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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

Case No. 2019-CP-26-01732

City of Myrtle Beach, For Itself and Class of Similarly Situated Plaintiffs, ... Respondent,

v.

Horry County, ... Appellant.

RECORD ON APPEAL
VOL II of IV

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COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

RESOLUTION R-84-18

A RESOLUTION DIRECTING STAFF TO CREATE A PLAN FOR PUBLIC SAFETY AND ROADS IN THE FY 2020 BUDGET USING UNCOMMITTED 1.5% HOSPITALITY FEE REVENUE.

WHEREAS, in 1996, Horry County Council established a 1.5% hospitality fee on prepared food, admissions, and rentals in the entirety of Horry County for the purpose of implementing a comprehensive road management plan as codified in Section 19-6 of the Horry County Code of Ordinances; and

WHEREAS, the 1.5% hospitality fee was scheduled to lapse upon the repayment of all outstanding loans due to the State Transportation Infrastructure Bank; and

WHEREAS, Horry County Council passed Ordinance 93-16 and Ordinance 32-17 to modernize the administration of the 1.5% hospitality fee and to extend its imposition following the repayment of loans due to the State Transportation Infrastructure Bank; and

WHEREAS, it is anticipated all funds necessary to repay the outstanding State Transportation Infrastructure Bank loans will be on deposit in the State Treasurer's Office by the end of Fiscal Year 2019; and

WHEREAS, Horry County Council intends to dedicate a portion of the 1.5% hospitality fee to facilitate the construction of the Horry County portion of I-73; and

WHEREAS, the Hospitality Fee can be used on other tourism-related purposes besides roads including, but not limited to, civic centers and coliseums, tourism-relate parks and cultural facilities, beach renourishment, tourism promotion, and tourism-related public safety costs; and

WHEREAS, staff has calculated the unrecovered cost of public safety from tourism to be approximately $7,800,000; and

WHEREAS, County Council seeks to dedicate a portion of the 1.5% hospitality fee for tourism-related hospitality costs beyond road construction.

NOW, THEREFORE, BE IT RESOLVED, directs staff to draft an ordinance amending Section 19-6(h) of the Horry County Code of Ordinances to allow the 1.5% hospitality fee for all eligible uses under state law. In addition, the County Administrator shall include a proposal in the FY 2020 budget a plan to utilize the uncommitted balance of the 1.5% hospitality fee for eligible tourism-related public safety expenditures and additional road projects that lead to tourist destinations.

AND IT IS SO RESOLVED this ___ day of _____, 2018.

HORRY COUNTY COUNCIL

_____
Mark Lazarus, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Harold Phillips, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:

_____
Patricia S. Hartley, Clerk to Council

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Exhibit M

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ORDINANCE 2019-22

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE VI, DIVISION 4, ACCOMMODATIONS TAX, TO INSTITUTE A THREE PERCENT TAX, EFFECTIVE IMMEDIATELY WITH IMPLEMENATION TO BE EFFECTIVE JULY 1, 2019.

IT IS HEREBY ORDAINED THAT Chapter 2, Article VI of the Code of Ordinances of the City of Myrtle Beach is hereby amended in Division 4, Accommodations Tax, in Sections 2-273, with repealed language stricken through and amended language underlined.

Sec. 2-270
This division shall be referred to as the City of Myrtle Beach Accommodations Tax Ordinance, enacted pursuant to South Carolina Code 6-1-500 et seq.

Sec. 2-271
It is hereby found and declared by the City Council of Myrtle Beach that tourism is the major industry in the City, accounting for millions of visitors annually. The City supports and encourages this industry by budgeting city funds for operational costs and capital improvements to streets and roadways, beach access and renourishment, water, sewer and waste management, as well as enhanced police and fire protection. By way of *ad valorem* taxation, the local stable population of approximately ~~25,000~~ 32,000 citizens, by 2018 estimates, bears the operational and capital costs of service provision made necessary by our annual visitors. The cost of providing the special or enhanced services required or made necessary by the tourism industry should be apportioned more equitably between the resident taxpayers and those who visit our City and enjoy the programs, events, benefits and municipal services, however briefly.

Sec. 2-272
The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accommodations for transients includes the Accommodations specified in S. C. Code 1976 & 12-36-920, as amended from time to time, or any successor provision thereto, located within the jurisdiction of the city.

Department of finance means the financial services department of the city.

Finance director means the director of finance of the city.

~~Sec. 2-273~~
~~Upon the ninetieth day following second reading,~~ ~~t~~ There shall be imposed and shall immediately accrue as of the first day of the month following such date a collected tax, as provided in this division, upon Accommodations for transients. The tax imposed by

this section shall not apply to additional guest charges as defined in S. C. Code 1976 , & 12-36-920(B). The tax shall be established at the rate of ~~one-half of one percent~~ three percent (3%) of the gross proceeds derived from the rental or charges for any Accommodations for transients.

Sec. 2-274
Taxes imposed by this division shall be due on the same date and in the same manner as provided in S.C. Code 1976, & 12-36-2570, and in accordance with the provisions of S.C. Code 1976, & 12-36-2570. The city shall provide the form for remittance of the tax to the city. At the time of filing of such form, the business providing Accommodations for transients shall pay to the finance department or its designee all taxes due for the period for which the form applies.

Sec. 2-275
All taxes collected under this division shall be used solely in connection with the tourism industry or economic development, in accordance with South Carolina Code 6-1-530 (as amended 1999).

Sec. 2-276
If for any reason any tax imposed by this division is not paid when due, a penalty at the rate of two percent per month on the amount of taxes which remain unpaid shall be added and collected. Whenever any person shall fail to pay any tax as provided in this division, upon the request of the city, an action may be brought by the city to enforce the payment of such tax on behalf of the city in any court of competent jurisdiction.

Sec. 2-277
Every business providing accommodations to transients in the city shall keep books and records showing the prices, rents or charges made or charges and occupancies taxable under this division. The finance director or his designee shall at all reasonable times have full access to such books and records of such business.

Sec. 2-278
If the city shall find that any person has willfully avoided payment of the taxes imposed by this division, the city may suspend or revoke all city licenses held by such business in accordance with the ordinance pertaining to business licenses.

Sec. 2-279
If any provisions, clause, sentence, paragraph, section or part of this division, or the application thereof to any person, firm, corporation, public agency or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this division and the application of such provision to other persons, firms, corporations, public agencies or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation, public agency or circumstances involved.

Sec. 2-280
An interest bearing and restricted account shall be established and known as the Myrtle Beach Local Accommodations Special Revenue Fund. All revenue received pursuant to

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this ordinance shall be deposited into this fund, and shall be expended only pursuant to law and at the sole discretion of City Council.

Sec. 2-281
It shall be unlawful to fail to collect the tax in connection with the rental of Accommodations to transients; or fail to remit to the City the tax collected, pursuant to the ordinance; or knowingly provide false information on any form or return to the City; or fail to provide books and records for the purpose of audit upon 24 hours' notice. Upon conviction, the penalty shall be as prescribed by law.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER STANFORD, CITY CLERK

1st Reading: 2-26-19
2nd Reading: 3-7-19

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ORDINANCE 2019-23

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE ENACTING IN CHAPTER 2, ARTICLE VI, A NEW DIVISION 7, LOCAL HOSPITALITY TAX, TO INSTITUTE A TWO PERCENT TAX, EFFECTIVE IMMEDIATELY WITH IMPLEMENATION TO BE EFFECTIVE JULY 1, 2019.

IT IS HEREBY ORDAINED THAT Chapter 2, Article VI of the Code of Ordinances of the City of Myrtle Beach is hereby amended by enacting Division 7, Local Hospitality Tax, in Sections 2-315 through 2-321.

Sec. 2.315. - Municipal local hospitality tax pursuant to South Carolina Code 6-1-700 through 6-1-770.

There is hereby imposed a uniform tax of two (2) percent on the gross proceeds derived from the sales of prepared meals, food, and beverages sold in or by establishments, or sales of prepared meals, food and beverages sold in or by establishments licensed for on-premises consumption of alcoholic beverages, beer or wine.

Sec. 2.316. - Payment of municipal hospitality tax.

The tax imposed by this section shall be collected from any patron when he tenders payment for his meal, food, or beverage and shall be held in trust for the benefit of the city until the same is paid to the director of the revenue collections division as hereinafter provided. Every establishment subject to this section shall, on the date or within the time period hereinafter prescribed, make a return to the revenue collections division of the city on forms provided by the office delineating gross proceeds of sales of prepared meals, food, and beverages for the previous month, and the amount of any tax due by virtue of this section. At the time the return is filed, the full amount of any tax due hereunder shall be remitted. Taxes and required reports shall be submitted to the Revenue Collections Division by the twentieth (20) day of the month and shall cover sales of the previous month. If the due date for reporting and payment falls on a Saturday or Sunday, or a federal, state, or City of Myrtle Beach observed holiday then reporting and payment are considered timely on the following business day. Furthermore, if the due date for reporting and payment falls during the period of a natural disaster which directly precluded the responsible party from timely submitting the reports and payments, an additional ten (10) day extension may be granted upon written request by the taxpayer to the director of the revenue collections division. A natural disaster is defined as a hurricane, earthquake, flood, or tornado. The responsible party is considered directly precluded from timely submitting reports and payments if their offices are deemed by emergency officials to be damaged to the extent of being unsafe or unavailable for use due to the disaster or postal service to the immediate area is suspended during the due date. Any taxes not timely remitted shall be subject to a penalty of twenty-five (25) percent. The failure to collect from patrons the tax imposed by this section shall not relieve any establishment subject to this section from making the required remittance.

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Sec. 2-317. - Hospitality tax account.
There is hereby established a special account, to be known as the hospitality tax account, into which all monies remitted to the city under this section shall be deposited. Any and all funds in the hospitality tax account, including any interest as may accrue thereon, shall be used only for the purposes as set forth in S.C. Code Ann. Sec. 6-1-730, as the same may from time to time be amended.

Sec. 2-318. - Inspections, audits and administration.
For the purpose of enforcing this section, the director of the revenue collections division or other authorized agent of the city is empowered to enter upon the premises of any person or entity subject to this section and to make inspections, and examine and audit books and records. It shall be unlawful for any person or entity to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours' written notice. In the event an audit reveals that false information has been filed by the remitter, the cost of the audit shall be added to the correct amount of taxes determined to be due. The director of the revenue collections division or other authorized agent may make systematic inspections of all establishments within the city to ensure compliance with this section. The director of the revenue collections division shall administer the provisions of this section and make reasonable regulations relating to its administration.

Sec. 2-319. - Violations. It shall be a violation of this section to:
1. Fail to collect the municipal hospitality tax in connection with the sale of meals, food, and beverages;
2. Fail to remit to the city the taxes collected pursuant to this section on a monthly basis;
3. Provide false information on the form of return submitted to the city;
4. Fail to provide or make available books and records to the director of revenue or other authorized agent for the purpose of an audit upon twenty-four (24) hours' written notice; or,
5. Fail to comply with any other specific provision/requirement of this section.

Sec. 2-320. – Violations a misdemeanor.
The failure of an establishment subject to this section to remit to the city the taxes required by this section, as and when due, shall constitute a misdemeanor, punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment for up to thirty (30) days, or both. Notwithstanding the foregoing, any misrepresentation of the information required by return(s) as set forth in subsection (b) hereof or the failure to collect or timely remit to the city the taxes imposed by this section shall result in the suspension and/or revocation of the business license of the offending establishment, or the business license of the offending establishment shall not be renewed, as may be determined, after a hearing by the business license committee. At least ten (10) days' notice of such hearing shall be provided to the owner of the applicable establishment.

Sec. 2-321. - Severability.
If any section, phrase, sentence or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions herein.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER STANFORD, CITY CLERK

1st Reading: 2-26-19
2nd Reading: 3-7-19

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ORDINANCE 2019-24

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE VI, DIVISION 3, HOSPITALITY FEE, TO PROVIDE A CREDIT OF THE HOSPITALITY FEE AGAINST THE LEVY OF THE LOCAL ACCOMMODATIONS TAX AND THE LOCAL HOSPITALITY TAX, EFFECTIVE IMMEDIATELY WITH IMPLEMENTATION TO BE EFFECTIVE JULY 1, 2019.

IT IS HEREBY ORDAINED THAT Chapter 2, Article VI of the Code of Ordinances of the City of Myrtle Beach is hereby amended in Division 3, Hospitality Fee in Sections 2-273, with repealed language stricken through and amended language underlined.

DIVISION 3. - HOSPITALITY FEE

Sec. 2-260. - Authority.

This chapter is enacted pursuant to the authority of Title 5, Code of Laws of South Carolina (1976), including, without limitation, S.C. Code Ann. § 5-7-10 (Supp. 1992), and S.C. Code Ann. § 5-7-30 (Supp. 1992), which provide, in relevant part, that municipalities may adopt all ordinances which appear necessary and proper for the security, general welfare and convenience of the municipality and for the preservation of the general health, peace and order in the municipality and further that municipalities may establish uniform service charges. Under a program established by the Manager, a taxpayer who concurrently pays to the City both the Hospitality Fee provided herein and either (a) a Local Accommodations Tax under authority of South Carolina Code, Title 6, Chapter 1, Article 5, the Local Accommodations Tax Act, or (b) a Local Hospitality Tax under authority of the South Carolina Code, Title 6, Chapter 1, Article 7, the Local Hospitality Tax Act, or (c) both taxes, is entitled to a credit, to be in the amount of the Hospitality Fees paid hereunder, against the Local Hospitality Tax or the Local Accommodations Tax levied within the same time period.

Sec. 2-261. - Declaration of purpose and intent.

This division is enacted to preserve the general health, safety and welfare of the general public within the City of Myrtle Beach, South Carolina, by creating a uniform fee for the purpose of creating a fund to pay in whole or in part for the current and future preservation, maintenance, nourishment, renourishment and improvement of the beaches of the city, and those public facilities related to the use of the beach; public transportation improvements, including street construction, storm drainage, right-of-way acquisitions, median and right-of-way enhancements and landscaping, walkways and bikeways; public park facilities, public parking and capital facilities and equipment necessary for the provision of police, fire and other public safety activities.

Sec. 2-262. - Hospitality fee.

A uniform fee equal to one percent is hereby imposed on all gross proceeds derived from:

(1) The rental or charges for any rooms, campground spaces, lodgings or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp,

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motel, campground, residence or any place in which rooms, lodgings or sleeping accommodations are furnished to transients for a consideration. This fee shall not apply where the facilities consist of less than six sleeping rooms contained in a single building if the building is used as the owners primary place of abode. The gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person for a period of 90 continuous days are not considered proceeds from transients. This fee imposed by this subsection (1) shall not apply to additional guest charges as that term is defined in S.C. Code § 12-36-920(B).

(2) The sale of all food and beverages, served by a restaurant, hotel, motel or other food service facility within the city. In addition, the fee shall be imposed for all food and beverages prepared or modified by convenience stores or grocery stores within the city.

(3) Paid admissions to places of amusement within the city. Provided, however, that those places of admission which are specifically exempted from payment of the state license tax on admissions established in S.C. Code § 12-21-2420 shall also be exempt from this hospitality fee.

Sec. 2-263. - Payment of fee.

(a) Payment of the fee established herein shall be the liability of the consumer of the services or products described in section 2-263. The fee shall be paid at the time of delivery of the services or products to which the fee applies and shall be collected by the provider or seller of the service or products.

(b) The fees collected by the seller or provider of the services or products as required under section 2-263 shall be remitted to the city on a monthly basis along with such return or form as may be established by the city for such purpose.

(c) Fees and required reports shall be submitted to the city by the twentieth day of the month and shall cover sales of the previous month. Any fees not timely remitted shall be subject to a penalty of ten percent. The failure to collect from patrons the fee imposed by this division shall not relieve any establishment subject to the division from making the required remittance.

(d) Upon request from any person required to collect and remit the fees established herein, that person shall be permitted to remit fees every 28 days instead of monthly if that person remits sales tax returns to the state on a 28-day schedule. In such case, the 28-day period shall be the same as the period used for the state tax return and remittances shall be submitted to the city within 20 days following the period covered by the return.

(e) Notwithstanding the provisions of subsections (c) and (d) above, when the total tax for which any person is liable under this division does not exceed $100.00 for any month, a quarterly remittance, instead of a monthly remittance, may be made on or before the 20th day of the month following the end of the quarter for which the tax is due. Such quarterly payment shall only be authorized if the person also submits sales tax returns to the state on a quarterly basis.

(f) Any person violating any provision of this division shall be deemed guilty of an offense and shall be subject to punishment under section 1-9 upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent fees, penalties and costs provided for herein.

Sec. 2-264. - Hospitality fee account.

The revenue account, to be known as the city hospitality fee account, shall be established and all revenues received from the hospitality fee shall be deposited into this account. The principal and any accrued interest from this account shall be expended only as permitted in section 2-266 below.

Sec. 2-265. - Permitted uses of funds.

The city council of the city is hereby authorized to utilize the funds collected from the imposition of the hospitality fee for the following purposes:

(1) Nourishment, renourishment and maintenance of the beaches; dunes restoration, including sand fencing, the planting of sea grass or other vegetation useful in preserving the dune system within the territorial limits of the city.

(2) Acquisition and maintenance of public beach access.

(3) Capital improvements to the beaches and beach related facilities which include, but are not limited to, public beach parks, public parking, public access, dune walkovers, public bathhouses and restrooms.

(4) Transportation improvements including construction and resurfacing of streets, stormwater drainage, sidewalks, bikeways, landscaping and all associated costs including right-of-way acquisition and engineering design.

(5) The acquisition of land and the construction of passive and active parks and facilities associated with parks including playground equipment, sports facilities and community recreation buildings.

(6) Acquisition of property and the construction of facilities required for the provision of police and fire service; the acquisition of capital equipment for the provision of police, fire and other public safety services.

(7) The payment of bonded indebtedness required to provide the above referenced uses.

(8) Administrative costs associated with collection, accounting for and applying the hospitality fees.

Sec. 2-266. - Authorization for use.

Authorization to utilize revenues from the hospitality fee account shall be by the annual budget ordinance duly adopted by the city council of the city.

Sec. 2-267. - Severability.

If any section, phrase, sentence or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, phrase, sentence or portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining sections, phrases, sentences or portions thereof.

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Secs. 2-269 - Reserved.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER STANFORD, CITY CLERK

1st Reading: 2-26-19
2nd Reading: 3-7-19

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Exhibit P

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STATE OF SOUTH CAROLINA	**) AN ORDINANCE OF THE TOWN OF SURFSIDE BEACH**
	) TO REPEAL AND REPLACE ARTICLE VII of CHAPTER 4
COUNTY OF HORRY	**)**
	) (Local Accommodations Tax)
TOWN OF SURFSIDE BEACH	**)**

WHEREAS, the Mayor and Town Council of the Town of Surfside Beach duly assembled on this 5th day of March 2019; and

WHEREAS, the Town of Surfside Beach is authorized to collect taxes on short term transient rentals pursuant to §6-1-500, S.C. Code et. seq. ("the Local Accommodations Tax Act"); and

WHEREAS, the Town of Surfside Beach collects Local Accommodations Tax pursuant to its ordinance at a rate of one-half percent (0.5%); and

WHEREAS, the Town is authorized to collect up to three percent (3%) if authorized by ordinance of Town Council; and

WHEREAS, The Mayor and Town Council have determined tourism is a major industry in the Town of Surfside Beach, and that it is in the best interests of the Town of Surfside Beach to preserve the general welfare of the Town by making a uniform accommodations tax for the public benefit, consistent with state law;

NOW, THEREFORE, by the power and authority granted to the Surfside Beach Town Council by the State of South Carolina that Chapter 4, Article VII Local Accommodations is hereby replaced in its entirety as set forth hereinbelow:

Chapter 4- Business Licenses, Permits, and Regulations

DIVISION 2. - LOCAL ACCOMMODATIONS TAX

Sec. 4-111. - Tax imposed. A local accommodations tax of three (3) percent is created and is imposed on every person that is engaged in the business of furnishing accommodations to transients within the municipal boundaries of the Town of Surfside Beach. (ref. §6-1-500, S.C. Code, et. seq.)

(Ord. No. 01-0463, § 1, 9-11-01)

Sec. 4-112. - Tax further enumerated. A uniform tax equal to three (3) percent is hereby imposed on all gross proceeds derived from the rental or charges for any rooms, campground spaces, lodging, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration. The gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person for a period of ninety (90) continuous days are not considered proceeds from transients. This tax imposed by this section shall not apply to additional guest charges as that term is defined in S.C. Code 1976, § 12-36-920(B).

(Ord. No. 02-0473, § A, 3-26-02; Ord. No. 05-0573, 9-27-05)

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Sec. 4-113. - Payment of tax. Payment of the local accommodations tax shall be the liability of the transient(s) described in section 4-112. The local accommodations tax shall be paid at the time of delivery of the service to which the tax applies and shall be collected by the provider of the services, and shall be held in trust by the provider until remitted as provided herein.

(Ord. No. 02-0473, § B, 3-26-02)

Sec. 4-114. - Collection of tax; remitting tax to local governing body; frequency determined by estimated average amounts.

(1) The local accommodations tax imposed by this section is due and payable in monthly installments on or before the twentieth day of each month when the estimated amount of average tax is more than fifty dollars ($50.00) a month, on a quarterly basis when the estimated amount of the average tax is twenty-five dollars ($25.00) to fifty dollars ($50.00) a month, and on an annual basis when the estimated amount of average tax is less than twenty-five dollars ($25.00) a month. Every person liable for the fee shall make a true and correct return to the town in such form as it may prescribe and remit the fee therewith. A return is considered timely filed if the return is mailed and has a postmark dated on or before the date the return is required to be filed.

(2) An establishment shall be entitled to a two (2) percent discount on taxes collected for returns that are filed on or before the due date. Any taxes not timely remitted shall be subject to a penalty of five (5) percent per month. The failure to collect from patrons the tax imposed by this article shall not relieve any establishment subject to the article from making the required remittance.

(3) Any person violating any provision of this article shall be deemed guilty of an offense and shall be subject to punishment under section 1-16 upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent fees, penalties, and costs provided for herein.

(4) In case of a failure to make a true and correct return, or a failure to file the return, the town shall make a return upon such information as it may be able to obtain, assess the fee due thereon, and add a penalty of ten (10) percent, whereupon the town shall mail notice to the person liable for the tax and, in the case of failure to pay the tax within ten (10) days after the mailing of any such notice, the town shall add an additional penalty of ten (10) percent.

(Ord. No. 02-0473, § C, 3-26-02; Ord. No. 09-0649, 1-26-09)

Sec. 4-115. - Inspections and audit. For the purpose of enforcing the provisions of this section, the license inspector, or another authorized agent for the town, is empowered to enter upon the premises of any person subject to this section and to make inspections, examinations, and audits of books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty- four (24) hours written notice. In the event that an audit reveals that the remitter has filed false information, the costs of the audit shall be added to the correct amount of fees determined to be due, in addition to the penalties provided herein. The license inspector, or another authorized agent of the town, may make systematic inspections of all businesses within the town to ensure compliance with this section. Records of inspections shall not be deemed public records.

(Ord. No. 02-0473, § D, 3-26-02)

Sec. 4-116. - Penalties. It is a violation of this article to:

1. Fail to collect the local accommodations tax;
2. Fail to remit to the town any local accommodations tax collected;

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3. Fail to file a local accommodations tax return;
4. Knowingly provide false information on a local accommodations tax return;
5. Fail to provide books and records to the license inspector, or other authorized agent of the town, for inspection, examination, or audit after seventy-two (72) hours written notice.

(Ord. No. 02-0473, § E, 3-26-02)

Sec. 4-117. - Real estate agents required to report when rental property listing dropped. Real estate agents, brokers, corporations, or listing services required to remit taxes under this section must notify the appropriate local governmental entity or entities if rental property, previously listed by them, is dropped from their listings.

(Ord. No. 02-0473, § F, 3-26-02)

Sec. 4-118. - Administrative fee. The costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of one (1) percent.

(Ord. No. 02-0473, § G, 3-26-02)

Sec. 4-119. - Local accommodations tax account. The revenue account to be known as "Town of Surfside Beach Local Accommodations Tax Account," shall be established and all revenues received from the local accommodations tax shall be deposited into this account. The principal and any accrued interest from this account shall be expended only as permitted herein.

(Ord. No. 02-0473, § H, 3-26-02)

Sec. 4-120. - Permitted uses of funds. The town council is hereby authorized to utilize the funds collected from the imposition of the local accommodations tax for the following purposes in accordance with the provisions of South Carolina Code §6-1-530:

(1) Use of revenue from local accommodations tax.

a. Tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;

b. Tourism-related cultural, recreational, or historical facilities;

c. Beach access and renourishment;

d. Highways, roads, streets, and bridges providing access to tourist destinations;

e. Advertisements and promotions related to tourism development; or

f. Water and sewer infrastructure to serve tourism-related demand.

(2) In a county in which at least nine hundred thousand dollars ($900,000.00) in accommodations taxes is collected annually pursuant to S.C. Code § 12-36-920, the revenues of the local accommodations tax authorized in this article may also be used for the operation and maintenance of those items provided in subsection (1)a.—f., including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.

Sec. 4-121 Authorization for Use. Authorization to utilize revenues from the Local Accommodations Tax account shall be by the annual budget ordinance duly adopted by the town council.

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Sec. 4-122 Effective Date. This article shall become effective on July 1, 2019.

(Ord. No. 02-0473, § I, 3-26-02)

Secs. 4-123—4-140. - Reserved.

SEVERABILITY. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this article, which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

EFFECT OF SECTION HEADINGS. The headings or titles of the sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this ordinance.

REPEAL AND EFFECTIVE DATE. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed. This ordinance shall take effect immediately upon second reading by the Mayor and Town Council of the Town of Surfside Beach.

BE IT ORDERED AND ORDAINED by the Mayor and Town Council of the Town of Surfside Beach, South Carolina, in assembly and by the authority thereof, this 12th day of March 2019.

Surfside Beach Town Council

Robert F. Childs, III, Mayor

David L. Pellegrino, Mayor Pro Tempore

Bruce H. Dietrich, Town Council

Mark L. Johnson, Town Council

Ron Ott, Town Council

Debbie Scoles, Town Council

Randle M. Stevens, Town Council

Attest:
Debra E. Herrmann, CMC, Town Clerk

DRAFT

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Exhibit Q

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STATE OF SOUTH CAROLINA) AN ORDINANCE OF THE TOWN OF SURFSIDE BEACH
) TO REPEAL AND REPLACE ARTICLE VI OF CHAPTER 4
COUNTY OF HORRY)
) (Hospitality Tax)
TOWN OF SURFSIDE BEACH)

WHEREAS, the Mayor and Town Council of the Town of Surfside Beach duly assembled on this 5th day of March 2019; and

WHEREAS, the Town of Surfside Beach is authorized to collect taxes on prepared meals and beverages pursuant to §6-1-700, S.C. Code et. seq. ("the Local Hospitality Tax Act"); and

WHEREAS, the Town of Surfside Beach collects Hospitality Fees pursuant to its ordinance at a rate of one percent (1%) Mayor; and

WHEREAS, the Town is authorized to collect up to two percent (2%) if authorized by ordinance of Town Council; and

WHEREAS, The Mayor and Town Council have determined the hospitality industry is a major industry in the Town of Surfside Beach, where tourism is an economic engine for the Town, and that it is in the best interests of the Town of Surfside Beach to preserve the general welfare of the Town by making a uniform hospitality tax for the public benefit, consistent with state law;

NOW, THEREFORE, by the power and authority granted to the Surfside Beach Town Council by the State of South Carolina that Chapter 4, Article VI Hospitality Fee is hereby replaced in its entirety as set forth hereinbelow:

Chapter 4- Business Licenses, Permits, and Regulations

ARTICLE VI. - HOSPITALITY TAX

Sec. 4-87. - Authority.

This article is enacted pursuant to the authority of Title 6, Article 7 ("the Local Hospitality Tax Act") and Title 5, S.C. Code 1976, including, without limitation, S.C. Code 1976, §§ 5-7-10 and 5-7-30, which provide, in relevant part, that municipalities may adopt all ordinances which appear necessary and proper for the security, general welfare and convenience of the municipality and for the preservation of the general health, peace and order in the municipality and further that municipalities may establish uniform service charges.

(Ord. No. 96-0381, 5-28-96; Ord. No. 05-0573, 9-27-05; Ord. No. 09-0654, 2-24-09)

Sec. 4-88. - Declaration of purpose and intent.

This article is enacted to preserve the general health, safety and welfare of the general

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public within the town by collecting a uniform hospitality tax to fund tourism- related projects and maintenance, infrastructure, access, and tourism-related public services, consistent with state law.

(Ord. No. 96-0381, 5-28-96; Ord. No. 09-0654, 2-24-09)

Sec. 4-89. - Hospitality Tax.

A uniform tax equal to two (2) percent is hereby imposed on all gross proceeds derived from:

(1) The sale of all food and beverages, served by a restaurant, hotel, motel, or other food service facility within the town. In addition, the fee shall be imposed for all food and beverages prepared or modified by convenience stores or grocery stores including, but not limited to, fishing pier establishments, or other general merchandise establishments where such food or beverage is provided for immediate consumption on or off of the premises.

(2) Paid admissions to places of amusement within the town; provided, however, that those places of admission which are specifically exempted from payment of the state license tax on admissions established in S.C. Code 1976, § 12-21-2420 shall also be exempt from this hospitality tax.

(Ord. No. 96-0381, 5-28-96; Ord. No. 98-0414, 4-14-98; Ord. No. 05-0573, 9-27-05; Ord. No. 09-0654, 2-24-09)

Sec. 4-90. - Payment of tax.

(a) Payment of the tax established herein shall be the liability of the consumer of the services or products described in section 4-89. The tax shall be paid at the time of delivery of the services or products to which the tax applies and shall be collected by the provider or seller of the service or products.

(b) The taxes collected by the seller or provider of the services or products as required under section 4-89 shall be remitted to the town along with such return or forms as may be established by the town for such purpose.

(c) Taxes and required reports shall be submitted to the town on the same basis as sales tax returns are required to be submitted to the state department of revenue. An establishment shall be entitled to a two (2) percent discount on taxes collected for returns that are filed on or before the due date. Any taxes not timely remitted shall be subject to a penalty of five (5) percent per month. The failure to collect from patrons the tax imposed by this article shall not relieve any establishment subject to the article from making the required remittance.

(d) Any person violating any provision of this article shall be deemed guilty of an offense and shall be subject to punishment under section 1-16 upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent fees, penalties, and costs provided for herein.

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(Ord. No. 96-0381, 5-28-96; Ord. No. 98-0414, 4-14-98; Ord. No. 09-0654, 2-24-09)

Sec. 4-91. - Hospitality Tax account.

The revenue account, to be known as the Town of Surfside Beach Hospitality Tax Account, shall be established and all revenues received from the hospitality tax shall be deposited into this account. The principal and any accrued interest from this account shall be expended as permitted in section 4-92 below.

(Ord. No. 96-0381, 5-28-96; Ord. No. 09-0654, 2-24-09)

Sec. 4-92. - Permitted uses of funds.

The town council is hereby authorized to utilize the funds collected from the imposition of the hospitality tax for the following purposes in accordance with the provisions of South Carolina Code §6-1-730:

(1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;

(2) tourism-related cultural, recreational, or historic facilities;

(3) beach access and renourishment;

(4) highways, roads, streets, and bridges providing access to tourist destinations;

(5) advertisements and promotions related to tourism development;

(6) water and sewer infrastructure to serve tourism-related demand; or

(7) operation and maintenance of those items provided in (1) through (6) including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.

(8) The payment of bonded indebtedness required to provide the above-referenced uses.

(Ord. No. 96-0381, 5-28-96; Ord. No. 09-0654, 2-24-09)
Sec. 4-93. - Authorization for use.

Authorization to utilize revenues from the hospitality tax account shall be by the annual budget ordinance, duly adopted by the town.

(Ord. No. 96-0381, 5-28-96; Ord. No. 09-0654, 2-24-09)

Sec. 4-94. - Effective Date

This article shall become effective on July 1, 2019.

APPROVED

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Secs. 4-95—4-100. - Reserved.

SEVERABILITY. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this article, which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

EFFECT OF SECTION HEADINGS. The headings or titles of the sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this ordinance.

REPEAL AND EFFECTIVE DATE. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed. This ordinance shall take effect immediately upon second reading by the Mayor and Town Council of the Town of Surfside Beach.

BE IT ORDERED AND ORDAINED by the Mayor and Town Council of the Town of Surfside Beach, South Carolina, in assembly and by the authority thereof, this 12th of March 2019.

ACCEPTED

VOTE:	Yes	No	**Surfside Beach Town Council**
	☐	☐	Robert F. Childs, III, Mayor
	☐	☐	David L. Pellegrino, Mayor Pro Tempore
	☐	☐	Bruce H. Dietrich, Town Council
	☐	☐	Mark L. Johnson, Town Council
	☐	☐	Ron Ott, Town Council
	☐	☐	Debbie Scoles, Town Council
	☐	☐	Randle M. Stevens, Town Council

Attest:

Debra E. Herrmann, CMC, Town Clerk

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiffs, vs. Horry County, Defendant.	)	CIVIL ACTION NO. 2019-CP-26-01732 **AFFIDAVIT OF MICHAEL W. SHELTON**

Personally appeared before me, Michael W. Shelton, who being duly sworn, affirms and swears as follows:

1. I am in excess of eighteen years of age and competent to give this affidavit.

2. I am currently Chief Financial Officer of the City of Myrtle Beach and have served as such since February 15, 2015. Immediately prior to serving as Chief Financial Officer, I served as the City's Director of Budget and Evaluation for twenty-six years. Prior to that, I served as the City's Director of Budget and Financial Management. In various roles, all involving the City's finances, I have worked for the City for more than thirty-three years.

3. In my position as Chief Financial Officer of the City, I am aware of the City's purchases of accommodations, prepared food and beverages from retailers situated within the City's corporate limits and the imposition of fees arising therefrom. The City purchases accommodations from retailers within its corporate limits to provide temporary housing for persons travelling to the City to do work with or for the City, including persons involved in the tourism industry. In addition, the City purchases prepared food and beverages from retailers within its corporate limits for persons travelling to the City to conduct business with, or on behalf of the

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City as well as for consumption by City personnel on appropriate occasions, including meals consumed during normal and extra working hours.

4. Since January 1, 2017, the City has purchased accommodations and prepared food and beverage from retailers within its corporate limits.

5. On all such purchases, the City has paid to the retailer the 1.5% hospitality fee imposed by Horry County within the City's corporate limits.

6. Unless Horry County is enjoined to cease imposing and collecting the 1.5% hospitality fee within the City's corporate limits, the City will be forced to continue paying such fee.

7. The City has not consented or agreed to the imposition and collection of the Horry County 1.5% hospitality fee on any retail transaction within the City's corporate limits for any period of time on or after January 1, 2017.

8. The City's consent and agreement to the imposition and collection of the Horry County 1.5% hospitality fee within the City's corporate limits prior to January 1, 2017, was limited (a) in scope to a fee the proceeds of which were to be used solely for implementation of the comprehensive road plan under the September 1996 Road Improvement and Development Effort (RIDE) project and (b) in duration to the period ending twenty years following the effective date of Horry County Ordinance No. 105-96, which was January 1, 1997.

9. The City, on March 7, 2019, adopted Ordinance No. 2019-022 imposing a 3% accommodations tax pursuant to S.C. Code Ann. §§6-1-500, et seq., Ordinance No. 2019-023 imposing a 2% hospitality tax pursuant to S.C. Code Ann. §§6-1-700, et seq., and Ordinance No. 2019-024 providing for a credit against these accommodations and hospitality taxes for any City hospitality fees paid under other City ordinances. Although the City has not consented or agreed

to the imposition and collection of the Horry County 1.5% hospitality fee on any retail transaction within the City's corporate limits on or after January 1, 2017, Horry County has imposed and collected, and I am informed and believe that Horry County intends to continue imposing and collecting, a 1.5% hospitality fee which the City will be required to pay on purchases of accommodations and prepared food and beverages within the City's corporate limits unless Horry County is enjoined from doing so.

FURTHER THE AFFIANT SAYETH NAUGHT.

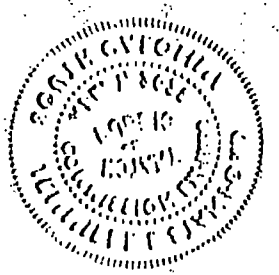
Michael W. Shelton

Sworn to and subscribed before me this
3rd day of May, 2019.

Notary Public for South Carolina

My Commission Expires: April 1, 2023
[NOTARIAL SEAL]

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STATE OF SOUTH CAROLINA,	)	IN THE CIRCUIT COURT
	)	
COUNTY OF HORRY	)	**MOTION FOR CASE ASSIGNMENT TO THE BUSINESS COURT PROGRAM**
	)	
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs,	)	
Plaintiffs	)	CASE NO. 2019-CP-26-01732
vs.	)	
	)	
Horry County,	)	
	)	
	)	
Defendant.	)	

1. As counsel for a party who has appeared in this action, we move for an order of the Chief Business Court Judge assigning this case to the Business Court Program of the South Carolina Circuit Courts. We certify that as of the date of this Motion, no more than 180 days have passed since the commencement of this action. In addition, we certify that all parties have been notified of this request.

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Program.
(Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit.)

- ☐ Title 33—South Carolina Business Corporation Act of 1988;
- ☐ Title 35—South Carolina Uniform Securities Act of 2005;
- ☐ Title 36, Chapter 8—South Carolina Uniform Commercial Code: Investment Securities;
- ☐ Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;
- ☐ Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
- ☐ Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
- ☒ Other Appropriate Matter determined by the Chief Justice. (See attached.)

3. Indicate whether the non-moving party or parties consents, ☐ does not oppose, ☒ opposes; ☐ position on assignment is unknown.

Non-Moving Party Signature (if applicable)

Attorney Name: Henrietta U. Golding, Esq.
Firm: Burr Forman McNair
Contact Information: 2411 Oak St, Ste 206
Myrtle Beach, SC 29577
hgolding@burr.com
843-443-3003
SC Bar # 2173
Location: Myrtle Beach, South Carolina
Date: May __, 2019

Attorney for Horry County

s/John M. S. Hoefer
Signature

Attorney Name: John M. S. Hoefer
Firm: Willoughby & Hoefer, P.A.
Contact Information: Post Office Box 8416
Columbia, SC 29202-8416
jhoefer@willoughybyhoefer.com
803-252-3300
SC Bar # 2549
Location: Columbia, South Carolina
Date: May 3, 2019

Attorneys for City of Myrtle Beach

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ATTACHMENT TO MOTION OF PLAINTIFF CITY OF MYRTLE FOR ASSIGNMENT OF CIVIL ACTION NO. 2019-CP-26-01732 TO THE BUSINESS COURT PROGRAM

Description of Claims

The City of Myrtle Beach ("City") has brought a civil action, on behalf of itself and a proposed class of similarly situated plaintiffs,[1] against Horry County ("County") seeking declaratory, permanent injunctive, and other relief arising out of the County's collection of a 1.5% fee on the sale of accommodations, prepared food and beverage, and amusements (the "Hospitality Fee") within the City's corporate limits from and after January 1, 2017. The ordinance imposing the Hospitality Fee was adopted by the County in 1996 for an express duration of 20 years, and only with the required consent of the respective municipalities within the County, which consent was required by law and obtained in order to allow the County to borrow monies from the South Carolina State Infrastructure Bank for the limited purpose of funding a comprehensive road plan in Horry County known as the "RIDE Project."

The City contends that the County's ordinance under which the Hospitality Fee is imposed and collected is, and has been since January 1, 2017, invalid as a matter of law because, *inter alia*, (a) this ordinance terminated by its own terms on that date, following the expiration of the express 20-year duration, (b) the County neither sought nor obtained the City's consent to continue to collect the Hospitality Fee within its corporate limits after January 1, 2017, and, on information and belief, the consent of the other municipalities within Horry County was neither sought nor obtained by the County for same, and (c) the County's collection, retention, and use of revenues that have continued to be generated thereby are beyond the scope of use provided for in this ordinance (i.e., the RIDE Project), and have been unjustly retained and expended by the County.

In addition to the declaratory, permanent injunctive, and other equitable relief (which consists of a return of monies to the persons or entities who have paid the illegally-collected Hospitality Fee on or after January 1, 2017) that is being sought, the City will also seek preliminary injunctive relief precluding the County from continuing to collect the Hospitality Fee within the corporate limits of the City (and any other municipality within Horry County as members of the proposed plaintiff class) during the pendency of this litigation.

[1] The Complaint defines the proposed class as "[a]ll individuals, corporations, companies, associations, firms, partnerships, societies, joint stock companies, political subdivisions, counties, municipalities, state agencies, and instrumentalities of the State of South Carolina who have paid 1.5% fee under Section 19-6(a) of the Code of Ordinances of Horry County, South Carolina, on or after January 1, 2017, and/or are subject to paying such 1.5% fee on a going forward basis, for purchases of covered accommodations, food, beverage, and amusements within the Municipalities situated in Horry County."

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Justification for Assignment

The action brought by the City is unusual in a number of ways which justify its assignment to the Business Court.

First, the nature of this action is unique as it involves two (and potentially as many as nine[2]) political subdivisions and an unknown number of individuals and other entities in a class action. This by itself warrants an assignment to a single judge which an exercise of jurisdiction by the Business Court would achieve.

Second, this action challenges the ability of the County to collect a fee based upon certain retail sales within the corporate limits of municipalities in the County under an ordinance which the City contends is invalid. The County currently collects approximately $29.1 Million annually from the Hospitality Fee imposed within the limits of Horry County municipalities. The City asserts that the County has lacked the authority to collect those funds since January 1, 2017. According to an April 2, 2019, resolution adopted by the County's governing body, Horry County Council (Resolution R-36-19), a copy of which (along with its two attachments) is attached hereto as Exhibit A, the County continues to collect the Hospitality Fee and has proposed to continue collecting it despite this lawsuit. Furthermore, it has earmarked these funds for a number of uses besides the RIDE Project, which now has been paid in full. *Id.* Therefore, this action will have a significant financial impact on a going forward basis on as many as nine political subdivisions, the residents thereof, the affected retail businesses therein, and payers of the Hospitality Fee from across the country and beyond. In addition, the action will resolve the legality of the County's collection and retention of the Hospitality Fee since January 1, 2017, resulting alternatively in a windfall to the County, or the creation of a constructive trust facilitating the return of those illegally-collected fees to the respective payors.

Third, members of the proposed class face imposition of the unlawful fee and proper local taxes on the same transaction if the Hospitality Fee is allowed to stand. The City and several other municipalities in Horry County (who are included in the proposed Plaintiff class) have enacted proper accommodations and hospitality taxes under Chapters 5 and 7 of Title 6. These taxes cover the same sales of accommodations and prepared food and beverage as the Hospitality Fee. This case thus concerns the rights of multiple municipalities to enact lawful taxes within their corporate limits versus Horry County's unilateral effort to impose an illegal fee inside a municipality without consent.

Fourth, and quite apart from the legal and financial interests of the City and the County, municipal residents have an interest in having input into the election of **all** persons[3] who make

[2] Other municipalities within the proposed plaintiff class are the Town of Atlantic Beach, the Town of Aynor, the Town of Briarcliffe Acres, the City of Conway, the City of Loris, the City of North Myrtle Beach, and the Town of Surfside Beach.

[3] Because eleven of the twelve members of Horry County Council are elected by districts which cover various parts but not all the County area, some of them may be elected by residents of a given municipality and others may not. This can be seen in the County's on-line district map.

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decisions regarding the adoption of ordinances under which revenues are generated from the sale of accommodations, prepared food and beverages, and amusements within their municipalities and the use of such revenues. The County was previously required to obtain the consent of all of the municipalities in Horry County to the imposition of the Hospitality Fee within their corporate limits. The consent given by these municipalities was expressly limited to a twenty (20) year term and a single purpose, i.e., support of the RIDE Project. Now, the County desires to unilaterally extend that fee in perpetuity and to fund projects other than the RIDE Project. Continued enforcement of the County's ordinance imposing the Hospitality Fee deprives the residents of the City (and other municipalities) of their rights by allowing members of Horry County council who are not elected by residents of one or more of the municipalities to make decisions for those citizens.

The City therefore respectfully submits that an assignment of this action to the Business Court is appropriate and so moves.

See https://hcg.maps.arcgis.com/home/webmap/viewer.html?webmap=02595aede8594611b340ba237b59bdec. By contrast, all members of the governing body of the eight municipalities are elected only by the residents of those municipalities.

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Horry County
SOUTH CAROLINA
Committed to Excellence

Horry County Council

Johnny Gardner
Chairman

Harold Worley
District 1
Vice Chairman

Bill Howard
District 2

Dennis DiSabato
District 3

Gary Loftus
District 4

Tyler Servant
District 5

Cam Crawford
District 6

Orton Bellamy
District 7

Johnny Vaught
District 8

W. Paul Prince
District 9

Danny Hardee
District 10

Al Allen
District 11

Patricia S. Hartley
Clerk to Council

(843) 915-5120
(843) 915-6120 Fax

April 3, 2019 **VIA EMAIL**

TO: Mayor Brenda Bethune
Mayor Marilyn Hatley
Mayor Barbara Blaine Bellamy
Mayor Bob Childs
Mayor John Gardner
Mayor Pro Tempore Todd Harrelson
Mayor Jake Evans

FROM: Johnny Gardner, Horry County Chairman

As you know by now, Horry County Council at its April 2nd meeting discussed a proposed allocation of hospitality fee revenues and adopted the attached Resolution and Exhibits. I am forwarding this to you for your consideration. County Council feels that this represents a good-faith offer to settle any disputes on the allocation of these fees.

I am willing to meet with you, prior to the County Council meeting on April 16, to discuss this in hopes of reaching a satisfactory resolution. I would ask that you contact me, or Pat Hartley, our Clerk, as soon as possible with dates/times that you would be available to meet. I hope that you agree with me that this is a fair and equitable resolution for all jurisdictions and I sincerely look forward to meeting with you and working together to benefit all of our citizens.

It is the intent of County Council to have this resolved by the April 16th meeting. Please let me know if you require any additional information.

Warm regards,

ELECTRONICALLY FILED - 2019 May 03 4:12 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

COUNTY OF HORRY)
) RESOLUTION R-36-19
STATE OF SOUTH CAROLINA)

A RESOLUTION ENDORSING HORRY COUNTY'S 1.5% COUNTYWIDE HOSPITALITY FEE, ADDRESSING THE COST OF PUBLIC SAFETY RESULTING FROM TOURISM, AND PROVIDING A GOOD FAITH OFFER TO THE MUNICIPALITIES FOR THE CONTINUED USE OF SUCH HOSPITALITY FEE

WHEREAS, Horry County imposed a 1.5% countywide Hospitality Fee in 1996 on prepared meals, accommodations, and admissions (subsequently including car rentals) to undertake a comprehensive countywide road construction program known as RIDE I, the proceeds from which were used to repay loans with the State Infrastructure Bank (SIB) used to finance RIDE I; and

WHEREAS, Horry County amended the 1996 ordinance several times, as recently as 2017, without objection from the municipalities in Horry County, to include extensions of the original sunset date; and

WHEREAS, Horry County repaid the final loan with the SIB on February 15, 2019, affording an opportunity to provide funding to address the construction of I-73 and offset the increasing costs of public safety resulting from tourism; and

WHEREAS, upon repayment, defeasance of the SIB loan resulted in a net balance in the 1.5 % Hospitality Fee account of $ 9,681,738; and

WHEREAS, the County has continued to collect the 1.5% Hospitality Fee; and

WHEREAS, the City of Myrtle Beach, the City of North Myrtle Beach, and the Town of Surfside Beach have passed ordinances imposing a Hospitality Tax and an Accommodations Tax pursuant to current State law, and have initiated a law suit against the County to prevent it from collecting the 1.5% Hospitality Fee within their corporate limits; and

WHEREAS, the actions of the City of Myrtle Beach, the City of North Myrtle Beach, and the Town of Surfside Beach grievously threaten the local funding for I-73 and would shrink the total tourism-related funds collected by all entities by approximately $13,561,992 annually as noted in Attachment A hereto; and

WHEREAS, County Council believes that Horry County and its municipalities are stronger by preserving the 1.5% Hospitality Fee as opposed to current legislative and judicial actions; and that the community's priorities can be advanced by working together; and

WHEREAS, County Council desires to make a good faith offer to the municipalities that advances the construction of I-73 and allows each community to address the escalating cost of public safety resulting from the growing tourism industry in a manner that preserves the 1.5% countywide Hospitality Fee for the benefit of both incorporated and unincorporated residents, businesses, and visitors; and

WHEREAS, County Council's offer includes preserving the 1.5% countywide Hospitality Fee and, effective for FY2020, dedication of $18 million toward the construction of I-73, which would allow for a borrowing of approximately $275 million over 30 years for the project based on current interest rates, and allocation of the remaining approximately $24.5 million as follows: approximately $9.8 million to the County, and the remaining approximately $14.7 million to the municipalities in proportion to where the revenue is collected, to allow each community to address the escalating costs of tourism. In addition, the net balance in the 1.5% Hospitality Fee account after defeasance of the SIB loan and amounts collected through June 30, 2019 are to be allocated to the County and municipalities in proportion to where the revenue was collected, and in future years annual revenue above the FY2020 baseline is to be allocated in like manner.

NOW, THEREFORE, BE IT RESOLVED that Horry County Council authorizes the County Council Chairman to convey this Resolution and good faith offer, more fully described in Attachment B hereto, requesting that they respond in kind.

AND IT IS SO RESOLVED this 2nd day of April, 2019.

HORRY COUNTY COUNCIL

Johnny Gardner, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Orton Bellamy, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

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Attachment A

Horry County, South Carolina
FY2018 Hospitality & Accommodations Revenue Impact Analysis

	Revenues				
	Current[1]	%	No 1.5%[2]	%	Variance
City of Myrtle Beach	14,607,215	19.7%	27,122,212	44.9%	12,514,997
Horry	9,496,938	12.8%	17,503,226	29.0%	8,006,288
North Myrtle Beach	6,116,010	8.3%	11,592,816	19.2%	5,476,806
Surfside	1,047,224	1.4%	2,022,680	3.3%	975,456
Conway	869,233	1.2%	1,683,512	2.8%	814,279
Aynor	82,228	0.1%	164,456	0.3%	82,228
Loris	65,163	0.1%	260,653	0.4%	195,490
Atlantic Beach	33,539	0.0%	51,887	0.1%	18,348
1.5% Hospitality & 2.5% Rental Car	41,645,884	56.3%	-	0.0%	(41,645,884)
	73,963,435	100.0%	60,401,442	100.0%	(13,561,992)

Analysis of Variance	
RIDE Admissions	(3,287,248)
County Admissions	(745,325)
Municipal Admissions	(1,436,667)
Total Admissions	(5,469,240)
Rental Car 2.5%	(1,473,717)
RIDE Food/Beverage 0.5%	(6,619,035)
	(13,561,992)

[1] Current is based on County 1.5% Hospitality & 2.5% Rental Car Collections by Municipality and Analysis of Municipal Financial Reports.
[2] No 1.5% is calculated at 2% Food/Beverage, 3% Accommodations, 0% Admissions and 0% Car Rental.

Prepared by Horry County Finance, March 28, 2019

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Attachment B

Horry County, South Carolina
FY2020 Hospitality Revenue Allocation Analysis

Projected Revenue FY2020	42,488,568
Debt Service	18,000,000
County Portion	9,795,427
Balance	14,693,141

	Projected Revenues - FY2020		
	Projected[1]	%	Allocation
City of Myrtle Beach	18,594,121	63.6%	9,345,750
North Myrtle Beach	7,704,558	26.4%	3,872,454
Surfside	1,195,839	4.1%	601,051
Conway	1,363,457	4.7%	685,299
Aynor	125,838	0.4%	63,248
Loris	199,445	0.7%	100,245
Atlantic Beach	49,929	0.2%	25,095
	29,233,187	100.0%	14,693,141

	Revenue through June 30, 2019			
		RIDE		
	Allocation %[2]	Balance[3]	Collections[4]	Total
City of Myrtle Beach	43.8%	4,236,985	7,862,410	12,099,395
Horry County	31.2%	3,020,463	5,604,957	8,625,419
North Myrtle Beach	18.1%	1,755,614	3,257,825	5,013,439
Surfside	2.8%	272,492	505,653	778,145
Conway	3.2%	310,687	576,529	887,216
Aynor	0.3%	28,674	53,210	81,884
Loris	0.5%	45,447	84,334	129,781
Atlantic Beach	0.1%	11,377	21,112	32,489
	100.0%	9,681,738	17,966,031	27,647,769

[1] Projected is based on County 1.5% Hospitality & 2.5% Rental Car estimated revenues for FY2018.

[2] Allocation % is based on County 1.5% Hospitality & 2.5% Rental Car revenues for Fiscal Year 2018.

[3] RIDE Balance funds remaining at the repayment of the SIB Loan on February 15, 2019.

[4] FY2019 Collections from February 15, 2019 until June 30, 2019.

Use of Hospitality revenues exclusely for purposes set forth at Section 6-1-530 and 6-1-730 of the Code of Laws of South Carolina 1976, as amended.

In future years, all annual revenue above the FY2020 baseline will be allocated to the County and municipalities in proportion to where the revenue was collected.

Prepared by Horry County Finance, April 3, 2019

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	**HORRY COUNTY'S**
Plaintiff,	)	**MOTION FOR**
	)	**PRELIMINARY INJUNCTION**
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	
	)	

Horry County ("County") respectfully moves, pursuant to Rule 65, SCRCP, for a preliminary injunction enjoining the City of Myrtle Beach ("City") from collecting or enforcing any tax or fee imposed in the City's newly enacted Ordinances 2019-22 and 2019-23.

A preliminary injunction requires a party to show three elements: "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

Here, the County can show all three. The County is likely to succeed on the merits because it validly extended its Hospitality Fee (the center of this dispute). Contrary to the City's argument, the County did not need, either by terms of the ordinance that adopted the Hospitality Fee or state law, the City's consent for the County to extend the period for which that fee would be collected.

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The County will face an irreparable harm for which it has no adequate remedy at law if the injunction is not granted. If the City is allowed to collect its new taxes, taxpayers will be required to pay more in local accommodations or hospitality taxes than permitted under state law, pursuant to S.C. Code §§ 6-1-520(A) and 6-1-720(A). This will create significant confusion, uncertainty with respect to whether the County will be able maintain its budgeted expenses, and public distrust as well as more litigation, all of which will be virtually impossible to undo later on.

This motion is based on the South Carolina Rules of Civil Procedure, the South Carolina Constitution, the South Carolina Code, applicable case law, the attached memorandum of law and exhibits, and any other materials that may be submitted to the Court.

In accordance with Rule 11, SCRCP, the County's counsel certify that consultation would serve no useful purpose.

Respectfully submitted:

Burr & Forman LLP

s/Henrietta U. Golding

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Attorneys for Defendant

Myrtle Beach, South Carolina
Dated: May 14, 2019

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	**MEMORANDUM**
Plaintiff,	)	**IN OPPOSITION TO**
	)	**PLAINTIFF'S MOTION FOR**
vs.	)	**PRELIMINARY INJUNCTION**
	)	**AND**
Horry County,	)	**IN SUPPORT OF**
	)	**DEFENDANT'S MOTION FOR**
Defendant.	)	**PRELIMINARY INJUNCTION**
	)	

Horry County ("County") respectfully submits this memorandum in support of its motion for a preliminary injunction and in opposition to the City of Myrtle Beach's motion for a preliminary injunction.

Introduction

The County adopted a Hospitality Fee in the mid-1990s to raise revenue for infrastructure development. Originally scheduled to expire in 2017, the County extended the Hospitality Fee to continue building the roads and infrastructure that the area's continued economic growth requires.

The City of Myrtle Beach ("City") insists that the County could not extend that fee without its consent and that the County is now "illegally" collecting it. In fact, knowing full well that the County's Hospitality Fee was in place, the City rolled the dice, adopted its own local accommodations and hospitality tax in March 2019, and (essentially at the same time) filed this lawsuit asking the Court to declare that the County's Hospitality Fee is no longer in effect.

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Now, both parties have cross-moved for preliminary injunctions. The City seeks to have the Court enjoin the collection of the County's Hospitality Fee, while the County asks the Court to enjoin the collection of the City's new taxes.

The Court should grant the County's motion and deny the City's. The City's entire claim is premised on the incorrect assertion that its consent was required to extend the Hospitality Fee. Neither state law nor the ordinance that adopted the Hospitality Fee requires the City's consent. Therefore, the City's claims have no merit, and the County's Hospitality Fee remains valid.

Factual Background

Horry County needs to fund road construction

As was the case with many parts of South Carolina, Horry County faced serious problems with its roads in the mid-1990s, including with such major roads at U.S. 17, U.S. 501, U.S. 378, S.C. 544, and S.C. 90. The County road system is critical in providing necessary access for residents, visitors, and workers to and from destinations throughout the County, including the City. The County sought to raise money to improve its road system by adopting a local option sales tax, but Horry County voters rejected that referendum by a margin of more than two-to-one in 1996. *See* RIDE Committee Report (Sept. 1996) (attached as Ex. A).

Forced to look for alternatives for the County road system, the chairman of the State Department of Transportation, at Governor Beasley's direction, formed a committee to study the County's needs and make recommendations. One

recommendation was for the County to adopt a hospitality fee to finance infrastructure development.

The County adopts Ordinance 105-96 to raise revenue for roads

That is just what the County did. In response to the RIDE Report's recommendations, the County adopted Ordinance 105-96 on October 15, 1996. *See* County Ord. 105-96 (attached as Ex. B). This ordinance adopted a 1.5 percent Hospitality Fee throughout the County on proceeds from lodging, food and beverage sales, and admissions to places of amusement, with an additional 1 percent fee on the same transactions in unincorporated areas.[1] The ordinance provided that the fee start to be collected on January 1, 1997. County Ord. 105-96, § 4. It was originally intended to last for twenty years. County Ord. 105-96 § 1(H).

Before Ordinance 105-96 was adopted, the City "strongly and unanimously . . . *urge[d]*" the County to adopt this ordinance "to implement the Ride Committee Report." City Resolution of Oct. 8, 1996 (attached as Ex. C) (emphasis added).

With Ordinance 105-96 in place, the County sought funding from the State Transportation Infrastructure Bank. *See* Application (Oct. 1997); Revised Application (Nov. 1997) (attached collectively as Ex. D). With this additional source of revenue to combine with the Hospitality Fee, the County was able to undertake substantial and necessary road projects.

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[1] In its current form, the Hospitality Fee includes these items, as well as an additional 1.5 percent fee (instead of an additional 1 percent fee) on accommodations in unincorporated areas, which was added by County Ordinance 111-01 in 2001, and a 2.5 percent countywide fee on rental cars, which was added by County Ordinance 80-01 in 2001.

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The County extends the Hospitality Fee in 2004

Ordinance 105-96 was amended in 2004. *See* County Ord. 11-04 (attached as Ex. E).[2] In this Ordinance, the County extended the 1.5 percent Hospitality Fee "for an additional period not to exceed five years." The City never objected to this ordinance in the fifteen years since it was adopted.

The County adopts Ordinances 93-16 and 32-17

In 2016 and 2017, the County adopted two ordinances that impacted Ordinance 105-96.

The first was Ordinance 93-16. *See* County Ord. 93-16 (attached as Ex. G). In that ordinance, the County recognized that the Hospitality Fee, in addition to a local accommodations tax, was important for defraying costs related to transportation infrastructure needed for tourism, as about 18 million tourists visit the County (and, of course, its municipalities) every year. Among other things, Ordinance 93-16 addressed the termination date for the Hospitality Fee, confirming that it was January 1, 2022, the five-year period enacted by Ordinance 11-04.

The second was Ordinance 32-17. *See* County Ord. 32-17 (attached as Ex. H). This ordinance removed the January 1, 2022 sunset provision for the Hospitality Fee, which meant that the fee would "continue indefinitely in the absence of further action by County Council." In addition to determining other eligible uses for the Hospitality

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[2] Ordinance 105-96 was also amended on various occasions in the five years after its adoption, but none of these amendments is essential to the issues in this litigation. *See* County Ord. 7-97; County Ord. 76-97; County Ord. 80-01; County Ord. 111-01 (attached collectively as Ex. F).

Fee, the County intends to use $30 million annually to construct I-73. *See* County Resolutions 82-18, 84-18 (attached collectively as Ex. I).

The City adopts its own accommodations fee and hospitality tax

In March 2019, the City adopted two new local taxes. One was an accommodations tax. *See* City Ordinance 2019-22 (attached as Ex. J). This ordinance imposes a 3 percent tax on lodging, which is the maximum cumulative tax rate for county and municipal local accommodations taxes under S.C. Code § 6-1-540.

The other is a hospitality tax. *See* City Ordinance 2019-23 (attached as Ex. K). This ordinance also imposes the maximum cumulative tax rate of 2 percent for a county and municipal local hospitality tax under S.C. Code § 6-1-720.

The City sues the County

Having passed these ordinances seeking to collect the maximum possible amount allowed under state law for local accommodations and hospitality taxes for itself, the City, at the same time, sued the County over its Hospitality Fee. The City seeks a declaration that Ordinance 105-96 has expired and was not properly extended, for injunctive relief against the County collecting the Hospitality Fee, and for a constructive trust put on the Hospitality Fee that has been collected since January 1, 2017. The County denied that the City is entitled to any of the relief it seeks.

Now, the parties have cross-moved for preliminary injunctions. The City seeks an injunction to stop the County from collecting the Hospitality Fee, and the County seeks an injunction to prevent the City from collecting the new local accommodations and hospitality taxes imposed in City Ordinances 2019-22 and 2019-23.

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Legal Standard

A litigant must meet three elements to obtain a preliminary injunction: "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). The decision to grant a preliminary injunction is in the sound discretion of the trial court. *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

Argument

I. The County—not the City—is likely to succeed on the merits.

The City cannot carry its burden on this first element. No state constitutional provision or statute precludes the County from amending Ordinance 105-96, which the County lawfully enacted twenty-three years ago. Because the County legally extended the Hospitality Fee, the City's new taxes violate state law. Therefore the County is likely to succeed on the merits.

A. The County can extend the Hospitality Fee without the City's consent.

The crux of the City's argument is that the Hospitality Fee in Ordinance 105-96 could not be extended without the City's consent, which the City never gave. This argument, however, is flawed in multiple ways.

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1. Ordinance 105-96 does not require the City's consent to be amended.

The City's first attack on the extension of Ordinance 105-96 is that the ordinance, on its face, requires the City's consent for any amendment. The City bases this contention on the ordinance's language that the Hospitality Fee would "be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County," Pl.'s Mem. 10 (quoting County Ord. 105-96, § 1(G)), and on the City's 1996 resolution in support of the Hospitality Fee, the County's application to the Transportation Infrastructure Bank, and the RIDE Report, Pl.'s Mem. 11.

None of these documents, however, can bear the weight that the City thrusts upon it, and none supports the conclusion that the City's consent is required before the County can extend the Hospitality Fee. *First*, as for Ordinance 105-96 itself, nowhere does it say that its adoption requires the City's (or any municipality's) consent or approval. In fact, Ordinance 105-96, in its fifth and final Whereas clause, specifically notes that state law allowed the County to adopt the ordinance "to levy reasonable and necessary fees to provide needed infrastructure."

This conclusion is reinforced by looking at § 1(G) of the ordinance, on which the City relies here. As an initial matter, this entire provision provides only the fund into which the Hospitality Fee will be deposited and how that fee would be used. It does not actually adopt the fee, which was done in § 1(A).

Moreover, a closer look at "in concert" further undermines the City's contentions. The full sentence on which the City relies provides:

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> The funds derived from the one and one-half percent fee shall be deposited into a Road Fund which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County.

County Ord. 105-96, § 1(G).

This provision uses "in concert" as part of the clause introduced by the past participle "adopted," which describes the "comprehensive road plan." Put another way, "in concert" describes how the County would develop the road plan for which the Hospitality Fee would be used. That is it. It has nothing to do with adopting the Hospitality Fee, the maintenance of the Hospitality Fee, or the adoption of future ordinances concerning the Hospitality Fee.

Second, the City's 1996 resolution shows that the City never thought its consent was required. The City did not "consent to" or "approve of" Ordinance 105-96. To the contrary, it simply "*urge[d]*" the County "to enact expeditiously the necessary ordinances to implement the RIDE Committee report."[3] City Resolution of Oct. 8, 1996 (emphasis added). That language leaves no doubt that the City did not contemplate that its consent was required for any County ordinance. The City was merely expressing support for improving transportation infrastructure and the recommendations in the RIDE Report.

Third, as for the Transportation Infrastructure Bank application and RIDE Report, neither document has any binding language that limits the Hospitality Fee to a period of the twenty years, and neither has the force of law (like Ordinance 105-96

[3] The resolutions from other municipalities, *see* Pl's. Mem., Ex. D, all use language identical to the City's resolution.

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does). Indeed, the City implicitly acknowledges as much here by saying the RIDE Report "envisioned" (a nonbinding word, distinct from a word like "mandated") that the projects would be paid over twenty years. Pl.'s Mem. 3. Moreover, those two documents were simply using twenty years as a time period for projecting the building and financing of road projects, a time period long enough to prepare for major projects but yet not so long as to have so much change that plans become unrealistic or obsolete. And in any event, the RIDE Report was not actually limited to twenty years. It recognized—in both the preface and throughout other sections—that the ideas in that report might take thirty years to accomplish (a window which will not close for another seven years).

2. The County has not adopted a "new" fee by extending the Hospitality Fee.

The City's second attack on the extension of the Hospitality Fee is that the extension is actually a new fee, subject to the provisions of Act 138 of 1997. *See* Pl.'s Mem. 11–12.

Act 138 adopted various provisions regarding local taxation, one of which is significant here. Section 6-1-330 allows a county or municipality to adopt a service or user fee subject to certain requirements. But this section also specifically states that "[a] fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this section." S.C. Code § 6-1-330(A).

The County's Hospitality Fee was *adopted* prior to December 31, 1996, meaning that under this section, the County's Hospitality Fee is still valid, even after

its extension. The Hospitality Fee in Ordinance 105-96 did not go into effect until January 1, 1997, but the Ordinance was adopted on October 15, 1996—two and a half months before the December 31, 1996 deadline. *See, e.g.*, *Roper v. S.C. Tax Comm'n*, 231 S.C. 587, 593, 99 S.E.2d 377, 379 (1957) (citing the date that the General Assembly passed legislation as the date on which it was "adopted"). Therefore, the Hospitality Fee "remains in force and effect until repealed by the" County. S.C. Code § 6-1-330(A). The County, of course, has not repealed the Hospitality Fee.

The City's contention that the extension of the Hospitality Fee is actually the adoption of a new fee misconstrues Ordinance 105-96 and ignores the plain language of that enactment. *Cf. S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 7, 809 S.E.2d 223, 226 (2018) (explaining that the "best evidence" of the legislative intent is "the text of the statute"). The text of the ordinance distinguishes between the fee itself and the time period for which it will be collected. As for the former, the Hospitality Fee is established in § 1(A) of Ordinance 105-96. This section imposes the amount of the fee and to whom it applies. As for the latter, the time period of which that fee will be collected is in a different provision, in § 1(H), which refers to a fee that has already been established.

This concept of a sunset provision is nothing novel. Many statutes adopt certain rules for society, only to have a separate provision that establishes when those rules may cease to apply. *See, e.g.*, *Republic of Iraq v. Beaty*, 556 U.S. 848, 865–66 (2009) (discussing a sunset provision in the Emergency Wartime Supplemental Appropriations Act); *Cty. of Florence v. W. Florence Fire Dist.*, 422 S.C. 316, 320, 811

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S.E.2d 770, 773 (2018) (observing that an act passed by the General Assembly had a sunset provision). But legislatures often renew those rules before they expire. *See, e.g., Riley v. Kennedy*, 553 U.S. 406, 413 (2008) (noting how Congress had renewed the Voting Rights Act on multiple occasions). Or they even do away with sunset provisions altogether. *See, e.g.*, Letter to Mark R. Elam, 1994 WL 378027, at *1 (S.C.A.G. June 29, 1994) (discussing the General Assembly's removal of sunset provisions for the Boards of Dentistry and Opticianry). Such a renewal or removal does not create a "new" law but merely extends the law that had already been passed (subject to any substantive amendments to it).

And so here with Ordinance 105-96, the extension and eventual removal of a sunset provision did not create a new fee, but simply kept the Hospitality Fee in place. This fee is one that the County had the power to enact and one that does not conflict with the South Carolina Constitution or this State's general law. *See Hosp. Ass'n of S.C., Inc. v. Cty. of Charleston*, 320 S.C. 219, 224, 464 S.E.2d 113, 117 (1995) (discussing the two-part test for the validity of a local ordinance).

3. The City misinterprets state law to claim that it must consent to any fee charged within its borders.

The City opens its argument on the merits by claiming that a county must have a municipality's consent to impose a uniform service charge within the municipality's boundaries. *See* Pl.'s Mem. 8–10.

The City is wrong. Nothing the City cites supports this conclusion, and the provisions of Act 138 actually disprove the City's contention. A quick review of the

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constitutional provisions, statutes, and case law on which the City relies shows it is mistaken:

- **S.C. Constitution, Article VIII, § 7**: This section requires the General Assembly to implement "home rule" and send power back to local elected officials and away from legislative delegations. *See, e.g.*, *Cty. of Florence v. W. Florence Fire Dist.*, 422 S.C. 316, 322, 811 S.E.2d 770, 773–74 (2018); *Hosp. Ass'n of S.C., Inc.*, 320 S.C. at 225, 464 S.E.2d at 117. It says nothing about a municipality having to approve any county ordinance that imposes a fee within the municipality.

- **S.C. Constitution, Article VIII, § 13(A)**: This provision provides, "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." Joint administration and sharing costs is not at issue here. Rather, the County has imposed a fee, for which it has not sought to do anything in conjunction with the City other than develop a road plan for how to spend that money after it is collected.

- **S.C. Constitution, Article XIII, § 13(A)**: No such provision exists, and this appears to be a typo in the City's memorandum.

- **S.C. Code § 4-9-30**: This section establishes the powers for each type of county government permitted under state law. In subsection 5(a), a county is permitted to impose a uniform service charge, but that provision never requires the consent of a municipality for such a charge to be imposed.

- **S.C. Code § 4-9-40**: This statute provides, "Any county may 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. *Provided,* however, that where such service is being provided by the municipality or has been budgeted or funds have been applied for that such service may not be rendered without the permission of the municipal governing body." This statute has no relevance here. The County is not providing any service that the City could possibly be providing, but rather the County is collecting a fee.

- **S.C. Code § 5-7-30**: This provision gives municipalities the power to enact regulations for the general welfare and for the health, peace, and

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order of the community. Nowhere does it give a municipality the right or authority to approve of a fee imposed by a county.

- **S.C. Code § 5-7-60**: This statute allows a municipality to contract with other entities, public or private, for various services. This statute has nothing to do with a fee imposed by a county. (Indeed, the word "county" never even appears in this statute.)

- ***Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 56 (1992)**: In this case, our Supreme Court upheld Horry County's road-maintenance fee of $15 imposed on every car in the county. The case never addresses what relationship a municipality has with a county when it imposes such a fee.

In short, none of these legal sources supports the City's argument.

Additionally, the plain language of the local accommodations tax in S.C. Code § 6-1-520(A) and hospitality tax in S.C. Code § 6-1-720(A) makes clear that certain taxes imposed by a county within a municipality do not require a municipality's consent. A county may collect a 1.5 percent accommodations tax before a municipality's consent is needed. *See* S.C. Code § 6-1-520(A). Moreover, a county may collect a 1 percent hospitality tax before a municipality's consent is required under the statute. *See* S.C. Code § 6-1-720(A). State law thus plainly allows a county to impose a tax within a municipality without the municipality's consent.[4]

Logic also supports the conclusion that a municipality does not have to consent to every tax or fee imposed by a county. Given local interests and personalities, having every municipality in a county consent to a tax or fee is unlikely. Thus, a

[4] These two statutes also show why the City's new taxes are illegal: The City's taxes make the cumulative rate for both the local accommodations and hospitality tax higher than the statutory maximum. Because the County's Hospitality Fee was established first, it has priority of the City's new taxes. *See City of Hardeeville v. Jasper Cty.*, 340 S.C. 39, 46, 530 S.E.2d 374, 378 (2000).

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single municipality could hamstring a county's ability to collect the revenue necessary to fund basic government services that provide a countywide benefit.

4. The City's hyperbole and misstatements do not help it show that extending the Hospitality Fee was arbitrary, capricious, or oppressive.

The City rightly notes that it must show that the County's action is "arbitrary, oppressive or capricious" to obtain injunctive relief against the County. *Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018). At the close of its argument, the City seeks to meet its heavy burden to show that extension of the Hospitality Fee meets this standard by resorting to many adjectives but to little substance. The City calls the extension of the Hospitality Fee "craven, extra-constitutional, and extra-statutory," in "bad faith," with "corrupt intent," and "surreptitious and wantonly injurious." Pl.'s Mem. 16–19.

Such outlandish statements may play well on cable news and in politics, but they have no place in our judicial system. The City has nothing that actually supports its accusations. First, it claims that the County "acknowledge[d] that the consent of the municipalities was required in 1996," but that misstates the record, which shows that the City's consent was not required to pass Ordinance 105-96. *See supra* Part I.A.

Next, the City also points to statements from members of County Council who questioned whether the Hospitality Fee should be extended. The County Council acts as a collective body, not as individuals. *Greenville Cty. v. Kenwood Enters.*, 353 S.C. 157, 174, 577 S.E.2d 428, 437 (2003). Therefore, inquiries into legislative motives or

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purposes are a hazardous matter. *Id.* (citing *United States v. O'Brien*, 391 U.S. 367, 383 (1968)). If statements from dissenting legislators were evidence of an action being arbitrary, oppressive, or capricious, virtually every piece of legislation, from local governments to Congress, would be arbitrary, oppressive, or capricious.

Then, the City points to the various provisions it cited to argue that it had to approve any fee imposed by the County within its boundaries, and the City contends that these provisions obviously required its consent to extending the Hospitality Fee. Those provisions, however, do not support the City's contention. *See supra* Part I.C. And even if they did, they do not so plainly support it that reaching the opposite conclusion was arbitrary, oppressive, or capricious.

The City's own actions, by contrast, meet this standard for an injunction against a public entity. The timing of its new taxes and its lawsuit against the County demontrate that this litigation is a scheme to undermine the long-standing Hospitality Fee and grab that tax revenue for itself.

B. The City's challenge is untimely.

The County first extended the Hospitality Fee in 2004. For the next fifteen years, the City never challenged that decision. Nor did the City challenge the extension of the Hospitality Fee when Ordinance 93-16 was passed or on January 2, 2017, after the original termination date came and went and the County continued collecting that fee. This unconscionable delay bars the City from challenging it now.

Courts refuse to allow a party to benefit from an unreasonable delay. "Laches is the negligent failure to act for an unreasonable period of time." *Provident*

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Life & Acc. Ins. Co. v. Driver, 317 S.C. 471, 478, 451 S.E.2d 924, 929 (Ct. App. 1994). Under this doctrine, "if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay suffers his adversary to incur expenses or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce these rights." *Id.*

Here, the City chose not to challenge the extension of the Hospitality Fee for fifteen years. It tries, in a footnote, to cast Ordinance 11-04 aside by saying that the language in that ordinance was different from the language in Ordinance 105-96 and was never put into the County Code. *See* Pl.'s Mem. 10 n.2. But the City cannot so easily avoid the impact of this duly passed ordinance, of which it has had at least constructive knowledge for a decade and a half. The language of Ordinance 11-04 is clear, and the County's intent to extend the Hospitality Fee was evident. And a technical error, if any,[5] in codifying specific language does not nullify Ordinance 11-04. Otherwise, a bureaucrat could overrule the people's representatives at any time.

At the very least, the City did not bring this challenge for two-and-a-half years, after Ordinance 93-16 was adopted and the County continued collecting the Hospitality Fee after January 1, 2017. As the Affidavit of Michael W. Shelton makes clear, the City has been paying Hospitality Fees since that date, so even before the

[5] First Reading of Ordinance 11-04 was held on February 17, 2004, Second Reading on March 2, 2004, and Third Reading on April 20, 2004. A public hearing on Ordinance 11-04 was held on April 20, 2004. Ordinance 11-04 was indexed with the Horry County Resister of Deeds on April 23, 2004. Ordinance 11-04 was referenced in the Horry County Code. Therefore, all requirements of S.C. Code § 4-9-120 were met.

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City passed its new local accommodations and hospitality taxes, it had standing to challenge the extension of the Hospitality Fee. Yet it did not do so.

This delay has greatly prejudiced the County. *See Provident Life & Acc. Ins. Co.*, 317 S.C. at 479, 451 S.E.2d at 929 ("[T]he delay in bringing suit must have caused some injury, prejudice or disadvantage to the party claiming laches."). The County has continued developing infrastructure plans—including, for example, the construction of I-73[6]—based on the Hospitality Fee revenue. Additionally, the County has continued collecting and administering the Hospitality Fee, which takes time and money.

The City could have challenged the extension of the Hospitality Fee at any time in the past fifteen years. But it never did. That delay has prejudiced the County, so the City is now barred from bringing these claims.

II. The other two elements of the preliminary injunction test support granting the County's motion, not the City's.

The other two elements of the preliminary injunction test—irreparable harm and an adequate legal remedy—are related concepts that look at whether a party has another way to protect its rights without an injunction.

---

[6] The City complains about this project because it was not in the RIDE Report. *See, e.g.*, Compl. ¶ 31. But its objections on this front are baseless. Plans for that Interstate were still being debated in Congress and by federal officials when the RIDE Report was issued, at which time the County had more pressing needs. As the Grand Strand continues to grow, its infrastructure needs will evolve, but the Hospitality Fee is still being used for the same purpose for which it has always been used, if not the same specific infrastructure and roads.

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A. The City cannot meet these elements.

The City insists that it has no adequate remedy and will thus suffer irreparable harm because it has no way to challenge the Hospitality Fee once that fee is paid. *See* Pl.'s Mem. 13–14.

The City is incorrect. Anyone who pays the Hospitality Fee may challenge that fee before the Board of Fee Appeals. *See Hospitality Fee*, Horry County Government, https://www.horrycounty.org/Departments/Hospitality-Fee (last visited May 9, 2019). The Board of Fee Appeals was created by Ordinance 8-00 and is codified at Section 2-111 of the County Code. It has jurisdiction to hear an appeal from anyone who has paid some amount pursuant to "any county fee, revenue, or license ordinance." Horry County Code § 2-115(a). All a person has to do is pay a $25 filing fee, and the Board will consider the matter within forty-five days, at a hearing governed by the rules of evidence and at which a party may be represented by counsel and present evidence. The Board will then issue a decision with findings of facts and conclusions of law. *Id.* § 115(a), (b).

Thus, the City's case is a far cry from ones like *Ware Shoals Manufacturing Co. v. Jones*, 78 S.C. 211, 58 S.E. 811, 813 (1907), in which the Supreme Court observed that the taxpayer had no adequate remedy because the statute did not allow the taxpayer to sue the government entity that actually held the tax revenue. Instead, the City is akin to the taxpayer in *Riverwoods, LLC v. County of Charleston*, 349 S.C. 378, 389, 563 S.E.2d 651, 657 (2002), which had a method to challenge and recover any improperly collected taxes, meaning injunctive relief was unnecessary.

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Armed with this legal remedy, the City (and anyone in the purported class it claims to represent) is not irreparably harmed without an injunction. Indeed, the City's entire argument about an injunction being "reasonably necessary," Pl.'s Mem. 15–16, is premised on the mistaken assertions that a municipality has to consent to any fee imposed by the County within its borders and that the County originally conditioned Ordinance 105-96 on municipalities' consent. *See supra* Parts I.A.1., 1.A.3.

In fact, if the City's motion for an injunction were granted, the County would likely face an irreparable harm. Typically, a loss of money is not an irreparable harm; after all, money is fungible. *See Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) ("Normally the mere payment of money is not considered irreparable . . . ."). But not always. *See id.* ("If expenditures cannot be recoupled, the resulting loss may be irreparable.").

This case is one of the unusual instances when the threat of monetary harm to the enjoined party is irreparable. The County collects over $50 million a year now from the Hospitality Fee. *See* Aff. Of Barry R. Spivey (attached as Ex. L). Realistically, the City is unlikely to be able to obtain a bond as security for an injunction, particularly given that this litigation will likely take multiple years to resolve, meaning the lost Hospitality Fee will continue to increase and the bond will likely need to be nine figures. *See Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007) (explaining that, under Rule 65(c), SCRCP, a bond must be in "an amount sufficient to protect [the enjoined party] in the event the injunction is

ultimately deemed improper"). If the City cannot prove that it can obtain this bond and repay the County for any Hospitality Fee not collected while an injunction is in place, then the County will have no way to recover money that rightly belongs to it.

B. The County does meet these elements.

Unlike the City, the County can show irreparable harm and no adequate remedy at law if the City seeks to collect its new taxes on top of the Hospitality Fee.

The County's Hospitality Fee has been in place for over twenty-two years. The system for collecting it is well established. If the City is allowed to start collecting its brand new taxes on July 1, the City will have deliberately created a situation in which taxpayers are paying more than the maximum amount that can be charged by local governments for local accommodations and hospitality taxes. *See* S.C. Code § 6-1-520(A); *id.* § 6-1-720(A). This could easily lead to challenges, more lawsuits, and significant confusion for businesses charging the taxes to the consumer.

The Court can and should prevent this result. Such a situation is easily avoided by enjoining the City from collecting its new taxes while this lawsuit is pending. If the City is in fact correct and it could have been collecting these taxes, it will have a way to recover them from the County, which has already collected that money. If the City is wrong (as Part I here explains it is), legal and bureaucratic mayhem will have been avoided.

No amount of money will be able to compensate the County for that mayhem (or the taxpayers who are also affected). Plus, this mayhem is presumably impossible to undo. Once businesses have overpaid these taxes, neither the County nor these

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business will have a way to return that money to the customer, as even if a business kept records of each transaction that used a debit or credit card, cash transactions would presumably be untraceable at this stage.

Conclusion

The Court should grant the County's motion for a preliminary injunction and deny the City's motion for a preliminary injunction.

Respectfully submitted:

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Myrtle Beach, South Carolina
Dated: May 14, 2019

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Exhibit A

RIDE Committee Report

TRANSPORTATION and HORRY COUNTY



REPORT

to the

Honorable David M. Beasley
Governor of South Carolina

prepared by:

The Road Improvement
and Development Effort
September 1996



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PREFACE

To those before us ...

South Carolina's Grand Strand has grappled with solutions to severe traffic congestion since 1984, when the Myrtle Beach Chamber of Commerce created the Area Council on Transportation (ACT). The purpose of ACT was to inform state officials of dangerous travel conditions and potential revenue losses statewide resulting from increasing tourism and commuter traffic on U.S. Highways 17 and 501. ACT's efforts to raise the consciousness of elected officials were successful, but the only solution proposed in the mid-1980s was the controversial Conway Bypass, for which state funding and grass roots support were limited.

Community business leaders saw the Conway Bypass as one step in what should have been a multi-step plan to save lives and foster tourism growth. As ACT worked diligently on trying to make the Conway Bypass a reality, a group of local leaders called the Planning Council, initiated work on what was later to become the Carolina Bays Parkway. This led to the formation of the Carolina Bays Parkway Task Force by then State Highway Commissioner Billy Alford in November 1990, which became a named demonstration project in the *Intermodal Surface Transportation Efficiency Act of 1991*. The Carolina Bays Parkway unlike the Conway Bypass had grass roots support but no way to fund its construction.

For over a decade, no planning or funding mechanism evolved to build the much needed highways in Horry County until leaders initiated an unsuccessful local option sales tax referendum in March 1996. Meanwhile economic forecasts reported South Carolina was losing approximately $1 billion annually in revenue due to heavy traffic driving visitors to North Carolina beaches and other vacation sites.

Survey for the future

This loss of revenue continues to threaten South Carolina's economy and endangers lives. That's why Governor David Beasley called upon his own staff, the Horry County Legislative Delegation, and local citizens to form an emergency response team to recommend immediate action to address traffic safety and its corollary concerns: job preservation and hurricane evacuation.

The Governor of South Carolina, working through the South Carolina Department of Transportation, has taken the initiative to: (1) survey the transportation infrastructure needs of Horry County for the next 20 to 30 years (identifying short term, as well as long term needs); and (2) evaluate how these needs can best be financially realized and implemented.



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The Chairman of the South Carolina Department of Transportation, at the direction of the Governor, created the Road Improvement and Development Effort Committee (RIDE) to determine short and long term transportation infrastructure needs and improvements for Horry County along with various options to fund these improvements.

The RIDE Committee

The RIDE Committee consists of nine people with varied backgrounds and interests: Mr. Gary M. Loftus (Chairman), Mr. Frankie Blanton (Vice Chairman), Mr. Edward Bouknight (concerned citizen), Mr. Harry Charles (Councilman, City of Myrtle Beach), Mr. James Frazier (Councilman, Horry County), Mr. John Kost (Councilman, Horry County), Mr. Edward Rodelsperger (Horry County School Board), Ms. Suzette Rogers (Myrtle Beach Chamber of Commerce Board of Directors), and Mr. Frank Thompson (concerned citizen). The Committee was formed in May 1996 to perform an analysis of road needs, possible funding sources, and oversee the development of a report to be submitted to the Governor in September 1996.

The Committee collected technical information from various engineering and planning groups and individuals concerning transportation issues and held several public meetings throughout Horry County. Concurrently, the Committee attempted to develop an understanding of social, technical, political, and jurisdictional issues which have complicated the solutions and frustrated previous efforts of both the public and private sectors.

This report responds to the Governor's directive through the sections outlined below:

- Section 1 - Introduction
- Section 2 - Short Term Recommendations
- Section 3 - Long Term Recommendations
- Section 4 - Financing Recommendations
- Section 5 - Implementation Recommendations
- Section 6 - Conclusion

Thanks and Appreciation

The Committee received invaluable assistance and support from City, County, State, and Federal personnel familiar with various aspects of the transportation problem. They, together with knowledgeable private citizens, made this report possible in the short time allowed. Their data, candor, and most important, their apparent eagerness to participate in a problem-solving effort too large for any one entity was critical in maintaining focus and momentum toward the success of this report. For their help we are very grateful.

The Committee would like to acknowledge the assistance, cooperation, and guidance of the South Carolina Department of Transportation Chairman, Mr. H.B. "Buck" Limehouse, the personnel of the Department who provided information and services necessary for the preparation of this report, and Mr. Robert Probst of the Federal Highway Administration.

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Section 1.0
INTRODUCTION

"Urgent steps must be taken to better maintain our highways and airways or South Carolina faces a transportation crisis."
-- David E. Parson, President of AAA Carolinas.

Following an unsuccessful referendum vote on Horry County's Comprehensive Road Plan on March 5, 1996, the Chairman of the South Carolina Department of Transportation (SCDOT), at the direction of the Governor, created the Road Improvement and Development Effort Committee (RIDE). This Committee was charged with the development of a roadway improvement plan that would relieve traffic congestion in Horry County through implementation of short and long term solutions. The Committee also was directed to develop a potential funding program that would address Horry County's short term needs, as well as provide ideas that might be implemented to fund the long term requirements.

REFERENDUM HISTORY

In January 1995, Horry County Council instructed the County Administrator to develop a road plan that combined existing efforts in order to accomplish the construction of major projects (such as the Conway Bypass and Carolina Bays Parkway) and provide improved mobility for the citizens of Horry County.

Horry County Comprehensive Road Plan

For years, many interested individuals and organizations worked on individual components of what became ultimately the Comprehensive Road Plan that had been endorsed by the Horry County Council and the Horry County Legislative Delegation. These organizations included the Area Council on Transportation (ACT), Carolina Bays Parkway Task Force, Council of Myrtle Beach Business Organizations (COMBO), Horry County Transportation Committee (CTC) appointed by the Legislative Delegation, Grand Strand Area Transportation Study (GSATS), and Horry County Department of Public Works through funds appropriated by the Horry County Council. Legislation passed during the 1995 session of the South Carolina General Assembly provided the local option sales tax for roads as a possible source of revenue allowing a much broader approach to be taken to solve the transportation needs. Horry County's Comprehensive Road Plan suggested that the combination of talents and resources that might have contributed to an innovative and pro-active model for highway construction statewide. Working together, the organizations pooled their resources to try to produce mega projects such as the Conway Bypass and Carolina Bays Parkway while at the same time providing much needed relief in rural areas along with the expansion of two critical state routes.

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Traditional methods of highway construction were very quickly determined to be inadequate or nonexistent in view of statements made by the SCDOT and the Federal Highway Administration concerning the availability of funding. Specifically, the SCDOT indicated that the Conway Bypass might be built by the year 2019 but did not suggest any way to construct the Carolina Bays Parkway, upgrade S.C. 544 or S.C. 9, and did not address rural needs at all.

Utilizing existing statistical data and projections produced by the E. Craig Wall Sr. School of Business Administration and Computer Science at Coastal Carolina University, the Comprehensive Road Plan recommended combining a number of funding sources including the local option sales tax for infrastructure that required a referendum. Based on sales tax figures and utilizing the 25-year sunset clause in the enabling legislation, it was possible to project total revenues available through the addition of the one percent local option sales tax. This resource, in combination with a local hospitality fee and other sources, such as the CTC state gas tax dollars called "C" funds, GSATS funds, and County Department of Public Works funds, provided $2.49 billion in revenues for the construction of projects and the amortization of associated general obligation debts. Projects identified by Horry County Council for construction included the Conway Bypass, Carolina Bays Parkway, S.C. 544 (five lanes between the Socastee bridge and Conway), S.C. 9 (four lanes from Green Sea to county line), and paving of approximately 600 miles of the 970 total miles of county dirt roads, for a total estimated construction cost of $1.48 billion.

But the referendum failed by a margin of greater than 2:1 . . .

THE RIDE COMMITTEE

RIDE Committee

The RIDE Committee, formed in May 1996, held their first meeting on May 16, 1996. The Committee met every Thursday after that (with the exception of July 4, 1996, and July 12, 1996 due to Hurricane Bertha) and twice weekly beginning July 29, 1996 through August 23, 1996. The Committee also held three public meetings (June 17, 1996, June 24, 1996, and July 1, 1996, Appendix A), at which they received public input, prior to formulating their plan.

The following sections of this Report, present our recommendations to the Governor.

"Make big plans; aim high in hope and work ..."
-- Daniel Burham

THE PROPOSED SHORT TERM PLAN

The short term improvement recommendations, as described below, include projects that are currently ongoing and projects that could be implemented by the year 2005 (Table 1). These projects will incorporate portions of the GSATS Long Range Plan as approved in March 1996. As shown in the figure titled Recommended Short Term Improvements, the proposed short term plan includes:

- **Conway Bypass** - construct the six-lane section (as originally designed) between U.S. 17 and Long Bay Road, with an interchange at Long Bay Road or the Carolina Bays Parkway. From Long Bay Road to S.C. 90, construct six lanes of fill and bridges but pave four lanes. From S.C. 90 to S.C. 905, construct three lanes of fill and bridges but pave two lanes. From S.C. 905 to S-97, construct two lanes of fill and bridges and pave both lanes.

  The RIDE Committee proposes that the SCDOT fund the portion of the Conway Bypass between U.S. 17 and S.C. 90 as "*Advance Construction*" under federal guidelines and "*set aside*" federal funding in the next 25 years in the State Transportation Improvement Program (STIP) to "*pay back*" the initial early completion of the project. The impact to Federal Highway Administration funding provided to SCDOT would not be adversely affected in any given year, but instead the payment requirements would be spread evenly over the Federal Program for up to 25 years, causing much the same effect as building the project over time. The advantages of this funding scenario are: (1) early completion of the Conway Bypass would immediately relieve congestion in Conway, improve safety, and provide an additional hurricane evacuation route in the area and would enhance other solutions proposed by the RIDE Committee; (2) the SCDOT would avoid the inflation on construction costs over the next 25 years (which would possibly double in cost); and, (3) the Conway Bypass could be completed with efficiencies gained from a design/build concept.

- **Carolina Bays Parkway** - construct six lanes of fill and bridges but pave four lanes of the Parkway from S.C. 9 to the intersection of Perry Road and River Oaks Drive Extension (including Central Parkway Connector which would be four lanes). Intersections with S.C. 9 and Central Parkway will be signalized at-grade intersections.

- **S.C. 544** - widen to five lanes between the Socastee bridge and U.S. 501 to improve capacity and, accelerate the construction of the five lane section between U.S. 17 and the Socastee bridge.

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Table 1
RECOMMENDED SHORT TERM IMPROVEMENTS

PROJECTS	RESPONSIBLE PARTY	*PRELIMINARY* PROJECT COST (1996 $)	METHOD OF PAYMENT	
			$330,000,000 BOND ISSUE	HORRY COUNTY RESIDUAL CASH FLOW*
CONWAY BYPASS				
Existing design from U.S. 17 to Long Bay Road (6-lane section, including U.S. 17 interchange)	SCDOT/FHWA/ RIDE	$65,900,000	"Advance Construction"	
Diamond interchange at Long Bay Road and Conway Bypass	SCDOT/FHWA/ RIDE	$6,100,000		
Long Bay Road to S.C. 90 (6-lane fill and bridges, paving 4 lanes)	SCDOT/FHWA/ RIDE	$34,400,000		
Diamond interchange at S.C. 90 and Conway Bypass	SCDOT/FHWA/ RIDE	$7,800,000		
S.C. 90 to S.C. 905 (3-lane fill and bridges, paving 2 lanes)	RIDE/ STATE OF S.C.	$37,100,000	$37,100,000	
S.C. 905 to S-97 (2-lane fill and bridges, paving 2 lanes)	RIDE/ STATE OF S.C.	$42,000,000	$42,000,000	
Estimated Program Cost (1996 $)		$193,300,000	$79,100,000	
CAROLINA BAYS PARKWAY				
S.C. 9 to Conway Bypass (6-lane fill and bridges, paving 4 lanes, approximately 7.8 miles)	RIDE/ STATE OF S.C.	$55,900,000	$31,700,000	$24,200,000
Conway Bypass to Central Parkway Connector (6-lane fill and bridges, paving 4 lanes, approximately 6.2 miles)	RIDE/ DEVELOPERS	$47,300,000	$25,800,000	$21,500,000
Central Parkway Connector (approximately 1.8 miles)	RIDE/ STATE OF S.C.	$38,600,000	$38,600,000	
Central Parkway Connector to Perry Road (6-lane fill and bridges, paving 4 lanes, approximately 0.8 miles)	RIDE/I.P	$6,700,000		$6,700,000
Estimated Program Cost (1996 $)		$148,500,000	$96,100,000	$52,400,000



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Table 1
RECOMMENDED SHORT TERM IMPROVEMENTS

PROJECTS	RESPONSIBLE PARTY	*PRELIMINARY* PROJECT COST (1996 $)	METHOD OF PAYMENT	
			$330,000,000 BOND ISSUE	HORRY COUNTY RESIDUAL CASH FLOW*
CENTRAL PARKWAY				
48th Avenue North to 29th Avenue North	RIDE/ STATE OF S.C.	$10,400,000	$10,400,000	
21st Avenue North to 10th Avenue North	RIDE/ STATE OF S.C.	$5,200,000	$5,200,000	
10th Avenue North to U.S. 501	RIDE/ STATE OF S.C.	$6,000,000	$6,000,000	
U.S. 501 to Harrelson Boulevard (S-600)	RIDE/ STATE OF S.C.	$6,600,000	$6,600,000	
Estimated Program Cost (1996 $)		$28,200,000	$28,200,000	
Fantasy Harbour Bridge Interchange (with U.S. 17)	STATE OF S.C./ RIDE	$12,000,000	$12,000,000	
City of Conway Perimeter Road (U.S. 501 to U.S. 378, approximately 0.8 miles with interchanges at U.S. 501/ S-165 and U.S. 378)	STATE OF S.C./ RIDE	$13,000,000	$13,000,000	
U.S. 17/U.S. 501 Interchange (complete)	STATE OF S.C./ RIDE	$12,300,000	$12,300,000	
U.S. 501 Overpass (George Bishop Parkway/River Oaks Drive)	RIDE/ STATE OF S.C.	$7,500,000	$7,500,000	
S.C. 544 (5-lane section between U.S. 17 and Socastee Bridge)	GSATS (accelerated)	$7,100,000	$7,100,000	
S.C. 544 (5-lane section between Socastee Bridge and U.S. 501)	RIDE/ STATE OF S.C.	$52,000,000	$3,600,000	$48,400,000
S.C. 90 (intersection improvements between Conway Bypass and S.C. 9)	RIDE/ STATE OF S.C.	$4,500,000	$4,500,000	
S-31/S-66 (intersection improvements)	RIDE/ STATE OF S.C.	$7,200,000	$7,200,000	

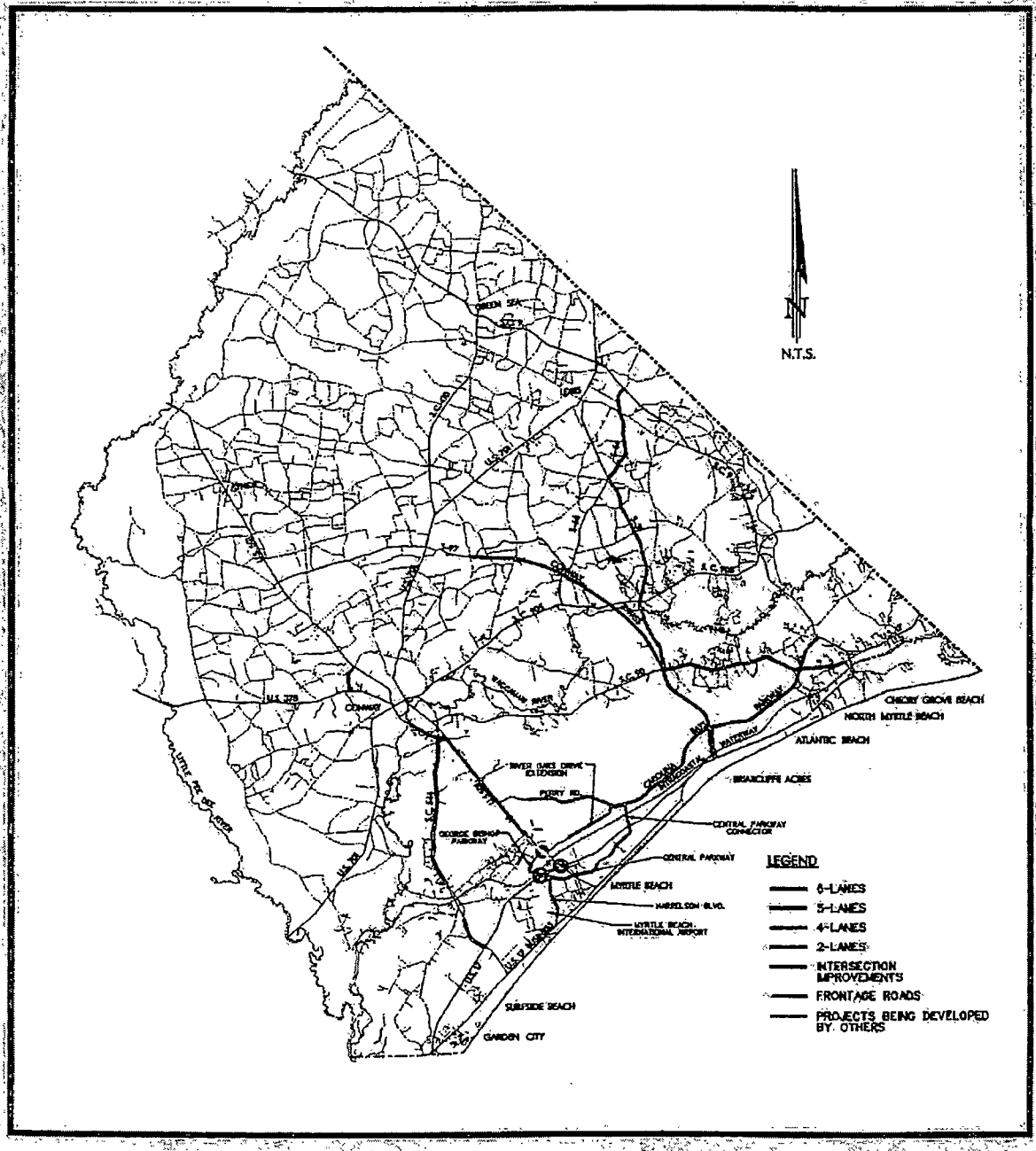
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Table 1
RECOMMENDED SHORT TERM IMPROVEMENTS

PROJECTS	RESPONSIBLE PARTY	*PRELIMINARY* PROJECT COST (1996 $)	METHOD OF PAYMENT	
			$330,000,000 BOND ISSUE	HORRY COUNTY RESIDUAL CASH FLOW*
Implementation of *Proposal for the Development of the Grand Strand Area Congestion Management Program*	RIDE/ STATE OF S.C.	$4,500,000	$4,500,000	
U.S. 501 (frontage road system, Atlantic Intracoastal Waterway bridge to Forestbrook Road including the interchange at Forestbrook Road)	RIDE/ STATE OF S.C.	$40,800,000	$40,800,000	
U.S. 501/Perry Road Interchange	RIDE/ STATE OF S.C.	$10,000,000	$10,000,000	
U.S. 501 (acceleration/deceleration lanes, eliminating median breaks where they are not needed)	RIDE/ STATE OF S.C.	$4,000,000	$4,000,000	
SUBTOTAL	RIDE/ STATE OF S.C.	$416,900,000	$322,800,000	$94,100,000
SUBTOTAL ("Advance Construction")	STATE OF S.C./ RIDE	$114,200,000		
SUBTOTAL (Accelerated)	GSATS	$7,100,000	$7,100,000	
SUBTOTAL	RIDE/ DEVELOPERS	$6,700,000		$6,700,000
GRAND TOTAL		$544,900,000		
STATE OF S.C./RIDE et al		$423,600,000	$329,900,000	$100,800,000

NOTE: * Horry County Residual Cash Flow, refer to Tables 4 and 5 in Section 4, column labeled "Future Project Debt Service Available."

Recommended Short Term Improvements



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- **Conway Perimeter Road** - construct a bypass of Conway on the south side from U.S. 501 between S-165 and U.S. 378, thereby giving motorists an option to either traverse Conway on U.S. 501 or turn off on S-165 and use U.S. 378 to avoid the congestion through Conway, particularly in the vicinity of the intersection of 16th Avenue and U.S. 501.
- **Metropolitan Loop** - connect the projects that are currently planned or underway. These projects are the Fantasy Harbour bridge, River Oaks Drive Extension, and Central Parkway between 38th Avenue North and U.S. 501. The completion of the Loop would require the construction of the rest of Central Parkway between U.S. 501 and the Fantasy Harbour bridge, and between 38th Avenue North and the Central Parkway Connector of the Carolina Bays Parkway, all four lanes. In addition, construction of an interchange at the intersection of the Fantasy Harbour bridge, U.S. 17, Central Parkway, and Harrelson Boulevard, as well as an overpass at the intersection of U.S. 501 and George Bishop Parkway, would be required.
- **U.S. 501** - construct the frontage road system between the Atlantic Intracoastal Waterway and Forestbrook Road, as well as the interchange at Forestbrook Road. Also, construct an interchange at Perry Road, install acceleration and deceleration lanes at median breaks (which may require the elimination of several of the existing median breaks) between Forestbrook Road and the Waccamaw River, and completion of the U.S. 17/U.S. 501 interchange.
- **Intersection Improvements** - perform intersection improvements on S.C. 90 (between the Conway Bypass interchange and S.C. 9), S-31 (between S.C. 90 and S-66), and S-66 (between S-31 and S.C. 9 in Loris).
- Implementation of all or portions of the *Proposal for the Development of the Grand Strand Area Congestion Management Program* (SCDOT Traffic Engineering, June 1996), including implementation of the SHEP Program in the GSATS area.

Looking toward the Future

In addition to the implementation of the projects outlined in Table 1 and the Recommended Short Term Improvements illustration, the RIDE Committee requests:

1. Passage of enabling legislation to create the Infrastructure Bank, so that the South Carolina Department of Transportation can receive federal funding identified in the recent federal legislation. The SCDOT is one of the ten pilot states identified and this would provide *"seed money"* for road projects statewide.
2. Amendment of the enabling legislation passed during the 1995 session of the South Carolina General Assembly relating to funding of highway projects through the implementation of a local option sales tax or tolls. The elimination of the referendum requirement for tolling if the project costs exceed $150 million would allow necessary projects to proceed at a faster pace and lower cost.

3. Clarification and amendment of ***ALL*** legislation regarding tolling to allow greater flexibility and innovation. Currently, tolls from Project A cannot be used to construct Project B, even though they may be connected. This and other restrictions, need to be addressed.

4. Assignment of additional troopers and an additional District Supervisor (Lieutenant) to Horry County on a permanent basis. This will assist with the prevention of accidents, thus improving the public safety and welfare and providing increased mobility under existing conditions. As a side note, we wish to thank the South Carolina Department of Public Safety for increasing the number of troopers assigned to Horry County during the 1996 summer season. Their presence and assistance were greatly appreciated.

5. Coordination with the U.S. Fish and Wildlife Service to ensure that ***ALL*** wildlife refuge proposals do not hinder the implementation of long term highway requirements in Horry County, including the GSATS Long Range Transportation Plan.

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Section 3.0
LONG TERM RECOMMENDATIONS

Where do we go from here?

WHERE WE ARE NOW

The historic solution to transportation needs of Horry County has been crisis-oriented with piecemeal planning and construction being performed in an uncoordinated manner. Planning for the future should integrate the multimodal approach (road, bicycle, pedestrian, and transit) proposed by GSATS. This integration should involve principal participants at all levels (federal, state, regional, and local). The RIDE Committee, therefore, recommends that a strategic planning approach utilizing the GSATS Long Range Plan be applied under the leadership of the *"group"* chosen to implement the short term recommendations, as outlined in Section 5.

Path to the Future

THE FUTURE

Applying the strategic planning approach to Horry County should involve not only innovative thinking regarding needs for the next 20 to 30 years but also consider community goals and values. The future could be implemented in degrees, in order for it to be workable, and should focus on all aspects (social, technical, environmental, and economic) but with a *"vision"* to a comprehensive transportation network. The argument for a specific *"group"* to play a fundamental role in no way excuses the responsibilities of federal, state, or local governments, but would produce a mechanism that would eliminate the long, tedious process of multi-phased assessment, review, and approval. This *"group"* could be given the authority to certify projects in a one-step process and thereby reduce the involvement of federal, state, or local governments.

In order to meet the challenge of integration, all boundaries (technical and political) must be eliminated to create the act of *"achieving"* not just planning.

DETAILING THE PLAN

The RIDE Committee recognizes and applauds the extensive work that has been performed by others before them, and desires to advance these efforts by developing a management plan which would address regulatory, financial, and operational needs for a successful transportation plan. This transportation plan should involve the detailed study that was prepared and approved by the Grand Strand Area Transportation Study in March 1996 (Appendix B). Additionally, the RIDE Committee has added several projects

"Change unfair federal formulas for federal funding ... stop government from using dollars raised in South Carolina elsewhere."
— U.S. Senator Strom Thurmond

that are not considered in the GSATS Long Range Plan, most of which are outside the GSATS Study Area, but in Horry County. The list of improvements that are offered for consideration is outlined in Table 2 and illustrated on the figure titled Recommended Long Term Improvements.

In addition to the consideration of the projects outlined in Table 2 and Recommended Long Term Improvements illustration, the RIDE Committee requests that the State find solutions to keep South Carolina from being a donor state and increase the funding for the SCDOT. Additionally, the State needs to address the total funding requirements for road construction and maintenance. Current funding mechanisms are inadequate and the formulas used need to be reviewed and overhauled.

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Long Term Projects

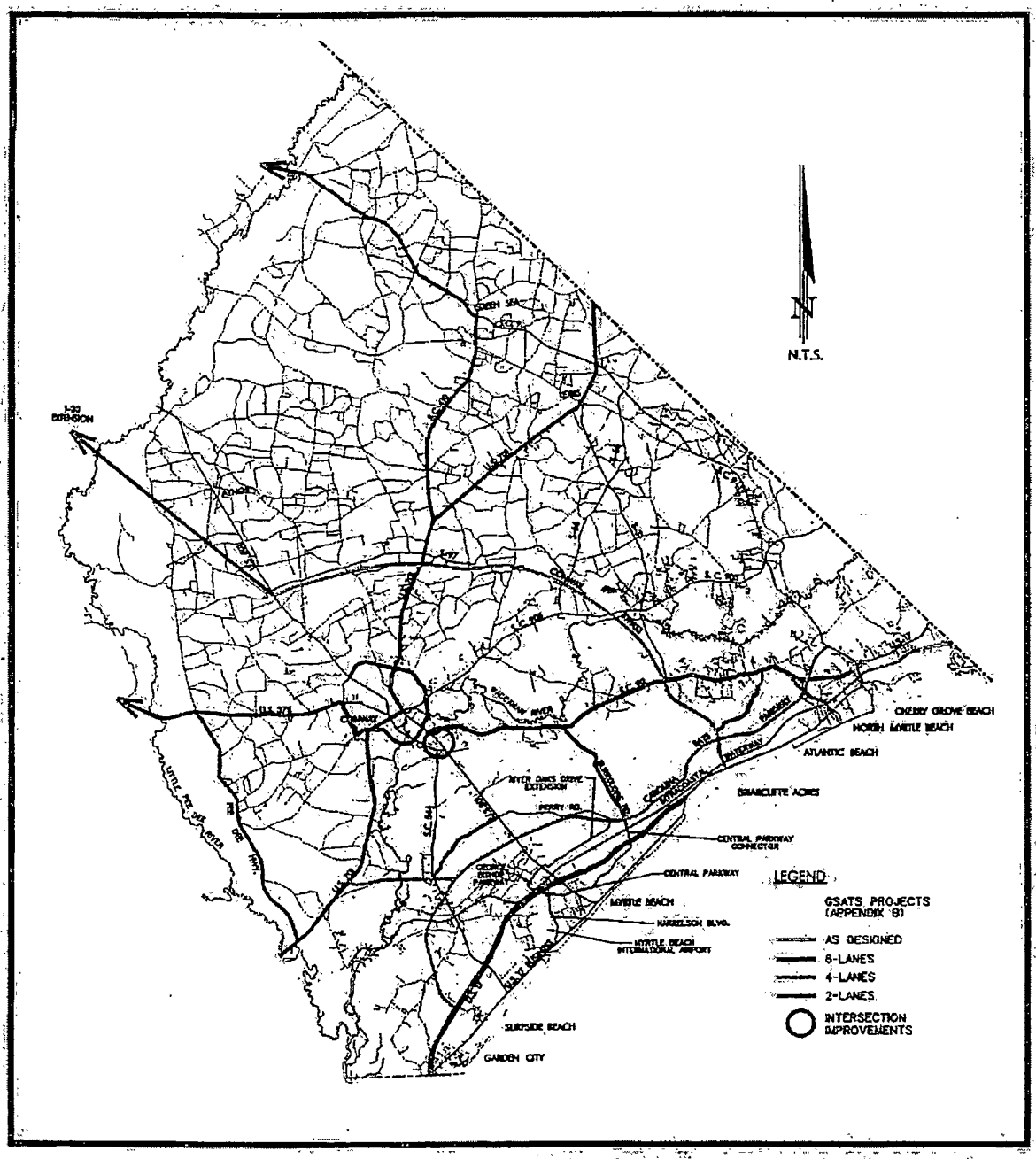
Table 2

RECOMMENDED LONG TERM IMPROVEMENTS

- GSATS Long Range Plan (as approved March 1995, Appendix B)
- Conway Bypass (as designed, 6 lanes between U.S. 17 and S.C. 905 and 4 lanes between S.C. 905 and U.S. 501)
- Carolina Bays Parkway (as designed, 6 lanes from S.C. 9 to U.S. 17, including a 4 lane crossing of the Atlantic Intracoastal Waterway in North Myrtle Beach)
- Fire/Water Tower Road (2-lanes between Conway Bypass and S-1029 [paved section])
- Burroughs Road (2-lanes between Carolina Bays Parkway and S.C. 90, approximately 8.4 miles)
- Perry Road (4-lanes between U.S. 501 and S.C. 544)
- U.S. 501 (6-lanes with frontage roads between Forestbrook Road and Conway)
- Ocean Boulevard in Atlantic Beach
- S.C. 9 (4-lanes between Green Sea and Horry County line)
- Big Block Road through the MBAFB to Ocean Boulevard
- U.S. 17 (6-lanes between Inlet Square Mall and U.S. 17/U.S. 17 Business interchange)
- U.S. 701 (4-lanes from Conway to Loris)
- S.C. 410 (4-lanes from U.S. 701 to S.C. 9)
- Loris to Tabor City Connector
- U.S. 701 (4-lanes, Conway to Georgetown)
- Conway Perimeter Road (complete the bypass around Conway)
- Pee Dee Road (4-lanes between U.S. 701 and U.S. 378)
- Florence to Conway Connector (I-20 extension)
- U.S. 378 (4-lanes, Conway to Horry County line)
- S.C. 90 (4-lanes between Conway and S.C. 9/U.S. 17 interchange)
- U.S. 501/S.C. 544/S.C. 90 interchange
- Community Bus System (shared bus system with hotels/motels)

NOTE: Should the proposed funding scenario for the short term recommendations have a surplus, it is the recommendation of the RIDE Committee that projects from this list be implemented as short term projects.

Recommended Long Term Improvements



Ride

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Section 2.0
SHORT TERM RECOMMENDATIONS

"If we first know where we are, and whither we are tending, we could then better judge what to do and how to do it."
-- Abraham Lincoln

THE CRISIS

Horry County and the Grand Strand have become the second most popular resort area on the East Coast. The region, under the guidance of the Grand Strand Area Transportation Study (GSATS), is looking for a *"vision"* that provides accessibility to the Grand Strand, as well as internal mobility. Based on the *"vision,"* the current transportation system will not accommodate future traffic demands and therefore a solution was developed in the form of the GSATS Long Range Plan (approved but not funded March 1996, Appendix B).

WHAT IT WILL COST

Realizing that it is futile to depend exclusively on highway expansion, the region is considering a multimodal approach that will provide a balanced system. The system will include appropriate transit, bicycle, and pedestrian systems, as well as highways. This plan, however, has an estimated cost of $2.4 billion for: highway $1.74 billion, transit $0.67 billion, and other $0.01 billion, with a long list of funding options that would require participation from federal, state, and local sources.

Although the RIDE Committee recognizes the appropriateness of this plan, we have chosen to focus on a short term solution which in turn would lead to the implementation of the GSATS Long Range Plan.

"If we can't meet our infrastructure needs, we can't [expand] the private sector."
-- Honorable David M. Beasley

THE NEXT STEP

Confronted with the magnitude and complexity of the transportation needs, the RIDE Committee initiated their program by receiving input from entities involved in transportation issues in Horry County. These entities included both the public and private sectors. Based on the data received and from the information presented by local citizens at the public meetings, the Committee defined two improvement options: (1) short term improvements that could be implemented between 1996 and 2005 which would provide traffic congestion relief; and (2) long term improvements that could be implemented and completed between 2005 and 2025.



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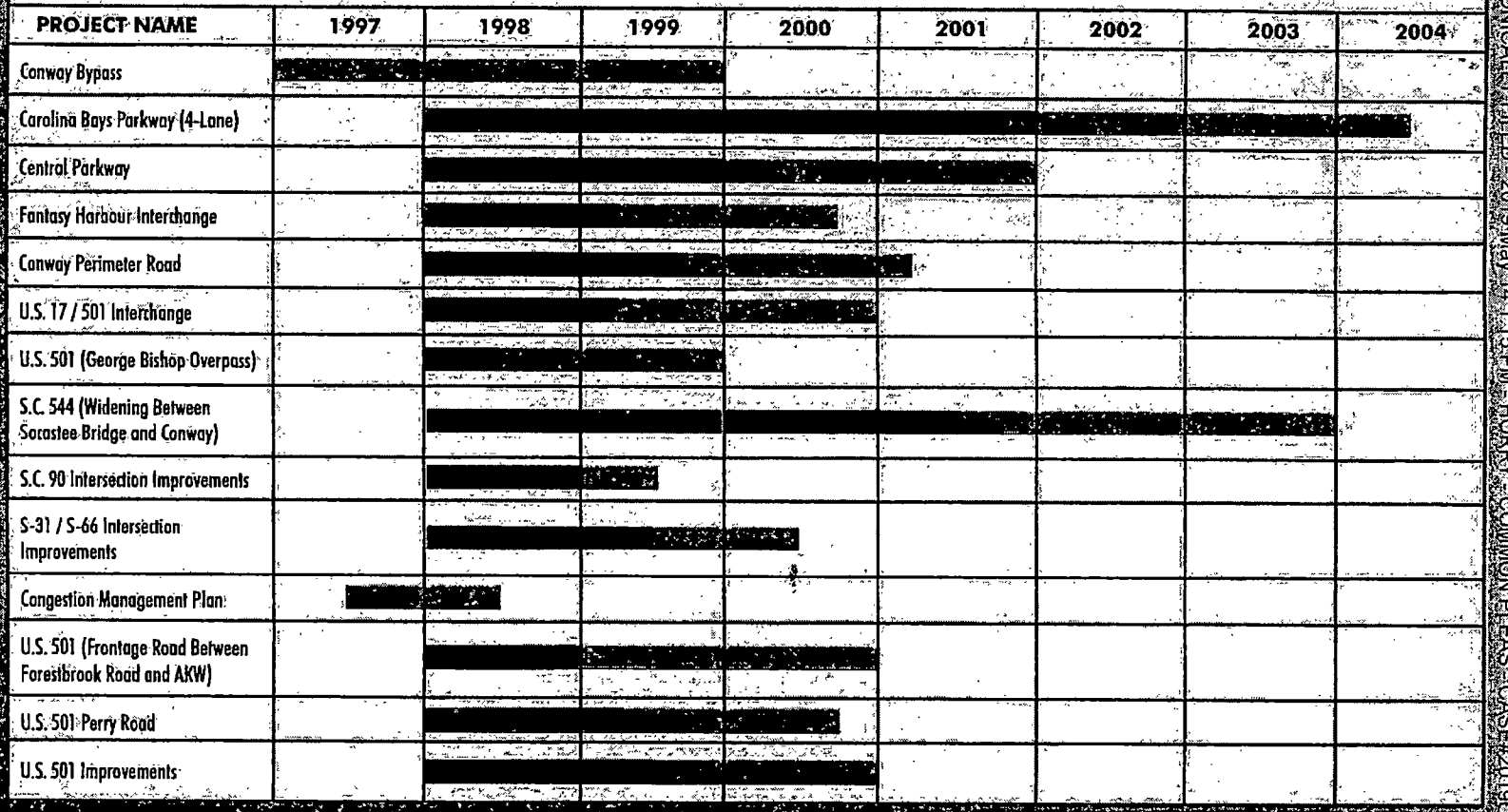
Table 3
10-, 15-, AND 20-YEAR PROJECTED REVENUE STREAM

FISCAL YEAR (7/1-6/30)	1.5-PERCENT HOSPITALITY FEE*				TOTAL INFLOW	TOTAL REVENUES
			HORRY COUNTY			
	Myrtle Beach	North Myrtle Beach	Additional Incorporated Areas	Unincorporated Areas		
96/97	$8,579,404	$2,211,933	$481,708	$3,403,325	$14,676,370	
97/98	$9,094,168	$2,344,649	$510,610	$3,607,525	$15,556,952	
98/99	$9,639,818	$2,485,328	$541,247	$3,823,976	$16,490,369	
99/00	$10,218,207	$2,634,448	$573,722	$4,053,415	$17,479,791	
00/01	$10,831,300	$2,792,514	$608,145	$4,296,619	$18,528,579	
01/02	$11,481,178	$2,960,065	$644,634	$4,554,417	$19,640,294	
02/03	$12,170,049	$3,137,669	$683,312	$4,827,682	$20,818,711	
03/04	$12,900,251	$3,325,929	$724,311	$5,117,342	$22,067,834	
04/05	$13,674,267	$3,525,485	$767,769	$5,424,383	$23,391,904	
05/06	$14,494,723	$3,737,014	$813,836	$5,749,846	$24,795,418	← $193,446,223
06/07	$15,364,406	$3,961,235	$862,666	$6,094,837	$26,283,143	
07/08	$16,286,270	$4,198,909	$914,426	$6,460,527	$27,860,132	
08/09	$17,263,446	$4,450,844	$969,291	$6,848,159	$29,531,740	
09/10	$18,299,253	$4,717,894	$1,027,449	$7,259,048	$31,303,644	
10/11	$19,397,208	$5,000,968	$1,089,096	$7,694,591	$33,181,863	← $341,606,746
11/12	$20,561,041	$5,301,026	$1,154,441	$8,156,266	$35,172,775	
12/13	$21,794,703	$5,619,088	$1,223,708	$8,645,642	$37,283,141	
13/14	$23,102,386	$5,956,233	$1,297,130	$9,164,381	$39,520,130	
14/15	$24,488,529	$6,313,607	$1,374,958	$9,714,244	$41,891,338	
15/16	$25,957,840	$6,692,423	$1,457,455	$10,297,098	$44,404,818	← $539,878,947

NOTE: * Assumes a 6-percent rate of annual growth.

SOURCE: Coastal Carolina University, E. Craig Wall Sr. School of Business Administration and Computer Science, June 6, 1996.

PROPOSED PROJECT SCHEDULE FOR SHORT TERM RECOMMENDATIONS



LEGEND

- Environmental and / or Design
- Right - of - Way Aquisition
- Construction

Ride

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Table 4
PROJECTED DEBT SERVICE - 15-YEAR SCENARIO

FISCAL YEAR (7/1-6/30)	1.5-PERCENT HOSPITALITY FEE* TOTAL COUNTY REVENUES	FUTURE PROJECT DEBT SERVICE AVAILABLE	CURRENT DEBT SERVICE AVAILABLE	ESTIMATED DEBT SERVICE ON $330,000,000 LOAN (6.5% FOR 15 YEARS)	CURRENT DEBT SERVICE SHORTFALL (*STATE CONTRIBUTION*)
96/97	$14,676,370	$0	$14,676,370	$35,096,418	($20,420,048)
97/98	$15,556,952	$1,414,268	$14,142,684	$35,096,418	($20,953,734)
98/99	$16,490,369	$2,851,965	$13,638,404	$35,096,418	($21,458,014)
99/00	$17,479,791	$4,346,965	$13,132,826	$35,096,418	($21,963,592)
00/01	$18,528,579	$5,873,310	$12,655,269	$35,096,418	($22,441,149)
01/02	$19,640,294	$7,445,217	$12,195,077	$35,096,418	($22,901,341)
02/03	$20,818,711	$9,067,091	$11,751,620	$35,096,418	($23,344,798)
03/04	$22,067,834	$10,743,546	$11,324,288	$35,096,418	($23,772,130)
04/05	$23,391,904	$12,479,408	$10,912,496	$35,096,418	($24,183,922)
05/06	$24,795,418	$14,279,740	$10,515,678	$35,096,418	($24,580,740)
06/07	$26,283,143	$16,149,853	$10,133,290	$35,096,418	($24,963,128)
07/08	$27,860,132	$18,095,326	$9,764,806	$35,096,418	($25,331,612)
08/09	$29,531,740	$20,122,018	$9,409,722	$35,096,418	($25,686,696)
09/10	$31,303,644	$22,236,093	$9,067,551	$35,096,418	($26,028,867)
10/11	$33,181,863	$24,444,041	$8,737,822	$35,096,418	($26,358,596)
TOTAL	$341,606,746	$169,548,843	$172,057,903	$526,446,270	($354,388,367)
PRESENT VALUE (1996 $) AT 6.5%		$87,553,940			

NOTES: * Assumes a 6-percent rate of annual growth.
Assumes that four lanes of the Carolina Bays Parkway will be constructed between S.C. 9 and Perry Road, as well as the Central Parkway Connector, and S.C. 544 will be widened to five lanes between the Socastee bridge and Conway, using the $330 million bond issue and monies available under the "Future Project Debt Service Available."

SOURCE: Coastal Carolina University, E. Craig Wall Sr. School of Business Administration and Computer Science, June 6, 1996.
South Carolina Department of Transportation, August 28, 1996.



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Table 5
PROJECTED DEBT SERVICE - 20-YEAR SCENARIO

FISCAL YEAR (7/1-6/30)	1.5-PERCENT HOSPITALITY FEE* TOTAL COUNTY REVENUES	FUTURE PROJECT DEBT SERVICE AVAILABLE	CURRENT DEBT SERVICE AVAILABLE	ESTIMATED DEBT SERVICE ON $330,000,000 LOAN (6.5% FOR 20 YEARS)	CURRENT DEBT SERVICE SHORTFALL (*STATE CONTRIBUTION*)
96/97	$14,676,370	$0	$14,676,370	$29,949,610	($15,273,240)
97/98	$15,556,952	$1,414,268	$14,142,684	$29,949,610	($15,806,926)
98/99	$16,490,369	$2,851,965	$13,638,404	$29,949,610	($16,311,206)
99/00	$17,479,791	$4,346,965	$13,132,826	$29,949,610	($16,816,784)
00/01	$18,528,579	$5,873,310	$12,655,269	$29,949,610	($17,294,341)
01/02	$19,640,294	$7,445,217	$12,195,077	$29,949,610	($17,754,533)
02/03	$20,818,711	$9,067,091	$11,751,620	$29,949,610	($18,197,990)
03/04	$22,067,834	$10,743,546	$11,324,288	$29,949,610	($18,625,322)
04/05	$23,391,904	$12,479,408	$10,912,496	$29,949,610	($19,037,114)
05/06	$24,795,418	$14,279,740	$10,515,678	$29,949,610	($19,433,932)
06/07	$26,283,143	$16,149,853	$10,133,290	$29,949,610	($19,816,320)
07/08	$27,860,132	$18,095,326	$9,764,806	$29,949,610	($20,184,804)
08/09	$29,531,740	$20,122,018	$9,409,722	$29,949,610	($20,539,888)
09/10	$31,303,644	$22,236,093	$9,067,551	$29,949,610	($20,882,059)
10/11	$33,181,863	$24,444,041	$8,737,822	$29,949,610	($21,211,788)
11/12	$35,172,775	$26,752,692	$8,420,083	$29,949,610	($21,529,527)
12/13	$37,283,141	$29,169,243	$8,113,898	$29,949,610	($21,835,712)
13/14	$39,520,130	$31,701,283	$7,818,847	$29,949,610	($22,130,763)
14/15	$41,891,338	$34,356,813	$7,534,525	$29,949,610	($22,415,085)
15/16	$44,404,818	$37,144,245	$7,260,573	$29,949,610	($22,689,037)
TOTAL	$539,878,947	$328,673,118	$211,205,829	$598,992,200	($387,786,371)
PRESENT VALUE (1996 $) AT 6.5%		$138,450,681			

NOTES: * Assumes a 6-percent rate of annual growth.
Assumes that four lanes of the Carolina Bays Parkway will be constructed between S.C. 9 and Perry Road, as well as the Central Parkway Connector, and S.C. 544 will be widened to five lanes between the Socastee bridge and Conway, using the $330 million bond issue and monies available under the "Future Project Debt Service Available."

SOURCE: Coastal Carolina University, E. Craig Wall Sr. School of Business Administration and Computer Science, June 6, 1996.
South Carolina Department of Transportation, August 28, 1996.

As work proceeds with the implementation of the short term recommendations, additional options for funding may evolve, such as:

- The reevaluation of Horry County's share of state dollars (it has long been a contention that Horry County's share of SCDOT dollars should be based on permanent population ***and*** tourists and not just permanent population);
- Implementation of a local gas fee for roads; and,
- Implementation of tolls.

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Section 5.0
IMPLEMENTATION RECOMMENDATIONS

"Team" Building toward Workable Solutions

The realization of the goals and work program discussed in Sections 2 and 3 will require a committed *"group"* of talented individuals who can stay focused on the goal of developing a workable transportation plan that benefits everyone, while keeping in perspective both public sentiment and political realities. To this end, the RIDE Committee offers the following recommendations:

1. A workable and achievable transportation plan that encompasses the projected needs (both short and long term) of Horry County for the next 20 to 30 years must be developed and adopted. This plan must be presented to and reviewed by Horry County and Municipal Councils, in order to achieve a mutual consensus of the program to be implemented. The most important factor is that the plan ***MUST*** be maintained to completion ***AS ADOPTED*** with only very minor modifications, if any at all.
2. An intergovernmental agreement between the State, SCDOT, Horry County, and municipal governments must be prepared. This agreement should outline the responsibilities of the State and SCDOT (issuance of the bonds, oversight responsibility for construction, and matching of funds to achieve each annual bond payment) and Horry County and municipal governments (annual, quarterly, or monthly payments to the State to retire the bonds issued for a period of 15 or 20 years).
3. A *"group"* to implement the Plan must be appointed. The RIDE Committee recommends that the *"group"* consist of seven members, two representatives chosen by Horry County, two chosen by the municipalities, two chosen by the SCDOT, and a chairman chosen by the Governor. The *"group,"* once formed, would have to be supported by a staff with a director responsible for overseeing the daily implementation and requirements of the plan and to coordinate with the State and SCDOT, and Federal Highway Administration, if necessary.
4. A SCDOT Fast Response Team must be created. This Fast Response Team would have the capability to expedite various planning, engineering, and environmental challenges to ensure that all projects stay on the fastest track possible. The team should consist of individuals who have the skills, expertise, and power of approval to *"cut through red tape and make things happen."* This team, in concert with the *"group,"* would be responsible for maintaining the schedule and the ultimate success of the adopted transportation plan.

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Section 6.0
CONCLUSION

This report provides a workable solution to the transportation issues facing Horry County that will enhance the quality of life of its residents, as well as ensure its continued prosperity in the future. It recommends a program that will produce a series of meaningful short term improvements that will assist in making the GSATS Long Range Transportation Plan a reality. It has a plan that will provide a revenue stream to fund short term improvements while working to find a funding solution for long term requirements. It develops also a mechanism that can be used throughout the State of South Carolina to accelerate the construction of other critical infrastructure needs.

The RIDE Committee has determined that the only way for Horry County to achieve an improved transportation network that benefits everyone is for citizens of Horry County and tourists visiting the Grand Strand to participate in the future success of tourism, one of the State's very important economic engines.

"Destiny is a matter of choice."
-- William Jennings Bryan

Therefore, in order to serve the citizens of Horry County correctly and completely, the RIDE Committee requests that the State, in partnership with Horry County, be willing to act on the recommendations outlined herein.

Respectfully Submitted

THE RIDE COMMITTEE

Gary M. Loftus (Chairman)

Frankie Blanton (Vice Chairman)

Edward Bouknight

Harry Charles

James Frazier

John Kost

Edward Rodelsperger

Suzette Rogers

Frank Thompson, II

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Appendix A

Public Meeting Summaries

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PUBLIC MEETING NUMBER 1

Location: Myrtle Beach Law Enforcement Center at 1101 Oak Street, Myrtle Beach.

Time: The public meeting was held on Monday, June 17, 1996, from 7:00 p.m. to 8:30 p.m.

Displays: Two displays were available for review, a map of Horry County and a map illustrating transportation projects that are proposed or currently underway in Horry County between the Waccamaw River and the coast.

Personnel: Actively participating in the public meeting were five members of the RIDE Committee (Mr. Gary M. Loftus [Chairman], Mr. Edward Bouknight, Mr. Harry Charles, Ms. Suzette Rogers, and Mr. Frank Thompson). Absent was Mr. Frankie Blanton (Vice Chairman), Mr. James Frazier, Mr. John Kost, and Mr. Edward Rodelsperger.

Process: The attendees were greeted as they entered and asked to sign in. The attendees were also asked if they wanted to address the Committee, as the purpose of the public meeting was to receive public comment prior to formulating the Report to the Governor.

Attendance: Approximately 41 people attended the meeting. Of this number 14 addressed the Committee.

Comments: Comments received included:

- ❑ Add left-turn lanes to existing four-lane roads.
- ❑ Add a third lane for turning to existing two-lane roads.
- ❑ Construct I-20 from Florence to Myrtle Beach.
- ❑ Impose development impact fees.
- ❑ Purchase the right-of-way for Carolina Bays Parkway.
- ❑ Increase the gas tax $0.05.
- ❑ Construct a bypass to the south of Conway and connect it to S.C. 544.
- ❑ Use the tax dollars currently sent to Columbia to pay for the local road improvements.
- ❑ Toll I-95.
- ❑ Improve S.C. 544, U.S. 521, and U.S. 501.
- ❑ Widen S.C. 9 to four lanes all the way to I-95.

- Build a bridge over the Waccamaw River to connect S.C. 544 with U.S. 701.
- Impose a two-percent hospitality tax east of Conway.
- Widen S.C. 319 (located north of U.S. 501) from Aynor to Conway, build a bridge over the Waccamaw River and connect it to the bridge over the Atlantic Intracoastal Waterway at Briarcliffe Acres.
- Tell Governor Beasley that Horry County should not be responsible for finding the money to build the roads.

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PUBLIC MEETING NUMBER 2

Location: North Myrtle Beach City Hall, Council Chambers at 1015 Second Avenue South, North Myrtle Beach.

Time: The public meeting was held on Monday, June 24, 1996, from 7:00 p.m. to 8:30 p.m.

Displays: Two displays were available for review, a map of Horry County and a map illustrating transportation projects that are proposed or currently underway in Horry County between the Waccamaw River and the coast.

Personnel: Actively participating in the public meeting were the nine members of the RIDE Committee (Mr. Gary M. Loftus [Chairman], Mr. Frankie Blanton [Vice Chairman], Mr. Edward Bouknight, Mr. Harry Charles, Mr. James Frazier, Mr. John Kost, Mr. Edward Rodelsperger, Ms. Suzette Rogers, and Mr. Frank Thompson).

Process: The attendees were greeted as they entered and asked to sign in. The attendees were also asked if they wanted to address the Committee, as the purpose of the public meeting was to receive public comment prior to formulating the Report to the Governor.

Attendance: Approximately 28 people attended the meeting. Of this number eight addressed the Committee.

Comments: Comments received included:

- ❑ Construct a small bypass of Conway instead of the Conway Bypass.
- ❑ Use Waccamaw Regional Planning and Development Council's expertise, because they are the transportation representatives for Horry County.
- ❑ Impose development impact fees.
- ❑ Improve signage for S.C. 9 in order to attract increased usage.
- ❑ Use accommodations taxes to improve roads instead of for advertising.
- ❑ Impose a business license fee.
- ❑ Construct clover-leaves at interchanges.

- ❑ Increase the sales tax $0.01.
- ❑ Widen U.S. 701 from S.C. 9 to the state line to take advantage of North Carolina's plans.
- ❑ Tell the Governor Horry County deserves their fair share.

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PUBLIC MEETING NUMBER 3

Location: Burroughs School Auditorium at 801 Main Street, Conway.

Time: The public meeting was held on Monday, July 1, 1996, from 7:00 p.m. to 8:45 p.m.

Displays: One display was available for review, a map of Horry County.

Personnel: Actively participating in the public meeting were seven members of the RIDE Committee (Mr. Gary M. Loftus [Chairman], Mr. Frankie Blanton [Vice Chairman], Mr. Edward Bouknight, Mr. Harry Charles, Mr. John Kost, Mr. Edward Rodelsperger, and Mr. Frank Thompson). Absent was Ms. Suzette Rogers and Mr. James Frazier.

Process: The attendees were greeted as they entered and asked to sign in. The attendees were also asked if they wanted to address the Committee, as the purpose of the public meeting was to receive public comment prior to formulating the Report to the Governor.

Attendance: Approximately 43 people attended the meeting. Of this number 15 addressed the Committee.

Comments: Comments received included

- ❑ Impose development impact fees.
- ❑ Increase the sales tax on vehicle sales.
- ❑ Learn from the mistakes made in Miami and Fort Lauderdale.
- ❑ Increase the gas tax $0.01.
- ❑ Impose a one-percent hospitality fee.
- ❑ Create a lottery and use the revenues to pay for infrastructure.
- ❑ Widen S.C. 9 to I-95.
- ❑ Widen U.S. 501.
- ❑ Impose tolls.
- ❑ Financing should come from everyone, federal, state, and local participation.
- ❑ Revenues for financing should be mixed, sales tax, hospitality fees, gas tax, tolls.

- ❑ Impose a development moratorium.
- ❑ Improve traffic flow through Conway.
- ❑ Computerize the traffic signals.
- ❑ Improve S.C. 544.

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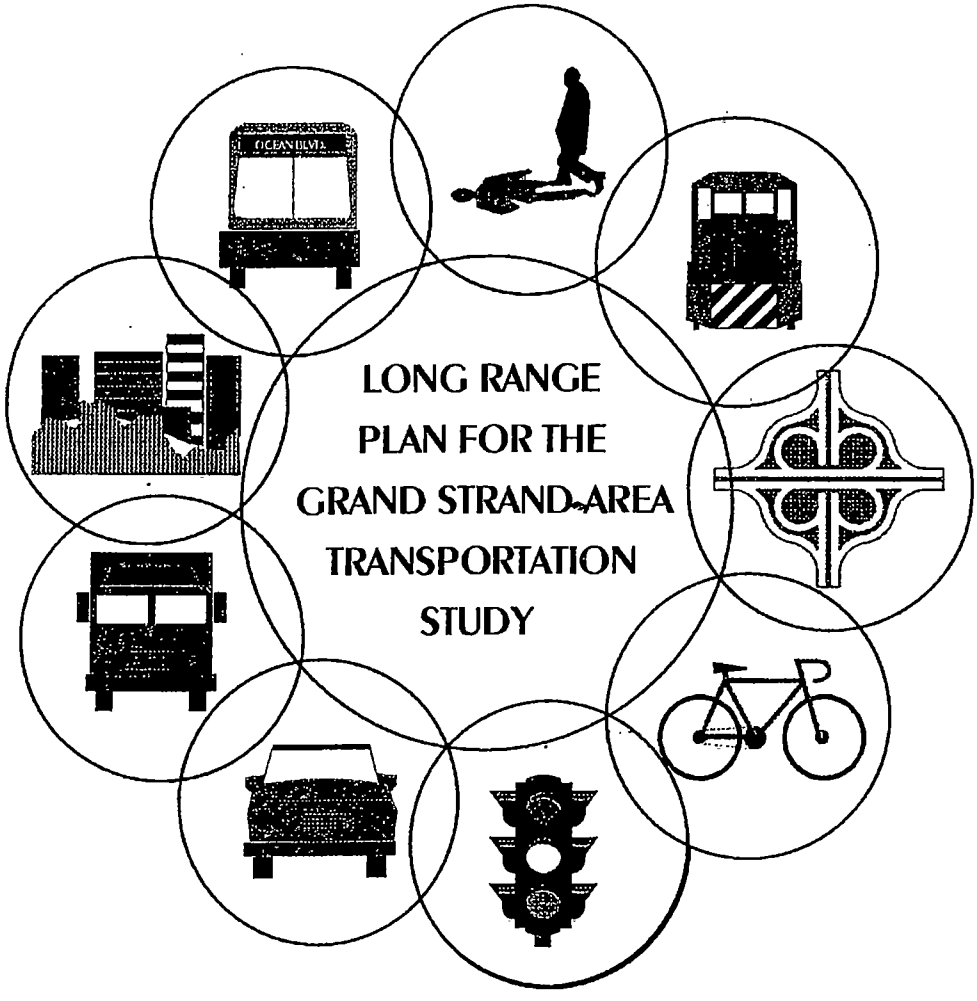
Appendix B

Long Range Plan for the Grand Strand Area Transportation Study

Executive Summary



EXECUTIVE SUMMARY



Conducted for:
Waccamaw Regional Planning and Development Council

Prepared by:
Wilbur Smith Associates

March 1996

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Funding for this study was provided by the Federal Highway Administration, the South Carolina Department of Transportation, and the Waccamaw Regional Planning and Development Council.

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The last decade has seen the Grand Strand Area emerge as the second most popular resort destination on the East Coast. More and more people have found their way to the region. The upside is economic growth; the downside is traffic congestion.

The region is capitalizing on its popularity and is looking to continued growth and success in the decades to come. For this vision to be realized, there must be a realistic long range transportation plan that:

(1) **provides accessibility to the Grand Strand Area.** If the required roadway and transit capacities leading to the area are not in place, then there is no way for the vision to become reality; and

(2) **provides internal mobility through the area.** As more and more people flock to the beach, it will become impossible and impractical to accommodate all the short-distance travel demands by automobile. It is essential that an expanded highway, transit, pedestrian, and bicycle system be provided to encourage non-automobile travel within the area.

THE PRESENT AND FUTURE

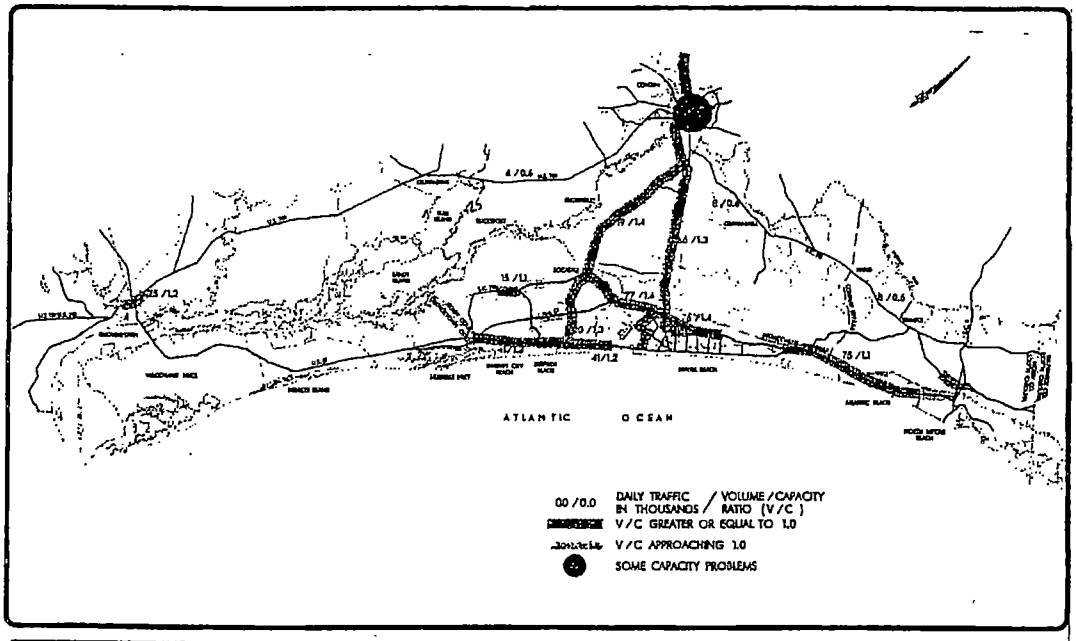
There is no way the region can accommodate anticipated future travel demands with the current transportation system. Presently, a typical summer day is characterized by long queues on major highways such as US 501, SC 544, and US 17 Business and Bypass. Along the oceanfront, pedestrians and vehicles compete for space on Ocean Boulevard and Kings Highway. These situations confirm the results of technical analyses that indicate the region's present highway system is operating just over capacity and cannot handle any significant increases in traffic without intolerable delays.

ROADWAY	1995 DAILY TRAFFIC	2015 DAILY TRAFFIC	PERCENT INCREASE
SC 544	19,000	30,000	58%
US 501	66,000	101,000	53%
US 17 Bypass	77,000	132,000	71%
US 17 BUSINESS	41,000	69,000	68%

A number of highway improvements have been proposed; some have reached the stage of being considered as committed projects, such as widening of US 17 Business in Murrells Inlet and US 17 in North Myrtle Beach as well as the Conway Bypass. Some projects have been studied in detail, such as Carolina Bays Parkway, as well as the widening of US 501 and SC 544.

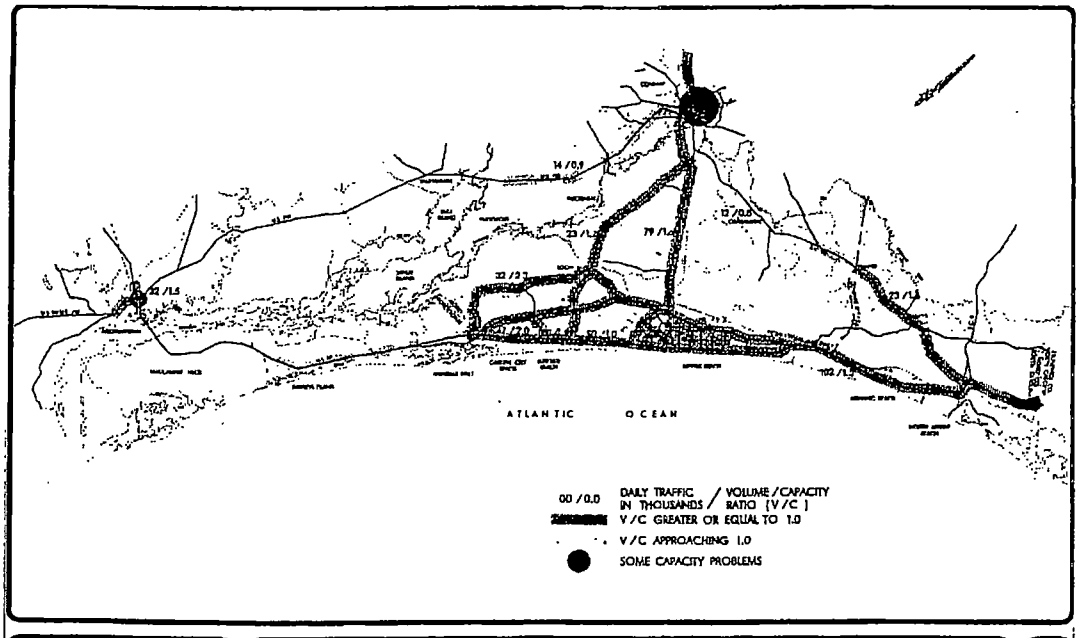
If the Year 2015 traffic projections become a reality, all these projects, and numerous other improvements, will be needed to keep traffic conditions from getting worse than they already are.

Some would argue that the construction of highway improvements encourages highway-dependent land development, which in turn encourages more traffic, perpetuating today's traffic problems.



EXISTING 1995 TRAFFIC CONDITIONS
GSATS Long Range Plan

FIGURE ES-1



ANTICIPATED 2015 EXISTING & COMMITTED TRAFFIC CONDITIONS
GSATS Long Range Plan

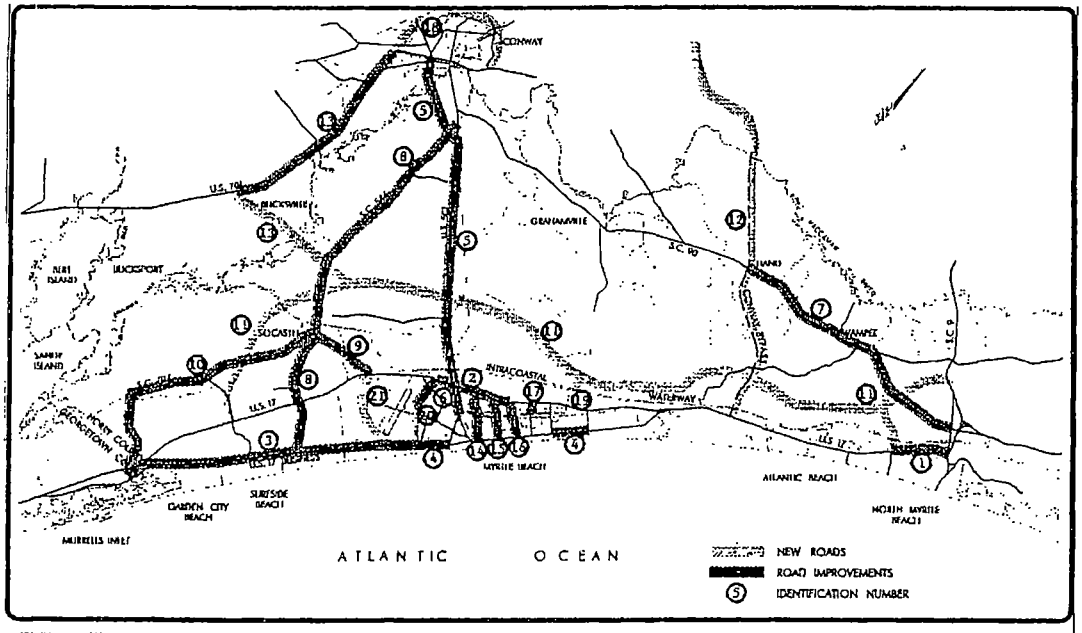
FIGURE ES-2

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BALANCE IS THE ONLY REAL SOLUTION

Evidence of the futility of excessive dependence on highways is the amount of land required to accommodate the automobile. Not only road space is needed, but parking spaces as well. If status quo automobile dependent conditions continue into the future, and if the anticipated traffic growth materializes, it is estimated that approximately 2,500 acres of land would be needed to construct an estimated 240,000 parking spaces (assuming only surface lots are built). This land could obviously be put to better economic use.

Highway improvements totaling $1.7 billion (with contingency) are necessary to accommodate projected traffic growth and return traffic conditions to better than they are today. But these improvements would not address all of the region's transportation problems. It would be easier to get to the area, but not so easy to move around. Movements, especially on Ocean Boulevard and Kings Highway, would be hampered as pedestrians walk along or cross streets, and vehicles try to maneuver through the area. Sidewalks can be provided, but with wider roads and more parking needed, the resulting environment would not likely be pedestrian friendly.



MAJOR HIGHWAY PROJECTS CONSIDERED
GSATS Long Range Plan

FIGURE ES-3

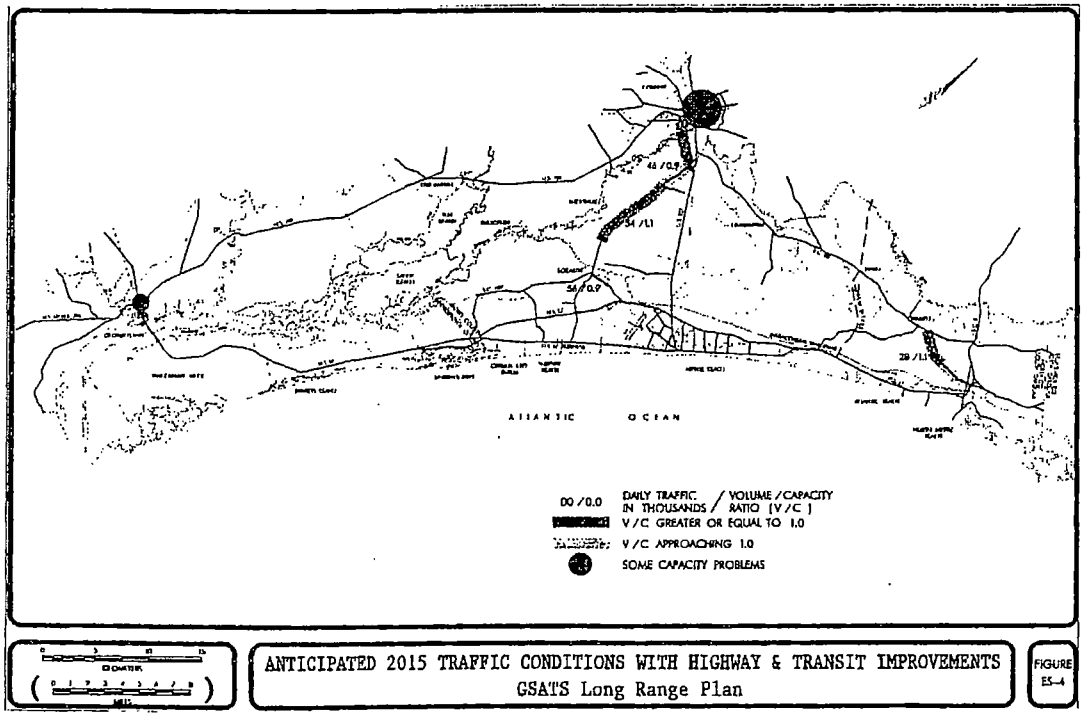
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Another drawback to the "All Highway" approach is the lack of capacity to address post-Year 2015 growth. The proposed highway improvements will result in little reserve capacity to accommodate any additional growth beyond that anticipated by Year 2015. After most major roadways become six to eight lanes wide, there will be few opportunities to provide more road capacity. Therefore, the "All Highway" approach has limited potential to serve the region's post-Year 2015 growth.

PREFERRED PLAN

A multimodal approach that provides a balanced transportation system is the only sound basis for addressing the region's needs. The Preferred Plan is based on a series of highway improvements needed today or in the near future to alleviate congestion. These improvements must be augmented by an increased emphasis on alternate modes of transportation, such as transit, bicycles, and pedestrian improvements.

It is not possible to stop building roads and force people to use alternate modes -- in part because those alternate modes do not exist today, and in part because presently there is no overwhelming willingness to use those modes. Careful planning over time will allow the appropriate transit, bicycle, and pedestrian systems to evolve in concert with changes in land use which will be critical to the success of these alternate modes. To encourage more people to ride transit, transit services must be improved, and the convenience/cost of internal travel by automobile changed.



ANTICIPATED 2015 TRAFFIC CONDITIONS WITH HIGHWAY & TRANSIT IMPROVEMENTS
GSATS Long Range Plan

FIGURE ES-4

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Land Use Controls

Today, the Grand Strand Area is primarily served by low density development. Within the Myrtle Beach area, development is poised to jump over the Intracoastal Waterway and repeat the low density pattern. Such trends will compound demands for highway capacity and make viable transit service difficult to provide.

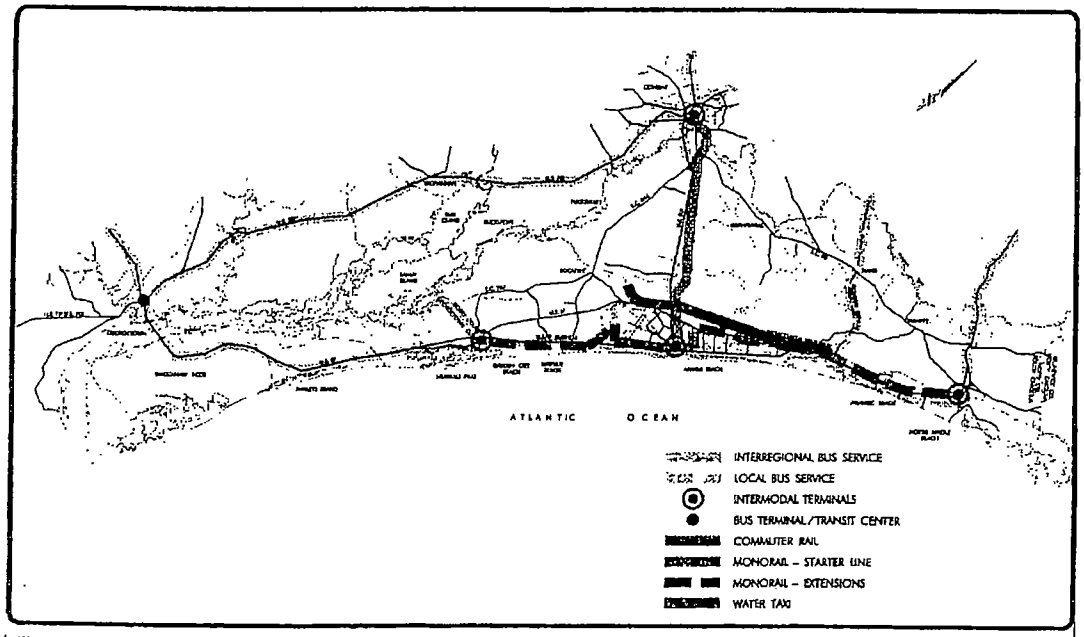
A combination of highway and transit improvements along the Grand Strand can encourage redevelopment of low density areas into major development clusters that encourage transit usage, and facilitate the use of bicycle and pedestrian travel.

Only by coordinating land use and transit improvements as part of a comprehensive long

ar. e plan will the Grand Strand be able to
r :ment the transportation plan required to
ac: ommodate future economic growth. Without managed land use and a balanced transportation system, desired growth may never materialize.

Transit Plan

The Transit Element of the Preferred Plan is a comprehensive program of regional and local bus service, rail projects, plus introduction of water taxi and monorail service. The heart of the plan is a monorail system that would initially link the Air Force Base Redevelopment Area to the Visitors Center, and on to Broadway at the Beach. Later, the system would be extended to North Myrtle Beach and Murrells Inlet.



MASS TRANSIT CONCEPT
GSATS Long Range Plan

FIGURE ES-5

Supporting the Transit Element would be bicycle and pedestrian improvements that offer nonmotorized transportation alternatives. Pedestrian and bicycle improvements around transit stations and intermodal terminals will be important to the success of the transit system.

Highway Element

The adjacent table indicates the highway improvements that are required, in addition to the Transit Element and pedestrian/bicycle improvements, to maintain traffic conditions at acceptable standards. These improvements range from localized intersection or interchange improvements, to short segments of roadway widenings or new connecting highways, to major regional highway improvements such as the proposed Carolina Bays Parkway.

The improvements are prioritized by group and within each group. Priority Group 1 includes all projects contained in the existing Transportation Improvement Plan, plus projects oriented towards improving capacity on routes leading to the Grand Strand Area. Priority Group 2, as a rule, focuses on projects that typically carry lower traffic volumes or are more sub-regional in nature. Additionally, the first phase of the monorail and transit improvement projects are included in Priority Group 2. The final group, Priority Group 3, involves generally localized projects and the expansion of the monorail transit system.

Estimated Costs

The plan is estimated to cost approximately $2.4 billion, including an overall contingency factor of 15 percent. Estimates (including the contingency factor) for each major element include:

Highway	$1.74 billion
Transit	$0.67 billion
Other	$0.01 billion
Total	**$2.42 billion**

Funding Options

A long list of potential local funding options was explored with those having the best potential to generate the funds necessary to finance the plan being: a motor vehicle fuel tax, a county sales tax,, a local accommodations tax, impact fees, and an increase in the admissions tax. Although a combination of these taxes could produce most of the required funds, it is likely that State and Federal funding beyond what is already committed could be found to finance some improvements, and that user fees could sustain the Transit Element.

NEXT STEPS

The GSATS Region has come to a fork in the road. If a status quo approach is most desired by the region, then the All Highway approach costing $1.7 billion will do -- for now. If the region is willing to take slightly more risk and increase the cost of the plan by some $675 million, then the Preferred Plan will not only meet all anticipated travel demands to the Year 2015, but also have reserve capacity to serve the anticipated development beyond that planning horizon. The Preferred Plan appears to be more in tune with the area's goals and objectives.

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Table ES-1
PRIORITIZED PREFERRED PLAN ELEMENTS

PRIORITY GROUP	NO.	IMPROVEMENT	TYPE	ACTION	LOCATION	COST ($000)
1	1	CAROLINA BAYS PARKWAY	HIGHWAY	NEW FACILITY	SC 9 TO US17 (BYPASS) INC US701 CONNECTOR	$717,000
1	1	CONWAY BYPASS	HIGHWAY	NEW FACILITY	US501 TO US17, NORTH MB	$413,000
1	2	US501	HIGHWAY	WIDEN TO 4 LANE FRWY/4 LANE FRONTAGE RD	CONWAY TO FORESTBROOK RD	$31,431
1	2	US501	HIGHWAY	WIDEN TO 6 LANE FRWY/6 LANE FRONTAGE RD	FORESTBROOK RD TO US17 (BYPASS)	$32,789
1	2	US501	HIGHWAY	WIDEN TO 6 LANES	US17 (BYPASS) TO 3RD AVE S	$11,202
1	3	SC544	HIGHWAY	WIDEN TO 6 LANES	US17B TO US17 (BYPASS)	$6,075
1	3	SC544	HIGHWAY	WIDEN TO 6 LANES	US17 (BYPASS) TO SOCASTEE	$14,580
1	3	SC544	HIGHWAY	WIDEN TO 8 LANES	SOCASTEE TO CONWAY	$14,648
1	3	SC544	HIGHWAY	CONSTRUCT INTERCHANGE	SC707/SOCASTEE BLVD, SOCASTEE	$2,500
1	4	US501	HIGHWAY	INTERSECTION IMPROVEMENTS	16TH AVE, CONWAY	$500
1	5	3RD AVENUE S	HIGHWAY	ADD TWO WAY LEFT TURN LANE	US501 TO US17B, MB	$4,051
1	6	BELTLINE ROAD	HIGHWAY	NEW TWO LANE ROAD	SC905 TO US701, CONWAY	$7,050
1	7	10TH AVENUE N	HIGHWAY	WIDEN TO 7/6 LANES	US17 (BYPASS) TO CENTRAL PARKWAY, MB	$3,375
1	8	INLET SQUARE DRIVE	HIGHWAY	REALIGN-SMALL TIP PROJECT	ALIGN WITH MT GILEAD RD, GARDEN CITY	$400
1	9	SC90	HIGHWAY	REALIGN-SMALL TIP PROJECT	REALIGN AT ENT. TO CEDAR CREEK SUBDIV., NORTH M	$500
1	10	N OCEAN BOULEVARD	HIGHWAY	WIDEN	SEA MOUNTAIN HWY TO 53RD AVE N	$1,200
1	11	SC707	HIGHWAY	WIDEN TO 8 LANES	SC544 TO US17 (BYPASS), BACK GATE	$3,600
1	12	US17	HIGHWAY	WIDEN	S OF 8TH AVE N TO SC9, NORTH MB	$1,900
1	13	US17 BUSINESS	HIGHWAY	WIDEN	US17B TO S-62, MURRELLS INLET	$1,480
1	14	ATLANTIC AVENUE (S-51)	HIGHWAY	ADD TWO WAY LEFT TURN LANE	WACCAMAW DRIVE TO US17B, GARDEN CITY	$942
1		NORTH OCEAN BLVD	BIKEWAY	NEW FACILITY	MYRTLE BEACH	$190
1		OCEAN BOULEVARD	BIKEWAY	ADD BIKE AND PED PATH/BIKE LANE	SURFSIDE BEACH	$51
1		US17	BIKEWAY	NEW FACILITY	MYRTLE BEACH	$380
1		CRABTREE CANAL BIKEWAY	BIKEWAY	NEW FACILITY	CONWAY	$10
1		SANTEE COOPER BIKEWAY	BIKEWAY	NEW FACILITY	48TH AVE N TO 76TH AVE N	$342
1		SOUTH WACCAMAW DRIVE	SIDEWALK	CONSTRUCT SIDEWALKS	GARDEN CITY	$113
1		WACHESAW RD	SIDEWALK	CONSTRUCT SIDEWALKS	MURRELLS INLET	$18
1		16TH AVE N	SIDEWALK	ADD SIDEWALKS	MYRTLE BEACH	$21
1		62ND ST N	SIDEWALK	ADD SIDEWALKS	MYRTLE BEACH	$189
1		VARIOUS	SIDEWALK	ADD SIDEWALKS	MYRTLE BEACH	$2,500
1		VARIOUS	MISC	SIGNAL SYSTEMS	MYRTLE BEACH, N. MYRTLE BEACH, CONWAY	$1,160
1		VARIOUS	TRANSIT	PHASE 1 CAPITAL COSTS (w/ contingency)	REGIONAL	$61,625
					SUBTOTAL	$1,334,822
					CONTINGENCY @ 15% (exc transit)	$190,980
March 28, 1996					TOTAL PRIORITY GROUP 1	$1,525,802

Table ES-1 (cont)
PRIORITIZED PREFERRED PLAN ELEMENTS

PRIORITY GROUP	NO.	IMPROVEMENT	TYPE	ACTION	LOCATION	COST ($000)
2	1	US17 (BYPASS)	HIGHWAY	WIDEN TO 6/7 LANES	BACK GATE TO JETPORT ROAD TO US501 TO 29TH AVE N	$28,080
2	2	US17BUSINESS	HIGHWAY	WIDEN TO 6 LANES	N OF MURRELLS INLET TO JETPORT ROAD	$8,500
2	3	21ST AVE N	HIGHWAY	WIDEN TO 5/4 LANES	US17 TO US17B, MB	$4,750
2	4	US17BUSINESS	HIGHWAY	WIDEN TO 6 LANES	JETPORT TO 34TH AVE AND 48TH AVE N TO 62ND AVE N	$15,500
2	5	JETPORT ROAD	HIGHWAY	EXTEND	JETPORT TO US17B, MB	$2,000
2	5	JETPORT ROAD	HIGHWAY	WIDEN TO 4 LANES DIVIDED	US17 (BYPASS) TO JETPORT, MB	$1,214
2	6	SC707	HIGHWAY	WIDEN TO 8 LANES	CAROLINA BAYS PARKWAY TO SC544	$7,200
2	6	SC707	HIGHWAY	WIDEN TO 8 LANES	US17 (BYPASS), MURRELLS INLET TO CBP	$11,520
2	7	SC90	HIGHWAY	WIDEN TO 4 LANES	CAROLINA BAYS PARKWAY TO SC9	$960
2	7	SC90	HIGHWAY	WIDEN TO 4 LANES	CONWAY BYPASS TO CAROLINA BAYS PKWY NEAR SC9	$6,660
2	8	CENTRAL PARKWAY - NORTH	HIGHWAY	NEW DIVIDED ARTERIAL	52ND AVE N TO 38TH AVE N	$10,138
2	8	CENTRAL PARKWAY - SOUTH	HIGHWAY	NEW DIVIDED ARTERIAL	21ST AVE N TO US501	$9,462
2	9	US378	HIGHWAY	CORRIDOR IMPROVEMENTS	CONWAY	$500
2	10	US701	HIGHWAY	CORRIDOR IMPROVEMENTS	CONWAY	$500
2	11	US17	HIGHWAY	ADD RAISED MEDIAN	NORTH MYRTLE BEACH	$250
2	12	OLD SOCASTEE ROAD	HIGHWAY	WIDEN	US501 TO US17 (BYPASS)	$1,056
2	12	OLD SOCASTEE ROAD EXTENSION	HIGHWAY	EXTEND	S-635 TO BACK GATE RD	$285
2	13	US501/378 CONNECTOR	HIGHWAY	NEW FACILITY	CONWAY	$1,560
2	14	GLENN'S BAY RD	HIGHWAY	WIDEN/IMPROVE TO 3 LANES	US 17 (BYPASS) TO US17B	$3,400
2	15	S OCEAN BLVD	HIGHWAY	WIDEN TO 4 LANES	ATLANTIC BEACH TO 48TH AVENUE S, NORTH MB	$1,500
2	16	S OCEAN BLVD	HIGHWAY	WIDEN TO 4 LANES	17TH AVENUE S TO ATLANTIC BEACH, NORTH MB	$750
2		KINGS HIGHWAY	BIKEWAY	ADD BIKEWAYS	MYRTLE BEACH	$100
2		MONORAIL-PHASE 1	TRANSIT	FROM AIRBASE TO DOWNTOWN	MYRTLE BEACH	$151,100
					SUBTOTAL	$266,985
					CONTINGENCY @15% (exc transit)	$17,383
March 28, 1996					TOTAL PRIORITY GROUP 2	$284,368

Table ES-1 (cont)
PRIORITIZED PREFERRED PLAN ELEMENTS

PRIORITY GROUP	PRIORITY NO.	IMPROVEMENT	TYPE	ACTION	LOCATION	COST ($000)
3	1	29TH AVE N	HIGHWAY	WIDEN TO 5/4 LANES	US17 (BYPASS) TO US17B, MB	$2,850
3	2	38TH AVE N	HIGHWAY	WIDEN TO 4 LANES	US17 (BYPASS) TO CENTRAL PARKWAY, MB	$2,850
3	3	5TH AVE S	HIGHWAY	EXTEND 3 LANE ROAD THRU RACEPATH RD	S-600 TO BROADWAY, MB	$2,064
3	3	5TH AVE S	HIGHWAY	ADD TWO WAY LEFT TURN LANE	BROADWAY HWY TO US17B, MB	$1,601
3	4	GEORGETOWN BYPASS	HIGHWAY	NEW FACILITY	US701 TO US17, WEST OF TOWN	$6,724
3	5	GEORGETOWN NE-SW BOULEVARD	HIGHWAY	MAKE FRASIER AND HAZARD ONE-WAY PAIRS	GEORGETOWN	$1,500
3	6	GEORGETOWN NW-SE BOULEVARD	HIGHWAY	MAKE HIGHMARKET AND CHURCH ONE-WAY PAIRS	GEORGETOWN	$1,500
3	7	ELIZABETH STREET	HIGHWAY	EXTEND	16TH AVE TO WALMART CONN, CONWAY	$1,958
3	8	FORESTBROOK ROAD	HIGHWAY	WIDEN TO 4 LANES	US501 SOUTH	$6,585
3	9	MILL POND ROAD	HIGHWAY	EXTEND	US378 TO BEYOND US501, CONWAY	$1,500
3	10	SOUTH JETPORT PARKWAY	HIGHWAY	NEW FACILITY	MYRTLE BEACH	$11,880
3	11	LITTLE RIVER NECK ROAD	HIGHWAY	WIDEN	NORTH MB	$9,000
3	12	LITTLE RIVER NECK ROAD CONNECTOR	HIGHWAY	NEW FACILITY	BETWEEN LITTLE RIVER NECK AND US17	$9,200
3	13	CYPRESS AVE	HIGHWAY	ADD TWO WAY LEFT TURN LANE	WACCAMAW DRIVE TO US17B, GARDEN CITY	$942
3	14	S-111	HIGHWAY	WIDEN TO 4 LANES	S-50 TO SC57	$1,920
3	15	S-50	HIGHWAY	WIDEN TO 4 LANES	LITTLE RIVER TO S-111	$3,360
3	16	US501	HIGHWAY	CORRIDOR IMPROVEMENTS	CONWAY	$500
3	17	US501	HIGHWAY	INTERSECTION IMPROVEMENTS	9TH AVE, CONWAY	$500
3	18	US501	HIGHWAY	INTERSECTION IMPROVEMENTS	US378, CONWAY	$500
3	19	US501	HIGHWAY	CONSTRUCT INTERCHANGE	FORESTBROOK ROAD	$2,500
3	20	US501	HIGHWAY	CONSTRUCT INTERCHANGE	FUTURE INTERSECTION	$2,500
3	21	US501	HIGHWAY	CONSTRUCT INTERCHANGE	SINGLETON RIDGE ROAD	$2,500
3	22	US501	HIGHWAY	CONSTRUCT INTERCHANGE	SC544, CONWAY	$4,000
3	23	US501	HIGHWAY	CONSTRUCT INTERCHANGE	US17 (BYPASS)	$10,000
3	24	US501	HIGHWAY	CONSTRUCT INTERCHANGE	CENTRAL PARKWAY/S-600	$3,500
3	25	US501	HIGHWAY	CONSTRUCT INTERCHANGE	GEORGE BISHOP BOULEVARD	$3,500
3	26	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	SC707/SOUTH JETPORT PARKWAY, MB	$2,500
3	27	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	JETPORT ROAD, MB	$2,500
3	28	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	10TH AVE N, MB	$2,500
3	29	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	21ST AVE N, MB	$2,500
3	30	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	38TH AVE N, MB	$2,500
3	31	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	29TH AVE N, MB	$2,500
3	32	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	67TH AVE N, MB	$2,500
3	33	US17BUSINESS	HIGHWAY	CONSTRUCT INTERCHANGE	OCEAN BLVD/MAIN GATE, MB	$2,500
3	34	US17BUSINESS	HIGHWAY	CONSTRUCT INTERCHANGE	SC544, SOUTH STRAND	$2,500
3	35	US17BUSINESS	HIGHWAY	CONSTRUCT INTERCHANGE	21ST AVE N, MB	$4,000
3	36	US17BUSINESS	HIGHWAY	CONSTRUCT INTERCHANGE	SURFSIDE DRIVE, SOUTH STRAND	$2,500
3	37	OCEAN BOULEVARD	HIGHWAY	MAKE CONTINUOUS	32ND TO 33RD AVES S, ATLANTIC BEACH	$100
3	38	OCEAN BOULEVARD	HIGHWAY	MAKE CONTINUOUS	20TH TO 29TH AVES S, ATLANTIC BEACH	$200
3	39	MAIN STREET/US17	HIGHWAY	HIGHWAY INTERSECTION IMPROVEMENTS	NORTH MB	$30
3	40	48TH AVE S/US17	HIGHWAY	HIGHWAY INTERSECTION IMPROVEMENTS	NORTH MB	$30
3	41	HILL STREET/LITTLE RIVER NECK	HIGHWAY	HIGHWAY INTERSECTION IMPROVEMENTS	NORTH MB	$120
3	42	WALMART CONNECTOR	HIGHWAY	NEW FACILITY	US501 TO OAK STREET EXT, CONWAY	$2,500
3	43	NORTH STREET	HIGHWAY	WIDEN TO 5 LANES/EXTEND	US701 TO US521, GEORGETOWN	$2,900
3		BIKE THE NECK	BIKEWAY	ADD BIKE FACILITIES	WACCAMAW NECK, GEORGETOWN COUNTY	$950
3		MONORAIL-PHASE 2	TRANSIT	EXTEND TO MURRELLS INLET AND NORTH MB	REGIONAL	$185,500
3		VARIOUS	TRANSIT	PHASES 2 AND 3 COSTS (EXC MONORAIL)	REGIONAL	$270,185
					SUBTOTAL	$586,949
					CONTINGENCY @ 15% (exc transit)	$19,690
					TOTAL PRIORITY GROUP 3	$606,639

March 28, 1996

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

Exhibit B

County Ordinance 105-96

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

244918

FILED
HORRY COUNTY, S.C.
'96 JUL 15 P1 1:36
R.M.C.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ORDINANCE NO. 105-96

AN ORDINANCE IMPOSING A TWO AND ONE-HALF PERCENT HOSPITALITY FEE IMMEDIATELY.

WHEREAS, A plan which offered long-range solutions to this area's road problems failed to pass; and

WHEREAS, The need for road improvement continues and will in all likelihood increase in the future; and

WHEREAS, Considerable time and effort was expended by the Governor's RIDE Committee to establish a new plan and a new timetable; and

WHEREAS, All past efforts to institute a local options sales tax have failed, thus making difficult the possibility of using the largest single revenue generator available; and

WHEREAS, Current law allows local government to levy reasonable and necessary fees to provide needed infrastructure.

NOW THEREFORE, BE IT ORDAINED IN COUNCIL DULY ASSEMBLED,

SECTION 1. (A) **Establishment of Hospitality Fee.** There is established a uniform service charge, hereinafter referred to as the "hospitality fee," equal to one and one-half percent (1.5%) within the geographic confines of Horry County, with an additional hospitality fee equal to one percent (1.0%) within the unincorporated areas of Horry County only. These fees shall be imposed on:

(1) the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies;

(2) those paid admissions to places of amusement within the County to which the admissions tax imposed by the State of South Carolina pursuant to Section 12-21-2420, et seq. of the South Carolina Code, applies (golf fees not to begin until 7/1/97); and

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(3) the gross proceeds derived from the sale of food and beverages sold in establishments which primarily have as their business purpose the sale of prepared food for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine.

(B) **Payment of the Hospitality Fee.** Payment of the hospitality fee shall be the liability of the consumer of the services described in Section 19-51 subsection (A). The hospitality fee shall be paid at that time of the delivery of services to which the hospitality fee applies, shall b3e collected by the provider of the services,and shall be held in trust by the provider until remitted as provided for herein.

(C) **Collection of the Hospitality Fee.** The hospitality fee imposed by this section is due and payable in monthly installments on or before the twentieth day of each month and every person liable for the fee shall on or before the twentieth day of each month make a true and correct return to the County in such form as it may prescribe and remit the fee therewith. A return is considered to be timely filed if the return is mailed and has a postmark dated on or before the date the return is required to be filed. In case of a failure to make a true and correct return or a failure to file the return, the County shall make a return upon such information as it may be able to obtain, assess the fee due thereon, and add a penalty of ten percent, whereupon the County shall mail notice to the person liable for the fee and, in the case of failure to pay the fee within ten days after the mailing of any such notice, the County shall add an additional penalty of ten percent.

(D) **Inspections and Audits.** For the purpose of enforcing the provisions of this section the County Administrator or other authorized agent of the County, is empowered to enter upon the premises of any person subject to this section and to make inspections, examinations and audits of books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours written notice. In the event that an audit reveals that false information has been filed by the remitter, the costs of the audit shall be added to the correct amount of fees determined to be due, in addition to the penalties provided in subsection (C). The County Administrator or other authorized agent of the County may make systematic inspection of all businesses within the County, to ensure compliance with this section. Records of inspection shall not be deemed public records.

(E) **Penalties.** (1) It is a violation of this section to:

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(a) fail to collect the hospitality fee;

(b) fail to remit to the County any hospitality fee collected;

(c) fail to file a hospitality fee; return.

(d) knowingly provide false information on a hospitality fee return;

or

(e) fail to provide books and records to the County Administrator or other authorized agent of the County for the purpose of inspection, examination, or audit after twenty-four (24) hours written notice.

(2) Each day this section is violated constitutes a separate offense.

(3) Upon conviction of this section, the violator is guilty of a misdemeanor and subject to a fine or forfeiture not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both.

(F) **Start-up Funds and Administration of Hospitality Fee.** The County Administrator is responsible for the implementation, collection, and enforcement of the hospitality fee and, upon mutual agreement with the County Auditor and County Treasurer, the County Administrator may provide for the implementation, collection, and enforcement of the hospitality fee through the County Auditor and County Treasurer.

(G) **Disposition of Hospitality Fee.** All revenues collected fro the hospitality fee shall be deposited in two separate funds. The funds derived from the one and one-half percent fee shall be deposited into a Road Fund which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County. The money in this Fund shall be held in escrow until the said comprehensive road plan is finalized and adopted. Interest generated by this fund shall accrue to the fund. The funds derived for the one percent fee shall be deposited in the general fund of the County to offset the cost of public safety and public works services and infrastructure directly impacted by tourism. In the case of either fund, the costs of collecting

the monies may be reimbursed by the fund monies, up to a maximum of one percent (1%).

(H) **Sunset.** The imposition of the one and one-half (1.5%) percent hospitality fee for infrastructure will terminate (a) on 8/1/97 if an appropriate agreement or legislation is not in place fro the State of South Carolina to provide their share of the short term funding plan outlined by RIDE or (b) twenty years from the effective date of this ordinance. Should the one and one-half (1.5%) percent hospitality fee be terminated on 8/1/97, all funds collected will be placed in the general fund of the County and used for services directly impacted by the tourism industry (see G above).

SECTION 2. SEVERABILITY.

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby.

SECTION 3. CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this ordinances are hereby repealed.

SECTION 4. EFFECTIVE DATE.

This ordinance shall be effective 1/1/97.

FIRST READING: August 6, 1996
SECOND READING: August 20, 1996
THIRD READING: October 15, 1996

ATTEST:
Rosella H. Carroll
Rosella H. Carroll, Clerk to Council

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HORRY COUNTY COUNCIL

A. Joseph McNutt, Jr., Chairman

Ray Skidmore, Jr., District 1

John Kost, District 2

Raymond J. Brown, District 3

Chandler Brigham, District 4

Chandler C. Prosser, District 5

Terry Chambers, District 6

James R. Frazier, District 7

Elizabeth D. Gilland, District 8

Ulysses Dewitt, District 9

Johnny Shelley, District 10

Janice Jordan, District 11

ATTEST:

Rosella H. Carroll, Clerk to Council

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BOOK 1895 PAGE 842

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Exhibit C

City Resolution of Oct. 8, 1996

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
CITY OF MYRTLE BEACH

RESOLUTION SUPPORTING THE FINDINGS AND RECOMMENDATIONS OF THE RIDE COMMITTEE REPORT OF SEPTEMBER 1996.

WHEREAS, the serious transportation problem and traffic congestion are an ever increasing threat to the public safety and welfare, and the future economic development of Horry County and the State of South Carolina: and

WHEREAS, the Honorable David M. Beasley, Governor of the State of South Carolina, requested that the Honorable H.B. Limehouse, Chairman of the South Carolina Department of Transportation, form a special committee, which consisted of nine members and became known as the Road Improvement and Development Effort (RIDE Committee), to prepare a study on Horry County transportation problems and potential solutions; and

WHEREAS, the RIDE Committee considered both short term and long term solutions to the serious transportation problems and traffic congestion on Horry County roads; and

WHEREAS, the RIDE Committee presented the results of their study to the Governor on September 16, 1996, and to the South Carolina Department of Transportation Commission on September 19, 1996, and municipal bodies of Horry County on October 3, 1996; and

WHEREAS, the plan presented will provide substantial traffic relief and require participation in the funding package by the citizens of Horry County, as outlined by the proposed implementation of a 1.5 percent hospitality fee for a period of up to 20 years in partnership with the State of South Carolina, who will contribute substantial funding; and

WHEREAS, in order to solve the serious transportation and traffic congestion problems in Horry County, it is essential that the people and governments of Horry County work together harmoniously toward that common goal.

NOW, THEREFORE, BE IT RESOLVED that Myrtle Beach City Council strongly and unanimously support the RIDE Committee Report to Governor David M.

Beasley; and further urges Horry County Council to enact expeditiously the necessary ordinances to implement the RIDE Committee report.

SIGNED AND SEALED this 8th day of October, 1996.

ATTEST:

JOAN GROVE, CITY CLERK

ROBERT M. GRISSOM, MAYOR

RACHEL BROADHURST, COUNCIL MEMBER

WILSON CAIN, COUNCIL MEMBER

HARRY CHARLES, COUNCIL MEMBER

JOHN MAXWELL, COUNCIL MEMBER

MARK S. McBRIDE, COUNCIL MEMBER

CRAIN WOODS, COUNCIL MEMBER

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Exhibit D-1

County's Application and Revised Application to State Transportation Infrastructure Bank

ELECTRONICALLY FILED 2019 May 14 1:15 PM HOBRY COMMON PLEAS CASE #2019CP2601432

APPLICATION

to the

State Transportation Infrastructure Bank Board

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

EXECUTIVE SUMMARY

On behalf of Horry County, this application is being presented to the South Carolina Transportation Infrastructure Bank as a request for funding of the Road Improvement and Development Effort (RIDE) Project, which was presented to and approved by Governor David M. Beasley in September 1996.

Horry County's RIDE Project is the initiation of a comprehensive solution for transportation problems which pairs significant funding from the local level with funding provided by the State of South Carolina. Horry County enacted an ordinance in the fall of 1996 that implemented a 1.5-percent hospitality fee (accommodations, restaurants, amusements, golf, and theaters) effective January 1, 1997. The purpose of this fee is to provide the financial ability for Horry County to partner with the State of South Carolina to meet the infrastructure needs of the County.

The participating parties of the RIDE Project are Horry County, the South Carolina Transportation Infrastructure Bank and the South Carolina Department of Transportation. The role of the South Carolina Transportation Infrastructure Bank is to provide the necessary financing and funding for the RIDE Project. It is Horry County's intent to contract with the South Carolina Department of Transportation to manage the design, construction, and implementation of the RIDE Project. Horry County, in addition to providing 30 percent of the overall cost of the RIDE Project, will provide limited oversight to ensure that project schedules are met.

The total cost of the RIDE Project is $774 million ($698 million in 1997 dollars, escalated at 4.5 percent per year over the construction period, seven years). The total debt service over the life of the proposed bonds for the RIDE Project is $1.2 billion. Horry County's contribution to retire the debt is $368 million; the South Carolina Transportation Infrastructure Bank is requested to fund the balance of the debt service, $859 million.

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INTRODUCTION

On behalf of Horry County, this application is being presented to the South Carolina Transportation Infrastructure Bank as a request for funding of the Road Improvement and Development Effort (RIDE) Project, which was presented to and approved by Governor David M. Beasley in September 1996. The RIDE Project provides solutions for today's needs as well as addressing the long term transportation requirements for the Grand Strand. This application is requesting funding for the implementation of the RIDE Project. Horry County's RIDE Project is the initiation of a comprehensive solution for transportation problems which pairs significant funding from the local level with funding provided by the State of South Carolina.

DESCRIPTION OF THE PROJECT

The Horry County RIDE Project (implementable between 1998 and 2004) provides relief to the traffic congestion resulting from immense growth in the County's tourist population as well as permanent residents. The current road infrastructure does not accommodate a community with a fluctuating population of 250,000 to 750,000 people daily, and therefore results in significant delays, congestion, frustration, fuel consumption, and safety problems, as well as hurricane evacuation concerns.

The RIDE Project includes a series of interconnected highway construction and road enhancements that will improve the overall transportation network in Horry County. These include (refer to Figure 1):

- **Conway Bypass** - A fully controlled access facility from U.S. 17 [the bridge at Briarcliffe complete with interchange at U.S. 17] to U.S. 501 between Aynor and Conway. The facility will consist of six-lane fill/bridging/paving between U.S. 17 and Carolina Bays Parkway, six-lane fill/bridging/four-lane paving between Carolina Bays Parkway and S.C. 90, three-lane fill/bridging/two-lane paving between S.C. 90 and S.C. 905, and two-lane fill/bridging/paving between S.C. 905 and U.S. 501, with temporary at-grade access allowed at U.S. 501, S.C. 319, U.S. 701, S.C. 905, and S.C. 90. The cost includes the purchase of right-of-way as originally designed.

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RIDE PROJECT

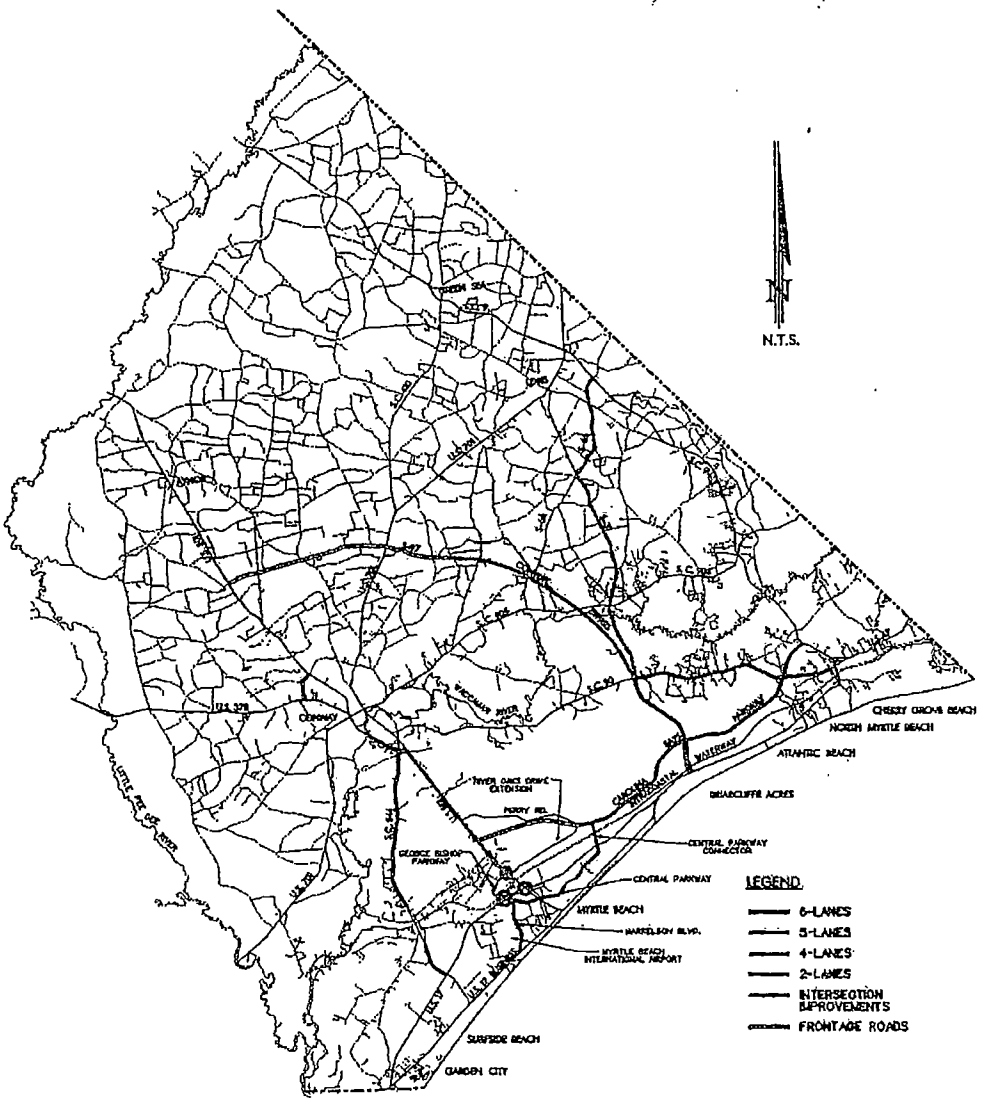


Figure 1

- **Carolina Bays Parkway** - A fully controlled access facility, six-lane fill/bridging/four-lane paving from S.C. 9 to U.S. 501, including the Central Parkway connector crossing the Atlantic Intracoastal Waterway to U.S. 17 Bypass [four-lane fill/bridging/two-lane paving]. The cost includes the purchase of right-of-way as originally designed.

- **S.C. 544** - Five lanes from the U.S. 17 Bypass to U.S. 501.

- **U.S. 501** - Frontage road system between the Atlantic Intracoastal Waterway and Forestbrook Road, intersection improvements between Forestbrook Road and the Waccamaw River, and an overpass at George Bishop Boulevard/River Oaks Drive.

- **Central Parkway** - Four lanes from the Central Parkway connector (between 48th Avenue North and 62nd Avenue North) to Harrelson Boulevard (in the vicinity of the Myrtle Beach International Airport).

- **Fantasy Harbour Bridge Interchange** - Four-lane bridge/interchange that will create the final leg of what is to be called the Metropolitan Loop, which includes Central Parkway, George Bishop Boulevard, and River Oaks Drive and Extension.

- **Conway Perimeter Road** -Four lanes from U.S. 501 on the west side of Conway to U.S. 378).

- **Intersection/Interchange Improvements** - Along S.C. 90 between Conway Bypass and S.C. 9, S-31, S-66, and U.S. 17 Bypass.

Appendix A consists of a copy of the RIDE Report to Governor David M. Beasley (September 1996) as well as Resolutions passed supporting the RIDE Project by the municipalities within Horry County, Horry County Board of Education, and South Carolina Department of Transportation. This RIDE report details the objectives of the short and long term transportation needs of Horry County. It also provides a brief history of the difficulty Horry County has faced in trying to fund their transportation infrastructure needs which jeopardizes the significant economic contribution Horry County provides the State of South Carolina through tourism.

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PUBLIC BENEFITS

The Grand Strand has grappled with solutions to severe traffic congestion since 1984. Community business groups, such as the Area Council on Transportation and Carolina Bays Parkway Task Force, have spent over 15 years trying to find solutions to the increasing commuter and tourism traffic along the Grand Strand. The approval of the RIDE Report by Governor David M. Beasley in September 1996 gave the Grand Strand a sense of hope that finally something would be done to alleviate their problems. The Governor's approval led to the passage of Resolutions passed supporting the RIDE Project by the municipalities within Horry County, Horry County Board of Education, and South Carolina Department of Transportation (refer to Appendix A).

Economic benefits of the RIDE Project include both reductions in the cost of transportation and the potential for increased economic activity. Highways are best thought of as "tools" for moving goods and people from one place to another. In this sense, highways lower real and perceived transportation costs. The main way that transportation investments can contribute to economic growth is by reducing the cost of moving people and goods. When they save time, enhance safety, and/or cut vehicle-operating costs, travelers benefit. Their transportation cost savings are net gains to society. Public benefits fall into five primary categories:

- **Economics** – The increase in mobility associated with construction of the RIDE Project can conservatively be expected to increase statewide employment by more than 20,800 jobs by the year 2010.[1] Furthermore, the gross state product (value added) could be increased by $896 million between the years 2001 and 2010. Construction of the RIDE Project is imperative to maintaining the growth of the healthy tourism industry that currently supplies a significant amount of the tax revenue to the State of South Carolina. Currently, approximately 13 million tourists enjoy the Grand Strand and contribute to South Carolina's tax revenues, while experiencing frustration and delays on the roads that make their vacation experience much less than their expectations. Tourism must continue to grow for the area and the State to prosper. Adoption of the RIDE Project will be a major factor in insuring growth rather than decline. The RIDE project also provides an

[1]THE LPA GROUP INCORPORATED in association with Wilbur Smith Associates (September 1993). *Carolina Bays Parkway Feasibility Study*. Prepared for the Horry County Higher Education Commission.

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increase in employment that accompanies the resulting growth. This employment growth affects in addition to Horry County, but also Georgetown, Williamsburg, and Marion Counties who are currently experiencing unemployment rates of 8.4, 16.7, and 8.6 percent, respectively, and to some extent Sumter and Florence Counties.

- **Convenience** – Currently both local residents and the 13 million tourists that visit Horry County on an annual basis find themselves driving on congested roads. Without action, the situation will only get worse as Horry County is projected to be the second fastest growing county in the United States through the year 2005. Implementation of the RIDE project, will significantly improve access to and exiting from Myrtle Beach, as well as enhancing daily traffic movement within the County. With the implementation of the RIDE Project, examples of improved mobility across the traffic network would be an average travel speed of 29 miles per hour, 12,524,830 total vehicle miles traveled, and 430,545 total vehicle hours. Without implementation of the RIDE Project, the average network travel speed would be 15 miles per hour, 12,828,510 total vehicle miles traveled, and 839,403 total vehicle hours.

- **Safety** – The road infrastructure in Horry County is currently just over capacity, which has a dramatic impact on traffic flow and access. The completion of the RIDE Project will significantly improve the traffic mobility and safety in Horry County.

- **Emergency Response** – Horry County's increased resident retirement population combined with the transient tourist population makes the need for efficient emergency response times critical to the area. By increasing the capacity of the roads designated in the RIDE Project, a substantial reduction in emergency response times by the public safety departments will result.

- **Hurricane Evacuation** – Hurricane evacuation is another pressing concern for Horry County. Should Horry County experience a hurricane during the peak tourist season, approximately 20 to 30 percent of the visitors and residents would be stranded due to the insufficient road infrastructure. The RIDE Project, once complete, would provide several evacuation route alternatives in addition to the current evacuation routes from the Grand Strand. Theses new routes will significantly improve the safety of evacuation procedures.

Technical analysis of our present highway system reported by the Grand Strand Area Transportation Study (GSATS) indicates that the region's present highway system is operating just over capacity and can not handle significant increases in traffic without intolerable delays. Table A of the daily traffic volumes, provided in Appendix B, is evidence of the benefits resulting from implementation of the RIDE Project.

FINANCIAL PLAN

Horry County enacted an ordinance in the fall of 1996 that implemented a 1.5-percent hospitality fee (accommodations, restaurants, amusements, golf, and theaters) effective January 1, 1997. The purpose of this fee is to provide the financial ability for Horry County to partner with the State of South Carolina to meet the infrastructure needs of the County. The total cost of the RIDE Project is $774 million ($698 million in 1997 dollars, escalated at 4.5 percent per year over the construction period, seven years, refer to Table 1). The anticipated cash requirements for the RIDE Project is provided in Column 2 on Table 2. The total debt service over the life of the proposed bonds for the RIDE Project is $1.2 billion, as shown in Column 4 on Table 2. Horry County's contribution to retire the debt is $368 million, outlined in Column 5 of Table 2. Horry County is requesting that the South Carolina Transportation Infrastructure Bank fund the balance of the debt service, $859 million as outlined in Column 6 of Table 2.

The projected financial plan includes the following assumptions:

- Local revenues are increased by a combined growth and inflation rate of 6.5 percent per year;
- Construction inflation is projected at 4.5 percent per year using 1997 dollars as the base (except for the Conway Bypass which has been negotiated between Fluor Daniel and South Carolina Department of Transportation); and,
- Twenty-year bonds were utilized with 5.5 percent interest rates.

The degree of financial risk is very low! Local participation for Horry County is funded by the 1.5-percent hospitality fee, which in Horry County carries approximately the same risk as a sales tax (i.e., very low risk). While this source of County participation is subject to severe weather, economic downturns, etc., the projected revenue collection of the hospitality fee allows a contingency amount to address those situations.

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Table 1
HIDE PROJECT
COST-TIMELINE

FACILITY	COSTS (1997)	CONSTRUCTION TIMETABLE 1998	1999	2000	2001	2002	2003	2004	TOTAL
Conway Bypass (1997 costs provided by Fluor Daniel 9/16/97)									
U.S. 17 to Carolina Bays Parkway (6/6/6)	$77,500,000		$77,500,000						$77,500,000
Diamond Interchange (Conway Bypass/Carolina Bays Parkway)	$0								$0
Carolina Bays Parkway to S.C. 90 (6/6/4)	$34,500,000		$34,500,000						$34,500,000
Diamond Interchange (Conway Bypass/S.C. 90)	$0								$0
S.C. 90 to S.C. 905 (3/3/2)	$39,700,000		$39,700,000						$39,700,000
S.C. 905 to S-97 (2/2/2)	$33,100,000			$33,100,000					$33,100,000
S-97 to U.S. 501 (2/2/2)	$33,200,000			$33,200,000					$33,200,000
Grade separations (6)	$24,800,000	$24,800,000							$24,800,000
Superpave	$2,300,000			$2,300,000					$2,300,000
Right-of-Way	$6,000,000	$6,000,000							$6,000,000
Contingency	$24,000,000	$24,000,000							$24,000,000
Subtotal	$275,100,000	$54,800,000	$151,700,000	$68,600,000	$0	$0	$0	$0	$275,100,000
Carolina Bays Parkway (1997 costs provided by LPA/WSA 9/30/97)									
S.C. 9 to Conway Bypass (6/6/4)	$69,600,000	$3,252,282		$7,806,672	$67,555,796				$78,614,750
Diamond Interchange (Conway Bypass/Carolina Bays Parkway)	$13,000,000	$780,000				$14,530,720			$15,310,720
Conway Bypass to Central Parkway (6/6/4)	$38,800,000	$1,937,809		$1,597,633		$42,214,193			$45,749,635
Central Parkway Connector (4/4/2)	$28,900,000	$1,473,602		$570,583			$33,527,152		$35,571,337
Central Parkway to Carolina Forest Boulevard (6/6/4)	$0								$0
Central Parkway to U.S. 501 (6/6/4)	$65,000,000	$3,072,754		$6,550,294				$72,834,037	$82,457,085
Subtotal	$215,300,000	$10,516,447	$0	$16,525,181	$67,555,796	$56,744,913	$33,527,152	$72,834,037	$257,703,526
Central Parkway									
48th Avenue North to 29th Avenue North	$10,868,000		$527,448	$5,799,406	$5,759,865				$12,086,719
21st Avenue North to 10th Avenue North	$5,434,000	$5,678,530							$5,678,530
10th Avenue North to U.S. 501	$6,270,000		$301,399	$3,313,946	$3,291,351				$6,906,697
U.S. 501 to Harrelson Boulevard	$6,897,000		$470,936	$2,071,217	$5,142,736				$7,684,889
Subtotal	$29,469,000	$5,678,530	$1,299,783	$11,184,569	$14,193,953	$0	$0	$0	$32,356,835
Fantasy Harbour Bridge Interchange	$12,540,000	$3,135,000	$3,276,075	$3,423,498	$3,577,556				$13,412,129
City of Conway Perimeter Road (U.S. 501 to U.S. 378 with interchanges)	$13,585,000		$740,939	$6,224,542	$8,091,239				$15,056,720
U.S. 17/U.S. 501 Interchange (complete)	$12,853,500		$596,519	$7,132,288	$6,514,133				$14,242,940
U.S. 501 Overpass (George Bishop Parkway/River Oaks Drive)	$7,837,500			$1,706,043	$17,828,153				$19,534,196
S.C. 544 (5-lanes - U.S. 17 to Socastee Bridge)	$7,419,500		$3,709,750	$3,709,750					$7,419,500

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Table 1c
RIDE PROJECT
COST TIMELINE

FACILITY	COSTS (1997)	CONSTRUCTION TIMETABLE: 1998	1999	2000	2001	2002	2003	2004	TOTAL
S.C. 544 (5-lanes - Socastee Bridge to U.S. 501)	$54,340,000		$3,909,450	$14,298,812		$14,954,183	$15,627,121	$16,330,342	$65,119,908
SC 90 (intersection improvements between Conway Bypass and S.C. 9)	$4,702,500		$5,135,247.56						$5,135,248
S-31 and S-66 (intersection improvements)	$7,524,000		$8,216,396.10						$8,216,396
U.S. 501(frontage road system AICW to Forestbrook Road, including interchange at Forestbrook Road)	$42,636,000	$10,659,000	$22,277,310	$11,639,895					$44,576,205
U.S. 501/Carolina Forest Boulevard Interchange	$10,450,000		$11,411,661						$11,411,661
U.S. 501 (acceleration/deceleration lanes)	$4,180,000		$4,368,100						$4,368,100
TOTAL	$697,937,000	$84,788,977	$216,641,230	$144,444,578	$117,760,829	$71,699,096	$49,154,273	$89,164,379	$773,653,363
Bond Issue Amounts:		$84,788,977	$216,641,230	$144,444,578	$117,760,829	$71,699,096	$49,154,273	$89,164,379	$773,653,363
Payment for Each Bond (20 Yr. Bond)		$6,725,199	$17,183,311	$11,456,896	$9,340,424	$5,686,950	$3,898,765	$7,072,242	

October 1997
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Table 2
RIDE PROJECT
DEBT SERVICE SCHEDULE

FISCAL YEAR (7/1-6/30)	SIB BOND AMOUNT REQUIRED*/** (20 Year Term)	ANNUAL BOND DEBT SERVICE AMOUNT	ANNUAL ESTIMATED TOTAL DEBT SERVICE (5.5% for 20 Years)	HORRY COUNTY PORTION OF BOND PAYMENT (Paid to SIB) (30% Contribution Ratio)	STATE PORTION OF BOND PAYMENT**
97/98	$84,788,977	$6,725,199	$6,725,199	$2,017,560	$4,707,639
98/99	$216,641,230	$17,183,311	$23,908,510	$7,172,553	$16,735,957
99/00	$144,444,578	$11,456,896	$35,365,406	$10,609,622	$24,755,784
00/01	$117,760,829	$9,340,424	$44,705,830	$13,411,749	$31,294,081
01/02	$71,699,096	$5,686,950	$50,392,780	$15,117,834	$35,274,946
02/03	$49,154,273	$3,898,765	$54,291,545	$16,287,464	$38,004,082
03/04	$89,164,380	$7,072,242	$61,363,787	$18,409,136	$42,954,651
04/05			$61,363,787	$18,409,136	$42,954,651
05/06			$61,363,787	$18,409,136	$42,954,651
06/07			$61,363,787	$18,409,136	$42,954,651
07/08			$61,363,787	$18,409,136	$42,954,651
08/09			$61,363,787	$18,409,136	$42,954,651
09/10			$61,363,787	$18,409,136	$42,954,651
10/11			$61,363,787	$18,409,136	$42,954,651
11/12			$61,363,787	$18,409,136	$42,954,651
12/13			$61,363,787	$18,409,136	$42,954,651
13/14			$61,363,787	$18,409,136	$42,954,651
14/15			$61,363,787	$18,409,136	$42,954,651
15/16			$61,363,787	$18,409,136	$42,954,651
16/17			$61,363,787	$18,409,136	$42,954,651
17/18			$54,638,588	$16,391,576	$38,247,012
18/19			$37,455,277	$11,236,583	$26,218,694
19/20			$25,998,381	$7,799,514	$18,198,867
20/21			$16,657,957	$4,997,387	$11,660,570
21/22			$10,971,007	$3,291,302	$7,679,705
22/23			$7,072,242	$2,121,673	$4,950,569
TOTAL	$773,653,363	$61,363,787	$1,227,275,740	$368,182,722	$859,093,018

NOTE: Growth Rate + Inflation Rate Assumed: 6.5%

Source of Local Revenue: 1.5% Hospitality Fee

Debt service calculations are based on annual principal plus interest payments paid at the beginning of each year. 20 Year Term Per Bond. Fixed Interest Rate Used: 5.5%.

* Refer to Table 2 Cost Timetable.

** The SCDOT Commission has committed $114,000,000 (or equivalent debt service) to the South Carolina Transportation Infrastructure Bank for the Conway Bypass.

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Other contributions include the South Carolina Department of Transportation commitment of $114 million (or equivalent $10 million debt service per year) to fund a portion of the Conway Bypass phase of the RIDE Project. All components of the RIDE Project have been structured to capture any federal funding that might become available (i.e., appropriate federal regulations and requirements have been and will be followed).

In an effort to reduce maintenance expense and extend the life of the Conway Bypass and Carolina Bays Parkway, the cost of superpaving has been included. This will significantly reduce the routine maintenance effort for the South Carolina Department of Transportation of these primary roads. Horry County will also contribute $100,000 per year for 20 years to the South Carolina Department of Transportation, to be placed in an escrow interest bearing account for use in the resurfacing of the Conway Bypass and Carolina Bays Parkway, as deemed necessary by the South Carolina Department of Transportation. State and local maintenance participation on secondary roads will be defined at the completion of construction of each facility.

Please refer to Table 2, Column 1 for the schedule of requested funds.

PROJECT APPROACH

The project schedule shown on Figure 2, illustrates that given sufficient funding provided by the South Carolina Transportation Infrastructure Bank, South Carolina Department of Transportation, and Horry County, the RIDE Project will be completed with the time frame indicated. The cost estimates outlined in preceding sections of this application are based on building the roads to American Association of State Highway and Transportation Officials (AASHTO) standards. Those standards project a life of 20 years before resurfacing is required. Table 3 provides the project cost components. Table 4 accompanies Figure 2 and outlines the factors (necessary steps) required to initiate construction. At this time there are no obstacles (legal issues, lack of support, environmental concerns) anticipated that would deter the implementation of the RIDE Project.

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RIDE PROJECT SCHEDULE

PROJECT NAME	1998	1999	2000	2001	2002	2003	2004
Conway Bypass							
Carolina Bays Parkway (4-Lane)							
Central Parkway							
Fantasy Harbour Bridge Interchange							
Conway Perimeter Road							
U.S. 17 / 501 Interchange							
U.S. 501 (George Bishop Overpass)							
S.C. 544 (Widening Between Socastee Bridge and Conway)							
S.C. 90 Intersection Improvements							
S-31 / S-66 Intersection Improvements							
U.S. 501 (Frontage Road Between Forestbrook Road and AKW)							
U.S. 501 Carolina Forest Boulevard							
U.S. 501 Improvements							

LEGEND

- Environmental and / or Design
- Right - of - Way Aquisition
- Construction

Ride

Figure 2

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Table 3
RIDE PROJECT
PROJECT COST COMPONENTS

FACILITY	COSTS (1997)	ENVIRONMENTAL/ ENGINEERING	RIGHT-OF-WAY ACQUISITION	CONSTRUCTION	MAINTENANCE
Conway Bypass (1997 costs provided by Fluor Daniel 9/16/97)					
U.S. 17 to Carolina Bays Parkway (6/6/6)	$77,500,000			$77,500,000	
Diamond Interchange (Conway Bypass/Carolina Bays Parkway)	$0				
Carolina Bays Parkway to S.C. 90 (6/6/4)	$34,500,000			$34,500,000	
Diamond Interchange (Conway Bypass/S.C. 90)	$0				
S.C. 90 to S.C. 905 (3/3/2)	$39,700,000			$39,700,000	
S.C. 905 to S-97 (2/2/2)	$33,100,000			$33,100,000	
S-97 to U.S. 501 (2/2/2)	$33,200,000			$33,200,000	
Grade separations (6)	$24,800,000			$24,800,000	
Superpave	$2,300,000				$2,300,000
Right-of-Way	$6,000,000		$6,000,000		
Contingency	$24,000,000			$24,000,000	
Subtotal	$275,100,000	$0	$6,000,000	$266,800,000	$2,300,000
Carolina Bays Parkway (1997 costs provided by LPA/WSA 9/30/97)					
S.C. 9 to Conway Bypass (6/6/4)	$69,600,000	$3,112,232	$6,840,960	$58,746,808	$900,000
Diamond Interchange (Conway Bypass/Carolina Bays Parkway)	$13,000,000	$910,000	$0	$11,990,000	$100,000
Conway Bypass to Central Parkway (6/6/4)	$38,800,000	$1,854,363	$1,400,000	$35,245,637	$300,000
Central Parkway Connector (4/4/2)	$28,900,000	$1,410,145	$500,000	$26,789,855	$200,000
Central Parkway to Carolina Forest Boulevard (6/6/4)	$0	$0	$0	$0	
Central Parkway to U.S. 501 (6/6/4)	$65,000,000	$2,940,434	$5,740,000	$55,519,566	$800,000
Subtotal	$215,300,000	$10,227,174	$14,480,960	$188,291,866	$2,300,000
Central Parkway					
48th Avenue North to 29th Avenue North	$10,868,000	$504,735	$5,310,690	$5,052,575	
21st Avenue North to 10th Avenue North	$5,434,000			$5,434,000	
10th Avenue North to U.S. 501	$6,270,000	$288,420	$3,034,680	$2,946,900	
U.S. 501 to Harrelson Boulevard	$6,897,000	$450,656	$1,896,675	$4,549,669	
Subtotal	$29,469,000	$1,243,811	$10,242,045	$17,983,144	$0
Fantasy Harbour Bridge Interchange	$12,540,000			$12,540,000	
City of Conway Perimeter Road (U.S. 501 to U.S. 378 with interchanges)	$13,585,000	$709,033	$5,700,000	$7,175,968	
U.S. 17/U.S. 501 Interchange (complete)	$12,853,500	$570,831	$6,531,250	$5,751,419	
U.S. 501 Overpass (George Bishop Parkway/River Oaks Drive)	$7,837,500		$1,706,043	$6,131,457	
S.C. 544 (5-lanes - U.S. 17 to Socastee Bridge)	$7,419,500			$7,419,500	
S.C. 544 (5-lanes - Socastee Bridge to U.S. 501)	$54,340,000	$3,741,100	$13,093,850	$37,505,050	
S.C. 90 (intersection improvements between Conway Bypass and S.C. 9)	$4,702,500	$300,437.50	$1,306,250	$3,095,813	

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Table 3
RIDE PROJECT
PROJECT COST COMPONENTS

FACILITY	COSTS (1997)	ENVIRONMENTAL/ ENGINEERING	RIGHT-OF-WAY ACQUISITION	CONSTRUCTION	MAINTENANCE
S-31 and S-66 (intersection improvements)	$7,524,000	$540,787.50	$1,567,500	$5,415,713	
U.S. 501(frontage road system AICW to Forestbrook Road, including interchange at Forestbrook Road)	$42,636,000	$1,358,500.00		$41,277,500	
U.S. 501/Carolina Forest Boulevard Interchange	$10,450,000	$627,000	$418,000	$9,405,000	
U.S. 501 (acceleration/deceleration lanes)	$4,180,000	$250,800	$522,500	$3,406,700	
TOTAL	$697,937,000	$19,559,474	$61,568,398	$612,199,128	$4,600,000

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Table 4
RIDE PROJECT
PROJECT STATUS

FACILITY	ENVIRONMENTAL	PERMITTING	PRELIMINARY DESIGN	FINAL DESIGN	RIGHT-OF-WAY ACQUISITION	CONSTRUCTION
Conway Bypass	complete	complete	complete	underway	underway	initiated
Carolina Bays Parkway	underway	underway				
Central Parkway			underway			
Fantasy Harbour Bridge Interchange						
City of Conway Perimeter Road (U.S. 501 to U.S. 378 with interchanges)						
U.S. 17/U.S. 501 Interchange (complete)						
U.S. 501 Overpass (George Bishop Parkway/River Oaks Drive)						
S.C. 544 (5-lanes - U.S. 17 to Socastee Bridge)	complete	complete	complete	underway	underway	
S.C. 544 (5-lanes - Socastee Bridge to U.S. 501)						
S.C. 90 (intersection improvements between Conway Bypass and S.C. 9)						
S-31 and S-66 (intersection improvements)						
U.S. 501(frontage road system AICW to Forestbrook Road, including interchange at Forestbrook Road)	complete	complete	complete	underway	underway	
U.S. 501/Carolina Forest Boulevard Interchange						
U.S. 501 (acceleration/deceleration lanes)						

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The participating parties of the RIDE Project are Horry County, the South Carolina Transportation Infrastructure Bank, and the South Carolina Department of Transportation. The role of the South Carolina Transportation Infrastructure Bank is to provide the necessary financing and funding for the RIDE Project.

It is Horry County's intent to contract with the South Carolina Department of Transportation to manage the design, construction, and implementation of the RIDE Project. Horry County, in addition to providing 30 percent of the overall cost of the RIDE Project, will provide limited oversight to ensure that project schedules are met.

Upon receipt of funding, South Carolina Department of Transportation is responsible for the construction of the RIDE Project including design, right-of-way, construction, maintenance, etc. South Carolina Department of Transportation is to use its judgement in determining whether a specific phase of the RIDE project should be design/build, traditional, or any other methodology of road construction so as to meet the schedule outlined in the RIDE Project (refer to Figure 2).

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APPENDIX A

RIDE REPORT

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TRANSPORTATION and HORRY COUNTY

REPORT

to the

Honorable David M. Beasley
Governor of South Carolina

prepared by:

The Road Improvement
and Development Effort
September 1996

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PREFACE

To those before us ...

South Carolina's Grand Strand has grappled with solutions to severe traffic congestion since 1984, when the Myrtle Beach Chamber of Commerce created the Area Council on Transportation (ACT). The purpose of ACT was to inform state officials of dangerous travel conditions and potential revenue losses statewide resulting from increasing tourism and commuter traffic on U.S. Highways 17 and 501. ACT's efforts to raise the consciousness of elected officials were successful, but the only solution proposed in the mid-1980s was the controversial Conway Bypass, for which state funding and grass roots support were limited.

Community business leaders saw the Conway Bypass as one step in what should have been a multi-step plan to save lives and foster tourism growth. As ACT worked diligently on trying to make the Conway Bypass a reality, a group of local leaders called the Planning Council, initiated work on what was later to become the Carolina Bays Parkway. This led to the formation of the Carolina Bays Parkway Task Force by then State Highway Commissioner Billy Alford in November 1990, which became a named demonstration project in the *Intermodal Surface Transportation Efficiency Act of 1991*. The Carolina Bays Parkway unlike the Conway Bypass had grass roots support but no way to fund its construction.

For over a decade, no planning or funding mechanism evolved to build the much needed highways in Horry County until leaders initiated an unsuccessful local option sales tax referendum in March 1996. Meanwhile economic forecasts reported South Carolina was losing approximately $1 billion annually in revenue due to heavy traffic driving visitors to North Carolina beaches and other vacation sites.

Survey for the future

This loss of revenue continues to threaten South Carolina's economy and endangers lives. That's why Governor David Beasley called upon his own staff, the Horry County Legislative Delegation, and local citizens to form an emergency response team to recommend immediate action to address traffic safety and its corollary concerns: job preservation and hurricane evacuation.

The Governor of South Carolina, working through the South Carolina Department of Transportation, has taken the initiative to: (1) survey the transportation infrastructure needs of Horry County for the next 20 to 30 years (identifying short term, as well as long term needs); and (2) evaluate how these needs can best be financially realized and implemented.

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The Chairman of the South Carolina Department of Transportation, at the direction of the Governor, created the Road Improvement and Development Effort Committee (RIDE) to determine short and long term transportation infrastructure needs and improvements for Horry County along with various options to fund these improvements.

The RIDE Committee

The RIDE Committee consists of nine people with varied backgrounds and interests: Mr. Gary M. Loftus (Chairman), Mr. Frankie Blanton (Vice Chairman), Mr. Edward Bouknight (concerned citizen), Mr. Harry Charles (Councilman, City of Myrtle Beach), Mr. James Frazier (Councilman, Horry County), Mr. John Kost (Councilman, Horry County), Mr. Edward Rodelsperger (Horry County School Board), Ms. Suzette Rogers (Myrtle Beach Chamber of Commerce Board of Directors), and Mr. Frank Thompson (concerned citizen). The Committee was formed in May 1996 to perform an analysis of road needs, possible funding sources, and oversee the development of a report to be submitted to the Governor in September 1996.

The Committee collected technical information from various engineering and planning groups and individuals concerning transportation issues and held several public meetings throughout Horry County. Concurrently, the Committee attempted to develop an understanding of social, technical, political, and jurisdictional issues which have complicated the solutions and frustrated previous efforts of both the public and private sectors.

This report responds to the Governor's directive through the sections outlined below:

- Section 1 - Introduction
- Section 2 - Short Term Recommendations
- Section 3 - Long Term Recommendations
- Section 4 - Financing Recommendations
- Section 5 - Implementation Recommendations
- Section 6 - Conclusion

Thanks and Appreciation

The Committee received invaluable assistance and support from City, County, State, and Federal personnel familiar with various aspects of the transportation problem. They, together with knowledgeable private citizens, made this report possible in the short time allowed. Their data, candor, and most important, their apparent eagerness to participate in a problem-solving effort too large for any one entity was critical in maintaining focus and momentum toward the success of this report. For their help we are very grateful.

The Committee would like to acknowledge the assistance, cooperation, and guidance of the South Carolina Department of Transportation Chairman, Mr. H.B. "Buck" Limehouse, the personnel of the Department who provided information and services necessary for the preparation of this report, and Mr. Robert Probst of the Federal Highway Administration.

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Section 1.0
INTRODUCTION

"Urgent steps must be taken to better maintain our highways and airways or South Carolina faces a transportation crisis."
— David E. Parson, President of AAA Carolinas.

Following an unsuccessful referendum vote on Horry County's Comprehensive Road Plan on March 5, 1996, the Chairman of the South Carolina Department of Transportation (SCDOT), at the direction of the Governor, created the Road Improvement and Development Effort Committee (RIDE). This Committee was charged with the development of a roadway improvement plan that would relieve traffic congestion in Horry County through implementation of short and long term solutions. The Committee also was directed to develop a potential funding program that would address Horry County's short term needs, as well as provide ideas that might be implemented to fund the long term requirements.

REFERENDUM HISTORY

In January 1995, Horry County Council instructed the County Administrator to develop a road plan that combined existing efforts in order to accomplish the construction of major projects (such as the Conway Bypass and Carolina Bays Parkway) and provide improved mobility for the citizens of Horry County.

Horry County Comprehensive Road Plan

For years, many interested individuals and organizations worked on individual components of what became ultimately the Comprehensive Road Plan that had been endorsed by the Horry County Council and the Horry County Legislative Delegation. These organizations included the Area Council on Transportation (ACT), Carolina Bays Parkway Task Force, Council of Myrtle Beach Business Organizations (COMBO), Horry County Transportation Committee (CTC) appointed by the Legislative Delegation, Grand Strand Area Transportation Study (GSATS), and Horry County Department of Public Works through funds appropriated by the Horry County Council. Legislation passed during the 1995 session of the South Carolina General Assembly provided the local option sales tax for roads as a possible source of revenue allowing a much broader approach to be taken to solve the transportation needs. Horry County's Comprehensive Road Plan suggested that the combination of talents and resources that might have contributed to an innovative and pro-active model for highway construction statewide. Working together, the organizations pooled their resources to try to produce mega projects such as the Conway Bypass and Carolina Bays Parkway while at the same time providing much needed relief in rural areas along with the expansion of two critical state routes.

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Traditional methods of highway construction were very quickly determined to be inadequate or nonexistent in view of statements made by the SCDOT and the Federal Highway Administration concerning the availability of funding. Specifically, the SCDOT indicated that the Conway Bypass might be built by the year 2019 but did not suggest any way to construct the Carolina Bays Parkway, upgrade S.C. 544 or S.C. 9, and did not address rural needs at all.

Utilizing existing statistical data and projections produced by the E. Craig Wall Sr. School of Business Administration and Computer Science at Coastal Carolina University, the Comprehensive Road Plan recommended combining a number of funding sources including the local option sales tax for infrastructure that required a referendum. Based on sales tax figures and utilizing the 25-year sunset clause in the enabling legislation, it was possible to project total revenues available through the addition of the one percent local option sales tax. This resource, in combination with a local hospitality fee and other sources, such as the CTC state gas tax dollars called "C" funds, GSATS funds, and County Department of Public Works funds, provided $2.49 billion in revenues for the construction of projects and the amortization of associated general obligation debts. Projects identified by Horry County Council for construction included the Conway Bypass, Carolina Bays Parkway, S.C. 544 (five lanes between the Socastee bridge and Conway), S.C. 9 (four lanes from Green Sea to county line), and paving of approximately 600 miles of the 970 total miles of county dirt roads, for a total estimated construction cost of $1.48 billion.

But the referendum failed by a margin of greater than 2:1 . . .

THE RIDE COMMITTEE

RIDE Committee

The RIDE Committee, formed in May 1996, held their first meeting on May 16, 1996. The Committee met every Thursday after that (with the exception of July 4, 1996, and July 12, 1996 due to Hurricane Bertha) and twice weekly beginning July 29, 1996 through August 23, 1996. The Committee also held three public meetings (June 17, 1996, June 24, 1996, and July 1, 1996, Appendix A), at which they received public input, prior to formulating their plan.

The following sections of this Report, present our recommendations to the Governor.

"Make big plans; aim high in hope and work ..."
-- Daniel Burham

THE PROPOSED SHORT TERM PLAN

The short term improvement recommendations, as described below, include projects that are currently ongoing and projects that could be implemented by the year 2005 (Table 1). These projects will incorporate portions of the GSATS Long Range Plan as approved in March 1996. As shown in the figure titled Recommended Short Term Improvements, the proposed short term plan includes:

- Conway Bypass - construct the six-lane section (as originally designed) between U.S. 17 and Long Bay Road, with an interchange at Long Bay Road or the Carolina Bays Parkway. From Long Bay Road to S.C. 90, construct six lanes of fill and bridges but pave four lanes. From S.C. 90 to S.C. 905, construct three lanes of fill and bridges but pave two lanes. From S.C. 905 to S-97, construct two lanes of fill and bridges and pave both lanes.

  The RIDE Committee proposes that the SCDOT fund the portion of the Conway Bypass between U.S. 17 and S.C. 90 as "*Advance Construction*" under federal guidelines and "*set aside*" federal funding in the next 25 years in the State Transportation Improvement Program (STIP) to "*pay back*" the initial early completion of the project. The impact to Federal Highway Administration funding provided to SCDOT would not be adversely affected in any given year, but instead the payment requirements would be spread evenly over the Federal Program for up to 25 years, causing much the same effect as building the project over time. The advantages of this funding scenario are: (1) early completion of the Conway Bypass would immediately relieve congestion in Conway, improve safety, and provide an additional hurricane evacuation route in the area and would enhance other solutions proposed by the RIDE Committee; (2) the SCDOT would avoid the inflation on construction costs over the next 25 years (which would possibly double in cost); and, (3) the Conway Bypass could be completed with efficiencies gained from a design/build concept.

- Carolina Bays Parkway - construct six lanes of fill and bridges but pave four lanes of the Parkway from S.C. 9 to the intersection of Perry Road and River Oaks Drive Extension (including Central Parkway Connector which would be four lanes). Intersections with S.C. 9 and Central Parkway will be signalized at-grade intersections.

- S.C. 544 - widen to five lanes between the Socastee bridge and U.S. 501 to improve capacity and, accelerate the construction of the five lane section between U.S. 17 and the Socastee bridge.

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Table 1
RECOMMENDED SHORT TERM IMPROVEMENTS

PROJECTS	RESPONSIBLE PARTY	*PRELIMINARY* PROJECT COST (1996 $)	METHOD OF PAYMENT	
			$330,000,000 BOND ISSUE	HORRY COUNTY RESIDUAL CASH FLOW*
CONWAY BYPASS				
Existing design from U.S. 17 to Long Bay Road (6-lane section, including U.S. 17 interchange)	SCDOT/FHWA/ RIDE	$65,900,000	"Advance Construction"	
Diamond interchange at Long Bay Road and Conway Bypass	SCDOT/FHWA/ RIDE	$6,100,000		
Long Bay Road to S.C. 90 (6-lane fill and bridges, paving 4 lanes)	SCDOT/FHWA/ RIDE	$34,400,000		
Diamond interchange at S.C. 90 and Conway Bypass	SCDOT/FHWA/ RIDE	$7,800,000		
S.C. 90 to S.C. 905 (3-lane fill and bridges, paving 2 lanes)	RIDE/ STATE OF S.C.	$37,100,000	$37,100,000	
S.C. 905 to S-97 (2-lane fill and bridges, paving 2 lanes)	RIDE/ STATE OF S.C.	$42,000,000	$42,000,000	
Estimated Program Cost (1996 $)		$193,300,000	$79,100,000	
CAROLINA BAYS PARKWAY				
S.C. 9 to Conway Bypass (6-lane fill and bridges, paving 4 lanes, approximately 7.8 miles)	RIDE/ STATE OF S.C.	$55,900,000	$31,700,000	$24,200,000
Conway Bypass to Central Parkway Connector (6-lane fill and bridges, paving 4 lanes, approximately 6.2 miles)	RIDE/ DEVELOPERS	$47,300,000	$25,800,000	$21,500,000
Central Parkway Connector (approximately 1.8 miles)	RIDE/ STATE OF S.C.	$38,600,000	$38,600,000	
Central Parkway Connector to Perry Road (6-lane fill and bridges, paving 4 lanes, approximately 0.8 miles)	RIDE/I.P	$6,700,000		$6,700,000
Estimated Program Cost (1996 $)		$148,500,000	$96,100,000	$52,400,000



Table 1
RECOMMENDED SHORT TERM IMPROVEMENTS

PROJECTS	RESPONSIBLE PARTY	*PRELIMINARY* PROJECT COST (1996 $)	METHOD OF PAYMENT	
			$330,000,000 BOND ISSUE	HORRY COUNTY RESIDUAL CASH FLOW*
CENTRAL PARKWAY				
48th Avenue North to 29th Avenue North	RIDE/ STATE OF S.C.	$10,400,000	$10,400,000	
21st Avenue North to 10th Avenue North	RIDE/ STATE OF S.C.	$5,200,000	$5,200,000	
10th Avenue North to U.S. 501	RIDE/ STATE OF S.C.	$6,000,000	$6,000,000	
U.S. 501 to Harrelson Boulevard (S-600)	RIDE/ STATE OF S.C.	$6,600,000	$6,600,000	
Estimated Program Cost (1996 $)		$28,200,000	$28,200,000	
Fantasy Harbour Bridge Interchange (with U.S. 17)	STATE OF S.C./ RIDE	$12,000,000	$12,000,000	
City of Conway Perimeter Road (U.S. 501 to U.S. 378, approximately 0.8 miles with interchanges at U.S. 501/ S-165 and U.S. 378)	STATE OF S.C./ RIDE	$13,000,000	$13,000,000	
U.S. 17/U.S. 501 Interchange (complete)	STATE OF S.C./ RIDE	$12,300,000	$12,300,000	
U.S. 501 Overpass (George Bishop Parkway/River Oaks Drive)	RIDE/ STATE OF S.C.	$7,500,000	$7,500,000	
S.C. 544 (5-lane section between U.S. 17 and Socastee Bridge)	GSATS (accelerated)	$7,100,000	$7,100,000	
S.C. 544 (5-lane section between Socastee Bridge and U.S. 501)	RIDE/ STATE OF S.C.	$52,000,000	$3,600,000	$48,400,000
S.C. 90 (intersection improvements between Conway Bypass and S.C. 9)	RIDE/ STATE OF S.C.	$4,500,000	$4,500,000	
S-31/S-66 (intersection improvements)	RIDE/ STATE OF S.C.	$7,200,000	$7,200,000	

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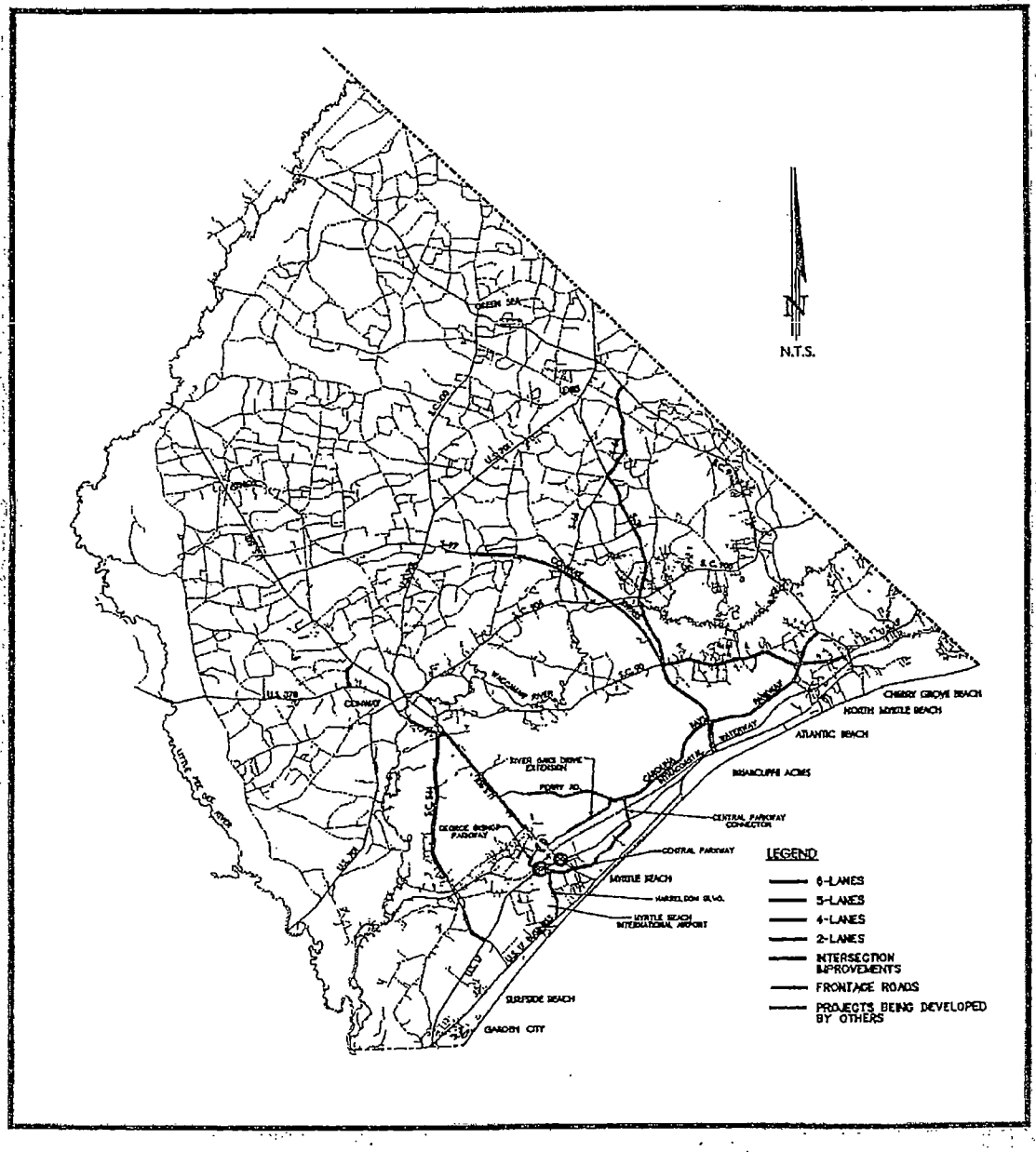
Table 1
RECOMMENDED SHORT TERM IMPROVEMENTS

PROJECTS	RESPONSIBLE PARTY	*PRELIMINARY* PROJECT COST (1996 $)	METHOD OF PAYMENT	
			$330,000,000 BOND ISSUE	HORRY COUNTY RESIDUAL CASH FLOW*
Implementation of *Proposal for the Development of the Grand Strand Area Congestion Management Program*	RIDE/ STATE OF S.C.	$4,500,000	$4,500,000	
U.S. 501 (frontage road system, Atlantic Intracoastal Waterway bridge to Forestbrook Road including the interchange at Forestbrook Road)	RIDE/ STATE OF S.C.	$40,800,000	$40,800,000	
U.S. 501/Perry Road Interchange	RIDE/ STATE OF S.C.	$10,000,000	$10,000,000	
U.S. 501 (acceleration/deceleration lanes, eliminating median breaks where they are not needed)	RIDE/ STATE OF S.C.	$4,000,000	$4,000,000	
SUBTOTAL	RIDE/ STATE OF S.C.	$416,900,000	$322,800,000	$94,100,000
SUBTOTAL ("Advance Construction")	STATE OF S.C./ RIDE	$114,200,000		
SUBTOTAL (Accelerated)	GSATS	$7,100,000	$7,100,000	
SUBTOTAL	RIDE/ DEVELOPERS	$6,700,000		$6,700,000
GRAND TOTAL		$544,900,000		
STATE OF S.C./RIDE et al		$423,600,000	$329,900,000	$100,800,000

NOTE: * Horry County Residual Cash Flow, refer to Tables 4 and 5 in Section 4, column labeled "Future Project Debt Service Available."

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Recommended Short Term Improvements



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- Conway Perimeter Road - construct a bypass of Conway on the south side from U.S. 501 between S-165 and U.S. 378, thereby giving motorists an option to either traverse Conway on U.S. 501 or turn off on S-165 and use U.S. 378 to avoid the congestion through Conway, particularly in the vicinity of the intersection of 16th Avenue and U.S. 501.
- Metropolitan Loop - connect the projects that are currently planned or underway. These projects are the Fantasy Harbour bridge, River Oaks Drive Extension, and Central Parkway between 38th Avenue North and U.S. 501. The completion of the Loop would require the construction of the rest of Central Parkway between U.S. 501 and the Fantasy Harbour bridge, and between 38th Avenue North and the Central Parkway Connector of the Carolina Bays Parkway, all four lanes. In addition, construction of an interchange at the intersection of the Fantasy Harbour bridge, U.S. 17, Central Parkway, and Harrelson Boulevard, as well as an overpass at the intersection of U.S. 501 and George Bishop Parkway, would be required.
- U.S. 501 - construct the frontage road system between the Atlantic Intracoastal Waterway and Forestbrook Road, as well as the interchange at Forestbrook Road. Also, construct an interchange at Perry Road, install acceleration and deceleration lanes at median breaks (which may require the elimination of several of the existing median breaks) between Forestbrook Road and the Waccamaw River, and completion of the U.S. 17/U.S. 501 interchange.
- Intersection Improvements - perform intersection improvements on S.C. 90 (between the Conway Bypass interchange and S.C. 9), S-31 (between S.C. 90 and S-66), and S-66 (between S-31 and S.C. 9 in Loris).

Looking toward the Future

- Implementation of all or portions of the *Proposal for the Development of the Grand Strand Area Congestion Management Program* (SCDOT Traffic Engineering, June 1996), including implementation of the SHEP Program in the GSATS area.

In addition to the implementation of the projects outlined in Table 1 and the Recommended Short Term Improvements illustration, the RIDE Committee requests:

1. Passage of enabling legislation to create the Infrastructure Bank, so that the South Carolina Department of Transportation can receive federal funding identified in the recent federal legislation. The SCDOT is one of the ten pilot states identified and this would provide *"seed money"* for road projects statewide.
2. Amendment of the enabling legislation passed during the 1995 session of the South Carolina General Assembly relating to funding of highway projects through the implementation of a local option sales tax or tolls. The elimination of the referendum requirement for tolling if the project costs exceed $150 million would allow necessary projects to proceed at a faster pace and lower cost.

3. Clarification and amendment of *ALL* legislation regarding tolling to allow greater flexibility and innovation. Currently, tolls from Project A cannot be used to construct Project B, even though they may be connected. This and other restrictions, need to be addressed.
4. Assignment of additional troopers and an additional District Supervisor (Lieutenant) to Horry County on a permanent basis. This will assist with the prevention of accidents, thus improving the public safety and welfare and providing increased mobility under existing conditions. As a side note, we wish to thank the South Carolina Department of Public Safety for increasing the number of troopers assigned to Horry County during the 1996 summer season. Their presence and assistance were greatly appreciated.
5. Coordination with the U.S. Fish and Wildlife Service to ensure that *ALL* wildlife refuge proposals do not hinder the implementation of long term highway requirements in Horry County, including the GSATS Long Range Transportation Plan.

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Section 3.0
LONG TERM RECOMMENDATIONS

WHERE WE ARE NOW

Where do we go from here?

The historic solution to transportation needs of Horry County has been crisis-oriented with piecemeal planning and construction being performed in an uncoordinated manner. Planning for the future should integrate the multimodal approach (road, bicycle, pedestrian, and transit) proposed by GSATS. This integration should involve principal participants at all levels (federal, state, regional, and local). The RIDE Committee, therefore, recommends that a strategic planning approach utilizing the GSATS Long Range Plan be applied under the leadership of the *"group"* chosen to implement the short term recommendations, as outlined in Section 5.

THE FUTURE

Path to the Future

Applying the strategic planning approach to Horry County should involve not only innovative thinking regarding needs for the next 20 to 30 years but also consider community goals and values. The future could be implemented in degrees, in order for it to be workable, and should focus on all aspects (social, technical, environmental, and economic) but with a *"vision"* to a comprehensive transportation network. The argument for a specific *"group"* to play a fundamental role in no way excuses the responsibilities of federal, state, or local governments, but would produce a mechanism that would eliminate the long, tedious process of multi-phased assessment, review, and approval. This *"group"* could be given the authority to certify projects in a one-step process and thereby reduce the involvement of federal, state, or local governments.

In order to meet the challenge of integration, all boundaries (technical and political) must be eliminated to create the act of *"achieving"* not just planning.

DETAILING THE PLAN

The RIDE Committee recognizes and applauds the extensive work that has been performed by others before them, and desires to advance these efforts by developing a management plan which would address regulatory, financial, and operational needs for a successful transportation plan. This transportation plan should involve the detailed study that was prepared and approved by the Grand Strand Area Transportation Study in March 1996 (Appendix B). Additionally, the RIDE Committee has added several projects

"Change unfair federal formulas for federal funding ... stop government from using dollars raised in South Carolina elsewhere."
— U.S. Senator Strom Thurmond

that are not considered in the GSATS Long Range Plan, most of which are outside the GSATS Study Area, but in Horry County. The list of improvements that are offered for consideration is outlined in Table 2 and illustrated on the figure titled Recommended Long Term Improvements.

In addition to the consideration of the projects outlined in Table 2 and Recommended Long Term Improvements illustration, the RIDE Committee requests that the State find solutions to keep South Carolina from being a donor state and increase the funding for the SCDOT. Additionally, the State needs to address the total funding requirements for road construction and maintenance. Current funding mechanisms are inadequate and the formulas used need to be reviewed and overhauled.

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Long Term Projects

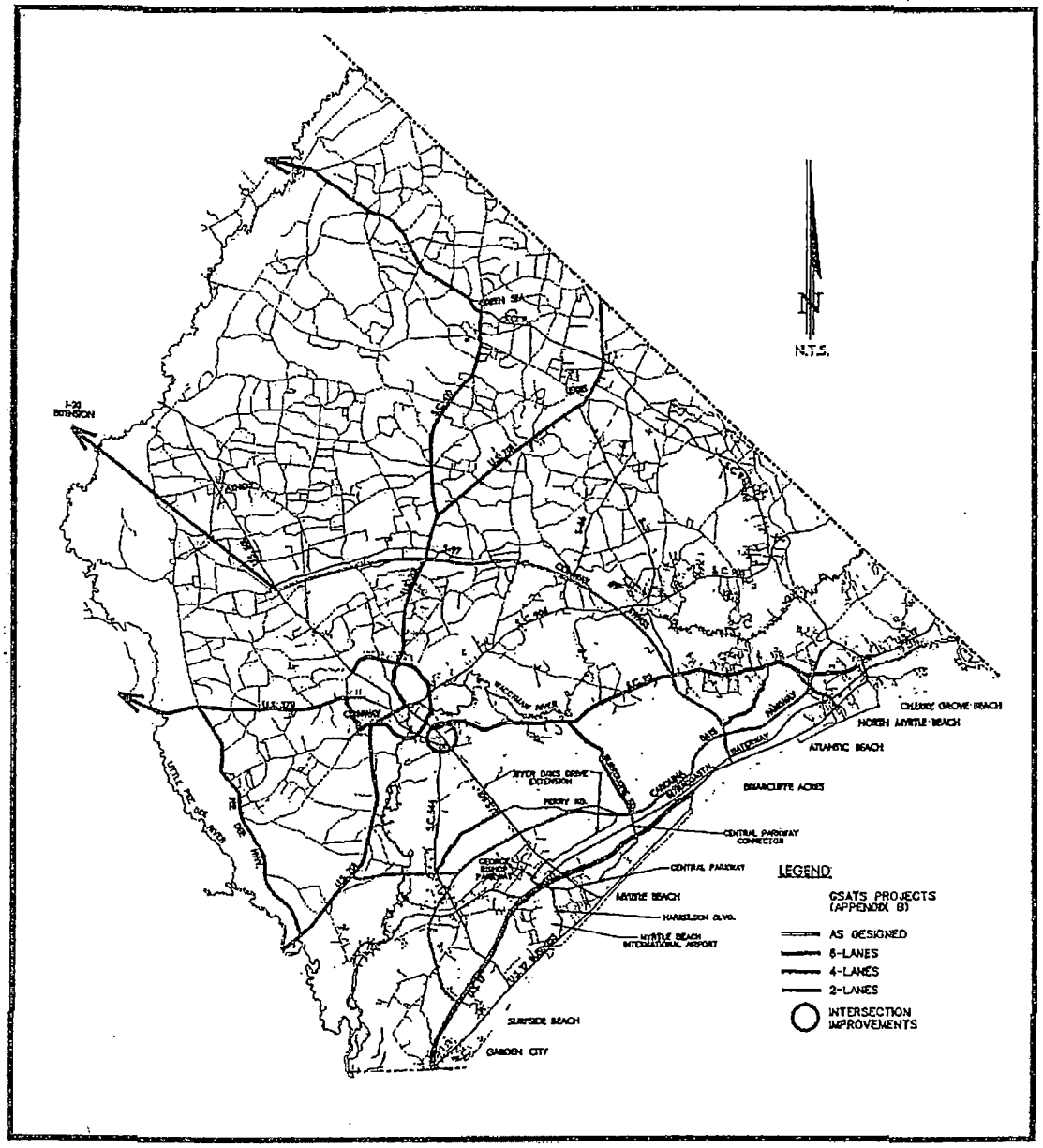
Table 2

RECOMMENDED LONG TERM IMPROVEMENTS

- GSATS Long Range Plan (as approved March 1995, Appendix B)
- Conway Bypass (as designed, 6 lanes between U.S. 17 and S.C. 905 and 4 lanes between S.C. 905 and U.S. 501)
- Carolina Bays Parkway (as designed, 6 lanes from S.C. 9 to U.S. 17, including a 4 lane crossing of the Atlantic Intracoastal Waterway in North Myrtle Beach)
- Fire/Water Tower Road (2-lanes between Conway Bypass and S-1029 [paved section])
- Burroughs Road (2-lanes between Carolina Bays Parkway and S.C. 90, approximately 8.4 miles)
- Perry Road (4-lanes between U.S. 501 and S.C. 544)
- U.S. 501 (6-lanes with frontage roads between Forestbrook Road and Conway)
- Ocean Boulevard in Atlantic Beach
- S.C. 9 (4-lanes between Green Sea and Horry County line)
- Big Block Road through the MBAFB to Ocean Boulevard
- U.S. 17 (6-lanes between Inlet Square Mall and U.S. 17/U.S. 17 Business interchange)
- U.S. 701 (4-lanes from Conway to Loris)
- S.C. 410 (4-lanes from U.S. 701 to S.C. 9)
- Loris to Tabor City Connector
- U.S. 701 (4-lanes, Conway to Georgetown)
- Conway Perimeter Road (complete the bypass around Conway)
- Pee Dee Road (4-lanes between U.S. 701 and U.S. 378)
- Florence to Conway Connector (I-20 extension)
- U.S. 378 (4-lanes, Conway to Horry County line)
- S.C. 90 (4-lanes between Conway and S.C. 9/U.S. 17 interchange)
- U.S. 501/S.C. 544/S.C. 90 interchange
- Community Bus System (shared bus system with hotels/motels)

NOTE: Should the proposed funding scenario for the short term recommendations have a surplus, it is the recommendation of the RIDE Committee that projects from this list be implemented as short term projects.

Recommended Long Term Improvements



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Section 2.0
SHORT TERM RECOMMENDATIONS

"If we first know where we are, and whither we are tending, we could then better judge what to do and how to do it."
-- Abraham Lincoln

THE CRISIS

Horry County and the Grand Strand have become the second most popular resort area on the East Coast. The region, under the guidance of the Grand Strand Area Transportation Study (GSATS), is looking for a *"vision"* that provides accessibility to the Grand Strand, as well as internal mobility. Based on the *"vision,"* the current transportation system will not accommodate future traffic demands and therefore a solution was developed in the form of the GSATS Long Range Plan (approved but not funded March 1996, Appendix B).

WHAT IT WILL COST

Realizing that it is futile to depend exclusively on highway expansion, the region is considering a multimodal approach that will provide a balanced system. The system will include appropriate transit, bicycle, and pedestrian systems, as well as highways. This plan, however, has an estimated cost of $2.4 billion for: highway $1.74 billion, transit $0.67 billion, and other $0.01 billion, with a long list of funding options that would require participation from federal, state, and local sources.

Although the RIDE Committee recognizes the appropriateness of this plan, we have chosen to focus on a short term solution which in turn would lead to the implementation of the GSATS Long Range Plan.

"If we can't meet our infrastructure needs, we can't [expand] the private sector."
-- Honorable David M. Beasley

THE NEXT STEP

Confronted with the magnitude and complexity of the transportation needs, the RIDE Committee initiated their program by receiving input from entities involved in transportation issues in Horry County. These entities included both the public and private sectors. Based on the data received and from the information presented by local citizens at the public meetings, the Committee defined two improvement options: (1) short term improvements that could be implemented between 1996 and 2005 which would provide traffic congestion relief; and (2) long term improvements that could be implemented and completed between 2005 and 2025.

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Table 3
10-, 15-, AND 20-YEAR PROJECTED REVENUE STREAM

FISCAL YEAR (7/1-6/30)	1.5-PERCENT HOSPITALITY FEE*				TOTAL INFLOW	TOTAL REVENUES
			HORRY COUNTY			
	Myrtle Beach	North Myrtle Beach	Additional Incorporated Areas	Unincorporated Areas		
96/97	$8,579,404	$2,211,933	$481,708	$3,403,325	$14,676,370	
97/98	$9,094,168	$2,344,649	$510,610	$3,607,525	$15,556,952	
98/99	$9,639,818	$2,485,328	$541,247	$3,823,976	$16,490,369	
99/00	$10,218,207	$2,634,448	$573,722	$4,053,415	$17,479,791	
00/01	$10,831,300	$2,792,514	$608,145	$4,296,619	$18,528,579	
01/02	$11,481,178	$2,960,065	$644,634	$4,554,417	$19,640,294	
02/03	$12,170,049	$3,137,669	$683,312	$4,827,682	$20,818,711	
03/04	$12,900,251	$3,325,929	$724,311	$5,117,342	$22,067,834	
04/05	$13,674,267	$3,525,485	$767,769	$5,424,383	$23,391,904	
05/06	$14,494,723	$3,737,014	$813,836	$5,749,846	$24,795,418	← $193,446,223
06/07	$15,364,406	$3,961,235	$862,666	$6,094,837	$26,283,143	
07/08	$16,286,270	$4,198,909	$914,426	$6,460,527	$27,860,132	
08/09	$17,263,446	$4,450,844	$969,291	$6,848,159	$29,531,740	
09/10	$18,299,253	$4,717,894	$1,027,449	$7,259,048	$31,303,644	
10/11	$19,397,208	$5,000,968	$1,089,096	$7,694,591	$33,181,863	← $341,606,746
11/12	$20,561,041	$5,301,026	$1,154,441	$8,156,266	$35,172,775	
12/13	$21,794,703	$5,619,088	$1,223,708	$8,645,642	$37,283,141	
13/14	$23,102,386	$5,956,233	$1,297,130	$9,164,381	$39,520,130	
14/15	$24,488,529	$6,313,607	$1,374,958	$9,714,244	$41,891,338	
15/16	$25,957,840	$6,692,423	$1,457,455	$10,297,098	$44,404,818	← $539,878,947

NOTE: * Assumes a 6-percent rate of annual growth.

SOURCE: Coastal Carolina University, E. Craig Wall Sr. School of Business Administration and Computer Science, June 6, 1996.

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PROPOSED PROJECT SCHEDULE FOR SHORT TERM RECOMMENDATIONS

PROJECT NAME	1997	1998	1999	2000	2001	2002	2003	2004
Conway Bypass								
Carolina Bays Parkway (4-Lane)								
Central Parkway								
Fantasy Harbour Interchange								
Conway Perimeter Road								
U.S. 17 / 501 Interchange								
U.S. 501 (George Bishop Overpass)								
S.C. 544 (Widening Between Socastee Bridge and Conway)								
S.C. 90 Intersection Improvements								
S-31 / S-66 Intersection Improvements								
Congestion Management Plan								
U.S. 501 (Frontage Road Between Forestbrook Road and AKW)								
U.S. 501 Perry Road								
U.S. 501 Improvements								

LEGEND

- Environmental and / or Design
- Right - of - Way Aquisition
- Construction

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Table 4
PROJECTED DEBT SERVICE - 15-YEAR SCENARIO

FISCAL YEAR (7/1-6/30)	1.5-PERCENT HOSPITALITY FEE* TOTAL COUNTY REVENUES	FUTURE PROJECT DEBT SERVICE AVAILABLE	CURRENT DEBT SERVICE AVAILABLE	ESTIMATED DEBT SERVICE ON $330,000,000 LOAN (6.5% FOR 15 YEARS)	CURRENT DEBT SERVICE SHORTFALL (*STATE CONTRIBUTION*)
96/97	$14,676,370	$0	$14,676,370	$35,096,418	($20,420,048)
97/98	$15,556,952	$1,414,268	$14,142,684	$35,096,418	($20,953,734)
98/99	$16,490,369	$2,851,965	$13,638,404	$35,096,418	($21,458,014)
99/00	$17,479,791	$4,346,965	$13,132,826	$35,096,418	($21,963,592)
00/01	$18,528,579	$5,873,310	$12,655,269	$35,096,418	($22,441,149)
01/02	$19,640,294	$7,445,217	$12,195,077	$35,096,418	($22,901,341)
02/03	$20,818,711	$9,067,091	$11,751,620	$35,096,418	($23,344,798)
03/04	$22,067,834	$10,743,546	$11,324,288	$35,096,418	($23,772,130)
04/05	$23,391,904	$12,479,408	$10,912,496	$35,096,418	($24,183,922)
05/06	$24,795,418	$14,279,740	$10,515,678	$35,096,418	($24,580,740)
06/07	$26,283,143	$16,149,853	$10,133,290	$35,096,418	($24,963,128)
07/08	$27,860,132	$18,095,326	$9,764,806	$35,096,418	($25,331,612)
08/09	$29,531,740	$20,122,018	$9,409,722	$35,096,418	($25,686,696)
09/10	$31,303,644	$22,236,093	$9,067,551	$35,096,418	($26,028,867)
10/11	$33,181,863	$24,444,041	$8,737,822	$35,096,418	($26,358,596)
TOTAL	$341,606,746	$169,548,843	$172,057,903	$526,446,270	($354,388,367)
PRESENT VALUE (1996 $) AT 6.5%		$87,553,940			

NOTES: * Assumes a 6-percent rate of annual growth.
Assumes that four lanes of the Carolina Bays Parkway will be constructed between S.C. 9 and Perry Road, as well as the Central Parkway Connector, and S.C. 544 will be widened to five lanes between the Socastee bridge and Conway, using the $330 million bond issue and monies available under the "Future Project Debt Service Available."

SOURCE: Coastal Carolina University, E. Craig Wall Sr. School of Business Administration and Computer Science, June 6, 1996.
South Carolina Department of Ttansportation, August 28, 1996.

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Table 5
PROJECTED DEBT SERVICE - 20-YEAR SCENARIO

FISCAL YEAR (7/1-6/30)	1.5-PERCENT HOSPITALITY FEE* TOTAL COUNTY REVENUES	FUTURE PROJECT DEBT SERVICE AVAILABLE	CURRENT DEBT SERVICE AVAILABLE	ESTIMATED DEBT SERVICE ON $330,000,000 LOAN (6.5% FOR 20 YEARS)	CURRENT DEBT SERVICE SHORTFALL (*STATE CONTRIBUTION*)
96/97	$14,676,370	$0	$14,676,370	$29,949,610	($15,273,240)
97/98	$15,556,952	$1,414,268	$14,142,684	$29,949,610	($15,806,926)
98/99	$16,490,369	$2,851,965	$13,638,404	$29,949,610	($16,311,206)
99/00	$17,479,791	$4,346,965	$13,132,826	$29,949,610	($16,816,784)
00/01	$18,528,579	$5,873,310	$12,655,269	$29,949,610	($17,294,341)
01/02	$19,640,294	$7,445,217	$12,195,077	$29,949,610	($17,754,533)
02/03	$20,818,711	$9,067,091	$11,751,620	$29,949,610	($18,197,990)
03/04	$22,067,834	$10,743,546	$11,324,288	$29,949,610	($18,625,322)
04/05	$23,391,904	$12,479,408	$10,912,496	$29,949,610	($19,037,114)
05/06	$24,795,418	$14,279,740	$10,515,678	$29,949,610	($19,433,932)
06/07	$26,283,143	$16,149,853	$10,133,290	$29,949,610	($19,816,320)
07/08	$27,860,132	$18,095,326	$9,764,806	$29,949,610	($20,184,804)
08/09	$29,531,740	$20,122,018	$9,409,722	$29,949,610	($20,539,888)
09/10	$31,303,644	$22,236,093	$9,067,551	$29,949,610	($20,882,059)
10/11	$33,181,863	$24,444,041	$8,737,822	$29,949,610	($21,211,788)
11/12	$35,172,775	$26,752,692	$8,420,083	$29,949,610	($21,529,527)
12/13	$37,283,141	$29,169,243	$8,113,898	$29,949,610	($21,835,712)
13/14	$39,520,130	$31,701,283	$7,818,847	$29,949,610	($22,130,763)
14/15	$41,891,338	$34,356,813	$7,534,525	$29,949,610	($22,415,085)
15/16	$44,404,818	$37,144,245	$7,260,573	$29,949,610	($22,689,037)
TOTAL	$539,878,947	$328,673,118	$211,205,829	$598,992,200	($387,786,371)
PRESENT VALUE (1996 $) AT 6.5%		$138,450,681			

NOTES: * Assumes a 6-percent rate of annual growth.
Assumes that four lanes of the Carolina Bays Parkway will be constructed between S.C. 9 and Perry Road, as well as the Central Parkway Connector, and S.C. 544 will be widened to five lanes between the Socastee bridge and Conway, using the $330 million bond issue and monies available under the "Future Project Debt Service Available."

SOURCE: Coastal Carolina University, E. Craig Wall Sr. School of Business Administration and Computer Science, June 6, 1996.
South Carolina Department of Transportation, August 28, 1996.

As work proceeds with the implementation of the short term recommendations, additional options for funding may evolve, such as:

- The reevaluation of Horry County's share of state dollars (it has long been a contention that Horry County's share of SCDOT dollars should be based on permanent population ***and*** tourists and not just permanent population);
- Implementation of a local gas fee for roads; and,
- Implementation of tolls.

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Exhibit D-2

County's Application and Revised Application to State Transportation Infrastructure Bank

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Section 5.0
IMPLEMENTATION RECOMMENDATIONS

"Team" Building toward Workable Solutions

The realization of the goals and work program discussed in Sections 2 and 3 will require a committed *"group"* of talented individuals who can stay focused on the goal of developing a workable transportation plan that benefits everyone, while keeping in perspective both public sentiment and political realities. To this end, the RIDE Committee offers the following recommendations:

1. A workable and achievable transportation plan that encompasses the projected needs (both short and long term) of Horry County for the next 20 to 30 years must be developed and adopted. This plan must be presented to and reviewed by Horry County and Municipal Councils, in order to achieve a mutual consensus of the program to be implemented. The most important factor is that the plan *MUST* be maintained to completion *AS ADOPTED* with only very minor modifications, if any at all.
2. An intergovernmental agreement between the State, SCDOT, Horry County, and municipal governments must be prepared. This agreement should outline the responsibilities of the State and SCDOT (issuance of the bonds, oversight responsibility for construction, and matching of funds to achieve each annual bond payment) and Horry County and municipal governments (annual, quarterly, or monthly payments to the State to retire the bonds issued for a period of 15 or 20 years).
3. A *"group"* to implement the Plan must be appointed. The RIDE Committee recommends that the *"group"* consist of seven members, two representatives chosen by Horry County, two chosen by the municipalities, two chosen by the SCDOT, and a chairman chosen by the Governor. The *"group,"* once formed, would have to be supported by a staff with a director responsible for overseeing the daily implementation and requirements of the plan and to coordinate with the State and SCDOT, and Federal Highway Administration, if necessary.
4. A SCDOT Fast Response Team must be created. This Fast Response Team would have the capability to expedite various planning, engineering, and environmental challenges to ensure that all projects stay on the fastest track possible. The team should consist of individuals who have the skills, expertise, and power of approval to *"cut through red tape and make things happen."* This team, in concert with the *"group,"* would be responsible for maintaining the schedule and the ultimate success of the adopted transportation plan.

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Section 6.0
CONCLUSION

This report provides a workable solution to the transportation issues facing Horry County that will enhance the quality of life of its residents, as well as ensure its continued prosperity in the future. It recommends a program that will produce a series of meaningful short term improvements that will assist in making the GSATS Long Range Transportation Plan a reality. It has a plan that will provide a revenue stream to fund short term improvements while working to find a funding solution for long term requirements. It develops also a mechanism that can be used throughout the State of South Carolina to accelerate the construction of other critical infrastructure needs.

The RIDE Committee has determined that the only way for Horry County to achieve an improved transportation network that benefits everyone is for citizens of Horry County and tourists visiting the Grand Strand to participate in the future success of tourism, one of the State's very important economic engines.

"Destiny is a matter of choice."
-- William Jennings Bryan

Therefore, in order to serve the citizens of Horry County correctly and completely, the RIDE Committee requests that the State, in partnership with Horry County, be willing to act on the recommendations outlined herein.

Respectfully Submitted

THE RIDE COMMITTEE

Gary M. Loftus (Chairman)

Frankie Blanton (Vice Chairman)

Edward Bouknight

Harry Charles

James Frazier

John Kost

Edward Rodelsperger

Suzette Rogers

Frank Thompson, II

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Appendix A

Public Meeting Summaries

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PUBLIC MEETING NUMBER 1

Location: Myrtle Beach Law Enforcement Center at 1101 Oak Street, Myrtle Beach.

Time: The public meeting was held on Monday, June 17, 1996, from 7:00 p.m. to 8:30 p.m.

Displays: Two displays were available for review, a map of Horry County and a map illustrating transportation projects that are proposed or currently underway in Horry County between the Waccamaw River and the coast.

Personnel: Actively participating in the public meeting were five members of the RIDE Committee (Mr. Gary M. Loftus [Chairman], Mr. Edward Bouknight, Mr. Harry Charles, Ms. Suzette Rogers, and Mr. Frank Thompson). Absent was Mr. Frankie Blanton (Vice Chairman), Mr. James Frazier, Mr. John Kost, and Mr. Edward Rodelsperger.

Process: The attendees were greeted as they entered and asked to sign in. The attendees were also asked if they wanted to address the Committee, as the purpose of the public meeting was to receive public comment prior to formulating the Report to the Governor.

Attendance: Approximately 41 people attended the meeting. Of this number 14 addressed the Committee.

Comments: Comments received included:

- ❑ Add left-turn lanes to existing four-lane roads.
- ❑ Add a third lane for turning to existing two-lane roads.
- ❑ Construct I-20 from Florence to Myrtle Beach.
- ❑ Impose development impact fees.
- ❑ Purchase the right-of-way for Carolina Bays Parkway.
- ❑ Increase the gas tax $0.05.
- ❑ Construct a bypass to the south of Conway and connect it to S.C. 544.
- ❑ Use the tax dollars currently sent to Columbia to pay for the local road improvements.
- ❑ Toll I-95.
- ❑ Improve S.C. 544, U.S. 521, and U.S. 501.
- ❑ Widen S.C. 9 to four lanes all the way to I-95.

- ❑ Build a bridge over the Waccamaw River to connect S.C. 544 with U.S. 701.
- ❑ Impose a two-percent hospitality tax east of Conway.
- ❑ Widen S.C. 319 (located north of U.S. 501) from Aynor to Conway, build a bridge over the Waccamaw River and connect it to the bridge over the Atlantic Intracoastal Waterway at Briarcliffe Acres.
- ❑ Tell Governor Beasley that Horry County should not be responsible for finding the money to build the roads.

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PUBLIC MEETING NUMBER 2

Location: North Myrtle Beach City Hall, Council Chambers at 1015 Second Avenue South, North Myrtle Beach.

Time: The public meeting was held on Monday, June 24, 1996, from 7:00 p.m. to 8:30 p.m.

Displays: Two displays were available for review, a map of Horry County and a map illustrating transportation projects that are proposed or currently underway in Horry County between the Waccamaw River and the coast.

Personnel: Actively participating in the public meeting were the nine members of the RIDE Committee (Mr. Gary M. Loftus [Chairman], Mr. Frankie Blanton [Vice Chairman], Mr. Edward Bouknight, Mr. Harry Charles, Mr. James Frazier, Mr. John Kost, Mr. Edward Rodelsperger, Ms. Suzette Rogers, and Mr. Frank Thompson).

Process: The attendees were greeted as they entered and asked to sign in. The attendees were also asked if they wanted to address the Committee, as the purpose of the public meeting was to receive public comment prior to formulating the Report to the Governor.

Attendance: Approximately 28 people attended the meeting. Of this number eight addressed the Committee.

Comments: Comments received included:

- ❑ Construct a small bypass of Conway instead of the Conway Bypass.
- ❑ Use Waccamaw Regional Planning and Development Council's expertise, because they are the transportation representatives for Horry County.
- ❑ Impose development impact fees.
- ❑ Improve signage for S.C. 9 in order to attract increased usage.
- ❑ Use accommodations taxes to improve roads instead of for advertising.
- ❑ Impose a business license fee.
- ❑ Construct clover-leaves at interchanges.

- ❑ Increase the sales tax $0.01.
- ❑ Widen U.S. 701 from S.C. 9 to the state line to take advantage of North Carolina's plans.
- ❑ Tell the Governor Horry County deserves their fair share.

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PUBLIC MEETING NUMBER 3

Location: Burroughs School Auditorium at 801 Main Street, Conway.

Time: The public meeting was held on Monday, July 1, 1996, from 7:00 p.m. to 8:45 p.m.

Displays: One display was available for review, a map of Horry County.

Personnel: Actively participating in the public meeting were seven members of the RIDE Committee (Mr. Gary M. Loftus [Chairman], Mr. Frankie Blanton [Vice Chairman], Mr. Edward Bouknight, Mr. Harry Charles, Mr. John Kost, Mr. Edward Rodelsperger, and Mr. Frank Thompson). Absent was Ms. Suzette Rogers and Mr. James Frazier.

Process: The attendees were greeted as they entered and asked to sign in. The attendees were also asked if they wanted to address the Committee, as the purpose of the public meeting was to receive public comment prior to formulating the Report to the Governor.

Attendance: Approximately 43 people attended the meeting. Of this number 15 addressed the Committee.

Comments: Comments received included

- ❑ Impose development impact fees.
- ❑ Increase the sales tax on vehicle sales.
- ❑ Learn from the mistakes made in Miami and Fort Lauderdale.
- ❑ Increase the gas tax $0.01.
- ❑ Impose a one-percent hospitality fee.
- ❑ Create a lottery and use the revenues to pay for infrastructure.
- ❑ Widen S.C. 9 to I-95.
- ❑ Widen U.S. 501.
- ❑ Impose tolls.
- ❑ Financing should come from everyone, federal, state, and local participation.
- ❑ Revenues for financing should be mixed, sales tax, hospitality fees, gas tax, tolls.

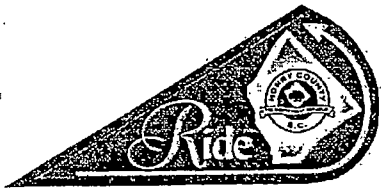
- ❑ Impose a development moratorium.
- ❑ Improve traffic flow through Conway.
- ❑ Computerize the traffic signals.
- ❑ Improve S.C. 544.

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Appendix B

Long Range Plan for the Grand Strand Area Transportation Study Executive Summary



EXECUTIVE SUMMARY



Conducted for:
Waccamaw Regional Planning and Development Council

Prepared by:
Wilbur Smith Associates

March 1996

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Funding for this study was provided by the Federal Highway Administration, the South Carolina Department of Transportation, and the Waccamaw Regional Planning and Development Council.

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The last decade has seen the Grand Strand Area emerge as the second most popular resort destination on the East Coast. More and more people have found their way to the region. The upside is economic growth; the downside is traffic congestion.

The region is capitalizing on its popularity and is looking to continued growth and success in the decades to come. For this vision to be realized, there must be a realistic long range transportation plan that:

(1) **provides accessibility to the Grand Strand Area.** If the required roadway and transit capacities leading to the area are not in place, then there is no way for the vision to become reality; and

(2) **provides internal mobility through the area.** As more and more people flock to the beach, it will become impossible and impractical to accommodate all the short-distance travel demands by automobile. It is essential that an expanded highway, transit, pedestrian, and bicycle system be provided to encourage non-automobile travel within the area.

THE PRESENT AND FUTURE

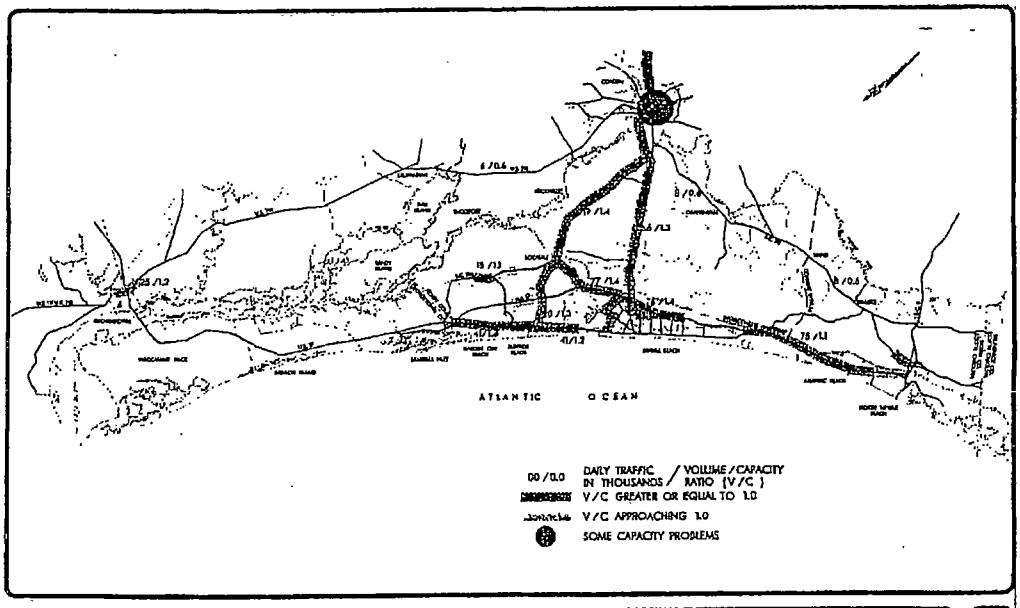
There is no way the region can accommodate anticipated future travel demands with the current transportation system. Presently, a typical summer day is characterized by long queues on major highways such as US 501, SC 544, and US 17 Business and Bypass. Along the oceanfront, pedestrians and vehicles compete for space on Ocean Boulevard and Kings Highway. These situations confirm the results of technical analyses that indicate the region's present highway system is operating just over capacity and cannot handle any significant increases in traffic without intolerable delays.

ROADWAY	1995 DAILY TRAFFIC	2015 DAILY TRAFFIC	PERCENT INCREASE
SC 544	19,000	30,000	58%
US 501	66,000	101,000	53%
US 17 Bypass	77,000	132,000	71%
US 17 BUSINESS	41,000	69,000	68%

A number of highway improvements have been proposed; some have reached the stage of being considered as committed projects, such as widening of US 17 Business in Murrells Inlet and US 17 in North Myrtle Beach as well as the Conway Bypass. Some projects have been studied in detail, such as Carolina Bays Parkway, as well as the widening of US 501 and SC 544.

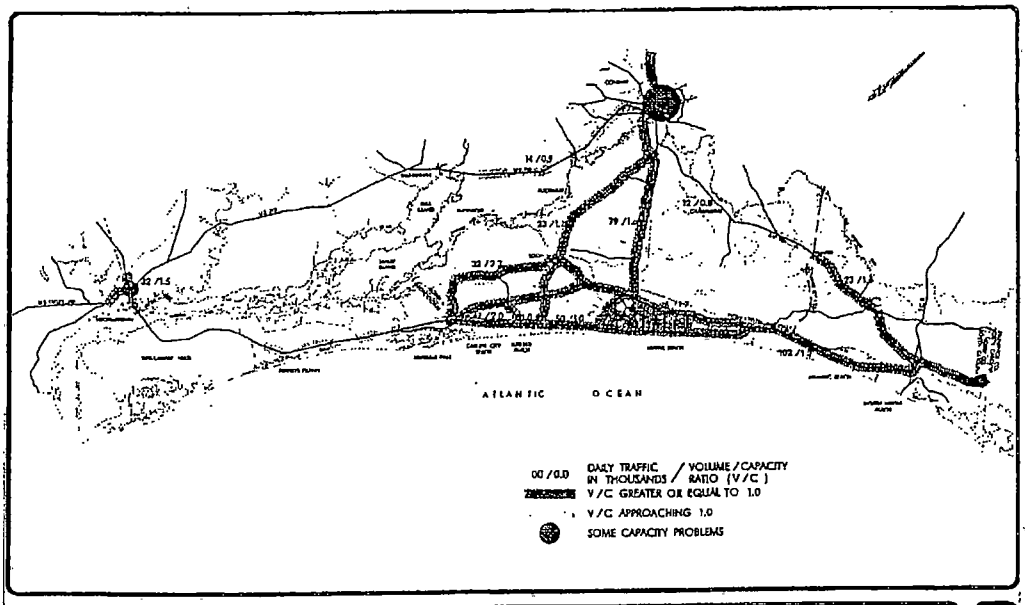
If the Year 2015 traffic projections become a reality, all these projects, and numerous other improvements, will be needed to keep traffic conditions from getting worse than they already are.

Some would argue that the construction of highway improvements encourages highway-dependent land development, which in turn encourages more traffic, perpetuating today's traffic problems.



EXISTING 1995 TRAFFIC CONDITIONS
GSATS Long Range Plan

FIGURE ES-1



ANTICIPATED 2015 EXISTING & COMMITTED TRAFFIC CONDITIONS
GSATS Long Range Plan

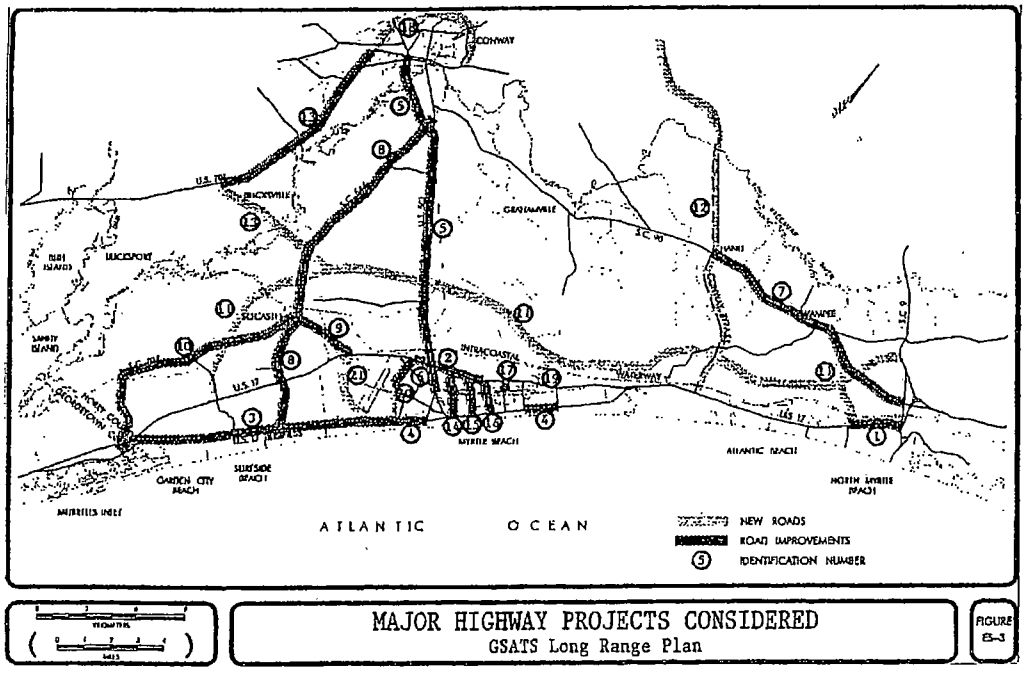
FIGURE ES-2

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BALANCE IS THE ONLY REAL SOLUTION

Evidence of the futility of excessive dependence on highways is the amount of land required to accommodate the automobile. Not only road space is needed, but parking spaces as well. If status quo automobile dependent conditions continue into the future, and if the anticipated traffic growth materializes, it is estimated that approximately 2,500 acres of land would be needed to construct an estimated 240,000 parking spaces (assuming only surface lots are built). This land could obviously be put to better economic use.

Highway improvements totaling $1.7 billion (with contingency) are necessary to accommodate projected traffic growth and return traffic conditions to better than they are today. But these improvements would not address all of the region's transportation problems. It would be easier to get to the area, but not so easy to move around. Movements, especially on Ocean Boulevard and Kings Highway, would be hampered as pedestrians walk along or cross streets, and vehicles try to maneuver through the area. Sidewalks can be provided, but with wider roads and more parking needed, the resulting environment would not likely be pedestrian friendly.



MAJOR HIGHWAY PROJECTS CONSIDERED
GSATS Long Range Plan

FIGURE ES-3

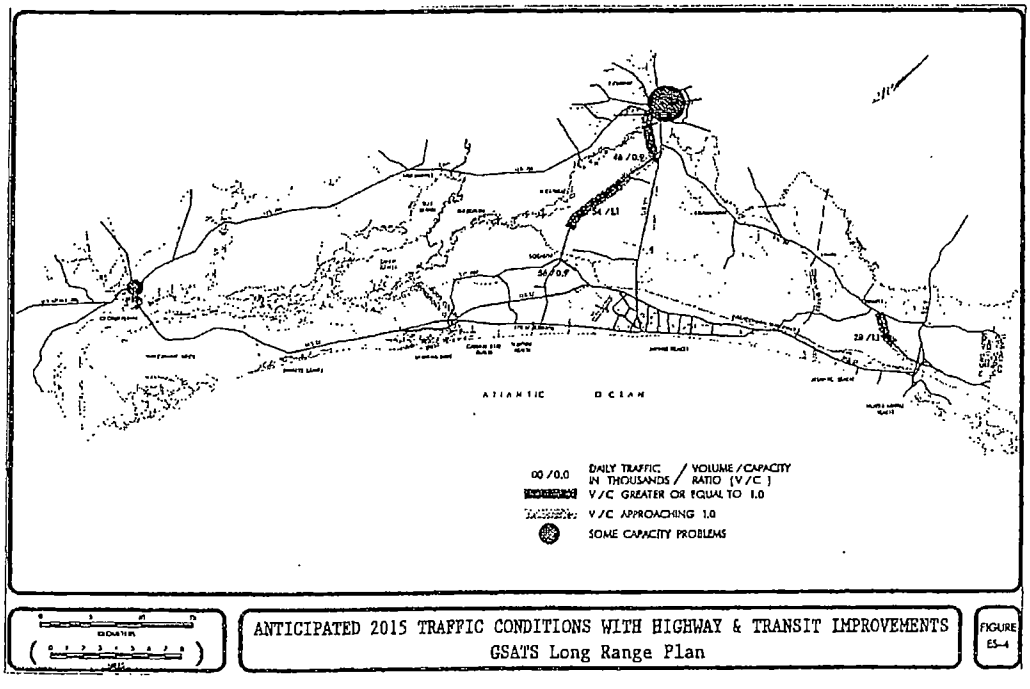
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Another drawback to the "All Highway" approach is the lack of capacity to address post-Year 2015 growth. The proposed highway improvements will result in little reserve capacity to accommodate any additional growth beyond that anticipated by Year 2015. After most major roadways become six to eight lanes wide, there will be few opportunities to provide more road capacity. Therefore, the "All Highway" approach has limited potential to serve the region's post-Year 2015 growth.

PREFERRED PLAN

A multimodal approach that provides a balanced transportation system is the only sound basis for addressing the region's needs. The Preferred Plan is based on a series of highway improvements needed today or in the near future to alleviate congestion. These improvements must be augmented by an increased emphasis on alternate modes of transportation, such as transit, bicycles, and pedestrian improvements.

It is not possible to stop building roads and force people to use alternate modes -- in part because those alternate modes do not exist today, and in part because presently there is no overwhelming willingness to use those modes. Careful planning over time will allow the appropriate transit, bicycle, and pedestrian systems to evolve in concert with changes in land use which will be critical to the success of these alternate modes. To encourage more people to ride transit, transit services must be improved, and the convenience/cost of internal travel by automobile changed.



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Land Use Controls

Today, the Grand Strand Area is primarily served by low density development. Within the Myrtle Beach area, development is poised to jump over the Intracoastal Waterway and repeat the low density pattern. Such trends will compound demands for highway capacity and make viable transit service difficult to provide.

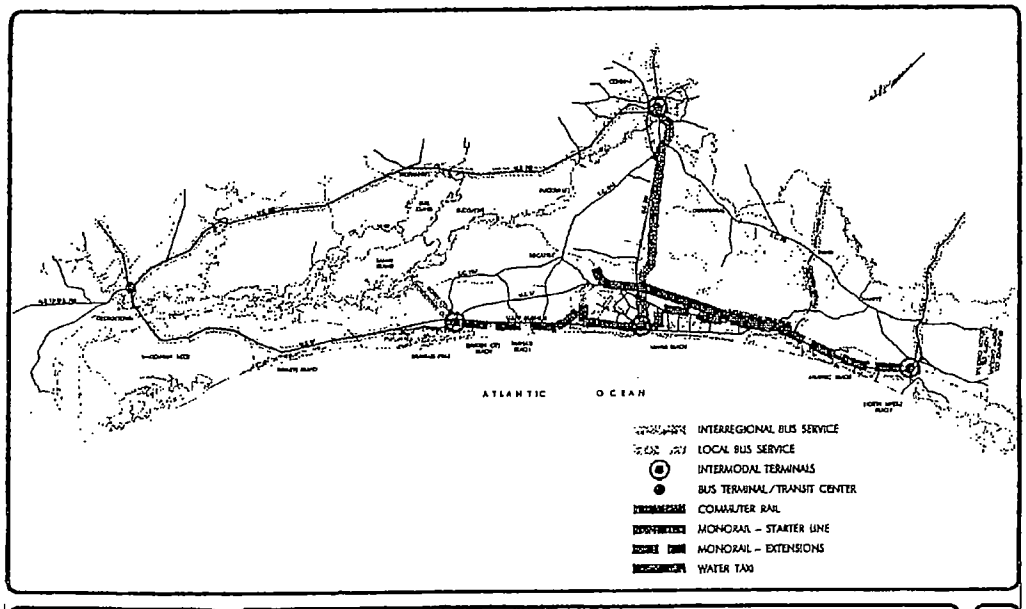
A combination of highway and transit improvements along the Grand Strand can encourage redevelopment of low density areas into major development clusters that encourage transit usage, and facilitate the use of bicycle and pedestrian travel.

Only by coordinating land use and transit improvements as part of a comprehensive long

ar; e plan will the Grand Strand be able to
ir :ment the transportation plan required to
ac: ommodate future economic growth. Without managed land use and a balanced transportation system, desired growth may never materialize.

Transit Plan

The Transit Element of the Preferred Plan is a comprehensive program of regional and local bus service, rail projects, plus introduction of water taxi and monorail service. The heart of the plan is a monorail system that would initially link the Air Force Base Redevelopment Area to the Visitors Center, and on to Broadway at the Beach. Later, the system would be extended to North Myrtle Beach and Murrells Inlet.



MASS TRANSIT CONCEPT
GSATS Long Range Plan

FIGURE ES-5

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Supporting the Transit Element would be bicycle and pedestrian improvements that offer nonmotorized transportation alternatives. Pedestrian and bicycle improvements around transit stations and intermodal terminals will be important to the success of the transit system.

Highway Element

The adjacent table indicates the highway improvements that are required, in addition to the Transit Element and pedestrian/bicycle improvements, to maintain traffic conditions at acceptable standards. These improvements range from localized intersection or interchange improvements, to short segments of roadway widenings or new connecting highways, to major regional highway improvements such as the proposed Carolina Bays Parkway.

The improvements are prioritized by group and within each group. Priority Group 1 includes all projects contained in the existing Transportation Improvement Plan, plus projects oriented towards improving capacity on routes leading to the Grand Strand Area. Priority Group 2, as a rule, focuses on projects that typically carry lower traffic volumes or are more sub-regional in nature. Additionally, the first phase of the monorail and transit improvement projects are included in Priority Group 2. The final group, Priority Group 3, involves generally localized projects and the expansion of the monorail transit system.

Estimated Costs

The plan is estimated to cost approximately $2.4 billion, including an overall contingency factor of 15 percent. Estimates (including the contingency factor) for each major element include:

Highway	$1.74 billion
Transit	$0.67 billion
Other	$0.01 billion
Total	**$2.42 billion**

Funding Options

A long list of potential local funding options was explored with those having the best potential to generate the funds necessary to finance the plan being: a motor vehicle fuel tax, a county sales tax,, a local accommodations tax, impact fees, and an increase in the admissions tax. Although a combination of these taxes could produce most of the required funds, it is likely that State and Federal funding beyond what is already committed could be found to finance some improvements, and that user fees could sustain the Transit Element.

NEXT STEPS

The GSATS Region has come to a fork in the road. If a status quo approach is most desired by the region, then the All Highway approach costing $1.7 billion will do -- for now. If the region is willing to take slightly more risk and increase the cost of the plan by some $675 million, then the Preferred Plan will not only meet all anticipated travel demands to the Year 2015, but also have reserve capacity to serve the anticipated development beyond that planning horizon. The Preferred Plan appears to be more in tune with the area's goals and objectives.

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Table ES-1
PRIORITIZED PREFERRED PLAN ELEMENTS

PRIORITY GROUP	NO.	IMPROVEMENT	TYPE	ACTION	LOCATION	COST ($000)
1	1	CAROLINA BAYS PARKWAY	HIGHWAY	NEW FACILITY	SC 9 TO US17 (BYPASS) INC US701 CONNECTOR	$717,000
1	1	CONWAY BYPASS	HIGHWAY	NEW FACILITY	US501 TO US17, NORTH MB	$413,000
1	2	US501	HIGHWAY	WIDEN TO 4 LANE FRWY/4 LANE FRONTAGE RD	CONWAY TO FORESTBROOK RD	$31,431
1	2	US501	HIGHWAY	WIDEN TO 6 LANE FRWY/6 LANE FRONTAGE RD	FORESTBROOK RD TO US17 (BYPASS)	$32,789
1	2	US501	HIGHWAY	WIDEN TO 6 LANES	US17 (BYPASS) TO 3RD AVE S	$11,202
1	3	SC544	HIGHWAY	WIDEN TO 6 LANES	US17B TO US17 (BYPASS)	$6,075
1	3	SC544	HIGHWAY	WIDEN TO 6 LANES	US17 (BYPASS) TO SOCASTEE	$14,580
1	3	SC544	HIGHWAY	WIDEN TO 8 LANES	SOCASTEE TO CONWAY	$14,648
1	3	SC544	HIGHWAY	CONSTRUCT INTERCHANGE	SC707/SOCASTEE BLVD, SOCASTEE	$2,500
1	4	US501	HIGHWAY	INTERSECTION IMPROVEMENTS	16TH AVE, CONWAY	$500
1	5	3RD AVENUE S	HIGHWAY	ADD TWO WAY LEFT TURN LANE	US501 TO US17B, MB	$4,051
1	6	BELTLINE ROAD	HIGHWAY	NEW TWO LANE ROAD	SC905 TO US701, CONWAY	$7,050
1	7	10TH AVENUE N	HIGHWAY	WIDEN TO 7/8 LANES	US17 (BYPASS) TO CENTRAL PARKWAY, MB	$3,375
1	8	INLET SQUARE DRIVE	HIGHWAY	REALIGN-SMALL TIP PROJECT	ALIGN WITH MT GILEAD RD, GARDEN CITY	$400
1	9	SC90	HIGHWAY	REALIGN-SMALL TIP PROJECT	REALIGN AT ENT. TO CEDAR CREEK SUBDIV., NORTH M	$500
1	10	N OCEAN BOULEVARD	HIGHWAY	WIDEN	SEA MOUNTAIN HWY TO 53RD AVE N	$1,200
1	11	SC707	HIGHWAY	WIDEN TO 6 LANES	SC544 TO US17 (BYPASS), BACK GATE	$3,600
1	12	US17	HIGHWAY	WIDEN	S OF 8TH AVE N TO SC9, NORTH MB	$1,900
1	13	US17 BUSINESS	HIGHWAY	WIDEN	US17B TO S-62, MURRELLS INLET	$1,460
1	14	ATLANTIC AVENUE (S-51)	HIGHWAY	ADD TWO WAY LEFT TURN LANE	WACCAMAW DRIVE TO US17B, GARDEN CITY	$942
1		NORTH OCEAN BLVD	BIKEWAY	NEW FACILITY	MYRTLE BEACH	$190
1		OCEAN BOULEVARD	BIKEWAY	ADD BIKE AND PED PATH/BIKE LANE	SURFSIDE BEACH	$51
1		US17	BIKEWAY	NEW FACILITY	MYRTLE BEACH	$380
1		CRABTREE CANAL BIKEWAY	BIKEWAY	NEW FACILITY	CONWAY	$10
1		SANTEE COOPER BIKEWAY	BIKEWAY	NEW FACILITY	48TH AVE N TO 76TH AVE N	$342
1		SOUTH WACCAMAW DRIVE	SIDEWALK	CONSTRUCT SIDEWALKS	GARDEN CITY	$113
1		WACHESAW RD	SIDEWALK	CONSTRUCT SIDEWALKS	MURRELLS INLET	$18
1		16TH AVE N	SIDEWALK	ADD SIDEWALKS	MYRTLE BEACH	$21
1		62ND ST N	SIDEWALK	ADD SIDEWALKS	MYRTLE BEACH	$189
1		VARIOUS	SIDEWALK	ADD SIDEWALKS	MYRTLE BEACH	$2,500
1		VARIOUS	MISC	SIGNAL SYSTEMS	MYRTLE BEACH, N. MYRTLE BEACH, CONWAY	$1,160
1		VARIOUS	TRANSIT	PHASE 1 CAPITAL COSTS (w/ contingency)	REGIONAL	$61,625
					SUBTOTAL	$1,334,822
					CONTINGENCY @ 15% (exc transit)	$190,980
					TOTAL PRIORITY GROUP 1	$1,525,802

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Table ES-1 (cont)
PRIORITIZED PREFERRED PLAN ELEMENTS

PRIORITY GROUP	NO.	IMPROVEMENT	TYPE	ACTION	LOCATION	COST ($000)
2	1	US17 (BYPASS)	HIGHWAY	WIDEN TO 6/7 LANES	BACK GATE TO JETPORT ROAD TO US501 TO 29TH AVE N	$26,080
2	2	US17BUSINESS	HIGHWAY	WIDEN TO 6 LANES	N OF MURRELLS INLET TO JETPORT ROAD	$8,500
2	3	21ST AVE N	HIGHWAY	WIDEN TO 5/4 LANES	US17 TO US17B, MB	$4,750
2	4	US17BUSINESS	HIGHWAY	WIDEN TO 6 LANES	JETPORT TO 34TH AVE AND 48TH AVE N TO 62ND AVE N	$15,600
2	5	JETPORT ROAD	HIGHWAY	EXTEND	JETPORT TO US17B, MB	$2,000
2	5	JETPORT ROAD	HIGHWAY	WIDEN TO 4 LANES DIVIDED	US17 (BYPASS) TO JETPORT, MB	$1,214
2	6	SC707	HIGHWAY	WIDEN TO 8 LANES	CAROLINA BAYS PARKWAY TO SC544	$7,200
2	6	SC707	HIGHWAY	WIDEN TO 8 LANES	US17 (BYPASS), MURRELLS INLET TO CBP	$11,520
2	7	SC90	HIGHWAY	WIDEN TO 4 LANES	CAROLINA BAYS PARKWAY TO SC9	$960
2	7	SC90	HIGHWAY	WIDEN TO 4 LANES	CONWAY BYPASS TO CAROLINA BAYS PKWY NEAR SC9	$6,660
2	8	CENTRAL PARKWAY - NORTH	HIGHWAY	NEW DIVIDED ARTERIAL	62ND AVE N TO 38TH AVE N	$10,138
2	8	CENTRAL PARKWAY - SOUTH	HIGHWAY	NEW DIVIDED ARTERIAL	21ST AVE N TO US501	$9,462
2	9	US378	HIGHWAY	CORRIDOR IMPROVEMENTS	CONWAY	$500
2	10	US701	HIGHWAY	CORRIDOR IMPROVEMENTS	CONWAY	$500
2	11	US17	HIGHWAY	ADD RAISED MEDIAN	NORTH MYRTLE BEACH	$250
2	12	OLD SOCASTEE ROAD	HIGHWAY	WIDEN	US501 TO US17 (BYPASS)	$1,056
2	12	OLD SOCASTEE ROAD EXTENSION	HIGHWAY	EXTEND	S-635 TO BACK GATE RD	$286
2	13	US501/378 CONNECTOR	HIGHWAY	NEW FACILITY	CONWAY	$1,560
2	14	GLENN'S BAY RD	HIGHWAY	WIDEN/IMPROVE TO 3 LANES	US 17 (BYPASS) TO US17B	$3,400
2	15	S OCEAN BLVD	HIGHWAY	WIDEN TO 4 LANES	ATLANTIC BEACH TO 48TH AVENUE S, NORTH MB	$1,500
2	16	S OCEAN BLVD	HIGHWAY	WIDEN TO 4 LANES	17TH AVENUE S TO ATLANTIC BEACH, NORTH MB	$750
2		KINGS HIGHWAY	BIKEWAY	ADD BIKEWAYS	MYRTLE BEACH	$100
2		MONORAIL-PHASE 1	TRANSIT	FROM AIRBASE TO DOWNTOWN	MYRTLE BEACH	$151,100
					SUBTOTAL	$268,985
					CONTINGENCY @15% (exc transit)	$17,383
					TOTAL PRIORITY GROUP 2	$284,368

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Table ES-1 (cont)
PRIORITIZED PREFERRED PLAN ELEMENTS

PRIORITY GROUP	NO.	IMPROVEMENT	TYPE	ACTION	LOCATION	COST ($000)
3	1	29TH AVE N	HIGHWAY	WIDEN TO 5/4 LANES	US17 (BYPASS) TO US17B, MB	$2,850
3	2	38TH AVE N	HIGHWAY	WIDEN TO 4 LANES	US17 (BYPASS) TO CENTRAL PARKWAY, MB	$2,850
3	3	5TH AVE S	HIGHWAY	EXTEND 3 LANE ROAD THRU RACEPATH RD	S-600 TO BROADWAY, MB	$2,064
3	3	5TH AVE S	HIGHWAY	ADD TWO WAY LEFT TURN LANE	BROADWAY HWY TO US17B, MB	$1,601
3	4	GEORGETOWN BYPASS	HIGHWAY	NEW FACILITY	US701 TO US17, WEST OF TOWN	$8,724
3	5	GEORGETOWN NE-SW BOULEVARD	HIGHWAY	MAKE FRASIER AND HAZARD ONE-WAY PAIRS	GEORGETOWN	$1,500
3	6	GEORGETOWN NW-SE BOULEVARD	HIGHWAY	MAKE HIGHMARKET AND CHURCH ONE-WAY PAIRS	GEORGETOWN	$1,500
3	7	ELIZABETH STREET	HIGHWAY	EXTEND	16TH AVE TO WALMART CONN, CONWAY	$1,958
3	8	FORESTBROOK ROAD	HIGHWAY	WIDEN TO 4 LANES	US501 SOUTH	$6,585
3	9	MILL POND ROAD	HIGHWAY	EXTEND	US378 TO BEYOND US501, CONWAY	$1,500
3	10	SOUTH JETPORT PARKWAY	HIGHWAY	NEW FACILITY	MYRTLE BEACH	$11,880
3	11	LITTLE RIVER NECK ROAD	HIGHWAY	WIDEN	NORTH MB	$8,000
3	12	LITTLE RIVER NECK ROAD CONNECTOR	HIGHWAY	NEW FACILITY	BETWEEN LITTLE RIVER NECK AND US17	$9,200
3	13	CYPRESS AVE	HIGHWAY	ADD TWO WAY LEFT TURN LANE	WACCAMAW DRIVE TO US17B, GARDEN CITY	$842
3	14	S-111	HIGHWAY	WIDEN TO 4 LANES	S-50 TO SC57	$1,920
3	15	S-50	HIGHWAY	WIDEN TO 4 LANES	LITTLE RIVER TO S-111	$3,360
3	16	US501	HIGHWAY	CORRIDOR IMPROVEMENTS	CONWAY	$500
3	17	US501	HIGHWAY	INTERSECTION IMPROVEMENTS	9TH AVE, CONWAY	$500
3	18	US501	HIGHWAY	INTERSECTION IMPROVEMENTS	US378, CONWAY	$500
3	19	US501	HIGHWAY	CONSTRUCT INTERCHANGE	FORESTBROOK ROAD	$2,500
3	20	US501	HIGHWAY	CONSTRUCT INTERCHANGE	FUTURE INTERSECTION	$2,500
3	21	US501	HIGHWAY	CONSTRUCT INTERCHANGE	SINGLETON RIDGE ROAD	$2,500
3	22	US501	HIGHWAY	CONSTRUCT INTERCHANGE	SC544, CONWAY	$4,000
3	23	US501	HIGHWAY	CONSTRUCT INTERCHANGE	US17 (BYPASS)	$10,000
3	24	US501	HIGHWAY	CONSTRUCT INTERCHANGE	CENTRAL PARKWAY/S-600	$3,500
3	25	US501	HIGHWAY	CONSTRUCT INTERCHANGE	GEORGE BISHOP BOULEVARD	$3,500
3	26	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	SC707/SOUTH JETPORT PARKWAY, MB	$2,600
3	27	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	JETPORT ROAD, MB	$2,500
3	28	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	10TH AVE N, MB	$2,500
3	29	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	21ST AVE N, MB	$2,500
3	30	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	38TH AVE N, MB	$2,500
3	31	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	29TH AVE N, MB	$2,500
3	32	US17 (BYPASS)	HIGHWAY	CONSTRUCT INTERCHANGE	67TH AVE N, MB	$2,500
3	33	US17BUSINESS	HIGHWAY	CONSTRUCT INTERCHANGE	OCEAN BLVD/MAIN GATE, MB	$2,500
3	34	US17BUSINESS	HIGHWAY	CONSTRUCT INTERCHANGE	SC544, SOUTH STRAND	$2,500
3	35	US17BUSINESS	HIGHWAY	CONSTRUCT INTERCHANGE	21ST AVE N, MB	$4,000
3	36	US17BUSINESS	HIGHWAY	CONSTRUCT INTERCHANGE	SURFSIDE DRIVE, SOUTH STRAND	$2,500
3	37	OCEAN BOULEVARD	HIGHWAY	MAKE CONTINUOUS	32ND TO 33RD AVES S, ATLANTIC BEACH	$100
3	38	OCEAN BOULEVARD	HIGHWAY	MAKE CONTINUOUS	20TH TO 29TH AVES S, ATLANTIC BEACH	$200
3	39	MAIN STREET/US17	HIGHWAY	HIGHWAY INTERSECTION IMPROVEMENTS	NORTH MB	$30
3	40	48TH AVE S/US17	HIGHWAY	HIGHWAY INTERSECTION IMPROVEMENTS	NORTH MB	$30
3	41	HILL STREET/LITTLE RIVER NECK	HIGHWAY	HIGHWAY INTERSECTION IMPROVEMENTS	NORTH MB	$120
3	42	WALMART CONNECTOR	HIGHWAY	NEW FACILITY	US501 TO OAK STREET EXT, CONWAY	$2,500
3	43	NORTH STREET	HIGHWAY	WIDEN TO 5 LANES/EXTEND	US701 TO US521, GEORGETOWN	$2,900
3		BIKE THE NECK	BIKEWAY	ADD BIKE FACILITIES	WACCAMAW NECK, GEORGETOWN COUNTY	$950
3		MONORAIL-PHASE 2	TRANSIT	EXTEND TO MURRELLS INLET AND NORTH MB	REGIONAL	$185,500
3		VARIOUS	TRANSIT	PHASES 2 AND 3 COSTS (EXC MONORAIL)	REGIONAL	$270,185
					SUBTOTAL	$586,849
					CONTINGENCY @ 15% (exc transit)	$19,690
					TOTAL PRIORITY GROUP 3	$606,639

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APPENDIX B

TRAFFIC DATA

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Table A
RIDE PROJECT
TRAFFIC VOLUME COMPARISON

FACILITY/LOCATION	1995		2010 Without RIDE		2010 With RIDE	
	V/C Ratio	Volume	V/C Ratio	Volume	V/C Ratio	Volume
U.S. 501						
- Waccamaw Pottery	2.04	102,100	3.03	151,577	1.01	64,700
- West of Carolina Forest	1.33	66,000	1.92	95,916	1.14	70,100
- Conway	1.8	72,100	2.05	82,356	1.5	62,400
U.S. 17						
- North Myrtle Beach	1.05	74,300	1.39	96,659	0.8	60,000
- Myrtle Beach (north of U.S. 501)	1.47	81,100	2.33	128,288	1.34	110,500
- Myrtle Beach (south of U.S. 501)	1.49	84,500	2.67	147,430	1.45	74,700
- Surfside Beach	0.83	53,400	1.79	90,415	1.52	83,800
U.S. 17 Business						
- Myrtle Beach	0.92	43,100	1.02	48,540	1.15	43,700
- Surfside Beach	1.88	49,000	2.38	61,934	1.85	48,000
U.S. 378						
- At U.S. 501	1.14	57,500	1.45	70,542	1.24	79,200
S.C. 544						
- East of U.S. 17	1.42	19,900	2.42	33,911	1.28	46,500
- Socastee Bridge	0.77	28,200	1.35	49,231	1.71	62,500
- U.S. 501	1.26	18,000	1.96	27,936	1.19	43,400
S.C. 90						
- Conway	0.81	11,900	2.27	33,100	0.88	12,800
- S.C. 9	1.07	15,600	1.92	27,936	0.7	38,700
S.C. 9						
- Between S-57/U.S. 17	0.74	20,200	0.87	23,618	0.24	6,600
Conway Bypass						
- Briarcliffe (6 lanes)	0.00	0	0.00	0	0.99	61,200
- Carolina Bays Parkway (6 lanes)	0.00	0	0.00	0	0.43	26,900
- S.C. 90 (4 lanes)	0.00	0	0.00	0	0.43	26,900
- Aynor (2 lanes)	0.00	0	0.00	0	0.77	11,600
Carolina Bays Parkway						
- U.S. 501	0.00	0	0.00	0	0.3	18,300
- Conway Bypass (north)	0.00	0	0.00	0	0.81	50,100
- Conway Bypass (south)	0.00	0	0.00	0	0.73	45,200
- S.C. 9	0.00	0	0.00	0	0.23	14,100
Central Parkway						
- U.S. 17 Bypass	0.00	0	0.00	0	2.31	34,700
- U.S. 501	0.00	0	0.00	0	1.39	39,500
Fantasy Harbour Bridge	0.00	0	0.00	0	1.92	50,800

SOURCE: Waccamaw Regional Planning and Development Council, September 12, 1997.

Appendix B
October 1997

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

Exhibit D-3

County's Application and Revised Application to State Transportation Infrastructure Bank

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APPENDIX C

RESOLUTIONS

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

RESOLUTION

WHEREAS, serious transportation problems and traffic congestion are an ever increasing threat to the public safety and welfare, and the future economic development of Horry County and the State of South Carolina; and

WHEREAS, the Honorable David M. Beasley, Governor of the State of South Carolina, requested Transportation Commission Chairman H. B. Limehouse to form a special committee to prepare a study on Horry County transportation problems and potential solutions; and

WHEREAS, a nine-member Road Improvement and Development Effort (RIDE) committee was formed, and has considered both short and long term solutions; and

WHEREAS, the RIDE Committee presented its study results to the Governor on September 16, 1996, and to the South Carolina Department of Transportation Commission on September 19, 1996, and to municipal bodies in Horry County on October 3, 1996; and

WHEREAS, the plan presented will provide substantial traffic relief and provides a plan that involves partnering among and between the South Carolina Department of Transportation, the State of South Carolina and Horry County; and

WHEREAS, the South Carolina Department of Transportation commends the RIDE Committee for proposing this partnering concept to address the Horry County transportation concerns;

NOW, THEREFORE, BE IT RESOLVED THAT the South Carolina Department of Transportation Commission strongly and unanimously support the RIDE Committee Report to Governor David M. Beasley; and further, that the following actions be implemented immediately:

THAT the South Carolina Department of Transportation and Horry County proceed with the Conway Bypass Project, listed as the number one priority in the RIDE Report. The scope of the modified Conway Bypass project is to be revised to provide a complete, limited access road. Also, that additional review of other projects in the RIDE Report be conducted to assure all factors have been considered in the setting of priorites and subsequent funding.

Done this 22 day of November, 1996.

H.B. Limehouse, Chairman

S. Lyman Whitehead

Jack E. Mullinax

Arnold S. Goodstein

W.M. "Mat" Seif

Bobby T. Jones

Joe Jefferson

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RESOLUTION

Whereas, transportation problems and traffic congestion present a serious concern for the welfare and public safety, and the future economic development of Atlantic Beach, Horry County, and the State of South Carolina; and

Whereas, the Honorable David M. Beasley, Governor of the State of South Carolina, requested that the Honorable H.B. Limehouse, Chairman of the South Carolina Highway Commission, form a special committee which consist of nine members and become known as the Road Improvement and Development Effort (R.I.D.E.) Committee to prepare a study on Horry County transportation problems and potential solutions; and

Whereas, the R.I.D.E. Committee presented the results of the study to the Governor on September 16, 1996, and to the South Carolina Department of Transportation Commission on September 19, 1996; and

Whereas, the plan provides for substantial relief and requires participation in the funding package by the citizens of Horry County to include a 1.5% hospitality fee for a period of up to twenty years in partnership with the substantial funding; and

Whereas, in order to solve the serious transportation and traffic congestion problem in Horry County it is essential that the people and the governments of Horry County work together harmonically toward that common goal.

NOW, THEREFORE, BE IT RESOLVED that the Atlantic Beach City Council support the R.I.D.E. Committee Report to Governor David M. Beasley; and further urges Horry County Council to enact expeditiously the necessary ordinance to implement the R.I.D.E. Committee Report.

DATED at Atlantic Beach , South Carolina, this 2nd day of December, 1996.

Irene Armstrong, Mayor

Attest:

City Clerk

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY
TOWN OF AYNOR

RESOLUTION

WHEREAS, the serious transportation problems and traffic congestion are an ever increasing threat to the public safety and welfare, and the future economic development of Horry County and the State of South Carolina; and

WHEREAS, the Honorable David M. Beasley, Governor of the State of South Carolina, requested that the Honorable H. B. Limehouse, Chairman of the South Carolina Department of Transportation, form a special committee, which consisted of nine members and became known as the Road Improvement and Development Effort (RIDE Committee), to prepare a study on Horry County transportation problems and potential solutions; and

WHEREAS, the RIDE Committee considered both short term and long term solutions to the serious transportation problems and traffic congestion on Horry County roads; and

WHEREAS, the RIDE Committee presented the results of their study to the Governor on September 16, 1996, and to the South Carolina Department of Transportation Commission on September 18, 1996, and municipal bodies of Horry County on October 3, 1996; and

WHEREAS, the plan presented will provide a substantial traffic relief and require participation in the funding package by the citizens of Horry County, as outlined by the proposed implementation of a 1.5 percent hospitality fee for a period of up to 20 years in partnership with the State of South Carolina, who will contribute substantial funding; and

WHEREAS, in order to solve the serious transportation and traffic congestion problems in Horry County, it is essential that the people and governments of Horry County work together harmoniously toward that common goal.

NOW, THEREFORE, BE IT RESOLVED that Aynor Town Council strongly and unanimously support the RIDE Committee Report to Governor David M. Beasley; and further urges Horry County Council to enact expeditiously

the necessary ordinances to implement the RIDE Committee report.

SIGNED SEALED THIS 21st DAY OF October, 1996.

ATTEST:

OPAL DORSETT, CITY CLERK

JOHN W. DAWSEY, MAYOR

LYNN CAPPS, COUNCIL MEMBER

JOHN GARDNER, COUNCIL MEMBER

KEB JOHNSON, COUNCIL MEMBER

CRAIG MORRISON, COUNCIL MEMBER

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) RESOLUTION
CITY OF CONWAY)

WHEREAS, the serious transportation problem and traffic congestion are an ever increasing threat to the public safety and welfare, and the future economic development of Horry County and the State of South Carolina; and

WHEREAS, the Honorable David M. Beasley, Governor of the State of South Carolina, requested that the Honorable H.B. Limehouse, Chairman of the S.C. Department of Transportation, form a special committee which consisted of nine members and became known as the Road Improvement and Development Effort (RIDE Committee), to prepare a study on Horry County transportation problems and potential solutions; and

WHEREAS, the RIDE Committee considered both short term and long term solutions to the serious transportation problems and traffic congestion on Horry County roads; and

WHEREAS, the RIDE Committee presented the results of their study to the Governor on September 16, 1996, and to the South Carolina Department of Transportation Commission on September 19, 1996, and municipal bodies of Horry County on October 3, 1996; and

WHEREAS, the plan presented will provide substantial traffic relief and require participation in the funding package by the citizens of Horry County, as outlined by the proposed implementation of a 1.5 percent hospitality fee for a period of up to 20 years in partnership with the State of South Carolina, who will contribute substantial funding; and

WHEREAS, in order to solve the serious transportation and traffic congestion problems in Horry County, it is essential that the people and governments of Horry County work together harmoniously toward that common goal.

NOW, THEREFORE, BE IT RESOLVED that Conway City Council strongly and unanimously support the RIDE Committee Report to Governor David M. Beasley; and further urges Horry County Council to enact expeditiously the necessary ordinances to implement the RIDE Committee report.

SIGNED AND SEALED this 28th day of October, 1996.

Gregory K. Martin

ATTEST:
Carolyn Stevens
Carolyn Stevens, City Clerk

Gregory K. Martin, Mayor
Miriam Webb, Mayor Pro Tem
William A. Graham, Jr.
Edwin F. Brown, Jr.
Leslie H. McIver, Sr.
Barbara Jo Blain
Vivian E. Chestnut

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HORRY COUNTY
BOARD OF EDUCATION

RESOLUTION SUPPORTING
THE R.I.D.E. COMMITTEE REPORT

WHEREAS, the serious transportation problem and traffic congestion are an ever increasing threat to the public safety and welfare of Horry County Schools' students and those who transport them to and from school; and

WHEREAS, the Honorable David M. Beasley, Governor of the State of South Carolina, requested that a special committee be formed, which consisted of nine members and became known as the Road Improvement and Development Effort (RIDE Committee), to prepare a study on Horry County transportation problems and potential solutions: and

WHEREAS, the RIDE Committee considered both short term and long term solutions to the serious transportation problems and traffic congestion on Horry County roads; and

WHEREAS, the RIDE Committee presented to the Governor the results of their study that will provide substantial traffic and that study has since been endorsed by the various governments of Horry County; and

WHEREAS, in order to solve the serious transportation and traffic problems of Horry County, it is essential that the people and governments of Horry County work together harmoniously toward that common goal.

NOW, THEREFORE, BE IT RESOLVED that the Horry County Board of Education supports the RIDE Committee Report and pledges cooperation with other governmental bodies to enact the RIDE Committee's plan.

SIGNED AND SEALED this 18th day of November, 1996.

ATTEST:

Helen M. Smith
Board Chairperson

William A. Graham, Jr.
Board Vice-Chairperson

Owen L. Anderson Jr.
Board Member

Patti Hilton
Board Member

Ronald Bass
Board Member

Yusef Salim
Board Member

Wm. G. Rhodes
Board Member

Ken Summerall
Board Member

Board Member

Wm. Wallace Jr.
Board Member

Board Member

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

RESOLUTION NUMBER 13-96-

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) R E S O L U T I O N
CITY OF LORIS)

WHEREAS, the serious transportation problems and traffic congestion are an ever increasing threat to the public safety and welfare, and the future economic development of Horry County and the State of South Carolina; and

WHEREAS, the Honorable David M. Beasley, Governor of the State of South Carolina, requested that the Honorable H. B. Limehouse, Chairman of the South Carolina Department Of Transportation, form a special committee, which consisted of nine members and became known as the Road Improvement and Development Effort (Ride Committee), to prepare a study on Horry County Transportation problems and potential solutions; and

WHEREAS, the RIDE Committee considered both short term and long term solutions to the serious transportation problems and traffic congestion on Horry County roads; and

WHEREAS, the RIDE Committee presented the results of their study to the Governor on September 16, 1996, and to the South Carolina Department of Transportation Commission on September 19, 1996, and municipals bodies of Horry County on October 3, 1996; and

WHEREAS, the plan presented will provide a substantial traffic relief and require participation in the funding package by the citizens of Horry County, as outlined by the proposed implementation of a 1.5 percent hospitality fee for a period of up to 20 years in partnership with the State of South Carolina, who will contribute substantial funding; and

WHEREAS, in order to solve the serious transportation and traffic congestion problems in Horry County, it is essential that the people and governments of Horry County work together harmoniously toward that common goal.

NOW, THEREFORE, BE IT RESOLVED that the City Of Loris strongly and unanimously support the RIDE Committee Report to Governor David M. Beasley; and further urges Horry County Council to enact expeditiously the necessary ordinances to implement the RIDE Committee report.

SIGNED, SEALED THIS 4TH DAY OF NOVEMBER, 1996.

ATTEST:

MARTHA G. DORMAN, CLERK

DAVID E. STOUDENMIRE, JR., MAYOR

MARTIN L. CLINE, COUNCIL

JOAN S. GAUSE, COUNCIL

JAMES R. HERRING, COUNCIL

MICHAEL E. SUGGS, COUNCIL

FRED D. WATSON, COUNCIL

ESTELLE S. WRIGHT, COUNCIL

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY
CITY OF MYRTLE BEACH

RESOLUTION SUPPORTING THE FINDINGS AND RECOMMENDATIONS OF THE RIDE COMMITTEE REPORT OF SEPTEMBER 1996.

WHEREAS, the serious transportation problem and traffic congestion are an ever increasing threat to the public safety and welfare, and the future economic development of Horry County and the State of South Carolina: and

WHEREAS, the Honorable David M. Beasley, Governor of the State of South Carolina, requested that the Honorable H.B. Limehouse, Chairman of the South Carolina Department of Transportation, form a special committee, which consisted of nine members and became known as the Road Improvement and Development Effort (RIDE Committee), to prepare a study on Horry County transportation problems and potential solutions; and

WHEREAS, the RIDE Committee considered both short term and long term solutions to the serious transportation problems and traffic congestion on Horry County roads; and

WHEREAS, the RIDE Committee presented the results of their study to the Governor on September 16, 1996, and to the South Carolina Department of Transportation Commission on September 19, 1996, and municipal bodies of Horry County on October 3, 1996; and

WHEREAS, the plan presented will provide substantial traffic relief and require participation in the funding package by the citizens of Horry County, as outlined by the proposed implementation of a 1.5 percent hospitality fee for a period of up to 20 years in partnership with the State of South Carolina, who will contribute substantial funding; and

WHEREAS, in order to solve the serious transportation and traffic congestion problems in Horry County, it is essential that the people and governments of Horry County work together harmoniously toward that common goal.

NOW, THEREFORE, BE IT RESOLVED that Myrtle Beach City Council strongly and unanimously support the RIDE Committee Report to Governor David M.

Beasley; and further urges Horry County Council to enact expeditiously the necessary ordinances to implement the RIDE Committee report.

SIGNED AND SEALED this 8th day of October, 1996.

ATTEST:

JOAN GROVE, CITY CLERK

ROBERT M. GRISSOM, MAYOR

RACHEL BROADHURST, COUNCIL MEMBER

WILSON CAIN, COUNCIL MEMBER

HARRY CHARLES, COUNCIL MEMBER

JOHN MAXWELL, COUNCIL MEMBER

MARK S. McBRIDE, COUNCIL MEMBER

CRAIN WOODS, COUNCIL MEMBER

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R E S O L U T I O N

WHEREAS, transportation problems and traffic congestion present a serious concern for the welfare and public safety, and the future economic development of North Myrtle Beach, Horry County, and the State of South Carolina; and

WHEREAS, the Honorable David M. Beasley, Governor of the State of South Carolina, requested that the Honorable H.B. Limehouse, Chairman of the South Carolina Highway Commission, form a special committee which consisted of nine members and became known as the Road Improvement and Development Effort (R.I.D.E.) Committee to prepare a study on Horry County transportation problems and potential solutions; and

WHEREAS, the R.I.D.E. Committee presented the results of the study to the Governor on September 16, 1996, and to the South Carolina Department of Transportation Commission on September 19, 1996; and

WHEREAS, the plan provides for substantial relief and requires participation in the funding package by the citizens of Horry County to include a 1.5% hospitality fee for a period of up to twenty years in partnership with the State of South Carolina, who will contribute substantial funding; and

WHEREAS, in order to solve the serious transportation and traffic congestion problem in Horry County it is essential that the people and the governments of Horry County work together harmoniously toward that common goal.

NOW, THEREFORE, BE IT RESOLVED that the North Myrtle Beach City Council support the R.I.D.E. Committee Report to Governor David M. Beasley; and further urges Horry County Council to enact expeditiously the necessary ordinance to implement the R.I.D.E. Committee Report.

DATED at North Myrtle Beach, South Carolina, this 4th day of November, 1996.

Philip W. Tilghman, Mayor

ATTEST:

City Clerk

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

Resolution

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
TOWN OF SURFSIDE BEACH)

IN SUPPORT OF THE
R I D E COMMITTEE
REPORT

WHEREAS, the serious transportation problems and traffic congestion are an ever increasing threat to the public safety and welfare, and the future economic development of Horry County and the State of South Carolina; and,

WHEREAS, the Honorable David M. Beasley, Governor of the State of South Carolina, requested that the Honorable H.B. Limehouse, Chairman of the South Carolina Department of Transportation, form a special committee, which consisted of nine (9) members, and became know as the "Road Improvement and Development Effort" (RIDE Committee), to prepare a study on Horry County transportation problems and potential solutions; and,

WHEREAS, the RIDE Committee considered both short term and long term solutions to the serious transportation problems and traffic congestion on Horry County Roads; and,

WHEREAS, the RIDE Committee presented the results of their study to the Governor on September 16, 1996, and to the South Carolina Department of Transportation Commission on September 19, 1996, and municipal bodies of Horry County on October 3, 1996; and,

WHEREAS, the plan presented will provide substantial traffic relief and require participation in the funding package by the citizens of Horry County, as outlined by the proposed implementation of a 1.5 percent Hospitality Fee for a period of up to twenty (20) years, in partnership with the State of South Carolina, which will contribute substantial funding; and,

WHEREAS, in order to solve the serious transportation and traffic congestion problems in Horry County, it is essential that the people and governments of Horry County work together harmoniously toward that common goal,

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Town Council of Surfside Beach strongly and unanimously support the RIDE Committee Report to Governor David M. Beasley, and further urges Horry County Council to expeditiously enact the necessary ordinances to implement the RIDE Committee Report.

SIGNED, SEALED, AND ADOPTED THIS 12th DAY OF October, 1996

Dick M. Johnson
MAYOR

TOWN COUNCIL

TOWN COUNCIL

TOWN COUNCIL

TOWN COUNCIL

TOWN COUNCIL

TOWN COUNCIL

ATTEST:
TOWN CLERK

#96-04

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OFFICE OF COUNTY ADMINISTRATOR

LINDA G. ANGUS, COUNTY ADMINISTRATOR

October 15, 1997

Mr. Howard "Champ" Covington, Jr., Chairman
South Carolina State Transportation
Infrastructure Bank
P.O. Box 191
Columbia, South Carolina 29202-0191

Dear Mr. Covington,

Horry County is pleased to submit twenty (20) copies of our application to the State Transportation Infrastructure Bank for funding of the Road Improvement and Development Effort (RIDE) Project, which was presented to and approved by Governor David M. Beasley in September 1996, and has been endorsed by all the local governing bodies of Horry County.

Your approval and subsequent financing of this project will be the first step in implementing this much needed infrastructure improvement necessary to sustain the economic viability and growth of the Grand Strand, as well as ensure safe travelways and evacuation routes for tourists and local citizens of Horry County.

It has been brought to our attention that the Bank may consider additional funding to four-lane the Conway Bypass in its entirety. The RIDE project (which two lanes a portion of the Conway Bypass) presented in the application is the plan adopted by the RIDE Committee. This plan was formulated after many meetings, public input and consideration of financial limitations. Any change to the plan presented must be approved by the RIDE Committee.

Horry County would like the Bank to know that, while the completion of the Conway Bypass is very important, it can in no way jeopardize the implementation of the entire RIDE project as presented. Therefore, if the Bank decides to add the additional $147 million required to four-lane the entire Bypass, the RIDE Committee and the County would agree to that addition of state funds provided the funding for the RIDE project remains intact as presented.

Sincerely,
HORRY COUNTY

Linda Green Angus
County Administrator

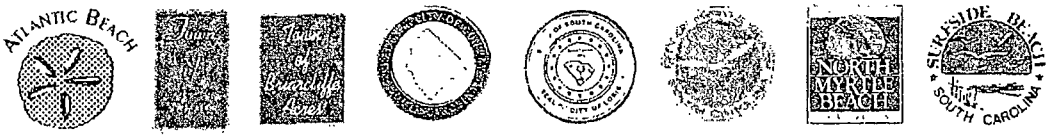
LGA:sb
ride

Attachments

c: The Honorable John Kost
The Honorable James Frazier
Gary Loftus, RIDE Chairman
Steven S. Gosnell, P.E., Director of Public Works Division
Tanya Quickel, Director of Finance Division

103 Elm Street • Post Office Box 1236 • Conway, SC 29528-1236 • Phone: 248-1203 • 626-1203 • Fax: 248-1378

TRANSPORTATION for HORRY COUNTY



Revised

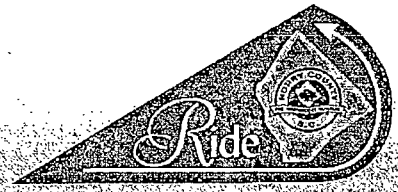
APPLICATION

to the

State Transportation Infrastructure Bank Board

Submitted by:

Horry County
November 1997



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OFFICE OF COUNTY ADMINISTRATOR

LINDA G. ANGUS, COUNTY ADMINISTRATOR

November 20, 1997

Mr. Howard "Champ" Covington, Chairman
South Carolina Transportation Infrastructure Bank
955 Park Street
Post Office Box 191
Columbia, SC 29202

RE: Revised Horry County Application

Dear Mr. Covington:

Horry County is pleased to submit for the Bank's review the revised application, as directed by the Bank on November 11, 1997. Please note that Horry County Council approved a unanimously resolution supporting the application on November 18, 1997 (included as Appendix A in the application). We have also provided the Bank's review copies of the Ordinances that implement the 1.5 percent hospitality fee (included as Appendix B in the application).

The County looks forward to a favorable review and approval of this resubmittal. In the meantime should you have any questions please call me at (803) 248-1203.

Sincerely,

Linda G. Angus

Linda G. Angus
Horry County Administrator

LGA/slp
enclosures

103 Elm Street • Post Office Box 1236 • Conway, SC 29528-1236 • Phone: 248-1203 • 626-1203 • Fax: 248-1378

ELECTRONICALLY FILED: 2013 MAY 14 3:15 PM - HORNY - COMMON PLEAS - CASE #2013 CV 02801 7732

Revised APPLICATION to the State Transportation Infrastructure Bank Board

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

EXECUTIVE SUMMARY

On behalf of Horry County, this revised application is being presented to the South Carolina Transportation Infrastructure Bank as a request for funding a portion of the Horry County Road Improvement and Development Effort Project (County RIDE Project). The Original County RIDE Project was presented to and approved by Governor David M. Beasley in September 1996.

Horry County's RIDE Project is the initiation of a comprehensive solution for transportation problems which pairs significant funding from the local level (49 percent) with funding provided by the State of South Carolina. Horry County enacted an ordinance in the fall of 1996 that implemented a 1.5-percent hospitality fee (accommodations, restaurants, amusements, golf, and theaters) effective January 1, 1997. The purpose of this fee is to provide the financial ability for Horry County to partner with the State of South Carolina to meet the infrastructure needs of the County.

The participating parties of the County RIDE Project are Horry County, the South Carolina Transportation Infrastructure Bank, and the South Carolina Department of Transportation. The role of the South Carolina Transportation Infrastructure Bank is to provide the necessary financing and funding for the County RIDE Project. It is Horry County's intent to contract with the South Carolina Department of Transportation to manage the design, construction, and implementation of the County RIDE Project. Horry County, in addition to providing 49 percent of the overall cost of the County RIDE Project, will provide limited oversight to ensure that project schedules are met.

The revised cost of the County RIDE Project that is being requested for funding by the South Carolina Transportation Infrastructure Bank is $545 million. The total debt service over the life of the proposed bonds for the County RIDE Project is $864.6 million. Horry County's contribution to retire the debt is $300 million; the South Carolina Transportation Infrastructure Bank is requested to fund the balance of the debt service, $564.6 million.

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INTRODUCTION

On behalf of Horry County, this revised application is being presented to the South Carolina Transportation Infrastructure Bank as a request for funding a portion of the Road Improvement and Development Effort Project (County RIDE Project, refer to Appendix A for a copy of the Resolution). The Original RIDE Project was presented to and approved by Governor David M. Beasley in September 1996. The County RIDE Project provides solutions for today's needs as well as addressing the long term transportation requirements for the Grand Strand. This application is requesting funding for the implementation of the County RIDE Project. Horry County's RIDE Project is the initiation of a comprehensive solution for transportation problems which pairs significant funding from the local level with funding provided by the State of South Carolina.

DESCRIPTION OF THE PROJECT

The Horry County RIDE Project (implementable between 1998 and 2004) provides relief to the traffic congestion resulting from immense growth in the County's tourist population as well as permanent residents. The current road infrastructure does not accommodate a community with a fluctuating population of 250,000 to 750,000 people daily, and therefore results in significant delays, congestion, frustration, fuel consumption, and safety problems, as well as hurricane evacuation concerns.

The revised County RIDE Project for which funding is being requested by Horry County from the South Carolina Transportation Infrastructure Bank includes (refer to Figure 1):

- **Conway Bypass** - A fully controlled access facility from U.S. 17 [the bridge at Briarcliffe complete with interchange at U.S. 17] to U.S. 501 between Aynor and Conway. The facility will consist of six-lane fill/bridging/paving between U.S. 17 and Carolina Bays Parkway, four-lane fill/bridging/paving between Carolina Bays Parkway and S.C. 90, two-lane fill/bridging/paving between S.C. 90 and U.S. 501, with diamond interchanges at U.S. 501, S.C. 319, U.S. 701, S.C. 905, and S.C. 90. The cost includes the purchase of right-of-way as originally designed by the South Carolina Department of Transportation.

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REVISED HORRY COUNTY RIDE PROJECT

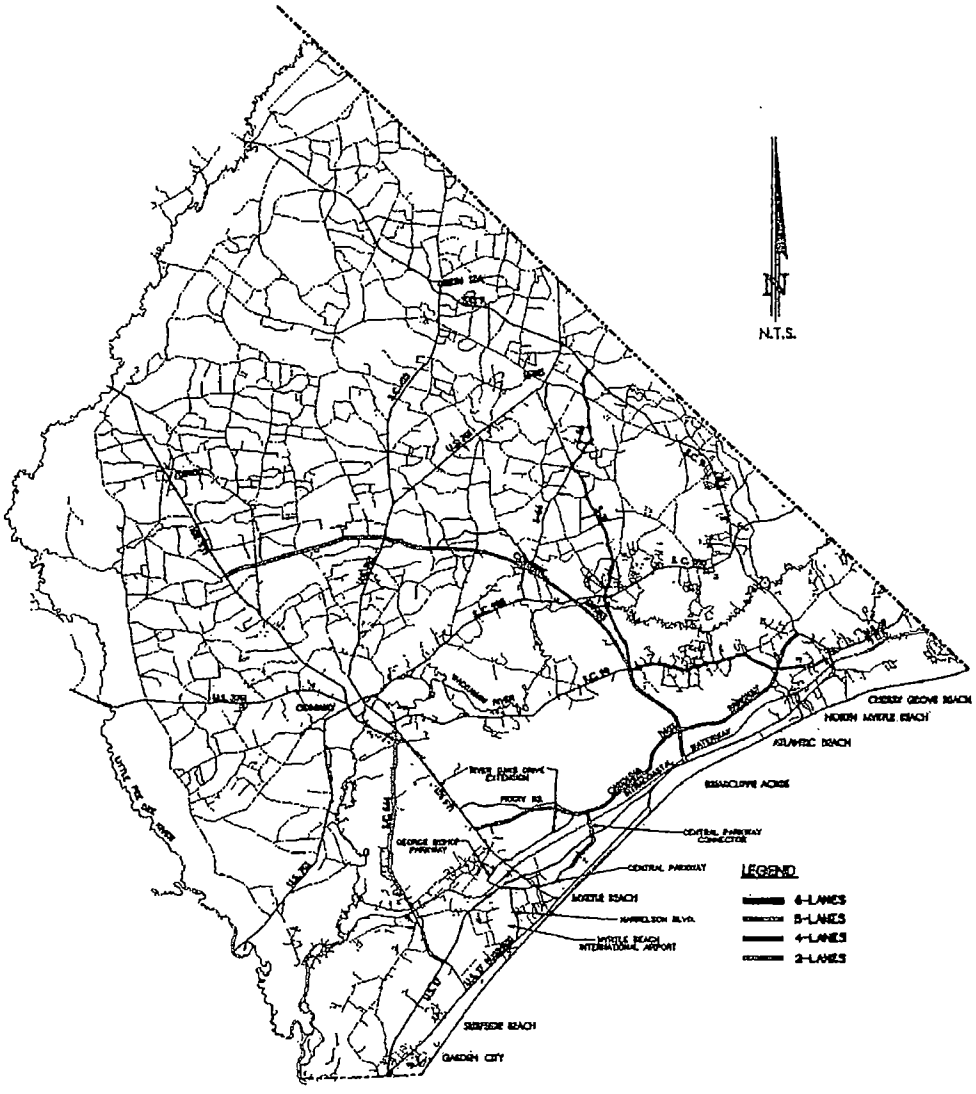


Figure 1

11/24/97

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- **Carolina Bays Parkway** - A fully controlled access facility, six-lane fill/six-lane bridging/four-lane paving from S.C. 9 to U.S. 501, including the Central Parkway connector crossing the Atlantic Intracoastal Waterway to U.S. 17 Bypass [four-lane fill/four-lane bridging/two-lane paving]. The cost includes the purchase of right-of-way as originally designed by the South Carolina Department of Transportation.

- **S.C. 544** - Five lanes from the U.S. 17 Bypass to U.S. 501.

The remainder of the County RIDE Project includes a series of interconnected highway construction and Road enhancements that will improve the overall transportation network in Horry County includes (refer to Figure 2):

- S.C. 544 - Five lanes from the Socastee Bridge to U.S. 501. The portion of this project required by Horry County to bring this project to completion above and beyond the commitment by the South Carolina Transportation Infrastructure Bank.

- **U.S. 501** - Frontage road system between the Atlantic Intracoastal Waterway and Forestbrook Road, intersection improvements between Forestbrook Road and the Waccamaw River, and an overpass at George Bishop Boulevard/River Oaks Drive.

- **Central Parkway** - Four lanes from the Central Parkway connector (between 48th Avenue North and 62nd Avenue North) to Harrelson Boulevard (in the vicinity of the Myrtle Beach International Airport).

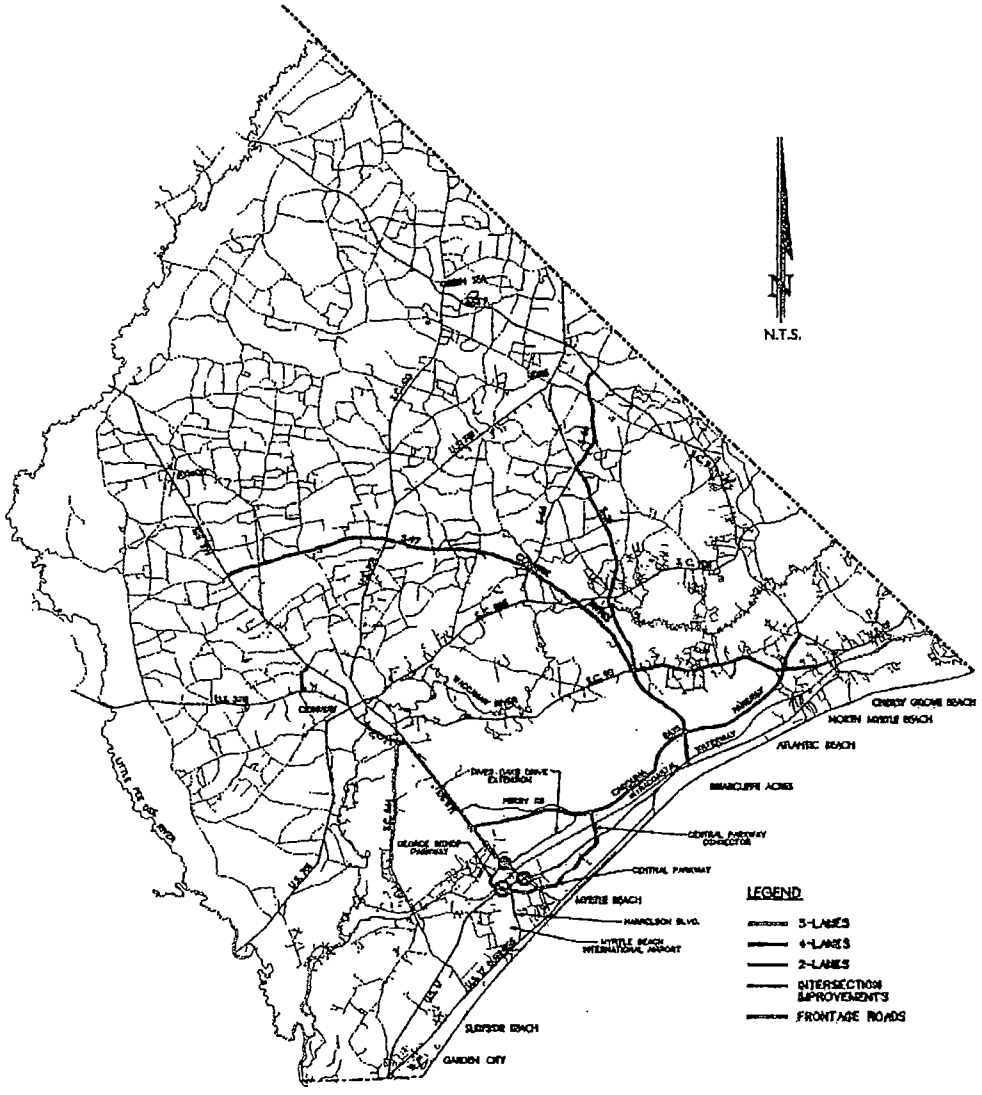
- **Fantasy Harbour Bridge Interchange** - Four-lane bridge/interchange that will create the final leg of what is to be called the Metropolitan Loop, which includes Central Parkway, George Bishop Boulevard, and River Oaks Drive and Extension.

- **Conway Perimeter Road** -Four lanes from U.S. 501 on the west side of Conway to U.S. 378).

- **Intersection/Interchange Improvements** - Along S.C. 90 between Conway Bypass and S.C. 9, S-31, S-66, and U.S. 17 Bypass.

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HORRY COUNTY'S PORTION OF RIDE PROJECT



11/24/97

Figure 2

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PUBLIC BENEFITS

Refer to the original application submitted to the South Carolina Transportation Infrastructure Bank on October 15, 1997.

FINANCIAL PLAN

Horry County enacted an ordinance in the fall of 1996 that implemented a 1.5-percent hospitality fee (accommodations, restaurants, amusements, golf, and theaters) effective January 1, 1997 (refer to Appendix B for copies of the Ordinances). The purpose of this fee is to provide the financial ability for Horry County to partner with the State of South Carolina to meet the infrastructure needs of the County. The total cost of the revised County RIDE Project is $545 million (1997 dollars, which escalates to approximately $593 million over the seven year construction period, refer to Table 1). The anticipated cash requirements for the revised County RIDE Project is provided in Column 2 on Table 2. The total debt service over the life of the proposed bonds for the County RIDE Project is $864.6 million, as shown in Column 4 on Table 2. Horry County's contribution to retire the debt is $300 million, outlined in Column 5 of Table 2. Horry County is requesting that the South Carolina Transportation Infrastructure Bank fund the balance of the debt service, $564.6 million as outlined in Column 6 of Table 2.

The projected financial plan includes the following assumptions:

- Local revenues are increased by a combined growth and inflation rate of 6.5 percent per year;
- Construction inflation is projected at 4.5 percent per year using 1997 dollars as the base (except for the Conway Bypass which has been negotiated between Fluor Daniel and South Carolina Department of Transportation); and,
- Twenty-year bonds were utilized with 5.5 percent interest rates.

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Table I
REVISED HORRY COUNTY RIDE PROJECT
COST TIMELINE

FACILITY	ESTIMATED COST (1997)	CONSTRUCTION TIMETABLE 1998	1999	2000	2001	2002	2003	2004	TOTAL
Conway Bypass (1997 costs provided by Fluor Daniel 9/16/97, revised 11/18/97)	$291,300,000	$54,800,000	$159,800,000	$76,700,000	$0	$0	$0	$0	$291,300,000
Carolina Bays Parkway (1997 costs provided by LPA/WSA 9/10/97)									
S.C. 9 to Conway Bypass (6/6/4)	$69,600,000	$3,252,282		$7,810,672	$67,555,796				$78,614,750
Diamond Interchange (Conway Bypass/Carolina Bays Parkway)	$13,000,000	$780,000				$14,530,720			$15,310,720
Conway Bypass to Central Parkway (6/6/4)	$38,800,000	$1,937,809		$1,597,633		$42,214,193			$45,749,635
Central Parkway Connector (4/4/2)	$28,900,000	$1,473,602		$570,583			$33,527,152		$35,571,337
Central Parkway to Carolina Forest Boulevard (6/6/4)	$0								$0
Central Parkway to U.S. 501 (6/6/4)	$65,000,000	$3,072,754		$6,550,291				$72,834,037	$82,457,083
Subtotal	$215,300,000	$10,516,447	$0	$16,525,181	$67,555,796	$56,744,913	$33,527,152	$72,834,037	$257,703,526
S.C. 544 (5-lanes - U.S. 17 to Socastee Bridge)	$7,419,500		$3,709,750	$3,709,750					$7,419,500
S.C. 544 (5-lanes - Socastee Bridge to U.S. 501)	$30,980,500		$3,909,450	$14,298,812		$18,531,349			$36,739,611
TOTAL	$545,000,000	$65,316,447	$167,419,200	$111,233,743	$67,555,796	$75,276,261	$33,527,152	$72,834,037	$593,162,636
Bond Issue Amounts:		$65,316,447	$167,419,200	$111,233,743	$67,555,796	$75,276,261	$33,527,152	$24,671,401	$545,000,000
Horry County Additional Funds								$48,162,636	
Payment for Each Bond (20 Yr. Bond)		$5,180,698	$13,279,172	$8,822,716	$5,358,316	$5,970,680	$2,659,270	$1,956,859	$43,227,711

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Table 2
REVISED HORRY COUNTY RIDE PROJECT
DEBT SERVICE SCHEDULE

FISCAL YEAR (7/1-6/30)	SIB BOND AMOUNT REQUIRED*/** (20 Year Term)	ANNUAL BOND DEBT SERVICE AMOUNT	ANNUAL ESTIMATED TOTAL DEBT SERVICE (5.5% for 20 Years)	HORRY COUNTY PORTION OF BOND PAYMENT (Paid to SIB) (35% Contribution Ratio)	STATE PORTION OF BOND PAYMENT**
97/98	$65,316,447	$5,180,698	$5,180,698	$15,000,000	($9,819,302)
98/99	$167,419,200	$13,279,172	$18,459,870	$15,000,000	$3,459,870
99/00	$111,233,743	$8,822,716	$27,282,586	$15,000,000	$12,282,586
00/01	$67,555,796	$5,358,316	$32,640,902	$15,000,000	$17,640,902
01/02	$75,276,261	$5,970,680	$38,611,582	$15,000,000	$23,611,582
02/03	$33,527,152	$2,659,270	$41,270,852	$15,000,000	$26,270,852
03/04	$24,671,401	$1,956,859	$43,227,711	$15,000,000	$28,227,711
04/05			$43,227,711	$15,000,000	$28,227,711
05/06			$43,227,711	$15,000,000	$28,227,711
06/07			$43,227,711	$15,000,000	$28,227,711
07/08			$43,227,711	$15,000,000	$28,227,711
08/09			$43,227,711	$15,000,000	$28,227,711
09/10			$43,227,711	$15,000,000	$28,227,711
10/11			$43,227,711	$15,000,000	$28,227,711
11/12			$43,227,711	$15,000,000	$28,227,711
12/13			$43,227,711	$15,000,000	$28,227,711
13/14			$43,227,711	$15,000,000	$28,227,711
14/15			$43,227,711	$15,000,000	$28,227,711
15/16			$43,227,711	$15,000,000	$28,227,711
16/17			$43,227,711	$15,000,000	$28,227,711
17/18			$38,047,013	$0	$38,047,013
18/19			$24,767,841	$0	$24,767,841
19/20			$15,945,125	$0	$15,945,125
20/21			$10,586,809	$0	$10,586,809
21/22			$4,616,129	$0	$4,616,129
22/23			$1,956,859	$0	$1,956,859
TOTAL	$545,000,000	$43,227,711	$864,554,220	$300,000,000	$564,554,220

NOTE: Growth Rate + Inflation Rate Assumed: 6.5%

Source of Local Revenue: 1.5% Hospitality Fee

Debt service calculations are based on annual principal plus interest payments paid at the beginning of each year. 20 Year Term Per Bond. Fixed Interest Rate Used: 5.5%.

* Refer to Table 1Cost Timetable.

** The SCDOT Commission has committed $114,000,000 (or equivalent debt service) to the South Carolina Transportation Infrastructure Bank for the Conway Bypass.

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The degree of financial risk is very low! Local participation for Horry County is funded by the 1.5-percent hospitality fee, which in Horry County carries approximately the same risk as a sales tax (i.e., very low risk). While this source of County participation is subject to severe weather, economic downturns, etc., the projected revenue collection of the hospitality fee allows a contingency amount to address those situations.

Other contributions include the South Carolina Department of Transportation commitment of $114 million (or equivalent $10 million debt service on $114 million per year) to fund a portion of the Conway Bypass phase of the County RIDE Project. All components of the County RIDE Project have been structured to capture any federal funding that might become available (i.e., appropriate federal regulations and requirements have been and will be followed).

In an effort to reduce maintenance expense and extend the life of the Conway Bypass and Carolina Bays Parkway, the cost of superpaving has been included. This will significantly reduce the routine maintenance effort for the South Carolina Department of Transportation of these primary roads. Horry County will also contribute $100,000 per year for 20 years to the South Carolina Department of Transportation, to be placed in an escrow interest bearing account for use in the resurfacing of the Conway Bypass and Carolina Bays Parkway, as deemed necessary by the South Carolina Department of Transportation. State and local maintenance participation on secondary roads will be defined at the completion of construction of each facility.

Horry County will implement the remainder of the County RIDE Project, with assistance from the South Carolina Department of Transportation in the form of a contract to manage the design, construction, and implementation, as well as bonding. The total cost of the remainder County RIDE Project is $199.4 million ($169.1 million in 1997 dollars, escalated at 4.5 percent per year over the construction period, seven years, refer to Table 3). Horry County's participation in implementing this plan in no way eliminates or reduces any funding that the County would normally receive through the Metropolitan Planning Organization guideshare, other standard revenue sharing plans, or critical needs implemented through normal South Carolina Department of Transportation funding.

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Table 3
HORRY COUNTY'S PORTION OF THE RIDE PROJECT
COST TIMELINE

FACILITY	ESTIMATED COST (1997)	CONSTRUCTION TIMETABLE							
		1998	1999	2000	2001	2002	2003	2004	TOTAL
Central Parkway									
48th Avenue North to 29th Avenue North	$10,868,000		$527,448	$5,799,486	$5,759,805				$12,086,719
21st Avenue North to 10th Avenue North	$5,434,000	$5,678,530							$5,678,530
10th Avenue North to U.S. 501	$6,270,000		$301,399	$3,313,946	$3,291,351				$6,906,697
U.S. 501 to Harrelson Boulevard	$6,897,000		$470,936	$2,071,217	$5,142,736				$7,684,889
Subtotal	$29,469,000	$5,678,530	$1,299,783	$11,184,569	$14,193,953	$0	$0	$0	$32,356,835
Fantasy Harbour Bridge Interchange	$12,540,000	$3,135,000	$3,276,073	$3,423,398	$3,577,556				$13,412,127
City of Conway Perimeter Road (U.S. 501 to U.S. 378 with interchanges)	$13,585,000		$710,939	$6,224,542	$8,091,239				$15,026,720
U.S. 17/U.S. 501 Interchange (complete)	$12,843,500		$596,519	$7,132,288	$6,584,111				$14,312,918
U.S. 501 Overpass (George Bishop Parkway/River Oaks Drive)	$7,837,500			$1,706,043	$17,828,153				$19,534,196
S.C. 544 (5-lanes - Socastee Bridge to U.S. 501)	$23,359,500						$15,210,073	$15,894,526	$31,104,599
SC 90 (intersection improvements between Conway Bypass and S.C. 9)	$1,702,500		$5,135,247.56						$5,135,248
S-31 and S-66 (intersection improvements)	$7,524,000		$8,216,396.10						$8,216,396
U.S. 501(frontage road system AICW to Forestbrook Road, including interchange at Forestbrook Road)	$42,636,000	$10,659,000	$22,277,310	$11,639,895					$44,576,205
U.S. 501/Carolina Forest Boulevard Interchange	$10,450,000		$11,411,661						$11,411,661
U.S. 501 (acceleration/deceleration lanes)	$1,180,000		$4,368,100						$4,368,100
TOTAL	$169,137,000	$19,472,530	$57,322,030	$41,310,836	$50,205,033	$0	$15,210,073	$15,894,526	$199,415,028

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PROJECT APPROACH

The revised County RIDE Project schedule shown on Figure 3 and Table 4 illustrates that given sufficient funding provided by the South Carolina Transportation Infrastructure Bank, South Carolina Department of Transportation, and Horry County, the revised County RIDE Project will be completed within the time frame indicated. Table 5 accompanies Figure 3 and outlines the factors (necessary steps) required to initiate construction. At this time there are no obstacles (legal issues, lack of support, environmental concerns) anticipated that would deter the implementation of the revised County RIDE Project.

The schedule, project components, and factors necessary to initiate construction for the remainder of the County RIDE Project is outlines in Figure 4 and Tables 6 and 7.

The participating parties of the County RIDE Project are Horry County, the South Carolina Transportation Infrastructure Bank, and the South Carolina Department of Transportation. The role of the South Carolina Transportation Infrastructure Bank is to provide the necessary financing and funding for the County RIDE Project.

It is Horry County's intent to contract with the South Carolina Department of Transportation to manage the design, construction, implementation, and assist in bonding of the County RIDE Project. Horry County, in addition to providing 49 percent of the overall cost of the County RIDE Project, will provide limited oversight to ensure that project schedules are met.

Upon receipt of funding, South Carolina Department of Transportation is responsible for the construction of the County RIDE Project including design, right-of-way, construction, maintenance, etc. South Carolina Department of Transportation is to use its judgement in determining whether a specific phase of the County RIDE Project should be design/build, traditional, or any other methodology of road construction so as to meet the schedule outlined in the County RIDE Project (refer to Figures 3 and 4).

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REVISED HORRY COUNTY RIDE PROJECT SCHEDULE

PROJECT NAME	1998	1999	2000	2001	2002	2003	2004
Conway Bypass							
Carolina Bays Parkway (4-Lane)							
S.C. 544 (Widening Between U.S. 17 and Socastee Bridge)				(Infrastructure Bank/SCDOT)			
S.C. 544 (Widening Between Socastee Bridge and U.S. 501)						(Infrastructure Bank/SCDOT)	

LEGEND

- Environmental and / or Design
- Right - of - Way Aquisition
- Construction

Ride

Figure 3

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Table 4
REVISED HORRY COUNTY RIDE PROJECT
PROJECT COST COMPONENTS

FACILITY	ESTIMATED COST (1997)	ENVIRONMENTAL/ ENGINEERING	RIGHT-OF-WAY ACQUISITION	CONSTRUCTION	MAINTENANCE
Conway Bypass (1997 costs provided by Fluor Daniel 9/16/97, revised 11/18/97)	$291,300,000	$0	$6,000,000	$283,000,000	$2,300,000
Carolina Bays Parkway (1997 costs provided by LPA/WSA 9/30/97)					
S.C. 9 to Conway Bypass (6/6/4)	$69,600,000	$3,113,212	$6,840,960	$58,746,808	$900,000
Diamond Interchange (Conway Bypass/Carolina Bays Parkway)	$13,000,000	$910,000	$0	$11,990,000	$100,000
Conway Bypass to Central Parkway (6/6/4)	$38,800,000	$1,854,363	$1,400,000	$35,245,637	$300,000
Central Parkway Connector (4/4/2)	$28,900,000	$1,410,145	$500,000	$26,789,855	$200,000
Central Parkway to Carolina Forest Boulevard (6/6/4)	$0	$0	$0	$0	
Central Parkway to U.S. 501 (6/6/4)	$65,000,000	$2,910,431	$5,710,000	$55,519,566	$800,000
Subtotal	$215,300,000	$10,227,174	$14,480,960	$188,291,866	$2,300,000
S.C. 544 (5-lanes - U.S. 17 to Socastee Bridge)	$7,419,500			$7,119,500	
S.C. 544 (5-lanes - Socastee Bridge to U.S. 501)	$30,980,500	$3,741,100	$13,093,850	$14,870,500	
TOTAL	$545,000,000	$13,968,274	$33,574,810	$493,581,866	$4,600,000

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Table 5
REVISED HORRY COUNTY RIDE PROJECT
CURRENT PROJECT STATUS

FACILITY	ENVIRONMENTAL	PERMITTING	PRELIMINARY DESIGN	FINAL DESIGN	RIGHT-OF-WAY ACQUISITION	CONSTRUCTION
Conway Bypass	complete	complete	complete	underway	underway	initiated
Carolina Bays Parkway	underway	underway				
S.C. 544 (5-lanes - U.S. 17 to Socastee Bridge)	complete	complete	complete	underway	underway	
S.C. 544 (5-lanes - Socastee Bridge to U.S. 501)						

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HORRY COUNTY RIDE PROJECT SCHEDULE

PROJECT NAME	1998	1999	2000	2001	2002	2003	2004
Central Parkway							
Fantasy Harbour Bridge Interchange							
Conway Perimeter Road							
U.S. 17 / 501 Interchange							
U.S. 501 (George Bishop Overpass)							
S.C. 544 (Widening Between Socastee Bridge and U.S. 501)					(Horry County/SCDOT)		
S.C. 90 Intersection Improvements							
S-31 / S-66 Intersection Improvements							
U.S. 501 (Frontage Road Between Forestbrook Road and AKW)							
U.S. 501 Carolina Forest Boulevard							
U.S. 501 Improvements							

LEGEND

- Environmental and / or Design
- Right - of - Way Aquisition
- Construction

Ride

Figure 4

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Table 6
HORRY COUNTY'S PORTION OF THE RIDE PROJECT
PROJECT COST COMPONENTS

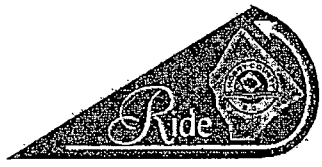
FACILITY	ESTIMATED COST (1997)	ENVIRONMENTAL/ ENGINEERING	RIGHT-OF-WAY ACQUISITION	CONSTRUCTION	MAINTENANCE
Central Parkway					
48th Avenue North to 29th Avenue North	$10,868,000	$501,715	$3,100,670	$7,052,975	
21st Avenue North to 10th Avenue North	$5,434,000			$5,434,000	
10th Avenue North to U.S. 501	$6,270,000	$288,420	$3,034,680	$2,946,900	
U.S. 501 to Harrelson Boulevard	$6,897,000	$450,656	$1,896,675	$4,549,669	
Subtotal	$29,469,000	$1,243,811	$10,242,045	$17,983,144	$0
Fantasy Harbour Bridge Interchange	$12,540,000			$12,540,000	
City of Conway Perimeter Road (U.S. 501 to U.S. 378 with interchanges)	$13,585,000	$709,033	$5,700,000	$7,175,968	
U.S. 17/U.S. 501 Interchange (complete)	$12,853,500	$570,831	$6,531,250	$5,751,419	
U.S. 501 Overpass (George Bishop Parkway/River Oaks Drive)	$7,837,500		$1,706,043	$6,131,457	
S.C. 544 (5-lanes - Socastee Bridge to U.S. 501)	$23,359,500			$23,359,500	
S.C. 90 (intersection improvements between Conway Bypass and S.C. 9)	$4,702,500	$300,437.50	$1,306,250	$3,095,813	
S-31 and S-66 (intersection improvements)	$7,524,000	$340,787.50	$1,567,500	$5,415,713	
U.S. 501 (frontage road system ALCW to Forestbrook Road, including interchange at Forestbrook Road)	$42,616,000	$1,358,500.00		$41,257,500	
U.S. 501/Carolina Forest Boulevard Interchange	$10,450,000	$627,000	$418,000	$9,405,000	
U.S. 501 (acceleration/deceleration lanes)	$4,180,000	$250,800	$522,500	$3,406,700	
TOTAL	$169,137,000	$5,601,200	$27,993,588	$135,542,212	$0

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Table 7
HORRY COUNTY'S PORTION OF THE RIDE PROJECT
CURRENT PROJECT STATUS

FACILITY	ENVIRONMENTAL	PERMITTING	PRELIMINARY DESIGN	FINAL DESIGN	RIGHT-OF-WAY ACQUISITION	CONSTRUCTION
Central Parkway			underway			
Fantasy Harbour Bridge Interchange						
City of Conway Perimeter Road (U.S 501 to U.S. 378 with interchanges)						
U.S. 17/U.S. 501 Interchange (complete)						
U.S. 501 Overpass (George Bishop Parkway/River Oaks Drive)						
S.C. 544 (5-lanes - Socastee Bridge to U.S. 501)						
S.C. 90 (intersection improvements between Conway Bypass and S.C. 9)						
S-31 and S-66 (intersection improvements)						
U.S. 501(frontage road system AICW to Forestbrook Road, including interchange at Forestbrook Road)	complete	complete	complete	underway	underway	
U.S. 501/Carolina Forest Boulevard Interchange						
U.S. 501 (acceleration/deceleration lanes)						

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Appendix A

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

RESOLUTION NUMBER 224-97

A RESOLUTION REAFFIRMING HORRY COUNTY COUNCIL'S SUPPORT OF BUILDING THE ROADS OUTLINED IN THE "RIDE PLAN" AS APPROVED AND ENDORSED BY ORDINANCE NUMBER 105-96, AND PLEDGING FINANCIAL SUPPORT THROUGH DEDICATION OF REVENUE DERIVED FROM A COUNTY-WIDE HOSPITALITY FEE:

WHEREAS, Horry County Council passed Ordinance Number 105-96 on October 15, 1996, to collect a Hospitality Fee to pay for road construction pursuant to the RIDE Plan; and

WHEREAS, Ordinance Number 105-96 implemented a one and one-half percent Hospitality Fee to be used to provide the county portion of funding for the RIDE Plan; and

WHEREAS, Governor Beasley and SCDOT endorsed the RIDE Plan as the preferred solution to the traffic problems of Horry County; and

WHEREAS, Horry County remains firm on its commitment to the RIDE Plan as the minimum solution to the county's transportation crisis; and

WHEREAS, State funding is being provided through the newly formed State Infrastructure Bank (SIB) allowing for a lesser percentage participation by Horry County; and

WHEREAS, the State Infrastructure Bank has indicated a desire to have a resolution from Horry County Council reaffirming its support of the roads outlined in the RIDE Plan and supporting Horry County's application to the State Infrastructure Bank.

NOW THEREFORE, BE IT RESOLVED BY THE HORRY COUNTY COUNCIL, duly assembled, that the Horry County Council reaffirms its support of the RIDE Plan as presented to and approved by Governor David Beasley in September, 1996, and supports, endorses and approves its amended application to the State Infrastructure Bank to be presented on November 24, 1997.

Dated this 18th day of November, 1997.

HORRY COUNTY COUNCIL

Chandler C. Prosser, Chairman

Ray Skidmore, Jr., District 1

John Kost, District 2

Raymond F. Brown, District 3

Chandler Brigham, District 4

Terry Chambers, District 6

James R. Frazier, District 7

Elizabeth D. Gilland, District 8

Ulysses Dewitt, District 9

Johnny Shelley, District 10

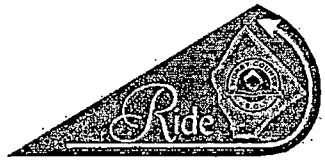
Janice Jordan, District 11

ATTEST:

Rosella H. Carroll, Clerk to Council

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Appendix B

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ORDINANCE NO. 105-96

AN ORDINANCE IMPOSING A TWO AND ONE-HALF PERCENT HOSPITALITY FEE IMMEDIATELY.

WHEREAS, A plan which offered long-range solutions to this area's road problems failed to pass; and

WHEREAS, The need for road improvement continues and will in all likelihood increase in the future; and

WHEREAS, Considerable time and effort was expended by the Governor's RIDE Committee to establish a new plan and a new timetable; and

WHEREAS, All past efforts to institute a local options sales tax have failed, thus making difficult the possibility of using the largest single revenue generator available; and

WHEREAS, Current law allows local government to levy reasonable and necessary fees to provide needed infrastructure.

NOW THEREFORE, BE IT ORDAINED IN COUNCIL DULY ASSEMBLED,

SECTION 1. (A) **Establishment of Hospitality Fee.** There is established a uniform service charge, hereinafter referred to as the "hospitality fee," equal to one and one-half percent (1.5%) within the geographic confines of Horry County, with an additional hospitality fee equal to one percent (1.0%) within the unincorporated areas of Horry County only. These fees shall be imposed on:

(1) the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies;

(2) those paid admissions to places of amusement within the County to which the admissions tax imposed by the State of South Carolina pursuant to Section 12-21-2420, et seq. of the South Carolina Code, applies (golf fees not to begin until 7/1/97); and

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(3) the gross proceeds derived from the sale of food and beverages sold in establishments which primarily have as their business purpose the sale of prepared food for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine.

(B) **Payment of the Hospitality Fee.** Payment of the hospitality fee shall be the liability of the consumer of the services described in Section 19-51 subsection (A). The hospitality fee shall be paid at that time of the delivery of services to which the hospitality fee applies, shall b3e collected by the provider of the services,and shall be held in trust by the provider until remitted as provided for herein.

(C) **Collection of the Hospitality Fee.** The hospitality fee imposed by this section is due and payable in monthly installments on or before the twentieth day of each month and every person liable for the fee shall on or before the twentieth day of each month make a true and correct return to the County in such form as it may prescribe and remit the fee therewith. A return is considered to be timely filed if the return is mailed and has a postmark dated on or before the date the return is required to be filed. In case of a failure to make a true and correct return or a failure to file the return, the County shall make a return upon such information as it may be able to obtain, assess the fee due thereon, and add a penalty of ten percent, whereupon the County shall mail notice to the person liable for the fee and, in the case of failure to pay the fee within ten days after the mailing of any such notice, the County shall add an additional penalty of ten percent.

(D) **Inspections and Audits.** For the purpose of enforcing the provisions of this section the County Administrator or other authorized agent of the County, is empowered to enter upon the premises of any person subject to this section and to make inspections, examinations and audits of books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours written notice. In the event that an audit reveals that false information has been filed by the remitter, the costs of the audit shall be added to the correct amount of fees determined to be due, in addition to the penalties provided in subsection (C). The County Administrator or other authorized agent of the County may make systematic inspection of all businesses within the County, to ensure compliance with this section. Records of inspection shall not be deemed public records.

(E) **Penalties.** (1) It is a violation of this section to:

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(a) fail to collect the hospitality fee;

(b) fail to remit to the County any hospitality fee collected;

(c) fail to file a hospitality fee; return.

(d) knowingly provide false information on a hospitality fee return;

or

(e) fail to provide books and records to the County Administrator or other authorized agent of the County for the purpose of inspection, examination, or audit after twenty-four (24) hours written notice.

(2) Each day this section is violated constitutes a separate offense.

(3) Upon conviction of this section, the violator is guilty of a misdemeanor and subject to a fine or forfeiture not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both.

(F) **Start-up Funds and Administration of Hospitality Fee.** The County Administrator is responsible for the implementation, collection, and enforcement of the hospitality fee and, upon mutual agreement with the County Auditor and County Treasurer, the County Administrator may provide for the implementation, collection, and enforcement of the hospitality fee through the County Auditor and County Treasurer.

(G) **Disposition of Hospitality Fee.** All revenues collected fro the hospitality fee shall be deposited in two separate funds. The funds derived from the one and one-half percent fee shall be deposited into a Road Fund which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County. The money in this Fund shall be held in escrow until the said comprehensive road plan is finalized and adopted. Interest generated by this fund shall accrue to the fund. The funds derived for the one percent fee shall be deposited in the general fund of the County to offset the cost of public safety and public works services and infrastructure directly impacted by tourism. In the case of either fund, the costs of collecting

the monies may be reimbursed by the fund monies, up to a maximum of one percent (1%).

(H) **Sunset.** The imposition of the one and one-half (1.5%) percent hospitality fee for infrastructure will terminate (a) on 8/1/97 if an appropriate agreement or legislation is not in place fro the State of South Carolina to provide their share of the short term funding plan outlined by RIDE or (b) twenty years from the effective date of this ordinance. Should the one and one-half (1.5%) percent hospitality fee be terminated on 8/1/97, all funds collected will be placed in the general fund of the County and used for services directly impacted by the tourism industry (see G above).

SECTION 2. SEVERABILITY.

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby.

SECTION 3. CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this ordinances are hereby repealed.

SECTION 4. EFFECTIVE DATE.

This ordinance shall be effective 1/1/97.

FIRST READING: August 6, 1996
SECOND READING: August 20, 1996
THIRD READING: October 15, 1996

ATTEST:
Rosella H. Carroll
Rosella H. Carroll, Clerk to Council

B-5 1995 AT 841

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HORRY COUNTY COUNCIL

A. Joseph McNutt, Jr., Chairman

Ray Skidmore, Jr., District 1

John Kost, District 2

Raymond J. Brown, District 3

Chandler Brigham, District 4

Chandler C. Prosser, District 5

Terry Chambers, District 6

James R. Frazier, District 7

Elizabeth D. Gilland, District 8

Ulysses Dewitt, District 9

Johnny Shelley, District 10

Janice Jordan. District 11

ATTEST:

Rosella H. Carroll, Clerk to Council

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B-6

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INCLUDES PROPOSED REVISIONS FOR SECOND READING

STATE OF SOUTH CAROLINA)
) ORDINANCE NO. 7-97
COUNTY OF HORRY)

97 FEB 21 AM 9:52

FILED
R.H.C.C.

WHEREAS, the Horry County Council, in meeting duly assembled, enacted Ordinance No. 105-96 on October 15, 1996; and

WHEREAS, County Council deems it appropriate to clarify certain portions of that ordinance; and

WHEREAS, County Council now desires to amend said ordinance in order to provide authority to use the funds collected pursuant to the ordinance for the purpose of matching state and/or federal funds as may be determined by the Horry County Council to be appropriated.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Horry County Council, in meeting duly assembled, does hereby amend Ordinance No. 105-96 as follows:

SECTION 1.

Section 1. (A)(2) of Ordinance Number 105-96 shall be amended by the deletion of the language contained therein and by the substitution of the following language therefor:

> Those paid admissions to places of amusement within the County to which the admissions tax imposed by the State of South Carolina pursuant to Section 12-21-2420, et seq. of the South Carolina Code, applies; and

SECTION 2.

Section 1.(A)(3) of Ordinance Number 105-96 shall be amended by the deletion of the language contained therein and by the substitution of the following language therefor:

> The gross proceeds derived from the sale of prepared food and beverages sold for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine.

SECTION 3.

Section 1. (A)(3)(G) "Disposition of Hospitality" of Ordinance Number 105-96 shall be further amended by the deletion of the language contained therein and by the substitution of the following language therefor:

Disposition of the Hospitality Fee. All revenues collected from the hospitality fee shall be deposited in two separate funds. The funds derived from the one and one-half percent fee shall be deposited into a Road Special Revenue Fund which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County. The money in this Fund shall be held in escrow until the said comprehensive road plan is finalized and adopted. Interest generated by this Fund shall accrue to the Fund. The funds derived from the one percent fee shall be deposited in a separate Special Revenue Fund of the County to offset the cost of providing public safety and public works services and infrastructure directly impacted by tourism. In the case of either fund, the costs of collecting the monies may be reimbursed by the Fund monies, up to a maximum of one percent (1%).

EXEMPT

BOOK 1922 PAGE 1483

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SECTION 4.

Section 1.(A)(3)(H) "Sunset" of Ordinance Number 105-96 shall be further amended by the deletion of the language contained therein and by the substitution of the following language therefor:

Sunset. The imposition of the one and one-half (1.5%) percent hospitality fee for infrastructure will terminate (a) on 8/1/97 if an appropriate agreement or legislation is not in place from the State of South Carolina to provide their share of the short term funding plan outlined by RIDE or (b) twenty years from the effective date of this ordinance. Should the one and one-half (1.5%) percent hospitality fee be terminated on 8/1/97, all funds collected will be placed in the one percent (1%) Special Revenue Fund of the County and used for services directly impacted by the tourism industry (see G above).

SECTION 5. SEVERABILITY

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby.

SECTION 6. CONFLICTING ORDINANCES REPEALED

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 7. EFFECTIVE DATE.

This ordinance shall be effective upon its third reading

FIRST READING: 1-7-97 as amended
SECOND READING: 1-21-97
THIRD READING: 2-4-97

ATTEST:
Rosella H. Carroll
Rosella H. Carroll, Clerk to Council

BOOK 1922 PAGE 1464

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

HORRY COUNTY COUNCIL

A. Joseph McNutt, Jr., Chairman

Ray Skidmore, Jr., District One

John Kost, District Two

Raymond J. Brown, District Three

Chandler Brigham, District Four

Chandler C. Prosser, District Five

Terry Chambers, District Six

James R. Frazier, District Seven

Elizabeth D. Gilland, District Eight

Ulysses Dewitt, District Nine

Johnny Shelley, District Ten

Janice G. Jordan, District Eleven

ATTEST:

Rosella H. Carroll, Clerk to Council

BOOK 1922 PAGE 1465

B-9

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

Exhibit E

County Ordinance 11-04

4/31/94

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

HORRY COUNTY, S.C.
FILED
2004 APR 23 AM 9:01
REGISTER OF DEEDS

ORDINANCE NO: 11-04

AN ORDINANCE AMENDING ORDINANCE NO. 105-96 (HOSPITALITY FEE) SO AS TO EXTEND THE SUNSET PROVISION OF THE ORDINANCE BY A PERIOD OF NOT MORE THAN FIVE (5) YEARS.

WHEREAS, on October 15, 1996, Council passed ordinance No. 105-96 whereby a Hospitality Fee was established, and on February 4, 1997, Council amended that ordinance by the adoption of Ordinance No. 7-97; and

WHEREAS, through prior Intergovernmental Agreements, Horry County has pledged the proceeds of the 1.5% portion of the Hospitality Fee so as to meet the certain financial obligations to the S.C. Transportation Infrastructure Bank (SIB), including those related to the repayment of principal and interest of bond indebtedness incurred by the SIB, such bond funds having been utilized to construct various highways located in Horry County, including the Conway Bypass, Carolina Bays Parkway, etc.; and

WHEREAS, it appears that the sums generated by Horry County's Hospitality Fee soon may be insufficient to satisfy the periodic payment obligations of the County to the SIB, thereby creating the possibility of a mandatory Intercept as permitted both by South Carolina statutes and the Intergovernmental Agreements referenced above; and

WHEREAS, on December 18, 2003, the Commission of the South Carolina Department of Transportation (SCDOT), in an effort to aid Horry County, did lawfully agree to the following financial assistance and undertaking, particularly

> **That SCDOT will replace the Horry County's Ten Million ($10,000,000.00) Dollar reserve requirement with an SCDOT guarantee of an equal amount, provided that by March 31, 2004, the State Infrastructure Bank and Horry County have renegotiated their loan agreement whereby the following requirements are met by Horry County, namely,**
>
> - Horry County extends its Hospitality Fee Ordinance for a period not to exceed five (5) years;
> - Horry County agrees to restructure its annual loan payment amounts based upon updated financial projections that reflect a more realistic revenue stream from the Hospitality Fee;
> - Horry County agrees that if it became necessary to draw on the SCDOT guarantee, Horry County will be obligated to repay SCDOT at some future time when Horry County's revenues are sufficient to make the necessary repayment.

WHEREAS, it appears to the satisfaction of Council that it is appropriate and in the best interest of Horry County to extend the 1.5 % portion of the Hospitality Fee established by Ordinance No. 105-96 for up to an additional five (5) years beyond January 1, 2017, the date that portion of the Hospitality Fee is otherwise scheduled to expire pursuant to the aforesaid ordinance, and

DEED
2725 0610

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

NOW, THEREFORE, by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained and enacted that:

1. The Hospitality Fee Ordinance, Number 105-96, as heretofore amended, including the one and one-half percent (1.5%) portion of the Hospitality Fee deposited into the Road Special Revenue Fund, hereby is extended for an additional period not to exceed five (5) years, which extension expires January 1, 2022, for the purpose of paying all existing payment obligations of Horry County to the S.C. Transportation Infrastructure Bank as scheduled and any additional obligations to the S.C. Transportation Bank which Council may approve.

2. Upon final review by Council, the Horry County Administrator is authorized to execute revised Intergovernmental Agreements, and any other related agreements and documents, with the S.C. Transportation Infrastructure Bank and the South Carolina Department of Transportation wherein amendments and modifications consistent with the provisions heretofore referenced are memorialized.

3. **Severability:** If a Section, Sub-section, or part of this Ordinance shall be deemed or found to conflict with a provision of the South Carolina law, or other pre-emptive legal principle, then that Section, Sub-section, or part of this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

4. **Conflict with Preceding Ordinances:** If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry County, then the preceding Section, Sub-section or provision shall be deemed repealed and no longer in effect.

5. **Effective Date:** This Ordinance shall become effective on Third Reading.

AND IT IS SO ORDAINED, ENACTED AND ORDERED.

Dated this 20th day of April, 2004.

HORRY COUNTY COUNCIL

Liz Gilland, Chairman

Harold G. Worley, District 1

Mark Lazarus, District 2

Marion D. Foxworth, III, District 3

Michael L. Ryan, District 4

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

Howard D. Barnard, III, District 5

Gene R. Smith, Jr., District 6

James R. Frazier, District 7

Carl Schwartzkopf, District 8

W. Paul Prince, District 9

Kevin J. Hardee, District 10

John C. Boyd, District 11

Attest:

Patricia S. Hartley, Clerk to Council

Date of First Reading February 17, 2004
Date of Second Reading March 2, 2004
Date of Third Reading April 20, 2004

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

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Exhibit F

County Ordinances 7-97, 76-97, 80-01, and 111-01

253294

INCLUDES PROPOSED REVISIONS FOR SECOND READING

STATE OF SOUTH CAROLINA)
) ORDINANCE NO. 7-97
COUNTY OF HORRY)

FILED
HORRY COUNTY
97 FEB 21 AM 9:52
R.M.C.

WHEREAS, the Horry County Council, in meeting duly assembled, enacted Ordinance No. 105-96 on October 15, 1996; and

WHEREAS, County Council deems it appropriate to clarify certain portions of that ordinance; and

WHEREAS, County Council now desires to amend said ordinance in order to provide authority to use the funds collected pursuant to the ordinance for the purpose of matching state and/or federal funds as may be determined by the Horry County Council to be appropriated.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Horry County Council, in meeting duly assembled, does hereby amend Ordinance No. 105-96 as follows:

SECTION 1.

Section 1. (A)(2) of Ordinance Number 105-96 shall be amended by the deletion of the language contained therein and by the substitution of the following language therefor:

> Those paid admissions to places of amusement within the County to which the admissions tax imposed by the State of South Carolina pursuant to Section 12-21-2420, et seq. of the South Carolina Code, applies; and

SECTION 2.

Section 1.(A)(3) of Ordinance Number 105-96 shall be amended by the deletion of the language contained therein and by the substitution of the following language therefor:

> The gross proceeds derived from the sale of prepared food and beverages sold for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine.

SECTION 3.

Section 1. (A)(3)(G) "Disposition of Hospitality" of Ordinance Number 105-96 shall be further amended by the deletion of the language contained therein and by the substitution of the following language therefor:

Disposition of the Hospitality Fee. All revenues collected from the hospitality fee shall be deposited in two separate funds. The funds derived from the one and one-half percent fee shall be deposited into a Road Special Revenue Fund which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County. The money in this Fund shall be held in escrow until the said comprehensive road plan is finalized and adopted. Interest generated by this Fund shall accrue to the Fund. The funds derived from the one percent fee shall be deposited in a separate Special Revenue Fund of the County to offset the cost of providing public safety and public works services and infrastructure directly impacted by tourism. In the case of either fund, the costs of collecting the monies may be reimbursed by the Fund monies, up to a maximum of one percent (1%).

EXEMPT

BOOK 1922 PAGE 1463

1463

ELECTRONICALLY FILED - 2019-May-14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

SECTION 4.

Section 1.(A)(3)(H) "Sunset" of Ordinance Number 105-96 shall be further amended by the deletion of the language contained therein and by the substitution of the following language therefor:

> Sunset. The imposition of the one and one-half (1.5%) percent hospitality fee for infrastructure will terminate (a) on 8/1/97 if an appropriate agreement or legislation is not in place from the State of South Carolina to provide their share of the short term funding plan outlined by RIDE or (b) twenty years from the effective date of this ordinance. Should the one and one-half (1.5%) percent hospitality fee be terminated on 8/1/97, all funds collected will be placed in the one percent (1%) Special Revenue Fund of the County and used for services directly impacted by the tourism industry (see G above).

SECTION 5. SEVERABILITY

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby.

SECTION 6. CONFLICTING ORDINANCES REPEALED

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 7. EFFECTIVE DATE.

This ordinance shall be effective upon its third reading

FIRST READING: 1-7-97 as amended
SECOND READING: 1-21-97
THIRD READING: 2-4-97

ATTEST:
Rosella H. Carroll
Rosella H. Carroll, Clerk to Council

BOOK 1922 PAGE 1464

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ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

HORRY COUNTY COUNCIL

A. Joseph McNutt, Jr., Chairman

Ray Skidmore, Jr., District One

John Kost, District Two

Raymond J. Brown, District Three

Chandler Brigham, District Four

Chandler C. Prosser, District Five

Terry Chambers, District Six

James R. Frazier, District Seven

Elizabeth D. Gilland, District Eight

Ulysses Dewitt, District Nine

Johnny Shelley, District Ten

Janice G. Jordan, District Eleven

ATTEST:

Rosella H. Carroll, Clerk to Council

BOOK 1922 PAGE 1465

1465

264959

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ORDINANCE NUMBER 76-97

FILED
HORRY COUNTY, S.C.
97 AUG -6 PM 2:52
R.M.C.

AN ORDINANCE TO AMEND ORDINANCE NO. 105-96, AS AMENDED.

WHEREAS, the Horry County Council, in meeting duly assembled, enacted Ordinance No. 105-96 on October 15,1996; and

WHEREAS, County Council deemed it appropriate to clarify certain portions of that Ordinance and thereby enacted Ordinance No. 07-97 amending Ordinance No. 105-96; and

WHEREAS, County Council now desires to amend said Ordinance in order to provide alternative reporting periods for reporters and further clarify other portions of that Ordinance.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Horry County Council, in meeting duly assembled, does hereby amend Ordinance No. 105-96, as amended, as follows:

SECTION 1.

Section 1. (C) of Ordinance No. 105-96 shall be amended by the deletion of the language contained therein and by the substitution of the following language therefor:

(C) **Collection of the Hospitality Fee.**

(1) The hospitality fee imposed by this Section is due:

(a) in twelve monthly installments payable on or before the twentieth (20th) day of each month on sales for the previous month; or

(b) in thirteen installments payable on or before the twentieth (20th) day following the period covered by the return on sales for the previous reporting period. This payment option requires thirteen payments in each calendar year.

(2) Every person liable for the fee shall make a true and correct return to the County, in such form as the County may prescribe, and remit the fee therewith.

(3) A return is considered to be timely filed if the return is mailed and has a US Post Office postmark dated on or before the date the return is required to be filed. If the due date of the return falls on Sunday or a US Post Office holiday, the return is considered to be timely filed if the return is mailed and has a US Post Office postmark dated on or before the day following that Sunday or US Post Office holiday.

BK. 1963 PG. 105

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

(4) Penalties:

(a) In case of a failure to make a true and correct return or a failure to file a return, the County shall make a return upon such information as it may be able to obtain, assess the fee due thereon, and add a penalty of ten percent (10%). The County shall mail notice to the person liable for the fee and, in the case of failure to pay the fee within ten days after the mailing of any such notice, the County shall add an additional penalty of ten percent (10%).

(b) In case of a failure to file a timely return, the County shall add a penalty of ten percent (10%) for the period from the twentieth (20th) of the month to the end of the month, and an additional ten percent (10%) for any month or portion thereof.

SECTION 2.

Section 1. (E) of Ordinance No. 105-96 shall be amended by the deletion of the language contained therein and by the substitution of the following language therefor:

(E) Violations.

SECTION 3. SEVERABILITY

If any Section, Subsection, or Clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining Sections, Subsections and Clauses shall not be affected thereby.

SECTION 4. CONFLICTING ORDINANCES REPEALED

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 5. EFFECTIVE DATE

This Ordinance shall be effective upon it's third reading.

ORDINANCE NO.
FIRST READING: 6-17-97
SECOND READING: 7-16-97
THIRD READING: 8-5-97

BK 1963 Pg 106-A 106

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

HORRY COUNTY COUNCIL

A. Joseph McNutt, Jr., Chairman

Ray Skidmore, Jr., District One

John Kost, District Two

Raymond J. Brown, District Three

Chandler Brigham, District Four

Chandler C. Prosser, District Five

Terry Chambers, District Six

James R. Frazier, District Seven

Elizabeth D. Gilland, District Eight

Ulysses Dewitt, District Nine

Johnny Shelley, District Ten

Janice G. Jordan, District Eleven

ATTEST:

Rosella H. Carroll, Clerk to Council

BK. 1963 pg 107

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

FILED
HORRY COUNTY, S.C.
2001 JUL 11 AM 11:07
R.M.C.

STATE OF SOUTH CAROLINA)
) ORDINANCE NUMBER 80-01
COUNTY OF HORRY)

AN ORDINANCE TO AMEND ORDINANCE NUMBER 105-96 (HOSPITALITY FEE) SO AS TO MAKE THE FEE APPLICABLE TO THE RENTAL OF PRIVATE PASSENGER MOTOR VEHICLES.

WHEREAS, the Horry County Council, in meeting duly assembled, enacted Ordinance Number 105-96 on October 15, 1996; and

WHEREAS, the said ordinance has been amended previously on two occasions (Ordinance Number 07-97 and Ordinance Number 76-97); and

WHEREAS, County Council now desires to amend Ordinance 105-96 in order to include the rental of private passenger motor vehicles as a business activity upon which the fee shall be imposed;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Horry County Council, in meeting duly assembled, does hereby amend Ordinance Number 105-96, as amended, as follows:

SECTION 1.

Section 1:(A) of Ordinance Number 105-96 and Section 19-6 of the Code of Ordinances of Horry County shall be amended by the addition of the language contained herein:

(4) the gross proceeds derived from rental companies engaged in the business of renting private passenger motor vehicles to a renter for a consideration within Horry County. The proceeds derived from the lease or rental of a private passenger motor vehicle supplied to the same person for a period of ninety (90) continuous days or more are not considered proceeds.

As used in this ordinance:

(1) "Rental Company" means any individual, firm, partnership or corporation in the business of providing private passenger automobiles to the public under the terms of a rental agreement.

(2) "Private passenger motor vehicle" means a private passenger motor vehicle, including passenger vans and mini-vans, that is intended primarily for the transport of persons.

SECTION 2. Rental companies shall be subject to the same terms of payment, collection, inspections and audits, and penalties as heretofore set forth in the original ordinance and all prior amendments.

DEED
2388 1388

1388 R

SECTION 3. SEVERABILITY If any Section, Subsection, or Clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining Sections, Subsections and Clauses shall not be affected thereby.

SECTION 4. CONFLICTING ORDINANCES REPEALED All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 5. The Ordinance shall be effective on July 1, 2001.

HORRY COUNTY COUNCIL

Chad Prosser, Chairman

Ray Skidmore, Jr., District One

John Kost, District Two

Ray Brown, District Three

Michael L. Ryan, District Four

Terry B. Cooper, District Five

Gene R. Smith, Jr., District Six

James R. Frazier, District Seven

Liz Gilland, District Eight

W. Paul Prince, District Nine

Kevin J. Hardee, District Ten

Janice G. Jordan, District Eleven

ATTEST:

Patricia S. Hartley, Clerk to Council

First Reading April 10, 2001 (By Title Only)

Second Reading May 8, 2001

Third Reading June 19, 2001

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747932

FILED
HORRY COUNTY
2007 FEB 23 PM 12:50
R.M.C.

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

ORDINANCE NO. 111-01

AN ORDINANCE CREATING A LOCAL ACCOMMODATIONS TAX PURSUANT TO SOUTH CAROLINA CODE SECTION 6-1-500, et seq., WITH A RATE OF ONE-HALF OF ONE PERCENT THROUGHOUT THE UNINCORPORATED AREAS OF HORRY COUNTY.

WHEREAS, South Carolina statutory law authorizes a local governing body to impose, by ordinance, a local accommodations tax, not to exceed three percent (3%); and

WHEREAS, through Horry County's Hospitality Fee, as authorized through Ordinance 105-96, Section 1.(1), passed October 15, 1996, there presently exists a two and one-half (2.5%) percent tax on local accommodations; and

WHEREAS, Horry County Council has determined that there is a need for additional funding of those tourist-related purposes defined in Section 6-1-530, South Carolina Code; and

WHEREAS, by a "positive majority" vote of Council, it is deemed appropriate to establish a rate of one-half of one percent (.5%) throughout the unincorporated areas of Horry County.

NOW, THEREFORE, by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the state, it is ordained and enacted that:

1) A. Establishment of a Local Accommodations Tax. There is established a uniform service charge, hereinafter referred to as the "local accommodations tax," equal to one-half of one percent (.5%) within the geographic confines of the unincorporated areas of Horry County. This tax shall be imposed on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which

DEED
2454 1060

1060

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ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies.

B. Payment of the Local Accommodations Tax. Payment of the local accommodations tax shall be the liability of the transient(s) described in the aforesaid paragraph. The local accommodations tax shall be paid at the time of the delivery of service to which the tax applies, shall be collected by the provider of the services, and shall be held in trust by the provider until remitted as provided for herein.

C. Collection of the Local Accommodations Tax. The local accommodations tax imposed by this section is due and payable in monthly installments on or before the twentieth (20^{th}) day of each month and every person liable for the fee shall on or before the twentieth (20^{th}) day of each month make a true and correct return to the County in such form as it may prescribe and remit the fee therewith. A return is considered to be timely filed if the return is mailed and has a postmark dated on or before the date the return is required to be filed. In case of a failure to make a true and correct return or a failure to file the return, the County shall make a return upon such information as it may be able to obtain, assess the fee due thereon, and add a penalty of ten (10%) percent, whereupon the County shall mail notice to the person liable for the fee and, in the case of failure to pay the fee within ten (10) days after the mailing of any such notice, the County shall add an additional penalty of ten (10%) percent.

D. Inspections and Audit. For the purpose of enforcing the provisions of this section, the County Administrator, or another authorized agent of the County, is empowered to enter upon the premises of any person subject to this section and to make inspections, examinations and audits of books and records, and it shall be unlawful for any person to fail or refuse to make

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available the necessary books and records during normal business hours upon twenty-four (24) hours written notice. In the event that an audit reveals that false information has been filed by the remitter, the costs of the audit shall be added to the correct amount of fees determined to be due, in addition to the penalties provided in subsection (C). The County Administrator, or another authorized agent of the County, may make systematic inspections of all businesses within the County to ensure compliance with this section. Records of inspection shall not be deemed public records.

E. Penalties.

(1) It is a violation of this section to:

(a) fail to collect the Local Accommodations Tax;

(b) fail to remit to the County any Local Accommodations Tax collected;

(c) fail to file a Local Accommodations Tax return;

(d) knowingly provide false information on a Local Accommodations Tax return;

(e) fail to provide books and records to the County Administrator or other authorized agent of the County for the inspection, examination, or audit after twenty-four (24) hours written notice.

F. Start-up Funds and Administration of Local Accommodations Tax. The County Administrator is responsible for the implementation, collection, and enforcement of the tax described herein and, upon mutual agreement with the County Auditor and County Treasurer, the County Administrator may provide for the implementation, collection, and enforcement of the Local Accommodation Tax through the County Auditor and County Treasurer.

G. Administrative Fee. The costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of one (1%) percent.

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

2) It is agreed by Council that one hundred (100%) percent of all funds received by the County through April 30, 2003 shall be utilized pursuant to Section 6-1-530(A)(5), South Carolina Code, for advertisements and promotions related to tourism development.

3) Further, so as to ensure that the Grand Strand receives maximum exposure to both national and regional tourists, all advertisements and promotions shall be through out-of-market sources that are no less than seventy-five (75) miles from Myrtle Beach.

4) Responsibility for the administration and utilization of funds generated by this Local Accommodations Tax shall be vested among the various Chambers of Commerce located within the County. Advertising and promotional monies shall be distributed among these organizations through April 30, 2003 pursuant to a Joint Resolution entered into by and between Horry County, City of Myrtle Beach, City of North Myrtle Beach, and Town of Surfside Beach.

5) Beginning on May 1, 2003, all funds generated by the Local Accommodations Tax within the unincorporated areas of Horry County shall be utilized pursuant to South Carolina statutory law at the sole discretion of County Council.

6) Severability. If a Section, Sub-section, or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other pre-emptive legal principle, then that Section, Sub-section, or part of this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

7) Conflict With Preceding Ordinances: If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry County, then the preceding Section, Sub-section, or part shall be deemed repealed and no longer in effect.

8) Effective Date: This Ordinance shall become effective on May 1, 2002.

AND IT IS SO ORDAINED, ENACTED AND ORDERED.

Dated this 19th day of February, 2002.

HORRY COUNTY COUNCIL

Chad Prosser, Chairman

Ray Skidmore, Jr., District One

John Kost, District Two

District Three Vacant

Michael L. Ryan, District Four

Terry B. Cooper, District Five

Gene R. Smith, Jr., District Six

James R. Frazier, District Seven

Liz Gilland, District Eight

W. Paul Prince, District Nine

Kevin J. Hardee, District Ten

Janice G. Jordan, District Eleven

ATTEST:

Patricia S. Hartley, Clerk to Council

First Reading: August 21, 2001

Second Reading: February 5, 2002

Third Reading: February 19, 2002

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

Exhibit G

County Ordinance 93-16

Instrument#: 2016000146285, DEED BK: 3970 PG: 2298 DOCTYPE: 057 12/07/2016 at 01:48:32 PM, 1 OF 12 MARION D. FOXWORTH III, HORRY COUNTY, SC REGISTRAR OF DEEDS

ELECTRONICALLY FILED - 2019 May 14 1:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

ORDINANCE 93-16

AN ORDINANCE

AMENDING AND RESTATING ORDINANCE NO. 105-96, AS AMENDED, AND ORDINANCE NO. 111-01, AS AMENDED; AND OTHER MATTERS RELATING THERETO, THIS AMENDED AND RESTATED ORDINANCE TO BE KNOWN AS THE HOSPITALITY FEE AND LOCAL ACCOMMODATIONS FEE ORDINANCE.

FINDINGS OF FACT

The County Council of Horry County (the "County Council"), the governing body of Horry County, South Carolina (the "County"), hereby finds and determines:

WHEREAS, County Council, in meeting duly assembled, enacted Ordinance No. 105-96, on October 15, 1996, imposing a Hospitality Fee (as defined therein) in the County pursuant to the terms thereof.

WHEREAS, Ordinance No. 105-96 has been amended previously on four occasions, by Ordinance No. 7-97, Ordinance No. 76-97, Ordinance No. 80-01, and Ordinance No. 11-04 (as amended, the "Hospitality Fee Ordinance").

WHEREAS, County Council, in meeting duly assembled, enacted Ordinance No. 111-01 on February 19, 2002, imposing an accommodations fee at a rate of one-half of one percent (0.5%) throughout the unincorporated areas of the County (the "Local Accommodations Fee").

WHEREAS, the said Ordinance No. 111-01 has been amended previously on one occasion by Ordinance No. 50-04 (as amended, the "Local Accommodations Fee Ordinance").

WHEREAS, the Hospitality Fee is currently imposed at a rate of 1.5% within the bounds of the County and imposed at an additional rate of 1% within the unincorporated area of the County, on the following:

(1) the gross proceeds derived from the rental or charges for any rooms, camp ground spaces, lodgings, or sleeping accommodations furnished to transients by any motel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies;

(2) those paid admissions to places of amusement within the County to which the admissions tax imposed by the State of South Carolina pursuant to Section 12-21-2420, et seq. of the South Carolina Code, applies (golf fees not to begin until 7/1//97); and

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(3) the gross proceeds derived from the sale of food and beverages sold in establishments which primarily have as their business purpose the sale of prepared food for immediate consumption either on or off premises; or maintain licenses for the in-premise consumption of alcohol, beer or wine.

(4) The gross proceeds derived from rental companies engaged in the business of renting private passenger motor vehicles to a renter for a consideration within the County. The proceeds derived from the lease or rental of a private passenger motor vehicle supplied to the same person for a period of ninety (90) continuous days are not considered proceeds.

WHEREAS, a "positive majority" of the County Council has determined that in order to best ensure the health, safety and welfare of the its citizens and in order generate additional revenue to better serve the tourists visiting the County, the scope of the Hospitality Fee and the rate of the Hospitality Fee with respect to numbered paragraph (4) immediately above shall be clarified as to scope as set forth herein and increased as to rate to 2.5% within the bounds of the County and that no additional rate shall be imposed solely in the unincorporated area of the County. Such action is taken pursuant to the authority granted the County in the South Carolina Code, specifically Section 6-1-330, without limitation.

WHEREAS, the Local Accommodations Fee is currently imposed in the unincorporated area of the County at a rate of one-half of one percent (0.5%) on:

> the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies.

WHEREAS, the receipts of the Hospitality Fee and Local Accommodations Fee (such receipts, the "Fee Revenues") currently provide sources of funding for the purposes set forth in their respective authorizing ordinances.

WHEREAS, County Council finds that receipts from Fee Revenues are currently and shall from this day forward be used exclusively for purposes set forth at Section 6-1-530 and 6-1-730 of the Code of Laws of South Carolina 1976, as amended (the "South Carolina Code").

WHEREAS, County Council has further determined that the condition, availability, location, and capacity of existing transportation infrastructure within and without the County serving tourists, or persons who do not reside in but rather enter temporarily, for reasons of recreation or leisure, the jurisdictional boundaries of the County, present impediments to economic growth and improvement thereof would benefit the health, safety and welfare of the citizens of the County and tourists.

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WHEREAS, of the purposes outlined above, County Council finds that the current and future dedication of all or a portion of the Fee Revenues to defray the costs of designing, constructing, maintaining and operating transportation infrastructure and facilities and infrastructure serving tourists, and providing access to tourist destinations is in the best interest of the County, its citizens, and particularly its tourists.

WHEREAS, County Council finds that the Hospitality Fee and Local Accommodations Fee (each a "Fee" and together the "Fees") are uniform service charges or user fees, viz:

(1) Fee Revenues are used to benefit the payers. County Council finds that in order to purchase the goods and services on which the Hospitality Fee and Local Accommodations Fee are imposed, individuals nearly without exception must travel upon the transportation infrastructure of the County. Improved transportation infrastructure and other facilities and infrastructure benefiting tourists thus directly benefits those obtaining the subject goods and services by facilitating access to points of sale and service, attracting individuals to such points of sale, and enhancing safety. Furthermore, the County has a population of approximately 300,000 and receives approximately 18 million tourists each year, tourists who purchase the goods and services subject to the Hospitality Fee and Local Accommodations Fee and who benefit greatly from transportation infrastructure serving tourist destinations and tourism-related facilities.

(2) Fee Revenues are only used for specific purposes. Fee Revenues do not support the general operations of the County and may only be used for the purposes outlined herein.

(3) Fee Revenues do not exceed the cost of providing the improvements and services funded from Fee Revenues. Estimated annual costs for designing, constructing, maintaining, and operating transportation infrastructure providing access to tourist destinations and tourism-related facilities and infrastructure exceeds annual receipts of the Hospitality Fee currently and is reasonably anticipated to exceed annual receipts on a going forward basis.

(4) The Hospitality Fee and Local Accommodations Fee are uniformly imposed. All persons obtaining goods or services subject to the Hospitality Fee and Local Accommodations Fee pay a uniform rate in the incorporated areas of the County and pay a uniform rate in the unincorporated area of the County.

WHEREAS, the County Council finds that the Hospitality Fee and the rate thereof was authorized and adopted prior to December 31, 1996, remains in force and effect pursuant to the Hospitality Fee Ordinance and Section 6-1-330 of the South Carolina Code, and has not been repealed.

WHEREAS, the County Council finds the portions of the Hospitality Fee described at numbered paragraphs (1) and (3) describing the scope of the Hospitality Fee above and the entirety of the Local Accommodations Fee are currently imposed and authorized in a manner wholly consistent with the fees authorized at Title 6, Chapter 1, Articles 5 and 7.

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WHEREAS, to the extent the rate limitations set forth at Section 6-1-540 and Section 6-1-740 are applicable to the rate of the Hospitality Fee or Local Accommodations Fee, such rates either (i) do not exceed the rates allowed by such sections or (ii) are exempt from such rate limitation by virtue of the date of adoption of the rate level.

WHEREAS, in order to meet the needs of the County as set forth above, the County Council is now minded to amend and restate the Hospitality Fee Ordinance and the Local Accommodations Fee Ordinance to incorporate the findings and determinations above, and provide concurrent authorization, to the extent applicable, for the Hospitality Fee imposed pursuant to the Hospitality Fee Ordinance in accordance with Title 6, Chapter 1, Articles 5 and 7 of the South Carolina Code. In providing such concurrent authorization, the County is in no manner waiving, repealing, or supplanting any existing authorization for the Hospitality Fee.

WHEREAS, the County, through experience in collecting the Fees, and in response to certain legislative developments, seeks to make certain changes in the administration of the collection of the Fees in order to more efficiently and effectively serve the people of the County.

WHEREAS, the County Council has determined to hold a public hearing in connection with the enactment of this Hospitality Fee and Local Accommodations Fee Ordinance.

BE IT ORDAINED BY THE COUNTY COUNCIL OF HORRY COUNTY, SOUTH CAROLINA, AS FOLLOWS:

SECTION I. HOSPITALITY FEE

(A) Establishment and Imposition of Hospitality Fee. There is established a uniform service charge, hereinafter referred to as the "Hospitality Fee," equal to one and one-half percent (1.5%) within the geographic confines of the County, and an additional imposition equal to one percent (1.0%) within the unincorporated areas of the County only; such rates shall apply to and be imposed on:

(1) the gross proceeds derived from the rental or charges for any rooms, camp ground spaces, lodgings, or sleeping accommodations furnished to transients by any motel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies;

(2) those paid admissions to places of amusement within the County to which the admissions tax imposed by the State of South Carolina pursuant to Section 12-21-2420, et seq. of the South Carolina Code, applies; and

(3) the gross proceeds derived from the sale of prepared food and beverages sold for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine.

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(B) The Hospitality Fee shall be imposed at a rate equal to two and one-half percent (2.5%) within the geographic confines of the County solely with regard to:

(4) The gross proceeds derived from Rental Companies engaged in the business of renting Private Passenger Motor Vehicles to a renter for a consideration within The County. The proceeds derived from the lease or rental of a private passenger motor vehicle supplied to the same person for a period of ninety (90) continuous days are not considered proceeds. "Rental Company" means any individual, firm, partnership or corporation in the business of providing private passenger automobiles to the public under the terms of a rental agreement. "Private Passenger Motor Vehicle" means any private passenger motor vehicle, including passenger vans and mini-vans, that is intended primarily for the transport of persons on public roads and highways.

(C) Payment of the Hospitality Fee. Payment of the Hospitality Fee shall be the liability of the consumer of the services. The Hospitality Fee shall be paid at that time of the delivery of the services to which the Hospitality Fee applies, shall be collected by the provider of the services, and shall be held in trust by the provider until remitted as provided for herein.

(D) Disposition of Hospitality Fee. All revenues collected from the Hospitality Fee shall be deposited or allocated as follows:

(1) The funds derived from the one and one-half percent (1.5%) Hospitality Fee shall be deposited into a Road Special Revenue Fund which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County. Interest generated by this Road Special Revenue Fund shall accrue to the fund.

(2) The funds derived from the one percent (1%) fee shall be specifically allocated within the County's budget to offset the cost of public safety and public works services and infrastructure directly impacted by tourism.

In the case of disposition of funds, the costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of one percent (1%).

(E) Sunset. The imposition of the one and one-half (1.5%) Hospitality Fee for infrastructure will terminate on January 1, 2022.

(F) Use of Hospitality Fee Revenues. Receipts of the Hospitality Fee shall be expended only for a purpose or purposes identified below:

(1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;

(2) tourism-related cultural, recreational, or historic facilities;

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(3) beach access and renourishment;

(4) highways, roads, streets, and bridges providing access to tourist destinations;

(5) advertisements and promotions related to tourism development;

(6) water and sewer infrastructure to serve tourism-related demand; or

(7) operation and maintenance of police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to the forgoing (1) through (6).

SECTION III. LOCAL ACCOMMODATIONS FEE

(A) Establishment and Imposition of a Local Accommodations Fee. There is established a uniform service charge, hereinafter referred to as the "Local Accommodations Fee," equal to one-half of one percent (0.5%) within the geographic confines of the unincorporated areas of the County.

> The Local Accommodations Fee shall be imposed on the gross proceeds derived from the rental or charges for any rooms, camp ground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code, applies.

(B) Payment of the Local Accommodations Fee. Payment of the Local Accommodations Fee shall be the liability of the transient(s) described in the aforesaid paragraph. The Local Accommodations Fee shall be paid at the time of the delivery of service to which the Local Accommodations Fee applies, shall be collected by the provider of the services, and shall be held in trust by the provider until remitted as provided for herein.

(C) Use of Local Accommodations Fee Revenues. Receipts of the Hospitality Fee shall be expended only for a purpose or purposes identified below:

(1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;

(2) tourism-related cultural, recreational, or historic facilities;

(3) beach access and renourishment, or other tourism-related lands and water access;

(4) highways, roads, streets, and bridges providing access to tourist destinations;

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(5) advertisements and promotions related to tourism development;

(6) water and sewer infrastructure to serve tourism-related demand; or

(7) operation and maintenance of police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to the forgoing (1) through (6).

SECTION IV. FEE COLLECTION AND ADMINISTRATION

(A) Collection of Fees.

(1) Requirement to Make Filing and Payment. Each person liable for any Fee shall (a) make a true and correct return to the County in such form as it may prescribe and (b) remit such Fee therewith.

(2) When Due. Any Fee imposed by this Hospitality Fee and Local Accommodations Fee Ordinance is due and payable:

i. in monthly installments on or before the twentieth (20th) day of each month, or

ii. in thirteen installments payable on or before the twentieth (20th) day following the period covered by the return on sales for the previous reporting period. This payment option requires thirteen payments in each calendar year. For those persons electing to pay in thirteen installments (every four weeks), payments for each period are due on or before the twentieth (20th) day after the conclusion of the four calendar week period for which payment is due.

The return shall be due at the same time the Fee is due and payable.

(3) Manner and Location of Payment. Fee payments shall be made by mail, in-person at facilities designated by the County Administrator, or electronically. County Council, by resolution, may establish mandatory electronic filing for certain classes of payers.

(4) Timely Filing and Payment. A return and the payment due therewith are considered to be timely if (i) the return and payment are mailed and such mailing has a postmark dated on or before the date the return is required to be filed; or (ii) the County actually receives the return and payment (a) at a physical location designated by the County Administrator, or (b) electronically in a manner selected by the County Administrator. The burden of demonstrating the timeliness of the filing and payment and presentation of a

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corroborating proof of mailing or receipt demonstrating the same is the responsibility of the person making payment.

(5) Failure to File Return. In the case of a failure to file the return, the County shall make a return upon such information as it may be able to obtain, assess the Fee due thereon, and assess a late filing penalty (the "Failure to File Penalty") upon the entire Fee then due, whereupon the County shall mail such notice to the person liable for the Fee. Such payment shall be due within ten days of the postmark of such return.

The Failure to File Penalty shall be calculated as

(A x B) x C = the Failure to File Penalty

where "A" represents the amount of the entire then due Fee, "B" represents the daily penalty in percentage terms calculated on the basis of a 10% per month penalty assuming a 30-day month (0.333%), and "C" represents the number of calendar days from the date the filing was due to the date of the filing and payment of the Failure to File Penalty. The amount of the Failure to File Penalty for any period shall not exceed 20% of the Fee due for that period.

(6) Failure to Timely File Return. In the case of late filing of the return, the County shall assess a late filing penalty (the "Late Filing Penalty") upon the entire Fee then due.

The Late Filing Penalty shall be calculated as

(D x E) x F = the Late Filing Penalty

where "D" represents the amount of the entire then due Fee, "E" represents the daily penalty in percentage terms calculated on the basis of a 10% per month penalty assuming a 30-day month (0.333%), and "F" represents the number of calendar days from the date the filing was due to the date of the payment of the Fee, the Late Filing Penalty, and any Late Payment Penalty. The amount of the Late Filing Penalty for any period shall not exceed 20% of the Fee due for that period.

(7) Failure to Pay. In the case of failure to pay the entirety of any Fee when due, the County shall add a late payment penalty (the "Late Payment Penalty").

The Late Payment Penalty shall be calculated as:

(X x Y) x Z = the Late Payment Penalty

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where "X" represents the amount of the entire Fee due for the period in question without regard to any partial payment, "Y" represents the daily penalty in percentage terms calculated on the basis of a 10% per month penalty assuming a 30-day month (0.333%), and "Z" represents the number of calendar days from the date the payment was due to the date of the payment of such Fee, and the Late Payment Penalty. There shall be no limit on the amount of the Late Payment Penalty.

For a given period, a person may be assessed a Failure to File Penalty, or a Late Filing Penalty, but shall not be assessed both.

(B) Inspections and Audit. For the purpose of enforcing the provisions of this Hospitality Fee and Local Accommodations Fee Ordinance, the County Administrator or other authorized agent of the County, is empowered to enter upon the premises of any person subject to this section and to make inspections, examinations and audits of books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours written notice. In the event that an audit reveals that false information has been filed by the remitter, the costs of the audit shall be added to the correct amount of any Fees determined to be due, in addition to the penalties provided in subsection (A) above. The County Administrator or other authorized agent of the County may make systematic inspection of all businesses within the County, to ensure compliance with this section. Records of inspection shall not be deemed public records.

(C) Violations.

(1) It is a violation of this section to:

(a) fail to collect any Fee;
(b) fail to remit to the County any Fee collected;
(c) fail to file any Fee return;
(d) knowingly provide false information on any Fee return;
(e) fail to provide books and records to the County Administrator or other authorized agent of the County for the purpose of in inspection, examination, or audit after twenty-four (24) hours written notice.

(2) Each day this section is violated constitutes a separate offence.

(3) Upon conviction of this section, the violator is guilty of a misdemeanor and subject to a fine or forfeiture not exceeding five hundred dollars or imprisonment for not exceeding thirty days, or both.

(D) Administration of Fees. The County Administrator is responsible for the implementation, collection, and enforcement of the Fees through any legally available means as may be available to the County, including, without limitation, the Setoff Debt Collection Act,

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codified at Title 12, Chapter 56 of the South Carolina Code and Governmental Enterprise Accounts Receivable (GEAR), codified at Section 12-4-580 of the South Carolina Code.

(E) Administrative Fee. The costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of one (1%) percent.

SECTION V. FAIRNESS IN LODGING ACT

(A) Findings and Authorization. In order to ensure fair competition in providing accommodations to transients and Tourists, the County finds that additional enforcement authority would be helpful in enforcing the Hospitality Fee and Local Accommodations Fee to support the health, safety and welfare of its residents and Tourists. The County is authorized to implement such authority in light of the concurrent authority of Title 6, Chapter 1, Article 5 provided to portions of the Hospitality Fee by this ordinance, and the plenary authority granted by Title 6, Chapter 1, Article 5 in the Local Hospitality Fee Ordinance, and confirmed hereby.

(B) Implementation. The County hereby implements the provisions of the Fairness in Lodging Act, codified at Title 6, Chapter 1, Article 8 of the South Carolina Code. The County Administrator is hereby directed to provide a certified copy of this Hospitality Fee and Local Accommodations Fee Ordinance to the Director of the South Carolina Department of Revenue (the "Department of Revenue") pursuant to Section 6-1-815(A) of the South Carolina Code.

(C) Data Sharing. The County Administrator is hereby directed to take such action as he finds necessary and desirable to collaborate with the Department of Revenue to use returns and copies of returns and other documents filed with or otherwise available to either the Department of Revenue or the County so that each may share data helpful to both the Department of Revenue and the County in determining possible instances of noncompliance

(D) Notices in Annual Property Tax Notices. There shall be included or caused to be included notices in annual property tax notices for parcels of residential real property assessed for property tax purposes pursuant to Section 12-43-220(e) of the South Carolina Code in such form as the County Administrator finds necessary and desirable. Such notices must provide (1) details of fees imposed pursuant to Title 6, Chapter 1, Article 5 of the South Carolina Code and state sales tax on accommodations required to be paid by persons renting residential real property to tourists in the County and (2) the intention of the County to vigorously to enforce these requirements. Details must include specific information on obtaining additional information with respect to these requirements and the names, addresses, and telephone numbers of the County officials designated by the County Administrator able to answer questions, provide forms, and assist in compliance.

(E) Civil Penalties. In addition to, and separate and apart from, other penalties and interest imposed by this ordinance for failure to comply with the portion of the Hospitality Fee concurrently authorized by Title 6, Chapter 1, Article 5 and the Local Accommodations Fee the County hereby imposes, with respect to a single rental property, a one-time civil penalty for noncompliance for failure to collect and remit the portion of the Hospitality Fee concurrently authorized by Title 6, Chapter 1, Article 5 and the Local Accommodations Fee of not less than five hundred dollars nor more than two thousand dollars for each seven days the property was rented. This additional penalty may not be imposed unless the owner has received the notice provided pursuant to Section V(D) above. For purposes of enforcement and collection, this

penalty is deemed property tax on the rental property pursuant to Section 6-1-820(C), and enforceable in the same manner and to the same extent as County property taxes.

SECTION V. SEVERABILITY

If any Section, Subsection, or Clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining Sections, Subsections and Clauses shall not be affected thereby.

SECTION VI. CONFLICTING ORDINANCES REPEALED

If any Section, Subsection, or Clause of this ordinance shall conflict with any Section, Subsection or Clause of a preceding ordinance of the County, then the preceding Section, Subsection or Clause is hereby repealed and no longer in effect.

SECTION VII. CONCURRENT AUTHORIZATION

The Hospitality Fee Ordinance is hereby amended to add the supplemental and concurrent authorization of Title 6, Chapter 1, Articles 5 and 7, to the Hospitality Fee to the extent applicable. Under no circumstances shall the addition of such concurrent authorization be construed as the imposition of a new fee or tax; such authorization is entirely supplementary and concurrent in nature.

SECTION VIII.EFFECTIVE DATE

This Hospitality Fee and Local Accommodations Fee Ordinance shall become effective January 1, 2017.

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AND IT IS SO ORDAINED, ENACTED AND ORDERED.

Dated this 6th day of December, 2016.

HORRY COUNTY COUNCIL

Mark Lazarus, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Jimmy Washington, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Harold Phillips, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Jody Prince, District 10
Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

First Reading:	November 1, 2016
Second Reading:	November 15, 2016
Public Hearing:	November 15, 2016
Third Reading:	December 6, 2016

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Exhibit H

County Ordinance 32-17

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COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

ORDINANCE 32-17

AN ORDINANCE

AMENDING ORDINANCE NO. 93-16 TO REPEAL THE SUNSET PROVISION APPLICABLE TO THE 1.5% HOSPITALITY FEE, AND OTHER MATTERS RELATED THERETO.

FINDINGS OF FACT

The County Council of Horry County (the "County Council"), the governing body of Horry County, South Carolina (the "County"), hereby finds and determines:

WHEREAS, County Council, in meeting duly assembled, enacted Ordinance No. 93-16, on December 6, 2016, and amended and restated its Hospitality Fee Ordinance and its Local Accommodations Fee Ordinance as a single Hospitality and Local Accommodations Fee Ordinance in order to provide for certain modernizations and to avail the County of certain statutory authorizations related to the administration, collection and enforcement of such fees.

WHEREAS, Section I(E) of such Hospitality and Local Accommodations Fee Ordinance provides that the imposition of the one and one-half percent (1.5%) Hospitality Fee (the "1.5% Hospitality Fee") for infrastructure will terminate on January 1, 2022.

WHEREAS, County Council, upon advice received and after due consideration has determined that the sunset of the 1.5% Hospitality Fee does not serve the interests of the County, its residents, or visiting tourists and that the County faces substantial infrastructure challenges in the coming years that are eligible for funding pursuant to the terms of the Hospitality and Local Accommodations Fee Ordinance and that it is in the bests interests of the County, its citizens, and its visiting tourists, to provide for the continued imposition of the 1.5% Hospitality Fee beyond January 1, 2022, in order to meet such challenges.

BE IT ORDAINED BY THE COUNTY COUNCIL OF HORRY COUNTY, SOUTH CAROLINA, AS FOLLOWS:

SECTION I. CONTINUATION OF 1.5% HOSPITALITY FEE; REMOVAL OF SUNSET

The sunset provision contained at Section I(E) of the Hospitality and Local Accommodations Fee Ordinance providing for the termination of the 1.5% Hospitality Fee on January 1, 2022, and shown below:

> (E) Sunset. The imposition of the one and one-half (1.5%) Hospitality Fee for infrastructure will terminate on January 1, 2022.

is hereby repealed and of no further effect. Such 1.5% Hospitality Fee shall continue indefinitely in the absence of further action by County Council pursuant to ordinance.

Instrument#: 2017000049972, DEED BK: 4007 PG: 605 DOCTYPE: 057 05/03/2017 at 01:42:09 PM, 1 OF 2 MARION D. FOXWORTH III, HORRY COUNTY, SC REGISTRAR OF DEEDS

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SECTION II. SEVERABILITY

If any Section, Subsection, or Clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining Sections, Subsections and Clauses shall not be affected thereby.

SECTION III. CONFLICTING ORDINANCES REPEALED

If any Section, Subsection, or Clause of this ordinance shall conflict with any Section, Subsection or Clause of a preceding ordinance of the County, then the preceding Section, Subsection or Clause is hereby repealed and no longer in effect.

SECTION VIII.EFFECTIVE DATE

This Hospitality Fee and Local Accommodations Fee Ordinance shall become effective immediately upon approval at Third Reading.

AND IT IS SO ORDAINED, ENACTED AND ORDERED this 2nd day of May, 2017.

HORRY COUNTY COUNCIL

Mark Lazarus, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Harold Phillips, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

First Reading: April 4, 2017
Second Reading: April 18, 2017
Third Reading: May 2, 2017

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Exhibit I

County Resolutions 82-18 and 84-18

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COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

RESOLUTION R-82-18

A RESOLUTION DEDICATING $23,000,000 AND, CONSIDERING GROWTH, UP TO $25,000,000 OF THE 1.5% HOSPTIALITY FEE REVENUE ANNUALLY TO CONSTRUCT THE HORRY COUNTY SECTION OF I-73.

WHEREAS, in 1996, Horry County Council established a 1.5% hospitality fee on prepared food, admissions, and rentals in the entirety of Horry County for the purpose of implementing a comprehensive road management plan as codified in Section 19-6 of the Horry County Code of Ordinances; and

WHEREAS, the 1.5% hospitality fee was scheduled to lapse upon the repayment of all outstanding loans due to the State Transportation Infrastructure Bank; and

WHEREAS, Horry County Council passed Ordinance 93-16 and Ordinance 32-17 to modernize the administration of the 1.5% hospitality fee and to extend its imposition following the repayment of loans due the State Transportation Infrastructure Bank; and

WHEREAS, it is anticipated all funds necessary to repay the outstanding State Transportation Infrastructure Bank loans will be on deposit in the State Treasurer's Office by the end of Fiscal Year 2019 and, upon repayment of the outstanding loans, Horry County Council seeks to dedicate a portion of the 1.5% hospitality fee for the continued development of major road projects within Horry County; and

WHEREAS, Horry County Council seeks the development of interstate connections to the Grand Strand and the construction of I-73, which is anticipated to provide significant economic benefit, as well as a faster evacuation route in the event of a catastrophic hurricane affecting the Myrtle Beach area; and

WHEREAS, in light of the above, Horry County Council seeks to dedicate a portion of the 1.5% hospitality fee to facilitate the construction of the Horry County portion of I-73.

NOW, THEREFORE, BE IT RESOLVED, that the Horry County Council dedicates $23,000,000 and, considering growth, up to $25,000,000 annually of the 1.5% Hospitality Fee to construct the Horry County segments of I-73.

AND IT IS SO RESOLVED this 24th day of July, 2018.

HORRY COUNTY COUNCIL

Mark Lazarus, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Harold Phillips, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

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COUNTY OF HORRY)
) RESOLUTION R-84-18
STATE OF SOUTH CAROLINA)

A RESOLUTION DEDICATING UP TO $18,000,000 (AND GROWTH ABOVE THE $25,000,000 DEDICATED FOR THE CONSTRUCTION OF THE HORRY COUNTY SECTION OF I-73) OF THE 1.5% HOSPITALITY FEE REVENUE ANNUALLY TO TOURIST RELATED PUBLIC SAFETY, AND DIRECTING STAFF TO PROVIDE A PLAN FOR THE ELIGIBLE USE OF SUCH FUNDS.

WHEREAS, in 1996, Horry County Council established a 1.5% hospitality fee on prepared food, admissions, and rentals in the entirety of Horry County for the purpose of implementing a comprehensive road management plan as codified in Section 19-6 of the Horry County Code of Ordinances; and

WHEREAS, the 1.5% hospitality fee was scheduled to lapse upon the repayment of all outstanding loans due to the State Transportation Infrastructure Bank; and

WHEREAS, Horry County Council passed Ordinance 93-16 and Ordinance 32-17 to modernize the administration of the 1.5% hospitality fee and to extend its imposition following the repayment of loans due the State Transportation Infrastructure Bank; and

WHEREAS, it is anticipated all funds necessary to repay the outstanding State Transportation Infrastructure Bank loans will be on deposit in the State Treasurer's Office by the end of Fiscal Year 2019; and

WHEREAS, by way of in Resolution R-82-18, Horry County Council has dedicated a portion of the future 1.5% hospitality fee revenue to facilitate the construction of the Horry County portion of I-73; and

WHEREAS, the Hospitality Fee can be used on other tourism-related purposes besides roads including, but not limited to, civic centers and coliseums, tourism-relate parks and cultural facilities, beach re-nourishment, tourism promotion, and tourism-related public safety costs; and

WHEREAS, recognizing that public safety services are needing to be augmented to meet the increased demands for such services occasioned by the influx of large numbers of tourists in our area, Horry County Council seeks to dedicate a portion of the 1.5% hospitality fee for the operation and maintenance of police, fire protection, emergency medical services, and emergency preparedness operations directly attendant to tourism related infrastructure, facilities, and programs within Horry County consistent with Section 19-6(j) of the Horry County Code of Ordinances; and

NOW, THEREFORE, BE IT RESOLVED, that the Horry County Council directs staff to draft an ordinance amending Section 19-6(h) of the Horry County Code of Ordinances to allow the 1.5% hospitality fee for all eligible uses under applicable law, as set forth in Section 19-6(j). In addition, Council dedicates up to $18,000,000 annually of the 1.5% Hospitality Fee and growth above the $25,000,000 dedicated for the construction of the Horry County segments of I-73, set forth in Resolution R-82-18, so long as such use of hospitality fee revenues is consistent with Section 19-6(j) of the Horry County Code of Ordinances and applicable law, staff to provide to Council a plan for the eligible use of such funds.

AND IT IS SO RESOLVED this 24th day of July, 2018.

HORRY COUNTY COUNCIL

Mark Lazarus, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant., District 5
Cam Crawford, District 6
Harold Phillips, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:
Patricia S. Hartley, Clerk to Council

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Exhibit J

City Ordinance 2019-22

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ORDINANCE 2019-22

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE VI, DIVISION 4, ACCOMMODATIONS TAX, TO INSTITUTE A THREE PERCENT TAX, EFFECTIVE IMMEDIATELY WITH IMPLEMENATION TO BE EFFECTIVE JULY 1, 2019.

IT IS HEREBY ORDAINED THAT Chapter 2, Article VI of the Code of Ordinances of the City of Myrtle Beach is hereby amended in Division 4, Accommodations Tax, in Sections 2-273, with repealed language stricken through and amended language underlined.

Sec. 2-270
This division shall be referred to as the City of Myrtle Beach Accommodations Tax Ordinance, enacted pursuant to South Carolina Code 6-1-500 et seq.

Sec. 2-271
It is hereby found and declared by the City Council of Myrtle Beach that tourism is the major industry in the City, accounting for millions of visitors annually. The City supports and encourages this industry by budgeting city funds for operational costs and capital improvements to streets and roadways, beach access and renourishment, water, sewer and waste management, as well as enhanced police and fire protection. By way of *ad valorem* taxation, the local stable population of approximately ~~25,000~~ 32,000 citizens, by 2018 estimates, bears the operational and capital costs of service provision made necessary by our annual visitors. The cost of providing the special or enhanced services required or made necessary by the tourism industry should be apportioned more equitably between the resident taxpayers and those who visit our City and enjoy the programs, events, benefits and municipal services, however briefly.

Sec. 2-272
The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accommodations for transients includes the Accommodations specified in S. C. Code 1976 & 12-36-920, as amended from time to time, or any successor provision thereto, located within the jurisdiction of the city.

Department of finance means the financial services department of the city.

Finance director means the director of finance of the city.

~~Sec. 2-273~~
~~Upon the ninetieth day following second reading,~~ ~~t~~ There shall be imposed and shall immediately accrue as of the first day of the month following such date a collected tax, as provided in this division, upon Accommodations for transients. The tax imposed by

this section shall not apply to additional guest charges as defined in S. C. Code 1976 , & 12-36-920(B). The tax shall be established at the rate of ~~one-half of one percent~~ three percent (3%) of the gross proceeds derived from the rental or charges for any Accommodations for transients.

Sec. 2-274
Taxes imposed by this division shall be due on the same date and in the same manner as provided in S.C. Code 1976, & 12-36-2570, and in accordance with the provisions of S.C. Code 1976, & 12-36-2570. The city shall provide the form for remittance of the tax to the city. At the time of filing of such form, the business providing Accommodations for transients shall pay to the finance department or its designee all taxes due for the period for which the form applies.

Sec. 2-275
All taxes collected under this division shall be used solely in connection with the tourism industry or economic development, in accordance with South Carolina Code 6-1-530 (as amended 1999).

Sec. 2-276
If for any reason any tax imposed by this division is not paid when due, a penalty at the rate of two percent per month on the amount of taxes which remain unpaid shall be added and collected. Whenever any person shall fail to pay any tax as provided in this division, upon the request of the city, an action may be brought by the city to enforce the payment of such tax on behalf of the city in any court of competent jurisdiction.

Sec. 2-277
Every business providing accommodations to transients in the city shall keep books and records showing the prices, rents or charges made or charges and occupancies taxable under this division. The finance director or his designee shall at all reasonable times have full access to such books and records of such business.

Sec. 2-278
If the city shall find that any person has willfully avoided payment of the taxes imposed by this division, the city may suspend or revoke all city licenses held by such business in accordance with the ordinance pertaining to business licenses.

Sec. 2-279
If any provisions, clause, sentence, paragraph, section or part of this division, or the application thereof to any person, firm, corporation, public agency or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this division and the application of such provision to other persons, firms, corporations, public agencies or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation, public agency or circumstances involved.

Sec. 2-280
An interest bearing and restricted account shall be established and known as the Myrtle Beach Local Accommodations Special Revenue Fund. All revenue received pursuant to

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this ordinance shall be deposited into this fund, and shall be expended only pursuant to law and at the sole discretion of City Council.

Sec. 2-281
It shall be unlawful to fail to collect the tax in connection with the rental of Accommodations to transients; or fail to remit to the City the tax collected, pursuant to the ordinance; or knowingly provide false information on any form or return to the City; or fail to provide books and records for the purpose of audit upon 24 hours' notice. Upon conviction, the penalty shall be as prescribed by law.

_____
BRENDA BETHUNE, MAYOR

ATTEST:

_____
JENNIFER STANFORD, CITY CLERK

1st Reading: 2-26-19
2nd Reading: 3-7-19

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Exhibit K

City Ordinance 2019-23

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ORDINANCE 2019-23

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE ENACTING IN CHAPTER 2, ARTICLE VI, A NEW DIVISION 7, LOCAL HOSPITALITY TAX, TO INSTITUTE A TWO PERCENT TAX, EFFECTIVE IMMEDIATELY WITH IMPLEMENATION TO BE EFFECTIVE JULY 1, 2019.

IT IS HEREBY ORDAINED THAT Chapter 2, Article VI of the Code of Ordinances of the City of Myrtle Beach is hereby amended by enacting Division 7, Local Hospitality Tax, in Sections 2-315 through 2-321.

Sec. 2.315. - Municipal local hospitality tax pursuant to South Carolina Code 6-1-700 through 6-1-770.

There is hereby imposed a uniform tax of two (2) percent on the gross proceeds derived from the sales of prepared meals, food, and beverages sold in or by establishments, or sales of prepared meals, food and beverages sold in or by establishments licensed for on-premises consumption of alcoholic beverages, beer or wine.

Sec. 2.316. - Payment of municipal hospitality tax.

The tax imposed by this section shall be collected from any patron when he tenders payment for his meal, food, or beverage and shall be held in trust for the benefit of the city until the same is paid to the director of the revenue collections division as hereinafter provided. Every establishment subject to this section shall, on the date or within the time period hereinafter prescribed, make a return to the revenue collections division of the city on forms provided by the office delineating gross proceeds of sales of prepared meals, food, and beverages for the previous month, and the amount of any tax due by virtue of this section. At the time the return is filed, the full amount of any tax due hereunder shall be remitted. Taxes and required reports shall be submitted to the Revenue Collections Division by the twentieth (20) day of the month and shall cover sales of the previous month. If the due date for reporting and payment falls on a Saturday or Sunday, or a federal, state, or City of Myrtle Beach observed holiday then reporting and payment are considered timely on the following business day. Furthermore, if the due date for reporting and payment falls during the period of a natural disaster which directly precluded the responsible party from timely submitting the reports and payments, an additional ten (10) day extension may be granted upon written request by the taxpayer to the director of the revenue collections division. A natural disaster is defined as a hurricane, earthquake, flood, or tornado. The responsible party is considered directly precluded from timely submitting reports and payments if their offices are deemed by emergency officials to be damaged to the extent of being unsafe or unavailable for use due to the disaster or postal service to the immediate area is suspended during the due date. Any taxes not timely remitted shall be subject to a penalty of twenty-five (25) percent. The failure to collect from patrons the tax imposed by this section shall not relieve any establishment subject to this section from making the required remittance.

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Sec. 2-317. - Hospitality tax account.
There is hereby established a special account, to be known as the hospitality tax account, into which all monies remitted to the city under this section shall be deposited. Any and all funds in the hospitality tax account, including any interest as may accrue thereon, shall be used only for the purposes as set forth in S.C. Code Ann. Sec. 6-1-730, as the same may from time to time be amended.

Sec. 2-318. - Inspections, audits and administration.
For the purpose of enforcing this section, the director of the revenue collections division or other authorized agent of the city is empowered to enter upon the premises of any person or entity subject to this section and to make inspections, and examine and audit books and records. It shall be unlawful for any person or entity to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours' written notice. In the event an audit reveals that false information has been filed by the remitter, the cost of the audit shall be added to the correct amount of taxes determined to be due. The director of the revenue collections division or other authorized agent may make systematic inspections of all establishments within the city to ensure compliance with this section. The director of the revenue collections division shall administer the provisions of this section and make reasonable regulations relating to its administration.

Sec. 2-319. - Violations. It shall be a violation of this section to:
1. Fail to collect the municipal hospitality tax in connection with the sale of meals, food, and beverages;
2. Fail to remit to the city the taxes collected pursuant to this section on a monthly basis;
3. Provide false information on the form of return submitted to the city;
4. Fail to provide or make available books and records to the director of revenue or other authorized agent for the purpose of an audit upon twenty-four (24) hours' written notice; or,
5. Fail to comply with any other specific provision/requirement of this section.

Sec. 2-320. – Violations a misdemeanor.
The failure of an establishment subject to this section to remit to the city the taxes required by this section, as and when due, shall constitute a misdemeanor, punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment for up to thirty (30) days, or both. Notwithstanding the foregoing, any misrepresentation of the information required by return(s) as set forth in subsection (b) hereof or the failure to collect or timely remit to the city the taxes imposed by this section shall result in the suspension and/or revocation of the business license of the offending establishment, or the business license of the offending establishment shall not be renewed, as may be determined, after a hearing by the business license committee. At least ten (10) days' notice of such hearing shall be provided to the owner of the applicable establishment.

Sec. 2-321. - Severability.
If any section, phrase, sentence or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions herein.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER STANFORD, CITY CLERK

1st Reading: 2-26-19
2nd Reading: 3-7-19

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Exhibit L

Affidavit of Barry Spivey

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2019-CP-26-01732
City of Myrtle Beach For Itself and a Class of Similarly Situated Plaintiffs, Plaintiff, vs. Horry County, Defendant.	)	**AFFIDAVIT OF BARRY R. SPIVEY**

PERSONALLY appeared before me, Barry R. Spivey, who, being duly sworn, deposes and says as follows:

1. I am the Finance Director for the County of Horry, State of South Carolina and have been in this position for the last eight (8) years. Additionally, I also serve currently as the Interim Assistant County Administrator.

2. My qualification to serve as the Finance Director for the County of Horry, is that I received a BS Degree from the University of South Carolina at Coastal and an MBA from Coastal Carolina University. I have also been a Certified Public Accountant, in good standing, with the South Carolina Board of Accountancy for thirty-three (33) years.

3. As the Finance Director for the County of Horry, I am familiar with the collection and use of monies received by the County as a result of County Ordinance 105-96 and its amendments. This Ordinance authorizes the County to collect, within the unincorporated areas, a two and one/half (2 ½%) percent uniform service charge hereinafter referred to as the "hospitality fee" on the sale of admissions, rental cars, and prepared food and beverages as well as three (3%)

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percent on the sale of accommodations. This Ordinance also authorizes the County to collect, within the corporate limits of municipalities, a one and one/half (1 ½%) percent uniform service charge hereinafter referred to as the "hospitality fee" on the sale of accommodations, admissions, and prepared food and beverages as well as two and one/half (2 ½%) percent on the sale of rental cars.

4. It is my understanding that the City of Myrtle Beach is challenging the validity of the aforesaid Ordinance, and its amendments, and this challenge, if successful, would be a fiscal catastrophe for Horry County and its residents. The catastrophe for Horry County would be because the County would have to immediately raise property tax millage to replace existing funding or terminate the employment of many critical public safety related employees such as police, emergency management, EMS personnel, and employees handling 911.

5. For the last three (3) fiscal years, the collection of the monies due to the Ordinance has been as follows:

FY 2018 – $51,165,252.32

FY 2017 – $49,985,884.50

FY 2016 – $47,347,621.65

TOTAL: $148,498,758.47

Of these monies, approximately $9 Million, on an annual basis, is utilized in normal reoccurring critical public safety expenditures of Horry County.

6. In addition, this lawsuit, and the relief the City of Myrtle Beach seeks, could negatively effect the bond ratings and capacity of the County.

FURTHER AFFIANT SAYETH NAUGHT.

Barry R. Spivey

SWORN to and subscribed before
me this 10 day of May, 2019

Notary Public, State of South Carolina
My Commission Expires: 1-11-29

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ELECTRONICALLY FILED - 2019 May 20 2:36 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiff, vs. Horry County, Defendant.	)	CIVIL ACTION NO. 2019-CP-26-01732 **MOTION TO DISMISS**

TO: DEFENDANT HORRY COUNTY, by and through its Attorneys: Henrietta U. Golding, Esquire, Adam R. Artigliere, Esquire, and Wm. Grayson Lambert, Esquire, of Burr Forman McNair, Myrtle Beach, South Carolina:

YOU WILL PLEASE TAKE NOTICE that Plaintiff City of Myrtle Beach ("City"), pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP, will move for an order dismissing the counterclaims brought by Defendant Horry County ("County") on the ground that the County has not pled facts sufficient to state a cause of action on either of its counterclaims and that this Court lacks jurisdiction with respect to the County's first counterclaim. City is therefore entitled to judgment as a matter of law. City will seek a hearing on the within motions before the Honorable William H. Seals at the Horry County Courthouse, Conway, South Carolina, or such other location as the Court may set, ten days after the date of this motion or as soon thereafter as a hearing is scheduled by the Court.

In support of this motion, the City would respectfully show:

1. This Court should dismiss the County's counterclaims under Rule 12(b)(6), SCRCP, because they fail as a matter of law for the following reasons:

   A. The County's first counterclaim fails because the County has not pled a basis for an award of attorneys' fees.

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B. The County's second counterclaim fails because County has not alleged a definite and unambiguous promise made by City, that the City breached any such promise, or that any such breach has caused County any cognizable harm. To the contrary, the County's allegations prove the City actually complied with the only alleged "promise" made by the City.

2. The Court should dismiss the County's first counterclaim under Rule 12(b)(1) and 12(b)(6), SCRCP, as it is not ripe for review and therefore fails to present a justiciable controversy.

This motion is based upon the South Carolina Rules of Civil Procedure, the South Carolina Constitution and other applicable law, the pleadings, a memorandum or memoranda of law submitted by the City concurrently herewith and/or before the hearing on this motion, and any other materials or matters the Court may permit to be presented at the hearing on this matter.

Respectfully submitted,

s/Chad N. Johnston
John M.S. Hoefer, SC Bar # 2549
Chad N. Johnston, SC Bar # 73752
R. Walker Humphrey, II, SC Bar # 79426
Willoughby & Hoefer, P.A.
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whumphrey@willoughbyhoefer.com
(803) 252-3300 (office)
(803) 256-8062 (facsimile)

Attorneys for Plaintiff City of Myrtle Beach and All Others Similarly Situated

Columbia, South Carolina
May 20, 2019

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiff, vs. Horry County, Defendant.	)	CIVIL ACTION NO. 2019-CP-26-01732 **MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS**

Plaintiff, City of Myrtle Beach ("City"), submits this memorandum in support of its motion to dismiss the counterclaims brought by Defendant Horry County ("County") pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP.

INTRODUCTION

To distract from its illegal collection of tens of millions of dollars per year from a range of individuals, businesses, and governmental bodies, the County has pled two meritless counterclaims against the City. Both counterclaims are facially baseless and untenable and should be dismissed. Moreover, the City's first counterclaim fails to present a justiciable controversy. The City therefore respectfully requests that the Court grant the City's motions.

FACTUAL BACKGROUND

The Horry County Council ("County Council") enacted Ordinance No. 105-96 on October 15, 1996. A copy of this ordinance is attached hereto and incorporated by reference as Exhibit A. This ordinance imposed a 2.5% percent uniform service charge on the sale of accommodations, amusements, and prepared food and beverages within the County in order to fund road infrastructure projects identified by the Governor's RIDE Committee. The fee had two components: a 1.5% percent fee "county-wide," to be imposed inside the corporate limits of

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any municipalities within, as well as the unincorporated areas of, the County, and an additional 1% fee imposed solely in the unincorporated areas of the County. The fee that is the subject of this case is the 1.5% portion imposed within the municipalities ("Hospitality Fee").

The County alleges that "[t]he City made certain unambiguous promises to [the County], including, but not limited to the City's strong and unanimous support of [the County's] actions whereby the City urged the Defendant to implement the RIDE Report and collect a Hospitality Fee (the 'City's Promises')." Def.'s Answer and Countercl. ("Answer") ¶ 170. This "promise" is asserted to arise out of the City's "Resolution Supporting the Findings and Recommendations of the RIDE Committee Report of September 1996."[1] A copy of this resolution is attached hereto and incorporated by reference as Exhibit B. In this resolution, the City resolved to "strongly and unanimously support the RIDE Committee Report to Governor David M. Beasley" and "urge[d] Horry County to enact expeditiously the necessary ordinances to implement the RIDE Committee Report." *Id.* The County identifies no other alleged promise made by the City.

But the resolution makes no commitment that has been broken by the City. Rather, the City's resolution consents to the imposition of "a 1.5 percent hospitality fee" by the County, but only for purposes of implementing "the plan" set out in the September 16, 1996 RIDE Committee Report and "***for a period of up to 20 years***" *Id.* (emphasis added). And, just as the City resolved that it would support the County in doing, the County has received "the express and implied support of the City" for the imposition of the Hospitality Fee for that period. Answer ¶ 174.

[1] The County's Answer craved reference to this resolution, which was attached to the City's complaint, and only denied any inconsistent averments. Answer ¶ 20. Because the County incorporated all of its Answer into its counterclaims, *id.* ¶¶ 165 and 169, this Court may consider the resolution in connection with this Motion to Dismiss.

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However, the Hospitality Fee expired by its own terms on January 1, 2017.[2] *See* Ex. A, § 2. The City never resolved, much less promised, that the County was entitled to continue collecting and imposing the Hospitality Fee beyond that date or for any purpose other than funding the plan set out in the RIDE Report. The City, individually and on behalf of all who paid the Hospitality Fee, brought the underlying proposed class action lawsuit to declare the County's collection of the Hospitality Fee after January 1, 2017, improper, enjoin the County from continuing to collect the fee, and return the fees paid since that date to all who paid this fee. The County filed two counterclaims against the City in response. The first is bereft of any substance or detail. It simply declares the City's claims to not be well-founded, asserts there are no justiciable issues of law or fact to be tried, and requests that the City pay the County's attorneys' fees and costs. *Id.* ¶¶ 166-68. The second ostensibly is one for promissory estoppel. Through it, the County seeks to recover the costs it "incurred in implementing the Hospitality Fee and in defending this lawsuit" due to the City's alleged "broken [] promise of support" for the Hospitality Fee. *Id.* ¶¶ 169-79.

LAW/ANALYSIS

I. This Court Should Dismiss the County's Counterclaims Because They Fail to State Sufficient Facts to Support Any Relief as a Matter of Law.

A counterclaim is subject to dismissal if it "fail[s] to state facts sufficient to constitute a cause of action." Rule 12(b)(6), SCRCP. Under this standard, the Court must construe the counterclaim in the light most favorable to the non-moving party and "determine if the facts

[2] The County asserts that it extended, and then ultimately repealed, the sunset provision for the Hospitality Fee. *See* Answer ¶¶ 28-30 (alleging that the County validly passed ordinances amending and repealing the sunset provision). The City disputes this assertion and submits that any attempted extension or repeal were ineffective for a number of reasons. *See* Mem. of Law in Supp. of Mot. for Prelim. Inj., filed May 3, 2019. Resolution of this disputed assertion is not, however, necessary for the Court's determination of the instant motion.

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alleged and the inferences reasonably deducible from the pleadings would entitle the [counterclaiming defendant] to relief on any theory of the case." *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) (internal quotations omitted). At this stage, the Court considers the well-pled facts alleged in the counterclaim to be true. *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 560, 521 S.E.2d 153, 157 (1999).

This Court generally considers only the allegations on the face of the counterclaim. *Id.* But the Court may also consider documents referenced in and integral to the Defendant's counterclaims. *See Phillips v. LCI Int'l, Inc.*, 190 F.3d 609, 618 (4th Cir. 1999); *see also Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) ("[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based.").

A. The County's counterclaim for attorneys' fees should be dismissed because the County identifies no basis for such an award.

There is no common law right to recover attorneys' fees under South Carolina law. *Raynor v. Byers*, 422 S.C. 128, 131, 810 S.E.2d 430, 432 (Ct. App. 2017). This Court can award them only under a contract or when a statute so provides. *Id.* The County does not allege a contract exists between the parties that allows it to make a claim for attorneys' fees. Nor does the County allege any statutory basis upon which it may seek an award of attorneys' fees. This renders it impossible to determine whether the County has pled sufficient facts to meet the varying standards imposed by statute. To be sure, the City steadfastly denies the County's characterizations of the City's Complaint. And if the County's position had merit, it would have been unnecessary for the Horry County House Delegation to introduce legislation specifically

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designed to alter the outcome of the case. *See* H.R. 4597, 123d Gen. Assem., Reg. Sess. (S.C. 2019). But the County has no claim for attorneys' fees regardless.

The County's first counterclaim therefore fails to state facts sufficient to constitute a cause of action, and is baseless as a matter of law. For each of these reasons, it should be dismissed under Rule 12(b)(6), SCRCP.

B. The County's counterclaim for attorneys' fees fails to present a justiciable controversy.

Moreover, any claim the County may have in this regard is clearly not ripe no matter what the theory. "[A]n issue that is contingent, hypothetical, or abstract is not ripe for judicial review." *Colleton Cnty. Taxpayers Ass'n v. School Dist. of Colleton Cnty.*, 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006). The County's first counterclaim cannot ripen into a cognizable claim for attorneys' fees unless and until the litigation has been terminated in some manner adverse to the City (and subject to the substantive requirements of any contract or statute – if one exists – providing for such a claim). The County's present claim is therefore impermissibly contingent, hypothetical, and abstract and must therefore be dismissed under Rules 12(b)(1) and 12(b)(6), SCRCP.

C. The County's allegations of promissory estoppel in its second counterclaim are self-defeating and legally insufficient.

Though unnamed, the County's second counterclaim substantively is one for promissory estoppel. The County must plead ultimate facts supporting four elements for this claim to survive Rule 12(b)(6): "(1) a promise with unambiguous terms; (2) reasonable reliance upon the unambiguous promise; (3) foreseeability of the promisee's reliance; and (4) injury sustained in relying on the promise because of the promisor's inconsistent disposition." *Barnes v. Johnson*,

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402 S.C. 458, 469, 742 S.E.2d 6, 11 (Ct. App. 2013). The County has failed to meet its pleading burden.

First and foremost, the County has not identified an unambiguous promise made by the City that has not been fulfilled. "[T]he promise to be enforced must be unambiguous with clearly articulated, definite terms." *Id.* at 470, 742 S.E.2d at 11. In order to prevent the inequitable application of promissory estoppel, the doctrine requires "clarity, definiteness, and specificity" for the underlying promise. *Id.* at 470-71, 742 S.E.2d at 12; *see also Rushing v. McKinney*, 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct. App. 2006) (holding the plaintiff's inability to "clearly articulate the terms" of the alleged promise precludes recovery under promissory estoppel). The County identified just one alleged promise: "the City's strong and unanimous support of the Defendant's actions whereby the City urged the Defendant to implement the RIDE Report and collect a Hospitality Fee." Answer ¶ 170. There is nothing specific, definite, or unambiguous about the terms of this "promise." This general but vague allegation of support for a local initiative is legally insufficient to support promissory estoppel. *See Barnes*, 402 S.C. at 470, 742 S.E.2d at 12 (noting promissory estoppel exists to prevent injustice "but where a promise is unclear . . . the doctrine does not risk imposing its own inequity against the party sought to be estopped").

Even assuming *arguendo* that this pledge of support was sufficient, the County has not identified any inconsistent actions taken by the City. The source of this "promise" is the City's resolution pledging support of the RIDE Program and the Hospitality Fee ***for a period of twenty years***. *See* Ex. B. And the County alleges that it acted "with the express and implied support of the City for over twenty years." Answer ¶ 174. By the County's own admission, the City fully

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satisfied the sole promise upon which its promissory estoppel claim is built. There being no inconsistent disposition by the City, the County's claim fails yet again.

Furthermore, the County has alleged no injury as a result of any inconsistent disposition by the City (even assuming such exists). Just like an ambiguous promise, "an injury not arising out of the inconsistent disposition precludes promissory estoppel's application." *Barnes*, 402 S.C. at 470, 742 S.E.2d at 12. The County identifies just two claimed injuries: implementation costs for the Hospitality Fee and costs incurred in defending the lawsuit. Answer ¶ 179. The implementation costs, which the County necessarily incurred in or around 1996 when it put the Hospitality Fee into effect, could not have been caused by the City's alleged "broken [] promise of support" in 2019. *See* Answer ¶ 174. The County also wants to have its cake and eat it too. It asks this Court to award the costs of implementing the fee, but it wants to keep all proceeds of the fee collected since 1996. This duplicity—recoup the costs but keep all of the benefit—underscores the sophism of the County's counterclaim and position in this litigation. Likewise, the County's additional and duplicative request for attorneys' fees under the guise of promissory estoppel suffers an equal fate to this underlying claim, as well as the first counterclaim. Promissory estoppel is not a back door around the deep-seated rule allowing for recovery of attorneys' fees only when permitted by contract or statute. *See* discussion *supra*.

The City therefore requests that this Court dismiss the County's second counterclaim pursuant to Rule 12(b)(6), SCRCP.

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court dismiss both of the County's counterclaims under Rule 12(b)(6) for failure to state a claim and dismiss its first counterclaim under Rules 12(b)(1) and 12(b)(6).

Respectfully submitted,

s/Chad N. Johnston
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Attorneys for Plaintiff City of Myrtle Beach and All Others Similarly Situated

Columbia, South Carolina
May 20, 2019

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Exhibit A

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STATE OF SOUTH CAROLINA)
) ORDINANCE NO. 105-96
COUNTY OF HORRY)

AN ORDINANCE IMPOSING A TWO AND ONE-HALF PERCENT HOSPITALITY FEE IMMEDIATELY.

WHEREAS, A plan which offered long-range solutions to this area's road problems failed to pass; and

WHEREAS, The need for road improvement continues and will in all likelihood increase in the future; and

WHEREAS, Considerable time and effort was expended by the Governor's RIDE Committee to establish a new plan and a new timetable; and

WHEREAS, All past efforts to institute a local options sales tax have failed, thus making difficult the possibility of using the largest single revenue generator available; and

WHEREAS, Current law allows local government to levy reasonable and necessary fees to provide needed infrastructure.

NOW THEREFORE, BE IT ORDAINED IN COUNCIL DULY ASSEMBLED,

SECTION 1. (A) **Establishment of Hospitality Fee.** There is established a uniform service charge, hereinafter referred to as the "hospitality fee," equal to one and one-half percent (1.5%) within the geographic confines of Horry County, with an additional hospitality fee equal to one percent (1.0%) within the unincorporated areas of Horry County only. These fees shall be imposed on:

(1) the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies;

(2) those paid admissions to places of amusement within the County to which the admissions tax imposed by the State of South Carolina pursuant to Section 12-21-2420, et seq. of the South Carolina Code, applies (golf fees not to begin until 7/1/97); and

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(3) the gross proceeds derived from the sale of food and beverages sold in establishments which primarily have as their business purpose the sale of prepared food for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine.

(B) **Payment of the Hospitality Fee.** Payment of the hospitality fee shall be the liability of the consumer of the services described in Section 19-51 subsection (A). The hospitality fee shall be paid at that time of the delivery of services to which the hospitality fee applies, shall b3e collected by the provider of the services,and shall be held in trust by the provider until remitted as provided for herein.

(C) **Collection of the Hospitality Fee.** The hospitality fee imposed by this section is due and payable in monthly installments on or before the twentieth day of each month and every person liable for the fee shall on or before the twentieth day of each month make a true and correct return to the County in such form as it may prescribe and remit the fee therewith. A return is considered to be timely filed if the return is mailed and has a postmark dated on or before the date the return is required to be filed. In case of a failure to make a true and correct return or a failure to file the return, the County shall make a return upon such information as it may be able to obtain, assess the fee due thereon, and add a penalty of ten percent, whereupon the County shall mail notice to the person liable for the fee and, in the case of failure to pay the fee within ten days after the mailing of any such notice, the County shall add an additional penalty of ten percent.

(D) **Inspections and Audits.** For the purpose of enforcing the provisions of this section the County Administrator or other authorized agent of the County, is empowered to enter upon the premises of any person subject to this section and to make inspections, examinations and audits of books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours written notice. In the event that an audit reveals that false information has been filed by the remitter, the costs of the audit shall be added to the correct amount of fees determined to be due, in addition to the penalties provided in subsection (C). The County Administrator or other authorized agent of the County may make systematic inspection of all businesses within the County, to ensure compliance with this section. Records of inspection shall not be deemed public records.

(E) **Penalties.** (1) It is a violation of this section to:

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(a) fail to collect the hospitality fee;

(b) fail to remit to the County any hospitality fee collected;

(c) fail to file a hospitality fee; return.

(d) knowingly provide false information on a hospitality fee return;

or

(e) fail to provide books and records to the County Administrator or other authorized agent of the County for the purpose of inspection, examination, or audit after twenty-four (24) hours written notice.

(2) Each day this section is violated constitutes a separate offense.

(3) Upon conviction of this section, the violator is guilty of a misdemeanor and subject to a fine or forfeiture not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both.

(F) **Start-up Funds and Administration of Hospitality Fee.** The County Administrator is responsible for the implementation, collection, and enforcement of the hospitality fee and, upon mutual agreement with the County Auditor and County Treasurer, the County Administrator may provide for the implementation, collection, and enforcement of the hospitality fee through the County Auditor and County Treasurer.

(G) **Disposition of Hospitality Fee.** All revenues collected fro the hospitality fee shall be deposited in two separate funds. The funds derived from the one and one-half percent fee shall be deposited into a Road Fund which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County. The money in this Fund shall be held in escrow until the said comprehensive road plan is finalized and adopted. Interest generated by this fund shall accrue to the fund. The funds derived for the one percent fee shall be deposited in the general fund of the County to offset the cost of public safety and public works services and infrastructure directly impacted by tourism. In the case of either fund, the costs of collecting

the monies may be reimbursed by the fund monies, up to a maximum of one percent (1%).

(H) **Sunset.** The imposition of the one and one-half (1.5%) percent hospitality fee for infrastructure will terminate (a) on 8/1/97 if an appropriate agreement or legislation is not in place fro the State of South Carolina to provide their share of the short term funding plan outlined by RIDE or (b) twenty years from the effective date of this ordinance. Should the one and one-half (1.5%) percent hospitality fee be terminated on 8/1/97, all funds collected will be placed in the general fund of the County and used for services directly impacted by the tourism industry (see G above).

SECTION 2. SEVERABILITY.

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby.

SECTION 3. CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this ordinances are hereby repealed.

SECTION 4. EFFECTIVE DATE.

This ordinance shall be effective 1/1/97.

FIRST READING: August 6, 1996
SECOND READING: August 20, 1996
THIRD READING: October 15, 1996

ATTEST:
Rosella H. Carroll
Rosella H. Carroll, Clerk to Council

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HORRY COUNTY COUNCIL

A. Joseph McNutt, Jr., Chairman

Ray Skidmore, Jr., District 1

John Kost, District 2

Raymond J. Brown, District 3

Chandler Brigham, District 4

Chandler C. Prosser, District 5

Terry Chambers, District 6

James R. Frazier, District 7

Elizabeth D. Gilland, District 8

Ulysses Dewitt, District 9

Johnny Shelley, District 10

Janice Jordan. District 11

ATTEST:
Rosella H. Carroll, Clerk to Council

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Exhibit B

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY
CITY OF MYRTLE BEACH

RESOLUTION SUPPORTING THE FINDINGS AND RECOMMENDATIONS OF THE RIDE COMMITTEE REPORT OF SEPTEMBER 1996.

WHEREAS, the serious transportation problem and traffic congestion are an ever increasing threat to the public safety and welfare, and the future economic development of Horry County and the State of South Carolina; and

WHEREAS, the Honorable David M. Beasley, Governor of the State of South Carolina, requested that the Honorable H.B. Limehouse, Chairman of the South Carolina Department of Transportation, form a special committee, which consisted of nine members and became known as the Road Improvement and Development Effort (RIDE Committee), to prepare a study on Horry County transportation problems and potential solutions; and

WHEREAS, the RIDE Committee considered both short term and long term solutions to the serious transportation problems and traffic congestion on Horry County roads; and

WHEREAS, the RIDE Committee presented the results of their study to the Governor on September 16, 1996, and to the South Carolina Department of Transportation Commission on September 19, 1996, and municipal bodies of Horry County on October 3, 1996; and

WHEREAS, the plan presented will provide substantial traffic relief and require participation in the funding package by the citizens of Horry County, as outlined by the proposed implementation of a 1.5 percent hospitality fee for a period of up to 20 years in partnership with the State of South Carolina, who will contribute substantial funding; and

WHEREAS, in order to solve the serious transportation and traffic congestion problems in Horry County, it is essential that the people and governments of Horry County work together harmoniously toward that common goal.

NOW, THEREFORE, BE IT RESOLVED that Myrtle Beach City Council strongly and unanimously support the RIDE Committee Report to Governor David M.

Beasley; and further urges Horry County Council to enact expeditiously the necessary ordinances to implement the RIDE Committee report.

SIGNED AND SEALED this 8th day of October, 1996.

ATTEST:

JOAN GROVE, CITY CLERK

ROBERT M. GRISSOM, MAYOR

RACHEL BROADHURST, COUNCIL MEMBER

WILSON CAIN, COUNCIL MEMBER

HARRY CHARLES, COUNCIL MEMBER

JOHN MAXWELL, COUNCIL MEMBER

MARK S. McBRIDE, COUNCIL MEMBER

CRAIN WOODS, COUNCIL MEMBER

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiff, vs. Horry County, Defendant.	)	CIVIL ACTION NO. 2019-CP-26-01732 **REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff, City of Myrtle Beach ("City"), on behalf of itself and all other similarly situated plaintiffs, submits this memorandum in reply in support of its motion for a preliminary injunction. By its motion, the City seeks to prevent Defendant Horry County ("County") from continuing to collect its 1.5% uniform service charge on the sale of accommodations, prepared food and beverage, and amusements within the corporate limits of any Horry County municipality ("Hospitality Fee") during the pendency of this litigation.

In addition to opposing the City's motion, the County also moves to enjoin the City's imposition of local accommodations and hospitality taxes within the City's corporate limits. The City will oppose the County's motion in a separate responsive memorandum. The City notes, however, that the County's motion is improper given that the County has not pled a counterclaim against City challenging the lawfulness of the City's ordinances and seeking injunctive relief with respect to same. *Cf. AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50-51, 674 S.E.2d 505, 508 (Ct. App. 2009) ("[P]laintiff's complaint must allege facts sufficient to constitute a cause of action for injunction"). Thus, County's assertion that the pendency of "cross-motions" for preliminary injunction (*see, e.g.*, Mem. in Opp. to Pl.'s Mot. for Prelim. Inj. & in Supp. of Def.'s Mot for Prelim. Inj. ("County Mem.") at 2, 5) bears upon the City's motion is without merit.

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INTRODUCTION

As is its penchant in this litigation, the County employs a colorful analogy in an attempt to discredit the City's effort to prevent enforcement of the County's unlawful ordinance within the corporate limits of municipalities within Horry County. *See* County Mem. at 1 (repeating the assertion in paragraph 67 of its Answer that "the City rolled the dice" by bringing this lawsuit and enacting ordinances imposing local accommodations and hospitality taxes within the City's corporate limits). Of course, this is hypocritical in view of the undisputed public statements by members of the County's own governing body questioning the propriety of changing the uses to which the proceeds of the Hospitality Fee are to be put and by the County's attorney expressing the view that action was needed to avoid losing the grandfathered status to which he believed the Hospitality Fee to be entitled. *Cf.* Mem. of Law in Supp. of Mot. for Prelim. Inj. ("City Mem.") at 18-19, Exs. P and Q; County Mem. at 14-15.

The County's gambling analogy is not completely inapt, however, as the County obviously considers itself to be the "house" which can make whatever rules it chooses and leave those betting on lawful governance and fair representation of voters in Horry County as required by law struggling against long odds. This Court's intervention is necessary to disabuse the County of this notion and a preliminary injunction for that purpose is warranted by the pleadings and affidavits on file.

FACTUAL BACKGROUND

The County asserts that no consent from the City is required for it to "extend the Hospitality Fee" enacted by Ordinance No. 105-96. County Mem. at 2. Only by ignoring the plain language of its own ordinance, the provisions of the South Carolina Constitution limiting provision of county services within the corporate limits of municipalities, and the enactments of

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the General Assembly in pursuance of these limitations on the provision of such services and the imposition of uniform service charges, can the result urged by the County be reached. For the reasons discussed below, the Court should reject the County's assertion in this regard. In order to fully examine the infirmities in the County's arguments, a discussion of the background "facts" described by the County in its opposing memorandum is first necessary.

A. Road Construction in Horry County Under the RIDE Report Plan and the Ordinances and Resolutions Adopted by the County, City, and other Municipalities in Furtherance of that Plan.

The County begins its opposition by recounting its version of the history regarding the joint efforts of local governments in Horry County to improve road conditions therein. This recitation of "facts" misstates or mischaracterizes a number of key points.

For example, the plan to improve road conditions in Horry County via what became the RIDE Report was not for the purpose of improving the "County road system" as County suggests. County Mem. at 2. To the contrary, the plans under both the RIDE Report (County Mem. Ex. A) and the incorporated Executive Summary of the Grand Strand Area Transportation Study, or "GSATS Study" (Appendix B to County Mem. Ex. A) provided for improvements to roads which were not (and are not) part of the County's road system, including roads situated within the municipalities—some of which are part of the State highway system over which the County has no control but the City does. *Compare* S.C. Code Ann. § 57-17-10 (providing for county supervision and control of public roads) *and* § -70 (charging "the governing body of each county" with the obligation to "take charge of and superintend the repair of the highways **in the county**") (emphasis supplied), *with* § 5-27-10 (granting municipal councils power to establish and improve roads), § -120 (giving City's council authority obligation to repair roads and same

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powers "within the limits of ... city ... [as] are given to governing bodies of ... counties), and § 57-5-820 (requiring municipal consent to work on state highways within a municipality).

Also incorrect is the County's contention that the RIDE Report recommended that "the County ... adopt a hospitality fee." County Mem. at 3. To the contrary, the RIDE Report only referenced the County Administrator's recommendation for a comprehensive road plan that included "a local hospitality fee" which, when combined with a proposed local option sales taxes and other revenue sources, would be used to fund a $1.48 Billion project. County Mem., Ex. A, § 1.0. As noted by the County, the referendum for this local option sales tax failed. County Mem. at 2. To be sure, a 1.5% hospitality fee is contemplated in the financial projections associated with the RIDE Report (*see, e.g.*, County Mem. Ex. A, § 4, tables 3,4, and 5). However, the imposition of the Hospitality Fee was not a recommendation of the RIDE Committee.

Similarly, although the City's October 8, 1996, resolution urged the adoption of County ordinances (Ordinance 105-96 is not mentioned) needed to implement the RIDE Committee Report, County Mem. at 3, it did so under the express understanding that the Hospitality Fee would be implemented "for a period of up to 20 years" and for the purpose of supporting the "plan presented" in the RIDE Committee Report (which purpose is road funding for clearly identified and specific roadways, and nothing else). *See* County Mem., Ex. C (set forth in the fourth and fifth "Whereas" clauses).[1] The County's omission of these facts—albeit understandable given their adverse effect upon its arguments—at best paints an incomplete picture with respect to the City's qualified support for implementation of the Hospitality Fee.

[1] Just as County asserts with respect to its reading of Ordinance 105-96, City submits that the recitals of its October 8, 1996 resolution are part and parcel of the action taken by its governing body to support the plan under the RIDE Report. *Cf.* County Mem. at 7.

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B. The State Transportation Infrastructure Bank Loan.

Another mischaracterization by the County lies in its suggestion that loan proceeds received from the State Transportation Infrastructure Bank ("STIB") were "combine[d] with the Hospitality Fee" so as to enable the County to "undertake substantial and necessary road projects." County Mem. at 3. As is made clear by the County's own Resolution Number 224-97 (which resolution the County provided to the STIB as a condition of receiving that loan), the Hospitality Fee was passed so that the County could "collect a Hospitality fee for **road construction pursuant to the RIDE Plan**" and was "to be used to provide the county portion of **funding for the RIDE Plan**." *See* City Mem. Ex. G (emphasis supplied). No other road projects—including the creation of I-73 which is the only road project now being proposed by the County to be funded using proceeds of the extended Hospitality Fee—or any other County services are contemplated by Ordinance 105-96 or the resolutions of the City or the County.[2] *Cf.* County Mem. at 4-5 (stating that the County intends to use $30 Million in revenues derived from the Hospitality Fee "to construct I-73") and County Resolution Nos. 82-18 and 84-18, City Mem. Exs. K and L (stating County's intent to use Hospitality Fee revenues for a variety of other purposes, including public safety).

C. The City's Ordinances Purporting to Extend the Hospitality Fee Indefinitely for Purposes Beyond the RIDE Plan and to Bar This Lawsuit.

The County, presaging its arguments at pp. 15-17 of its memorandum, asserts that its 2004 Ordinance 11-04 "extended the Hospitality Fee" until January 1, 2022,[3] and that "the City never objected to this ordinance in the fifteen years since it was adopted." The latter assertion

[2] And, as discussed *infra* at pp. 10-16, the County's intended expenditures go far beyond road projects and, in effect, transmute Ordinance 105-96 into an impermissible extra-statutory sales tax akin to the one which Horry County voters rejected in 1996.

[3] As discussed below, County's contention that Ordinance 11-04 was effective to amend Ordinance 105-96 is without merit. *See* discussion *infra* p. 22.

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presupposes that the City had notice of Ordinance 11-04 and an obligation to object prior to instituting the instant lawsuit. However, the City had no such notice nor any such obligation and the "fact" that it did not object sooner is only irrelevant. *See* discussion at pp. 18-24, *infra.*

And, in another, related misstatement the County asserts that its Ordinance 93-16 "addressed the termination date for the Hospitality Fee, confirming that it was January 1, 2022, the five-year period enacted by Ordinance 11-04." County Mem. at 4. This statement is belied by the plain language of Ordinance 11-04, however, which only purported to give the County the *ability* to continue to collect the Hospitality Fee for a period "not to exceed five (5) years." County Mem. at Ex. E § 1. It did not unconditionally extend the fee's imposition, as now misstated by the County. Ordinance 93-16 did that for the first time. The County therefore incorrectly represents that Ordinance 93-16 merely "confirm[ed]" Ordinance 11-04.

ARGUMENT

Beyond the misstatements identified above, the County's opposition does little to argue the actual merits of the City's request for injunctive relief. After correctly reciting the three required elements for entitlement to preliminary injunctive relief as set out in *Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004),[4] the County first contends that the City "cannot carry its burden on this first (*sic*) element" because the "County is likely to succeed on the merits." County Mem. at 6. The County also intersperses in its memorandum a misguided argument that the doctrine of laches bars the City "from bringing these claims," County Mem. at 15-17, before making cursory arguments that the City

[4] These elements require City to establish that "(1) it would suffer irreparable harm if the injunction is not granted: (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf Co., supra.* The City must also establish that an injunction is reasonably necessary to protect its rights and that the County acted in an arbitrary, capricious, and oppressive manner. *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018); *AJG Holdings*, 382 S.C. at 50-51, 674 S.E.2d at 508.

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cannot establish the other two required elements. For the reasons discussed below, the County's arguments are without merit and the City is entitled to a preliminary injunction against the County's continued imposition of the Hospitality Fee within the municipalities of Horry County.

A. The City's Consent or Agreement to the Imposition of the Hospitality Fee is Required by the Constitution, State Statute, and the County's Ordinance; the Admitted Absence of Same Demonstrates a Likelihood of Success on the Merits.

Central to the County's argument that the City cannot establish a likelihood of success on the merits is the incredible underlying assertion that the County is not obligated to obtain the consent or agreement of the City (or any other municipality in Horry County) to provide a County service and impose a uniform service charge for same within municipal corporate limits. The obligation to obtain consent or agreement, which arises out of State constitutional and statutory law, is even recognized in the County's own ordinance at the heart of this dispute. In proclaiming it may impose these fees within the municipalities unilaterally, "[t]he County's argument disfigures the Home Rule concept." *Georgetown Cnty. v. Davis & Floyd, Inc.*, 426 S.C. 52, 60, 824 S.E.2d 471, 475 (Ct. App. 2019).

For the reasons discussed below, City has made a showing that presents far more than a reasonable question as to the existence of a legal right to relief, *see AJG Holdings*, *supra*, and has, thus, made "a prima facie showing ... entitling [City] to injunctive relief." *See Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1991). The issue of likelihood of success on the merits element is therefore resolved decidedly in the City's favor.

1. Ordinance 105-96 Requires Municipal Consent.

The County's assertion that Ordinance 105-96 does not require municipal consent to the imposition of a fee for a different term or purpose than specified therein flies in the face of its plain language which—as has been the County's wont in its opposing arguments—is misquoted.

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As acknowledged by the County, the ordinance requires that the Hospitality Fee "will be used to implement a comprehensive road plan adopted by the County **in concert with the municipalities** of the County." County Mem. at 7 (quoting Ordinance 105-96, §(G)) (emphasis supplied). This ordinance does not, as the County erroneously contends, simply "note[] that state law allowed **the County** to adopt the ordinance 'to levy reasonable and necessary fees to provide needed infrastructure.'" *Id.* (emphasis supplied). Rather, Ordinance 105-96 states that "[c]urrent law allows **local government** to levy reasonable and necessary fees to provide needed infrastructure." City Mem. Ex. A; County Mem. Ex. B. The City was (and is) a local government equally empowered to impose uniform service charges like Ordinance 105-96, but only subject to the constitution and general law of South Carolina requiring consent before the City may provide a service and impose a uniform service charge for it within the territory of another local government—the exact same restriction which is binding upon the County (*cf.* S.C. Code Ann. §§ 5-7-30 and -60 (applying to municipalities); *id.* §§ 4-9-30(5), -40, -41 (applying to counties)) but which the County fails or refuses to recognize.

Further, it is only by reading Ordinance 105-96 § 1(A) in isolation, and engaging in a tortuous parsing of the language of its § 1(G), that the County is able to develop any argument that the purpose of the Hospitality Fee is not limited to providing funds for the implementation of the plan provided for in the RIDE Report "in concert with" (*i.e.*, with the consent or agreement of) the municipalities. *See* County Mem. at 7-8. This is, of course, impermissible, as an ordinance is required to be read as a whole, giving effect to the plain meaning of all of its parts, and may not be construed by examining individual parts in isolation. *Atkins v. Wilson*, 417 S.C. 3, 12-13 788 S.E.2d 228, 233 (Ct. App. 2016). Similarly, "an ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers."

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Arkay, LLC v. City of Charleston, 418 S.C.86, 92, 791 S.E.2d 305, 308 (Ct. App. 2016). Regardless, the County's arguments prove too much as they admit that § 1(G) "provides ... **how th[e] [Hospitality] [F]ee would be used**" and that the phrase "in concert" in § 1(G) "describes how the County would develop **the road plan for which the Hospitality Fee would be** used." County Mem. at 7-8 (emphasis supplied). The undisputed (and undisputable) facts are that the County is using Hospitality Fee funds for a purpose other than implementation of any road plan developed in concert with any municipality. *Compare* Affidavit of Michael W. Shelton, May 3, 2019, paras. 7-8, *with* County Mem. Ex. L (May 10, 2019 Affidavit of Barry R. Spivey).

Deficient in a similar manner is the County's assertion that the City's October 8, 1996 resolution supporting the road improvement plan under the RIDE Report demonstrates that it "never thought its consent was required," apparently because the resolution does not use the phrases "consent to" or "approve of." County Mem. at 8. Again, the County impermissibly reads out of this resolution (and those adopted by every other then-existing municipality in Horry County) the language reflecting the City's understanding that the plan presented to the City by the RIDE Committee sought "to provide substantial traffic relief and require[s] participation in the funding package by citizens of Horry County, as outlined by the **proposed implementation of a 1.5% hospitality fee for a period of up to 20 years**." City Mem. Ex C (emphasis supplied). The County's selective recitation of the resolution's terms further ignores its language recognizing that "to solve the serious transportation and traffic problems in Horry County, it is **essential** that the ... **governments of Horry County work together harmoniously toward that common goal**." *Id.* (emphasis supplied).

It is only through the County's twisted logic that "urg[ing]" the County to "enact expeditiously the necessary ordinances to implement the RIDE Committee Report"—*i.e.*, the

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Hospitality Fee—is not considered consent to that fee. *See* County Mem. at 8. The ordinance creating the Hospitality Fee was the only ordinance under consideration by the County at the time of the resolution, and the County needed no municipal consent or agreement to impose its 1.5% uniform service charge solely in the unincorporated areas. If it was just a "statement of support," why did the City did go through the trouble of an official resolution when a simple letter if any lesser expression of support would have sufficed? *See* S.C. Code Ann. § 5-7-260 (providing that acts of a municipal council may be accomplished only by ordinance or resolution). Why did each municipality in Horry County ultimately go through this trouble, and why did the County submit all of these resolutions to the STIB in support of its loan application? The answer simply is that the municipalities' consent was required, and the County understood that it needed such consent to enact the Hospitality Fee, which would supply each municipalities' agreed contribution to the RIDE Plan's funding.

2. County Has Improperly Adopted a New Uniform Service Charge Which It Imposes Within City's Corporate Limits but Without City's Consent or Agreement.

The City contends that the County's amendments to Ordinance 105-96, changing its duration and allowing for the use of Hospitality Fee funds for purposes not set out in the original version, give rise to unlawful new uniform service charges which are not entitled to the grandfathered status under S.C. Code Ann. §§ 6-1-330 and -760. City Mem. at 11-12. Reflective of the weakness in its substantive arguments, the County advances a classic "red herring" argument that mischaracterizes the City's position and then challenges the mischaracterization in order to avoid confronting the City's true argument. Specifically, the County asserts that the City contended Ordinance 105-96 was not adopted prior to December 31, 1996, and is therefore not

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entitled to grandfathered status under § 6-1-330(A).[5] County Mem. at 9-10. This is not the City's contention at all; to the contrary, the City acknowledged that Ordinance 105-96 was adopted prior to December 31, 1996. *See* City Mem. at 12. What the City does contend, and what the County seeks to confuse and fails to refute, is that the termination of Ordinance 105-96 was self-executing and it no longer exists. The County's attempted extension of the Hospitality Fee and change in the use of its revenues can only be viewed as the County's attempt to enact new and non-grandfathered uniform service charges. *Id.*

From a substantive perspective, the County focuses primarily on the City's argument that the amendments to the January 1, 2017, termination date of Ordinance 105-96 give rise to a new and non-grandfathered uniform service charge, and gives short shrift to the City's contention that the use of Hospitality Fee revenues for any purpose other than those provided in § 1(G) necessarily creates a new uniform service charge that is not entitled to the benefit of grandfathering. City Mem. at 10-12. As to the latter, the County again impermissibly ignores, isolates, and parses the plain language of Ordinance 105-96 §§ 1(A), 1(G), and 1(H) (*see* County Mem. at 10). *See Atkins, supra.* This is nothing more than "the emperor's new clothes" because it pretends that these subsections of Ordinance 105-96 are unrelated when, in reality, all three of them specifically reference the 1.5% hospitality fee.

As to the former, the County's argument that an ordinance generally may be amended to modify or even repeal a sunset provision (County Mem. at 10-11) is yet another red-herring as this is not the issue the City raised. Rather, the question is whether the County may continue to impose a uniform service charge within the corporate limits of a municipality after the period of

[5] In fact, County fails to address § 6-1-760 in any manner in its opposing memorandum. Accordingly, the Court should consider the City's argument in this regard to have been accepted by County.

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time for which the municipality consented to its imposition has expired. Although counties have a "broad grant of power" under S.C. Code Ann. § 4-9-25, that grant is "limited by the requirement that the regulation, resolution, or ordinance be consistent with the Constitution and general law of this State." *Hospitality Ass'n of S.C., Inc. v. Cnty. of Charleston,* 320 S.C. 219, 226, 464 S.E.2d 113, 118 (1995) (citing S.C. Code Ann. § 4-9-30). Collecting Hospitality Fee proceeds for any use other than the plan provided in the RIDE Report after the expiration of municipal consent necessarily gives rise to a new ordinance imposing a new uniform service charge within a municipality, and is thus inconsistent with S.C. Const. art. VIII, §7 and § 13(A) and S.C. Code Ann. § 4-9-30, § 4-9-40 and § 4-9-41. And, because of this inconsistency, the County's ordinance is not grandfathered but is a new ordinance imposing new and unlawful uniform service charges.

3. The County, and not the City, has Misinterpreted State Law Regarding the Imposition of County Uniform Service Charges Within Municipal Corporate Limits.

Contrary to the County's conclusory arguments otherwise, all of which lack analysis, and as demonstrated below, each of the constitutional and statutory provisions cited by the City supports its argument that a county must have municipal consent or agreement before imposing a uniform service charge within a municipality's corporate limits.

- S.C. Const. art VIII, §7 states in pertinent part that "[t]he General Assembly shall provide by general law for the ... powers ... and the responsibilities of counties." The Legislature has done this, *inter alia*, in S.C. Code Ann. § 4-9-25 which specifically provides that a county's ordinances may not be "inconsistent with the Constitution and general law of this State" and § 4-9-30 which specifically provides that a county's powers (including the power to impose a uniform service charge under § 4-9-30(5)) are constrained "by the Constitution and subject to the general law of this State." *Accord, Hospitality Ass'n, supra.*

- S.C. Const. art. VIII, § 13(A) states in pertinent part that "[a]ny county, incorporated municipality, or other political subdivision ... may agree with ... any other political subdivision for the joint ... exercise of powers." Here, a joint exercise of powers was undertaken in 1996 when City consented and agreed that County could impose a

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uniform service charge within the City for road improvements pursuant to "a road plan" which County admits was developed "in conjunction with the City." *See* County Mem. at 12. City and County each possessed then, and still do today, the statutory authority to make road improvements within their respective jurisdictions under § 5-7-30 and § 4-9-30. However, under this constitutional provision, County has no authority to impose a uniform service charge within the City for road improvements located outside the City's corporate limits (*e.g.*, the long discussed but never constructed I-73) unless City consents or agrees "to a joint exercise of these powers and the sharing of its costs" – which it has not.

- S.C. Code Ann. § 4-9-30 empowers the County to impose a uniform service charge under its subsection (a)(5), but only if the exercise of that power is "within the authority granted [to the County] by the Constitution." Further, any exercise of this power is expressly "subject to the general law of this State."[6] County overlooks this language of the statute and, as noted above, County's authority to provide services within municipalities is restricted by S.C. Const. art. VIII, § 13(A) and it is not empowered to act contrary to the general law provisions set out S.C. Code Ann. § 4-9-40 and § 4-9-41 as discussed, *infra.*

- S.C. Code Ann. § 4-9-40 empowers the County to "perform any of its functions ... [and] furnish any of its services within the corporate limits of any municipality ... by contract with [a] municipal governing body **subject always** to the general law and Constitution of this State regarding such matters." (Emphasis supplied). In addressing the applicability of this statute, County makes the incredible assertion that "it is not providing any service that the City could possibly be providing, but rather the County is collecting a fee." County Mem. at 12. Quite clearly, the City could be (and does) provide services to its residents and visitors with respect to road design, construction, maintenance and operation as authorized by § 5-7-30. *See* Exhibit A, May 24, 2019 Reply Affidavit of Michael W. Shelton at ¶12.[7]

- S.C. Code Ann. § 4-9-41(A) empowers the County to jointly administer any of its functions and jointly exercise any of its powers with the co-equal powers of other local governments, including the City, but only subject to the express limitation of § 4-9-41(B) that it not diminish or alter the City's "political integrity" in engaging in such functions or exercising such powers. As City has asserted, the County's actions in imposing a uniform service charge within municipal limits without bespeaking the City's consent have destroyed the rights of municipal voters, thus contravening § 4-9-41(B). *See* City Mem. at 16.

[6] As noted above, a similar limitation is set out in S.C. Code Ann. § 4-9-25 ("[a]ll counties ... have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State").

[7] County has adopted resolutions indicating that it intends to use revenues from the Hospitality Fee for a variety of other functions and services, including public safety, which City is also statutorily authorized to provide and does provide. *See* Ex. A, Shelton Reply Aff. at ¶9.

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- S.C. Code Ann. § 5-7-30 empowers the City to enact regulations, resolutions and ordinances with respect to a variety of matters, including roads, streets and public safety. Although this section may not specifically give the City "the right or authority to approve of a fee imposed by a county" as County contends (see County Mem. at 13), this section clearly gives the City the power to control its own roads and law enforcement and impose uniform service charges. Moreover, nothing in this section authorizes a County to impose a uniform service charge for roads and law enforcement within the City's limits. And even if it did, it would be in conflict with S.C. Const. art. VIII, §7 and 13(A) and § 4-9-30, § 4-9-40, and § 4-9-41.

- S.C. Code Ann. § 5-7-60 empowers the City to perform any of its functions and provide any of its services in areas outside its corporate limits, which would include the unincorporated areas of Horry County, by contract and, where a county is already providing such service, to do so only with the consent of such county. The limitations in § 5-7-60 are nearly identical to those imposed on the County by § 4-9-30 and § 4-9-40. Under the County's rubric, the City has the ability discharge its functions and exercise its powers, and impose a uniform service charge relating to same, outside its corporate limits without the County's agreement and consent.

- *Brown v. County of Horry*, 308 S.C. 180, 184, 417 S.E.2d 565, 567 (1992) interprets the Home Rule provisions of the Constitution and the enabling statute to allow a county to impose a uniform service charge "upon those for whom the service is primarily provided." In yet another red herring argument, the County complains *Brown* "never addresses what relationship a municipality has with a county when it imposes" a road-maintenance fee. County Mem. at 13. That was not the purpose for which the City cited *Brown*. *See* City Mem. at 9 (asserting that *Brown* requires that a uniform service charge be imposed upon those for whom the service is primarily provided). Neither did *Brown* set out to answer that question.

So, at bottom, the above-referenced constitutional provisions, statutes, and case law do support City's argument that the County has no authority to impose a uniform service charge within the City's corporate limits under these facts absent the City's agreement or consent. The County's *ipse dixit* arguments cannot change the legal effect of these constitutional and statutory provisions and caselaw cited by City.

The County further asserts that various provisions of S.C. Code Ann. §§ 6-1-500, *et seq.*, and 6-1-700, *et seq.* (the "Local Tax Enabling Acts"), "allow[] a county to impose a tax within a municipality without the municipality's consent." County Mem. at 13. The Hospitality Fee – adopted by the County before the Local Tax Enabling Acts were enacted by the Legislature – is

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not a tax but a uniform service charge. *See* Ordinance Number 105-96, § 1(A), County Mem. Ex. B.[8] The County never adopted an ordinance imposing a 1.5% tax under these statutes; it merely enacted resolutions declaring that its uniform service charge under Ordinance 105-96 may serve the same purpose. *See* County Mem. in Supp. Ex. K and Ex. L. The difficulty with these declarations is that (a) Ordinance 105-96 states that it required the City's agreement or consent and has expired by its own terms, (b) the constitutional and statutory provisions cited by City require County to obtain the City's consent to the provision of road and public safety services and the imposition of County's uniform service charge within the City's limits, which the County lacks, and (c) the County's ability to impose taxes under the Local Tax Enabling Acts is foreclosed by § 6-1-330, § 6-1-540, § 6-1-740, and *City of Hardeeville* in view of the fact that City has enacted its own ordinances under the Local Tax Enabling Acts.[9]

Given the foregoing, the County's appeal to "logic" based on the Local Tax Enabling Act provisions (*see* County Mem. at 13-14) is only an illogical, last ditch-effort to salvage an invalid uniform service charge being imposed within the City's (and all Horry County municipalities') corporate limits. But this appeal is self-indicting as it demonstrates why the General Assembly was required to enact the limiting language in §§ 4-9-25, -30, -40, and -41 to give effect to the Home Rule provisions of the Constitution. Without these limitations, the County would be able to sweep aside the local interests of municipal residents by enacting uniform service charges (or taxes under the guise of uniform service charges) without their consent.

[8] Which is why *City of Hardeeville v. Jasper County*, 340 S.C. 39, 46, 530 S.E.2d 374, 378 (2000) is of no support to the County but does support the City's arguments. *Cf.* City Mem. in Opp., n. 4.

[9] And, if the County is now asserting that the Hospitality Fee has always been a tax, that further calls into question its validity because such taxing authority did not exist in 1996. *Cf. Hospitality Association, supra.*

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These requirements do not, as the County believes, "hamstring a county's ability to collect the revenue necessary to fund basic government services that provide a countywide benefit."[10] County Mem. at 13-14. They preserve that which the Constitution and implementing statutes recognize: the rights of a municipality to exercise its police powers within its corporate limits to the exclusion of counties absent consent or agreement by the municipality and the rights of its citizens in that regard. Rather than appealing to logic, the County's position seeks judicial approval for a power-grab based on a demonstrably incorrect contention that the County will be incapable of collecting revenues to support the provision of basic government services. *Cf.* County Mem. at 13-14; Ex. A, Shelton Reply Aff. at ¶13. And whether logical or not, the County's position is wholly inconsonant with South Carolina law.[11]

[10] This is a revealing assertion in and of itself as it demonstrates that what the County seeks to do is far removed from being a uniform service charge permitted by *Brown*. Moreover, the statement is demonstrably false since (a) the County can impose real and personal property taxes needed to fund basic services as a matter of law and (b) the County is flush with cash as it is holding some $52.55 Million in reserve or unassigned funds. *See* Horry County Comprehensive Annual Financial Report at 30, *available at* https://www.horrycounty.org/portals/0/docs/finance/CAFR2018final.pdf; *see also* Ex. A, Shelton Reply Aff. at n.1 (explaining availability of the County's CAFR).

[11] Of course, counties possess only such powers as are granted them by the Legislature. *Williams v. Wylie*, 217 S.C. 247, 60 S.E.2d 586 (1950). The City is unaware of any decision of a South Carolina appellate court addressing the specific issue raised in this action. This is likely because no municipality has ever been confronted with as brazen an attempt by a county to usurp municipal constitutional and statutory powers as exists in the instant action. However, the Attorney General has repeatedly concluded that the County's underlying position in this matter (*i.e.*, that the local interests of municipalities and their residents must give way to the County's putative interests) is contrary to law. In one such opinion, the Attorney General specifically finds that a county has no power with respect to roads located within a municipality and, in so doing, observes that "[t]he Legislature did not grant county councils the ability to exercise any power within the territory of a municipality **without the permission of the municipal council**." *See* 2016 WL 7031993 (emphasis supplied); *see also* 1984 WL 249691 (recognizing the autonomy of a municipality within its borders to the exclusion of a county with respect to a referendum for the sale of mini-bottles by non-profit entities); 1988 WL 383501 (recognizing that the Home Rule amendments to the Constitution and associated legislative enactments do not permit a County to regulate bingo within municipal corporate limits and stating that "[o]ur beliefs are in accordance with the general law on this issue. Counties and cities are viewed co-equal political subdivisions

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4. The City's Characterizations of the County's Actions are Factually Correct and Based Upon Caselaw Pertaining to City's Causes of Action.

County contends that City has made "outlandish statements" in describing the County's actions which City asserts to be the arbitrary, capricious and oppressive conduct required for the imposition of a preliminary injunction against County under *Richland County, supra. E.g., Richland Cnty.*, 422 S.C. at 311, 811 S.E.2d at 368 (defining this test to include actions that are in bad faith or wantonly injurious). This is simply an effort to distract from the the public statements of members of the County's governing body questioning the lawfulness of the very acts about which City complains, and the statements of County's attorney that the County's actions were a matter of "urgency" to avoid "los[ing] their grandfathered status once they paid off the SIB loan never to be recovered." Exhibit B attached hereto, May 2, 2017 County Council Minutes, at 4.; *see also* Exhibit C attached hereto, April 18, 2017, County Council Minutes, at 3 (questioning the propriety of extending the fee).

The County simply cannot explain why it needed to act "in concert with the municipalities" in 1996 but now may impose the Hospitality Fee unilaterally for different purposes and for a different period of time in utter disregard of the constitutional and statutory provisions requiring municipal consent for such actions. The County's contention that the City is seeking to "undermine the long-standing Hospitality Fee and grab that tax revenue for itself" (County Mem. at 15) demonstrates the audacity of the County and its refusal to recognize (or lack of understanding regarding) the limitations placed upon the County by Home Rule and the

which are independent of each other politically, geographically, and governmentally"); 2011 WL 3918176 (concluding that a county may not enforce its non-smoking ordinance within the corporate limits of municipalities because it infringes upon the autonomy of municipalities under Home Rule unless a municipality chooses to allow it by agreement). These Attorney General opinions cite many, if not all, of the constitutional provisions and statutes relied upon by the City in this action.

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differences between lawfully enacted uniform service charges and taxes imposed under the Local Government Enabling Acts.[12]

For all of the foregoing reasons, City has demonstrated a likelihood of success on the merits as it has raised more than just a reasonable question as to the existence of a legal right to relief from the County's imposition of uniform service charges within the City's corporate limits without the City's consent or agreement. *See AJG Holdings, supra.*

B. The City's Challenge to the County's Actions Are Timely.

County next asserts that the doctrine of laches bars the City from challenging the continued enforcement of Ordinance 105-96 because Ordinance 11-04 was enacted in 2004 to amend the termination date and because two and one-half years have passed since the County enacted Ordinance 93-16. The County's contention widely misses the mark for a number of reasons. First, any amendment to the termination date in Ordinance 105-96 without City's consent is ineffective as a matter of law for the reasons discussed above.

Beyond that legal infirmity, the instant legal action of the City to declare the invalidity of the County's actions, which is an action by governmental entity that invokes a public interest and is in furtherance of a principle of public policy, given the illegality of collecting a uniform service charge without the proper authorization, is not subject to the doctrine of laches. Courts have long disfavored applying the equitable doctrine of laches against the government. *See, e.g, United States v. Kirkpatrick*, 22 U.S. 720, 735 (1824) ("The government can transact its business only through its agents; and its fiscal operations are so various, and its agencies so numerous and scattered, that the utmost vigilance would not save the public from the most serious losses, if the doctrine of laches can be applied to its transactions"). In most cases, this view applies to local

[12] Neither of which allow a tax on admissions or rental cars as Ordinance 105-96, as amended, imposes.

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governments as well. *See United States v. City of Greenville*, 118 F.2d 963, 966 (4th Cir. 1941) ("[I]t is well settled that the rights of the government are not affected by laches of its officers and it is not estopped by their conduct from asserting its rights").[13]

Even setting those legal impediments aside, laches does not apply under the instant facts. As the Court of Appeals recently explained in *Harrison v. Owen Steel Co.*, 422 S.C. 132, 810 S.E.2d 433 (Ct. App. 2018), "[l]aches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Id.* at 138 n.2, 810 S.E.2d at 436 n.2 (citations omitted). It requires that the asserting party prove "negligence, the opportunity to act sooner, and material prejudice. In order to constitute laches, the delay in bringing suit must have caused some injury, prejudice[,] or disadvantage to the party claiming laches." *Id.*; *see also Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478-479, 451 S.E.2d 924, 929 (Ct. App. 1994) (holding that the claimant must have "had actual knowledge or inquiry notice of the facts forming the basis of its claim, and its failure to assert its right is irrelevant until there is a reason or situation that demands assertion" and that "[a]s with waiver, laches arises upon the failure to assert a known right under

[13] *See also Citizens and Landowners Against the Miles City/New Underwood Powerline v. Secretary, U.S. Dept. of Energy*, 683 F.2d 1171 (8th Cir. 1982); *Embassy Real Estate Holdings, LLC v. District of Columbia Mayor's Agent For Historic Pres.*, 944 A.2d 1036, 1049 (D.C. 2008) (laches should "be narrowly applied against the government"); *Gropp v. District of Columbia Bd. of Dentistry*, 606 A.2d 1010, 1016 (D.C. 1992) laches generally "is not applicable to a government agency acting to protect a public interest."); *New 3145 Deauville, L.L.C. v. First Am. Title Ins. Co.*, 881 A.2d 624, 629 (D.C. 2005) ("[N]either laches nor statutes of limitations will constitute a defense to suit by the sovereign in the enforcement of a public right."); *Washington Bancorporation v. Said*, 812 F.Supp. 1256, 1258 (D.D.C. 1993) ("[L]aches ... not typically applicable against government instrumentalities[.]"); *City of Huntsville v. Stove House 5, Inc.*, 3 So. 3d 186, 192 (Ala. 2008) (laches cannot be applied against municipalities); *accord, Ingalls v. Board of Registration In Medicine*, 445 Mass. 291, 837 N.E.2d 232 (2005); *City of Mosier v. Hood River Sand, Gravel and Ready-Mix, Inc.*, 206 Or. App. 292, 136 P.3d 1160 (2006); *Big Piney Oil & Gas Co. v. Wyoming Oil and Gas Conservation Com'n*, 715 P.2d 557 (Wyo. 1986).

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circumstances indicating that the lached party has abandoned or surrendered the right"). The County's arguments fail to demonstrate that laches applies to these facts for several reasons.

1. The Statute of Limitations, and Not Laches, Governs the Timeliness of this Action.

Although City's quantum meruit/unjust enrichment claim is an equitable claim, it is governed by the three-year statute of limitations arising under S.C. Code Ann. § 15-3-530(1) because it is based upon a contract implied by law. *See Wells Fargo Bank v. Carter*, 2014 WL 11034776 at *2 (D.S.C. 2014). This claim is also subject to the discovery rule, under which "the statute of limitations only begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." *True v. Monteith*, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997). Thus, because this claim was brought within three years of January 1, 2017, when City first began wrongfully collecting the Hospitality Fee beyond the termination date of Ordinance 105-96, it is timely and not barred by either the statute of limitations or laches.

The same is true with respect to City's constructive trust claim, which is "[a]n action ... in equity." *See Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987). A constructive trust claim "arise[s] whenever the circumstances under which the property was acquired make it inequitable that it should be retained by the one holding legal title" and "results from fraud" which "is an essential element, although it need not be actual fraud." *Id.*, 291 S.C. at 529, 354 S.E.2d at 561. Where an equitable action involving fraud "was cognizable only by the court of chancery before the merger of the courts of law and equity," it is subject to the three-year statute of limitations under S.C. Code Ann. § 15-3-530(7) and not subject to the defense of laches. *See PCS Nitrogen, Inc. v. Ross Dev. Corp.*, 127 F. Supp. 3d 568, 590 (D.S.C. 2015). Because a constructive trust claim is based upon fraud, it is also subject to this three-year statute of limitations, not laches, and City's claim therefore is timely.

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With respect to City's declaratory judgment cause of action, it is a general rule that such an action "will be barred to the same extent the applicable statute of limitations bars the underlying action." 22A Am. Jur. 2d., Declaratory Judgments, § 182 (2019). Because the City's claims for equitable relief are not barred, its claim for declaratory relief is also timely.

Moreover, "where a liability arises on a recurring basis, a cause of action accrues each time a wrongful act occurs, triggering a new limitations period." *See State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, 414 S.C. 33, 78, 777 S.E.2d 176, 200 (2015). The County's liability for imposing an unlawful fee arises every time the 1.5% uniform service charge is imposed. Similarly, no statute of limitations or equitable consideration precludes a challenge to an unconstitutional or otherwise invalid ordinance which imposes a liability[14] and is continuing to be enforced when the claim is brought within an applicable statute of limitations period. *See Nat'l Advertising Co. v. City of Raleigh,* 947 F.2d 1158 (4th Cir. 1991). Given that the City's claims have been brought within three years, the claims for declaratory and injunctive relief from the unconstitutional and invalid ordinance are therefore not time-barred.

Finally, Ordinance 11-04 could not have been challenged on these grounds before January 1, 2017. That ordinance, assuming its effectiveness, only granted the County the option to extend the Hospitality Fee for an indeterminate period if the County needed extra time to repay the STIB loan. Due to this contingency, any action by the City or anyone else to enjoin the County from collecting the fee would not have been justiciable prior to January 1, 2017. *See Sloan v. Greenville Cnty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003) ("A justiciable controversy is a real and substantial controversy appropriate for judicial

[14] Not only does Ordinance 105-96 create a pecuniary liability for the Hospitality Fee, it provides for a criminal penalty against retailers. *See* City Mem. Ex. A, § E; County Mem. Ex. B, § E. This may become an issue if the County is not enjoined to cease its imposition of the Hospitality Fee in the municipalities of Horry County.

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determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract nature."). The instant claim did not ripen until the County collected the fee after that date. Certainly, no claim for a refund of fees not yet paid could have lied until they were collected.

2. City Did Not Have Notice of Ordinance 11-04.

As mentioned at p. 5, *supra*, the County's assumption that the City was on notice of the adoption of Ordinance 11-04 is incorrect. This is so because the County effectively admits that it failed to comply with the requirement of S.C. Code Ann. § 4-9-120 that all ordinances be codified. The County does not dispute that the language of Ordinance 11-04 does not appear in Ordinance 105-96. Nor does it dispute that the language of Ordinance 11-04 has never appeared in Ordinance 93-16, Ordinance 32-17, or in the County's Code of Ordinances. *Cf.* County Mem. at 16 & n.5 (acknowledging that Ordinance 11-04 was only "**referenced** in the Horry County Code") (emphasis supplied). Far from simply being a "technical error" as County contends, the failure to codify Ordinance 11-04 as mandated by statute means it was not publicly noticed as required by law and therefore is unenforceable. This is not a case of a "bureaucrat overruling the people's representatives," to quote the County; rather, it is a case of the County (again) asserting it can ignore laws intended to protect citizens, including those residing within the City and every other municipality of Horry County. In sum, City had no obligation to bring an action within any time period following the adoption of Ordinance 11-04 because the City did not have the benefit of the constructive public notice achieved by codification as mandated by § 4-9-120 – which is the inquiry notice contemplated by *Provident Life*, *supra*.

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3. Laches, if Applicable, Does Not Bar the City's Action.

Even assuming laches is available, it does not bar the City's action because the City nevertheless commenced it within any applicable statute of limitations (and even assuming same is not renewed every time the fee is imposed under *State ex rel. Wilson, supra*).

When determining whether an equitable action may be barred by laches, courts look for an analogous statute of limitations as a guide. *See S.C. State Ports Auth. v. M/V Tyson Lykes*, 837 F. Supp. 1357 (D.S.C. 1993) (stating that "the fact that this action was commenced well within the state statute of limitations, while not controlling, is a consideration of the court in ruling on laches"); *see also Fed. Treas. Enter. Sojuzplodoimport v. Spirits Intern. B.V.*, 809 F.3d 737, 746 (2d Cir. 2016) ("[i]f the most closely analogous state statute of limitations has not run, the presumption of laches does not attach and the defendant bears the burden of proving the defense. But once the analogous state statute of limitations has run, the burden shifts to the plaintiff to show why laches should not apply"); *accord* Am. Jur. 2d *Laches* § 38 (2019) ("[h]owever, a statute of limitations may serve as a guide in determining whether an action is barred by laches"). Here, no statute of limitations has run given the fact that City's claims have been brought within three years and cannot run given the repeated imposition of liability which results from the enforcement of Ordinance 105-96.

4. The County Has Not Been Prejudiced by Any Delay.

The County further has failed to demonstrate that it has been prejudiced by any delay in the bringing of this action. As explained in *Provident Life, supra,* "prejudice is an essential element of laches. In order to constitute laches, the delay in bringing suit must have caused some injury, prejudice or disadvantage to the party claiming laches." (Internal citation omitted). It is reversible error to apply laches and bar relief to the plaintiff where the defendant has enjoyed a

benefit and not suffered a detrimental change of position attributable to the delay." *Id.*, 317 S.C. at 479, 451 S.E.2d at 929.

The County has provided no facts supporting its claim of prejudice, only argument of counsel that are not evidence. *Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991). Incredibly, County argues that it has been prejudiced because it "has continued developing infrastructure plans – including, for example, the construction of I-73 – based on the Hospitality Fee revenue" even though it acknowledges that **"this project was not in the RIDE Report."** County Mem. at 17 n.6 (emphasis supplied). None of the amendments to Ordinance 105-96 mentions I-73. Only the County's resolutions adopted slightly less than one year ago specifically state that I-73 is a proposed use of the Hospitality Fee revenues. *See* Comp. Ex's. "L" and "M." Nor has the County demonstrated that it is incapable of generating revenue for construction of I-73 through any of its revenue raising vehicles, including property taxes, uniform service charges in its unincorporated areas, or consensual arrangements of the sort that previously it had with the municipalities in Horry County. The County also conspicuously omits the myriad public statements of support for I-73 from the Horry County municipalities.

And, the fact that the County expends resources collecting and administering the Hospitality Fee, County Mem. at 17, cannot demonstrate prejudice resulting from a cessation of those collections. The County will continue to collect that fee and taxes under the Local Tax Enabling Acts in the unincorporated areas of the County. *See* Ex. A, Shelton Reply Aff. at ¶7. Furthermore, any prejudice in this regard cannot be "material" as required under *Provident Life, supra*, given that other revenue collection activity will continue regardless of the loss of Hospitality Fee revenue.

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C. The City Has No Adequate Remedy at Law.

The County argues that its Ordinance 8-00, codified at Section 2-111 of the County Code, provides the City with an adequate remedy at law. A cursory examination of this ordinance (a copy of which was not provided by the County but is attached hereto as Exhibit D), reveals why this is neither adequate nor a remedy. Initially, it must be noted that the County has no authority to appoint a "Board of Fee Appeals" as this entity does not "provide services of local concerns for public purposes." *See* S.C. Code Ann. § 4-9-30(6). Ordinance 8-00 is invalid as a matter of law for this reason alone.

Second, even if this power exists, Ordinance 8-00 is still invalid because it allows the County's administrator to appoint members of the board, not its governing body, County Council. Pursuant to S.C. Code Ann. § 4-9-170, County Council is obligated to provide by ordinance for the appointment of any board not provided for in the general law or Constitution. Under the Council-Administrator form of government adopted by County (*see* County Ans. and Countercl. at para. 98), the administrator has no power to appoint any county board. *See* S.C. Code Ann. § 4-9-630. So, even if the County has the power to appoint a fee appeals board, which is disputed, it cannot be exercised by the administrator as this constitutes an unlawful delegation of County Council's authority. *See* Attorney General Opinion No. 85-36, 1985 WL 166006 ("[o]nce the General Assembly has delegated appointment power to a body other than itself, additional delegation may not be made absent statutory authorization. Should such further delegation be made, and appointment be made by an authority not authorized to make the appointment, then such appointment is usually considered to be void") (citations omitted).

Third, Ordinance 8-00 purports to vest in "a court of competent jurisdiction" appellate authority to review the "written decision based on findings of fact and the applicable

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ordinance[]" of its Board of Fee Appeals. However, no court in South Carolina has jurisdiction in such matters. *See* S.C. Code Ann. § 14-25-45 (describing municipal court jurisdiction); S.C. Code Ann. § 22-3-10 (describing magistrates' court jurisdiction); S.C. Code Ann. § 1-23-600(D) (describing administrative law court appellate jurisdiction); S.C. Code Ann. § 14-5-340 (providing for circuit court appellate jurisdiction); S.C. Code Ann. § 14-8-200 (providing for court of appeals' jurisdiction); S.C. Code Ann. §§ 14-3-310, *et seq.* (providing for supreme court appellate jurisdiction). In addition to the fact that a county has no authority to vest any court with jurisdiction, the absence of any ability to obtain judicial review deprives the City (and any other entity or person subject to the Hospitality Fee) of "meaningful backward looking relief" that is needed to rectify "any unconstitutional deprivation" because there is not a "clear and certain remedy." *See McKesson v. Div. of Alcoholic Bevs. & Tobacco*, 496 U.S. 18, 31 (1990).

Fourth, the requirement that a written appeal be filed within ten (10) days of payment of the fee and be accompanied by a $25 filing fee is an unrealistic requirement and a disincentive to appeal given that $1,666.66 in purchases are required in order to cover just the fee at 1.5%. Stated another way, requiring that a person who paid an unlawful fee of $0.15 on a $10 purchase to navigate this "appeals" procedure with no assurance that it will receive a fair and impartial review by an appellate court with jurisdiction is not a clear and certain remedy providing meaningful backward looking relief, *cf., McKesson, supra*, and is thus an inadequate remedy as a matter of law.

Finally, the procedure set out in Ordinance 8-00 is wholly inadequate given the sheer volume of claims that would have to be made in order for every purchaser of prepared food and beverage, accommodations, or amusements to recover the unlawful Hospitality Fee every time it is paid to the vendor. This ordinance requires a hearing before the board within 45 days of

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receipt of the notice, and the board must issue a written decision setting forth findings of fact. This putative "method to challenge any improperly collected [fees]" would be swamped if the thousands of people and entities paying this illegal fee daily were required to individually invoke this procedure.

In sum, *Ware Shoals Manufacturing Co. v. Jones,* 78 S.C. 211, 58 S.E. 811 (1907), does apply since Ordinance 8-00 is no way an adequate remedy at law. The appeals process in this ordinance is in no way "akin" to the Revenue Procedures Act provisions for appeals of property tax assessments discussed in *Riverwoods, LLC v. County of Charleston,* 349 S.C. 378, 389, 563 S.E.2d 651, 657 (2002), which involved exhaustion of administrative remedies before any judicial relief could be sought. *Cf.* County Mem. at 18. Here, there is no adequate remedy at law under Ordinance 8-00 because the "board" has not been lawfully constituted and there is no judicial review available under South Carolina law. Thus, no clear and certain remedy exists which could provide meaningful backward-looking relief as required by *McKesson* for this involuntary exaction of funds from payers of the Hospitality Fee.

D. The City Is Irreparably Harmed and An Injunction Is Reasonably Necessary to Prevent That Harm.

The County argues that the City is not irreparably harmed because Ordinance 8-00 provides an adequate remedy at law and that no injunction is reasonably necessary because County is entitled to impose "any fee ... within [the City'] borders" and without the City's consent. County Mem. at 19. As explained above, the County is incorrect on both points as a matter of law. Per *Brown, supra,* a uniform service charge may only be imposed if the payer is the primary beneficiary of the governmental service, which is not the case here as the I-73 project is not within the corporate limits of City (or any other municipality in Horry County) and the services that County proposes to provide are already being provided by the City and other

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municipalities. Further, the consent or agreement of a municipality for a county to offer a service within its municipal limits is required and County acknowledges that none has been sought or given. Accordingly, City is irreparably harmed and for that reason and injunction is needed.

The County argues the converse as well, namely that it will be irreparably harmed by the issuance of an injunction. It claims that, absent a bond, it may never recover the funds subject to this action if the injunction ultimately is improper. However, the City is not obligated to post security for the issuance of a preliminary injunction under Rule 65(c) because it is a political subdivision of the State and therefore exempt from this requirement. *See* Rule 65(c) ("No such security shall be required of the State or of an officer or agency thereof."); *see also Hibernian Soc'y v. Thomas*, 282 S.C. 465, 472, 319 S.E.2d 339, 333 (Ct. App. 1984) ("[m]unicipal corporations are not independent entities. They are political subdivisions of the state").

Moreover, the reason for exempting the State from the requirement of giving security applies equally to municipalities. In analyzing the similar exemption for the United States government under Rule 65(c), FRCP, it has been noted that "[a]lthough the government later may be liable for [damages arising from an improperly issued injunction], security is unnecessary because there is no substantial risk that the United States will be financially unable to indemnify the enjoined party for any of the costs it is legally obligated to pay." *See* 11A Fed. Prac. & Proc. Civ. § 2954 (3d ed.). Here, there has been no showing made that the City will lack the resources needed to respond to any demand for payment of damages should a preliminary injunction ultimately be determined to have been improperly issued.

Although the County asserts that this "litigation will likely take multiple years to resolve" and will involve "nine figures" (County Mem. at 19), this assumes that the County will fail to act to mitigate its damages by not immediately appealing an order granting the City's requested

injunction and seeking expedited review of such an appeal. *See Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 597 (2001) (holding that "[a]n order or decree in a court of common pleas granting ... an injunction is immediately appealable" and citing S.C. Code Ann. §14-3-330(4) for that proposition). Moreover, a party may move an appellate court for expedited review under Rule 263(b), SCACR. *See George v. Mun. Election Comm'n*, 335 S.C. 182, 184, 516 S.E.2d 206, 2017, n.1 (1999). The County also grossly overstates the amount of revenues that are at issue in this lawsuit. *See* Ex. A, Shelton Reply Aff. at ¶¶6-7, Ex. 3.

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court enjoin the County from collecting any additional funds raised by the Hospitality Fee from transactions occurring within municipal limits, and further enjoin the County from spending any Hospitality Fee funds collected within municipal limits since January 1, 2017.

Respectfully submitted,

s/ R. Walker Humphrey, II
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Attorneys for Plaintiff City of Myrtle Beach and All Others Similarly Situated

Columbia, South Carolina
May 24, 2019

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EXHIBIT A

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiffs, vs. Horry County, Defendant.	)	CIVIL ACTION NO. 2019-CP-26-01732 **AFFIDAVIT OF MICHAEL W. SHELTON**

Personally appeared before me, Michael W. Shelton, who being duly sworn, affirms and swears as follows:

1. I am in excess of eighteen years of age and competent to give this affidavit.

2. I am currently Chief Financial Officer of the City of Myrtle Beach and have served as such since February 15, 2015. Immediately prior to serving as Chief Financial Officer, I served as the City's Director of Budget and Evaluation for twenty-six years. Prior to that, I served as the City's Director of Budget and Financial Management. In various roles, all involving the City's finances, I have worked for the City for more than thirty-three years.

3. In my position as Chief Financial Officer of the City, I communicate regularly with my counterparts in other municipalities in Horry County ("County") and with the County itself regarding the collection of taxes and fees within municipal limits. This includes the 1.5% uniform service charge imposed under Horry County Ordinance 105-96, as amended ("Hospitality Fee"). I also review information published by the County regarding its fee collections. Furthermore, I am familiar with the criteria used to rate bonds issued by local governments and am familiar with

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the various revenue-generation options available to local governments to fund public services and projects.

4. I have reviewed the May 10, 2019, affidavit of Barry Spivey attached as "Exhibit L" to the County's Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction and in Support of Defendant's Motion for Preliminary Injunction ("Spivey Aff."). Furthermore, I have reviewed the relevant portions of the County's Comprehensive Annual Financial Report ("CAFR") for the fiscal year ended June 30, 2018,[1] discussed below, Horry County Councilman Harold Worley's March 27, 2019, E-mail and Revenue Stream Analysis to Horry County Council Chairman Johnny Gardner, and Attachment A to Mr. Gardner's April 3, 2019, Letter to the Mayors of Horry County Municipalities. Copies of Mr. Worley's E-mail and Analysis and Attachment A to Mr. Gardner's letter are attached hereto as Exhibits 1 and 2.

5. In Paragraph 5 of his affidavit, Mr. Spivey asserts that the County has collected and will collect $51,165,252.32 in revenues from Ordinance 105-96, as amended. This total has four constituent parts: (1) a 2.5% uniform service charge imposed in the unincorporated areas of Horry County[2]; (2) a 0.5% accommodations tax imposed in the unincorporated areas of Horry County[3]; (3) a 2.5% county-wide (i.e., in both incorporated and unincorporated areas of Horry County) uniform service charge imposed upon rental car charges; and (4) a 1.5% uniform service charge imposed within the corporate limits of each municipality within the County. Based on the information contained in

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[1] The County's 2018 CAFR is available online at: https://www.horrycounty.org/portals/0/docs/finance/CAFR2018final.pdf. Based on the permissions imposed by the County on the publicly available PDF version of the CAFR, it is not possible to either print or excerpt relevant pages for attachment to this affidavit.

[2] This is the combination of the 1.0% uniform service charge imposed only in the unincorporated portions of Horry County plus the portion of the 1.5% uniform service charge imposed in the County (unincorporated) area only.

[3] Contrary to Mr. Spivey's affidavit, this collection is not under Ordinance 105-96 or its amendments. Rather, it is collected pursuant to a different County ordinance which is not at issue in this case.

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the 2018 CAFR and Exhibits 1 and 2, I have determined the portion of the total collections attributable to each of these individual parts. For simplicity, I have confined my review to the Fiscal Year ending June 30, 2018.

6. The $51,165,252.32 total for 2018 is broken down among these parts as follows:

2.5% Uniform Service Charge:	$19,551,551.50
0.5% Accommodations Tax:	$1,254,523.74
2.5% Rental Car Fee:	$1,473,717.00
1.5% Uniform Service Charge:	$28,266,614.67

The total collections reported by Mr. Spivey also include $596,415.08 in differences between audited and unaudited statements that I believe are primarily attributable to the one percent charge that the County transfers from these sources to its general fund to cover administrative costs. The County's collection also includes a difference of $22,430.32 that I am unable to identify. These figures are reflected in the table attached as Exhibit 3 to this affidavit.

7. The lawsuit brought by the City, individually and on behalf of all other similarly situated plaintiffs, against Horry County concerns only the 1.5% Uniform Service Charge revenues generated from incorporated areas. If the Court were to enjoin the County's collection of the 1.5% Hospitality Fee generated within the corporate limits of Horry County municipalities, the County will continue collecting over $22 Million annually, based on 2018 figures, in revenues from the remaining fees and taxes Mr. Spivey references in his affidavit.

8. Mr. Spivey states in his affidavit that of the $51.165 Million total, "approximately $9 Million, on an annual basis, is utilized in normal reoccurring [sic] critical public safety expenditures of Horry County." Spivey Aff. ¶ 5. This approximately $9 Million expenditure is not paid for with any funds subject to this lawsuit. According to the County's 2018 CAFR, all

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revenues derived from the county-wide 1.5% Hospitality Fee and the 2.5% rental car fee (less County's "administrative fee") are restricted and used only for repayment of the County's loan with the State Transportation Infrastructure Bank for the RIDE Program. 2018 CAFR at pp. 34-35 (showing $41,667,715 in expenditures on RIDE Project debt service payments), p. 83 n.12 (reflecting restricted RIDE project fund balances), pp. 103-105 n.17 (stating, among other things, that "the [State Transportation Infrastructure Bank] established with the state treasurer a separate account known as the "Loan Servicing Account". **Horry County will thereafter deposit all future receipts of the 1.5% portion of its Hospitality Fee (net of administrative takedown as described in ordinances #105–96 and #9–97) into this account** (subject to the establishment of the loan reserve account). SIB will make transfers from this account to make loan payments under this Agreement and payments under [Intergovernmental Loan Agreements] #1 and #2") (emphasis added).

9. Moreover, a County official, acting in his official capacity, has stated that revenues from the 1.5% Hospitality Fee, whether generated within the corporate limits of any municipality or in the unincorporated areas of the County, can be used only for road projects. Ex. 4 hereto, July 19, 2018 Memorandum, at p. 1. Specifically, this County official asserted that these revenues cannot be used for public safety expenditures absent a duly-passed ordinance so providing. *Id.* Although the County has passed a resolution stating its intent to use the 1.5% Hospitality Fee funds for public safety and other non-RIDE Program expenditures, *see* Exs. 5-6 hereto, Horry County Resolutions R-82-18 and R-84-18, respectively, to my knowledge it has not passed an ordinance permitting these uses. The County therefore cannot use, and has not used, any of the collections at issue in this litigation to fund these public safety expenditures. The balance of the County's $51.165 Million collection is sufficient to cover the approximately $9 Million recurring expense.

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10. Mr. Spivey is of the opinion that "this lawsuit, and the relief the City of Myrtle Beach seeks, could negatively effect [sic] the bond ratings and capacity of the County." Spivey Aff. ¶ 6. This is incorrect. The question is which ratings might be affected. The credit rating is not a single monolithic label attached to the issuer's general credit-worthiness, but separate ratings, evaluated according to different criteria depending upon the specific pledge of revenues that secure the debt. The County has several ratings by the various rating agencies, Moody's, Standard & Poor's and Fitch. These agencies' respective ratings on outstanding Horry County General Obligation debt are "Aa1", "AA+", and "AA+". The County also has outstanding Airport Revenue Bonds to which Moody's has assigned a rating of "A2." There is no County rating on debt issued under the RIDE program or using the RIDE revenues, the 1.5% Hospitality Fee, because that debt was issued by the State Transportation Infrastructure Bank ("STIB") and the County's repayment with 1.5% Hospitality Fee revenues has been governed by a series Intergovernmental Agreements between the County and the STIB. [2018 CAFR at pp. 103-105 n.17.] The Hospitality Fee ordinance requires the 1.5% Hospitality Fee funds be deposited in a "special road revenue fund" and used only for specified purposes. Ex. 7, Horry County Ordinance 19-6(h). They are not deposited into the County's General Fund. I am also informed that these revenues currently are not pledged as security for any outstanding bond issuance. Mr. Spivey identified no existing expenditures currently funded by the Hospitality Fee that the County will be unable to fund from continued collections pursuant to the unaffected portions of the Hospitality Fee and accommodations tax.

The only impairment of County revenue to its governmental funds would be the roughly $400,000 per year that the County has collected as an administrative charge during the life of the 1.5% hospitality fee. Given the size of the County's budget, that is an immaterial amount and would hardly threaten the County's GO credit ratings. In conclusion on this point, based upon my review of the

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ratings criteria of Standard & Poor's and Moody's credit rating agencies in view of the above, I find no basis for concluding that the County's inability to collect the 1.5% hospitality fee from within municipalities could reasonably be expected to have any impact on the County's general obligation bond rating.

11. As to the County's General Obligation debt capacity, that is determined by the state Constitution to be 8.0% of the County's taxable assessed value, or by special authority of public referendum. The granting of the relief sought by the City in this action would affect neither. It is true that the County would not gain the capacity to use the 1.5% hospitality fee revenue generated within municipalities for the purpose of issuing new debt outside the scope of the original purpose of funding a portion of costs of the RIDE program for a period of up to 20 years, but that is debt capacity that the County has never had anyway.

12. In my position as the City's Chief Financial Officer, I am familiar with the various functions the City performs and the services it provides residents and visitors. The City currently designs, constructs, maintains, and operates roads and provides public safety services within its corporate limits, and it has done so during the entire time I have worked for the City. I am informed that the City has performed these services and functions since its incorporation.

13. In my position as the City's Chief Financial Officer, I am familiar with the funding sources available to local governments, such as the City and the County, for projects and operating expenses, such as roads and public safety. Local governments in South Carolina have a variety of available options to fund projects and services within their respective jurisdictions. For example, these governments can increase their millage rates for property taxes, impose other taxes, impose uniform service charges, and issue bonds, so long as the government acts in accordance with State law. Both the City and the County historically have used a combination of these sources.

14. Based upon its public pronouncements, including its resolutions, one project the County intends to fund with the 1.5% Hospitality Fee if its collection is not enjoined is the proposed Interstate Highway 73 ("I-73"). I am familiar with the planned route for this highway. As the plans exist currently, I-73 will not pass through the City or any other municipality within Horry County. Although the City has publicly stated that it is willing to participate in the funding of I-73, it is not a project identified in the plan set out in the RIDE Report nor one which City has consented or agreed to be funded by a County uniform service charge imposed within the City's corporate limits.

FURTHER THE AFFIANT SAYETH NAUGHT.

Michael W. Shelton

Sworn to and subscribed before me this
24th day of May, 2019.

Notary Public for South Carolina

My Commission Expires: April 1, 2023
[NOTARIAL SEAL]

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Exhibit 1

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From: Harold Worley <hworley@odresort.com>
Date: March 27, 2019 at 11:00:41 AM EDT
To: "'Vaught, Johnny'" <jvaught@horrycounty.org>, "'Hardee, Danny'" <hardeedan@horrycounty.org>
Cc: "'Hartley, Pat'" <HartleyP@HorryCounty.org>, "'Allen, Al'" <allena@HorryCounty.org>, "'Howard, Bill'" <howardb@horrycounty.org>, "'Crawford, Cam'" <crawfordc@horrycounty.org>, "'DiSabato, Dennis'" <disabatod@horrycounty.org>, "'Loftus, Gary'" <loftusg@HorryCounty.org>, "'Gardner, Johnny'" <Gardner.Johnny@horrycounty.org>, "'Bellamy, Orton'" <Bellamy.Orton@horrycounty.org>, "'Prince, Paul'" <PrinceP@HorryCounty.org>, "'Servant, Tyler'" <servantt@horrycounty.org>, "'Eldridge, Chris'" <CEldridge@HorryCounty.org>, "Carotti, Arrigo" <CarottiA@HorryCounty.org>, "'Powell, Justin'" <powellj@horrycounty.org>, <hworley@odresort.com>
Subject: RE: Hospitality fees

Mr. Chairman please don't sign that ridiculous agreement. it's a joke...who do they think they are?.... Peterson and his lawyers are wanting to kill I-73 and put the blame on YOU, Horry County Council and other municipalities. Please review the attached hospitality fee income stream. A third grader can see they are better off with the deal you offered Monday night. Politicians and Lawyers lie, numbers and facts don't. Remember Myrtle Beach has already offered 7.5 million of their 1% for I-73 construction... What has changed? Hello

---

From: Vaught, Johnny [mailto:jvaught@horrycounty.org]
Sent: Wednesday, March 27, 2019 8:34 AM
To: Hardee, Danny
Cc: Hartley, Pat; Allen, Al; Howard, Bill; Crawford, Cam; DiSabato, Dennis; Loftus, Gary; Harold Worley; Gardner, Johnny; Bellamy, Orton; Prince, Paul; Servant, Tyler
Subject: Re: Hospitality fees

I agree, mr chairman. Lets get the word out.
Johnny

Johnny Vaught
Chairman, Administrative Committee

On Mar 27, 2019, at 8:28 AM, Hardee, Danny <hardeedan@horrycounty.org> wrote:

I agree Mr. Chairman, it's a bad day when they say your word not good enough!!

Sent from my iPad

On Mar 27, 2019, at 8:19 AM, Hartley, Pat <HartleyP@HorryCounty.org> wrote:

Please see message below from Chairman Gardner ...

Pat Hartley | Clerk to Council
Horry County Government
Horry County Council
1301 Second Ave., Conway, SC 29526
Tel 843-915-5120 | Fax 843-915-6120 | hartleyp@horrycounty.org
www.horrycounty.org

From: Johnny Gardner [mailto:johnny@johnnygardnerlawgroup.com]
Sent: Wednesday, March 27, 2019 8:17 AM
To: Hartley, Pat <HartleyP@HorryCounty.org>
Subject: Hospitality fees

Pat, please send to members of council.
Thank you, Johnny

Gentlemen,
Pursuant to our discussions at the council meeting Monday night, I have started the process of reaching out to the mayors to set up a meeting to negotiate hospitality fees. Unfortunately it appears the mayors are not willing to sit down unless I sign the confidentiality agreement.
I am not comfortable with the idea of negotiating the distribution of public funds in private. As your chairman , I do not think it is good for the citizens of our county and I personally have a problem with the idea of dealing behind closed doors.
This is an important issue and I wanted to keep you informed.
Please let me know your thoughts on this matter.
Sincerely,
Johnny Gardner

Sent from my iPad

****

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Note!

	MUNICIPAL COLLECTIONS					UNINCORPORATED COLLECTIONS					
	FOOD AND BEVERAGE	ACCOMMO-DATIONS	ADMISSIONS	SUBTOTAL	% OF TOTAL	FOOD AND BEVERAGE	ACCOMMO-DATIONS	ADMISSIONS	SUBTOTAL	% OF TOTAL	TOTAL
Actual 1.5%	$13,990,899.14	$12,121,601.55	$2,154,113.98	$28,266,614.67	70.67%	$6,848,840.10	$3,763,571.20	$1,118,874.34	$11,731,285.64	29.33%	$39,997,900.31 ✓
At 1.0%	$9,327,266.09	$8,081,067.70	$1,436,075.99	$18,844,409.78	70.67%	$4,565,893.40	$2,509,047.47	$745,916.23	$7,820,857.09	29.33%	$26,665,266.87 ✓

13,332,634

ESTIMATED BY JURISDICTION

1-73 only 17 mil

Myrtle Beach	Actual 1.5%	$16,039,053.04
	At 1.0%	$12,026,035.36
Horry	Actual 1.5%	$12,039,367.99
	At 1.0%	$8,026,245.33
North Myrtle Beach	Actual 1.5%	$7,279,617.86
	At 1.0%	$4,853,078.57
Conway	Actual 1.5%	$1,279,932.81
	At 1.0%	$853,288.54
Surfside	Actual 1.5%	$1,239,934.81
	At 1.0%	$826,623.27
Others	Actual 1.5%	$119,993.70
	At 1.0%	$79,995.80

Numbers are Rounded

17m for 30 yrs. Bond = 272

272m — 17m 30 yrs.

272m → 25m 20 yrs.

40
17
23

839

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Exhibit 2

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Attachment A

Horry County, South Carolina
FY2018 Hospitality & Accommodations Revenue Impact Analysis

	Revenues				
	Current[1]	%	No 1.5%[2]	%	Variance
City of Myrtle Beach	14,607,215	19.7%	27,122,212	44.9%	12,514,997
Horry	9,496,938	12.8%	17,503,226	29.0%	8,006,288
North Myrtle Beach	6,116,010	8.3%	11,592,816	19.2%	5,476,806
Surfside	1,047,224	1.4%	2,022,680	3.3%	975,456
Conway	869,233	1.2%	1,683,512	2.8%	814,279
Aynor	82,228	0.1%	164,456	0.3%	82,228
Loris	65,163	0.1%	260,653	0.4%	195,490
Atlantic Beach	33,539	0.0%	51,887	0.1%	18,348
1.5% Hospitality & 2.5% Rental Car	41,646,884	56.3%	-	0.0%	(41,645,884)
	73,963,435	100.0%	60,401,442	100.0%	(13,561,992)

Analysis of Variance	
RIDE Admissions	(3,287,248)
County Admissions	(745,325)
Municipal Admissions	(1,436,667)
Total Admissions	(5,469,240)
Rental Car 2.5%	(1,473,717)
RIDE Food/Beverage 0.5%	(6,619,035)
	(13,561,992)

[1] Current is based on County 1.5% Hospitality & 2.5% Rental Car Collections by Municipality and Analysis of Municipal Financial Reports.
[2] No 1.5% is calculated at 2% Food/Beverage, 3% Accommodations, 0% Admissions and 0% Car Rental.

Prepared by Horry County Finance, March 28, 2019

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Exhibit 3

Fees levied (Spivey Affidavit ¶3)	Column A Collected in Unincorporated Areas	Column B Collected in Municipalities	Column C--Totals Totals Collected FY2018	Compare totals with County 2018 CAFR pp. 34-35
County Non-RIDE-related fees				
County 1.0% Uniform Service Charge[1]	-	-	-	$ 8,224,949
Admissions	$ 745,325.00	$ -	$ 745,325.00	-
Prepared Foods & Beverages	4,565,893.40	-	4,565,893.40	-
Accommodations	2,509,047.47	-	2,509,047.47	-
County 0.5% Accommodations Fee	1,254,523.74	-	1,254,523.74	1,272,589
County administrative charges, other misc. [3]	422,148.39	-	422,148.39	-
Sub-total non-RIDE County collections	**$ 9,496,938.00**	**$ -**	**$ 9,496,938.00**	**$ 9,497,538**
1.5% Uniform Service Charge (RIDE funds)	-	-	-	$ 41,667,715
Prepared Foods & Beverages	6,848,840.10	13,990,899.14	20,839,739.24	-
Accommodations	3,763,571.20	12,121,601.55	15,885,172.75	-
Admissions	1,118,874.34	2,154,113.98	3,272,988.32	-
County administrative charges, other misc. [3]	174,266.69	-	174,266.69	-
Total 1.5% (RIDE) uniform service charges[1]	$ 11,905,552.33	$ 28,266,614.67	$ 40,172,167.00	-
2.5% collections on Rental of Cars[2]	1,473,717.00	?	1,473,717.00	-
Sub-total 1.5% Uniform Svc Charge	**13,379,269.33**	**28,266,614.67**	**41,645,884.00**	**41,667,715**
Grand Total of funds accounted for	22,876,207.33	28,266,614.67	51,142,822.00	51,165,253.00
Unaccounted for differences	22,430.32	-	22,430.32	-
	$ 22,898,637.65	**$ 28,266,614.67**	**$ 51,165,252.32**	**$ 51,165,253.00**

1. From table attached to Harold Worley's memo to Johnny Gardner dated March 27, 2019.
2. From Attachment A to Chairman Gardner's letter to all Mayors of Horry County municipalities dated April 3, 2019. Rental car revenues are not broken down as to point of collection, but the total is shown here to account for the composition of the $41,645,884 classified in Attachment A as "1.5% Hospitality & 2.5% Rental Car."
3. According to my reading of the County's Code, 1% of revenue collected under the various provisions on hospitality and accommodations related revenues, 1% of all collections are transferred to the County's General Fund to cover administrative costs.

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Exhibit 4

County Council Decision Memorandum
Horry County, South Carolina

Date: July 19, 2018
From: Justin Powell, Assistant County Administrator
Cleared By: Chris Eldridge, County Administrator
Steve Gosnell, Assistant County Administrator
Arrigo Carotti, County Attorney
Barry Spivey, Finance Director
Re: Resolutions Pertaining to the Use of 1.5% Hospitality Fee

ISSUE

By the end of FY 2019, it is anticipated that the County will have paid off its outstanding loans from the State Transportation Infrastructure Bank Board (SIB). With the anticipated pay-off, funding from the 1.5% hospitality fee will be available to be allocated to other projects.

BACKGROUND

In 1996, Horry County Council adopted a 1.5% hospitality fee on prepared meals, admissions, and accommodations on the entirety of the County. Within the enabling language of the fee, funds were to be dedicated to the implementation of a comprehensive road program. This became known as RIDE I and was used to borrow funds from the SIB to construct several major roads such as SC-22, SC-31, and SC-544 widening. The loans were scheduled to be paid in full in FY 2022 when the 1.5% fee was scheduled to lapse, as originally written.

There have been several revisions to the hospitality fee ordinance since adoption including two recent revisions in 2016 and 2017. Ordinance 93-16 modernized the fee's administration for current practice and a new collection system that was being implemented. In addition, it conformed the eligible uses to state law to allow the County to borrow against the funds, rather than using a conduit borrower like the SIB. Ordinance 32-17 removed the sunset provisions and allowed for its continued imposition after the SIB loans are paid off.

Current Finance Department projections indicate that the County will place on deposit all funds necessary to repay the SIB loans in full sometime in FY 2019. Staff anticipates that the County will need to receive a written release from the State Transportation Infrastructure Bank Board in order to officially be released from its loan obligations. With that in mind, funding should begin to be available in FY 2020 for other eligible uses.

How Can the 1.5% Hospitality Fee Be Spent? When revisions were made to the authorizing language in 2016, the ordinance was conformed to the state's hospitality tax law which provides for the following uses:

- Tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums
- Tourism-related cultural, recreational, or historic facilities
- Beach access and renourishment
- Highways, roads, streets, and bridges providing access to tourist destinations
- Advertisements and promotions related to tourism development
- Water and sewer infrastructure to serve tourism-related demand
- Operation and maintenance of police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to the above

In addition, Section 19-6(h) of the Code of Ordinances further restricts the 1.5% hospitality's fees use to road construction:

> *"Funds shall be deposited into a road special revenue fund which will be used to implement a comprehensive road plan adopted by the county in concert with the municipalities of the county. Interest generated by this road special revenue fund shall accrue to the fund."*

Can the 1.5% Hospitality Fee Spent on Public Safety? Yes, if it is directly attributable to tourism and upon repealing the restriction in Section 19-6(h) in the Code of Ordinances.

As noted above, the County is presently restricted to spending the 1.5% on roads. If the County Council desires spending the 1.5% on items other than roads, it will need to adopt an ordinance repealing the restriction in Section 19-6(h) in the Code of Ordinances.

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If County Council elected to spend a portion of the 1.5% on public safety upon adoption an ordinance repealing the road restriction, it would be limited to the Police, Fire, Emergency Medical Services, and Emergency Management expenses directly attributable to public safety. The County presently allocates part of its 1.0% hospitality fee in the unincorporated area and the 0.5% local accommodations in the unincorporated area to public safety expenses in the General Fund. At present, the Finance Department estimates $7.8 million of public safety costs attributable to tourism are not recovered by those fees that could be paid with the 1.5% hospitality fee. The 1.5% hospitality fee could also be applied to additional personnel. However, there needs to be a clear and justifiable nexus to tourism and used in areas where there is a high tourism concentration such as the beachfront or high tourism traffic corridors like US-17 in Restaurant Row.

It should be noted that 71% of the 1.5% hospitality fee is generated in municipalities. Concern could arise about the level of County public safety services being rendered within the municipalities if the 1.5% is used for County public safety services.

PROPOSED RESOLUTIONS

There are three resolutions for the County Council's consideration. The first would dedicate $30 million of the approximately $41.5 million collected annually to the construction of I-73 within the limits of Horry County. The second resolution it would direct staff to take action in developing a road plan for the remaining balance. The third resolution would direct staff to draft an ordinance repealing the road plan restriction and directing the County Administrator to submit a plan in the FY 2020 budget to utilize part of the 1.5% hospitality fee for eligible public safety expenses and the balance for roads.

Resolution #1 (I-73 in Horry County): The South Carolina Department of Transportation (SCDOT) has received a permit for the construction of I-73. That permit is being presently litigated in federal court. Through federal earmark funds, SCDOT has completed the environmental impact study, acquired some right-of-way and is designing the segment between I-95 and US-501 in Dillon County. SCDOT's most recent cost estimate for constructing the entire corridor between I-95 and SC-22 is between $1.19 billion and $1.56 billion with a central estimate of $1.37 billion.

Based on the most recent cost estimate provided by SCDOT, staff estimates the cost to construct I-73 between SC-22 and the Little Pee Dee River to be between $373.3 million and $507.4 million with a central estimate of $440.4 million. If $30 million per year were dedicated to I-73, staff would initiate discussions with SCDOT on potential agreements to acquire right-of-way in Horry County, design the Horry County section of the interstate, and potentially supplement state funds on widening the shoulders on SC-22 to interstate standards. In addition, efforts would commence to identify state and federal funding to construct the entire interstate corridor from SC-22 to I-95, with a particular emphasis on getting the section of I-73 built from SC-22 to US-76 in Marion County. This would provide more direct access to Horry County and provide a new evacuation route in the event of a hurricane. The County envisions borrowing against that $30 million dollars and use the amount borrowed as a local match as state and federal funding sources are identified for construction.

Resolution 2 (Road Plan): The resolution would direct staff to develop a set of recommendations for other road projects that could be built with the 1.5% hospitality fee. After the allocation for I-73, approximately $11.5 million per year could be available for other road projects. Potential projects could include closing the $65 million funding gap on the extension of SC-31 to the North Carolina border, the $67 million Augusta Plantation interchange in SC-31, and funding for the Southern Evacuation Life Line. Other potential projects could be identified in the process, as long as the roads proposed provide access to tourist destinations.

Resolution 3 (Public Safety and Roads): The resolution would direct staff to draft an ordinance repealing the restriction in Section 19-6(h) of the Code of Ordinances that restricts the 1.5% to road projects. It would also direct the County Administrator submit a plan in the FY 2020 budget to submit a plan for using funds for tourism-eligible public safety expenses and the remainder be dedicated to road construction. This would significantly reduce the funds available for additional road construction to approximately $3.7 million per year.

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Exhibit 5

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COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

RESOLUTION R-82-18

A RESOLUTION DEDICATING $30,000,000 OF THE HOSPITALITY FEE ANNUALLY TO CONSTRUCT THE HORRY COUNTY SECTION OF I-73.

WHEREAS, in 1996, Horry County Council established a 1.5% hospitality fee on prepared food, admissions, and rentals in the entirety of Horry County for the purpose of implementing a comprehensive road management plan as codified in Section 19-6 of the Horry County Code of Ordinances; and

WHEREAS, the 1.5% hospitality fee was scheduled to lapse upon the repayment of all outstanding loans due to the State Transportation Infrastructure Bank; and

WHEREAS, Horry County Council passed Ordinance 93-16 and Ordinance 32-17 to modernize the administration of the 1.5% hospitality fee and to extend its imposition following the repayment of loans due to the State Transportation Infrastructure Bank; and

WHEREAS, it is anticipated all funds necessary to repay the outstanding State Transportation Infrastructure Bank loans will be on deposit in the State Treasurer's Office by the end of Fiscal Year 2019; and

WHEREAS, upon repayment of the outstanding State Transportation Infrastructure Bank loans, Horry County Council seeks to dedicate the 1.5% hospitality fee for the continued development of major road projects within Horry County consistent with Section 19-6(h) of the Horry County Code of Ordinances; and

WHEREAS, Horry County Council seeks the development of interstate connections to the Grand Strand and the construction of I-73. I-73 is anticipated to provide significant economic benefit, as well as a faster evacuation route in the event of a catastrophic hurricane affecting the Myrtle Beach area; and

WHEREAS, Horry County Council seeks to dedicate a portion of the 1.5% hospitality fee to facilitate the construction of the Horry County portion of I-73.

NOW, THEREFORE, BE IT RESOLVED, that the Horry County Council dedicates $30,000,000 annually of the 1.5% Hospitality Fee to construct the Horry County segments of I-73.

AND IT IS SO RESOLVED this ___ day of _____, 2018.

HORRY COUNTY COUNCIL

_____
Mark Lazarus, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Harold Phillips, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:

_____
Patricia S. Hartley, Clerk to Council

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Exhibit 6

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COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

RESOLUTION R-84-18

A RESOLUTION DIRECTING STAFF TO CREATE A PLAN FOR PUBLIC SAFETY AND ROADS IN THE FY 2020 BUDGET USING UNCOMMITTED 1.5% HOSPITALITY FEE REVENUE.

WHEREAS, in 1996, Horry County Council established a 1.5% hospitality fee on prepared food, admissions, and rentals in the entirety of Horry County for the purpose of implementing a comprehensive road management plan as codified in Section 19-6 of the Horry County Code of Ordinances; and

WHEREAS, the 1.5% hospitality fee was scheduled to lapse upon the repayment of all outstanding loans due to the State Transportation Infrastructure Bank; and

WHEREAS, Horry County Council passed Ordinance 93-16 and Ordinance 32-17 to modernize the administration of the 1.5% hospitality fee and to extend its imposition following the repayment of loans due to the State Transportation Infrastructure Bank; and

WHEREAS, it is anticipated all funds necessary to repay the outstanding State Transportation Infrastructure Bank loans will be on deposit in the State Treasurer's Office by the end of Fiscal Year 2019; and

WHEREAS, Horry County Council intends to dedicate a portion of the 1.5% hospitality fee to facilitate the construction of the Horry County portion of I-73; and

WHEREAS, the Hospitality Fee can be used on other tourism-related purposes besides roads including, but not limited to, civic centers and coliseums, tourism-relate parks and cultural facilities, beach renourishment, tourism promotion, and tourism-related public safety costs; and

WHEREAS, staff has calculated the unrecovered cost of public safety from tourism to be approximately $7,800,000; and

WHEREAS, County Council seeks to dedicate a portion of the 1.5% hospitality fee for tourism-related hospitality costs beyond road construction.

NOW, THEREFORE, BE IT RESOLVED, directs staff to draft an ordinance amending Section 19-6(h) of the Horry County Code of Ordinances to allow the 1.5% hospitality fee for all eligible uses under state law. In addition, the County Administrator shall include a proposal in the FY 2020 budget a plan to utilize the uncommitted balance of the 1.5% hospitality fee for eligible tourism-related public safety expenditures and additional road projects that lead to tourist destinations.

AND IT IS SO RESOLVED this ___ day of _____, 2018.

HORRY COUNTY COUNCIL

_____
Mark Lazarus, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Harold Phillips, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:

_____
Patricia S. Hartley, Clerk to Council

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Exhibit 7

Sec. 19-6. - Hospitality fee.

(a) *Establishment and imposition of hospitality fee.* There is established a uniform service charge, hereinafter referred to as the "hospitality fee," equal to one and one-half (1.5) percent within the geographic confines of the county, and an additional imposition equal to one (1) percent within the unincorporated areas of the county only; such rates shall apply to and be imposed on:

(1) The gross proceeds derived from the rental or charges for any rooms, camp ground spaces, lodgings, or sleeping accommodations furnished to transients by any motel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the county to which the sales tax imposed by the State of South Carolina pursuant to S.C. Code § 12-36-920 applies;

(2) Those paid admissions to places of amusement within the county to which the admissions tax imposed by the State of South Carolina pursuant to S.C. Code § 12-21-2420 et seq. applies; and

(3) The gross proceeds derived from the sale of prepared food and beverages sold for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine.

The hospitality fee shall be imposed at a rate equal to two and one-half (2.5) percent within the geographic confines of the county solely with regard to:

(1) The gross proceeds derived from rental companies engaged in the business of renting private passenger motor vehicles to a renter for a consideration within the county. The proceeds derived from the lease or rental of a private passenger motor vehicle supplied to the same person for a period of ninety (90) continuous days are not considered proceeds. "Rental company" means any individual, firm, partnership or corporation in the business of providing private passenger automobiles to the public under the terms of a rental agreement. "Private passenger motor vehicle" means any private passenger motor vehicle, including passenger vans and mini-vans, that is intended primarily for the transport of persons on public roads and highways.

(b) *Payment of the hospitality fee.* Payment of the hospitality fee shall be the liability of the consumer of the services. The hospitality fee shall be paid at that time of the delivery of the services to which the hospitality fee applies, shall be collected by the provider of the services, and shall be held in trust by the provider until remitted as provided for herein.

(c) *Collection of fees.*

(1) *Requirement to make filing and payment.* Each person liable for any fee shall (a) make a true and correct return to the county in such form as it may prescribe and (b) remit

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such fee therewith.

(2) *When due.* Any hospitality fee imposed herein is due and payable:

a. In monthly installments on or before the twentieth day of each month; or

b. In thirteen (13) installments payable on or before the twentieth day following the period covered by the return on sales for the previous reporting period. This payment option requires thirteen (13) payments in each calendar year. For those persons electing to pay in thirteen installments (every four (4) weeks), payments for each period are due on or before the twentieth day after the conclusion of the four-calendar-week period for which payment is due.

The return shall be due at the same time the fee is due and payable.

c. When the twentieth day is a Saturday, Sunday or other day, the county is not open for regular business, the fee is due on the following day the county is open for regular business.

(3) *Manner and location of payment*. Fee payments shall be made by mail, in-person at facilities designated by the county administrator, or electronically. County council, by resolution, may establish mandatory electronic filing for certain classes of payers.

(4) *Timely filing and payment*. A return and the payment due therewith are considered to be timely if (i) the return and payment are mailed and such mailing has a postmark dated on or before the date the return is required to be filed, or (ii) the county actually receives the return and payment (a) at a physical location designated by the county administrator, or (b) electronically in a manner selected by the county administrator. The burden of demonstrating the timeliness of the filing and payment and presentation of a corroborating proof of mailing or receipt demonstrating the same is the responsibility of the person making payment.

(5) *Failure to file return.* In the case of a failure to file the return, the county shall make a return upon such information as it may be able to obtain, assess the fee due thereon, and assess a late filing penalty (the "failure to file penalty") upon the entire fee then due, whereupon the county shall mail such notice to the person liable for the fee. Such payment shall be due within ten (10) days of the postmark of such return.

The failure to file penalty shall be calculated as:

(A x B) x C = the Failure to File Penalty

Where "A" represents the amount of the entire then due fee, "B" represents the daily penalty in percentage terms calculated on the basis of a ten (10) percent per month penalty assuming a thirty-day month (0.333%), and "C" represents the number of

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calendar days from the date the filing was due to the date of the filing and payment of the failure to file penalty. The amount of the failure to file penalty for any period shall not exceed twenty (20) percent of the fee due for that period.

(6) *Failure to timely file return.* In the case of late filing of the return, the county shall assess a late filing penalty (the "late filing penalty") upon the entire fee then due.

The late filing penalty shall be calculated as:

(D x E) x F = the Late Filing Penalty

Where "D" represents the amount of the entire then due fee, "E" represents the daily penalty in percentage terms calculated on the basis of a ten (10) percent per month penalty assuming a thirty-day month (0.333%), and "F" represents the number of calendar days from the date the filing was due to the date of the payment of the fee, the late filing penalty, and any late payment penalty. The amount of the late filing penalty for any period shall not exceed twenty (20) percent of the fee due for that period.

(7) *Failure to pay.* In the case of failure to pay the entirety of any fee when due, the county shall add a late payment penalty (the "late payment penalty").

The late payment penalty shall be calculated as:

(X Y) x Z = the Late Payment Penalty

Where "X" represents the amount of the entire fee due for the period in question less any accepted partial payment, "Y" represents the daily penalty in percentage terms calculated on the basis of a ten (10) percent per month penalty assuming a thirty-day month (0.333%), and "Z" represents the number of calendar days from the date the payment was due to the date of the payment of such fee, and the late payment penalty. There shall be no limit on the amount of the late payment penalty unless fees found to be due under an audit. The failure to pay penalty on fees found to be due under audit shall not exceed twenty-five (25) percent if paid within ten (10) days of the county's assessment, then the failure to pay penalty is not capped on the unpaid fee from the 11th day until the taxes are paid. An underpayment amount created by filing an amended return is subject to the failure to pay penalty for the underpayment amount.

(d) *Inspections and audit.* For the purpose of enforcing the provisions of this hospitality fee and local accommodations fee ordinance, the county administrator or other authorized agent of the county, is empowered to enter upon the premises of any person subject to this section and to make inspections, examinations and audits of books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours' written notice. In the event that an audit reveals that false information has been filed by the remitter, the costs of the audit

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shall be added to the correct amount of any fees determined to be due, in addition to the penalties provided in subsection (c) above. The county administrator or other authorized agent of the county may make systematic inspection of all businesses within the county, to ensure compliance with this section. Records of inspection shall not be deemed public records.

(e) *Violations.*

(1) It is a violation of this section to:

a. Fail to collect any fee;

b. Fail to remit to the county any fee collected;

c. Fail to file any fee return;

d. Knowingly provide false information on any fee return;

e. Fail to provide books and records to the county administrator or other authorized agent of the county for the purpose of in inspection, examination, or audit after twenty-four (24) hours' written notice.

(2) Each day this section is violated constitutes a separate offense.

(3) Upon conviction of this section, the violator is guilty of a misdemeanor and subject to a fine or forfeiture not exceeding five hundred dollars ($500.00) or imprisonment for not exceeding thirty (30) days, or both.

(f) *Administration of fees.* The county administrator is responsible for the implementation, collection, and enforcement of the fees through any legally available means as may be available to the county, including, without limitation, the Setoff Debt Collection Act, codified at Title 12, Chapter 56 of the South Carolina Code and Governmental Enterprise Accounts Receivable (GEAR), codified at S.C. Code § 12-4-580.

(g) *Administrative fee.* The costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of one (1) percent.

(h) *Disposition of hospitality fee* . All revenues collected from the hospitality fee shall be deposited or allocated as follows:

(1) The funds derived from the one and one-half (1.5) percent hospitality fee shall be deposited into a road special revenue fund which will be used to implement a comprehensive road plan adopted by the county in concert with the municipalities of the county. Interest generated by this road special revenue fund shall accrue to the fund.

(2) The funds derived from the one (1) percent fee shall be specifically allocated within the county's budget to offset the cost of public safety and public works services and infrastructure directly impacted by tourism.

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In the case of disposition of funds, the costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of one (1) percent.

(i) *Penalty waiver.*

(1) A penalty may be waived by the county administrator or his designee if the delay or failure to file or pay was caused by reliance on erroneous written or oral advice given by a county employee to the licensee or fee remitter, if accurate and complete facts were given to the employee, there is no change in law, and the licensee or fee remitter provides supporting documentation, such as a copy of the licensee or fee remitter's question to the employee and the advice provided by the employee. A penalty will not be waived if the advice was oral, unless the employee verifies that all the facts were provided and that he gave the advice.

(2) The county administrator or his designee may waive a penalty that is de minimis in nature.

(j) *Use of hospitality fee revenues* . Receipts of the hospitality fee shall be expended only for a purpose or purposes identified below:

(1) Tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;

(2) Tourism-related cultural, recreational, or historic facilities;

(3) Beach access and renourishment;

(4) Highways, roads, streets, and bridges providing access to tourist destinations;

(5) Advertisements and promotions related to tourism development;

(6) Water and sewer infrastructure to serve tourism-related demand; or

(7) Operation and maintenance of police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to the forgoing (1) through (6).

(k) *Amnesty period.*

(1) In order to encourage the voluntary disclosure and payment of fees owed to the county, the county council finds it desirable to allow the county to designate an amnesty period which has a beginning and ending date from time to time as determined by a resolution of county council. During the amnesty period, the county shall waive the penalties and interest or portion of them at its discretion imposed pursuant to Chapter 12.5—Licenses and Business Regulations and 19.6—Hospitality Fee for a licensee or fee remitter who voluntarily files delinquent returns and pays all fees owed. If the county establishes an amnesty period pursuant to this section, it must adopt a resolution of the amnesty period at least sixty (60) days before the commencement of the amnesty period.

(2) The county shall grant amnesty to a licensee or fee remitter who files a request for an

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amnesty form and:

a. Voluntarily files a current license or fee return and pays in full all fees due;

b. Voluntarily files an amended license or fee return to correct an incorrect or insufficient original return and pays all fees due; or

c. Voluntarily pays in full all previously assessed fee liabilities due within an extended amnesty period which begins at the close of the amnesty period and runs for a period of time as determined by the county. The administrator or his designee may set up installment agreements as long as all fees are paid within this period. An installment agreement must be agreed upon before the close of the amnesty period established.

(3) The county shall not waive penalties and interest attributable to any one filing period if the licensee or fee remitter has outstanding liabilities for other periods.

(4) A licensee or fee remitter that is currently under audit by the county is not eligible for amnesty for those periods being audited.

(5) The county may review all cases in which amnesty has been granted and may on the basis of mutual mistake of fact, fraud, or misrepresentation rescind the grant of amnesty. A licensee or fee remitter who files false or fraudulent returns or attempts in any manner to defeat or evade a fee under the amnesty program is subject to applicable civil penalties, interest, and criminal prosecution.

(Ord. No. 105-96, § 1, 10-15-96; Ord. No. 7-97, §§ 1—4, 2-4-97; Ord. No. 76-97, §§ 1, 2, 8-5-97; Ord. No. 80-01, § 1, 6-19-01; Ord. No. 93-16, §§ I, IV, 12-6-16; Ord. No. 24-18, §§ 1—3, 5, 4-3-18)

Editor's note— Ord. No. 105-96, adopted Oct. 15, 1996, did not specifically amend the Code; hence, codification of § 1 of said ordinance as § 19-6 was at the discretion of the editor.

Cross reference— Roads and bridges, Ch. 16.

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EXHIBIT B

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MINUTES
HORRY COUNTY COUNCIL
REGULAR MEETING
County Council Chambers
May 2, 2017
6:00 p.m.

MEMBERS PRESENT: Mark Lazarus, Chairman; Tyler Servant; Bill Howard; Harold Worley; Gary Loftus; Paul Prince; Johnny Vaught; Dennis DiSabato; Harold Phillips; Al Allen; Danny Hardee; and Cam Crawford.

MEMBERS ABSENT:

OTHERS PRESENT: Chris Eldridge; Justin Powell; Pat Hartley; Steve Gosnell; Arrigo Carotti; Barry Spivey; Lisa Bourcier; Janet Carter; and David Schwerd.

In accordance with the FOIA, notices of the meeting were provided to the press stating the time, date, and place of the meeting.

CALL TO ORDER: Chairman Lazarus called the meeting to order at approximately 6:00 p.m.

INVOCATION: Mr. Vaught gave the invocation.

PLEDGE: Mr. Loftus led in the pledge.

PUBLIC INPUT:

1. **Sharon Pollard** spoke regarding the 1.5% Hospitality Fee. The temporary hospitality tax enacted in 1993 for Routes 31 and 22 was proposed to be paid off in 2019 and would then end. They were voting that night on the second reading to pass that tax. She asked council to honor those people that voted in 1993 for the temporary tax. It was not an indefinite tax. After 2019, it became a hidden tax increase. We were in a booming county. Sometimes when they went to restaurants the taxes were higher than the tips, and that was appalling. They were retirees and got nothing in raises but were bombarded every year with tax increases. They had a chance to honor those that voted in 1993 and instead put the $40 million a year back into their hands and they would feed the economy. Put it in a fund so that it may fund Ride IV. They were taxed to the limit, and it had to end. They would make it too expensive for people to eat out or move down here and ruin what they had made a golden area. The tax and spend needed to stop.

APPROVAL OF AGENDA CONTENTS: Mr. Howard moved to approve, seconded by Mr. Vaught. Mr. Prince moved to remove Ord. 32-17 to be voted on separately, seconded by Mr. Worley. A vote was held. The motion failed with Messres. Vaught, Hardee, Crawford, Lazarus, and Allen voting Nay. Mr. Servant moved to remove Resolution R-03-17 from consent agenda. Motion failed due to lack of a second. The motion as presented was passed with Mr. Prince voting Nay.

APPROVAL OF MINUTES: Regular Meeting of April 18, 2017: **Mr. Howard moved to approve the Regular Meeting of April 18, 2017 meeting minutes, seconded by Mr. Vaught. The motion was unanimously passed.**

APPROVAL OF CONSENT AGENDA: Mr. Howard moved to approve, seconded by Mr. Vaught. Mr. Prince said the reason that he was opposed to vote Yea on **Ord. 32-17** was that he thought people needed to know which projects the money would be spent on before it was approved. He understood it would not be enacted at the present time but was being put into place. There was no need to rush because there were 2 ½ years before 2019, and they would have time if it was delayed to get a list of projects so the people would know what projects the money would be spent on. It would put them more at ease. If it wasn't delayed, he would vote Nay that night. Mr. Servant requested to be shown as a Nay vote on **Resolution R-03-17** and additionally on **Ordinance 32-17** because he felt the funds should be dedicated solely to roads and infrastructure as was set forth in the previous Ride I ordinance passed by council.

Mr. Vaught wanted to remind council that before any dollars were spent from this money it required a three reading approval of full council as well as public notice and public input. It was not like council was trying to pull the wool over somebody's eyes as to what they would be doing with the proceeds of the tax.

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Mr. Worley asked to be shown (inaudible). As he said before, he thought they were way ahead on the issue. Any time there was excess money.. He did agree that the tourists needed to pay their fair share. They could pass this and use that money for additional police officers and to give rebate back in the form of tax millage to the people of this county. They hadn't been able to get an impact fee on. With all the new growth, the property taxes would continue to go up. It was a tax everywhere that you looked. The school board was fixing to raise taxes. They were fixing to get a gasoline tax. It was just tax, tax, tax and the people needed some relief. He thought this would be an ideal way to do it and put the burden right where it was with the tourists, and he had no issue with that. He did have an issue with spending the money for a road that he didn't know of anybody in his district that wanted I-73. If it was built, President Trump told the Republican Club he would help us with the road. His point was, why should we step up and offer to pay for I-73 when we may be getting federal monies to do that. He couldn't support the ordinance the way it read. It was, in his opinion, wrong.

Mr. DiSabato said he echoed Councilman Servant's point of view with regards to **Ordinance 32-17** in that he supported it because he believed I-73 was a critical infrastructure program and he did not think we would receive any legitimate funding unless we put our best foot forward and this was one way to do that. However, hearing some of the descent up there it might be fruitful to have some debates. **He moved to reconsider Mr. Prince's initial motion to remove it from the consent agenda and place it on the regular agenda.** Chairman Lazarus said they were currently having debate on it so they were accomplishing that point, but they had a motion to reconsider. **Mr. Allen seconded the motion to reconsider. The motion to reconsider failed seven to five with Messrs. Vaught, Hardee, Crawford, Loftus, Lazarus, Howard, and Phillips voting Nay.**

Mr. Allen said that his concern was the same as some of the others. He first agreed that it was going to be a useful tool for a future council but there probably needed to be a little more input to it as far as establishing how it would be spent.

Chairman Lazarus said they took a great deal of time and purposely did it by presentation by Mr. Eldridge and then by legal briefing by Mr. Carotti at the prior meeting. They debated it a good bit on the dais between them and the reality of it was as Mr. Vaught said, before any project would be approved it had to have three readings of council. It had to adhere to the hospitality law. This was a hospitality fee. Not a sales tax. It was a hospitality fee. A hospitality fee was collected on prepared foods, lodging, and entertainment admissions. Those were the three sources of that income. It was not property taxes. It was not on their groceries at the store or the medicine that they bought. It was not on the clothes that they bought. It was just those three things and they validated that at least 65% of that was paid for by the tourists that came in and ate out and paid lodging and everything else. The lion's share of that was paid for by them. I-73 was just one of the many projects that this hospitality fee could be used for. There were many other things under the hospitality law that it could be used for but it would be debated and on a three reading ordinance by council whether by this same council or a future council. This hospitality fee would not be collected for three years from now but as he said earlier, this was a chance for them to be able to get it in line to be able to hopefully have I-73. He couldn't think of a better project for the western part of Horry County than I-73 because it gave them interstate access. They were all very heavily involved in the Economic Development Corporation and the first thing that a person that would like to bring their company here to Horry County asked was if they had interstate connectivity. They had lost many projects because they didn't have it and this would give it to them. Any time that you dealt with these types of projects, they ask you to have skin in the game. It gets you ahead of the game. Out of all the other states and all the other areas that were looking for dollars, if you had shovel ready and you had dollars available, it helped them get ahead of the game to get projects done. They had just passed through the DHEC permitting process for I-73. It was not protested by any of the conservation groups or anybody else. That was moving forward and he had good indication that they would be seeing permits coming in short order. Hopefully it would be on the president's agenda to help support it. Our portion of it could only be spent in Horry County to upgrade 22 to interstate standards and to take 22 to the state line which then would take federal money to get us to I-95 which would give us the connectivity. For those purposes he thought it was a good process and that the people would be very involved in it because there would be public readings along that process so everyone would be involved.

Mr. Prince asked if a person voted to rescind this action at a later point, could it be voted up or down. Mr. Carotti said to repeal an ordinance it would take the same formality as was used to enact the ordinance so it would be a three reading ordinance to repeal this ordinance. It could be done.

Mr. DiSabato wanted to make it clear that he was in support of this ordinance. While he appreciated all of the efforts that the local citizens made in support of the economy, the number one thing that they could do to help the economy was increase the amount of jobs that they were able to produce here in Horry County. Higher paying jobs. Higher wage jobs. Higher skilled labor. Unfortunately if you were not within a very tight radius of a major interstate highway, you were not in the game when it came to economic development. If this gave them a firm foothold in the ability to get I-73 completed, it could be potentially the most important thing that they did for Horry County. So he was in support of I-73 and in support of this ordinance. He

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would like to see if there was a way for them to tie this funding strictly to infrastructure projects but the answer from the legal department would be no. Mr. Carotti said it could be tied to infrastructure projects as was the 1% hospitality fee. However, staff would advise against that because that would limit council's ability to use the funds for any number of available projects.

Chairman Lazarus said to Mr. Worley's point earlier, hospitality fees were already being used to support the police and as everybody had said up on the dais, they needed more funding. They had issues where they needed more police on the ground. He didn't know if this was the appropriate fund. Everybody wanted it for infrastructure needs but there were some other funds out there that they would be discussing through the budget process on the 16th that they would work hard with the staff to do everything they could. They had already got nine new police officers put into the budget and as the Chief had said, he needed fifteen more. He committed to him and everybody up there to work within the budget and the dollars that they had coming to them to find those dollars because we had issues on the streets and they would give the chief and personnel all the tools that they could to work on that. They were serious about the crime.

Mr. Worley referred to the chairman's earlier comment. It was a perfect example of the fairness. We were paying for all of our major roads here in Horry County and secondary roads. We now paid over $.16 in gasoline tax to the state. It was obvious there would be at least a $.12 increase coming down the pipeline, but yet in his statement he said they would pay for it to the county line and they take our share of the tax dollars and they build everybody else's roads. As long as we continue to get ahead and not allow our delegation to bring those dollars back to Horry County we were going to continue to put the burden. The tourists aren't the only ones to pay the hospitality fee. Every time he went to McDonalds and got a hamburger, he paid it. So, it was not just tourists. He thought it was every time you turned around, there was a 1% road fee. This one and that one. What was the percentage of this that was on roads currently including this? Mr. Carotti said the hospitality fee would be 2 ½%. Mr. Worley asked Mr. Powell what was being paid currently on all the Ride programs. Mr. Powell said the locally imposed rate was 2.5 cents if you were in the unincorporated area. It was 1 ½ county and then if you were in the municipalities 1%. The sales tax rate was 8% for the county. Again, those applied to different things. Mr. Worley said he was talking about total for roads. Chairman Lazarus said 2 ½%. 1 ½ % for the original and then 1% for the Ride that came on in May 1st. Mr. Worley asked how much money we were looking at of that 2.5 cents. Mr. Powell said the Ride III that just went into effect the previous Monday, was a $.01 sales tax on all items taxed by the state of South Carolina aside from unprepared food. That was estimated around $70 million per year in collections. The hospitality fee that was proposed drew in about $38 million per year. Mr. Worley said we were talking about over $100 million per year going towards roads plus the state and federal monies. When was enough enough? Like the chairman had just said, and this really bothered him a whole lot, when his mother heard something, she called the police. She wanted someone to respond and he wanted someone to respond when they called. This time out, 20 – 30 minutes for a call just wouldn't work. It was not right and they needed to fix it. He told Mr. Allen he wasn't brow beating anybody. He was trying to help him get money to hire more cops. His point in this was to take this $40 million and take $20 million of it and hire cops and get them out there on the beat so that they could respond when called. In the City of North Myrtle Beach they were blessed that anytime you called the police they were there in 2 – 3 minutes. He wasn't saying they had to be 2 – 3 minutes, but it didn't need to be 30 minutes. They had an opportunity to use this money for that. He knew it was down the road. Then, take the balance of it and refund it back in the form of millage to the tax payers, not only residential but to the business community. They were just getting beat up. It was getting to a point that it was just about too much for some businesses that couldn't make it. **He moved to remand the ordinance back to the administration committee since it was a tax issue and give them an opportunity to look at it and see if they could come up with the correct way to spend the money before they passed it.** He thought the tax payers were saying that if they didn't know what they would spend it on, and the federal government may pay for I-73 depending on what the president did, he didn't think they needed to jump ahead of everybody and use this money or dedicate this money for something when we could use it to protect the people of Horry County and give them tax relief in the form of millage.

Chairman Lazarus said the law dictated what it could be used for so it was not that this money was coming up and they would willy-nilly decide what they would use it for. The law specifically said what a hospitality fee could be used for. As far as the police, there was an opportunity to use this under the hospitality fee and the TERC committee that would allow some of the money to be used for policing. If the amount of money that would be needed for I-73 was $400 million, you could bond it. You might only need $10 million a year instead of the $40 million a year so that would leave $20 million that you could use towards police. It was as simple as putting an ordinance together, and bringing it before council. Bringing it through committee and getting it voted on and approved as long as it met the headline test through the TERC committee. So the appropriate use under hospitality law would allow them to do that so his point was well taken. That was why it would come before them and if that was what he wanted to use some of it for then they needed to get Mr. Carotti to draw that ordinance when the dollars came in and when it was appropriate to use them and get council to pass it, up or down. They could go from there, but they had a motion that he had to consider as a remand back to the administration committee. **The motion was seconded by Mr. Prince.**

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Mr. Vaught said he thought the vote to remand was out of order. Did they not vote to approve the consent agenda as presented? Chairman Lazarus said they did not vote. They took a motion and a second and they were under discussion. Mr. Vaught said he thought they voted to approve the consent agenda. Chairman Lazarus said they hadn't voted to approve the consent agenda. They voted to approve it as changed and now they were back to the main motion as changed. Mr. Carotti said the main motion was to approve the items on the consent agenda which was duly seconded. What was currently on the floor for consideration by council was Mr. Worley's motion to refer it to the administration committee. That one ordinance, the first ordinance.

Mr. Allen asked what the time line on this was, and were they under urgency? When did it need to be past third reading in order for them to fall in compliance? Mr. Carotti said they had been apprised of the problem that they would lose their grandfathered status once they paid off the SIB loan never to be recovered. They would lose a one half percentage and there was no telling what the legislature might do between now and the time they paid off the last penny of the SIB loan. They did not know when that date would come depending on the revenue generated by this hospitality fee. Mr. Allen asked if it would be a month from now, three months or a year. Mr. Eldridge said there was a separate issue too when it came to funding and it related to I-73. Hopefully, this would make the project viable to have this funding source there. It didn't pay for all of it but it showed local commitment, showed a large chunk of the funding needed to make the project work. Our understanding was the federal government was looking for projects where as the chairman said you have a local effort. They wanted to see matching dollars. They didn't want to come in and pay 100% for a project. So, it did make I-73 viable. They understand permitting there was a change that that gets done. To have that sitting there. To have a project with a permit, a sizable amount of revenue stream that was possible to pledge towards I-73 sitting there on the table could make a very big difference when it came to congress and their next budget cycle. It was his understanding this was a project that the president mentioned when he was campaigning during the primary. So, that was the urgency. It was political. It didn't mean anything was promised. It didn't mean anything was going to happen but it did make a difference when you were looking around the country and you saw a project that has funding for it. That was the thought process behind it. Mr. Allen asked if our debt would be paid off in a year. Mr. Eldridge said one to two years. Mr. Allen said the tax would sunset in 2020. Mr. Eldridge said as soon as that last payment was made it was done. Mr. Allen asked roughly twelve months. Mr. Eldridge said probably 24 months. The issues were timing, projects, and getting it done. Yes, it would have to be passed before that last payment was made to pay off the county's debt from the Ride I.

Mr. Prince asked what the hurry was. He agreed with Mr. Worley. We needed to have a better plan of action. What were we going to spend the money on? They wanted to know that the people of Horry County that lived here day in and day out would get benefits from it. If they didn't do anything to make sure that all of it didn't go to I-73, the majority of the people living here were not interested in I-73. Of course it would help but they wanted relief for themselves and the people that lived here in this county for a change. It was no hurry. Why didn't they just get a plan of action on what they were going to do with it?

Mr. DiSabato asked what the collection of this fee did to our bonding capacity. Mr. Eldridge said there were two different issues. There was a bonding capacity. That was your general obligation debt that was capped by state law. This would be a revenue bond so this would be revenue pledged towards the issuance of any borrowing. It was like looking at your income and what you could borrow on the house. The same with this. You would be able to leverage toward borrowing long term for construction on a large project. Mr. DiSabato asked if they would be able to put together a $.5 billion bond. Mr. Eldridge said it would not support that amount. Mr. Powell said that when they had looked at that matter, it really depended on what the credit market was doing. It was a revenue bond so it would be secured by the hospitality fee. It wouldn't be the GO pledge which was the full faith and credit of the county. Depending on what the market would have it, it would depend on that final amount. It would be where interested rates were if they decided to go forward with this and borrow against it as well. Mr. DiSabato asked if they bonded the project to get our portion of I-73 completed, did that mean they couldn't take any portion of the $40 million that was being collected and use it towards other programs. Mr. Eldridge said those would be policy decisions council could make. That was why they tried to put the flexibility in the ordinance that you didn't know what the federal share would end up being. There could be other ways to help finance part of this project so you didn't know what that gap would be that you needed to fill. That was where you would have that opportunity if you got $40 million. If you only ended up having to pledge $30 million, then council would have $10 million to look at other projects on a pay-as-you-go to borrow against that whatever options council would have. This was why they wanted flexibility in the ordinance because you didn't know what that gap would be and there would be growth and funding over the years as well. Mr. DiSabato asked how many police officers $10 million would get us. Mr. Eldridge said they went through this exercise 2 – 3 years ago and Mr. Spivey went through and looked at maybe $10 million worth of costs that were being picked up with general fund monies that you could tie to tourism. That wasn't all police officers. A good chunk was at the jail because you could look at the census of where people were that were spending the night in our jail. It was EMS because it was easy to track on who we were picking up and providing EMS services to so it wouldn't even be the full $10 million out of that. Again, it had to

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be tied to tourism related expenditures and those were expenditures that were clear and easy to see that we could defend. You had to be able to make that connection and that was part of the state law that the chairman was talking about. You had to tie it back to tourism because that was where a lot of the money came from.

Mr. Servant asked what exactly could this money be spent for other than roads and infrastructure as it was currently written. Mr. Eldridge said tourism related facilities. Mr. Powell said tourism related facilities like arenas, colosseums, and roads related to tourism which had been discussed at length. Tourism related cultural recreation and facilities, beach access and renourishment, advertisement and promotion, water and sewer, and public safety and operation of tourism related facilities. Mr. Servant said that for the record, that was his issue with this ordinance as it was written. He wanted this to go solely towards roads and infrastructure and now it could go to anything under the sun it sounded like. Chairman Lazarus said only if it was voted by three votes of council.

Mr. Loftus asked if the general assembly could change what they were about to do and prevent them from doing it if they didn't do it in the small window that they had. Mr. Carotti said it was unknown what the general assembly.. They had already amended the hospitality and accommodations tax law in 1996. Could have been in response to what Horry County did in 1996 as well and there was no telling what the legislature could and would do between the present and that date. Mr. Loftus said they did have an open window but didn't know if and when it would be slammed shut. Mr. Carotti said yes. Mr. Loftus said there was some sense of urgency. Mr. Carotti said to correct this restriction that they imposed upon themselves. A vote was held on the motion to remand back to administration committee. **The motion failed with Messrs. Vaught, Hardee, Loftus, Lazarus, Servant, Howard, Phillips, DiSabato, and Allen voting Nay. A vote was held on the main motion of approving the consent agenda as presented. The main motion passed with Messrs. Prince voting Nay on Ord. 32-17, Servant voting Nay on Resolution 03-17 & Ord. 32-17, and Worley voting nay.** The consent agenda consisted of the following:

Third Reading – **Ord. 32-17** amending Ordinance 93-16 to repeal the sunset provision applicable to the 1.5% hospitality fee, and other matters related thereto.

Third Reading – **Ord. 33-17** to amend the County Code to update the county's ordinance summons process.

Third Reading of the following Ordinances to approve the request to amend the official zoning maps:
Ord. 34-17 Stillwater PDD; **Ord. 36-17** DDC Engineers, agent for Cap Care Group, Inc.; **Ord. 37-17** Terry & Pamela Jamison; **Ord. 38-17** Melody Page, agent for Karen Murray; **Ord. 39-17** Venture Engineering, agent for Drexel 101, LLC; **Ord. 40-17** Venture Engineering, agent for Queens Park Inc.; and **Ord. 41-17** Karen Townley-Rabon & Rosemary Chestnut

First Reading – **Ord. 47-17** amending the zoning ordinance pertaining to the Hwy 501 Overlay Zone.

First Reading – **Ord. 48-17** establishing regulations regarding unfit dwellings and related structures within the unincorporated areas of Horry County.

First Reading – **Ord. 49-17** to amending the zoning ordinance pertaining to home occupations.

First Reading – **Ord. 50-17** amending the County Code so as to prohibit the damage or destruction of sand dunes.

Resolutions to accept dedication of the roads and drainage into the county system at the following locations:
R-39-17 Lafayette Park Phase 3A-1; and **R-40-17** Bristol Pines Phase 1

Resolution R-41-17 approving the transfer of fund balance from FY 2016 to fund repayment of the Socastee Community Recreation Special Tax District Commission loan.

Resolutions pertaining to the Victim of Crime Act (VOCA) grants:
R-43-17 approval to the Police Department to submit & accept a not-to-exceed grant of $175,000 from the SC Dept. of Public Safety
R-44-17 approval to the Detention Center to accept a not-to-exceed grant of $25,028 from the SC Dept. of Public Safety.
R-45-17 approval to the Detention Center to submit & accept a not-to-exceed grant of $60,068 from the SC Dept. of Public Safety

Resolution R-46-17 authorizing execution of an agreement to participate in the Horry County HOME Consortium.

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Resolution R-49-17 authorizing & directing the transfer of funds from roof rehabilitation project to the terminal capacity & enhancement project.

Recreation Resolution R-03-17 approving allocations of council recreation funds to Greater Burgess Community Assn, Horry County Parks & Recreation, Wildlife Action of Horry County, Palmetto Studios Arts Alliance, Aynor High School, Town of Aynor, Carolina Forest High School Showcase Showchoir, & Waccamaw Economic Opportunity Council.

District Appointment: Steven Neeves to the Planning Commission

PRESENTATIONS / RESOLUTIONS:

Presentation on the updated Community Rating System class rating for Horry County for the National Flood Insurance Program. Mr. Webster said there had been a concerted effort between several departments of the county over the last two years to come together as a team to do a better job with the rating for the CRS Flood Insurance Program. FEMA had upgraded our program from a Class 9 to a Class 7, and just like the fire ISO rating system the lower the number the better positive result we had for people who currently held flood insurance premiums if they lived in a flood plain. The new policy ratings went into effect the previous day and the people that lived in a flood plain would see a savings of $875,000 annually because of the work that the county departments put together to achieve this new rating. This was only in the unincorporated areas. The cities in the CRS program had their own rating. Mr. Servant thanked Mr. Webster, Ms. Carroll, and the whole staff at the EMS department for putting this together. It would be a huge savings to the residents that had to buy flood insurance in Horry County, and it would be a savings of almost $1 million annually.

Mr. Worley asked Mr. Webster if they had been told when the elevations would be done. Mr. Webster's response could not be heard.

Chairman Lazarus thanked them for their good work and asked they get the elevations completed because they were critical to what was needed.

Resolution R-47-17 and Public Hearing in support of the issuance by the SC Jobs-Economic Development Authority of its hospital revenue bonds to Georgetown Hospital System for a not-to-exceed amount of $48 million. **Mr. Vaught moved to approve, seconded by Mr. Loftus.** Mr. Powell said this was what was known as a JEDA Bond which was the Jobs Economic Development Authority. That was the state agency responsible for issuing private activity bonds, tax exempt bonds for private business and non-profit corporations where there was a public purpose. What they were being asked to vote on this resolution as well as the following resolution was a statement that they supported the project in Horry County. It did not create a liability for Horry County. It did not go on our books. There was no recourse on the bond holder as it was paid by the revenues of the specific facility and had no recourse back to Horry County and the same for the following Resolution R-48-17. **There was no public input. The motion was unanimously passed.**

Resolution R-48-17 and Public Hearing in support of the issuance by the SC Jobs-Economic Development Authority of its economic revenue bonds to CR Senior Living LLC in the principal amount not exceeding $25 million. **Mr. Vaught moved to approve, seconded by Mr. Loftus. There was no public input.** Mr. Prince asked where this was. Mr. Powell said it was a proposed senior living facility. A 66 bed assisted living memory care facility and 40 unit independent living. It would be in Little River at the intersection of Sea Mountain Highway and Hwy. 9. **The motion was unanimously passed.**

READING OF ORDINANCES:

Second Reading and Public Hearing on the following Ordinances to approve the request to amend the official zoning maps: **Ord. 43-17** Nan Trout, agent for Central Storage LLC; **Ord. 44-17** Palm Lakes Plantation PDD; **Ord. 45-17** Eric Hardee, agent for Everette & Evelyn Hardee; and **Ord. 46-17** Keith Richardson. **Mr. Howard moved to approve, seconded by Mr. Allen. There was no public input. The motion was unanimously passed.**

OLD/NEW BUSINESS:

Appointments to the Solid Waste Authority Board of Directors. Two seats to be filled. Vote by ballot.
Nominees are:

Pam Creech
Norfleet Jones
Sam Johnson

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Mr. Allen gave a brief history of whose turn it would be to choose and present people for the Solid Waste Authority board. He reminded the council that they often heard about the struggle between council and the Solid Waste Authority Board. With them being an independent authority, a lot of the public did not understand that they could operate totally autonomous of council. Through the years, they seemed to continue to have issues with them. Such as the year that the Solid Waste Authority approved a larger Christmas bonus for their employees than council approved for the county employees, and that just a few years ago with the challenges that council had over flow control and C&D that there was a large division between Solid Waste Authority and council. There was actually money spent from the Solid Waste Authority in Columbia that went against what council's wishes were. At that time, there was a state ethics complaint filed again him that involved an employee and a Solid Waste Authority Board person during the vote for the flow control on the C&D. After the state investigator came down and interviewed everyone, he told him that he had been conducting these interviews for over 20 years and that to him all the 7 page complaint filed against him by an attorney out of North Myrtle Beach was a political hack job with the intentions of trying to influence his vote on the C&D. It went back to Columbia and the ethics board voted it unfounded. These things continued to happen. He would say that if they ever expected to have a change out there, they would have to change who served on that board. They had made some. He placed his person on the ballot that past week and also there was an email sent out from the Solid Waste Authority on a Solid Waste Authority account that was encouraging votes for current members of the Solid Waste Authority Board. He had a call in to the South Carolina Ethics Commission asking for a ruling on that but hadn't heard back from them. They were prohibited from that. It seemed there was a lot of interest in one of the reappointments and there had been a lot of political influence. There had been a lot of phone calls and a lot of back room talk made. If he was the only one up there that would speak out against it and until council stood up and did its job as to what it was supposed to be doing, they were going to continue to have these issues. A few days before he was served with that complaint, he had a Solid Waste Authority employee call him and tell him that there was an ethics complaint coming down about him. If they didn't do something about this, they would never get a hand hold on it. He encouraged them to vote for his nominee, Sam Johnson, that night.

Chairman Lazarus said he had a legal issue he needed to discuss with Mr. Carotti, and they had an executive session scheduled for discussion regarding criminal investigating proceedings. He would ask the legal question during that break, and they would go into executive session at that moment and come back and discuss the appointments.

EXECUTIVE SESSION: Mr. Servant moved to enter into Executive Session, seconded by Mr. Loftus. The motion was unanimously passed. Mr. Servant moved to exit Executive Session, seconded by Mr. Loftus. The motion was unanimously passed. Mr. Carotti said that while in executive session council received legal advice relating to matters covered by the attorney-client privilege and also engaged in discussions regarding criminal investigative proceedings. While in executive session, no decisions were made and no votes were taken.

Chairman Lazarus said they had a tie in the vote for the Solid Waste Authority Board of Directors. On the advice of legal counsel, they needed to re-vote. The new vote had the same result of a tie. He then told Ms. Pam Creech she had been reappointed to the Solid Waste Authority Board. They would take another vote for the two other individuals and he requested they vote by ballot. The vote resulted in another tie vote so they would defer the vote of the second for a future meeting. If anyone had anyone else to nominate, the nominations would still be open.

Chairman Lazarus said it had been brought to his attention that they had seven of the International Building Code books removed. He told Mr. Eldridge they needed to let the library know to see if they could track where those were going to. They were very important books.

Mr. Vaught responded to an earlier comment made by Mr. Allen about not having a good working relationship with the Solid Waste Authority. He was chairman of the I & R Committee last year during a tough time in which they dealt with the contentious Charleston contract. He couldn't have been more pleased with the Solid Waste Authority's transparency and willingness to come to I & R with all the information required of them. He felt they had the best working relationship with the Solid Waste Authority in his memory.

ANNOUNCEMENTS: Chairman Lazarus reminded everyone of the meeting the following night to discuss the proposed gun ordinance.

Mr. Prince said the responders for the Horry County Fire Department did not need a pager that you had to read. They needed something that they could hear. What they already had was good and what was needed it just wasn't communicating well enough. He hoped they would work towards that. Chairman Lazarus requested that the Chief get Mr. Prince a pager.

Memorial Dedications: Lisa Hupp Bell; Wilma Mae Allen; Olean Stalvey; Liston McDowell; and John Mishoe.

Upcoming meetings: Regular Council Meeting – May 16, 6:00 p.m.; Public Safety Committee – May 9, 10:00 a.m.; L & R Committee – May 23, 9:00 a.m.; Administration Committee – May 23, 2:00 p.m.; Transportation Committee – May 15, 9:00 a.m.; and Public Hearing/Workshop on Discharge of Firearms – May 3, 5:00 p.m.

ADJOURNMENT: With no further business, Mr. Vaught moved to adjourn at approximately 7:37 p.m. and it was seconded. The motion was unanimously passed. The meeting was adjourned in memoriam of: Lisa Hupp Bell; Wilma Mae Allen; Olean Stalvey; Liston McDowell; and John Mishoe.

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HORRY COUNTY COUNCIL

Mark Lazarus, Chairman

Harold G. Worley, District 1
Dennis DiSabato, District 3
Tyler Servant, District 5
Harold Phillips, District 7
W. Paul Prince, District 9
Al Allen, District 11

Bill Howard, District 2
Gary Loftus, District 4
Cam Crawford, District 6
Johnny Vaught, District 8
Danny Hardee, District 10

Attest:

Patricia S. Hartley, Clerk to Council

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EXHIBIT C

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MINUTES
HORRY COUNTY COUNCIL
REGULAR MEETING
County Council Chambers
April 18, 2017
6:00 p.m.

MEMBERS PRESENT: Mark Lazarus, Chairman; Tyler Servant; Bill Howard; Harold Worley; Gary Loftus; Paul Prince; Johnny Vaught; Harold Phillips; Al Allen; Danny Hardee; and Cam Crawford.

MEMBERS ABSENT: Dennis DiSabato.

OTHERS PRESENT: Chris Eldridge; Justin Powell; Pat Hartley; Steve Gosnell; Arrigo Carotti; Barry Spivey; Lisa Bourcier; Janet Carter; and David Schwerd.

In accordance with the FOIA, notices of the meeting were provided to the press stating the time, date, and place of the meeting.

CALL TO ORDER: Chairman Lazarus called the meeting to order at approximately 6:00 p.m.

INVOCATION: Mr. Phillips gave the invocation.

PLEDGE: Mr. Servant led in the pledge.

PUBLIC INPUT:

1. **Thomas Simnitch** spoke regarding the rezoning of Ord. 20-17. He was not in favor or against the rezoning. He requested that council consider installing a traffic light at the intersection of Lake Park and Hidden Woods. Sea Winds Estate was going in to the east of them and would add another 130 lots. That road accessed Lake Park Plantations Road and would put another 130 people using the roads. There were a lot of senior citizens in the neighborhood. He understood that at one time they were going to put a traffic light there but didn't because the lights would be too close together with a light already at Dick Pond Road. The lights down at the bypass were a lot closer than theirs would be. He requested council to consider the installation of a traffic light at the intersection of Lake Park and Hidden Woods. It would help them out greatly. Chairman Lazarus said that county council was not into traffic light business but the SCDOT was, and they needed to petition SCDOT for that. They would have to do a traffic study and give the county their feedback whether or not it would be warranted. He requested Mr. Gosnell look into it and at least request a traffic study be done.

2. **James Millward** spoke regarding the Socastee Recycling Center. He thanked them for the signage that was put up to direct people to the center. It had worked. They hadn't had any cars going down Pine Hollow Road and getting aggravated. The problem now was that someone was breaking into the recycling center after hours. They were cutting the fence to get in. He didn't know what anyone would want to steal from a recycling center. Employees had said that they had actually opened the center at 6:30 in the morning and there would be people inside that came out when they opened up the fence. He had a neighbor go to the center and he said that they hadn't cut the fence but had removed the brackets so that all you had to do was pull it back and crawl in. It didn't make sense. It was a problem that the county needed to solve because they were responsible for that recycling center. He had reported it to the police and also talked with Mr. Crawford about it. He proposed a motion activated spot light that would come on and video tape what was going on. It would send a signal back to a telephone so the supervisor could see what was going on. He would be able to talk to the people breaking in through the telephone. He wanted to bring it to their attention because if they were going to steal from the recycling center, they would be stealing from the sheds in their back yards and he didn't want anyone to get shot. Chairman Lazarus requested Mr. Eldridge solve the problem.

APPROVAL OF AGENDA CONTENTS: Mr. Howard moved to approve, seconded by Mr. Vaught. The motion was unanimously passed.

APPROVAL OF MINUTES: Regular Meeting of April 4, 2017: **Mr. Howard moved to approve the Regular Meeting of April 4, 2017 meeting minutes, seconded by Mr. Vaught. The motion was unanimously passed.**

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APPROVAL OF CONSENT AGENDA: Mr. Vaught moved to approve, seconded by Mr. Loftus. Mr. Allen requested to be shown as a no vote on Ord. 30-17. The motion was passed with Mr. Allen voting Nay on Ord. 30-17. The consent agenda consisted of the following:

Third Reading on the following Ordinances to approve the request to amend the official zoning maps:
Ord. 20-17 Earthworks Group, agent for Tallulah Williams Trustee; and Ord. 21-17 Johnny Staples, agent for Dianne & Deborah Lewis.

Third Reading – Ord. 22-17 approving & authorizing the county administrator to execute a lease agreement with the United States of America of certain office space located within the Johnny Shelley Agricultural Building.

Third Reading – Ord. 23-17 approving & authorizing the county administrator to convey to the SCDOT a portion of county property located along West Broadway Street in Myrtle Beach.

Third Reading – Ord. 24-17 approving & authorizing the county administrator to execute a lease agreement with SCDMV of certain office space located within the Ralph Ellis Complex.

Third Reading – Ord. 25-17 approving & authorizing the county administrator to execute the requisite legal documents to convey property on Waites Island to the Coastal Educational Foundation.

Third Reading – Ord. 26-17 to amend the Index Map of the official map ordinance adding the extension of Augusta Plantation Dr., Revolutionary War Way, and associated interchange with Carolina Bays Parkway to the Official Index Map.

Third Reading – Ord. 27-17 to add certain properties to the Historic Property Register as individual historic properties.

Third Reading – Ord. 28-17 to amend the zoning ordinance pertaining to minor amendments to a MRD zoning district.

Third Reading – Ord. 30-17 to amend the zoning ordinance pertaining to swimming pools.

First Reading on the following Ordinances to approve the request to amend the official zoning maps:
Ord. 43-17 Nan Trout, agent for Central Storage LLC; Ord. 44-17 Palm Lakes Plantation PDD; Ord. 45-17 Eric Hardee, agent for Everette & Evelyn Hardee; and Ord. 46-17 Keith Richardson.

PRESENTATIONS / RESOLUTIONS: None.

READING OF ORDINANCES:

Second Reading and Public Hearing – Ord. 32-17 amending Ordinance 93-16 to repeal the sunset provision applicable to the 1.5% hospitality fee, and other matters related thereto. **Mr. Loftus moved to approve, seconded by Mr. Crawford.** Mr. Eldridge gave a brief history of the fee. The intent at the time was for the revenues from the 1.5% hospitality fee to pay back a state infrastructure bank loan and principal. It paid for a lot. The original idea was it would be paid off in 2022. New projections have it being paid off in 2019. This was passed before state law changed, and it was unique to Horry County. It was a 1.5% sales fee on all prepared food, drink, accommodations, and admissions. All those were rolled in together at 1.5% hospitality fee. It generated over $38 million a year. 50% of that revenue came from prepared food and drinks, 40% from lodging, and 10% from admissions. It would be safe to say that at least 75% of this revenue was derived from people visiting Myrtle Beach. This would be the continuation of the tax. By passing this ordinance, any expenditures were restricted by state law. The possible projects going forward would be I-73, the $1.4 billion of road projects left from RIDE III, beach parking, recreation facilities with tournament capabilities, equestrian centers, completing the I-22 loop, and public safety. This would be a continuation of the tax. He didn't think there would ever be a shortage of money that this money could be spent on in the future. Just the road project alone could go out the next 40 – 50 years. The way the ordinance was written gives flexibility to council to choose those projects and to make changes over time as priorities change and as things come up to the top of the list because there may be something 10 years down the road that council would like to do. Chairman Lazarus clarified that state law dictated what you could use it for. Any expenditures of those funds would have to be voted on in a three reading ordinance by county council. Mr. Eldridge said yes. It would be part of the budget process like anything else, and it was a stable enough source to where you could borrow against it. You could bond a project and commit a portion or all the proceeds towards a project or a group of projects. You wouldn't have to pay as you go on anything either. It would

give them the ability to do larger projects. Just like when they did the Ride III ordinance they would put in the option of doing finances if they needed to bundle projects together to get things done quicker. **There was no public input.**

Mr. Prince asked if this would keep them from having to raise property taxes. Could they use this for the funds for things in which they might would have had to raise property taxes for? Mr. Eldridge said correct. This was a benefit that would definitely have a local benefit and you had the luxury of having visitors pay the lion's share of the cost. There was a local benefit to it as in road work that needed to be done.

Mr. Worley asked if they had the cart before the horse. They were going to raise taxes on the people before they knew what they were going to spend it on. Was that what he was hearing? Chairman Lazarus said no. Mr. Worley asked if they were going to spend it for roads. Chairman Lazarus said it would be used for infrastructure needs. Those listed that were applicable to hospitality. The law stated what you could and could not use it for. As Mr. Eldridge said, there was never a shortage of roads. The biggest project that we had facing us once the permitting came about was about $400 million allocated to the Horry County portion of I-73. That alone would give us the matching funds to get federal dollars for it to go outside of Horry County. You could not spend these dollars outside of Horry County. So in essence with most of it being paid by the tourists it could be allocated to a future I-73 portion in Horry County to take us to the line. Then the federal dollars would take us to I-95 which was the biggest thing that we needed for two reasons. One, tourism development and two, for economic development. The first thing anyone asked new businesses was what was their access to an interstate. We don't have one. This would give us that. It had been on the drawing board for 20+ years. This was not a new tax. It was an extension of a current tax that was already paid on admissions, accommodations, and prepared foods. It was already being collected and had been being collected for the last 20 years. That tax would just continue. It we didn't do it and at sunset in 2019 when the bonds were paid off, we could come back as a council but we would only be able to do it at 1% instead of the 1.5% by the new state law. So what they were doing in essence was ahead of that to where they could keep that .5% also to our favor for all these projects that they saw listed that a council and a three reading ordinance had to approve.

Mr. Worley said we had Ride II and Ride III currently on top of this so they were looking at roughly $60 to $70 million. Chairman Lazarus said Ride II expired, and they had quit collecting that tax until May when they would start collecting the new Ride III. Mr. Worley said this was about $38 - $39 million dollars. Wouldn't it make more sense if you were going to collect this tax and use it, to give the people of Horry County a credit on their millage? Chairman Lazarus said you couldn't do that. Mr. Worley said you could. To collect a tax that they didn't know what they would spend it for didn't seem right. There was something wrong with that. They needed more cops in Horry County, probably 150 cops. Why didn't they take some of that money and hire more cops and bring public safety up in pay scale where they needed to be in a living wage. Give the people of Horry County the protection they deserve. He couldn't vote for something that he really didn't know what he was voting for. They were asking him to tax the people, whether tourist or locals, when he didn't know what the money would be used for.

Chairman Lazarus said part of the money could be used for the jail, for EMS personnel, and for police that were allocated to tourism. He knew the scrutiny that was put over the hospitality fees. The police salaries that they would allocate that to could be offset for the beach patrol and other officers that they, as Mr. Spivey gave a reading recently of some tourism related, around $8 million worth of expenditures, that the county had that we potentially could take to the TERC Committee and get approval so that we could use hospitality fees to pay for some of those. That was something they could look at.

Mr. Worley said he thought they could get the whole $39 million allocated to tourism related expenditures because that was where it was coming from. It just made common sense. Having said that, if you could use a portion of this for public safety he thought it would make a lot of difference. He asked Mr. Powell what a mil was worth in Horry County. Mr. Eldridge said about $2 million. Mr. Worley said if we spent $15 million on public safety that would leave another $25 million so why didn't they give the people of Horry County a 12 mil tax savings. Chairman Lazarus said you couldn't do it today. The money that was being collected would go through 2019 so they were preparing for that time when it did sunset so we don't have the sunset enacted. So a council at that time could absolutely do that.

Mr. Eldridge said that was why the recommendation was to keep it as flexible as you could to where council would have that opportunity. If the council seated at the time wanted to look at those tourism related expenditures and look at covering those costs, that would be council's option at the time or to look at other capital related projects that may come up. There were plenty of road projects sitting out there. They had just went through Ride III. That would be a consideration for council. If I-73 got permitted, which appeared to be fairly close, Horry County would be expected to be a partner in that. That was an opportunity. The SELL project was a $600 million to a billion project. Just look at the magnitude of the projects sitting out there. His recommendation would be to keep this intact as best as they could as a funding source for it. Mr. Worley said that government was not in the business to make a profit. Mr. Eldridge said they were in the business of breaking even. Mr.

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Worley said this was a profit. We were going to have excess monies. If they were going to keep this money, then they needed to give back to the people in the form of millage to do the right thing.

Mr. Prince asked about a recreational project that has been mentioned several times. Mr. Eldridge said they had talked about a conference center or something like that. If you made the nexus towards attracting tourists to our community from outside Horry County, then you could justify it. That was the justification. You needed people driving or flying here to use the facility. Chairman Lazarus said if a tourism equestrian center was part of that, then yes you could use it for that. Mr. Prince asked for a list of everything they could use it for so that they could be prepared to start putting something together. Chairman Lazarus referred him to the screen. Mr. Prince said he understood that they may be able to use it for some things that they would usually use property taxes for. Chairman Lazarus said that was correct. Mr. Prince said that would help to keep from raising taxes and maybe help with public safety. If a lot of it could go to that, they may be able to reduce taxes. Mr. Eldridge said those would be choices that council would be able to make in the future. They still had two years of payments on the debt and then they would be debt free. Then council could make those choices at that time. Mr. Vaught said they wanted the ability to make those choices. Mr. Eldridge said exactly and without doing this you were cutting back on your ability to do that in the future. Mr. Prince said he was like Mr. Worley and said he wanted to be able to reduce property taxes instead of raise them.

Mr. Servant said his only reservation about this ordinance was that the money would not be spent on what it was originally passed for which was improving existing roads and building new ones. He could promise the residents of Horry County that he would be a tax payer watchdog over these monies to make sure these monies were spent correctly and efficiently on roads, new and improving the existing ones.

Mr. Crawford said Councilmen Worley and Prince made a good point about at some point in the future using the money to help upgrade our public safety (inaudible).

Mr. Vaught said one way to look at this too was if we got $1 raised from this, $.75 of that dollar didn't come from Horry County residents. It came from outside from tourism and stuff like that that would be applied to Horry County projects. Projects that we need to continue to promote tourism and to make things happen in Horry County. That was a pretty good deal.

Mr. Servant wanted to remind council that it wasn't that long ago, a couple of years ago, that we had the largest tax increase ever in Horry County which was sponsored by the majority of council, all except him and Mr. Worley, on the back of public safety. He would like for the administrator to bring to county council how much of that money was being currently spent for public safety. Chairman Lazarus said all that was allocated to the Class One officers getting a 5% raise and then all of Horry County personnel getting an average of a 3% raise was where it all went to. Mr. Servant asked Mr. Eldridge how much of the $7 million was being spent on public safety. Mr. Eldridge said the bulk of it went to public safety. It was positions that were added. The Class One officers got 5% as opposed to the rest of the employees getting 3%. Mr. Servant again asked how much of the $7 million went to public safety. Mr. Eldridge said it was 7 mils so it was $14 million per year. He could go back and look. They added another EMS crew as well. The bulk of it went there but they could go back and look. It went where council approved for it to go. Chairman Lazarus said they added another crime task force in that which was seven more personnel, a gang task force. He said Mr. Powell could bring that to the next meeting. Mr. Servant said he wanted to make sure that council realized that when this ordinance was originally passed by county council it was meant to go for roads and infrastructure. He didn't want to see Horry County make the same mistake the state had which was comingling funds that were supposed to go for roads and go for other parts of county government.

Mr. Crawford said he wanted to reiterate that we did need more police officers. This particular (inaudible) would allow them greater flexibility in doing that in the future.

Mr. Allen said they could never pay the police and fire what they really should be paid because it was a thankless job at times. If they didn't pass this it was going to take away a lot of their options and a lot of their flexibility in the future where they could do something for them without having to raise property taxes within this county. To him, this was about the best thing short of them setting up a toll booth at 501 at Gallivants Ferry.

Chairman Lazarus called for a vote.

Yea		Nay
Vaught	Servant	Worley
Hardee	Howard	
Crawford	Phillips	
Prince	Allen	
Lazarus	Loftus	

The motion passed ten to one.

Second Reading and Public Hearing – Ord. 33-17 to amend the County Code to update the county's ordinance summons process. **Mr. Loftus moved to approve, seconded by Mr. Crawford. There was no public input.** Mr. Vaught asked Mr. Carotti to explain the ordinance. He wanted the public to know what they were trying to do. Mr. Carotti said the charging document as provided by state law for violation of ordinances was the ordinance summons. State law allowed the counties by enactment of the local governing body to establish the ordinance summons locally to be used for violation of local ordinances that were passed by that governing body. For instance, if there was a violation of one of our zoning laws, the proper charging documents would not be the uniform traffic ticket, it would be the ordinance summons. So the local governing body established what departments and what agents of that local government had the authority to issue these tickets. The last time it was done was in 2009. He had updated the ordinance summons ordinance to comport with how we practiced in Horry County and to comport with current state laws. What they had was a reflection of the requirements under state law. It designated the officials or officers, the departments that were authorized under state and county law to issue these ordinance summons for violation of our local laws. The one major amendment since 2009 was the transfer of business license and hospitality fee ordinance. It transferred those responsibilities from the treasurer's office to the administrator in finance. It was transferred down to treasurer years ago for various reasons. It was not in finance. They issued tickets on occasion for violation of our local hospitality fee and business license laws so that responsibility would come upstairs so that change had to be made. He also looked at the ordinance and some clean up needed to be done as well.

Mr. Vaught asked that since we moved the hospitality accommodations tax and all that back under finance, did that mean the treasurer would no longer have any need to issue an ordinance summons. Mr. Carotti said that was correct. That was the only need they had for that in the past. Mr. Vaught said he thought there was something about boat licenses and that kind of things. Mr. Carotti said that to his knowledge they had never issued an ordinance summons other than for business license hospitality fee. Mr. Vaught said he just wanted to make sure they hadn't overlooked something that they still might need to issue an ordinance summons on. Mr. Carotti said he had checked and been assured that was not the case. Mr. Allen asked if this would add any more expense or positions to the county side by doing this. Mr. Carotti said absolutely not. **The motion was unanimously passed.**

Second Reading and Public Hearing of the following Ordinances to approve the request to amend the official zoning maps:
Ord. 34-17 Stillwater PDD
Ord. 36-17 DDC Engineers, agent for Cap Care Group, Inc.
Ord. 37-17 Terry & Pamela Jamison
Ord. 38-17 Melody Page, agent for Karen Murray
Ord. 39-17 Venture Engineering, agent for Drexel 101, LLC
Ord. 40-17 Venture Engineering, agent for Queens Park Inc.
Ord. 41-17 Karen Townley-Rabon & Rosemary Chestnut

Mr. Vaught moved to approve, seconded by Mr. Hardee. Mr. Prince moved to amend Ord. 36-17. (There was no second to the motion.) They had a copy of the amendment before them. Mr. Schwerd said the first reading version had the ordinance and a copy of the proposed development agreement. The development agreement assured that the developer, if they developed the property, would have to make the improvements to Long Bay Road which was currently a dirt road. They would have to build the road from the site all the way out to the nearest paved public road. It had the two public hearings at the planning commission. They both recommended approval. It basically made sure the developer paid their share of those improvements and built that road. Mr. Prince asked what was the name of the road. Mr. Schwerd answered that it was Long Bay Road. This particular property was all the way at the Intracoastal Waterway. Mr. Prince asked if it came up to Watertower Road. Mr. Schwerd said correct. Eventually it did reach Watertower Road. Mr. Prince asked if it would be a black top. Mr. Schwerd said they would have to pave it the entire way out unless the extensions to Champions Boulevard was paved at that time. **The amendment was unanimously passed.**

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There was no public input on the above-referenced ordinances.

Mr. Prince requested the Mr. Garigen explain how they would take care of the storm water and the runoffs for **Ord. 38-17**. Mr. Garigen asked if he was referring to the one on Hwy. 90 or the one of Monica Drive. Mr. Prince said both of them. Mr. Garigen asked not the one from Melody Page. Mr. Prince said the one on Monica Drive and the one on Hwy. 90. Mr. Garigen said they had had issues out there in the past for the one on Hwy. 90. Ms. Snipes lived out there and she had expressed concerns about the drainage there but this project was downstream. Ms. Snipes' property was upstream of where this project was located near Old Hwy. 90. This project drained under Old Hwy. 90 and then into Big Jones Swamp and then under Hwy. 90. As long as the drainage flow continued from the upstream area of Ms. Snipes' property, it should not cause any problems for her whatsoever. It was flowing through a natural wetland area and then out to Old Hwy. 90. Most of this property was wetland. There was some high ground up there that had good soils on it. They didn't see a particular issue there. Regarding the drainage concerns that Ms. Snipes had, they really needed to work with the DOT to improve that because that was water coming off of Hwy. 90 crossing her property. It washed out her driveway in the big storms. That was something they could talk to the DOT about improving and carrying that water down Hwy. 90 like it should. Mr. Prince said if they could get some relief on the tile part. Mr. Garigen said the tile under her driveway was a couple of hundred feet back from the road and that was what was carrying that water from Hwy. 90 and Hwy. 22, the interchange there. They needed to work with the DOT on that. That didn't really have anything to do with this project. Mr. Prince said everything that we were doing and the developer was doing should help. Mr. Garigen said he wasn't going to say it should help but it wouldn't hurt her because it was downstream. Mr. Prince said he was talking about the downstream part of it. Mr. Garigen said yes. They didn't see any particular issues with the drainage on the project on Monica Drive. He knew there were some concerns about the houses adding more traffic along Monica Drive and having to come out to the light there, but that was what happened with new developments. If you have more houses, you have more traffic. Monica Drive could certainly handle the traffic. They didn't see any big issues with the drainage there either. Mr. Worley requested to be shown as a no vote on **Ord. 38-17**. **The motion was passed with the Mr. Worley voting nay.**

OLD/NEW BUSINESS: None.

ANNOUNCEMENTS: None.

Memorial Dedications: John Usick; Richard Smith; Laura Best; and John Dawsey.

Upcoming meetings: Regular Council Meeting – April 18, 6:00 p.m.; Public Safety Committee – May 9, 10:00 a.m.; I & R Committee – April 25, 9:00 a.m.; Administration Committee – April 25, 2:00 p.m.; Transportation Committee – May 15, 9:00 a.m.; and Public Hearing/Workshop on Discharge of Firearms – May 3, 5:00 p.m.

EXECUTIVE SESSION: None.

ADJOURNMENT: With no further business, Mr. Vaught moved to adjourn at approximately 6:46 p.m. and it was seconded. The motion was unanimously passed. The meeting was adjourned in memoriam of: John Usick; Richard Smith; Laura Best; and John Dawsey.

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HORRY COUNTY COUNCIL

Mark Lazarus, Chairman

Harold G. Worley, District 1
Dennis DiSabato, District 3
Tyler Servant, District 5
Harold Phillips, District 7
W. Paul Prince, District 9
Al Allen, District 11

Bill Howard, District 2
Gary Loftus, District 4
Cam Crawford, District 6
Johnny Vaught, District 8
Danny Hardee, District 10

Attest:

Patricia S. Hartley, Clerk to Council

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EXHIBIT D

DIVISION 4. - BOARD OF FEE APPEALS

Sec. 2-111. - Creation.

There is hereby established a board of fee appeals to be composed of a chairperson and four (4) other members. The county auditor and county treasurer shall serve as ex officio members of the board. The county administrator shall appoint the chairman and four (4) members of the board.

(Ord. No. 8-00, § 2, 3-21-00; Ord. No. 117-03, 1-13-04)

Sec. 2-112. - Term.

The term of office of the chairperson and each member of the board shall be four (4) years, except that in taking the initial appointments, one (1) member shall be appointed for a term of one (1) year, two (2) members shall be appointed for a term of two (2) years, and two (2) members, including the chairperson shall be appointed for a term of three (3) years. Thereafter, their successors shall be appointed for terms of four (4) years or the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office. Members may be reappointed for one (1) succeeding term. If there is no chairperson, or if such officer is absent or unable to serve, the senior member in length of service shall be temporary chairperson.

(Ord. No. 8-00, § 2, 3-21-00)

Sec. 2-113. - Administrative support.

The county administrator is authorized to provide for the board such services as may be agreed upon between the administrator and the chairperson.

(Ord. No. 8-00, § 2, 3-21-00)

Sec. 2-114. - Quorum.

A majority of those members appointed to the board shall constitute a quorum.

(Ord. No. 8-00, § 2, 3-21-00)

Sec. 2-115. - Jurisdiction.

(a) The board of fee appeals shall have jurisdiction to review any fee or penalty decision, and final fee or penalty assessment arising under any county fee, revenue, or license ordinance. Notwithstanding the above grant of jurisdiction, nothing in this section shall be interpreted as granting the board of fee appeals authority to hear those matters which the board of

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zoning appeals is authorized by state law or county ordinance to hear. The aggrieved party shall initiate the appeal by written notice stating the reasons therefore filed, within ten (10) business days after payment of the assessment under protest. A written notice of appeal must be accompanied with a twenty-five dollar ($25.00) fee. The fee will be refunded in the event of final resolution of the appeal in favor of the appellant.

(b) An appeal or hearing on those matters set forth in subsection (a) above, shall be held by the board within forty-five (45) days after receipt of a request for appeal, at a time and place of which the applicant or licensee has been given written notice. At such hearing all parties shall have the right to be represented by counsel and to present evidence. The hearing shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by the board shall govern the hearing. The board shall render a written decision based on findings of fact and the applicable ordinances which shall be served on all parties or their representatives and shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service.

(Ord. No. 8-00, § 2, 3-21-00; Ord. No. 01-01, §§ 1, 2, 2-6-01; Ord. No. 92-16, § 4, 1-10-17)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	**HORRY COUNTY'S**
For Itsef and a Class of Similarly Situated Plaintiffs,	)	**MOTION FOR LEAVE TO FILE AMENDED ANSWER AND COUNTERCLAIMS**
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	
	)	

Horry County ("County") respectfully moves for leave to file Amended Answer and Counterclaims, pursuant to Rule 15(a), SCRCP. Attached to this motion is the County's proposed Amended Answer and Counterclaims.

Leave to amend "shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRCP. As our Supreme Court has explained, "[t]his rule strongly favors amendments and the court is encouraged to freely grant leave to amend." *Patton v. Miller*, 420 S.C. 471, 489, 804 S.E.2d 252, 261 (2017). This policy is based on the goal that a party should "be afforded an opportunity to test his claim on the merits." *Id.* at 490, 804 S.E.2d at 262 (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

In accordance with Rule 11, SCRCP, the defendant has conferred with the City to obtain its consent but the City refused to consent.

Respectfully submitted:

Burr & Forman LLP

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Attorneys for Defendant

Myrtle Beach, South Carolina

Dated: May 29, 2019

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STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2019-CP-26-01732
City of Myrtle Beach)) For Itself and a Class of Similarly) Situated Plaintiffs,)) Plaintiff,)) vs.)) Horry County,)) Defendant.)	**DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIMS**

The Defendant, answering the Complaint of the City of Myrtle Beach (referred hereinafter as the "City"), would respectfully show and allege unto this Honorable Court as follows:

FIRST DEFENSE

1. Each and every allegation in the Complaint which is not hereinafter admitted, modified or qualified is denied and strict proof demanded thereof.

2. To the extent Paragraph 1 of the Complaint contains factual allegations, they are generic and/or hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon the statutes which are not attached to the Complaint or other legal matters, Defendant craves reference to the statutes and applicable laws for their content, and denies any inconsistent allegations or characterizations. In addition, Paragraph 1 contains impertinent and scandalous matters which should be stricken. As a result, Defendant denies the allegations in Paragraph 1.

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3. Paragraph 2 of the Complaint sets forth the City's legal conclusions to which no response is required. To the extent that a response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 2.

4. The allegations of Paragraph 3 are admitted.

5. In answering Paragraph 4, it is admitted that the Defendant is a body politic and corporate and political subdivision of the State of South Carolina.

6. Paragraph 5 of the Complaint sets forth the City's legal conclusions to which no response is required. To the extent the City's allegations reference, describe or depend upon the statutes which are not attached to the Complaint or other legal matters, Defendant craves reference to the statutes and applicable laws statutes for their content, and denies any inconsistent allegations or characterizations.

7. Paragraph 6 of the Complaint sets forth the City's legal conclusions to which no response is required. To the extent the City's allegations reference, describe or depend upon the statutes which are not attached to the Complaint or other legal matters, Defendant craves reference to the statutes and applicable laws statutes for their content, and denies any inconsistent allegations or characterizations.

8. Paragraph 7 of the Complaint sets forth the City's legal conclusions to which no response is required. To the extent that a response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 7.

9. Paragraph 8 of the Complaint sets forth the City's legal conclusions to which no response is required. To the extent that a response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 8.

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10. The allegations contained in Paragraph 9 of the Complaint set forth the City's legal contentions, all of which are denied, including subparagraphs a - e. Paragraph 9 of the Complaint is based on a false premise in that it presumes, erroneously, that Defendant's actions were "illegal." To the extent that a further response is required, Defendant denies that a class action is appropriate and denies the allegations and implications in Paragraph 9, including subparagraphs a - e.

11. The allegations contained in Paragraph 10 of the Complaint set forth the City's legal contentions, all of which are denied, including subparagraphs a - c. Paragraph 10 of the Complaint is based on a false premise in that it presumes, erroneously, that Defendant's actions were "illegal." To the extent that a further response is required, Defendant denies that a class action is appropriate and denies the allegations and implications in Paragraph 10, including subparagraphs a - c.

12. Paragraph 11 of the Complaint sets forth legal conclusions to which no response is required. Paragraph 11 is based on a false premise in that it presumes, erroneously, that Defendant's actions were "illegal" and in that it asserts that the City, and others listed in Paragraph 7, "paid the illegal fee." To the extent that a further response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 11.

13. Paragraph 12 of the Complaint sets forth legal conclusions to which no response is required. The City's allegations that it possesses sufficient knowledge and involvement in the matter to fairly and adequately protect the interests of each member of the Class are specifically denied. The City's legal action is solely in its own self-interest and is specifically contrary to and in conflict with the interests of the parties listed in Paragraph 7. Moreover, the Complaint demonstrates a fundamental lack of knowledge as to the facts, circumstances, and law. The City misunderstands, mischaracterizes, and misstates the facts and circumstances alleged in its

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Complaint. Furthermore, the City ignores South Carolina state law in all aspects of its allegations. To the extent that a further response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 12.

14. Paragraph 13 of the Complaint sets forth legal conclusions to which no response is required. To the extent that a further response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 13.

15. To the extent Paragraph 14 of the Complaint contains factual allegations, they are generic and/or hypothetical, are irrelevant to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon the RIDE Report, Defendant craves reference to the RIDE Report's specific content, in full, and denies any inconsistent allegations or general characterizations of the RIDE Report. Moreover, Defendant asserts that the RIDE Report is irrelevant to the subsequent actions of Defendant and South Carolina's General Assembly. Defendant denies the allegations in Paragraph 14.

16. To the extent Paragraph 15 of the Complaint contains factual allegations, they are generic and/or hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon Ordinance No. 105-96, Defendant craves reference to the content of Ordinance No.

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105-96, and denies any inconsistent allegations, hypotheses, or characterizations. Defendant denies the allegations in Paragraph 15.

17. To the extent Paragraph 16 of the Complaint contains factual allegations, they are generic and/or hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon Ordinance No. 105-96, Defendant craves reference to the content of Ordinance No. 105-96, and denies any inconsistent allegations, hypotheses, or characterizations. Defendant denies the allegations in Paragraph 16.

18. To the extent Paragraph 17 of the Complaint contains factual allegations, they are generic and/or hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon Ordinance No. 105-96, Defendant craves reference to the content of Ordinance No. 105-96, and denies any inconsistent allegations, hypotheses, or characterizations. Defendant denies the allegations in Paragraph 17.

19. The Defendant admits to Paragraph 18.

20. To the extent Paragraph 19 of the Complaint contains factual allegations, they are generic and/or hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly

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referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon City of Myrtle Beach Resolution dated October 8, 1996 , Defendant craves reference to the content of said Resolution, and denies any inconsistent allegations, hypotheses, or characterizations, including any allegations as to what the City Council of Myrtle Beach "understood" at the time of the passage of said Resolution. Defendant denies the allegations in Paragraph 19.

21. To the extent that Ordinance No. 105-96 was properly enacted on October 15, 1996, following third and final reading, and recorded in the office of the Register of Mesne Conveyances in Book 1895, Page 838, the Defendant admits to Paragraph 20. All other allegations in Paragraph 20 are denied. To the extent the City's allegations reference, describe or depend upon Ordinance No. 105-96, Defendant craves reference to the content of Ordinance No. 105-96, and specifically denies any inconsistent allegations or characterizations. Defendant further states that the reference to Exhibit A is incorrect.

22. To the extent that Ordinance No. 7-97 was properly enacted on February 4, 1997, following third and final reading, and recorded in the office of the Register of Mesne Conveyances in Book 1922, Page 1463, the Defendant admits to Paragraph 21. All other allegations in Paragraph 21 are denied. To the extent the City's allegations reference, describe or depend upon Ordinance No. 7-97 and Ordinance 105-96, Defendant craves reference to the content of said ordinances, and specifically denies any inconsistent allegations or characterizations, including the allegations as to the purpose of Ordinance No. 7-97. Moreover, the Defendant specifically denies any implication that "the Fee Use Provision and the Sunset Provision" being retained in Ordinance No. 7-97 had any force or practical effect as to future actions of the Defendant.

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23. To the extent that an application was submitted to the South Carolina Transportation Infrastructure Bank on or about October 15, 1997, the Defendant admits to Paragraph. All other allegations in Paragraph 22 are denied. To the extent the City's allegations reference, describe or depend upon said application, Defendant craves reference to the content of said application, and specifically denies any inconsistent allegations or characterizations, including the characterizations and implications that recommendations had any force of law or practical effect as to future actions of the Defendant.

24. To the extent that Resolution Number 224-97 was properly enacted on November 18, 1997, the Defendant admits to Paragraph 23. All other allegations in Paragraph 23 are denied. To the extent the City's allegations reference, describe or depend upon Resolution Number 224-97, Defendant craves reference to the content of said Resolution, and specifically denies any inconsistent allegations or characterizations, including the allegations as to the recitals of said Resolution.

25. To the extent that an amended application was submitted to the South Carolina Transportation Infrastructure Bank on or about November 20, 1997, the Defendant admits to Paragraph 24. All other allegations in Paragraph 24 are denied. To the extent the City's allegations reference, describe or depend upon said amended application, Defendant craves reference to the content of said application, and specifically denies any inconsistent allegations or characterizations.

26. To the extent that the Defendant entered into a loan agreement with the South Carolina Transportation Infrastructure Bank on or about March 10, 1998, the Defendant admits to Paragraph 25. All other allegations in Paragraph 25 are denied. To the extent the City's allegations

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reference, describe or depend upon said loan agreement, Defendant craves reference to the content of said loan agreement, and specifically denies any inconsistent allegations or characterizations.

27. To the extent that the Defendant entered into a loan agreement with the South Carolina Transportation Infrastructure Bank on or about April 21, 1998, the Defendant admits to Paragraph 26. All other allegations in Paragraph 26 are denied, including, specifically, that the loan amount was in the approximate amount is $247.6 Million. To the extent the City's allegations reference, describe or depend upon said loan agreement, Defendant craves reference to the content of said loan agreement, and specifically denies any inconsistent allegations or characterizations.

28. To the extent that the Defendant properly enacted Ordinance No. 7-97, Ordinance No. 76-97, Ordinance No. 80-01, and Ordinance No. 11-04, the Defendant admits to Paragraph 27. All other allegations in Paragraph 27 are denied. To the extent the City's allegations reference, describe or depend upon said ordinances, Defendant craves reference to the content of said ordinances, and specifically denies any inconsistent allegations or characterizations. As to the City's specific allegation in Paragraph 27 that the provisions of Ordinance No. 105-96 "pertinent to the instant complaint" are not amended by Ordinance No. 11-04, Defendant craves reference to the following section of Ordinance No. 11-04, which states:

> The Hospitality Fee Ordinance, Number 105-96, as heretofore amended, including the one and one-half percent (1.5%) portion of the Hospitality Fee deposited into the Road Special Revenue Fund, hereby is extended for an additional period of not to exceed five (5) years, which extension expires January 1, 2022.

Thus, Horry County extended the sunset provision fifteen years ago, on April 20, 2004.

29. To the extent that the Defendant properly enacted Ordinance No. 93-16 on December 6, 2016, the Defendant admits to Paragraph 28. All other allegations in Paragraph 28 are denied. To the extent the City's allegations reference, describe or depend upon said Ordinance No. 93-16, Defendant craves reference to the content of Ordinance No. 93-16, and specifically

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denies any inconsistent allegations or characterizations. Defendant specifically denies any allegation or implication that Defendant was required by state law or its own ordinances that it obtain the City's approval or consent before enacting Ordinance No. 93-16. Moreover, Defendant specifically denies any allegation that the Defendant did not seek support of the City or other municipalities prior to enactment of Ordinance No. 11-04 or Ordinance No. 93-16.

30. To the extent that the Defendant properly enacted Ordinance No. 32-17 on May 2, 2017, the Defendant admits to Paragraph 29. All other allegations in Paragraph 29 are denied. To the extent the City's allegations reference, describe or depend upon said Ordinance No. 32-17, Defendant craves reference to the content of Ordinance No. 32-17, and specifically denies any inconsistent allegations or characterizations. Defendant specifically denies any allegation or implication that Defendant was required by state law or its own ordinances that it obtain the City's consent before enacting Ordinance No. 32-17. Moreover, Defendant specifically denies any allegation that the Defendant did not seek support of the City or other municipalities prior to enactment of Ordinance No. 32-17.

31. The Defendant admits Paragraph 30.

32. To the extent that Resolution Number R-82-18 was properly enacted on July 24, 2018, the Defendant admits to Paragraph 31. All other allegations in Paragraph 31 are denied. To the extent the City's allegations reference, describe or depend upon Resolution Number R-82-18, Defendant craves reference to the content of said resolution, and specifically denies any inconsistent allegations, characterizations, or alleged motivations of County Council.

33. To the extent that Resolution Number R-84-18 was properly enacted on July 24, 2018, the Defendant admits to Paragraph 32. All other allegations in Paragraph 32 are denied. To the extent the City's allegations reference, describe or depend upon Resolution Number R-84-18,

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Defendant craves reference to the content of said resolution, and specifically denies any inconsistent allegations, characterizations, or alleged motivations of County Council.

34. Defendant denies the allegations in Paragraph 33.

35. Defendant admits the allegations in Paragraph 34.

36. To the extent Paragraph 35 of the Complaint contains factual allegations, the stated estimates are irrelevant to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this action, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon the minutes of County Council, Defendant craves reference to the specific content of said minutes, in full, and denies any inconsistent allegations or general characterizations of the County Council minutes. Defendant denies the allegations in Paragraph 35.

37. Defendant denies the allegations in Paragraph 36. Defendant specifically denies any implied requirement that it obtain the City's consent before enacting or amending any of the county ordinances references in Complaint.

38. Upon information and belief, Defendant admits the allegations in Paragraph 37.

39. With respect to Paragraph 38, Defendant realleges and incorporates, by reference, its aforesaid responses to the Complaint.

40. The allegations contained in Paragraph 39 of the Complaint, including subparagraphs a., b., c. and d., are statements of the City's legal contentions. Defendant disputes those contentions. To the extent a response is required, Defendant craves reference to the provisions of Sections 15-53-10 to 140 , *et seq.* of the Code of Laws for the State of South Carolina, and denies all allegations of Paragraph 39 that are inconsistent therewith. To the extent Paragraph

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39, including subparagraphs a., b., c. and d., contains factual allegations, those allegations are denied. To the extent the City's allegations reference, describe or depend upon the contents of documents, ordinances, or statutes, Defendant craves reference to those documents for their contents, and denies any inconsistent allegations or characterizations.

41. The allegations contained in Paragraph 40 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied. To the extent the City's allegations reference, describe or depend upon the contents of documents, ordinances, or statutes, Defendant craves reference to those documents, ordinances, or statutes, in full, for their contents, and denies any inconsistent allegations or characterizations. Defendant specifically denies that the City or alleged proposed class members are entitled to any relief for there is no legal basis for such.

42. With respect to Paragraph 41 of the Complaint, Defendant realleges and incorporates by reference Paragraphs 1 through 41 of this Answer as if fully restated.

43. The allegations contained in Paragraph 42 of the Complaint set forth the City's legal contentions, all of which are denied. To the extent Paragraph 42 contains factual allegations, Defendant denies the allegations of Paragraph 42.

44. The allegations contained in Paragraph 43 of the Complaint set forth the City's legal contentions, all of which are denied. To the extent Paragraph 43 contains factual allegations, Defendant denies the allegations of Paragraph 43.

45. The allegations contained in Paragraph 44 of the Complaint set forth the City's legal contentions, all of which are denied. To the extent Paragraph 44 contains factual allegations, Defendant denies the allegations of Paragraph 44.

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46. The allegations contained in Paragraph 45 of the Complaint, including subparagraphs a. and b., set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied. To the extent the City's allegations reference, describe or depend upon the contents of documents, ordinances, or statutes, Defendant craves reference to those documents, ordinances, or statutes, in full, for their contents, and denies any inconsistent allegations or characterizations. Defendant specifically denies that the City or proposed class members are entitled to any relief for there is no legal basis for such.

47. With respect to Paragraph 46 of the Complaint, Defendant realleges and incorporates by reference Paragraphs 1 through 46 of this Answer as if fully restated

48. The allegations contained in Paragraph 47 of the Complaint set forth the City's legal contentions, all of which are denied, and any benefit to the Defendant, is, in equal measure, a benefit to the municipalities, including the City. To the extent Paragraph 47 contains factual allegations, Defendant denies the allegations of Paragraph 47.

49. The allegations contained in Paragraph 48 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied.

50. The allegations contained in Paragraph 49 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied. To the extent Paragraph 49 contains factual allegations, they are hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this action, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response.

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51. The allegations contained in Paragraph 50 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied.

52. The allegations contained in Paragraph 51 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied. Defendant specifically denies that the City, or proposed class members, are entitled to any relief for there is no legal basis for such.

53. With respect to Paragraph 52 of the Complaint, Defendant realleges and incorporates by reference Paragraphs 1 through 52 of this Answer as if fully restated

54. Defendant denies the allegations in Paragraph 53 of the Complaint.

55. The allegations contained in Paragraph 54 of the Complaint set forth the City's legal contentions to which no response is required. To the extent Paragraph 54 contains factual allegations, they are hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon the statutes which are not attached to the complaint or other legal matters, Defendant craves reference to the statutes and applicable laws for their content, and denies any inconsistent allegations or characterizations. Paragraph 54 contains impertinent and scandalous matters which should be stricken. Defendant denies the allegations in Paragraph 54 of the Complaint.

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56. The allegations contained in Paragraph 55 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied.

57. The allegations contained in Paragraph 56 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied. Defendant specifically denies that the City or proposed class members are entitled to any relief, including the creation of a constructive trust or "common fund."

58. The City implies, through its allegations in Paragraphs 16 and 19 of the Complaint, that a the comprehensive road plan adopted by the County was intended to be "in concert with the municipalities of the County" and that thus the Defendant is somehow bound to seek future consent from municipalities as to the length, amount or use of the Hospitality Fee put in place by and through Ordinance No. 105-96. This is a misreading and mischaracterization of said Ordinance and of the law.

59. As the City admits in Paragraph 19 of the Complaint, that several entities, including the South Carolina Department of Transportation, the Horry County Board of Education, and others passed resolutions in support of the RIDE Committee Report whereby the entities strongly encouraged and recommended that Horry County pass an ordinance implementing a Hospitality Fee.

60. Despite the allegations made in Paragraphs 28, 29, 36, 39, and 54, which are specifically denied, no requirement exists at law, nor did any requirement exist in 1996 or at any other time, whereby Horry County was required to obtain or maintain any approval or consent of any entity, including the Plaintiff, in order to impose and implement the Hospitality Fee or ordinances related to or amending the Hospitality Fee.

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61. The Defendant either fundamentally misunderstands or purposefully misconstrues any support provided in 1996 for Ordinance No. 105-06. Even if, at one time, the Defendant sought, and obtained support for Ordinance No. 105-06, the Plaintiff fails to adequately allege that there was, at any time, a requirement under state law, Ordinance No. 105-06, or otherwise, whereby the Defendant had to seek out or obtain any consent or approval of any entity, including the Defendant.

62. Upon information and belief, at no time has the Plaintiff passed a resolution or ordinance referencing, repealing or removing its strong and unanimous support to Horry County to enact ordinances as stated in the October 8, 1996 resolution.

63. Even though the ordinance was amended on February 4, 1997, August 5, 1997, June 19, 2001, April 20, 2004, December 6, 2016, and May 2, 2017, until the time of this lawsuit, upon information and belief, the Plaintiff took no action to assert its alleged rights to consent to said amendments, or to challenge or otherwise claim that amendments to Ordinance No. 105-96 required the consent of the City.

64. In its allegations, the City's mischaracterization of validly enacted ordinances improperly calls into question the proper actions taken by the Defendant regarding the sunset provisions of Ordinance No. 105-06. The City ignores the maxim that ordinances may be amended by and through subsequent ordinances. Through such amendments, any and all provisions of an ordinance, including a sunset provision, may be repealed, replaced or extended.

65. Now, after the Defendant has fostered a program that benefits the entire county for twenty two years, the City is incorrectly attempting, through this legal action, to call into question all actions taken by the Defendant, including actions taken to extend the sunset provision, which were properly enacted by the Defendant fifteen years ago.

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66. Upon information and belief, the City has amended its own ordinances by and through subsequent ordinances, yet the City alleges that the Defendant is precluded by state law or otherwise from doing the same.

67. In its allegations, the City characterizes itself as a victim that will be the proper entity to protect the rights of others. Yet, upon information and belief, the City has made these allegations so that it may bar the Defendant to continue to properly and effectively utilize the funds raised by the Hospitality Fee for the benefit of the entire County. Instead, in its insatiable desire for more money, the City has decided to roll the dice so that it may raise fees and taxes within the municipal limits of the City.

68. The City admits that it gave full and unanimous support to the Defendant to enact and implement a Hospitality Fee which has been in place and validly collected for over twenty two years.

69. The Defendant has at all times acted in good faith with the entire County in mind in its implementation and maintenance of the ordinances cited in the Complaint and the fees generated by said ordinances.

70. The City's allegations assert and imply that the Defendant has obtained a "windfall" and that the Defendant has received unjust enrichment to the detriment of the City and other municipalities by and through the Hospitality Fee. This is patently false, and calls into question the City's understanding of public funds. The funds collected by and through the Hospitality Fee, as in 1996, are and will be used under the statutory scheme set forth under state law by the South Carolina General Assembly. Moreover, all funds received have benefited and will continue to benefit the citizens and visitors of the County and all of its municipalities.

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71. The Defendant sought, and continues to seek, the support of the City and the other municipalities within Horry County in its efforts to improve the lives of all of the citizens of Horry County, and specifically, to obtain the support of the City in its properly enacted extension of Ordinance 105-96 and the Hospitality Fee.

72. The City cannot pick and choose what aspects of an ordinance, properly enacted by another political subdivision of the State, that it likes or does not like, and thereby legally challenge such ordinance through some misconstrued theory of consent and approval, which does not exist at law.

73. The City cannot, in its own interests, seek to nullify those proper actions of the Defendant by and through a claim that there is some alleged requirement that a right of consent or approval exists.

74. Upon information and belief, only when the City saw that it may use funds exclusively for the City did the City decide to litigate to try and force the County to acquiesce to the City's desire for more and more money.

75. The City's primary goal is to raise its state-mandated cap on fees it may charge its citizens and guests to the City so that the City may retain and use those funds for its own use.

76. The City seeks to thwart the long-standing state law provisions that allow for a governmental entity, in this case, the Defendant, to collect public funds for public benefit. Instead, the City seeks to keep and use such funds for uses limited to within its municipal boundaries.

77. Upon information and belief, the City's budget has increased significantly over the past several years.

78. The City's budgetary matters have been a cause of concern to the City for some time.

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79. By and through this lawsuit, the City is attempting to wrongfully force the Defendant to acquiesce to the City's demands for more funds.

80. The South Carolina General Assembly has capped the City's ability to tax its visitors and citizens within the City limits.

81. Now that the City has reached that cap, and to the detriment of the entire County and its municipalities, the City is now trying to obtain more money for its own use.

82. While the Defendant has worked to better the entire community, the City has apparently mismanaged its own budget, and now the City seeks to circumvent state law to shore up its own finances.

83. Instead of trying to work with the Defendant through the normal, correct political process to seek a resolution to best serve all citizens of the mutual communities, the City has decided to litigate its claims, which are based on incorrect theories of consent and approval of a political subdivision's valid actions.

84. This legal action is an attempt by the City to force the Defendant to give up its independent ability to legislate by passing and amending its own ordinances.

85. By and through this spurious legal challenge, the City is creating uncertainty and delay in the proper management of government. Moreover, the City, through this legal action, has increased the time, energy and cost of governmental affairs for all involved.

86. The City simply desires to funnel as much funds as it can directly to the City's coffers at the expense of the rest of the County and the County's smaller municipalities.

87. In response to the City's Prayer for Relief, Defendant denies that the City or any putative class member is entitled to any relief whatsoever, including, without limitation, that set forth in subparagraphs a – c.

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SECOND DEFENSE

88. The allegations of the First Defense are incorporated herein and made a part and parcel of this Second Defense.

89. The City fails to allege any state law or constitutional provision whereby the City's consent or approval was, or is, required for the Defendant to amend Ordinance No. 105-96.

90. Therefore, there is no justiciable question or fact or law at issue.

91. The Complaint fails to state facts sufficient to constitute a cause of action against the Defendant. Therefore, each of the City's claims should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

THIRD DEFENSE

92. The allegations of the First and Second Defenses are incorporated herein and made a part and parcel of this Third Defense.

93. By bringing this legal action, the City, without legal authority or standing, has requested that the Court amend and rewrite the Horry County ordinances.

94. The City may not exceed the authority granted to it by the South Carolina State Constitution and the South Carolina General Assembly.

95. The South Carolina State Constitution and the South Carolina General Assembly has not granted the City the authority to bring suit against political subdivisions for matters such as those alleged in the Complaint. Moreover, the purported class members do not have standing to sue a political subdivision of South Carolina for the matters alleged in the Complaint.

96. The City and/or any member of the purported class do not have standing to bring suit against the Defendant under the facts alleged, and therefore, the Complaint should be dismissed.

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FOURTH DEFENSE

97. The allegations of the First, Second, and Third Defenses are incorporated herein and made a part and parcel of this Fourth Defense.

98. The Defendant is organized under the Council-Administrator form of government as provided by Sections 4-9-20 and 4-9-610, et seq. of the Code of Laws for the State of South Carolina.

99. As a political subdivision of the State of South Carolina., the Defendant has certain powers conferred upon it by the South Carolina Constitution and state law.

100. All ordinances of the Defendant are duly considered and approved after three readings by Horry County Council and a public hearing.

101. The ordinances cited in the Complaint, including Ordinance No. 105-66, Ordinance No. 7-97, Ordinance No. 76-97, Ordinance No. 80-01, Ordinance No. 80-01, Ordinance No. 111-01, Ordinance No. 11-04, Ordinance No. 50-04, Ordinance No. 93-16, and Ordinance No. 32-17, were duly enacted after three readings and a public hearing.

102. All ordinances of the Defendant carry a presumption of validity and should not be disturbed.

103. The City fails to state any facts that the ordinances cited in the Complaint were not properly considered or enacted by the Defendant.

104. The City fails to allege any state law or constitutional provision whereby the ordinances cited in the Complaint are not valid.

105. The City fails to allege any facts, state law or constitutional provision whereby the Defendant must obtain any consent or approval of the City or any other entity before passage of any of the ordinances cited in the Complaint.

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106. Therefore, there is no justiciable question or fact or law at issue.

107. The Complaint fails to state facts sufficient to constitute a cause of action against the Defendant. Therefore, each of The City's claims should be dismissed.

FIFTH DEFENSE

108. The allegations of the First, Second, Third, and Fourth Defenses are incorporated herein and made a part and parcel of this Fifth Defense.

109. The Defendant fails to plead the essential elements of unjust enrichment, a cause of action also known as quantum meruit.

110. The City's allegations that an implied contract exists between the Defendant, the City, and any other party by and through the Hospitality Fee or the ordinance that created the Hospitality Fee is an incorrect reading of the law, and would create an absurd precedence whereby a government collecting a fee would thereby be considered to be in an implied contractual relationship with the fee payer.

111. Despite the allegations of the City, nothing about the Hospitality Fee is illegal.

112. The City has failed to state a prima facie case that an implied contract exists between the Defendant, the City, and any other party, including the putative class members.

113. The City has failed to state a prima facie case for breach of duty of good faith and fair dealing.

114. Therefore, City's Third and Fourth causes of action should be dismissed.

SIXTH DEFENSE

115. The allegations of the First, Second, Third, Fourth, and Fifth Defenses are incorporated herein and made a part and parcel of this Sixth Defense.

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116. Inasmuch as the claims made by the City are tort claims of actual or constructive fraud, abuse of confidence, and/or unconscionable conduct, the City's tort claims are barred by the economic loss doctrine.

SEVENTH DEFENSE

117. The allegations of the First, Second, Third, Fourth, Fifth, and Sixth Defenses are incorporated herein and made a part and parcel of this Seventh Defense.

118. Complaint fails to plead the essential elements of an entitlement to a declaratory judgment.

119. The City has failed to state a prima facie case for declaratory relief in that City failed to allege a substantial, direct, and legally protected present right or interest.

120. The City lacks standing to seek declaratory relief in that it has not alleged sufficient facts to fall within Sections 15-53-10, *et seq.*, of the Code of Laws for the State of South Carolina.

121. The City has not asserted a legal right and a denial of that right by Defendant. Therefore, a justiciable controversy does not exist in this case.

122. City has failed to state a cause of action for which declaratory relief may be granted. Therefore, City's request for declaratory relief should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

EIGHTH DEFENSE

123. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses are incorporated herein and made a part and parcel of this Eighth Defense.

124. The Complaint fails to plead the essential elements of a request for a preliminary or permanent injunction.

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125. Injunction is an extraordinary remedy that should not be granted where, as in this case, the City's right to a remedy under any legal or equitable theory is doubtful.

126. The City has not asserted a legal or equitable right of the City and a denial of that right by Defendant. Therefore, a justiciable controversy does not exist in this case.

127. There is no present or future justiciable controversy between the City and Defendant; therefore, the court lacks jurisdiction to grant injunctive relief.

128. The City has failed to establish an actual and substantial injury, or affirmative prospect thereof, and is not entitled to injunctive relief.

129. Through its own actions in not asserting any legal claim or equitable right for at least two years and for as many as fifteen years, the City has failed to establish that damages are immediate.

130. In accordance with the equitable maxim "he who seeks equity must do equity," the City is not entitled to equitable relief.

131. Therefore, the City's request for injunctive relief should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

NINTH DEFENSE

132. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth and Defenses are incorporated herein and made a part and parcel of this Ninth Defense.

133. The City's claims are barred by the doctrines of waiver, acquiescence, ratification, or estoppel.

TENTH DEFENSE

134. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Defenses are incorporated herein and made a part and parcel of this Tenth Defense.

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135. The voluntary payment doctrine bars all claims of the City, and of any member of the purported class whose Hospitality Fees have been paid in part or in full.

ELEVENTH DEFENSE

136. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, and Tenth Defenses are incorporated herein and made a part and parcel of this Eleventh Defense.

137. Any claim or allegation regarding the Sunset Provision can and should have been brought at the time of the amendments made by County Council to Ordinance No. 105-96, including, but not limited to Ordinance No. 11-04 enacted on April 20, 2004.

138. Moreover, any further claim or allegation could or should have been brought prior to the alleged subjected payment of "illegally charged Hospitality Fees."

139. The City and any purported class members had a duty to mitigate any or all of the alleged damages allegedly suffered by the City or the purported class members on or before January 1, 2017.

140. The City's recovery for any damages allegedly sustained by the City, which damages are specifically denied, must be reduced to the extent that the City has had the ability and opportunity to fully mitigate its damages, but has failed or refused to do so.

TWELFTH DEFENSE

141. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, and Eleventh Defenses are incorporated herein and made a part and parcel of this Twelfth Defense.

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142. The City knew or should have known of the extension of the Sunset Provision and amendments to Ordinance No. 105-96, including, but not limited to Ordinance No. 11-04 enacted on April 20, 2004.

143. If any valid claim were to be made regarding the consent of any municipality, including the City, to any amendments to Ordinance No. 105-96, such claim should have been brought at the time of said amendments.

144. The applicable statute of limitations bars all claims of the City and/or any member of the purported class which arose three years or more prior to the filing of this lawsuit.

THIRTEENTH DEFENSE

145. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, Eleventh, and Twelfth Defenses are incorporated herein and made a part and parcel of this Thirteenth Defense.

146. The Defendant extended the sunset provisions to Ordinance 105-96 in 2004.

147. If it is found that the City's allegations state a claim, which is specifically denied, the City neglected for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Specifically, and without prejudice to the generality of the forgoing, if it is found that the City's allegations state a claim, which is specifically denied, the City is required by the doctrine of laches to have brought the allegations on or before April 20, 2004, on or before December 6, 2016, or on or before January 1, 2017.

148. Instead, the City sat on its allegations for an unreasonable and unexplained length of time.

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149. The Defendant has rightfully relied on the actions it has taken on April 20, 2004, on December 6, 2016, and on January 1, 2017.

150. In light of the allegations made by the City, the delay in the City making the allegations has caused injury, prejudice, and disadvantage to the Defendant.

151. The doctrine of laches bars all claims of the City and/or any member of the purported class.

FOURTEENTH DEFENSE

152. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Defenses are incorporated herein and made a part and parcel of this Fourteenth Defense.

153. The City cannot assert its claims as a class action because the City has failed to define a legally definable and identifiable class of similarly situated entities or persons.

154. The City cannot assert its claims as a class action because the claims alleged would require an individualized inquiry for every purported class member which precludes class certification.

155. The City cannot prosecute its claims as a class action because whether a purported class member conferred a benefit upon Defendant such that its retention of that benefit is "unjust" requires an individualized inquiry that precludes class certification.

156. The City cannot prosecute its claims as a class action because the City has not suffered damages in excess of $100.00. Furthermore, the City fails to adequately allege that each member of the purported class has an amount in controversy in excess of $100.00.

157. To the extent members of the proposed class have paid the Hospitality Fee, the voluntary payment doctrine bars any claims for relief.

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158. The City is not an adequate representative of the class it seeks to represent.

159. The City cannot prosecute its claims as a class action because the City is not in the best position to fairly protect the interests of the class members.

160. The City cannot prosecute its claims as a class action because due process entitles Defendant to assert and prove any and all individual defenses it has to the claims asserted against Defendant by every purported class member.

FIFTEENTH DEFENSE

161. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, Eleventh, Twelfth, Thirteenth, and Fourteenth Defenses are incorporated herein and made a part and parcel of this Fifteenth Defense.

162. Defendant is a governmental entity within the meaning of § 15-78-10, *et seq.* of the Code of Laws for the State of South Carolina

163. Any claim for damages based on a legislative action or inaction is barred and/or limited by the provisions of § 15-78-60 of the Code of Laws for the State of South Carolina.

164. Any claim for damages based on a tortious act of commission or omission, including the claims of actual or constructive fraud, abuse of confidence, and/or unconscionable conduct, is barred and/or limited by the provisions of § 15-78-60 of the Code of Laws for the State of South Carolina.

SIXTEENTH DEFENSE
AND
FIRST COUNTERCLAIM

165. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth Defenses are incorporated herein and made a part and parcel of this Sixteenth Defense and First Counterclaim.

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166. The City unambiguously made certain promises to Defendant, including, but not limited to the City's strong and unanimous support of the Defendant's actions whereby the City urged the Defendant to implement the RIDE Report and collect a Hospitality Fee (the "City's Promises").

167. In reasonable reliance on City's Promises, Defendant agreed to incur the cost and expense associated with implementing the recommendations in the RIDE Report and in collecting and disbursing the Hospitality Fee.

168. Defendant only agreed to incur the cost and expense associated with such actions based on the City's Promises and upon the expectation that the City would keep the City's Promises.

169. In reasonable reliance on City's Promises, and with no expectation of having a lawsuit brought against it, the Defendant is now having to incur unexpected costs and expense in order to defend itself from the City's claims.

170. After unanimously and strongly urging Defendant to act, and then after Defendant so acted, in good faith with the express and implied support of the City for over twenty years, the City has now broken its promise of support.

171. The City expected and could foresee that Defendant would rely on the City's Promises.

172. Defendant did in fact rely on the City's Promises, and in reliance on the City's Promises, Defendant incurred costs and expenses.

173. The City's Promises were broken when the City commenced this lawsuit against Defendant.

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174. Defendant has been injured in reliance on the City's Promises, as Defendant incurred the needless cost and expense associated with the City's Promises.

175. Because the City has not kept its promises to Defendant, Plaintiffs should, in equity, have to pay the costs Defendant incurred in implementing the Hospitality Fee and in defending this lawsuit.

SEVENTEENTH DEFENSE
AND
SECOND COUNTERCLAIM

176. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, and Sixteenth Defenses are incorporated herein and made a part and parcel of this Seventeenth Defense and Second Counterclaim.

177. A justiciable controversy exists between the parties.

178. This Court has jurisdiction to issue a declaratory judgment pursuant to S.C. Code § 15-53-10 *et seq.*

179. In its Complaint, the City has challenged the validity of certain ordinances of the Defendant.

180. The Defendant is entitled to a declaratory judgment that:

A. Ordinance No. 105-96 was validity enacted on October 15, 1996, following third and final reading;

B. Defendant was not required to obtain approval or consent from the City for the passage of Ordinance No. 105-96;

C. Ordinance No. Ordinance No. 11-04 was validly enacted on April 20, 2004, following third and final reading;

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D. Defendant was not required to obtain approval or consent from the City for the passage of Ordinance No. 11-04;

E. The Hospitality Fee was validly extended by the Defendant in accordance with Ordinance No. 11-04;

F. Ordinance No. 93-16 was validly enacted on December 6, 2016, following third and final reading;

G. Defendant was not required to obtain approval or consent from the City for the passage of Ordinance No. 93-16;

H. Ordinance No. 32-17 was validly enacted on May 2, 2017, following third and final reading;

I. Defendant was not required to obtain approval or consent from the City for the passage of Ordinance No. 32-17;

J. The sunset provision of the Hospitality Fee was validly eliminated by the Defendant in accordance with Ordinance No. 32-17;

K. The Defendant may continue collecting the Hospitality Fee;

L. The Defendant was not required to obtain approval or consent from the City under state law or otherwise for the Defendant to extend the Hospitality Fee;

M. The Defendant was not required to obtain approval or consent from the City under state law or otherwise for the Defendant to eliminate the sunset provision for the Hospitality Fee; and

N. The City's collection of its new local accommodations and hospitality taxes under City Ordinances 2019-22 and 2019-23 would violate state law.

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EIGHTEENTH DEFENSE
AND
THIRD COUNTERCLAIM

181. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, and Sixteenth Defenses are incorporated herein and made a part and parcel of this Eighteenth Defense and Third Counterclaim.

182. If the City collects its new local accommodations and hospitality taxes on top of the Hospitality Fee, those taxes would exceed the maximum amount that a municipality may impose under state law for local accommodations and hospitality taxes. Therefore, the Defendant is likely to succeed on the merits.

183. The Defendant has no adequate remedy at law to stop the irreparable harm that it (along with the taxpayers) would suffer if the City collects taxes above the threshold set by state law.

184. The Defendant is entitled to preliminary and permanent injunctive relief prohibiting the City from collecting the taxes imposed by City Ordinances 2019-22 and 2019-23.

WHEREFORE, the Defendant, having fully answered the Complaint, pray for the following:

(1) the Complaint be dismissed with prejudice;

(2) the County be awarded declaratory and injunctive relief;

(3) the City be required to pay to the County all of the County's attorney's fees and costs it has incurred to defend this money-grabbing, frivolous lawsuit; and

(4) for such other and further relief as this Court may deem just and proper.

Respectfully submitted:

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Myrtle Beach, South Carolina

Dated: May 29, 2019
1975872v3

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiff, vs. Horry County, Defendant.	)	CIVIL ACTION NO. 2019-CP-26-01732 **MEMORANDUM IN OPPOSITION TO DEFENDANT HORRY COUNTY'S MOTION FOR LEAVE TO AMEND TO STATE NEW COUNTERCLAIMS**

Plaintiff, City of Myrtle Beach ("City"), on behalf of itself and all other similarly situated plaintiffs, submits this memorandum in opposition to the May 29, 2019, motion of Defendant Horry County ("County") for leave to amend its May 19, 2019, answer and counterclaims ("Motion") in the above-captioned action pursuant to Rule 15(a), SCRCP. Although City does not contest County's right to amend its answer and previously stated counterclaims, it opposes the Motion to the extent that County seeks to state new counterclaims because same are compulsory and the failure to have previously pled those counterclaims at County's first available opportunity constitutes a waiver of County's right to now do so.

I. BACKGROUND/FACTS

This matter arises out of City's action seeking declaratory and injunctive relief against the County's continued enforcement of its Ordinance 105-96 under which the County imposes a uniform service charge of 1.5% on sales of accommodations, prepared food and beverages, and amusements within the corporate limits of City and other municipalities in Horry County ("Hospitality Fee"). The City commenced this action on March 21, 2019, and County filed and served its answer and counterclaims on April 19, 2019. The City filed a motion to dismiss the counterclaims with a supporting memorandum on May 20, 2019, and subsequently filed on the

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same date its reply to the County's counterclaims.

By the Motion, County appears[1] to seek leave to depart from its previous pleading in two substantive ways: (1) to remove its previously-asserted First Counterclaim for attorneys' fees, and (2) to amend its answer and counterclaims by adding two new counterclaims for declaratory and injunctive relief challenging the lawfulness and enforceability of ordinances by which City intends to impose and collect, beginning on July 1, 2019, local accommodations and hospitality taxes wholly within the City's corporate limits as permitted by S.C. Code Ann. §§ 6-1-500, *et seq.*, and S.C. Code Ann. §§ 6-1-700, *et seq.* ("Local Tax Ordinances"). As to the former of these proposed amendments, County is clearly reacting to City's May 20, 2019, motion to dismiss the counterclaims previously pled by the County and City does not contest the amendment by County to remove that claim for attorneys' fees.[2] As to the latter, the County seeks to overcome a fatal deficiency of its May 14, 2019, Motion for Temporary Injunction which the City identified in its May 24, 2019, reply memorandum in support of its own motion for temporary injunctive relief. For the reasons discussed below, the Motion should be denied to the extent that it seeks to add new counterclaims for declaratory and injunctive relief as to the Local Tax Ordinances.

[1]The Motion only states County's request for leave to amend under Rule 15(a) and incorporates by reference an attached proposed amended answer and counterclaim; no explanation regarding the substance of the proposed amendment is provided. This requires the City (and this Court) to search through the County's previously filed answer and counterclaim and the proposed amended answer and counterclaim in an attempt to identify the proposed amendments. Although City believes it has correctly done so, it reserves the right to supplement this memorandum to the extent it should later discover a proposed amendment beyond those addressed here.

[2] The City also moved to dismiss the County's second original counterclaim for promissory estoppel. As best as the City can tell, *see* note 1, *supra*, the County proposes no change to this claim. The City's motion to dismiss therefore remains unaffected.

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II. LAW/ANALYSIS

A. The County's Proposed Counterclaims for Declaratory and Injunctive Relief Are Compulsory.

As noted above, the County has moved the Court for an order enjoining the City from collecting within the City the taxes on prepared food and beverage and accommodation under the Local Tax Ordinances. *See* County Mot. for Prelim. Inj. at 1-2. In opposing the City's own motion for a temporary injunction (to enjoin the County from imposing and collecting the Hospitality Fee within the corporate limits of the City and other Horry County municipalities), the County has asserted that this Court should consider that the County has "cross-moved" for temporary injunctive relief. *See* County Mem. in Opp., May 14, 2019, at 2, 5. In addressing this assertion, the City stated its intent to oppose the County's motion in a separate responsive memorandum[3] but noted, however, that the County's motion for temporary injunctive relief was improper and without legal foundation given that the County has not pled a counterclaim against City challenging the lawfulness of the City's ordinances and seeking injunctive relief with respect to same. *See* City Mem. in Reply, May 24, 2019, at 1. In short, without a cause of action for injunctive relief, County's putative "cross-motion" for injunctive relief fails out of the gate and is not legally permissible. *Id.* By way of the Motion, the County now seeks to rectify this shortcoming. However, under the South Carolina Rules of Civil Procedure, it is precluded from doing so.

Generally speaking, "[l]eave to amend pleadings pursuant to Rule 15, SCRCP, shall be liberally and freely granted when justice so requires and does not prejudice any other party." *See Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005) (citing, *inter alia, Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826

[3] That memorandum will be filed on or before the deadline set forth in the Supreme Court's Order No. 2015-09-10-01 providing for the Civil Motions Pilot Program in this judicial circuit.

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(1997)). However, the analysis of a motion to amend to add a counterclaim does not end with Rule 15. Rule 13(a) provides that "[a] pleading **shall** state as a [compulsory] counterclaim any claim which **at the time of serving the pleading** the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 61, 566 S.E.2d 863, 865 (Ct. App. 2002) (quoting Rule 13(a), SCRCP (emphasis supplied)). Thus, three questions bear on the propriety of the County's proposed amendments to add two new causes of action: (1) did the County have counterclaims for declaratory and injunctive relief as to the Local Tax Ordinances at the time it served its April 19, 2019 answer and counterclaims?; (2) do these counterclaims arise out of the transaction or occurrence that is the subject of City's complaint in this action?; and (3) do these counterclaims necessitate the inclusion of third parties of whom the Court cannot exercise jurisdiction? The third of these questions is not pertinent here as the counterclaims do not propose to add any third parties. An examination of the other two questions demonstrates that the answers thereto are affirmative and that the County's counterclaims are therefore compulsory.

1. The County Possessed the Proposed Counterclaims When It Served Its Responsive Pleading.

As to the first question, it is beyond peradventure that the County held its proposed counterclaims at the time it served its answer and counterclaim. The County was not only aware of the Local Tax Ordinances when it filed its April 19, 2019 answer and counterclaim in this matter, it took official action (*see* S.C. Code Ann. § 4-9-25 empowering counties to adopt resolutions) several weeks prior to that date specifically pertaining to the Local Tax Ordinances, the County's ordinance imposing the Hospitality Fee, and this lawsuit. *See* Horry County Resolution R-36-19, April 2, 2019, copy attached hereto and incorporated herein as Exhibit A

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(stating, *inter alia*, that "the City of Myrtle Beach, the City of North Myrtle Beach, and the Town of Surfside Beach have passed ordinances imposing a Hospitality Tax and an Accommodations tax pursuant to current State law, and have initiated a law suit against the County to prevent it from collecting the 1.5% Hospitality Fee within their corporate limits"). Clearly, the County had its proposed new counterclaims at the time it filed its responsive pleading in this action.

2. There is a Logical Relationship Between the County's Proposed Additional Counterclaims for Declaratory and Injunctive Relief and the City's Complaint.

With regard to the second question, the test for determining if a counterclaim arises out of the same transaction as the complaint is whether the issues of fact and law raised are largely the same **or** if there is "**any** logical relationship between the counterclaim and the causes of action in the complaint. *N.C. Fed. Savings & Loan Assoc. v. DAV Corp.*, 294 S.C. 27, 30, 362 S.E.2d 308, 310 (Ct. App. 1987), *modified*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989) (emphasis supplied). A logical relationship exists between (a) the City's complaint that a uniform service charge imposed by the County on the sale of prepared food and beverages and accommodations within municipal corporate limits (*i.e.*, the Hospitality Fee) is no longer enforceable because it was terminated by its own terms and the City (and every other municipality in Horry County) has not consented to its continued extra-constitutional and extra-statutory imposition (*see, e.g.*, Compl. at para. 39), and (b) the County's proposed counterclaims seeking to preclude imposition of taxes on the same retail transactions under the Local Tax Ordinances because the County's ordinance imposing the Hospitality Fee within municipal corporate limits is valid. *See* Proposed Amended Countercl. at paras. 180(N) and 182-184. The County acknowledged this to be the case in its April 2, 2019, resolution preceding the service of its original answer and counterclaims which expressly recognizes the relationship between the Hospitality Fee and the Local Tax Ordinances. *See* Ex. A, *supra*.

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Given the foregoing, the County was required to state its claims regarding the lawfulness and enforceability of City's Local Tax Ordinances in its answer and counterclaim as they are compulsory under Rule 13(a), SCRCP.

B. Because County's Proposed New Counterclaims Are Compulsory, They Have Been Waived and Are Thus Barred from Being Raised In An Amended Counterclaim.

Because they are compulsory under Rule 13(a), SCRCP, the County may not now amend its responsive pleading to advance counterclaims for declaratory and injunctive relief under Rule 15(a), SCRCP, as they are deemed waived by County's failure to state them when it served its responsive pleading. Although neither of our appellate courts appear to have addressed the interplay between Rules 13(a) and 15(a) of the South Carolina Rules of Civil Procedure, it has been the longstanding position of our courts that an issue must be raised at the earliest opportunity in a case, or that issue will be deemed to have been waived. *See Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 546, 725 S.E.2d 698, 701 (2012) (citing *Hurst v. Sumter County*, 189 S.C. 376, 1 S.E.2d 238 (1939) (noting the general rule in civil cases that issues must be raised at the earliest opportunity, or they will be considered waived)); *see also Scott v. Porter*, 340 S.C. 158, 167, 530 S.E.2d 389, 393 (Ct. App. 2000) (holding that in order to be timely, an objection usually must be made at the earliest possible opportunity). Moreover, the preclusive effect of the compulsory counterclaim rule and the interplay between Rules 13(a) and 15(a) has been treated by federal courts, even taking into consideration the liberality of the amended pleading under the federal rules.[4] *E.g. Vulcan Marketing, Inc. v. Technical Consumer Products, Inc.*, 614 F.Supp.2d 1253, 1257 (N.D. Ala. 2009) ("[t]he liberality of amendment provided by Rule 15, Fed.R.Civ.P.,

[4] In the absence of South Carolina law interpreting a provision of the SCRCP, South Carolina courts will look to decisions of federal courts interpreting the Federal Rules of Civil Procedure. *See Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 404 S.E.2d 200 (1991).

justifies the allowance of an amended answer, while a late counterclaim that under Rule 13(a) '**must**' have been filed ... but was not, cannot be justified merely by an invocation of Rule 13(f)") (emphasis in original); *see also Harbor Ins. Co. v. Cont'l Bank Corp.*, 922 F.2d 357, 360 (7th Cir. 1990) ("[a] compulsory counterclaim is compulsory; unless set forth in the answer to the complaint it is waived"); *Baker v. Gold Seal Liquors, Inc.*, 417 U.S. 467, 469 n. 1 (1974) ("A counterclaim which is compulsory but is not brought is thereafter barred"); *Ace Prop. and Casualty Ins. Co. v. Specialty Logging*, 2015 WL 1422181 (D.S.C. 2015) ("If a counterclaim falls within the scope of Rule 13(a), it is compulsory and '[a] counterclaim which is compulsory but is not brought is thereafter barred'") (citation omitted). Because they were not stated in its answer and counterclaim served on April 19, 2019, County's proposed new compulsory counterclaims are waived and Rule 15(a) may not be used to revive them.

III. CONCLUSION

Because the County's new counterclaims are compulsory under Rule 13(a), they may not be stated for the first time in an amended counterclaim and the motion to amend pursuant to Rule 15(a) must therefore be denied to that extent.

[SIGNATURE PAGE FOLLOWS]

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Respectfully submitted,

s/Chad N. Johnston

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Attorneys for Plaintiff City of Myrtle Beach and All Others Similarly Situated

Columbia, South Carolina
May 31, 2019

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EXHIBIT A

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COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

RESOLUTION R-36-19

A RESOLUTION ENDORSING HORRY COUNTY'S 1.5% COUNTYWIDE HOSPITALITY FEE, ADDRESSING THE COST OF PUBLIC SAFETY RESULTING FROM TOURISM, AND PROVIDING A GOOD FAITH OFFER TO THE MUNICIPALITIES FOR THE CONTINUED USE OF SUCH HOSPITALITY FEE

WHEREAS, Horry County imposed a 1.5% countywide Hospitality Fee in 1996 on prepared meals, accommodations, and admissions (subsequently including car rentals) to undertake a comprehensive countywide road construction program known as RIDE I, the proceeds from which were used to repay loans with the State Infrastructure Bank (SIB) used to finance RIDE I; and

WHEREAS, Horry County amended the 1996 ordinance several times, as recently as 2017, without objection from the municipalities in Horry County, to include extensions of the original sunset date; and

WHEREAS, Horry County repaid the final loan with the SIB on February 15, 2019, affording an opportunity to provide funding to address the construction of I-73 and offset the increasing costs of public safety resulting from tourism; and

WHEREAS, upon repayment, defeasance of the SIB loan resulted in a net balance in the 1.5 % Hospitality Fee account of $ 9,681,738; and

WHEREAS, the County has continued to collect the 1.5% Hospitality Fee; and

WHEREAS, the City of Myrtle Beach, the City of North Myrtle Beach, and the Town of Surfside Beach have passed ordinances imposing a Hospitality Tax and an Accommodations Tax pursuant to current State law, and have initiated a law suit against the County to prevent it from collecting the 1.5% Hospitality Fee within their corporate limits; and

WHEREAS, the actions of the City of Myrtle Beach, the City of North Myrtle Beach, and the Town of Surfside Beach grievously threaten the local funding for I-73 and would shrink the total tourism-related funds collected by all entities by approximately $13,561,992 annually as noted in Attachment A hereto; and

WHEREAS, County Council believes that Horry County and its municipalities are stronger by preserving the 1.5% Hospitality Fee as opposed to current legislative and judicial actions, and that the community's priorities can be advanced by working together; and

WHEREAS, County Council desires to make a good faith offer to the municipalities that advances the construction of I-73 and allows each community to address the escalating cost of public safety resulting from the growing tourism industry in a manner that preserves the 1.5% countywide Hospitality Fee for the benefit of both incorporated and unincorporated residents, businesses, and visitors; and

WHEREAS, County Council's offer includes preserving the 1.5% countywide Hospitality Fee and, effective for FY2020, dedication of $18 million toward the construction of I-73, which would allow for a borrowing of approximately $275 million over 30 years for the project based on current interest rates, and allocation of the remaining approximately $24.5 million as follows: approximately $9.8 million to the County, and the remaining approximately $14.7 million to the municipalities in proportion to where the revenue is collected, to allow each community to address the escalating costs of tourism. In addition, the net balance in the 1.5% Hospitality Fee account after defeasance of the SIB loan and amounts collected through June 30, 2019 are to be allocated to the County and municipalities in proportion to where the revenue was collected, and in future years annual revenue above the FY2020 baseline is to be allocated in like manner.

NOW, THEREFORE, BE IT RESOLVED that Horry County Council authorizes the County Council Chairman to convey this Resolution and good faith offer, more fully described in Attachment B hereto, requesting that they respond in kind.

AND IT IS SO RESOLVED this 2nd day of April, 2019.

HORRY COUNTY COUNCIL

Johnny Gardner, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Orton Bellamy, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

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Attachment A

Horry County, South Carolina
FY2018 Hospitality & Accommodations Revenue Impact Analysis

	Revenues				
	Current[1]	%	No 1.5%[2]	%	Variance
City of Myrtle Beach	14,607,215	19.7%	27,122,212	44.9%	12,514,997
Horry	9,496,938	12.8%	17,503,226	29.0%	8,006,288
North Myrtle Beach	6,116,010	8.3%	11,592,816	19.2%	5,476,806
Surfside	1,047,224	1.4%	2,022,680	3.3%	975,456
Conway	869,233	1.2%	1,683,512	2.8%	814,279
Aynor	82,228	0.1%	164,456	0.3%	82,228
Loris	65,163	0.1%	260,653	0.4%	195,490
Atlantic Beach	33,539	0.0%	51,887	0.1%	18,348
1.5% Hospitality & 2.5% Rental Car	41,645,884	56.3%	-	0.0%	(41,645,884)
	73,963,435	100.0%	60,401,442	100.0%	(13,561,992)

Analysis of Variance	
RIDE Admissions	(3,287,248)
County Admissions	(745,325)
Municipal Admissions	(1,436,667)
Total Admissions	(5,469,240)
Rental Car 2.5%	(1,473,717)
RIDE Food/Beverage 0.5%	(6,619,035)
	(13,561,992)

[1] Current is based on County 1.5% Hospitality & 2.5% Rental Car Collections by Municipality and Analysis of Municipal Financial Reports.
[2] No 1.5% is calculated at 2% Food/Beverage, 3% Accommodations, 0% Admissions and 0% Car Rental.

Prepared by Horry County Finance, March 28, 2019

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Attachment B

Horry County, South Carolina
FY2020 Hospitality Revenue Allocation Analysis

Projected Revenue FY2020	42,488,568
Debt Service	18,000,000
County Portion	9,795,427
Balance	14,693,141

	Projected Revenues - FY2020		
	Projected[1]	%	Allocation
City of Myrtle Beach	18,594,121	63.6%	9,345,750
North Myrtle Beach	7,704,558	26.4%	3,872,454
Surfside	1,195,839	4.1%	601,051
Conway	1,363,457	4.7%	685,299
Aynor	125,838	0.4%	63,248
Loris	199,445	0.7%	100,245
Atlantic Beach	49,929	0.2%	25,095
	29,233,187	100.0%	14,693,141

	Revenue through June 30, 2019			
		RIDE		
	Allocation %[2]	Balance[3]	Collections[4]	Total
City of Myrtle Beach	43.8%	4,236,985	7,862,410	12,099,395
Horry County	31.2%	3,020,463	5,604,957	8,625,419
North Myrtle Beach	18.1%	1,755,614	3,257,825	5,013,439
Surfside	2.8%	272,492	505,653	778,145
Conway	3.2%	310,687	576,529	887,216
Aynor	0.3%	28,674	53,210	81,884
Loris	0.5%	45,447	84,334	129,781
Atlantic Beach	0.1%	11,377	21,112	32,489
	100.0%	9,681,738	17,966,031	27,647,769

[1] Projected is based on County 1.5% Hospitality & 2.5% Rental Car estimated revenues for FY2018.

[2] Allocation % is based on County 1.5% Hospitality & 2.5% Rental Car revenues for Fiscal Year 2018.

[3] RIDE Balance funds remaining at the repayment of the SIB Loan on February 15, 2019.

[4] FY2019 Collections from February 15, 2019 until June 30, 2019.

Use of Hospitality revenues exclusely for purposes set forth at Section 6-1-530 and 6-1-730 of the Code of Laws of South Carolina 1976, as amended.

In future years, all annual revenue above the FY2020 baseline will be allocated to the County and municipalities in proportion to where the revenue was collected.

Prepared by Horry County Finance, April 3, 2019

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	**HORRY COUNTY'S**
For Itself and a Class of Similarly Situated Plaintiffs,	)	**REPLY IN SUPPORT OF MOTION TO FILE AMENDED ANSWER AND COUNTERCLAIMS**
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	

Horry County ("County") respectfully submits this reply in support of its motion for leave to file an Amended Answer and Counterclaims, pursuant to Rule 15(a), SCRCP.

Introduction

The City's opposition to the County's motion to for leave to amend runs seven pages, but its argument is simple enough: The County's proposed new counterclaims are compulsory and were not asserted in the County's first pleading, so they are now barred. Despite its apparent simplicity, this argument is flawed. Not only does the City rely on the minority rule in federal court (indeed, the City does not bother to mention the multitude of cases that reject the rule it asks this Court to adopt), but the City's proposed rule is antithetical to our judicial system's goal of deciding cases on their merits. The motion for leave to amend should therefore be granted, and the County should be allowed to assert the proposed new counterclaims.

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Argument

I. The majority of federal courts correctly analyze motions for leave to amend to assert compulsory counterclaims under Rule 15(a).

Federal courts—to which our state courts look for guidance when they have not decided a question, *see Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016)—have repeatedly held that "Rule 15(a)(2) governs Defendants' request for leave to assert a compulsory counterclaim," *Snyder Dev. Co. v. AutoZone, Inc.*, No. 2:18-CV-1274, 2019 WL 1115034, at *2 (S.D. Ohio Mar. 11, 2019); *see also Midgett, Tr. of Hardcastle Charitable Remained Annuity Tr. U/A Aug. 6, 2007 v. Hardcastle*, No. 2:17-CV-663, 2018 WL 4781178, at *3 (E.D. Va. Oct. 3, 2018) (noting that leave for "compulsory counterclaims should be granted freely" (quoting *Barnes Grp, Inc. v. C&C Prods., Inc.*, 716 F.2d 1023, 1035 n.35 (4th Cir. 1983))); *Nelson v. Repossessors, Inc.*, No. 17-CV-3727 (WMW/SER), 2018 WL 1891494, at *2 (D. Minn. Apr. 20, 2018) ("A party's amendment that seeks the court's permission to assert a compulsory counterclaim in the same litigation as the common 'transaction or occurrence' . . . is analyzed under Rule 15(a)."); *Chelsea House N. Apartments, LLC v. Blonder*, 223 F.R.D. 388, 391 (D. Md. 2004) (noting that "[t]his principle of great latitude in the granting of leave to amend a Rule 13(a) *compulsory* counterclaim is well recognized" and collecting cases).

One federal district court explained the logic this rule succinctly: "Courts are generally more willing to grant leave to amend when a compulsory counterclaim is involved, since an omitted compulsory counterclaim cannot be asserted in subsequent

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cases and the pleader will lose the opportunity to have the claim adjudicated."[1] *Kelly Supply, LLC v. Econ. Polymers & Chemicals*, No. CV-14-03-BLG-SPW-CSO, 2014 WL 2961083, at *4 (D. Mont. June 30, 2014); *see also Porter, Hill, Heisterkamp & Bushnell v. Providers Fid. Life Ins. Co.*, 958 F.2d 836, 839 (8th Cir. 1992); *Spartan Grain & Mill Co. v. Ayers*, 517 F.2d 214, 220 (5th Cir. 1975). In other words, courts are inclined to grant a party leave to amend on a compulsory counterclaim to give that party its sole opportunity to litigate that claim.

Importantly, this rule promotes "South Carolina's policy favoring the disposition of issues on their merits rather than on technicalities." *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). Therefore, the Court should follow this well-established and sound rule and analyze the County's motion under Rule 15, which "strongly favors amendments" and means that circuit courts are "encouraged to freely grant leave to amend." *Patton v. Miller*, 420 S.C. 471, 489, 804 S.E.2d 252, 261 (2017).

Our Supreme Court has held that leave to amend under Rule 15(a) should be denied only when the party opposing the motion would be prejudiced or "there was some other substantial reason" to deny leave to amend. *Id.* Here, the City has not even argued prejudice. And for good reason. This case is in its early stages, and the issues raised by the proposed counterclaims are already pending before the Court in

[1] In fact, in *Kelly Supply*, the plaintiff (like the City here) "place[d] added significance" in its opposition to the motion for leave to amend on the fact that the proposed new counterclaims were compulsory. The court specifically noted that this fact actually supported granting—not denying—the motion. *See Kelly Supply, LLC v. Econ. Polymers & Chemicals*, No. CV-14-03-BLG-SPW-CSO, 2014 WL 2961083, at *4 (D. Mont. June 30, 2014).

the motions for preliminary injunctions. Nor has the City put forth any other reason (other than its misguided argument about the timing of the proposed counterclaims) that leave should be denied.

II. The cases cited by the City are inapplicable and unpersuasive.

Nothing the City argues can overcome these well-reasoned decisions from federal courts around the country or should lead the Court to reject both their reasoning and South Carolina's policy favoring amendments to pleadings so that disputes are resolved on their merits.

As an initial matter, the City cites no South Carolina case that casts doubt on the reasoning of these federal decisions. First, the City's reliance on *Cannon v. Georgia Attorney Generals Office*, 397 S.C. 541, 725 S.E.2d 698 (2012), is of no help to its argument. There, the issue that the court held was not timely raised was one that had not been raised in an entirely separate, earlier appeal. *Id.* at 546, 725 S.E.2d at 701. That is a far cry from the case here, in which the proposed amended pleading comes barely a month after the original pleading was filed and before any hearing has been held in this litigation.

Second, *Scott v. Porter*, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000), is similarly inapposite. The question of timeliness there involved statements during closing arguments at trial, not pleadings at the earliest stages.

Third, the City points to a District of South Carolina case: *Ace Property & Casualty Insurance Co. v. Specialty Logging, LLC*, No. 1:14-CV-00944-JMC, 2015 WL 1422181 (D.S.C. Mar. 27, 2015). This case actually undermines the City's position.

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The City cites this case for the basic proposition that a compulsory counterclaim that is not brought is "thereafter barred."

But the City ignores what that case says about *by when* the compulsory counterclaim must be brought. In the very next sentence after the one the City quotes, the Court held that "if a party fails to assert a compulsory counterclaim *in an action*, that party will be precluded from asserting that claim *in a subsequent action*." *Id.* at *2 (emphasis added). The County has asserted its counterclaims in this action, not in a subsequent action, so they are not barred by Rule 13(a), and *Ace Property & Casualty Insurance Co.* supports granting the County's motion.

Outside of South Carolina, the City cites only a single case in which a court held that Rule 15(a) does not apply to compulsory counterclaims, a decision from the Northern District of Alabama. *See Vulcan Mktg., Inc. v. Tech. Consumer Prod., Inc.*, 614 F. Supp. 2d 1253 (N.D. Ala. 2009). For multiple reasons, that decision is unpersuasive.

First, a review of that decision makes clear that the court there believed that the defendant seeking leave to assert the amended counterclaim had acted improperly. Months had passed before the defendant first attempted to assert the counterclaim, then it asserted that counterclaims without requesting leave to do so, and finally it waited another month to try to correct that error. This context cannot be ignored. Indeed, it helps explain why the Northern District of Alabama itself has not strictly applied the rule from *Vulcan*. *See Byrd v. Williams*, No. 7:14-CV-01537-TMP, 2016 WL 362404, at *5 (N.D. Ala. Jan. 29, 2016); *Sington v. Taylor, Bean &*

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Whitaker Mortg. Corp., No. CV 08-AR-1657-S, 2009 WL 10703502, at *4 (N.D. Ala. Aug. 12, 2009).

Second, this decision came before the 2009 amendments to the Federal Rules of Civil Procedure. Those amendments removed Rule 13(f) (on which the Northern District of Alabama relied in part), and the advisory committee noted that after the 2009 changes to the rules, "[a]n amendment to add a counterclaim will be governed by Rule 15," drawing no distinction between compulsory and permissive counterclaims. Fed. R. Civ. P. 13, advisory committee's note on 2009 amendment. Thus, the underlying premise of the Northern District of Alabama that compulsory counterclaims are treated differently than permissive counterclaims is no longer valid (if it ever was). *See, e.g., Vizant Techs., LLC v. Whitchurch*, No. CIV.A. 15-431, 2015 WL 4505958, at *4 (E.D. Pa. July 23, 2015) (noting that Rule 15(a) "does not differentiate between compulsory and permissive counterclaims"); *Advocate Fin., LLC. v. Schmidt*, No. CIV.A. 09-2872, 2010 WL 2867906, at *1 (E.D. La. July 19, 2010) (recognizing that after the 2009 amendments, a motion for leave to file a compulsory counterclaim is governed by Rule 15(a)).

Third, the Northern District of Alabama's reliance on "must" from Rule 13(a) is misplaced. The court there reasoned that the rule used "must," so it required a compulsory counterclaim be filed with an answer, without any chance of amending the answer. This interpretation of Rule 13(a), however, ignores that Rule 12(a) requires that an answer also "must" be served, yet the answer can be amended under

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Rule 15(a). The Northern District of Alabama offered no reason why one type of responsive pleading could be amended but another could not.

Conclusion

The Court should grant the motion for leave to file an amended answer and counterclaims.

Respectfully submitted:

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Attorneys for Defendant

Myrtle Beach, South Carolina
Dated: June 6, 2019

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	**HORRY COUNTY'S**
For Itself and a Class of Similarly Situated Plaintiffs,	)	**MEMORANDUM FOR**
	)	**JUNE 14, 2019 HEARING**
Plaintiff,	)	
	)	
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	
	)	

Introduction

For the hundreds of pages of briefing and exhibits the parties have filed, this dispute turns on a single question: Was the City's consent required for the County to extend its Hospitality Fee?

The answer to this question matters because if the County did not need the City's consent, the City is unable to collect its new local accommodations and hospitality fees, which it adopted less than two weeks before filing this lawsuit. Under S.C. Code §§ 6-1-540 and 6-1-740, a municipality and a county may not cumulatively collect more than 3 percent and 2 percent, respectively, in such revenue. Under its new ordinances, the City seeks to collect those maximum amounts, even though the County is already collecting 1.5 percent within the City pursuant to its Hospitality Fee. Thus, if the County validly extended the Hospitality Fee, the City's new revenue sources violate state law.

Nothing in state law requires the City's consent, and the County validly extended the Hospitality Fee. Therefore, the City's complaint is without merit, and the County can continue to collect the Hospitality Fee, as it has been doing for over two decades.

Factual Background

In 1996, Horry County enacted the Hospitality Fee, in Ordinance 105-96, to raise revenue

for infrastructure, including road construction, after a study—the 1996 RIDE Report—outlined the County's transportation problems. *See* Ex. A (Cty. Ord. 105-96).[1] When the County was considering that ordinance, the City "strongly and unanimously . . . urge[d]" the County to adopt it. Ex. B (City's Oct. 8, 1996 Resolution).

Ordinance 105-96 imposed a 1.5 percent fee throughout the County on proceeds from lodging, food and beverage sales, and admissions to places of amusement, with an additional 1 percent fee on these items in unincorporated areas. Currently, the Hospitality Fee includes these things, as well as an additional 1.5 percent fee on accommodations and 1 percent fee on food and beverage and admissions in unincorporated areas and a 2.5 percent countywide fee on rental cars. Originally set to expire on January 1, 2017, the County, in 2004, without the consent or objection of the City, extended the Hospitality Fee to January 1, 2022, and then the County subsequently removed the sunset provision. *See* Ex. C (Cty. Ord. 11-04, 93-16, 32-17).

Days before filing this lawsuit, the City passed ordinances adopting a hospitality fee and a local accommodations fee. *See* Ex. D (City Ord. 2019-22, 2019-23). It then sued the County, claiming that the County's Hospitality Fee was invalidly extended. The parties have both moved for preliminary injunctions.

Argument

I. The City's consent was not required to adopt or extend the Hospitality Fee.

The City bases its lawsuit on the premise that its consent has always been required for the Hospitality Fee, from its adoption to its extension. On both fronts, the City is mistaken. Indeed, the City has not pointed to a single provision of state law that explicitly requires its consent for the

[1] For the Court's convenience, the County is attaching the most important documents to this memorandum, all of which have been attached to other filings in this litigation.

Hospitality Fee to be adopted or extended. With nothing explicit on which to rely, the City strains to find hidden, within various legal provisions, some support for its position that its consent is needed. Yet no such requirement is buried in state law, and the County validly extended the Hospitality Fee.

A. The County was not required to obtain the City's consent to enact the Hospitality Fee.

Ordinance 105-96 did not require the City's consent. The ordinance was proposed and passed by County Council alone. The City never voted on it, and Ordinance 105-96 does not say anything about being conditioned on any action by the City, another municipality, or the myriad other entities who expressed support for this ordinance and the Hospitality Fee. In an effort to avoid these facts, the City makes multiple arguments about why its consent was actually required, but none is persuasive.

First, the City points to its 1996 resolution. That resolution, however, makes clear that the City did not give any sort of consent, at least in a legal sense, to the Hospitality Fee. All the City did was "urge" the County to adopt the Hospitality Fee. Had the City been giving some legally binding consent, it would have done more than "urged"; it would have "consented." That the City only "urged" the County to adopt the Hospitality Fee is telling, and that the City may have supported the County's adoption of the Hospitality Fee does not mean the City had to consent to the Hospitality Fee for the County to adopt it.

Second, the City observes that it, like the County, is a "local government," and Ordinance 105-96, in the last recital, says the law allows "local government" to impose the Hospitality Fee. All of that may be true, but it does not change the fact that the County—not the City—was the local government that validly adopted the Hospitality Fee.

Third, the City relies on § 1(G) of Ordinance 105-96. In that section, the County provided

that the Hospitality Fee would "be used to implement a comprehensive road plan adopted by the County *in concert* with the municipalities of the County." Adopting a plan "in concert" with the City is not tantamount to needing the City's consent to enact the Hospitality Fee in the first place. The County adopted the Hospitality Fee in § 1(A), and nothing in that section even mentions the City's (or any municipality's) involvement in the adoption of the Hospitality Fee.

Fourth, the City insists that the Hospitality Fee can be used only for the projects outlined in the RIDE Report or the related application to the State Transportation Infrastructure Bank. Neither of those documents is relevant on the question of whether the City's consent was required for the County to adopt the Hospitality Fee, nor was either binding on the issues of how long that Hospitality Fee could last or what projects could benefit from the Hospitality Fee.

B. The County was not required to obtain the City's consent to extend the Hospitality Fee.

As for extending the Hospitality Fee, the City launches two arguments on consent. The first is that the County actually adopted a new fee when it extended the Hospitality Fee. The second is that Home Rule requires the City's consent for any change related to the Hospitality Fee. Both arguments are flawed.

1. The County did not adopt a new fee by extending the Hospitality Fee and by planning to use the revenue for new road-construction projects.

The City characterizes the Hospitality Fee's extension as a "new" fee. It contends that Ordinance 105-96 automatically expired after twenty years and its revenue could be used only for projects explicitly described in the RIDE Report.

That the City would make this argument is understandable. In 1997, the General Assembly passed Act 138, which adopted new rules governing hospitality and local accommodations fees. Act 138, however, grandfathered in fees that were adopted by December 31, 1996—like the Hospitality

Fee. *See* S.C. Code §§ 6-1-330, 6-1-760. Thus, if extending the Hospitality Fee amounted to a new fee, that new fee would not be excluded from the various requirements of Act 138, which include municipalities' consent for a part of such fees.

But the Hospitality Fee that the County is collecting now is the exact same fee it adopted in 1996. The Hospitality Fee itself was adopted in § 1(A). Then, § 1(H) provided the Hospitality Fee would be in place for twenty years. Later, in 2004, 2016, and 2017, the County extended and then removed that sunset provision entirely. Despite the City's best efforts to treat Ordinance 105-96 as an all-or-nothing piece of legislation, the sunset provision is distinct from the Hospitality Fee provision. Indeed, legislatures often extend or remove sunset provisions, without impacting the substance of the legislation. *See, e.g.*, *Riley v. Kennedy*, 553 U.S. 406, 413 (2008) (Congress's extending the Voting Rights Act); Letter to Mark R. Elam, 1994 WL 378027, at *1 (S.C.A.G. June 29, 1994) (General Assembly's removing sunset provisions for the Boards of Dentistry and Opticianry). Thus, amending the sunset provision did not adopt a new fee, but merely extended the time period during which the Hospitality Fee would continue to be collected.

Nor does using the revenue from the Hospitality Fee for road-construction projects (including I-73) not envisioned in the RIDE Report create a new fee. The City insists that § 1(G) limits the revenue from the Hospitality Fee to projects from the RIDE Report. As an initial matter, § 1(G) calls for a "comprehensive road plan." It never even refers to the RIDE Report. The Hospitality Fee is still being used for a comprehensive road plan; that plan has simply developed as the County has grown. Moreover, the City again casts the ordinance as all-or-nothing, when the sections, although related, accomplish different purposes.

2. The City gets the concept of Home Rule wrong.

The City cites a plethora of constitutional and statutory provisions to support its contention

that its consent was required to extend the Hospitality Fee, all premised on the concept of Home Rule. The City's argument, however, falls flat. For one thing, it misconstrues what Home Rule is. That concept has nothing to do with the relationship between counties and municipalities. Instead, it is about "how power is allocated between the General Assembly and local governments." *Cty. of Florence v. W. Florence Fire Dist.*, 422 S.C. 316, 321, 811 S.E.2d 770, 773 (2018).

For another, none of the provisions on which the City relies actually mandates the City's consent for extending the Hospitality Fee. Those provisions address issues like providing services (which is not the same as imposing a service charge), *see* S.C. Code § 4-9-40, or a county's authority to impose a service charge (this section never mentions municipal consent), *see id.* § 4-9-30, or joint exercise of powers by a county and a municipality (the Hospitality Fee was not jointly imposed), *see* S.C. Const. art. VIII, § 13; S.C. Code § 4-9-41, or the establishment and general powers of counties, *see* S.C. Const. art. VIII, § 7; S.C. Code § 4-9-25, or the powers of municipalities, *see* S.C. Code §§ 5-7-30, 5-7-60. Ultimately, none of these provisions implies (much less explicitly states) that the City's consent was required for the County to extend the Hospitality Fee. Indeed, the General Assembly still permits counties to impose some fees without municipal consent, which means that the City is wrong when it contends that municipal consent must always be obtained before a county can collect revenue within a city's limits. *See* S.C. Code §§ 6-1-520(A); 6-1-720(A).

II. The preliminary-injunction motions raise other important issues.

Whether the City's consent was required is the central question here, but other important issues are also raised by the cross-motions for injunctive relief. Some of those issues are laches, the elements of the preliminary-injunction test, and the purpose of a preliminary injunction.

A. The City's claims are barred, at least in part, by laches.

Although the City disclaims knowing about County Ordinance 11-04 enacted in 2004, the

City had at least constructive notice of that County ordinance, as it was the law of the county (even if the City is right that the ordinance was not put into the County Code, that does not mean the ordinance lacks the force of law). *See Labruce v. City of N. Charleston*, 268 S.C. 465, 467, 234 S.E.2d 866, 867 (1977). That means for that over fifteen years, the City knew that the County had extended the Hospitality Fee beyond January 1, 2017, yet it did nothing to object.

The City asserts that laches cannot apply here because it is a government entity. But cases refusing to apply laches against the government apply only when it "is acting in its governmental capacity, in the exercise of a governmental function, or is pursuing a suit founded on a sovereign right." *Stenehjem ex rel. State v. Nat'l Audubon Soc'y, Inc.*, 844 N.W.2d 892, 900 (N.D. 2014) (quoting 27 Am.Jur.2d *Equity* § 122 (2013)). In this case, the City is acting more like a private plaintiff than a sovereign, as it challenges the validity of another government entity's ordinance, seeks to recover money that it has paid to the County, and proposes to act as a class representative.

This delay has greatly prejudiced the County. *See Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (Ct. App. 1994) ("[T]he delay in bringing suit must have caused some injury, prejudice or disadvantage to the party claiming laches."). The County has continued developing infrastructure plans based on the Hospitality Fee revenue. Additionally, the County has continued collecting and administering the Hospitality Fee within the City and other municipalities, which takes time and money. Thus, at least as to its claims for relief from the Hospitality Fee that the City has already paid, its claims are barred by laches.

B. Only the County can satisfy all elements of the preliminary-injunction test.

In addition to showing a likelihood of success on the merits, a party seeking an injunction must show the lack of an adequate remedy at law and irreparable harm. *See Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

The City has a remedy: the County's Board of Fee Appeals. The City attacks the validity of that board, but the City is incorrect that County Council could not have the administrator appoint the board. *See* S.C. Code §§ 4-9-630; 4-9-170. Nor can the City make any headway based on the $25 filing fee or the potential volume of appeals. Filing fees in civil matters exist in almost every case, and how many appeals the board can handle is only a hypothetical issue at this stage.

The County, by contrast, has no remedy. If the City's new Hospitality Fee is not enjoined, legal and bureaucratic mayhem will likely result, as more lawsuits would presumably be filed about the City's new fees charging beyond what §§ 6-1-540 and 6-1-740 permit (when combined with the Hospitality Fee) and reimbursing taxpayers for their overpayment will be virtually impossible.

C. A preliminary injunction is about preserving the status quo.

A final consideration is a more fundamental one, going to the reason courts grant preliminary injunctions in the first place. As our Supreme Court has taught, the "purpose of a preliminary injunction is *to preserve the status quo* and prevent irreparable harm to the party requesting it." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) (emphasis added). The County is the party seeking to preserve the status quo, as it has been collecting the Hospitality Fee for over two decades. The City, on the other hand, is seeking to upend—at this early stage of litigation—a situation that has been well settled for many years, without any dispute until very recently.

Conclusion

The County's motion should be granted, and the City's motion should be denied.[2]

---

[2] In light of §§ 6-1-540 and 6-1-740, the Court should grant one of the motions for a preliminary injunction. Otherwise, as of July 1, 2019, the cumulative amount collected by the City and the County will exceed the maximum allowed under state law. After one of the motions is granted, the parties can then immediately seek appellate review of this issue (which might well be dispositive of the entire litigation). *See* S.C. Code § 14-3-330(4).

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Myrtle Beach, South Carolina
Dated: June 6, 2019

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Exhibit A

County Ordinance 105-96

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FILED
COUNTY, S.C.
96 DEC 31 P 1:36
R.M.C.

STATE OF SOUTH CAROLINA)
) ORDINANCE NO. 105-96
COUNTY OF HORRY)

AN ORDINANCE IMPOSING A TWO AND ONE-HALF PERCENT HOSPITALITY FEE IMMEDIATELY.

WHEREAS, A plan which offered long-range solutions to this area's road problems failed to pass; and

WHEREAS, The need for road improvement continues and will in all likelihood increase in the future; and

WHEREAS, Considerable time and effort was expended by the Governor's RIDE Committee to establish a new plan and a new timetable; and

WHEREAS, All past efforts to institute a local options sales tax have failed, thus making difficult the possibility of using the largest single revenue generator available; and

WHEREAS, Current law allows local government to levy reasonable and necessary fees to provide needed infrastructure.

NOW THEREFORE, BE IT ORDAINED IN COUNCIL DULY ASSEMBLED,

SECTION 1. (A) **Establishment of Hospitality Fee.** There is established a uniform service charge, hereinafter referred to as the "hospitality fee," equal to one and one-half percent (1.5%) within the geographic confines of Horry County, with an additional hospitality fee equal to one percent (1.0%) within the unincorporated areas of Horry County only. These fees shall be imposed on:

(1) the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies;

(2) those paid admissions to places of amusement within the County to which the admissions tax imposed by the State of South Carolina pursuant to Section 12-21-2420, et seq. of the South Carolina Code, applies (golf fees not to begin until 7/1/97); and

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(3) the gross proceeds derived from the sale of food and beverages sold in establishments which primarily have as their business purpose the sale of prepared food for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine.

(B) **Payment of the Hospitality Fee.** Payment of the hospitality fee shall be the liability of the consumer of the services described in Section 19-51 subsection (A). The hospitality fee shall be paid at that time of the delivery of services to which the hospitality fee applies, shall b3e collected by the provider of the services,and shall be held in trust by the provider until remitted as provided for herein.

(C) **Collection of the Hospitality Fee.** The hospitality fee imposed by this section is due and payable in monthly installments on or before the twentieth day of each month and every person liable for the fee shall on or before the twentieth day of each month make a true and correct return to the County in such form as it may prescribe and remit the fee therewith. A return is considered to be timely filed if the return is mailed and has a postmark dated on or before the date the return is required to be filed. In case of a failure to make a true and correct return or a failure to file the return, the County shall make a return upon such information as it may be able to obtain, assess the fee due thereon, and add a penalty of ten percent, whereupon the County shall mail notice to the person liable for the fee and, in the case of failure to pay the fee within ten days after the mailing of any such notice, the County shall add an additional penalty of ten percent.

(D) **Inspections and Audits.** For the purpose of enforcing the provisions of this section the County Administrator or other authorized agent of the County, is empowered to enter upon the premises of any person subject to this section and to make inspections, examinations and audits of books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours written notice. In the event that an audit reveals that false information has been filed by the remitter, the costs of the audit shall be added to the correct amount of fees determined to be due, in addition to the penalties provided in subsection (C). The County Administrator or other authorized agent of the County may make systematic inspection of all businesses within the County, to ensure compliance with this section. Records of inspection shall not be deemed public records.

(E) **Penalties.** (1) It is a violation of this section to:

(a) fail to collect the hospitality fee;

(b) fail to remit to the County any hospitality fee collected;

(c) fail to file a hospitality fee; return.

(d) knowingly provide false information on a hospitality fee return;

or

(e) fail to provide books and records to the County Administrator or other authorized agent of the County for the purpose of inspection, examination, or audit after twenty-four (24) hours written notice.

(2) Each day this section is violated constitutes a separate offense.

(3) Upon conviction of this section, the violator is guilty of a misdemeanor and subject to a fine or forfeiture not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both.

(F) **Start-up Funds and Administration of Hospitality Fee.** The County Administrator is responsible for the implementation, collection, and enforcement of the hospitality fee and, upon mutual agreement with the County Auditor and County Treasurer, the County Administrator may provide for the implementation, collection, and enforcement of the hospitality fee through the County Auditor and County Treasurer.

(G) **Disposition of Hospitality Fee.** All revenues collected fro the hospitality fee shall be deposited in two separate funds. The funds derived from the one and one-half percent fee shall be deposited into a Road Fund which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County. The money in this Fund shall be held in escrow until the said comprehensive road plan is finalized and adopted. Interest generated by this fund shall accrue to the fund. The funds derived for the one percent fee shall be deposited in the general fund of the County to offset the cost of public safety and public works services and infrastructure directly impacted by tourism. In the case of either fund, the costs of collecting

the monies may be reimbursed by the fund monies, up to a maximum of one percent (1%).

(H) **Sunset.** The imposition of the one and one-half (1.5%) percent hospitality fee for infrastructure will terminate (a) on 8/1/97 if an appropriate agreement or legislation is not in place fro the State of South Carolina to provide their share of the short term funding plan outlined by RIDE or (b) twenty years from the effective date of this ordinance. Should the one and one-half (1.5%) percent hospitality fee be terminated on 8/1/97, all funds collected will be placed in the general fund of the County and used for services directly impacted by the tourism industry (see G above).

SECTION 2. SEVERABILITY.

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby.

SECTION 3. CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this ordinances are hereby repealed.

SECTION 4. EFFECTIVE DATE.

This ordinance shall be effective 1/1/97.

FIRST READING: August 6, 1996
SECOND READING: August 20, 1996
THIRD READING: October 15, 1996

ATTEST:

Rosella H. Carroll

Rosella H. Carroll, Clerk to Council

HORRY COUNTY COUNCIL

A. Joseph McNutt, Jr., Chairman

Ray Skidmore, Jr., District 1

John Kost, District 2

Raymond J. Brown, District 3

Chandler Brigham, District 4

Chandler C. Prosser, District 5

Terry Chambers, District 6

James R. Frazier, District 7

Elizabeth D. Gilland, District 8

Ulysses Dewitt, District 9

Johnny Shelley, District 10

Janice Jordan, District 11

ATTEST:

Rosella H. Carroll, Clerk to Council

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BOOK 1895 PAGE 842

Exhibit B

City Resolution of Oct. 8, 1996

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
CITY OF MYRTLE BEACH

RESOLUTION SUPPORTING THE FINDINGS AND RECOMMENDATIONS OF THE RIDE COMMITTEE REPORT OF SEPTEMBER 1996.

WHEREAS, the serious transportation problem and traffic congestion are an ever increasing threat to the public safety and welfare, and the future economic development of Horry County and the State of South Carolina: and

WHEREAS, the Honorable David M. Beasley, Governor of the State of South Carolina, requested that the Honorable H.B. Limehouse, Chairman of the South Carolina Department of Transportation, form a special committee, which consisted of nine members and became known as the Road Improvement and Development Effort (RIDE Committee), to prepare a study on Horry County transportation problems and potential solutions; and

WHEREAS, the RIDE Committee considered both short term and long term solutions to the serious transportation problems and traffic congestion on Horry County roads; and

WHEREAS, the RIDE Committee presented the results of their study to the Governor on September 16, 1996, and to the South Carolina Department of Transportation Commission on September 19, 1996, and municipal bodies of Horry County on October 3, 1996; and

WHEREAS, the plan presented will provide substantial traffic relief and require participation in the funding package by the citizens of Horry County, as outlined by the proposed implementation of a 1.5 percent hospitality fee for a period of up to 20 years in partnership with the State of South Carolina, who will contribute substantial funding; and

WHEREAS, in order to solve the serious transportation and traffic congestion problems in Horry County, it is essential that the people and governments of Horry County work together harmoniously toward that common goal.

NOW, THEREFORE, BE IT RESOLVED that Myrtle Beach City Council strongly and unanimously support the RIDE Committee Report to Governor David M.

Beasley; and further urges Horry County Council to enact expeditiously the necessary ordinances to implement the RIDE Committee report.

SIGNED AND SEALED this 8th day of October, 1996.

ATTEST:

JOAN GROVE, CITY CLERK

ROBERT M. GRISSOM, MAYOR

RACHEL BROADHURST, COUNCIL MEMBER

WILSON CAIN, COUNCIL MEMBER

HARRY CHARLES, COUNCIL MEMBER

JOHN MAXWELL, COUNCIL MEMBER

MARK S. McBRIDE, COUNCIL MEMBER

CRAIN WOODS, COUNCIL MEMBER

Exhibit C

County Ordinances 11-04, 93-16, 32-17

4/31/94

HORRY FILED
2004 APR 23 AM 9:01
REQUESTED BY LEEDS

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ORDINANCE NO: 11-04

AN ORDINANCE AMENDING ORDINANCE NO. 105-96 (HOSPITALITY FEE) SO AS TO EXTEND THE SUNSET PROVISION OF THE ORDINANCE BY A PERIOD OF NOT MORE THAN FIVE (5) YEARS.

WHEREAS, on October 15, 1996, Council passed ordinance No. 105-96 whereby a Hospitality Fee was established, and on February 4, 1997, Council amended that ordinance by the adoption of Ordinance No. 7-97; and

WHEREAS, through prior Intergovernmental Agreements, Horry County has pledged the proceeds of the 1.5% portion of the Hospitality Fee so as to meet the certain financial obligations to the S.C. Transportation Infrastructure Bank (SIB), including those related to the repayment of principal and interest of bond indebtedness incurred by the SIB, such bond funds having been utilized to construct various highways located in Horry County, including the Conway Bypass, Carolina Bays Parkway, etc.; and

WHEREAS, it appears that the sums generated by Horry County's Hospitality Fee soon may be insufficient to satisfy the periodic payment obligations of the County to the SIB, thereby creating the possibility of a mandatory Intercept as permitted both by South Carolina statutes and the Intergovernmental Agreements referenced above; and

WHEREAS, on December 18, 2003, the Commission of the South Carolina Department of Transportation (SCDOT), in an effort to aid Horry County, did lawfully agree to the following financial assistance and undertaking, particularly

> **That SCDOT will replace the Horry County's Ten Million ($10,000,000.00) Dollar reserve requirement with an SCDOT guarantee of an equal amount, provided that by March 31, 2004, the State Infrastructure Bank and Horry County have renegotiated their loan agreement whereby the following requirements are met by Horry County, namely,**
>
> - Horry County extends its Hospitality Fee Ordinance for a period not to exceed five (5) years;
> - Horry County agrees to restructure its annual loan payment amounts based upon updated financial projections that reflect a more realistic revenue stream from the Hospitality Fee;
> - Horry County agrees that if it became necessary to draw on the SCDOT guarantee, Horry County will be obligated to repay SCDOT at some future time when Horry County's revenues are sufficient to make the necessary repayment.

WHEREAS, it appears to the satisfaction of Council that it is appropriate and in the best interest of Horry County to extend the 1.5 % portion of the Hospitality Fee established by Ordinance No. 105-96 for up to an additional five (5) years beyond January 1, 2017, the date that portion of the Hospitality Fee is otherwise scheduled to expire pursuant to the aforesaid ordinance, and

DEED
2725 0610

NOW, THEREFORE, by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained and enacted that:

1. The Hospitality Fee Ordinance, Number 105-96, as heretofore amended, including the one and one-half percent (1.5%) portion of the Hospitality Fee deposited into the Road Special Revenue Fund, hereby is extended for an additional period not to exceed five (5) years, which extension expires January 1, 2022, for the purpose of paying all existing payment obligations of Horry County to the S.C. Transportation Infrastructure Bank as scheduled and any additional obligations to the S.C. Transportation Bank which Council may approve.

2. Upon final review by Council, the Horry County Administrator is authorized to execute revised Intergovernmental Agreements, and any other related agreements and documents, with the S.C. Transportation Infrastructure Bank and the South Carolina Department of Transportation wherein amendments and modifications consistent with the provisions heretofore referenced are memorialized.

3. **Severability:** If a Section, Sub-section, or part of this Ordinance shall be deemed or found to conflict with a provision of the South Carolina law, or other pre-emptive legal principle, then that Section, Sub-section, or part of this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

4. **Conflict with Preceding Ordinances:** If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry County, then the preceding Section, Sub-section or provision shall be deemed repealed and no longer in effect.

5. **Effective Date:** This Ordinance shall become effective on Third Reading.

AND IT IS SO ORDAINED, ENACTED AND ORDERED.

Dated this 20th day of April, 2004.

HORRY COUNTY COUNCIL

Liz Gilland, Chairman

Harold G. Worley, District 1

Mark Lazarus, District 2

Marion D. Foxworth, III, District 3

Michael L. Ryan, District 4

Howard D. Barnard, III, District 5

Gene R. Smith, Jr., District 6

James R. Frazier, District 7

Carl Schwartzkopf, District 8

W. Paul Prince, District 9

Kevin J. Hardee, District 10

John C. Boyd, District 11

Attest:

Patricia S. Hartley, Clerk to Council

Date of First Reading February 17, 2004
Date of Second Reading March 2, 2004
Date of Third Reading April 20, 2004

Instrument#: 2016000146285, DEED BK: 3970 PG: 2298 DOCTYPE: 057 12/07/2016 at 01:48:32 PM, 1 OF 12 MARION D. FOXWORTH III, HORRY COUNTY, SC REGISTRAR OF DEEDS

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

ORDINANCE 93-16

AN ORDINANCE

AMENDING AND RESTATING ORDINANCE NO. 105-96, AS AMENDED, AND ORDINANCE NO. 111-01, AS AMENDED; AND OTHER MATTERS RELATING THERETO, THIS AMENDED AND RESTATED ORDINANCE TO BE KNOWN AS THE HOSPITALITY FEE AND LOCAL ACCOMMODATIONS FEE ORDINANCE.

FINDINGS OF FACT

The County Council of Horry County (the "County Council"), the governing body of Horry County, South Carolina (the "County"), hereby finds and determines:

WHEREAS, County Council, in meeting duly assembled, enacted Ordinance No. 105-96, on October 15, 1996, imposing a Hospitality Fee (as defined therein) in the County pursuant to the terms thereof.

WHEREAS, Ordinance No. 105-96 has been amended previously on four occasions, by Ordinance No. 7-97, Ordinance No. 76-97, Ordinance No. 80-01, and Ordinance No. 11-04 (as amended, the "Hospitality Fee Ordinance").

WHEREAS, County Council, in meeting duly assembled, enacted Ordinance No. 111-01 on February 19, 2002, imposing an accommodations fee at a rate of one-half of one percent (0.5%) throughout the unincorporated areas of the County (the "Local Accommodations Fee").

WHEREAS, the said Ordinance No. 111-01 has been amended previously on one occasion by Ordinance No. 50-04 (as amended, the "Local Accommodations Fee Ordinance").

WHEREAS, the Hospitality Fee is currently imposed at a rate of 1.5% within the bounds of the County and imposed at an additional rate of 1% within the unincorporated area of the County, on the following:

(1) the gross proceeds derived from the rental or charges for any rooms, camp ground spaces, lodgings, or sleeping accommodations furnished to transients by any motel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies;

(2) those paid admissions to places of amusement within the County to which the admissions tax imposed by the State of South Carolina pursuant to Section 12-21-2420, et seq. of the South Carolina Code, applies (golf fees not to begin until 7/1//97); and

(3) the gross proceeds derived from the sale of food and beverages sold in establishments which primarily have as their business purpose the sale of prepared food for immediate consumption either on or off premises; or maintain licenses for the in-premise consumption of alcohol, beer or wine.

(4) The gross proceeds derived from rental companies engaged in the business of renting private passenger motor vehicles to a renter for a consideration within the County. The proceeds derived from the lease or rental of a private passenger motor vehicle supplied to the same person for a period of ninety (90) continuous days are not considered proceeds.

WHEREAS, a "positive majority" of the County Council has determined that in order to best ensure the health, safety and welfare of the its citizens and in order generate additional revenue to better serve the tourists visiting the County, the scope of the Hospitality Fee and the rate of the Hospitality Fee with respect to numbered paragraph (4) immediately above shall be clarified as to scope as set forth herein and increased as to rate to 2.5% within the bounds of the County and that no additional rate shall be imposed solely in the unincorporated area of the County. Such action is taken pursuant to the authority granted the County in the South Carolina Code, specifically Section 6-1-330, without limitation.

WHEREAS, the Local Accommodations Fee is currently imposed in the unincorporated area of the County at a rate of one-half of one percent (0.5%) on:

> the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies.

WHEREAS, the receipts of the Hospitality Fee and Local Accommodations Fee (such receipts, the "Fee Revenues") currently provide sources of funding for the purposes set forth in their respective authorizing ordinances.

WHEREAS, County Council finds that receipts from Fee Revenues are currently and shall from this day forward be used exclusively for purposes set forth at Section 6-1-530 and 6-1-730 of the Code of Laws of South Carolina 1976, as amended (the "South Carolina Code").

WHEREAS, County Council has further determined that the condition, availability, location, and capacity of existing transportation infrastructure within and without the County serving tourists, or persons who do not reside in but rather enter temporarily, for reasons of recreation or leisure, the jurisdictional boundaries of the County, present impediments to economic growth and improvement thereof would benefit the health, safety and welfare of the citizens of the County and tourists.

WHEREAS, of the purposes outlined above, County Council finds that the current and future dedication of all or a portion of the Fee Revenues to defray the costs of designing, constructing, maintaining and operating transportation infrastructure and facilities and infrastructure serving tourists, and providing access to tourist destinations is in the best interest of the County, its citizens, and particularly its tourists.

WHEREAS, County Council finds that the Hospitality Fee and Local Accommodations Fee (each a "Fee" and together the "Fees") are uniform service charges or user fees, viz:

(1) Fee Revenues are used to benefit the payers. County Council finds that in order to purchase the goods and services on which the Hospitality Fee and Local Accommodations Fee are imposed, individuals nearly without exception must travel upon the transportation infrastructure of the County. Improved transportation infrastructure and other facilities and infrastructure benefiting tourists thus directly benefits those obtaining the subject goods and services by facilitating access to points of sale and service, attracting individuals to such points of sale, and enhancing safety. Furthermore, the County has a population of approximately 300,000 and receives approximately 18 million tourists each year, tourists who purchase the goods and services subject to the Hospitality Fee and Local Accommodations Fee and who benefit greatly from transportation infrastructure serving tourist destinations and tourism-related facilities.

(2) Fee Revenues are only used for specific purposes. Fee Revenues do not support the general operations of the County and may only be used for the purposes outlined herein.

(3) Fee Revenues do not exceed the cost of providing the improvements and services funded from Fee Revenues. Estimated annual costs for designing, constructing, maintaining, and operating transportation infrastructure providing access to tourist destinations and tourism-related facilities and infrastructure exceeds annual receipts of the Hospitality Fee currently and is reasonably anticipated to exceed annual receipts on a going forward basis.

(4) The Hospitality Fee and Local Accommodations Fee are uniformly imposed. All persons obtaining goods or services subject to the Hospitality Fee and Local Accommodations Fee pay a uniform rate in the incorporated areas of the County and pay a uniform rate in the unincorporated area of the County.

WHEREAS, the County Council finds that the Hospitality Fee and the rate thereof was authorized and adopted prior to December 31, 1996, remains in force and effect pursuant to the Hospitality Fee Ordinance and Section 6-1-330 of the South Carolina Code, and has not been repealed.

WHEREAS, the County Council finds the portions of the Hospitality Fee described at numbered paragraphs (1) and (3) describing the scope of the Hospitality Fee above and the entirety of the Local Accommodations Fee are currently imposed and authorized in a manner wholly consistent with the fees authorized at Title 6, Chapter 1, Articles 5 and 7.

WHEREAS, to the extent the rate limitations set forth at Section 6-1-540 and Section 6-1-740 are applicable to the rate of the Hospitality Fee or Local Accommodations Fee, such rates either (i) do not exceed the rates allowed by such sections or (ii) are exempt from such rate limitation by virtue of the date of adoption of the rate level.

WHEREAS, in order to meet the needs of the County as set forth above, the County Council is now minded to amend and restate the Hospitality Fee Ordinance and the Local Accommodations Fee Ordinance to incorporate the findings and determinations above, and provide concurrent authorization, to the extent applicable, for the Hospitality Fee imposed pursuant to the Hospitality Fee Ordinance in accordance with Title 6, Chapter 1, Articles 5 and 7 of the South Carolina Code. In providing such concurrent authorization, the County is in no manner waiving, repealing, or supplanting any existing authorization for the Hospitality Fee.

WHEREAS, the County, through experience in collecting the Fees, and in response to certain legislative developments, seeks to make certain changes in the administration of the collection of the Fees in order to more efficiently and effectively serve the people of the County.

WHEREAS, the County Council has determined to hold a public hearing in connection with the enactment of this Hospitality Fee and Local Accommodations Fee Ordinance.

BE IT ORDAINED BY THE COUNTY COUNCIL OF HORRY COUNTY, SOUTH CAROLINA, AS FOLLOWS:

SECTION I. HOSPITALITY FEE

(A) Establishment and Imposition of Hospitality Fee. There is established a uniform service charge, hereinafter referred to as the "Hospitality Fee," equal to one and one-half percent (1.5%) within the geographic confines of the County, and an additional imposition equal to one percent (1.0%) within the unincorporated areas of the County only; such rates shall apply to and be imposed on:

(1) the gross proceeds derived from the rental or charges for any rooms, camp ground spaces, lodgings, or sleeping accommodations furnished to transients by any motel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies;

(2) those paid admissions to places of amusement within the County to which the admissions tax imposed by the State of South Carolina pursuant to Section 12-21-2420, et seq. of the South Carolina Code, applies; and

(3) the gross proceeds derived from the sale of prepared food and beverages sold for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine.

(B) The Hospitality Fee shall be imposed at a rate equal to two and one-half percent (2.5%) within the geographic confines of the County solely with regard to:

(4) The gross proceeds derived from Rental Companies engaged in the business of renting Private Passenger Motor Vehicles to a renter for a consideration within The County. The proceeds derived from the lease or rental of a private passenger motor vehicle supplied to the same person for a period of ninety (90) continuous days are not considered proceeds. "Rental Company" means any individual, firm, partnership or corporation in the business of providing private passenger automobiles to the public under the terms of a rental agreement. "Private Passenger Motor Vehicle" means any private passenger motor vehicle, including passenger vans and mini-vans, that is intended primarily for the transport of persons on public roads and highways.

(C) Payment of the Hospitality Fee. Payment of the Hospitality Fee shall be the liability of the consumer of the services. The Hospitality Fee shall be paid at that time of the delivery of the services to which the Hospitality Fee applies, shall be collected by the provider of the services, and shall be held in trust by the provider until remitted as provided for herein.

(D) Disposition of Hospitality Fee. All revenues collected from the Hospitality Fee shall be deposited or allocated as follows:

(1) The funds derived from the one and one-half percent (1.5%) Hospitality Fee shall be deposited into a Road Special Revenue Fund which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County. Interest generated by this Road Special Revenue Fund shall accrue to the fund.

(2) The funds derived from the one percent (1%) fee shall be specifically allocated within the County's budget to offset the cost of public safety and public works services and infrastructure directly impacted by tourism.

In the case of disposition of funds, the costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of one percent (1%).

(E) Sunset. The imposition of the one and one-half (1.5%) Hospitality Fee for infrastructure will terminate on January 1, 2022.

(F) Use of Hospitality Fee Revenues. Receipts of the Hospitality Fee shall be expended only for a purpose or purposes identified below:

(1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;

(2) tourism-related cultural, recreational, or historic facilities;

(3) beach access and renourishment;

(4) highways, roads, streets, and bridges providing access to tourist destinations;

(5) advertisements and promotions related to tourism development;

(6) water and sewer infrastructure to serve tourism-related demand; or

(7) operation and maintenance of police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to the forgoing (1) through (6).

SECTION III. LOCAL ACCOMMODATIONS FEE

(A) Establishment and Imposition of a Local Accommodations Fee. There is established a uniform service charge, hereinafter referred to as the "Local Accommodations Fee," equal to one-half of one percent (0.5%) within the geographic confines of the unincorporated areas of the County.

> The Local Accommodations Fee shall be imposed on the gross proceeds derived from the rental or charges for any rooms, camp ground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the County to which the sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code, applies.

(B) Payment of the Local Accommodations Fee. Payment of the Local Accommodations Fee shall be the liability of the transient(s) described in the aforesaid paragraph. The Local Accommodations Fee shall be paid at the time of the delivery of service to which the Local Accommodations Fee applies, shall be collected by the provider of the services, and shall be held in trust by the provider until remitted as provided for herein.

(C) Use of Local Accommodations Fee Revenues. Receipts of the Hospitality Fee shall be expended only for a purpose or purposes identified below:

(1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;

(2) tourism-related cultural, recreational, or historic facilities;

(3) beach access and renourishment, or other tourism-related lands and water access;

(4) highways, roads, streets, and bridges providing access to tourist destinations;

(5) advertisements and promotions related to tourism development;

(6) water and sewer infrastructure to serve tourism-related demand; or

(7) operation and maintenance of police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to the forgoing (1) through (6).

SECTION IV. FEE COLLECTION AND ADMINISTRATION

(A) Collection of Fees.

(1) Requirement to Make Filing and Payment. Each person liable for any Fee shall (a) make a true and correct return to the County in such form as it may prescribe and (b) remit such Fee therewith.

(2) When Due. Any Fee imposed by this Hospitality Fee and Local Accommodations Fee Ordinance is due and payable:

i. in monthly installments on or before the twentieth (20th) day of each month, or

ii. in thirteen installments payable on or before the twentieth (20th) day following the period covered by the return on sales for the previous reporting period. This payment option requires thirteen payments in each calendar year. For those persons electing to pay in thirteen installments (every four weeks), payments for each period are due on or before the twentieth (20th) day after the conclusion of the four calendar week period for which payment is due.

The return shall be due at the same time the Fee is due and payable.

(3) Manner and Location of Payment. Fee payments shall be made by mail, in-person at facilities designated by the County Administrator, or electronically. County Council, by resolution, may establish mandatory electronic filing for certain classes of payers.

(4) Timely Filing and Payment. A return and the payment due therewith are considered to be timely if (i) the return and payment are mailed and such mailing has a postmark dated on or before the date the return is required to be filed; or (ii) the County actually receives the return and payment (a) at a physical location designated by the County Administrator, or (b) electronically in a manner selected by the County Administrator. The burden of demonstrating the timeliness of the filing and payment and presentation of a

corroborating proof of mailing or receipt demonstrating the same is the responsibility of the person making payment.

(5) Failure to File Return. In the case of a failure to file the return, the County shall make a return upon such information as it may be able to obtain, assess the Fee due thereon, and assess a late filing penalty (the "Failure to File Penalty") upon the entire Fee then due, whereupon the County shall mail such notice to the person liable for the Fee. Such payment shall be due within ten days of the postmark of such return.

The Failure to File Penalty shall be calculated as

(A x B) x C = the Failure to File Penalty

where "A" represents the amount of the entire then due Fee, "B" represents the daily penalty in percentage terms calculated on the basis of a 10% per month penalty assuming a 30-day month (0.333%), and "C" represents the number of calendar days from the date the filing was due to the date of the filing and payment of the Failure to File Penalty. The amount of the Failure to File Penalty for any period shall not exceed 20% of the Fee due for that period.

(6) Failure to Timely File Return. In the case of late filing of the return, the County shall assess a late filing penalty (the "Late Filing Penalty") upon the entire Fee then due.

The Late Filing Penalty shall be calculated as

(D x E) x F = the Late Filing Penalty

where "D" represents the amount of the entire then due Fee, "E" represents the daily penalty in percentage terms calculated on the basis of a 10% per month penalty assuming a 30-day month (0.333%), and "F" represents the number of calendar days from the date the filing was due to the date of the payment of the Fee, the Late Filing Penalty, and any Late Payment Penalty. The amount of the Late Filing Penalty for any period shall not exceed 20% of the Fee due for that period.

(7) Failure to Pay. In the case of failure to pay the entirety of any Fee when due, the County shall add a late payment penalty (the "Late Payment Penalty").

The Late Payment Penalty shall be calculated as:

(X x Y) x Z = the Late Payment Penalty

where "X" represents the amount of the entire Fee due for the period in question without regard to any partial payment, "Y" represents the daily penalty in percentage terms calculated on the basis of a 10% per month penalty assuming a 30-day month (0.333%), and "Z" represents the number of calendar days from the date the payment was due to the date of the payment of such Fee, and the Late Payment Penalty. There shall be no limit on the amount of the Late Payment Penalty.

For a given period, a person may be assessed a Failure to File Penalty, or a Late Filing Penalty, but shall not be assessed both.

(B) Inspections and Audit. For the purpose of enforcing the provisions of this Hospitality Fee and Local Accommodations Fee Ordinance, the County Administrator or other authorized agent of the County, is empowered to enter upon the premises of any person subject to this section and to make inspections, examinations and audits of books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours written notice. In the event that an audit reveals that false information has been filed by the remitter, the costs of the audit shall be added to the correct amount of any Fees determined to be due, in addition to the penalties provided in subsection (A) above. The County Administrator or other authorized agent of the County may make systematic inspection of all businesses within the County, to ensure compliance with this section. Records of inspection shall not be deemed public records.

(C) Violations.

(1) It is a violation of this section to:

(a) fail to collect any Fee;
(b) fail to remit to the County any Fee collected;
(c) fail to file any Fee return;
(d) knowingly provide false information on any Fee return;
(e) fail to provide books and records to the County Administrator or other authorized agent of the County for the purpose of in inspection, examination, or audit after twenty-four (24) hours written notice.

(2) Each day this section is violated constitutes a separate offence.

(3) Upon conviction of this section, the violator is guilty of a misdemeanor and subject to a fine or forfeiture not exceeding five hundred dollars or imprisonment for not exceeding thirty days, or both.

(D) Administration of Fees. The County Administrator is responsible for the implementation, collection, and enforcement of the Fees through any legally available means as may be available to the County, including, without limitation, the Setoff Debt Collection Act,

codified at Title 12, Chapter 56 of the South Carolina Code and Governmental Enterprise Accounts Receivable (GEAR), codified at Section 12-4-580 of the South Carolina Code.

(E) Administrative Fee. The costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of one (1%) percent.

SECTION V. FAIRNESS IN LODGING ACT

(A) Findings and Authorization. In order to ensure fair competition in providing accommodations to transients and Tourists, the County finds that additional enforcement authority would be helpful in enforcing the Hospitality Fee and Local Accommodations Fee to support the health, safety and welfare of its residents and Tourists. The County is authorized to implement such authority in light of the concurrent authority of Title 6, Chapter 1, Article 5 provided to portions of the Hospitality Fee by this ordinance, and the plenary authority granted by Title 6, Chapter 1, Article 5 in the Local Hospitality Fee Ordinance, and confirmed hereby.

(B) Implementation. The County hereby implements the provisions of the Fairness in Lodging Act, codified at Title 6, Chapter 1, Article 8 of the South Carolina Code. The County Administrator is hereby directed to provide a certified copy of this Hospitality Fee and Local Accommodations Fee Ordinance to the Director of the South Carolina Department of Revenue (the "Department of Revenue") pursuant to Section 6-1-815(A) of the South Carolina Code.

(C) Data Sharing. The County Administrator is hereby directed to take such action as he finds necessary and desirable to collaborate with the Department of Revenue to use returns and copies of returns and other documents filed with or otherwise available to either the Department of Revenue or the County so that each may share data helpful to both the Department of Revenue and the County in determining possible instances of noncompliance.

(D) Notices in Annual Property Tax Notices. There shall be included or caused to be included notices in annual property tax notices for parcels of residential real property assessed for property tax purposes pursuant to Section 12-43-220(e) of the South Carolina Code in such form as the County Administrator finds necessary and desirable. Such notices must provide (1) details of fees imposed pursuant to Title 6, Chapter 1, Article 5 of the South Carolina Code and state sales tax on accommodations required to be paid by persons renting residential real property to tourists in the County and (2) the intention of the County to vigorously to enforce these requirements. Details must include specific information on obtaining additional information with respect to these requirements and the names, addresses, and telephone numbers of the County officials designated by the County Administrator able to answer questions, provide forms, and assist in compliance.

(E) Civil Penalties. In addition to, and separate and apart from, other penalties and interest imposed by this ordinance for failure to comply with the portion of the Hospitality Fee concurrently authorized by Title 6, Chapter 1, Article 5 and the Local Accommodations Fee the County hereby imposes, with respect to a single rental property, a one-time civil penalty for noncompliance for failure to collect and remit the portion of the Hospitality Fee concurrently authorized by Title 6, Chapter 1, Article 5 and the Local Accommodations Fee of not less than five hundred dollars nor more than two thousand dollars for each seven days the property was rented. This additional penalty may not be imposed unless the owner has received the notice provided pursuant to Section V(D) above. For purposes of enforcement and collection, this

penalty is deemed property tax on the rental property pursuant to Section 6-1-820(C), and enforceable in the same manner and to the same extent as County property taxes.

SECTION V. SEVERABILITY

If any Section, Subsection, or Clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining Sections, Subsections and Clauses shall not be affected thereby.

SECTION VI. CONFLICTING ORDINANCES REPEALED

If any Section, Subsection, or Clause of this ordinance shall conflict with any Section, Subsection or Clause of a preceding ordinance of the County, then the preceding Section, Subsection or Clause is hereby repealed and no longer in effect.

SECTION VII. CONCURRENT AUTHORIZATION

The Hospitality Fee Ordinance is hereby amended to add the supplemental and concurrent authorization of Title 6, Chapter 1, Articles 5 and 7, to the Hospitality Fee to the extent applicable. Under no circumstances shall the addition of such concurrent authorization be construed as the imposition of a new fee or tax; such authorization is entirely supplementary and concurrent in nature.

SECTION VIII.EFFECTIVE DATE

This Hospitality Fee and Local Accommodations Fee Ordinance shall become effective January 1, 2017.

AND IT IS SO ORDAINED, ENACTED AND ORDERED.

Dated this 6th day of December, 2016.

HORRY COUNTY COUNCIL

Mark Lazarus, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Jimmy Washington, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Harold Phillips, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Jody Prince, District 10
Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

First Reading:	November 1, 2016
Second Reading:	November 15, 2016
Public Hearing:	November 15, 2016
Third Reading:	December 6, 2016

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

ORDINANCE 32-17

AN ORDINANCE

AMENDING ORDINANCE NO. 93-16 TO REPEAL THE SUNSET PROVISION APPLICABLE TO THE 1.5% HOSPITALITY FEE, AND OTHER MATTERS RELATED THERETO.

FINDINGS OF FACT

The County Council of Horry County (the "County Council"), the governing body of Horry County, South Carolina (the "County"), hereby finds and determines:

WHEREAS, County Council, in meeting duly assembled, enacted Ordinance No. 93-16, on December 6, 2016, and amended and restated its Hospitality Fee Ordinance and its Local Accommodations Fee Ordinance as a single Hospitality and Local Accommodations Fee Ordinance in order to provide for certain modernizations and to avail the County of certain statutory authorizations related to the administration, collection and enforcement of such fees.

WHEREAS, Section I(E) of such Hospitality and Local Accommodations Fee Ordinance provides that the imposition of the one and one-half percent (1.5%) Hospitality Fee (the "1.5% Hospitality Fee") for infrastructure will terminate on January 1, 2022.

WHEREAS, County Council, upon advice received and after due consideration has determined that the sunset of the 1.5% Hospitality Fee does not serve the interests of the County, its residents, or visiting tourists and that the County faces substantial infrastructure challenges in the coming years that are eligible for funding pursuant to the terms of the Hospitality and Local Accommodations Fee Ordinance and that it is in the bests interests of the County, its citizens, and its visiting tourists, to provide for the continued imposition of the 1.5% Hospitality Fee beyond January 1, 2022, in order to meet such challenges.

BE IT ORDAINED BY THE COUNTY COUNCIL OF HORRY COUNTY, SOUTH CAROLINA, AS FOLLOWS:

SECTION I. CONTINUATION OF 1.5% HOSPITALITY FEE; REMOVAL OF SUNSET

The sunset provision contained at Section I(E) of the Hospitality and Local Accommodations Fee Ordinance providing for the termination of the 1.5% Hospitality Fee on January 1, 2022, and shown below:

> (E) Sunset. The imposition of the one and one-half (1.5%) Hospitality Fee for infrastructure will terminate on January 1, 2022.

is hereby repealed and of no further effect. Such 1.5% Hospitality Fee shall continue indefinitely in the absence of further action by County Council pursuant to ordinance.

Instrument#: 2017000049972, DEED BK: 4007 PG: 605 DOCTYPE: 057 05/03/2017 at 01:42:09 PM, 1 OF 2 MARION D. FOXWORTH III, HORRY COUNTY, SC REGISTRAR OF DEEDS

SECTION II. SEVERABILITY

If any Section, Subsection, or Clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining Sections, Subsections and Clauses shall not be affected thereby.

SECTION III. CONFLICTING ORDINANCES REPEALED

If any Section, Subsection, or Clause of this ordinance shall conflict with any Section, Subsection or Clause of a preceding ordinance of the County, then the preceding Section, Subsection or Clause is hereby repealed and no longer in effect.

SECTION VIII.EFFECTIVE DATE

This Hospitality Fee and Local Accommodations Fee Ordinance shall become effective immediately upon approval at Third Reading.

AND IT IS SO ORDAINED, ENACTED AND ORDERED this 2nd day of May, 2017.

HORRY COUNTY COUNCIL

Mark Lazarus, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Harold Phillips, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:
Patricia S. Hartley, Clerk to Council

First Reading: April 4, 2017
Second Reading: April 18, 2017
Third Reading: May 2, 2017

Exhibit D

City Ordinances 2019-22, 2019-23

ORDINANCE 2019-22

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE VI, DIVISION 4, ACCOMMODATIONS TAX, TO INSTITUTE A THREE PERCENT TAX, EFFECTIVE IMMEDIATELY WITH IMPLEMENATION TO BE EFFECTIVE JULY 1, 2019.

IT IS HEREBY ORDAINED THAT Chapter 2, Article VI of the Code of Ordinances of the City of Myrtle Beach is hereby amended in Division 4, Accommodations Tax, in Sections 2-273, with repealed language stricken through and amended language underlined.

Sec. 2-270
This division shall be referred to as the City of Myrtle Beach Accommodations Tax Ordinance, enacted pursuant to South Carolina Code 6-1-500 et seq.

Sec. 2-271
It is hereby found and declared by the City Council of Myrtle Beach that tourism is the major industry in the City, accounting for millions of visitors annually. The City supports and encourages this industry by budgeting city funds for operational costs and capital improvements to streets and roadways, beach access and renourishment, water, sewer and waste management, as well as enhanced police and fire protection. By way of *ad valorem* taxation, the local stable population of approximately ~~25,000~~ 32,000 citizens, by 2018 estimates, bears the operational and capital costs of service provision made necessary by our annual visitors. The cost of providing the special or enhanced services required or made necessary by the tourism industry should be apportioned more equitably between the resident taxpayers and those who visit our City and enjoy the programs, events, benefits and municipal services, however briefly.

Sec. 2-272
The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accommodations for transients includes the Accommodations specified in S. C. Code 1976 & 12-36-920, as amended from time to time, or any successor provision thereto, located within the jurisdiction of the city.

Department of finance means the financial services department of the city.

Finance director means the director of finance of the city.

~~Sec. 2-273~~
~~Upon the ninetieth day following second reading,~~ ~~t~~ There shall be imposed and shall immediately accrue as of the first day of the month following such date a collected tax, as provided in this division, upon Accommodations for transients. The tax imposed by

this section shall not apply to additional guest charges as defined in S. C. Code 1976 , & 12-36-920(B). The tax shall be established at the rate of ~~one half of one percent~~ three percent (3%) of the gross proceeds derived from the rental or charges for any Accommodations for transients.

Sec. 2-274
Taxes imposed by this division shall be due on the same date and in the same manner as provided in S.C. Code 1976, & 12-36-2570, and in accordance with the provisions of S.C. Code 1976, & 12-36-2570. The city shall provide the form for remittance of the tax to the city. At the time of filing of such form, the business providing Accommodations for transients shall pay to the finance department or its designee all taxes due for the period for which the form applies.

Sec. 2-275
All taxes collected under this division shall be used solely in connection with the tourism industry or economic development, in accordance with South Carolina Code 6-1-530 (as amended 1999).

Sec. 2-276
If for any reason any tax imposed by this division is not paid when due, a penalty at the rate of two percent per month on the amount of taxes which remain unpaid shall be added and collected. Whenever any person shall fail to pay any tax as provided in this division, upon the request of the city, an action may be brought by the city to enforce the payment of such tax on behalf of the city in any court of competent jurisdiction.

Sec. 2-277
Every business providing accommodations to transients in the city shall keep books and records showing the prices, rents or charges made or charges and occupancies taxable under this division. The finance director or his designee shall at all reasonable times have full access to such books and records of such business.

Sec. 2-278
If the city shall find that any person has willfully avoided payment of the taxes imposed by this division, the city may suspend or revoke all city licenses held by such business in accordance with the ordinance pertaining to business licenses.

Sec. 2-279
If any provisions, clause, sentence, paragraph, section or part of this division, or the application thereof to any person, firm, corporation, public agency or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this division and the application of such provision to other persons, firms, corporations, public agencies or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation, public agency or circumstances involved.

Sec. 2-280
An interest bearing and restricted account shall be established and known as the Myrtle Beach Local Accommodations Special Revenue Fund. All revenue received pursuant to

this ordinance shall be deposited into this fund, and shall be expended only pursuant to law and at the sole discretion of City Council.

Sec. 2-281
It shall be unlawful to fail to collect the tax in connection with the rental of Accommodations to transients; or fail to remit to the City the tax collected, pursuant to the ordinance; or knowingly provide false information on any form or return to the City; or fail to provide books and records for the purpose of audit upon 24 hours' notice. Upon conviction, the penalty shall be as prescribed by law.

_____
BRENDA BETHUNE, MAYOR

ATTEST:

_____
JENNIFER STANFORD, CITY CLERK

1st Reading: 2-26-19
2nd Reading: 3-7-19

ORDINANCE 2019-23

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE ENACTING IN CHAPTER 2, ARTICLE VI, A NEW DIVISION 7, LOCAL HOSPITALITY TAX, TO INSTITUTE A TWO PERCENT TAX, EFFECTIVE IMMEDIATELY WITH IMPLEMENATION TO BE EFFECTIVE JULY 1, 2019.

IT IS HEREBY ORDAINED THAT Chapter 2, Article VI of the Code of Ordinances of the City of Myrtle Beach is hereby amended by enacting Division 7, Local Hospitality Tax, in Sections 2-315 through 2-321.

Sec. 2.315. - Municipal local hospitality tax pursuant to South Carolina Code 6-1-700 through 6-1-770.

There is hereby imposed a uniform tax of two (2) percent on the gross proceeds derived from the sales of prepared meals, food, and beverages sold in or by establishments, or sales of prepared meals, food and beverages sold in or by establishments licensed for on-premises consumption of alcoholic beverages, beer or wine.

Sec. 2.316. - Payment of municipal hospitality tax.

The tax imposed by this section shall be collected from any patron when he tenders payment for his meal, food, or beverage and shall be held in trust for the benefit of the city until the same is paid to the director of the revenue collections division as hereinafter provided. Every establishment subject to this section shall, on the date or within the time period hereinafter prescribed, make a return to the revenue collections division of the city on forms provided by the office delineating gross proceeds of sales of prepared meals, food, and beverages for the previous month, and the amount of any tax due by virtue of this section. At the time the return is filed, the full amount of any tax due hereunder shall be remitted. Taxes and required reports shall be submitted to the Revenue Collections Division by the twentieth (20) day of the month and shall cover sales of the previous month. If the due date for reporting and payment falls on a Saturday or Sunday, or a federal, state, or City of Myrtle Beach observed holiday then reporting and payment are considered timely on the following business day. Furthermore, if the due date for reporting and payment falls during the period of a natural disaster which directly precluded the responsible party from timely submitting the reports and payments, an additional ten (10) day extension may be granted upon written request by the taxpayer to the director of the revenue collections division. A natural disaster is defined as a hurricane, earthquake, flood, or tornado. The responsible party is considered directly precluded from timely submitting reports and payments if their offices are deemed by emergency officials to be damaged to the extent of being unsafe or unavailable for use due to the disaster or postal service to the immediate area is suspended during the due date. Any taxes not timely remitted shall be subject to a penalty of twenty-five (25) percent. The failure to collect from patrons the tax imposed by this section shall not relieve any establishment subject to this section from making the required remittance.

Sec. 2-317. - Hospitality tax account.

There is hereby established a special account, to be known as the hospitality tax account, into which all monies remitted to the city under this section shall be deposited. Any and all funds in the hospitality tax account, including any interest as may accrue thereon, shall be used only for the purposes as set forth in S.C. Code Ann. Sec. 6-1-730, as the same may from time to time be amended.

Sec. 2-318. - Inspections, audits and administration.

For the purpose of enforcing this section, the director of the revenue collections division or other authorized agent of the city is empowered to enter upon the premises of any person or entity subject to this section and to make inspections, and examine and audit books and records. It shall be unlawful for any person or entity to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours' written notice. In the event an audit reveals that false information has been filed by the remitter, the cost of the audit shall be added to the correct amount of taxes determined to be due. The director of the revenue collections division or other authorized agent may make systematic inspections of all establishments within the city to ensure compliance with this section. The director of the revenue collections division shall administer the provisions of this section and make reasonable regulations relating to its administration.

Sec. 2-319. - Violations. It shall be a violation of this section to:

1. Fail to collect the municipal hospitality tax in connection with the sale of meals, food, and beverages;
2. Fail to remit to the city the taxes collected pursuant to this section on a monthly basis;
3. Provide false information on the form of return submitted to the city;
4. Fail to provide or make available books and records to the director of revenue or other authorized agent for the purpose of an audit upon twenty-four (24) hours' written notice; or,
5. Fail to comply with any other specific provision/requirement of this section.

Sec. 2-320. – Violations a misdemeanor.

The failure of an establishment subject to this section to remit to the city the taxes required by this section, as and when due, shall constitute a misdemeanor, punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment for up to thirty (30) days, or both. Notwithstanding the foregoing, any misrepresentation of the information required by return(s) as set forth in subsection (b) hereof or the failure to collect or timely remit to the city the taxes imposed by this section shall result in the suspension and/or revocation of the business license of the offending establishment, or the business license of the offending establishment shall not be renewed, as may be determined, after a hearing by the business license committee. At least ten (10) days' notice of such hearing shall be provided to the owner of the applicable establishment.

Sec. 2-321. - Severability.

If any section, phrase, sentence or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions herein.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER STANFORD, CITY CLERK

1st Reading: 2-26-19
2nd Reading: 3-7-19

ELECTRONICALLY FILED - 2019 Jun 13 11:55 AM - HORRY - COMMON PLEAS - CASE#2019CP2601732

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	**HORRY COUNTY'S**
Plaintiff,	)	**OPPOSITION TO MOTION TO**
	)	**DISMISS**
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	
	)	

Horry County ("County") respectfully submits this opposition to the City of Myrtle Beach's ("City") motion to dismiss the counterclaims.[1]

Introduction

The City seeks to dismiss the County's counterclaims, arguing that neither states a claim. As for the first counterclaim for fees and costs, the County agrees to withdraw that claim because it can obtain fees and costs in this baseless litigation at its conclusion. As for the second counterclaim for promissory estoppel, the City's 1996 resolution in support of the Hospitality Fee and subsequent inaction as the County amended the Hospitality Fee is sufficiently definite to support this claim. Therefore, it should not be dismissed.

[1] The County has also filed a motion for leave to file an amended answer and counterclaims. In the proposed new pleading, the County withdraws its counterclaim for fees and costs, and it adds counterclaims for declaratory and injunctive relief. To the extent the Court concludes that the promissory estoppel counterclaim is not sufficiently pled, the County requests leave to correct any deficiencies in that claim before the amended pleading is filed.

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Factual Background

By now, the Court is familiar with the facts of this dispute, so only a brief overview is necessary here. In an effort to raise revenue for infrastructure, the County adopted the Hospitality Fee in 1996 in Ordinance 105-96. At that time, the City, in a October 8, 1996 resolution, "strongly and unanimously . . . urge[d]" the County to adopt that Fee.

Originally, the Hospitality Fee was set to expire in twenty years. In 2004, however, the County extended the Hospitality Fee for up to five years. Then, in 2016, the County extended the Fee for the full five years, and the next year, the County removed the sunset provision entirely.

The City adopted its own local accommodations and hospitality tax in March 2019, which—if collected alongside the Hospitality Fee—would exceed the maximum amount of these taxes that may be collected by a county and municipality pursuant to S.C. Code §§ 6-1-540 and 6-1-740. Almost simultaneously with adopting these new taxes, the City filed this lawsuit, claiming that its consent was required (but not given) for the County to extend the Hospitality Fee. The County counterclaimed.

The parties have cross-moved for preliminary injunctions, and a hearing is scheduled for June 14. Now, the City has moved to dismiss the County's counterclaims.

Legal Standard

A court may dismiss a complaint only when it "fail[s] to state facts sufficient to state a cause of action." Rule 12(b)(6), SCRCP. The court must view the allegations and draw reasonable inferences in the light most favorable to the plaintiff, and a court

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may not dismiss the complaint if "any theory of law" would entitle a party to relief. *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

Argument

I. The County withdraws its counterclaim for costs and fees.

Baseless or frivolous claims undermine the purpose and function of our judicial system. To discourage and punish such claims, both Rule 11 and the Frivolous Civil Proceedings Sanctions Act, S.C. Code § 15-36-10, allow courts to award costs and fees to litigants who have to defendant meritless claims. As the Court will see as this case progress, the City's case has no merit. Indeed, the County has explained in detail the fatal flaws with the City's argument in its briefing on the motions for preliminary injunctions. The City tries to characterize its case differently by saying the County has to have legislation to save its Hospitality Fee, but in reality, that legislation is merely a belt-and-suspenders approach (in conjunction with the County's defense in this litigation) to ensure that this well-established, essential revenue source remains in place.

Because the County can recover these costs and fees at the end of this litigation, *see Pee Dee Health Care, P.A. v. Estate of Thompson*, 424 S.C. 520, 818 S.E.2d 758 (2018), the County withdraws this claim now.

II. The County has stated a promissory estoppel claim.

The City's argument to dismiss the promissory estoppel claim is remarkable. On the one hand, the City has repeatedly claimed (in its complaint and its briefing

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on the preliminary injunction motions) that its 1996 resolution was sufficient to convey its approval of the Hospitality Fee. But on the other, the City now asserts that its 1996 resolution is "general but vague," lacking enough specificity to support a promissory estoppel claims.[2] City's Mem. 6.

The City cannot have it both ways. If the 1996 resolution was sufficient to establish the City's support for the Hospitality Fee in 1996, then it is sufficiently "unambiguous" and "clearly articulated" to support the promissory estoppel claim here regarding that Fee. *Barnes v. Johnson*, 402 S.C. 458, 470, 742 S.E.2d 6, 11 (Ct. App. 2013). Given that the City never questioned the sufficiency of its support for the Hospitality Fee for more than two decades, the answer to the choice presented by its inconsistent arguments in this litigation is obvious: The City has made a sufficiently clear promise to support the County's counterclaim.

The City fares no better by pointing to the twenty-year period noted in its 1996 resolution. The City's silence over the past twenty-three years precludes the City from gaining any traction on this front. The City never raised any objection to the 2004 county ordinance (No. 11-04) that extended the Hospitality Fee for up to five years. And it remained silent (and indeed kept paying that Fee) for more than two years after the 2016 and 2017 county ordinances (Nos. 93-16 and 32-17) extended and removed the sunset provision. A jury could reasonably find that the City's silence constitutes consent to the Fee being extended (if that consent was even required). Or

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[2] The City correctly notes in its memorandum that the Court may look to documents attached to or referenced in the pleadings. City's Mem. 2 n.1. That means the Court may look at the resolution itself, not only the County's allegations about it, when considering the City's motion to dismiss, to determine exactly what commitments the City made about the Hospitality Fee.

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at the very least, a jury could find that the City is estopped from asserting this argument on account of its silence. *Cf. Faulkner v. Millar*, 319 S.C. 216, 221, 460 S.E.2d 378, 381 (1995) (discussing implied consent and estoppel by silence).

The City's final argument on damages also comes up short. Since January 1, 2017, the County has spent money colleting and administering the Hospitality Fee within municipal limits. That is money that the County would not have spent if the City had not sat silently by for over two years after the original sunset date came and went if in fact the City did not support the County continuing to collect that Fee. Thus, the County has suffered damages that would allow it to recover on a promissory estoppel claim.

Conclusion

The City's motion to dismiss should be denied.

Respectfully submitted:

Burr & Forman LLP

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Attorneys for Defendant

Myrtle Beach, South Carolina
Dated: June 13, 2019

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiff, vs. Horry County, Defendant.	)	CIVIL ACTION NO. 2019-CP-26-01732 **MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT HORRY COUNTY'S MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff, City of Myrtle Beach ("City"), on behalf of itself and all other similarly situated plaintiffs, submits this memorandum in opposition to Defendant Horry County's ("County") May 14, 2019, Motion for Preliminary Injunction seeking to enjoin the City's collection of its properly-enacted accommodations and hospitality taxes.

INTRODUCTION

The County's memorandum largely ignores its motion to enjoin the City's collection of lawful accommodations and hospitality taxes.[1] And it is easy to see why.

The County pled no counterclaim for injunctive relief, or indeed any challenge to the City's own ordinances whatsoever. Any motion for injunctive relief therefore is improper and barred. On the merits, the County's sole argument to invalidate the City's ordinances is that its ordinance imposing a 1.5% uniform service charge within the limits of Horry County municipalities ("Hospitality Fee") was first in time. This argument fails for any number of reasons, including that the Hospitality Fee expired on January 1, 2017, and the County's uniform service charge (even if valid) does not impact the City's ability to collect accommodations and

[1] Nearly all of the County's May 14 supporting memorandum is its opposition to the City's May 3 Motion for Preliminary Injunction. The City has separately filed a reply memorandum in support of its motion.

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hospitality taxes. The County then grossly overstates the impact of the City's claims into order to conjure up fears of fiscal calamity. In reality, the County will continue collecting over $22 Million per year in uniform service charges and accommodations tax revenues even if the City prevails. No irreparable harm will befall the County. Finally, the County never attempts to shoulder its burden of demonstrating an injunction is reasonably necessary to protect its interests and half-heartedly claims the City acted in an arbitrary, capricious, and oppressive manner. This Court therefore should deny the County's motion for preliminary injunctive relief.

FACTUAL BACKGROUND

A. The City Enacted the Only Accommodations and Hospitality Taxes Imposed Within Its Corporate Limits.

The facts concerning the County's enactment of its Ordinance 105-96 creating and imposing the Hospitality Fee within the corporate limits of municipalities in Horry County, and subsequent amendments purporting to extend its duration and permissible uses, are stated more completely in the City's Memorandum in Support of Motion for Preliminary Injunction, filed May 3, 2019 ("City Inj. Mem."), and the City's Reply Memorandum of Law in Support of Motion for Preliminary Injunction, filed May 24, 2019 ("City Inj. Reply Mem."). The City incorporates those discussions and exhibits by reference as if fully set forth herein.[2]

The now-expired Hospitality Fee was a uniform service charge enacted under S.C. Code Ann. § 4-9-30(a)(5). The County, to date, has never imposed an accommodations or hospitality tax, pursuant to Articles 5 and 7 of Chapter 1, Title 6 of the South Carolina Code, respectively, within the corporate limits of any Horry County municipality. The City, on the other hand, has

[2] The County's motion implicates issues raised in a number of other pending motions. To avoid unnecessarily repeating arguments made elsewhere, the County also incorporates by reference its May 20 memorandum in support of its Motion to Dismiss ("City Dismiss Mem.") and May 31 opposition to the County's Motion to Amend Complaint ("City Mem. Opp. Mot. Am."), along with their exhibits.

done so. On March 7, 2019, the City's governing body, the Myrtle Beach City Council, gave a second and final reading to ordinances Nos. 2019-22 and 2019-23 ("Local Tax Ordinances"). These ordinances are attached hereto as Exhibits A-B, respectively. Ordinance No. 2019-22 increases the City's existing accommodations tax under S.C. Code Ann. §§ 6-1-500, *et seq.*, from 0.5% to 3%, and Ordinance No. 2019-23 adopts a 2% hospitality tax pursuant to S.C. Code Ann. §§ 6-1-700, *et seq.*

The Local Tax Ordinances go into effect July 1, 2019.

B. The County Will Continue Collecting Substantial Revenues Even If Plaintiffs Prevail.

In an apparent attempt to engender political support for its astonishing position in this matter (*i.e.*, that the County can impose uniform service charges within the corporate limits of municipalities without their consent, yet prevent municipalities from imposing statutorily authorized taxes within their corporate limits), the County paints a picture of dire financial harm should the City be allowed to collect its accommodations and hospitality taxes. In so doing, the County either intentionally or through a fundamental misunderstanding of the City's complaint, overstates the relief the City seeks.

The County's tale of catastrophe actually has nothing to do with the City's collection of its taxes; rather, it concerns the County's loss of its own Hospitality Fee revenues. But the City addresses it here to the extent the County asserts this will occur as a result of the City's taxes. The County relies on an affidavit from Barry Spivey, its Finance Director, to make this claim. *See* Mem. in Opp. to Pl.'s Mot. for Prelim. Inj. & in Supp. of Def.'s Mot for Prelim. Inj. ("County Mem.") at Ex. L ¶¶ 4-6. Mr. Spivey's affidavit summarizes the County's collections under the "Ordinance." *Id.* ¶ 5. This "Ordinance" actually encompasses two separate codified ordinances—Ordinance 19-6 imposing the Hospitality Fee and Ordinance 19-8 imposing an

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accommodations tax—each of which has several subparts and has been amended multiple times. *See id.* ¶ 3.

As currently constituted, the County's "Ordinance" (as defined by Mr. Spivey) can be broken down into four parts: (1) a cumulative 2.5% uniform service charge on accommodations, prepared food and beverage, and admissions in the unincorporated areas of Horry County[3]; (2) a 2% uniform service charge imposed on rental car charges in both incorporated and unincorporated areas of the County; (3) a 0.5% accommodations tax imposed solely in the unincorporated areas of the County; and (4) a 1.5% uniform service charge on accommodations, prepared food and beverage, and admissions imposed within the corporate limits of Horry County municipalities, *i.e.*, the Hospitality Fee. *See* Affidavit of Michael Shelton, May 24, 2019, attached hereto as Exhibit C, ¶ 5. The City's complaint alleges only that the fourth part—the 1.5% uniform service charge within municipalities—is invalid.

This puts the County's protestations of harm into the needed accurate context. In the fiscal year ending June 30, 2018, the County collected $51.16 Million in revenues from the "Ordinance," and $28.27 Million of it came from the Hospitality Fee imposed within the municipalities. *Id.* ¶ 6. This leaves over $22 Million (and likely growing) in annual revenues which are unhindered, untouched, and unimpacted by the City's complaint. *Id.* ¶ 7. The approximately $9 Million annually that the County spends on public safety from "Ordinance" revenues do not come from Hospitality Fee collections, and thus is not in jeopardy. *Id.* ¶¶ 8-9. And the County will have a $13 Million annual surplus it can spend for the purposes set forth in the applicable ordinances. Should these funds still not prove sufficient for the County's needs,

[3] This is the combination of the 1.0% uniform service charge imposed only in the unincorporated portions of Horry County plus the portion of the 1.5% uniform service charge imposed in the County (unincorporated) area only.

the County has at its disposal a number of other mechanisms for raising additional revenue if needed, including tax increases, properly-imposed uniform service charges, and bond issues. *Id.* ¶ 13.

The County also neglects to mention its existing cash reserves. According to its most recent Comprehensive Annual Financial Report, the County's General Fund Balance is $78.13 Million. *See* Horry County Comprehensive Annual Financial Report at 30, *available at* https://www.horrycounty.org/portals/0/docs/finance/CAFR2018final.pdf.[4] Of that sum, $52.55 Million is unassigned and unreserved. *Id.*

To claim that the City's success in this lawsuit "would be a fiscal catastrophe for Horry County and its residents" and that the County may have to "terminate the employment of many critical public safety related employees such as police, emergency management, EMS personnel, and employees handling 911," *see* County Mem. Ex. L ¶ 4, is a baseless scare tactic. Contrary to the County's fearmongering, there is no pending "catastrophe" or risk to critical public safety functions should the City succeed in protecting its rights.

C. The County Has Not Pled a Cause of Action for Injunctive Relief.

The City filed its complaint on March 20, 2019, asserting claims for declaratory judgment, injunctive relief, constructive trust, and unjust enrichment. The County filed its answer and counterclaims on April 19, 2019. It asserted two counterclaims: one for attorneys' fees incurred in defending against the City's action (but indicating no basis for such an award) and one for promissory estoppel rooted in the City's alleged promises of support for the Hospitality Fee. The County brought no counterclaim for injunctive relief, and its existing counterclaims do not address or contest the Local Tax Ordinances in any way.

[4] As Mr. Shelton noted, this document cannot be printed or have pages extracted from it. Ex. C, Shelton Aff., n.1.

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On May 29, the County filed a motion pursuant to Rule 15(a), SCRCP, requesting leave to amend its counterclaims to drop its standalone claim for attorneys' fees and to add claims for declaratory and injunctive relief regarding the Local Tax Ordinances. As explained in the City's opposition to this motion, the new counterclaims the County seeks to add are compulsory and thus have been waived because the County did not assert them when it served its Answer and Counterclaims. City Mem. Opp. Mot. Am. at 3-7.

ARGUMENT

A. The County Is Barred from Moving for Injunctive Relief Because It Failed to Plead a Counterclaim for Injunction.

The County's motion fails at the outset because the County has neither plead nor otherwise stated any cause of action for injunctive relief in its counterclaims. As a result, this Court need not reach the merits of the County's motion.

To be entitled to preliminary injunctive relief, "[t]he plaintiff's complaint," or here the County's counterclaim, "must allege facts sufficient to constitute a cause of action for injunction." *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50, 671 S.E.2d 505, 508 (Ct. App. 2009). "[A] complaint fails to state a cause of action for injunctive relief unless facts are alleged which show the plaintiff has no adequate and complete remedy at law." *Knohl v. Duke Power Co.*, 260 S.C. 374, 376, 196 S.E.2d 115, 115 (1973). The County's counterclaims seek attorneys' fees in defending this action and damages (including attorneys' fees) that the County claims resulted from the City's alleged promises of support for the Hospitality Fee. There is no claim for injunctive relief and no claim related at all to the City's taxes. Given this, the County's motion for a temporary injunction is simply a punitive afterthought reacting to the City's request for injunctive relief, not a constituent part of the County's pleadings against the City.

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Recognizing this fatal defect only after the City raised it,[5] the County filed a motion to amend its complaint to include a declaratory judgment claim and a request for injunctive relief (and drop its baseless claim for attorneys' fees). As the City explained at length in its opposition to the County's motion to amend, these are compulsory counterclaims that the County failed to raise when it served its counterclaims as required by Rule 13(a), SCRCP. City Mem. Opp. Mot. Am. at 3-6. The County consequently has waived these counterclaims. *Id.* at 6-7. In the absence of any properly and timely pled claim for injunctive relief pertaining to the Local Tax Ordinances, the County's motion fails as a matter of law.

B. The County's Motion Fails on its Merits Because the County Has Not and Cannot Meet the Elements for Injunctive Relief.

The County's motion fails on its merits as well. The County must satisfy five (not three) elements to enjoin the City's collection of its accommodations and hospitality taxes: (1) the County will likely succeed on its merits of its claims; (2) the County will suffer irreparable harm if an injunction is not granted: (3) there is an inadequate remedy at law; (4) an injunction is reasonably necessary to protect its legal rights in the pending litigation; and (5) the City's exercise of its statutory power to impose such taxes was arbitrary, capricious, and oppressive. *See Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018); *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50-51, 674 S.E.2d 505, 508 (Ct. App. 2009), *modified on other grounds by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010).

For the reasons explained below, the County has failed to establish any of them. This Court therefore should deny the County's motion.

[5] *See* City Inj. Reply Mem. at 1.

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1. The County Cannot Demonstrate a Likelihood of Success on the Merits that the Local Tax Ordinances are Improper.

The requirement to demonstrate a likelihood of success on the merits asks whether the party seeking injunctive relief "has made a sufficient prima facia showing of entitlement to relief." *Compton v. S.C. Dep't of Corrs.*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011). The question is not whether the moving party can "prove an absolute legal right," but whether it can "present a reasonable question as to the existence of such a right." *AJG Holdings*, 382 S.C. at 51, 674 S.E.2d at 509. The only claims the County has pending against the City—and hence the claims for which the County must demonstrate a likelihood of success the merits—are its counterclaims for attorneys' fees and promissory estoppel. As explained in the City's pending Motion to Dismiss, these counterclaims fail as a matter of law. City Dismiss Mem. at 4-7. More to the point, these counterclaims have nothing to do with the City's accommodations and hospitality taxes. The injunctive relief the County seeks in no way advances the ball on those claims and, as a result, cannot lie.

Assuming *arguendo* only that the County can bring its previously-unasserted compulsory counterclaims, the County still fails to demonstrate any likelihood of success on the merits of its claims that the Local Tax Ordinances are invalid. Understandably, the County does not contend that the City lacks the authority to impose the taxes provided for in the Local Tax Ordinances as §§ 6-1-500, *et seq.*, and §§ 6-1-700, *et seq.* make it clear that the City may do so. The County has put all of its eggs into just one small basket: the Local Tax Ordinances are invalid because, when considered in conjunction with the Hospitality Fee, they exceed the maximum cumulative

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tax rates in S.C. Code Ann. §§ 6-1-540 and 6-1-740.[6] County Mem. at 13 & n.4; Exhibit E, Def.'s Prop. Am. Ans. & Countercls., ¶ 182. This argument fails for two reasons.

First, the Hospitality Fee expired January 1, 2017, and is no longer effective because it was not renewed or extended with the consent of Horry County municipalities. *See* City Inj. Mem. at 8-12; City Inj. Reply Mem. at 7-18. It therefore has no impact on the City's authority to implement these taxes in July 2019. That alone compels denying the County's motion. Second, the Hospitality Fee is a uniform service charge, not an accommodations or hospitality tax. These are fundamentally different means of generating revenue. *See Brown v. Cnty. of Horry*, 308 S.C. 180, 185, 417 S.E.2d 565, 568 (1992) ("[a]lthough a service charge may possess points of similarity to a tax, it is inherently different and governed by different principles"). The accommodations and hospitality tax statutes also did not exist in October 1996 and therefore cannot be the source of the County's authority to enact the Hospitality Fee. *See* 1997 Act No. 138 § 11 (imposing an effective date of July 1, 1997). Furthermore, the General Assembly retained the distinction between uniform service charges and taxes (including accommodations and hospitality taxes) in Act 138. *Compare id.* § 7 (providing for the imposition of uniform service charges, as codified in S.C. Code Ann. §§ 6-1-300, *et seq.*) *with id.* § 8 (creating accommodations taxes) *and id.* § 9 (creating hospitality taxes).[7]

[6] Section 6-1-540 provides, "The cumulative rate of county and municipal local accommodations taxes for any portion of the county area may not exceed three percent, unless the cumulative total of such taxes were in excess of three percent prior to December 31, 1996, in which case the cumulative rate may not exceed the rate that was imposed as of December 31, 1996," and § 6-1-740 similarly states, "The cumulative rate of county and municipal hospitality taxes for any portion of the county area may not exceed two percent, unless the cumulative total of such taxes was in excess of two percent or were authorized to be in excess of two percent prior to December 31, 1996, in which case the cumulative rate may not exceed the rate that was imposed or adopted as of December 31, 1996."

[7] The County has recognized that the statutes view uniform service charges and taxes differently. *E.g.*, Exhibit D, July 24, 2018 County Council Minutes, at 2 ("The County's

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The County itself needs to preserve this critical distinction, as integral parts of the Hospitality Fee are not authorized taxes a county may impose under South Carolina law. To wit, there is no County taxing authority with respect to admissions or rental cars, and the 2.5% fee on prepared food and beverage in the unincorporated area exceeds the 2% cumulative hospitality tax cap in § 6-1-740 (the very cap the County misguidedly seeks to enforce here).[8] The Hospitality Fee therefore must be a uniform service charge and not a tax if it is to survive, and as such cannot contribute to the cumulative tax rate cap imposed by §§ 6-1-540 and 6-1-740.

The County cannot demonstrate a likelihood of success on the merits and as a result is not entitled to injunctive relief.

2. The County Misrepresents the Impact of the City's Lawsuit to Give the False Impression of Irreparable Harm.

The County claims that, absent injunctive relief against the City, taxpayers will "pay more than the maximum amount that can be charged by local governments for local accommodations and hospitality taxes," such a situation "could easily lead to challenges, more

hospitality fee ordinance went into effect before the state law was passed for hospitality and accommodations taxes.").

[8] The County, perhaps in recognition of these facts, adopted a resolution proposing to share with the municipalities on a going-forward basis a portion of the revenues generated by the Hospitality Fee. *See* City Mem. Opp. Mot. Am., Ex. A. The County has, in denying one of the City's requests for admissions, asserted that the fact that the County advanced such a proposal is protected from discovery under Rule 408, SCRE. This assertion is wholly without merit given that (a) the County refused to enter into a confidentiality agreement pursuant to Rule 408 prior to the adoption of this resolution (*see* Ex. C, Shelton Aff., at Ex. 1) and thereby waived any right to its protections, (b) this proposal was presented as part of an official, unilateral action taken by the County's governing body (*see* S.C. Code Ann. § 4-9-25) rendering it a matter of public record and not a "statement[] made in compromise negotiations" under Rule 408, (c) the resolution constitutes "evidence otherwise discoverable" which is exempt from the preclusive effect of Rule 408, and (d) it is a suggestion that the City not collect its own local accommodations and hospitality taxes as permitted by statute in exchange for a share of an unlawful uniform service charge collected by the County which is not a "valuable consideration" within the ambit of Rule 408, but an offer for the City to join the County in ignoring the statutory and constitutional law expressing the State's public policy of municipal independence from counties.

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lawsuits, and significant confusion for businesses charging the taxes to the consumer," and businesses and taxpayers will be subjected to "mayhem." County Mem. at 20-21. This assertion presupposes that the County will be permitted to continue imposing the Hospitality Fee which the City submits is not the case. In any event, such "harm" is impermissibly speculative, conjectural, and hypothetical. *See Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 317, 628 S.E.2d 496, 516 (Ct. App. 2006) ("It is, of course, true that the existence or amount of damages cannot be left to conjecture, guess or speculation."). And the County's other cries of harm are dubious, at best. Challenges and lawsuits are not any new harm to the County; the City has already challenged the County's fee, and any challenge to the City's taxes will be a matter for the City (not the County) to contend with. The County also does not allege it will pay more than the law allows. The County therefore has failed to show it will suffer any actionable harm in the absence of an injunction.

3. The County Fails to Show It Has No Adequate Remedy at Law.

The County makes no effort to show it lacks an adequate remedy at law, apart from relying on its unfounded misrepresentations of non-existent harm. It is true that irreparable harm and an inadequate remedy are law are related concepts. *See* 35 Am. Jur. 2d *Federal Tax Enforcement* § 1054. But the County's failure to identify a harm it has suffered ends the discussion. If there is no harm, there cannot be inadequate means to redress it.[9]

4. An Injunction Is Not Reasonably Necessary to the Protect the County's Rights.

The County conspicuously does not mention, much less address, this required element for injunctive relief. Here as well, the County has asserted no harm it can redress via an injunction.

[9] The County claims that "neither the County nor these businesses will have a way to return [overpaid] money to the customer." County Mem. at 20-21. This puts the lie to the County's claim just two pages earlier that its Board of Fee Appeals supplies an adequate remedy at law for all affected fee payers. *See id.* at 18.

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Moreover, at least four other municipalities within the County have adopted, or are in the process of adopting, similar hospitality and accommodations taxes. City Inj. Mem. at 15. The County does not seek to enjoin their imposition. Thus, other municipalities will collect 3% accommodations and 2% hospitality taxes even if the County prevails on this motion. The County's singular focus on the City's taxes demonstrates the County is more intent on punishing the City for having the temerity to challenge the County's imposition of unlawful uniform service charges within municipal corporate limits than protecting its own rights.

5. The County Makes No Effort to Demonstrate the City's Actions Were Arbitrary, Capricious, and Oppressive.

In order "to enjoin a public corporation or department of government in the performance of actions or duties provided by statute, there must be allegations or showing that the public department or corporation has exercised its power in an arbitrary, oppressive or capricious manner." *Headdon v. State Highway Dep't*, 197 S.C. 118, 14 S.E.2d 586, 588 (1941); *see also Richland Cnty.*, 422 S.C. at 310, 811 S.E.2d at 767. In a familiar conclusory fashion, the County asserts that it met this standard solely because, as it believes, "[t]he timing of [the City's] new taxes and its lawsuit against the County demonstrate that this litigation is a scheme to undermine the long-standing Hospitality Fee and grab that revenue for itself." County Mem. at 15. This does not withstand scrutiny.

The Local Tax Ordinances the County seeks to enjoin are clearly authorized by statute. The City's motion for temporary injunctive relief only seeks to protect its constitutionally-guaranteed independence and ensure that uniform service charges by a county within the City's corporate limits are imposed only in accordance with law – *i.e.*, with the City's consent. The County, on the other hand, has directly undermined the City's rights and intentionally continued collecting tens of millions of dollars per year in illegal uniform services charges from within the

City's limits to fund County projects, all the while proclaiming it does not need the City's (or any municipality's) consent to do so. And the City does not seek to "grab that revenue for itself." It only asks that those revenues first go where they belong: to *each* municipality where those funds are generated. Unless those municipalities expressly agree otherwise, and they have not since January 1, 2017, that is what the law requires. The only party who has acted in an arbitrary, oppressive or capricious manner is the County.

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court deny the County's motion to enjoin the City from collecting its properly-enacted accommodations and hospitality taxes.

Respectfully submitted,

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Attorneys for Plaintiff City of Myrtle Beach and All Others Similarly Situated

Columbia, South Carolina
June 13, 2019

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EXHIBIT A

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AN ORDINANCE AMENDING CHAPTER 2, ARTICLE VI, DIVISION 4, ACCOMMODATIONS TAX, TO INSTITUTE A THREE PERCENT TAX, EFFECTIVE IMMEDIATELY WITH IMPLEMENATION TO BE EFFECTIVE JULY 1, 2019.

Applicant/Purpose: Staff/adopt 3% accommodations tax per SC Code §6-1-500 et. seq.

Brief:

- This ordinance amends the City's current local accommodations tax ordinance, increasing the rate from 0.5% to 3.0%, per statutory limits.
- Ordinance would be effective immediately; tax levy beginning July 1, 2019.
- In Council's discretion, local accommodations tax revenue may be used:
  - To provide local funding for highways, roads, streets, & bridges providing access to tourist destinations, such as I-73 project.
  - To finance certain operations & maintenance costs, including police, fire service, emergency medical & emergency preparedness operations attendant to facilities for which funds may be spent.
- South Carolina Code §6-1-530, also provides for certain other uses:
  - Tourism-related buildings such as civic centers, coliseums, & aquariums.
  - Tourism-related cultural, recreational, or historic facilities.
  - Beach access, renourishment, & other tourism lands and water access.
  - Advertisements & promotions related to tourism development.
  - Water & sewer infrastructure to serve tourism-related demand.

Issues:

- Under §6-1-520, a local governing body may adopt, by positive majority vote, a local accommodations tax not to exceed 3%.
- A county may not impose a local accommodations tax in excess of 1.5% within the boundaries of a municipality without the consent, by resolution, of the appropriate municipal governing body.
- Cumulative rate of county & municipal local A-Taxes is limited to 3.0%.
- County has no local accommodations tax.

Public Notification: Normal meeting notification.

Alternatives: Do not adopt the amendment.

Financial Impact: When taken together with the proposed credit for hospitality fees paid to the city (see companion ordinance 2019-24), the net revenue increase is projected at about $8.1 million.

Manager's Recommendation: The previous agreement, by which County collects its 1.5% hospitality fee inside the MB corporate limits, expired in 2017. It is important to note that the approval of this action, together w/ approval of the credit in proposed Ordinance 2019-24, does not increase the total amount of the tax burden on any given taxpayer, just the distribution between the City & the County. I recommend 1st reading.

Attachment(s): Proposed ordinance.

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Ordinance 2019-22

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE VI, DIVISION 4, ACCOMMODATIONS TAX, TO INSTITUTE A THREE PERCENT TAX, EFFECTIVE IMMEDIATELY WITH IMPLEMENATION TO BE EFFECTIVE JULY 1, 2019.

IT IS HEREBY ORDAINED THAT Chapter 2, Article VI of the Code of Ordinances of the City of Myrtle Beach is hereby amended in Division 4, Accommodations Tax, in Sections 2-273, with repealed language stricken through and amended language underlined.

Sec. 2-270
This division shall be referred to as the City of Myrtle Beach Accommodations Tax Ordinance, enacted pursuant to South Carolina Code 6-1-500 et seq.

Sec. 2-271
It is hereby found and declared by the City Council of Myrtle Beach that tourism is the major industry in the City, accounting for millions of visitors annually. The City supports and encourages this industry by budgeting city funds for operational costs and capital improvements to streets and roadways, beach access and renourishment, water, sewer and waste management, as well as enhanced police and fire protection. By way of *ad valorem* taxation, the local stable population of approximately ~~25,000~~ 32,000 citizens, by 2018 estimates, bears the operational and capital costs of service provision made necessary by our annual visitors. The cost of providing the special or enhanced services required or made necessary by the tourism industry should be apportioned more equitably between the resident taxpayers and those who visit our City and enjoy the programs, events, benefits and municipal services, however briefly.

Sec. 2-272
The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accommodations for transients includes the Accommodations specified in S. C. Code 1976 & 12-36-920, as amended from time to time, or any successor provision thereto, located within the jurisdiction of the city.

Department of finance means the financial services department of the city.

Finance director means the director of finance of the city.

~~Sec. 2-273~~
~~Upon the ninetieth day following second reading, t~~ There shall be imposed and shall immediately accrue as of the first day of the month following such date a collected

tax, as provided in this division, upon Accommodations for transients. The tax imposed by this section shall not apply to additional guest charges as defined in S. C. Code 1976 , & 12-36-920(B). The tax shall be established at the rate of ~~one-half of one percent~~ three percent (3%) of the gross proceeds derived from the rental or charges for any Accommodations for transients.

Sec. 2-274
Taxes imposed by this division shall be due on the same date and in the same manner as provided in S.C. Code 1976, & 12-36-2570, and in accordance with the provisions of S.C. Code 1976, & 12-36-2570. The city shall provide the form for remittance of the tax to the city. At the time of filing of such form, the business providing Accommodations for transients shall pay to the finance department or its designee all taxes due for the period for which the form applies.

Sec. 2-275
All taxes collected under this division shall be used solely in connection with the tourism industry or economic development, in accordance with South Carolina Code 6-1-530 (as amended 1999).

Sec. 2-276
If for any reason any tax imposed by this division is not paid when due, a penalty at the rate of two percent per month on the amount of taxes which remain unpaid shall be added and collected. Whenever any person shall fail to pay any tax as provided in this division, upon the request of the city, an action may be brought by the city to enforce the payment of such tax on behalf of the city in any court of competent jurisdiction.

Sec. 2-277
Every business providing accommodations to transients in the city shall keep books and records showing the prices, rents or charges made or charges and occupancies taxable under this division. The finance director or his designee shall at all reasonable times have full access to such books and records of such business.

Sec. 2-278
If the city shall find that any person has willfully avoided payment of the taxes imposed by this division, the city may suspend or revoke all city licenses held by such business in accordance with the ordinance pertaining to business licenses.

Sec. 2-279
If any provisions, clause, sentence, paragraph, section or part of this division, or the application thereof to any person, firm, corporation, public agency or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this division and the application of such provision to other persons, firms, corporations, public agencies or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation, public agency or circumstances involved.

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Sec. 2-280
An interest bearing and restricted account shall be established and known as the Myrtle Beach Local Accommodations Special Revenue Fund. All revenue received pursuant to this ordinance shall be deposited into this fund, and shall be expended only pursuant to law and at the sole discretion of City Council.

Sec. 2-281
It shall be unlawful to fail to collect the tax in connection with the rental of Accommodations to transients; or fail to remit to the City the tax collected, pursuant to the ordinance; or knowingly provide false information on any form or return to the City; or fail to provide books and records for the purpose of audit upon 24 hours' notice. Upon conviction, the penalty shall be as prescribed by law.

_____
BRENDA BETHUNE, MAYOR

ATTEST:

_____
Jennifer Stanford, City Clerk

1st Reading_____
2nd Reading_____

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EXHIBIT B