.

An appeal must be submitted in writing to the appeal officer c/o county administrator, and shall contain the reason for appeal and required supporting documents. Required documents may include, but are not limited to, a survey prepared by a registered land surveyor or professional engineer containing information on the size and type of the property, business license or other license documentation, utility bills, company registration from the SC Secretary of State's Office, or other verifiable documentation which may tend to establish the use(s) to which the property is put, and/or the size or other relevant information. Using the information provided by the appellant, the appeal officer shall conduct a review of the property and fee assessment. The appeal officer may also request reasonable additional documentation pertinent to the appeal. The appeal officer shall respond to an appeal in writing within thirty (30) days. In response to an appeal, the appeal officer may adjust the fee applicable to the property in conformance with Section 4.

A decision of the appeal officer which is adverse to the appellant may be further appealed to the Beaufort County Administrator or his/her designee within thirty (30) days of the adverse decision. The appellant, stating the grounds for further appeal, shall deliver notice of the appeal to the County Administrator or his/her designee. The County Administrator or his/her designee shall issue a written decision on the appeal within thirty (30) days. All decisions by the County Administrator or his/her designee shall be served on the appellant personally or by registered or certified mail to the billing address of the property owner. All decisions of the County Administrator or his/her designee shall be final.

Section 7. LIABILITY; NO HINDRANCE OF SHERIFF'S DISCRETION

This chapter does not imply that a benefitted property will be free from criminal activity, and does not create additional duties on the part of the County or Sheriff's Office. This chapter does not waive the County's or Sheriff's Office's immunity or limited liability under any law. Nothing herein shall serve to hinder the exercise of law enforcement and other discretion held by the Sheriff's Office under the South Carolina Constitution and applicable law.

Section 8. LEGISLATIVE INTENT; SEVERABILITY

It is, inter alia, the legislative intent of the County that a law enforcement service charge and uniform user fee be levied under the terms described herein. The County asserts that this legislative intent must prevail if it can be reasonably discovered in the language used, and such language must be construed in light of the ordinance's intended purpose. To the extent any portion of this ordinance should be found illegal or unenforceable by a court of competent jurisdiction, the offending portion shall be void and of no effect, and is deemed severable from the remainder. The rest of the ordinance shall remain in force and of effect and shall be interpreted according to the findings and express and implied legislative intent to be operative and enforceable to the fullest extent.

Section 9. REPEALER, EFFECTIVE DATE

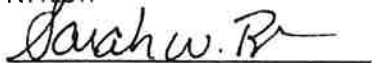
All ordinances or parts of ordinances in conflict with this ordinance or inconsistent with its provisions are hereby repealed or superseded to the extent necessary to give this ordinance full force and effect. This ordinance shall take effect upon final approval.

ADOPTED IN MEETING DULY ASSEMBLED this 24th day of August 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: 
Joseph Passiment, Chairman

ATTEST:



Sarah W. Brock, Clerk to Council

Third and Final Reading: August 24, 2020 / Vote: 9-2

Public Hearing: August 24, 2020

Second Reading: August 10, 2020/ Vote: 6-3

First Reading by Title Only: July 13, 2020/ Vote: 7-3

EXHIBIT 2 TO STIPULATION OF FACTS
CASE NUMBER 2020-CP-07-1840



Law Enforcement Service Charge and Uniform User Fee Study Approach and Findings

Prepared for:

Beaufort County, South Carolina

July 13, 2020

Prepared by:

TischlerBise
FISCAL | ECONOMIC | PLANNING

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Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
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EXECUTIVE SUMMARY

Beaufort County, South Carolina, retained TischlerBise to develop a methodology for a Law Enforcement Service Charge and Uniform User Fee to be implemented in the Town of Hilton Head Island. The Law Enforcement Service Charge and Uniform User Fee would cover the cost for law enforcement services provided by the Beaufort County Sheriff's Office (BCSO) to the Town of Hilton Head Island.

The BCSO provides law enforcement services in the Unincorporated County and supports municipal police departments. Although the Town of Hilton Head Island is an incorporated municipality in Beaufort County it does not have its own police force. Instead, the Town contracts with the BCSO for Law Enforcement Services.

The Law Enforcement Service Charge and Uniform User Fee is calculated to reflect the direct cost for services provided by the BCSO to the Town of Hilton Head Island. The report sets out a methodology to allocate those costs to the user of the services. The process is as follows:

- First, the total cost for BCSO law enforcement services provided to the Town of Hilton Head Island is documented. This cost reflects the actual cost for law enforcement services provided per the contract between BCSO and the Town.
- Second, the cost is allocated to residential and nonresidential land uses. This reflects the demand for law enforcement services from different users of the service.
- Finally, a service charge schedule is developed by type of land use. The summary schedule is shown below in Figure 1.

Figure 1. Beaufort County Law Enforcement Service Charge and Uniform User Fee Schedule

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88
Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
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OVERVIEW

Several incorporated jurisdictions in Beaufort County have municipal police departments (e.g., cities of Beaufort and Bluffton, town of Port Royal). In incorporated places with municipal police departments in Beaufort County, the Beaufort County Sheriff's Office (BCSO) assists on calls for service but is not the primary responder.

BCSO is the main law enforcement agency in Unincorporated Beaufort County and provides support to incorporated localities with law enforcement agencies. BCSO also provides law enforcement services directly to the Town of Hilton Head Island and via a contract for services executed between Beaufort County and the Town. These law enforcement services are provided to the Town in lieu of the Town providing its own police force and is above the base level of law enforcement service provided to incorporated places in the County.

Prior to Fiscal Year 2021, the Town of Hilton Head Island paid Beaufort County directly for the contracted services. As of FY2021, the Town has indicated it will stop paying the contracted amount yet expects continuation of law enforcement services.

To recoup direct costs for law enforcement services provided by the BCSO to the Town of Hilton Head Island, the County is exploring a Law Enforcement Service Charge and Uniform User Fee District. The Law Enforcement Service Charge and Uniform User Fee District is calculated to allocate costs to different types of land uses based on a commensurate demand for services.

The BCSO responded to over 320,000 law enforcement calls for service in Beaufort County in calendar year 2019. Of those calls, approximately 97,000 were in the Town of Hilton Head Island, or 30 percent of total County law enforcement calls. The BCSO FY2021 budget is approximately \$32 million.

APPROACH AND METHODOLOGY

Approach

The approach to calculate the Law Enforcement Service Charge and Uniform User Fee is:

- Identify and quantify law enforcement costs provided by the BCSO to the Town of Hilton Head Island. This reflects the actual costs for law enforcement services consumed by the Town.
- Develop the Service Charge and Uniform User Fee methodology to allocate costs to land uses on the Town of Hilton Head Island.
- Calculate the Service Charge and Uniform User Fee and schedule based on the methodologies developed.

Methodology

The following is a summary of steps used to calculate the Law Enforcement Service Charge and Uniform User Fee reflecting the services provided by BCSO in the Town of Hilton Head Island. Each step is discussed in further detail in this section:

1. Calculate the cost for Law Enforcement Services provided in Town of Hilton Head Island. This is separate from countywide services provided in both the unincorporated and incorporated County (such as Civil Processing, Court Security, Forensics Services Lab, Bomb Squad).
2. Allocate BCSO law enforcement costs serving Hilton Head Island to residential and nonresidential development using functional population split (i.e., demand from residential versus nonresidential development).
3. Calculate costs per service unit for residential (per person) and nonresidential (per nonresidential vehicle trip) development.
4. Calculate service charge for residential and nonresidential land uses and produce a schedule of charges by type of land use.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
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Cost for Law Enforcement Services provided in Town of Hilton Head Island

BCSO is a countywide agency. The range of services provided include Victims Advocate, School Resource Officers, Administration, Enforcement, Forensics Laboratory, Crime Suppression, Emergency Management, Communications, and Traffic Management. The total BCSO budget for FY21 is \$32 million. Of that amount, approximately \$4.4 million is spent on law enforcement services to the Town of Hilton Head Island. Detail is provided below.

Figure 2. FY2021 BCSO Budget for Town of Hilton Head Island Law Enforcement Services

	FY2021
Base Budget Positions^	\$3,704,257
Victim Advocate Officer	\$100,000
Benefits	\$504,000
Hilton Head Bar Patrol Overtime	\$75,000
Total HHI Cost	\$4,383,257
RBC Heritage Golf Tournament*	\$26,500

^ Reflects 41 positions

* Town of Hilton Head Island reimburses Beaufort County

As identified above, costs for services to Hilton Head Island reflect personnel (authorized at 41 positions), employee benefits, Victim Advocate Officer, and Hilton Head Bar Patrol Overtime. (BCSO also provides law enforcement services for the RBC Heritage Golf Tournament held on the Island. The Town reimburses the County for those services.)

The above calculated cost of \$4,383,257 is used to determine the proposed Law Enforcement Service Charge and Uniform User Fee. This figure can be adjusted as the budget changes.

BCSO Law Enforcement Costs for Hilton Head Island Allocated to Residential and Nonresidential Development

To allocate costs to land uses, functional population is used. Functional population is a standard methodology to apportion costs between residential and nonresidential development. Further detail is provided below.

Functional Population

Both residential and nonresidential development place demand on law enforcement services. To calculate the proportionate share between residential and nonresidential demand for a particular service or facility, a "functional population" approach is used. The functional population approach allocates the cost of law

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
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enforcement services to residential and nonresidential development based on the activity of residents and workers in the Town of Hilton Head Is and over a 24-hour time period.

Residents that do not work are assigned 20 hours per day to residential development and 4 hours per day to nonresidential development (annualized averages). Residents that work in Hilton County are assigned 14 hours to residential development and 10 hours to nonresidential development. Residents that work outside the Town are assigned 14 hours to residential development, the remaining hours in the day are assumed to be spent outside of the Town working. Inflow commuters are assigned 10 hours to nonresidential development. Based on 2017 data (the latest Origin-Destination data available from U.S. Census Bureau), residential development accounts for 75 percent of the functional population, while nonresidential development accounts for 25 percent.

Figure 3. Town of Hilton Head Island Functional Population

Hilton Head Town, SC (2017)				
Residential			Demand Hours/Day	Person Hours
Population*	76,698			
Residents Not Working	61,816		20	1,236,320
Employed Residents	14,882			
Employed in Hilton Head		8,898	14	124,572
Employed outside Hilton Head		5,984	14	83,776
		Residential Subtotal		1,444,668
		Residential Share =>		75%
Nonresidential				
Non-working Residents	61,816		4	247,264
Jobs Located in Hilton Head	23,471			
Residents Employed in Hilton Head		8,898	10	88,980
Non-Resident Workers (inflow commuters)		14,573	10	145,730
		Nonresidential Subtotal		481,974
		Nonresidential Share =>		25%
		TOTAL		1,926,642

Source: U.S. Census Bureau, OnTheMap 6.1.1 Application and LEHD Origin-Destination Employment Statistics.

* Seasonal/peak population; TischlerBise calculation from housing unit estimate and U.S. Census household size

The cost for the Beaufort County Sheriff's Office services provided in the Town of Hilton Head Is and is allocated to residential and nonresidential development using the above proportionate share factors. Results are shown below.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
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Figure 4. Town of Hilton Head Island BCSO Law Enforcement Cost Allocated to Residential and Nonresidential Development

Hilton Head BCSO Law Enforcement Cost		
Allocated to Residential / Nonresidential		\$4,383,257
	<i>Functional Population *</i>	
Residential Proportionate Share	75%	\$3,287,443
Nonresidential Proportionate Share	25%	\$1,095,814
TOTAL COST	100%	\$4,383,257

* Functional population (see supporting figure)

Costs per Service Unit

Appropriate service units are identified for Law Enforcement Services. For residential development, population is the driver and is reflected in household size (i.e., persons per household) by type of housing unit. This captures demand from both year-round and seasonal housing units. Population is the appropriate service unit.

For nonresidential development, the appropriate service unit is vehicle trips. Vehicle trip rates are typically used for public safety-related fees and charges to reflect the relative demand for public safety services from nonresidential development. That is, vehicle trip rates are highest for commercial/retail development—reflecting demand from all activity (workers, shoppers, visitors) at a retail establishment. Conversely, industrial development has the lowest nonresidential trip rates and office development rates fall between the other two categories reflecting the level of activity at each type of facility.

BCSO Law Enforcement costs allocated between residential and nonresidential development are then divided by the applicable base year demand factors to determine a cost per demand factor—for residential, a cost per capita and for nonresidential, a cost per nonresidential vehicle trip.

Seasonal population in housing units is calculated to account for both year-round and seasonally-occupied housing units in Hilton Head Island. Nonresidential vehicle trips are calculated based on applicable vehicle trip rates and adjustment factors per the Institute of Transportation Engineers (ITE) applied to nonresidential land uses in Hilton Head Island. Data is based on the Beaufort County Development Impact Fee Study conducted by TischlerBise in 2019-2020. Detail is provided in Appendix A.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
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Figure 5. Town of Hilton Head Island BCSO Law Enforcement Cost per Service Unit

Hilton Head BCSO Law Enforcement Cost	\$4,383,257	
	Residential	Nonresidential
Proportionate Share %	75%	25%
Proportionate Share \$	\$3,287,443	\$1,095,814
Service Unit	Seasonal Population in Hsg Units	Nonresidential Vehicle Trips
Current Service Units (2020)*	79,046	64,997
Cost per Service Unit (rounded)	\$41.59	\$16.86

* See Appendix A for supporting detail.

As shown, the calculated cost per person is \$41.59 and the cost per nonresidential vehicle trip is approximately \$16.86.

Service Charges and Uniform User Fees for Residential and Nonresidential Land Uses

Using the above factors, Law Enforcement Service Charges and Uniform User Fees for the Town of Hilton Head Island are calculated. The service charges are based on household size for residential development and vehicle trips per 1,000 square feet or hotel room for nonresidential development. Differentiating the service charge by housing type allows the results to reflect the level of demand (persons per household) from residential land uses. For residential development, the cost per person (\$41.59) is multiplied by household size to calculate the proposed service charge by type of unit. For nonresidential development, the cost per vehicle trip (\$16.86) is multiplied by trips per demand unit (either 1,000 square feet or lodging room) to calculate the proposed fee.

The schedule presented is meant to provide broad-based land use categories to capture the majority of types of land uses in the Town. Using ITE trip rates for nonresidential development allows additions to the schedule, as necessary.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
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Figure 6. Law Enforcement Service Charge and Uniform User Fee Proposed Schedule

Residential

Service Charge Component	Cost per Person
Hilton Head BCSO Law Enforcement Cost	\$41.59
Total	\$41.59

Housing Type	Persons per Household [^]	Service Charge per Housing Unit
Single Family	2.42	\$101
Multifamily	2.11	\$88

[^] Source: U.S. Census Bureau. 2013-2017 American Community Survey 5-Year Estimates

Nonresidential

User Fee Component	Cost per Trip
Hilton Head BCSO Law Enforcement Cost	\$16.86
Total	\$16.86

Development Type	Demand Unit	Vehicle Trip Ends per Demand Unit*	Trip Adj. Factor*	Service Charge per Demand Unit
Retail	1,000 sq. ft.	37.75	38%	\$242
Office/Service	1,000 sq. ft.	9.74	50%	\$82
Industrial	1,000 sq. ft.	3.93	50%	\$33
Institutional	1,000 sq. ft.	10.72	50%	\$90
Lodging	Room	8.17	50%	\$69

* Source: Trip Generation, Institute of Transportation Engineers, 10th Edition (2017)

SUMMARY: LAW ENFORCEMENT SERVICE CHARGE AND UNIFORM USER FEE SCHEDULE

The figure below summarizes the proposed Law Enforcement Service Charge and Uniform User Fee schedule calculated to cover the costs incurred by BCSC to serve the Town of Hilton Head Island.

Figure 7. Proposed Law Enforcement Service Charge and Uniform User Fee Schedule

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88
Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

Given the above schedule and estimated base year development in the Town of Hilton Head Island, an estimate of revenue can be provided. Please note, cost factors have been rounded in the analysis and therefore the total revenue calculated does not equal the total cost.

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
Beaufort County, South Carolina

Figure 8. Law Enforcement Service Charge and Uniform User Fee Estimated Revenue

Land Use	Demand Unit	Service Charge per Demand Unit	Base Year Development	Estimated Revenue
Residential				
Single Family	Housing Unit	\$101	20,075	\$2,027,597
Multifamily	Housing Unit	\$88	14,438	\$1,270,525
			<i>Subtotal</i>	<i>\$3,298,122</i>
Nonresidential				
Retail	1,000 sq. ft.	\$242	2,724	\$659,168
Office/Service	1,000 sq. ft.	\$82	3,340	\$273,881
Industrial	1,000 sq. ft.	\$33	2,515	\$82,979
Institutional	1,000 sq. ft.	\$90	880	\$79,204
			<i>Subtotal</i>	<i>\$1,095,231</i>
			GRAND TOTAL *	\$4,393,353

* Does not equal total cost due to rounding

APPENDIX A: DEMOGRAPHIC ASSUMPTIONS

Population and Housing Characteristics

Per capita standards and persons per housing unit or persons per household are used to derive proportionate service charge amounts. Household sizes vary by housing unit type and, consequently, demand for services vary. Thus, it is important to differentiate between housing types and size.

When persons per housing unit (PPHU) is used in service charge calculations, infrastructure standards are derived using year-round population. In contrast, when persons per household (PPHH) is used in the calculations, the service charge methodology assumes all housing units will be occupied, thus requiring seasonal population to be used when deriving infrastructure standards.

According to the state of South Carolina's Department of Parks, Recreation, and Tourism, Beaufort County is the third most visited county in the state. Infrastructure and services are sized to accommodate not just permanent residents, but seasonal residents and workers as well. Therefore, TischlerBise recommends that service charges for residential development be calculated according to persons per household.

Based on housing characteristics, TischlerBise recommends using two housing unit categories for the service charges: (1) Single Family and (2) Multifamily. Each housing type has different characteristics resulting in a different demand for Law Enforcement services. Figure 9 shows the U.S. Census American Community Survey 2017, 5-Year Estimates data for the Town of Hilton Head Island. Single family units have a household size of 2.42 persons and multifamily units have a household size of 2.11 persons.

Figure 9. Town of Hilton Head Island Persons per Household

HILTON HEAD

Housing Type	Persons	Housing Units	Persons per Housing Unit	Households	Persons per Household	Housing Unit Mix
Single Family [1]	29,905	19,771	1.51	12,341	2.42	58%
Multifamily [2]	9,570	14,219	0.67	4,527	2.11	42%
Total	39,475	33,990	1.16	16,868	2.34	

[1] Includes attached and detached single family homes

[2] Includes structures with 2+ units

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

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Base Year Population and Housing Units

As noted above, the Town of Hilton Head Island has permanent and short term (i.e., seasonal) residents. The current estimate of population, on which the service charge is based, accounts for full occupancy of residential units. Population estimates are based on assumptions in TischlerBise's Development Impact Fee Study (with data from the Beaufort County Transportation Model at the Traffic Analysis Zone (TAZ) level) and population estimates for the Town of Hilton Head Island from the U.S. Census.

Town of Hilton Head Island Housing Unit and Population Estimate (2020)

Current housing units by type of unit are estimated and used to derive current estimated seasonal population in the Town of Hilton Head Island. First, permanent population for the Town of Hilton Head Island is obtained from the U.S. Census for 2019 and updated to 2020 using growth rate assumptions from TischlerBise's Development Impact Fee Study. Next, the permanent population estimate is used to determine the estimated number of housing units in the Town. Then, persons per household (i.e., population in an occupied housing unit) is applied to the estimated number of housing units to calculate seasonal population in 2020. Detail is provided in the following two figures.

Figure 10. Town of Hilton Head Island Housing Unit Estimate (2020)

Hilton Head Permanent Population Estimate 2019 [1]	39,639
Estimated Growth 2019 to 2020 [2]	1.0%
2020 Hilton Head Permanent Population Estimate	40,035
Average Persons per Housing Unit [3]	1.16
Hilton Head Housing Unit Estimate 2020 [4]	34,513

[1] U.S. Census in Town of Hilton Head Island CAFR FY2019

[2] Beaufort County TAZ Transportation Model in TischlerBise Development Impact Fee Study (2020)

[3] U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

[4] Calculated. Permanent population / persons per housing unit

Figure 11. Town of Hilton Head Island Seasonal Population Estimate (2020)

Town of Hilton Head Island Housing Unit Estimate 2020		34,513		
			Seasonal	
	% Distr. [1]	# by Type	PPHH [2]	Pop. Est.
Single Family Units	58%	20,075	2.42	48,582
Multifamily Units	42%	14,438	2.11	30,464
Total	100%	34,513		79,046

[1] U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

[2] Persons per Household, U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

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Base Year Employment and Nonresidential Floor Area

The Law Enforcement Service Charge and Uniform User Fee is also applied to nonresidential development as discussed in the body of this report. Nonresidential vehicle trips are calculated for the base year using employment and nonresidential square footage in the Town of Hilton Head Island.

Figure 12 provides detail on base year employment and nonresidential square footage in the Town of Hilton Head Island. Nonresidential square footage is estimated based on number of jobs by type of industry and square feet per employee factors derived from the Institute of Transportation Engineers (ITE).

As shown below, it is estimated that there are 22,780 jobs in the Town of Hilton Head Island as of 2020. The estimate is from Traffic Analysis Zone (TAZ) data, provided in the Beaufort County Transportation Model for TischlerBise's Development Impact Fee Study (2020). Jobs are converted to nonresidential square footage with factors shown in Figure 13.

Figure 12. Town of Hilton Head Island Employment and Nonresidential Square Footage by Industry (2020)

Industry	Employment (2020)*	%	Sq. Ft./Emp [^]	Nonres. Sq. Ft. (2020)*
Retail	6,379	28%	427	2,723,833
Office	9,911	44%	337	3,340,007
Industrial	4,004	18%	628	2,514,512
Institutional	2,486	11%	354	880,044
Total	22,780	100%		9,458,396

* Beaufort County TAZ Transportation Model in TischlerBise Development Impact Fee Study (2020)

[^] Trip Generation, Institute of Transportation Engineers (ITE), 10th Edition (2017)

Square feet per employee conversion factors (indicated above) along with weekday trip rates (referenced in Figure 14) per demand unit are shown below in Figure 13.

Figure 13. Institute of Transportation Engineers Nonresidential Factors

ITE Code	Land Use	Demand Unit	Wkdy Trip Ends Per Dmd Unit	Wkdy Trip Ends Per Employee	Emp Per Dmd Unit	Sq Ft Per Emp
820	Shopping Center (avg size)	1,000 Sq Ft	37.75	16.11	2.34	427
710	General Office (avg size)	1,000 Sq Ft	9.74	3.28	2.97	337
140	Manufacturing	1,000 Sq Ft	3.93	2.47	1.59	628
610	Institutional/Hospital	1,000 Sq Ft	10.72	3.79	2.83	354

Source: Trip Generation, Institute of Transportation Engineers, 10th Edition (2017)

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Nonresidential Vehicle Trips

Vehicle trip generation for nonresidential land uses are calculated using average daily (weekday) trip end rates and adjustment factors from the Institute of Transportation Engineers in *Trip Generation*, 10th edition. To estimate base year nonresidential vehicle trips in Town of Hilton Head Island, weekday trip ends per 1,000 square feet factors shown in Figure 13 are used.

For nonresidential land uses, a standard 50 percent adjustment is applied to Office, Industrial, and Institutional to allocate trips to the nonresidential (destination) land use (with the other trip end allocated to the originating land use). A lower vehicle trip adjustment factor is used for Retail because this type of development attracts vehicles as they pass-by on arterial and collector roads. For example, when someone stops at a convenience store on their way home from work, the convenience store is not their primary destination.

In Figure 14, the Institute for Transportation Engineers' land use code, daily vehicle trip end rate, and trip adjustment factor is listed for each nonresidential land use.

Figure 14. Town of Hilton Head Island Average Daily Nonresidential Vehicle Trips (2020)

Industry	Nonres. Sq. Ft. (2020)*	Vehicle Trip Ends per 1,000 Sq. Ft.^	Trip Adj. Factor^	Vehicle Trip Ends (2020)
Retail	2,723,833	37.75	38%	39,073
Office	3,340,007	9.74	50%	16,266
Industrial	2,514,512	3.93	50%	4,941
Institutional	880,044	10.72	50%	4,717
Total	9,458,396			64,997

* Beaufort County TAZ Transportation Model in TischlerBise Development Impact Fee Study (2020)

^ *Trip Generation*, Institute of Transportation Engineers (ITE), 10th Edition (2017)

APPENDIX B: LAND USE DEFINITIONS

Residential Development

As discussed below, residential development categories are based on data from the U.S. Census Bureau, American Community Survey. It is anticipated that Beaufort County will collect the Law Enforcement Service Charge and Uniform User Fee from all residential units.

Single Family:

1. Single family detached is a one-unit structure detached from any other house, that is, with open space on all four sides. Such structures are considered detached even if they have an adjoining shed or garage. A one-family house that contains a business is considered detached as long as the building has open space on all four sides.
2. Single family attached (townhouse) is a one-unit structure that has one or more walls extending from ground to roof separating it from adjoining structures. In row houses (sometimes called townhouses), double houses, or houses attached to nonresidential structures, each house is a separate, attached structure if the dividing or common wall goes from ground to roof.
3. Mobile home includes both occupied and vacant mobile homes, to which no permanent rooms have been added, are counted in this category. Mobile homes used only for business purposes or for extra sleeping space and mobile homes for sale on a dealer's lot, at the factory, or in storage are not counted in the housing inventory.
 - Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 210.

Multifamily:

1. 2+ units (duplexes and apartments) are units in structures containing two or more housing units, further categorized as units in structures with "2, 3 or 4, 5 to 9, 10 to 19, 20 to 49, and 50 or more apartments."
2. Boat, RV, Van, Etc. includes any living quarters occupied as a housing unit that does not fit the other categories (e.g., houseboats, railroad cars, campers, and vans). Recreational vehicles, boats, vans, railroad cars, and the like are included only if they are occupied as a current place of residence.
 - Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 220, 221, 222.

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Nonresidential Development

Nonresidential development categories represent general groups of land uses that share similar average weekday vehicle trip generation rates and employment densities (i.e., jobs per thousand square feet of floor area).

Retail: Establishments primarily selling merchandise, eating/drinking places, and entertainment uses. By way of example, *Retail* includes shopping centers, supermarkets, pharmacies, restaurants, bars, nightclubs, automobile dealerships, and movie theaters.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 820, 815, 823, 850, 875, 880

Office/Service: Establishments providing management, administrative, professional, or business services. By way of example, *Office/Service* includes banks, business offices, headquarter buildings, business parks, and research and development centers.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 710, 712, 714, 720, 750, 770

Industrial: Establishments primarily engaged in the production, transportation, or storage of goods. By way of example, *Industrial* includes manufacturing plants, distribution warehouses, trucking companies, utility substations, power generation facilities, and telecommunications buildings.

- Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 110, 130, 150, 154, 160, 170

Institutional: Establishments providing management, administrative, professional, or business services. By way of example, *Institutional* includes assisted living facilities, nursing homes, hospitals, medical offices, veterinarian clinics, schools, universities, churches, daycare facilities, government buildings, and prisons.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 520, 560, 565, 575, 580, 590

Lodging: Establishments that provide sleeping accommodations and supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or other retail and service shops.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 310, 311, 312, 320, 330.

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APPENDIX C: COMPARISON LOCALITIES

Below is a list of communities with seasonal population demands and their respective Law Enforcement agency budgets. This is provided for comparison purposes only, at a high level, and is not meant to be exhaustive or reflective of a recommended level of service.

	Year Round Population	FY19 Police Budget (rounded)
City of Bluffton, SC	19,000	\$6,600,000
City of Beaufort, SC	13,357	\$4,500,000
Rehoboth Beach, DE	1,520	\$3,700,000
Gulf Shores, AL	12,517	\$6,200,000

Source: TischlerBise research from publicly available sources.