

-Respondent is the Registered Agent of D&L Seafood, a SC based corporation D/B/A Bluffton Oyster Company. (Exhibit A)

-Based on Beaufort County Council Meeting Minutes from December 9, 2002 the Bluffton Oyster Company Inc. (A sperate entity from D&L Seafood, which has been since dissolved) entered into a sale of real property located in Bluffton, SC to the Beaufort County Open Land Trust. The Beaufort County Open Land trust is the entity contracted by Beaufort County, SC to acquire land for preservation. After the Open Land Trust acquired the property, it was subsequently sold to Beaufort County using referendum funds. Prior to the sale, Mr. Toomer was leasing the property believed to be 63 Wharf Street for \$24,000 annually for the exclusive use of his for-profit entity D&L Seafood. (Exhibit B)

-The lease was reduced to a below-market rate of \$4,000 and has been in place since. The lease agreement requires the tenant to make all repairs and maintain the facility. (Exhibit C)

-In 2017 Bluffton and Beaufort County Entered into an agreement transferring the lease interest from the County to the Town; the Town also took over all operations of the park. (Exhibit D)

-Subsequent to this, the Town of Bluffton sought funds to repair the facility at 63 Wharf Street. Deputy Town Manager Scott Marshal said in a letter to State legislators "Costs for repairs required to maintain the facility exceed what can reasonably be expected of its current tenant." This is even though the tenant has enjoyed rents far below market rate totaling over \$300,000 in savings when the repairs were completed. (Exhibit E)

-The Town of Bluffton sought a grant from the States' Park and Recreation Development Fund to repair the for-profit business's structure. (Exhibit F)

-The grant was initially approved but was later revoked when the State learned the funds were used for a for-profit business. (Exhibit G)

-The Town has spent over \$63,000 in taxpayer funds repairing the property at 63 Wharf Street. (Exhibit H)

-Mr. Toomer did participate in the vote to amend the town's budget related to improvements to the property he leases. (Exhibit I)

-Mr. Toomer's real property interest include property leased to him by public entities

-Mr. Toomer's business is adjacent to public property (Bluffton Oyster Factory Park) that has received annual improvements with taxpayer funds, and according to Town of Bluffton Officials "the factory is the primary tourism draw to the park"

Business Entities Online

File, Search, and Retrieve Documents Electronically

D&L SEAFOOD CORPORATION

Corporate Information

Entity Type: Corporation

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 10/16/1995

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: LARRY C. TOOMER

Address: 63 WHARF ST
BLUFFTON, South Carolina 29910

Official Documents On File

Filing Type	Filing Date
Application for a Reinstatement of a Corporation Dissolved by Administrative Action	08/22/2019
Administrative Dissolution	07/24/2019
Change of Agent or Office	08/17/2007
Incorporation	10/16/1995

December 9, 2002

Official Proceedings
County Council of Beaufort County
December 9, 2002

The electronic and print media duly notified in
accordance with the State Freedom of Information Act

The regularly scheduled meeting of the County Council of Beaufort County was held at 4:00 p.m., Monday, December 9, 2002, in Council Chambers of the Administration Building, Beaufort, South Carolina.

ATTENDANCE

Chairman Thomas Taylor and members Robert Cuttino, Mark Generales, Herbert Glaze, William Ladson, Peter Lamb, William McBride, Weston Newton and W. R. "Skeet" Von Harten. Frank Brafman and Marvin Dukes absent.

PLEDGE OF ALLEGIANCE

Mr. Taylor led those present in the Pledge of Allegiance to the Flag.

INVOCATION

Dr. Robert Cuttino, Sr., St. Helena Baptist Church, gave the Invocation.

REVIEW OF PROCEEDINGS OF THE REGULAR MEETING HELD NOVEMBER 25, 2002

The following corrections and/or additions were made to the minutes of the regular meeting held November 25, 2002. Page 5, line 2, change "106-1912" to "106-1845"; and page 5, line 9, change "106-1912" to "106-1845".

It was moved by Mr. Generales, seconded by Mr. Ladson, that Council approve the proceedings of the regular meeting held November 25, 2002. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

PUBLIC COMMENT

The Chairman recognized Ms. Libby Barnes, President of the Greater Beaufort Chamber of Commerce, who stated the County's accommodations tax grant funding is extremely important to the Chamber as it is to other organizations. If we spread the funding thinly over an increasing number of very good and worthwhile organizations, the ultimate result is that not only will the designated marketing organization not be able to be effective, but none of the others will, too, in terms of doing the broad outreach outside of this region because there are few organizations who have the ability to market outside this region.

Ms. Joni Dimond, a Hilton Head Island resident, gave each Council member a copy of Section 24-5-110 of the *Code of Laws of South Carolina*, 1976, as amended, which states, "On the first day of every general session the Sheriff of the County shall give to the court the names of every prisoner and the item and cause of his or her confinement, whether civil or criminal." Ms. Dimond has heard that this is not

being done in Beaufort County. She asked that someone look into this matter because no one has put down in writing as to why Mary Peters is a prisoner. This will help those who have slipped through the cracks who have been charged on paper.

Mr. Robert Holzmacher, Chairman of the Beaufort County Republican Party, wished Mr. Taylor the best of luck in the future after serving 12 long years on Council. He also thanked Mr. Dukes for his four years of service.

Mrs. Dorothy Gnann, a former County Council member, thanked Mr. Taylor and Mr. Dukes for their service on County Council.

COUNTY ADMINISTRATOR'S REPORT

Recognition of 911 Dispatchers

Mr. John Kachmar, County Administrator, announced that Beaufort County 911 Communications employees received a trio of honors at the 2002 Association of Public-Safety Communications Officials and National Emergency Number Association conference in Myrtle Beach. Dispatch Supervisor Terry Coleman's shift received the Team 911 Award of Merit for outstanding performance on January 8, 2002, the day Lance Cpl. Dana Tate and Cpl. A. J. Coursen of the Beaufort County Sheriff's Office were killed in the line of duty while responding to a domestic disturbance in the Burton area. Team members honored were Regina Alderman, Assistant Shift Supervisor; Sandy Gardelle, Second Assistant Supervisor; Juliann Thomas, Emergency Communications Technician; Gayle Morris, Emergency Communications Technician; Mary Mansfield, Training Officer. The Team 911 Award of Merit was not the only honor received by Beaufort County Communications employees at the conference. Dispatch Training Officer Mary Mansfield received the Training Coordinator of the Year Award. Ms. Mansfield began her career as a dispatcher in 1979 and became Training Officer in 1997. One of Ms. Mansfield's main responsibilities is classroom instruction with new employees. Dispatch Assistant Supervisor Melanie Smith received the Palmetto Award for outstanding achievement in the field of 911 Communications. Ms. Smith, who has worked for Beaufort County Communications since 1998, became Assistant Shift Supervisor in March 2001.

Status of Appropriation Process in Congress - US Highway 278 Earmark (\$4 Million)

Mr. Kachmar, County Administrator, explained the US Congress adjourned last week without passing the Transportation Appropriations Bill and, thus, no earmarked money for US Highway 278. Congress resorted to a Continuing Resolution, commonly referred to as a CR, which continues transportation funding until January 11, 2003, at the same level as fiscal 2001-2002. In the new Congress Republicans will control both Houses of Congress and the Presidency. This will give them more power and control, but Democrats will have some influence in the Congress, particularly the Senate. For US Highway 278, US Senator Hollings is still our best hope.

Beaufort County's Potential Participation in the Eight-Hour Ozone Action Compact

It was moved by Mr. Lamb, seconded by Mr. Generales, that Council adopt and embrace the proposed Eight-Hour Ozone Attainment Standards. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

Update on Status of Purchase of Bluffton Oyster Factory

Mr. John Kachmar, County Administrator, explained the Bluffton Oyster Factory property is located in Bluffton and consists of 5,024 acres of land bordering the northern shore of the May River. Access is by way of Wharf Street, which divides the property into two parcels. On December 31, 2001, Integra appraised the property for the owner, Mr. Jerry Reeves of Bluffton. Finding that the highest and best use of the property was for single-family housing, the property appraised at \$2,450,000. The investment value of the property was appraised at \$2,900,000. The Beaufort County Open Land Trust (Open Land

Trust) purchased the property from the Bluffton Oyster Company, Inc. for approximately \$2,225,000 in February 2002. The current zoning of the property is single-family residential by the Town of Bluffton. However, there is a seafood processing plant/retail sales outlet on the property, The Bluffton Oyster Factory, which has been operating as a pre-existing use. Mr. Larry Toomer has had the lease on the building in which the oyster factory operates since 1991. The current rental is \$24,000 per year. There was a small residence on the site that rented for \$450 per month. The value of the oyster bed permit was not included in the appraisal nor is the County proposing to take an interest in the permit.

On January 16, 2002, HSA Engineers & Scientists (HSA) performed an environmental assessment. The report finds a Recognized Environment Condition exists, e.g., the Oyster Factory and residential parcel contain significant amounts of debris. The concern would not be that a large spill ever occurred and impacted the groundwater, rather than small spills over a long period of time have had some negative impact to the site. However, the most serious of these impacts would be groundwater contamination. Based on the visual data gathered during the visit and the fact that the nearest sensitive receptor, the May River, does not appear to be impacted (in fact it is designated Pristine by the SC Department of Natural Resources), HSA feels it is prudent to assume past activities have not significantly impacted the site. HSA reports that based on its experience with similar sites, it is likely that isolated areas of stained soil could be encountered if debris removal is initiated. Should this occur, the area would need to be excavated and sampled to document the complete removal of impacted soil.

Proposed Terms of Purchase. The County has discussed the following terms and conditions of sales: The total purchase price is \$2,372,746 and breaks down as follows: \$2,250,000 purchase price, \$70,187 interest on the loan that was held by the Open Land Trust, \$2,559 engineering and accounting fees, \$50,000 Open Land Trust land acquisition/management fee. Also, as a part of the condition of this sale, the County has asked the Open Land Trust to engage in some necessary improvements/up-fit costs to the property in the amount of \$141,400. If the proposed up-fit costs are included in the purchase price, the total purchase price is \$2,514,146. A breakdown of these proposed up-fit costs is as follows: new restrooms \$94,000, activity shed \$30,000, asbestos survey and abatement \$6,500, disposal \$3,000, parking lot/seed mix/signage \$900, general signage for park \$2,000, and picnic tables (\$500 each) \$5,000. Staff is recommending Council authorize the County Administrator to move forward with this purchase at the specified price of \$2,514,146.

Main motion.

It was moved by Mr. Generales, seconded by Mr. Newton, that Council authorize the County Administrator to enter into a contract with the Beaufort County Open Land Trust for the purchase of 5.024 acres of property known as the Bluffton Oyster Factory in the amount of \$2,514,146. The funding source is the \$40 million bond referendum.

Mr. Generales requested an explanation of the \$50,000 management fee. Mr. Kachmar responded the \$50,000 is a management fee the Open Land Trust is charging for holding and carrying the property. The Open Land Trust incurred numerous expenses during this process, such as attorneys' fees, not interest fees.

Motion to amend by deletion No. 1.

It was moved by Mr. Generales, seconded by Mr. Newton, that Council delete the \$50,000 management fee from the \$2,514,146 purchase price.

The Chairman asked Mr. Dean Moss, President of the Open Land Trust, to provide a little more information about what comprises the \$50,000 management fee. Mr. Moss stated attorneys' fees are due which resulted from the original purchase and sale, taxes are due on the property, there were other investigations such as the Open Land Trust disagreeing to undertake the improvements on the property for the County, and costs incurred in terms of administration with respect to this issue. The Open Land

Trust has taken the property out of development and has held it for a year. There have been certain costs associated with holding it in terms of some clean up which has occurred and other types of work associated with the property. The Open Land Trust feels it is not unreasonable to ask for certain consideration for those things that were accomplished.

Mr. Taylor asked, "Is a written summary of these charges available other than what has been provided verbally"? Mr. Moss agreed to provide that list to Council.

Mr. Taylor asked, "Is it Mr. Kachmar's recommendation Council accept those charges and that it is appropriate for the County to pay for it?" Mr. Kachmar stated it is staff's recommendation to proceed with this purchase. The Open Land Trust tied their money up and could not engage in any other purchase of any other properties during this time period.

Based upon the above-stated explanation, Mr. Generales, as maker of the motion, and the seconder Mr. Newton agreeing, withdrew the motion to amend by deletion.

Regarding the \$50,000 management fee, Mr. Von Harten inquired if the Open Land Trust incurred the full \$50,000 or is there a net profit to the Open Land Trust. Mr. Moss stated there is some net profit to the Open Land Trust, which is utilized for the acquisition of other open space in the County. The net profit is between \$10,000 and \$15,000 of all out-of-pocket expenses, miscellaneous expenses, including attorneys' fees and other things.

Mr. Taylor asked the question, "If there was such a motion to delete what is apparently just profit of \$15,000 and that Council would pay a \$35,000 management fee as opposed to \$50,000, would that be a deal breaker?" Mr. Moss responded obviously it would not. However, the Open Land Trust is appreciative of Beaufort County's consideration of this issue in any way. To whatever feels reasonable to Council, the Open Land Trust would be grateful.

Motion to amend by deletion No. 2.

It was moved by Mr. Generales, seconded by Mr. Newton, that Council strike \$15,000 from the \$50,000 management fee resulting in a \$35,000 management fee.

Mr. Newton requested clarification of the \$141,400 in up-fit costs. Mr. Kachmar explained the County is paying the Open Land Trust to engage in the up-fit and the Public Works Department is going to do some of the work on the site too. This will allow the property to be improved as the County takes ownership. The \$141,400 is part of the purchase price. Mr. Moss emphasized that the \$141,400 is an estimate. Based upon conversations he has had with contractors, this work could probably be done for less than that amount. Mr. Kachmar remarked the County should realize the savings.

Based upon the above-stated explanation, Mr. Generales, as maker of the motion, and the seconder Mr. Newton agreeing, withdrew the motion to amend by deletion.

Motion to amend by deletion No. 3.

It was moved by Mr. Generales, seconded by Mr. Newton, that Council shall spend up to \$2,499,146, the \$15,000 difference to come from the management fee to be paid to the Open Land Trust, and that any savings that inure below that go back to the County.

As to the preservation of the Bluffton Oyster Factory building, Mr. Generales stated the existing building is built on fill or pilings or a combination of both. It appears to have settled or is still settling. It does not meet code. A structural assessment would be required if the building were turned into a historic structure with the County assuming both the monetary and preservation costs. What is the intent with the County

going forward with this issue? Mr. Kachmar stated the County is asking the Open Land Trust to hire an outside engineering firm to conduct the structural assessment realizing that after the County purchases the property, it may be necessary to engage in some preservation costs for this particular building. The County had its engineer take a look at the structure and they feel the fill is shifting. This issue is probably 10 to 15 years out.

Mr. Von Harten noticed the current rent is \$24,000 per year, \$2,000 per month, and the proposed new rent is \$4,000 per year and \$200 a month. Mr. Kachmar explained the County had the owner of the property purchase indemnification and liability insurance that they were not carrying before so the County could be indemnified. Since the County was not in the money making business on this particular lease, we wanted to make sure we were covered and protected from any of the activities of the commercial operator that is going to be operating on the property. The County asked them to incur some additional costs and the monthly rent was lowered accordingly.

Mr. Von Harten stated the estimated cost to build new ADA compliant restrooms to include a new septic system is \$94,000. "At some point, will the Town of Bluffton ask the County to connect the sewer"? Mr. Kachmar noted the \$141,400 includes funds for sewer connectivity.

Mr. Von Harten inquired of the nature of the debris located on the property. "Is it construction material or oyster shell"? Mr. Kachmar responded construction debris and, a collapsed building exist on the property as well as oyster shells, the latter is not being counted as debris.

Mr. Von Harten requested clarification of the conservation easement? Mr. Kachmar explained there is an original conservation easement when Mr. Jerry Reeves sold the property to the Open Land Trust. The County is going to take that original easement and with some minor amendments the Open Land Trust is making, consent to the conservation easement. The conservation easement essentially says that this property will remain a public facility, used by the public, and cannot be used for commercial use, development property, etc.

Mr. Von Harten asked, "When the Town of Bluffton (Town) leases the pavilion for oyster roasts, etc. are they going to charge for that service"? Mr. Kachmar responded the property is going to be part of the County's park system and will charge for that service. The County is going to allow the Town to schedule private parties. If someone is going to use the pavilion, they will be responsible for paying a usage fee to the County's Parks and Leisure Services Department (PALS).

Mr. Glaze inquired if private parties supersede the public's use of the property. Mr. Kachmar remarked the ultimate scheduling is still up to PALS. Through a separate Memorandum of Understanding the County will sign with the Town the County will allow the Town some scheduling priorities. However, the County is still responsible for scheduling. The original desire of the Town was that they become solely responsible for scheduling activities at this site but Mr. Kachmar knew he could not bring that proposal to County Council.

Mr. Lamb briefly described this piece of property. The property has obviously been utilized as an oyster factory for many, many years. The property is one of only two public boat-launching sites on the May River. It has been utilized as a passive park ever since the property was acquired by Mr. Jerry Reeves. When Mr. Reeves sold this property to the Open Land Trust, he sold it below appraised value. Mr. Reeves required that the conservation easement be placed on the property basically to do two things. One issue is to permit the Oyster Factory to operate as an oyster factory, it being one of the last in the State of South Carolina. The second issue is that this property could not be utilized as any other type of commercial enterprise. For instance, a restaurant is generally prohibited. The hope is that this land will be held by the County for use as a passive park and to allow the citizens of the County access to the May River by small boat. Personally, it is a wonderful place to have an oyster roast. The Friends of the River used the property most recently to hold a fundraiser where they had an oyster roast/barbecue. The Town of Bluffton, through the generosity of Mr. Reeves when he owned the property, used the property for

oyster roasts. When Mr. Reeves sold it to the Open Land Trust, they permitted the same activity. It is a very significant piece of property. It is easily worth a million dollars an acre sitting on deep water. It will be a valuable asset to the County. He encouraged Council members to support this purchase. There are a lot of people prepared to do volunteer work to help clean up the site and get it in shipshape. It has one of the few freed man's houses still standing and the only one standing on the May River. It is in great need of restoration. It is a two-story dwelling. Hopefully, the Bluffton Preservation Society, in conjunction with the County, will be able to stabilize this facility so that in due course, perhaps, it could be restored. It is a wonderful asset of which there are a very few left.

Mr. Cuttino referenced paragraph 5, Conservation Easement and the text " . . . with the exception that the owner is permitted to continue leasing to third parties the portion of the property lease to D & L Seafood and that the terms of the easement do not restrict the use of that portion of the property." What do we have left of a conservation easement? This language seems to be very general and, maybe, opens us up to denaturing the conservation easement. Mr. Kachmar remarked the sentence is saying that an act of an oystering operation would continue at the site. It gives the County the ability, if it so desires, to continue the commercial oystering operation.

If the County desires to get out of the oystering business, Mr. Cuttino inquired of what would be involved in just making a blanket conservation easement. Mr. Taylor responded this could be handled by a simple execution of the document. What we have here is a five-acre tract with a small portion carved out of it that is not subject to the conservation easement because had it covered that, that would have been prohibitive from conducting the oyster businesses there. What the County is clearly trying to do with this lease is to encourage the Toomer Family's continuation of this business, which is so important to Bluffton and Beaufort County. If they were ever to go out of business for whatever reason, Mr. Taylor thinks the County would probably do exactly what Mr. Cuttino is suggesting if we could not find someone else to run an oystering operation. Mr. Kachmar remarked the County would just use it as a continuation of park space.

Mr. Ladson inquired of the amount of property to be used for commercial purposes. Mr. Lamb stated a little more than one-half an acre is used for commercial purposes. The property has been surveyed. The commercial zone is a small portion of the waterfront and the rest of the waterfront is for joint use where people get boats in and out of the water. The other four and one-half acres sit up on the bluff and is basically raw land, with the exception of the freed man's house and burned down cottage. It is this area that is subject to the conservation easement.

Vote on the motion to amend by deletion No. 3.

The vote was: FOR - Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. OPPOSED - Mr. Cuttino. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

Vote on the main motion, which includes the amended motion No. 3.

The vote was: FOR - Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. OPPOSED - Mr. Cuttino. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

CONSIDERATION OF CONTRACT AWARDS

Contract #18 - Dirt Road Reconstruction and Road Resurfacing Project

Mr. John Kachmar, County Administrator, explained that on November 21, 2002, the County received and reviewed four bid proposals regarding Contract #18 - Dirt Road Reconstruction and Road Resurfacing

Project as follows: (i) REA Construction Company, Inc. - \$1,642,338.25, (ii) APAC of Georgia - \$1,725,674.01, (iii) Cleland Construction Company - \$1,741,908.54, (iv) Malphrus Construction Company - \$1,766,468.72, and (v) Engineers Estimate - \$1,614,210.75. REA Construction Company, Inc., submitted the lowest responsible bid. An analysis of their bid prices was reviewed and there is no apparent cause for rejecting their bid. Based on this analysis, Staff recommends award of this contract to REA Construction Company, Inc. in the amount of \$1,642,338.25. The projects will be funded from the \$10 motorized vehicle fee and County Transportation Committee funds.

It was moved by Mr. Glaze, as Public Works Committee Chairman (no second required), that Council award a dirt road reconstruction contract to REA Construction Company, Inc., in the amount of \$1,642,338.25, for the construction and paving of Paul Heyward Drive, Tucker Avenue, Cole Drive, Dore Drive, Old Distant Island Road, Mallard Court, and Meadowlark Street on Lady's Island, Old Salem Road and Phillips Street in the City of Beaufort. This includes the resurfacing of approximately 12.37 miles of roadway in the City of Beaufort, Town of Hilton Head, Sheldon and Lady's Island. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

Construction Manager for the Detention Center Phase 2A.1 - Intake Dormitory

Mr. John Kachmar, County Administrator, explained the Detention Center intake dormitory is in critical need of expansion and a project is underway to address this situation. Design and regulatory requirements for detention facilities differ from standard commercial construction and, accordingly, require close supervision of the construction phase. To ensure a proper level of construction oversight and expedited delivery, staff has chosen to utilize a Construction Manager (CM) At Risk project delivery method. This approach provides low risk and offers the best assurance of a timely and well-supervised project. Staff currently has two qualified CM firms under contract, and both firms have submitted proposals to provide CM At Risk services to construct the Detention Center intake pod on an accelerated basis. Proposals were reviewed by a committee consisting of the Deputy Administrator Development and Services, Deputy Administrator Public Safety, Detention Center Director, County Engineer, and County Construction Manager. Both firms were interviewed by the selection committee and presented their approach and costs for the project. The selection committee discussed both presentations and selected the firm of Strecansky & Company as the best-value proposer. Strecansky & Company proposes to provide CM At Risk services with a guaranteed maximum price of \$658,919 with a construction duration of 125 days after mobilization. The project will be funded by Capital Improvement Projects (CIP) funds. Total budget for the project is \$786,000, which includes the A & E services costs.

It was moved by Mr. Glaze, as Public Works Committee Chairman (no second required), that Council award a contract in the amount of \$658,919 to the firm of Strecansky & Company to provide Construction Management At-Risk services for the Detention Center intake pod. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

Change Order Award for Burton Wells Site Work

Mr. John Kachmar, County Administrator, explained in February 2002, staff obtained bids for the Burton Wells Park site work. Those bids consisted of a base site work bid and six additive alternates. On June 10, 2002 Council awarded a contract for the Burton Wells Park site work to Malphrus Construction in the amount of \$3,667,777.41 for construction of the base bid and Alternate #1 Soccer Fields. The total value of all of the un-awarded bid alternates was \$317,254.75. The Parks and Leisure Services (PALS) Department has subsequently received a grant for a soccer field from South Carolina Parks, Recreation and Tourism (SCPRT) in the amount of \$250,000.

Review of the project budget, contract awards, and projected expenses, now indicates that funds are available to award four of the remaining site work alternates. Award of alternates 2, 3, 5 and 6 will add:

baseball playground, gymnasium playground, multipurpose field and tennis courts. Total budget for the project is \$8,303,777. Malphrus Construction submitted the lowest aggregate bid. An analysis of their bid price has been reviewed and there is no apparent cause for rejecting their bid. Staff recommends approval of a change order to the contract with Malphrus Construction in the amount of \$247,652.75 and to authorize construction of alternates 2, 3, 5, and 6.

It was moved by Mr. Glaze, as Public Works Committee Chairman (no second required), that Council approve a change order to the contract with Malphrus Construction in the amount of \$247,652.75 for the Burton Wells Park site work and to authorize construction of alternates 2, 3, 5, and 6. The funding source is a \$250,000 grant from the South Carolina Parks, Recreation and Tourism. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor, OPPOSED - Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

Software and Hardware Updates with Commsys, Inc.

Mr. John Kachmar, County Administrator, explained that since 1998 Commsys, Inc. of Dayton, Ohio has provided ALI Database Management Services to Beaufort County. The FCC has required that cellular telephone companies provide the capability to furnish 911 systems with the location (latitude and longitude) and cellular telephone number of all 911 calls. Under Phase I of this requirement, cellular companies must provide the telephone number of the cellular caller to 911. Under Phase II, the cellular company must provide the physical location of the cellular caller. South Carolina collects a surcharge of .69 cents per cellular telephone to pay for the implementation and operation of Cellular E911. On October 16, 2002 Staff submitted its plan to the State CMRS E911 Advisory Committee for approval and allocation of funds and have received approval of \$120,000 for implementation of Phases I and II. Staff also received funds of \$16,000 per year for three years to fund operations. The plan was developed with Commsys, Inc. and the cost for the services is \$86,450 for implementation and \$16,000 for the first year. These funds will pay for the software and hardware updates with Commsys, Inc. and for modifications to operate the present system to meet FCC requirements.

It was moved by Mr. Generales, as Finance Committee Chairman (no second required), that Council award a contract to Commsys, Inc., Dayton, Ohio, in the amount of \$120,000 for the software and hardware updates and for modifications to operate the present system to meet FCC requirements. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

DISCUSSION OF A RESOLUTION ADOPTING THE TRANSPORTATION ELEMENT OF THE BEAUFORT COUNTY COMPREHENSIVE PLAN

Mr. Tony Criscitiello, Planning Director, explained the Transportation Element is the only element of the Comprehensive Plan that County Council authorized the Planning Department to initiate a contractual relation with a consultant, Day Wilburn Associates, Inc.

By way of a Powerpoint presentation, Mr. Criscitiello discussed the transportation element review which includes a (i) Plan Summary which details accomplishments, goals/policies/actions, and transportation system needs, (ii) Policy recommendations, and (iii) Future initiatives.

Plan Summary. The 1997 Plan Accomplishments are as follows: initiated or completed seven of nine projects, initiated or completed seven of nine studies, initiated right-of-way purchase for the Bluffton Parkway utilizing a variety of funding sources on US Highway 278 corridor improvements, conducted water ferry feasibility studies, developed bikeway and trails plans, created a Transportation Advisory Group to enhance inter-jurisdiction coordination, authorized a Transportation Planned position, developed a TRANPLAN model, and prepared a draft Functional Classification System and Access Management Standards.

Policies and Actions. A presentation of the review findings was made to the members of the Transportation Advisory Group on July 15, 2002. Discussions occurred with municipal and county Planning staffs and Planning Committee on May 16, June 7 and July 12 to accomplish inter-jurisdictional planning and incorporated the vision, goals and objectives from the Towns of Bluffton and Hilton Head Island. Seventy-two action items were incorporated within 12 policies in the plan adopted in 1997. Three of those elements have been accomplished (Items 11.9, 12.4, 12.5), 40 are ongoing, 17 not yet started, and 12 are new.

Transportation System Needs. Applied a "sketch planning" approach, reviewed recent growth trends and future growth assumptions, reviewed future travel demand forecasts to assess year 2020 conditions, and reflected findings from other recent studies.

Policy Recommendations. (i) Regionalism - multi-jurisdictional agreement, elaborate process beyond Transportation Advisory Group, Lowcountry Council of Governments Transit Study, evaluation planning, (ii) Planning Process - major reevaluation of Transportation Element, formal process for periodic updates, TRANPLAN update, coordination of Transportation Impact Ordinances, (iii) Alternative Modes of Travel - Lowcountry Council of Governments Transit Study, southern Beaufort Greenways Plan, northern Beaufort Bikeways and trails Plan, water ferry service, (iv) Design Techniques - access management, traffic calming, transit accessibility.

Future Initiatives. (i) Multi-jurisdictional interagency coordination - county, localities, Lowcountry Council of Governments, Lowcountry Regional Transportation Authority, SCDOT, (ii) Update transportation needs analysis - major reevaluation of transportation element, (iii) Enhance alternative modes - regional transit, bike/pedestrian, waterborne, (iv) Coordinate emergency evacuation - continue vital regional efforts in emergency evacuation.

It was moved by Mr. Generales, as Planning Committee Vice Chairman (no second required), that Council adopt a resolution adopting the review of the Transportation Element of the Beaufort County Comprehensive Plan. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSTAINED - Mr. Lamb. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

UPDATE ON THE PROGRESS MADE TOWARD THE CREATION OF A MULTI-COUNTY/STATE REGIONAL TRANSPORTATION AUTHORITY

Mr. Newton explained that in July 2001 an organizing committee was set up consisting of representatives from Beaufort County, Jasper County, Effingham County and Chatham County to come forward and to work to create a Bi-State Mobility Authority Development (hereinafter MDA) looking not just at public transportation but at mobility of which public transportation is one component. Since that time Mr. Kachmar and he have met with the Chairman of Chatham County and officials from Jasper County and Effingham County at least once monthly. The Committee is in the process of reviewing the second draft Bi-State Mobility Compact between the States of South Carolina and Georgia. Thereafter, we will need to go to the State Legislature in both states to authorize a Bi-State Mobility Development Authority.

By way of a Powerpoint presentation, Mr. Kachmar explained there are seven compelling reasons for focusing on regional mobility. We will experience continued rapid growth, our economy is regional, our workforce is highly mobile, we cannot just pave our way of congestion, our land use encourages multiple trips, demographic and cultural trends require more mobility choices, and we must preserve our heritage and quality of life. The population in our region will likely double in the next 20 years. The critical questions to be answered by the Mobility Development Authority deal with mission and charter, powers/focus of the Authority, membership, governance, permanent funding, accountability, enactment strategy, sunset provisions for the Authority. The approach taken thus far is to coordinate the ongoing regional, county and local planning efforts and operations into the mobility enterprise model and generate a ten-year investment plan. The Authority is talking about supporting a viable public communications

dialogue while doing this and securing state, federal and private financial support for MDA. The approach MDA took was to create a consultative/collaborative stakeholder network to create MDA and develop the Regional Bi-State MDA framework.

The Committee's objectives are to formally create an MDA that has a dedicated, public revenue base by November 2003, generate \$4 million in local (public/private) matching funds to initiate a ten-year mobility development plan by January 2004, develop a minimum four-county regional governance structure to form the MDA, and pass legislation in South Carolina and Georgia to authorize a Bi-State MDA by June 2003. The initial committee members who have been meeting since July 2002 are Messrs. Newton and Kachmar, Beaufort County; Dr. Hair, Chatham County; Messrs. Shapp and Rutherford, Effingham County; and Messrs. McClary and Moss, Jasper County. The goal is to create a regional response to improving community mobility and develop a positive response to the age-old dilemma of catching up with growth to maintain our preferred quality of life. The State of Georgia counties involved are Liberty, Chatham, Bryan, and Effingham; the State of South Carolina counties are Beaufort, Jasper, Allendale, Colleton and Hampton.

The total population in this region is 574,836 people as of the 2000 census count and the workforce totals 263,132 people. Mobility patterns will become more diffuse in the future. The translation for that is more people will be going to more discrete destinations more often and at more hours in the day. Also, our mobility patterns are becoming more random. Projected traffic improvements and projected highway investments now planned are necessary. These investments will create an improved traffic level of service for no more than 5 to 7 years. The truth is you cannot just pave your way out of growth. Our region's population is aging. The fastest growing age cohort is 45 to 64. The next fastest growth cohort is over 65. At the same time Effingham County's schools are overcrowded. Housing prices tell a tale. In several areas, housing availability is not keeping up with population growth. Housing costs are causing many employees to live farther from their work. Households in automobile-dependent regions devote more than 20% of household expenditures to surface transportation (more than \$8,500 annually). Households in communities with more and better mobility choices spend less than 17% (less than \$5,500 annually). In keeping with the concepts of a changing world, by 2020 we will have entered a new era. The keys for the future are personalization, choice, flexibility and accountability. Enhancing mobility means creating choices and adopting new strategies. It is time to create a regional response. It is time to focus on mobility not just highway improvements. It is time to wisely invest in our future. As part of this mobility enterprise development system and to continue the planning process in 2003, Beaufort County's initial subsidy based on population is \$45,000. Effingham County and Jasper County have both committed \$25,000. Chatham County's subsidy is \$50,000.

It was moved by Mr. Newton, seconded by Mr. Generales, that Council approve a \$45,000 appropriation for consultant services and the development of a Bi-State Mobility Development Authority. The funding sources are \$20,000 Council contingent and \$25,000 vacancy factory. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSTAINED - Mr. Lamb. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

RECESS

Council recessed at 5:30 p.m. in order to attend the annual holiday tree lighting festivities.

AMENDMENTS TO THE TEMPLATE ORDINANCE

It was moved by Mr. McBride, as Community Services and Public Safety Committee Chairman (no second required), that Council approve on third and final reading amendments to the Template Ordinance. The vote was: FOR -Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

SOUTHERN BEAUFORT COUNTY MAP CORRECTIONS TO THE BEAUFORT COUNTY ZONING MAP FROM RURAL/R TO RURAL RESIDENTIAL/RR FOR ELEVEN (11) PARCELS ALONG OLD BAILEY ROAD, OKATIE, SC (R600-9-15D, 15E, 37, 80, 81, 82, 83, 88, 85, 92 AND 97)

It was moved by Mr. Generales, Planning Committee Vice Chairman (no second required), that Council approve on first reading southern Beaufort County map corrections to the Beaufort County Zoning Map from Rural/R to Rural Residential/RR for 11 parcels along Old Bailey Road, Okatie (R600-9-15D, 15E, 37, 80, 81, 82, 83, 88, 85, 92 and 97). The vote was: FOR -Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

PUBLIC HEARING

Text Amendments to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article VII: Table 106-1876, Uses In Open Space, and Section 106-1912, Water Dependent Uses (adds bulkheads and riprap--in Table 106-1876 as a limited use under general open space, headwater buffers and river buffer; and a special use in all other uses; and, in Section 106-1912 as an allowable use in water dependent uses)

The Chairman opened a public hearing at 6:00 p.m. for the purpose of receiving information from the public regarding text amendments to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article VII: Table 106-1876, Uses In Open Space, and Section 106-1912, Water Dependent Uses (adds bulkheads and riprap--in Table 106-1876 as a limited use under general open space, headwater buffers and river buffer; and a special use in all other uses; and, in Section 106-1912 as an allowable use in water dependent uses). After calling three times for public comment and receiving none, the Chairman declared the hearing closed at 6:01 p.m.

It was moved by Mr. Generales, as Planning Committee Vice Chairman (no second required), that Council approve on third and final reading text amendments to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article VII: Table 106-1876, Uses In Open Space, and Section 106-1912, Water Dependent Uses (adds bulkheads and riprap--in Table 106-1876 as a limited use under general open space, headwater buffers and river buffer; and a special use in all other uses; and, in Section 106-1912 as an allowable use in water dependent uses). The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

In the absence of the Vice Chairman the Chairman received committee reports.

COMMITTEE REPORTS

Community Services and Public Safety Committee

Library Board

* Sandra Stephan

The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. Mrs. Sandra Stephan received the six votes required to serve as a member of the Library Board to fill the unexpired term left vacant by Mrs. Barbara Banus.

Finance Committee

15% Reassessment Cap on Valuation

It was moved by Mr. Generales, as Finance Committee Chairman (no second required), that Council authorize the Staff Attorney to retain outside counsel and direct the filing of a Declaratory Judgment action to determine the constitutionality of the 15% tax cap statute and request a ruling from the Court about how to value real property for ad valorem tax purposes after the property is transferred in a non-exempt sale to a third party. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

Discussion of School District Budget Process

The Finance Committee asked Chairman Taylor to draft a letter to Mr. Herman Gaither, Executive Superintendent of Schools and Mr. Earl Campbell, School Board Chairman, stating Council did not authorize the School Board to amend their budget to include the carry-over funds once determined by their audit.

An Ordinance Authorizing a General Obligation Borrowing of General Obligation Bonds for FY 2003

It was moved by Mr. Generales, as Finance Committee Chairman (no second required), that Council approve on first reading, by title only, an ordinance authorizing a general obligation borrowing of general obligation bonds for FY-2003 capital projects in the amount of \$8,994,715. The vote was: FOR - Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. OPPOSED - Mr. Cuttino and Mr. Lamb. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

Funding 3% Local Accommodations Tax Monies

Mr. Lamb left the room prior to Council discussing the issue of 3% local accommodations tax funding.

It was moved by Mr. Generales, as Finance Committee Chairman (no second required), that Council authorize funding of 3% local accommodations tax dollars in the amount of \$270,000 as follows: (i) EMS ambulance Fripp Island - \$70,000, (ii) Fund Balance repayment from FY 2001-2002 shortfall - \$100,000, and (iii) Marketing Campaign (Joint Beaufort/Hilton Head/Bluffton Chambers) - \$100,000. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. Mr. Lamb left the room. The motion passed.

Funding 2% State Accommodations Tax Monies

Mr. Lamb left the room prior to Council discussing the issue of 2% state accommodations tax funding.

It was moved by Mr. Generales, as Finance Committee Chairman (no second required), that Council appropriate the 2002-2003 2% state accommodations tax funding recommendations in the amount of \$220,000 as follows: Friends of Hunting Island State Park \$2,500, St. Helena's Spring Tours \$3,000, Fripp Island Friends of Music \$1,000 Main Street Beaufort \$6,500, Lowcountry Tourism Commission and Lowcountry Visitors Center & Museum \$25,000, Arts Council of Beaufort County/Promotion \$8,000, Greater Beaufort Chamber of Commerce \$5,000 marketing plan and \$60,000 Visitors Center, Beaufort County Water Festival \$5,000, University of South Carolina-Beaufort/The Reconstruction Era \$15,000, Historic Beaufort Foundation/Museum \$10,000, Bluffton Historical Preservation Society/Heyward House Historic Center \$17,500, Hilton Head-Bluffton Chamber of Commerce/Welcome Center \$5,000, Beaufort County Black Chamber of Commerce \$5,000, Daufuskie Sea Island Foundation \$5,000, Penn Center \$25,000, Arts In The Park/Advertising \$9,000 and Moonlight Cinema at the Old Oyster Factory \$10,500, and the Lowcountry Estuarium \$2,000. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. Mr. Lamb left the room. The motion passed.

Intergovernmental Relations and Economic Development Committee

Parks and Recreation Development Fund (PARD)

It was moved by Mr. Newton, as Intergovernmental Relations and Economic Development Committee Chairman (no second required), that Council endorse and submit to the Legislative Delegation for their consideration and approval the FY 2002-2003 distribution of Parks and Recreation Development funds in the amount of \$37,535.28 as follows: (i) Beaufort County - South Side Park Tennis Courts resurfacing

\$7,200.00. Burton Wells Park basketball court resurfacing \$4,856.83. St. Helena Park Basketball court resurfacing \$4,856.83. Bluffton Center basketball court resurfacing \$4,856.82; (ii) City of Beaufort - Pigeon Point Park playground purchase and installation \$4,128.88; (iii) Town of Hilton Head Island - Jarvis Creek Park recreational trails \$10,509.87; and (iv) Town of Port Royal - Casablanca Park basketball court resurfacing \$1,126.05. The vote was: FOR - Mr. Cuttino, Mr. Generales, Mr. Glaze, Mr. Ladson, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

Planning Committee

Text amendment to the Beaufort County Zoning and Development Standards Ordinance (ZDSO), Appendix D, Table 4 - Community Preservation Use Table, Commercial Uses - Office, Contractor's Office Use (to allow exterior storage with contractor's office use)

It was moved by Mr. Generales, seconded by Mr. Lamb, that Council table consideration of this issue and refer the matter back to the Planning Committee for further investigation. The vote was: FOR - Mr. Generales, Mr. Glaze, Mr. Lamb, Mr. McBride, Mr. Newton, Mr. Taylor and Mr. Von Harten. OPPOSED - Mr. Cuttino. ABSTAINED - Mr. Ladson. ABSENT - Mr. Brafman and Mr. Dukes. The motion passed.

Rural and Critical Lands Board

Mr. Taylor nominated Ms. Jacki Martin, representing *ex-officio* non-profit organization, to serve as a member on the Rural and Critical Lands Board.

PUBLIC COMMENT

The Chairman recognized Ms. Marquette Goodwine, representing the Gullah/Geechee Sea Island Coalition, who said farewell to those members who will not be working with the Coalition in their capacity as a Council member. There should be an inquiry into Attorney Hoffman's office located on US Highway 21 on St. Helena because it does not seem to be an appropriate land use. Also, there may be an amendment to the Zoning and Development Standards Ordinance for the entire County regarding government offices being placed in Rural and Rural Residential areas. Attaching an office to a school is one issue, but to open up government offices in general in the Rural District is not proper.

Rev. Reuben Greene, a School Board member, asked Council to have a heart. Love each other.

FAREWELL REMARKS FROM THE CHAIRMAN

Chairman Taylor thanked Mr. Dukes, in his absence, for serving very faithfully on this Council for four years and who has served this community for years before that. Mr. Dukes is a good and decent man whom I know this Council will miss. We will miss his service greatly. Mr. Taylor expressed his appreciation to the citizens of this county for their support over the course of the past 12 years. It has been 12 great years. This has been a journey which he never envisioned would last this long. It has been an honor to serve the people of this County on this Council. Thank you for sending me here four different times. It has been a wonderful journey.

Mr. Taylor thanked Council for asking him to sit as Chairman six years. We have accomplished a great deal together. There is not a better group of working people anywhere in the County or country than the members of Beaufort County Council. Next, Mr. Taylor thanked Mr. John Kachmar, County Administrator, who, over the last four years, has been instrumental in bringing forth so many important programs. The most shining example of Mr. Kachmar's good work is the USC-Beaufort four-year campus. Mr. Kachmar and he have worked together a lot and he has a tremendous amount of respect for him and his ability. Next, Mr. Taylor thanked Ms. Sue Rainey, Clerk to Council, who is an incredible worker. To the incoming

Chairman she will be the best friend you will have for the next two years. Ms. Rainey has been a friend, supporter and most importantly a loyal employee of this County. Ms. Lynn Boccia and Ms. Juanita Ellis compose the best group of employees ever serving this Council.

In closing, during the late 1980s there was a growing sentiment in this County about development being out-of-control. It was particularly focused at that point in time on a development that was proposed on Victoria Bluff where they wanted to build a boat manufacturing plant. There were two issues that caused him to get involved and run for County Council in 1990. And these two issues are being repeated as history has a tendency to do-losing/being taxed off one's land and growth management. He implored this Council to once again consider aggressive growth control to be the top priority that is needed in this County.

The members of Council presented a plaque and crystal gavel to both Chairman Taylor for his service on Council from January 1991 through December 2002 and Vice Chairman Dukes for his service from January 1999 through December 2002.

ADJOURNMENT

Council adjourned at 6:35 p.m.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Thomas C. Taylor, Chairman

ATTEST:

Clerk to Council

Ratified: January 13, 2003

**ARTICLE 2
DEMISED PREMISES**

2.1 Landlord hereby leases to Tenant and Tenant hereby takes and hires from Landlord, upon and subject to the terms, covenants and provisions hereof, the Demised Premises" consisting of "the Operations Zone" consisting of the Bluffton Oyster Factory located at the foot of Wharf Street at the May River in Bluffton, Beaufort County, South Carolina, and situated on the property further described as:

All those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, and being described and shown on a plat of the property prepared by T Square Surveying, a copy of which is attached hereto and incorporated herein by reference, as the Operations Zone and the River Access Zone. It is understood that the title to said property is bounded by the mean high water mark of the May River.

2.2 Provided further that the Landlord and the Tenant agree that the Demised Premises is divided into two parts: to wit: (1) The Operations Zone; and (2) the River Access Zone as shown on the plat attached hereto.

2.3 The "Operations Zone" consists of the Building in which the Bluffton Oyster Factory operates, together with the land as shown and labeled on said plat. The Tenant shall be entitled to exclusive possession and use of the Operations Zone.

2.4 "The River Access Zone" consists of the area shown and designated on the Plat as such. The Tenant shall have the non-exclusive right with the general public to use the River Access Zone. The Tenant shall have the right to cross this zone so as to gain access to the Operations Zone, and property taxes are addressed in Article 5.

**ARTICLE 3
TERMS**

3.1 The term (the "Term") of this Lease shall be for Five (5) years, commencing on 12/30, 2002 (the "Commencement Date"), and expiring on 12/29, 2007. Provided there is no continuing event of default hereunder by Tenant, Tenant shall have the right to extend the term of this lease for up to four (4) consecutive terms of Five (5) years each (the "Extended Term") upon the same terms and conditions contained herein, except the basic and additional rent, by giving written notice to Landlord of Tenant's intent to extend the then existing term at least three (3) months prior to the expiration of the then existing term.



Landlord's Initials



Tenant's Initials

**ARTICLE 4
RENT AND OPERATING COSTS**

4.1 Tenant shall pay the following:

- A. Tenant shall pay a base rent to Landlord on an annual basis on the anniversary of the Commencement Date. The rent shall be One and 00/100 (\$1.00) Dollar per year.
- B. Tenant shall pay all personal property taxes; hazard, flood and liability insurance costs (see Article 5, infra); and all utilities, including, without limitation, charges for electricity, water, sewer, heating and air-conditioning.
- C. Tenant shall make such improvements to the building on the Demised Premises as may be necessary or required so as to remain permitted by the appropriate state regulatory agency as a seafood, an oyster processing plant and a retail seafood store.
- D. As additional rent, the Tenant shall also pay to the Landlord Four Hundred Dollars (\$400.00) per month for the months of September, October, November, December, January, February, March and April. The rent shall be due and payable on the first (1st) day of each month, and past due on the tenth (10th) day of each month.
- E. In all other months the Tenant shall pay to the Landlord the sum of Two Hundred Dollars (\$200.00) per month. The rent shall be due and payable on the first (1st) day of each month, and past due on the tenth (10th) day of each month.
- F. All Operating Costs as further defined in Article 5.
- G. If any payment of rent, either base or additional, is paid more than five (5) days after the date the same was due, it shall thereafter bear interest at the rate of Twenty and 00/100 (\$20.00) Dollars per day.

**ARTICLE 5
OPERATING COSTS**

5.1 Tenant shall pay all "operating costs" as defined herein. "Operating Costs" shall mean all capital and non-capital expenditures required to be made in the operation, management, repair and maintenance of the Land and Building constituting the "Bluffton Oyster Factory" located in the Operations Zone of the Demised Premises, including, but not limited to, any additional construction of an addition to the existing dock, wharf and pier located in the Operations Zone and all charges, fees and taxes of whatever kind attributable thereto including the following:

- A. All ad valorem, special assessment, personal property taxes and any tax or fee, including impact fees, attributable to the Land and Building within the Operations Zone of the


Landlord's Initials


Tenant's Initials

Demised Premises. The Tenant shall not be responsible for any ad valorem, special assessment, personal property taxes and any tax or fee, including impact fees, attributable to the River Access Zone.

B. All charges for water and sewer use, electricity, gas and other public utilities supplied to the Building and grounds within the Operations Zone of the Demised Premises.

C. Heating, ventilation and air conditioning supplied to the "Building" in the Operations Zone including any capital expenditures for same.

D. Wages, social security taxes, unemployment taxes and insurance for all employees of the Tenant who are full time or part time, and whose services are used for the operation and maintenance of the Bluffton Oyster Factory, the Building and grounds within the Operations Zone and River Access Zone of the Demised Premises.

E. The Cost of labor, materials and supplies for cleaning, maintaining and securing the Building in which the Bluffton Oyster Factory operates including the grounds, windows, hallways, bathrooms, elevators, offices and food service areas, whether performed by employees of the Tenant or by independent contractors or subcontractors engaged by the Tenant, within the Operations Zone or for the picking of trash and litter within the River Access Zone.

F. Premiums for any insurance whatsoever including insurance against loss or damage to the Building in which the Bluffton Oyster Factory operates, whether by fire or other hazard, general public liability insurance, worker's compensation insurance and business interruption insurance; and,

G. Any and all expenses for repair maintenance, decoration or redecoration of the common areas within the Operations Zone and the Building in which the Bluffton Oyster Factory operates including the grounds, gardening and landscaping.

H. Tenant shall make such improvements to the Operations Zone as may be necessary or required so as to remain permitted by the appropriate state regulatory agency as a seafood plant, an oyster processing plant and a retail seafood store; and,

I. Tenant shall be solely liable and responsible to pay any and all assessments, fees or other charges to or on the Operations Zone of the Demised Premises, or any activities conducted thereon as may now or hereafter be charged to the Operations Zone of the Demised Premised during the Term or any renewal term.

J. Tenant shall be responsible for picking up and disposing of trash and litter in the Operations Zone and River Access Zone.

**ARTICLE 6
USE OF PREMISES**

6.1 Tenant shall use the Premises to operate a seafood plant, an oyster processing facility and a retail seafood store and specified uses ancillary thereto. It shall comply with any and all applicable local, state and federal ordinances and regulations, including, without limitation, the Beaufort County Hazardous Materials Ordinance, OSHA requirements, the Americans with Disabilities Act and rules imposed by permit issuers charged with the regulation of Tenant's activities.

6.2 Tenant shall have the right to use the Operations Zone for those uses presently permitted and allowed by the Town of Bluffton under its current zoning ordinances, and the Parties hereto acknowledge that the Tenant's use of the Operations Zone is grand-fathered and a permitted use. Those uses consist of and are limited to the following: sale of seafood, both retail and wholesale, the sale of mercantile goods exclusive of wine, beer and alcoholic beverages, the operation of a seafood factory, the harvesting of seafood and the operation of seafood mariculture operations, provided that same are approved by all appropriate agencies of the State of South Carolina.

6.3 If during the Initial Term or any Extended Term, the application of any statute, code or ordinance of any government, authority, agency, official or officer applicable to the Building or the Demised Premises makes it impossible or not economical for Tenant to operate in the Demised Premises in accordance with subparagraph 6.1, then Tenant, at its option, may terminate this Lease, whereupon the Base Rent and Additional Rent and all other charges payable to the Landlord hereunder by Tenant shall be apportioned as of such date of termination.

**ARTICLE 7
ASSIGNMENT AND SUBLETTING**

7.1 Tenant shall have no right to assign this Lease or sublet the Demised Premises, in whole or in part, to any person or entity including a State agency, institution, department, bureau, political subdivision or State or political subdivision operated entity or to any other successor or assign. In the event that the Tenant is involved in bankruptcy or insolvency proceedings and the Tenant's trustee fails to perform or rejects any of the Tenant's obligations provided under this Lease, this Lease shall immediately terminate.

**ARTICLE 8.
NOTICE THAT NO SERVICES OR INSURANCE IS PROVIDED**

8.1 Tenant expressly acknowledges and agrees that the Landlord is not providing any service whatsoever to the Tenant in this Lease. Tenant expressly acknowledges and agrees that Landlord is not providing any form of insurance, which would inure to the benefit of the Tenant, in this Lease.

8.2 Tenant expressly acknowledges and agrees that the Landlord is not obtaining, providing or otherwise insuring the Building in which the Bluffton Oyster Factory operates against loss, in



Landlord's Initials



Tenant's Initials

whole or in part, due to fire, flood, or any other hazard including acts of God. Tenant further acknowledges and agrees that Landlord is not providing any form of insurance, which would inure to the benefit of the Tenant.

8.3 Tenant expressly acknowledges and agrees that the Landlord is not providing lighting, heating or air conditioning, ventilation, electricity, janitorial service, security service, grounds maintenance, repair and maintenance to or about the Building in which the Bluffton Oyster Factory operates or any other service or supply necessary or convenient to maintain and /or operate the Bluffton Oyster Factory, the Building in which it operates and the real property on which the Building is sited including any improvements made thereto by the Tenant. Tenant expressly agrees that Tenant shall be obligated to pay for any service, maintenance or repair required by State, Federal or Local Law ordinance or regulation.

8.4 Tenant shall use separately metered utilities servicing the Operations Zone of the Demised Premises and make direct payment for such utility services to the suppliers thereof.

**ARTICLE 9
ARCHITECTURAL BARRIERS**

9.1 Tenant covenants and agrees that those portions of the Land, Building and Demised Premises, open to the public, shall comply with any and all applicable State and Federal law, rules and regulations with respect to architectural barriers or design that would prohibit free and full access to and use of those portions of the Land, Building, Demised Premises or any part thereof within the Operations Zone of the Demised Premises open to the aged, disabled or physically handicapped. In the event the Land, Building or Demised Premises within the Operations Zone of the Demised Premises do not so comply as of the Commencement Date of this Lease, Tenant shall, at Tenant's sole cost and expense and within ninety (90) days following the Commencement Date, alter, repair, renovate or otherwise provide at the Land, Building and Demised Premises within the Operations Zone of the Demised Premises all reasonable access and use thereof for the aged, disabled or physically handicapped as required by Law, taking into account any grand-fathering compliance permitted by law.

**ARTICLE 10
IMPROVEMENTS, ALTERATIONS AND MAINTENANCE**

10.1 Tenant shall have the following responsibilities and privileges for improvements, alterations and maintenance:

A. Tenant may develop, construct and operate within the Operations Zone, at its sole cost and expense, any additional improvements (the "Tenant's Improvements") necessary or convenient for Tenant to conduct its business. Tenant's improvements which are not permanently affixed, may be removed by the Tenant at the expiration of the Term provided; however, Tenant shall repair, cause to repair, or compensate Landlord for any repairs,


Landlord's Initials


Tenant's Initials

construction or reconstruction required to return the Demised Premises to its original condition existing prior to this Lease which are caused or resulted from removal of Tenant's improvements. Any such construction and operations shall be pursuant to permit by the applicable state, county or town agency.

B. Tenant agrees, except for normal wear and use, to keep and maintain the exterior and interior of the Leased Premises and any improvements thereon, including roofs, doors, windows, walls and any other structural elements in good condition and repair. Tenant shall make and be responsible for the costs of any electrical repairs, heating and air conditioning repairs, plumbing repairs and replacement, including the replacement of heating and air conditioning equipment and water heaters, all of which shall be deemed to be affixed, except in the case of personalty, such as window air conditioning units.

C. Tenant shall, at its sole expense, keep the Operations Zone (as defined hereinafter) free and clear of trash and debris, and the River Access Zone free of trash and litter.

D. Tenant agrees to perform such maintenance actions as may be commercially reasonable to keep the Building in which the Bluffton Oyster Factory operates and any improvements within the Operations Zone in the condition required by the appropriate state regulatory agencies to allow the use as a seafood plant, an oyster processing facility and a retail seafood store.

E. Tenant agrees to take such actions as may be necessary to prevent any unlawful discharge from the Operations Zone of the Leased Premises into the waters of the May River and further shall not store or allow hazardous or toxic waste or substances, which are defined as those substances, materials and wastes, including but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl's, (iv) designated as a "Hazardous substance" pursuant to Section 331 of the Clean Water Act, 33 U.S.C. Sec 1251, et. seq. (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec 1371), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec 6901, et. seq. (42 U.S.C. sec 9601), et seq. (42 U.S.C. 9601) within the Operations Zone of the Leased Premises.

F. Tenant shall be liable, at its sole cost and expense, for any fines, penalties and/or recovery of costs and expenses associated with any improper or unlawful discharge into the May River from the Operations Zone. The Tenant shall have no right to make any discharge from the River Access Zone into the May River.



Landlord's Initials



Tenant's Initials

**ARTICLE 11
CONDEMNATION AND CASUALTY**

11.1 If any damage or destruction occurs, in whole or in part, to the Bluffton Oyster Factory Building, or if proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof.

11.2 If any damage or destruction occurs, in whole or in part, to the Bluffton Oyster Factory Building and the dock(s), wharf(s), and pier(s) from any cause whatsoever, including acts of God, Landlord shall have no duty, obligation or liability to Tenant to restore, replace or rebuild the Bluffton Oyster Factory Building, any structure associated therewith, the dock(s), wharf(s) and pier(s), including Tenant Improvements made thereto.

11.3 If any damage to or destruction occurs, in whole or in part, to the Bluffton Oyster Factory Building, or any structure associated with it, including docks, wharfs, and piers, Tenant may elect, at its sole cost and expense, to restore the Bluffton Oyster Factory Building, any structure associated therewith, and the docks, wharfs, and piers to the original condition subject to permitting by state and local authorities. If Tenant elects not to restore or rebuild any damaged structure as provided herein including the Bluffton Oyster Factory Building, the Tenant shall terminate this Lease by notice to Landlord within ten (10) days from the date Tenant elects not to restore or rebuild the structure.

11.4 Nothing contained in this Lease shall be deemed or construed to grant the Tenant a claim or cause of action against the Landlord, its successors and assigns, for the value of the Tenant's leasehold estate, its leasehold improvements, lost income and /or rents, moving and related costs or any other damages whatsoever. Tenant expressly waives any claim or cause of action against the Landlord and its successors and assigns.

**ARTICLE 12
INSURANCE**

12.1 Tenant shall obtain and maintain throughout the Term the following:

A. At all times during the term of this lease, Tenant shall keep in full force and effect a Commercial General Liability Policy insuring against bodily injury, including death, or damage to tangible property, with minimum limits of liability in the amount of One Million (\$1,000,000.00) Dollars for a single occurrence for activities on the Operations Zone. The Landlord shall be shown as an additional insured.

B. At all times during the term of this lease, Tenant shall keep in full force and effect a Workers' Compensation Insurance policy with statutory benefits.

C. At all times during the term of this lease, Tenant shall keep in full force and effect an Employer's Liability insurance policy with minimum limits of liability in the amount of

Three Hundred Thousand (\$300,000.00) Dollars.

12.2 The policies or certificates of insurance shall include a provision that written notice of cancellation or notice of any material change to the insurance policy, including the limits of liability in said policy(s), shall not be effective until after the Landlord is given thirty (30) days written notice of such change

12.3 The landlord shall not be required to maintain hazard or all risk insurance on the Bluffton Oyster Factory Building or the improvements of the Operations Zone. Tenant elects not to maintain hazard or all risk insurance on the Bluffton Oyster Factory Building, the improvements thereto and the contents thereof, and shall occupy and make improvements to it at its own risk.

**ARTICLE 13
INDEMNITY**

13.1 Tenant hereby agrees to indemnify and hold harmless Landlord, its successors and assigns, from any and all costs, expenses, losses, liabilities, causes of action or other obligations in any way connected or associated with its occupation of the Leased Premises pursuant to this Lease. In the event any claim or demand is made on Landlord for any such obligation, Tenant shall promptly defend, remove, bond or otherwise dispose of such claim or demand and save and hold Landlord harmless against all expenses, costs and attorney's fees which may arise from any action taken by Landlord in response to said claim or demand.

**ARTICLE 14
DEFAULTS**

14.1 Any of the following shall constitute an Event of Default by Tenant under this Lease:

A. If Tenant shall fail to perform any of Tenant's obligations to pay the base rent or additional rent hereunder on or before the due date thereof, and such default remains uncured for period of Ten (10) Days after written notice of such default; or,

B. If Tenant fails to observe or perform any of Tenant's other obligations under any of the terms, covenants, conditions and provisions of this Lease and such default shall remain uncured for a period of Thirty (30) days after written notice of such default, provided the notice sets forth the specific actions necessary for Tenant to undertake, to correct or cure such default. No event of default shall be deemed to have occurred if Tenant commences necessary corrective or remedial action within the thirty (30) day notice period and diligently pursues and completes same.

14.2 If an event of default as defined in Section 14.1 A, B occurs, then (a) Landlord shall have the immediate right to give a written termination notice to Tenant specifying a date on which this Lease shall terminate, and on such date, the Term of this Lease shall expire and terminate, and all rights of Landlord and Tenant under this Lease shall cease; or, (b) if Tenant has not (i) cured such default or (ii) made arrangements to address the default and such arrangements have not been approved by


Landlord's Initials


Tenant's Initials

Landlord, which approval shall not be unreasonably withheld, within thirty (30) days of written notice of such default, Landlord shall have the right to cure such default by any reasonable means including, without limitation, the expenditure of funds, in which case Tenant shall pay to Landlord the reasonable cost of curing such default on demand of Landlord.

14.3 If within thirty (30) days after receipt by Landlord of written notice from Tenant to Landlord specifying any failure by Landlord to observe or perform any of Landlord's obligations under any of the terms, covenants, conditions and provisions of this Lease, Landlord has not commenced diligently to correct or otherwise to cure the default or defaults so specified or has not thereafter diligently pursued such correction.

14.4 If an event of default as defined in Section 14.3 shall have occurred, Tenant shall have the immediate right at any time thereafter to give a written termination notice to Landlord specifying a date on which this Lease shall terminate, and on such date, the Term of this Lease shall expire and terminate, and all rights of Landlord and Tenant under this Lease shall cease. Or in the alternative, Tenant shall have the right to cure such default by any reasonable means including, without limitation, the expenditure of funds and Tenant shall be entitled to recoup the reasonable cost of curing such default by offsetting such expenses against the basic rent due.

**ARTICLE 15
NOTICE**

15.1 Any notice to be given by either party to the other pursuant to the provisions of this Lease shall be given by personal delivery or by first-class United States mail, postage paid, addressed to the party for whom it is intended at the address first stated above or at such other address as may be designated in writing

**ARTICLE 16
SUCCESSORS AND ASSIGNS**

16.1 The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the Landlord and its respective successors and assigns. Unless repugnant to the context, the word "Landlord" appearing in this Lease shall be construed to mean the Landlord named above and its successors and assigns, and those claiming through or under it respectively.

16.2 The covenants, conditions and agreements contained in this Lease shall not bind or inure to the benefit of the Tenant's successors and assigns or those claiming through or under it.

**ARTICLE 17
MISCELLANEOUS**

17.1 The Lease shall be subject to the following:

A. Landlord agrees that upon Tenant's payment of the base and additional rent and



Landlord's Initials



Tenant's Initials

performing and observing the terms, covenants, conditions and provisions on its part to be performed and observed, Tenant shall and may peaceably and quietly have, hold and enjoy the Operations Zone exclusively and the non-exclusive right in the River Access Zone of the Demised Premises during the Term without any manner of hindrance, interruption or molestation from Landlord or anyone claiming under Landlord, subject, however, to the terms of this Lease.

B. If any term in this Lease shall be declared invalid or unenforceable, the remaining terms of this Lease shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties.

C. This agreement represents the entire understanding of the parties with reference to the subject matter hereof, and shall be construed and enforced in accordance with the laws of South Carolina.

D. Tenant shall neither assign this Lease nor sublet any portion of the Leased Premises.

E. The failure of either party to call any one default under the provisions of this Lease shall not be construed as a waiver of the right to call any other or future default.

F. Tenant shall not encumber the Demised Premises or any part thereof or permit any lien or charge to be taken against the Demised Premises or any part thereof.

G. Nothing herein shall be construed as a subordination by Landlord of its interests in the Leased Premises. Landlord shall not be required to subordinate its interest in the Leased Premises to any other party.

ARTICLE 18 SPECIAL PROVISIONS

18.1 The following special provisions apply to the parties herein:

A. The Demised Premises shall consist of the two areas as shown on the plat affixed hereto as Exhibit "1", the Operations Zone and the River Access Zone. The Tenant shall be entitled to the sole and exclusive possession and use of the Operations Zone. Tenant shall be entitled to non-exclusive possession and use of the River Access Zone. The Operations Zone shall include all appurtenances and improvements affixed to the property, including the docks, wharfs and piers emanating from that property.

B. Entry and access to the Operations Zone shall be limited to the Tenant and its guests and invitees.

C. Tenant shall have the right to terminate this Lease in the event of any of the following:
(i) the improvements on the Leased Premises are damaged, by fire, flood, storm or other casualty to the extent that repairs by the Tenant are not financially feasible by the Tenant

and there are no insurance proceeds available to Tenant to effect repairs or rebuild; Tenant acknowledges that Landlord is not providing any form of insurance including hazard insurance which would inure to the benefit of the Tenant; or, (ii) in the event that a regulatory agency having jurisdiction over the business operations of the Tenant shall issue an order, make such findings or enact such regulation(s) as will substantially impair the ability of the Tenant to conduct the permitted uses of the Leased Premises. In the event of termination under the provisions of this Paragraph, Tenant shall give the Landlord sixty (60) days written notice of its intent to terminate and this Lease shall terminate on the 60th day and all obligations of the parties hereunder shall terminate.

D. Tenant agrees that prior to making any structural modifications of the Building it will obtain the consent of the Landlord in writing, which consent shall not be unreasonably withheld.

E. Tenant shall have, subject to Tenant obtaining at it's sole and exclusive cost, all necessary permits and authorization from governmental entities having jurisdiction over such activities, the right to construct additions to the dock, wharf and pier at the eastern (down river) side of the existing structure and located in the Operations Zone. The costs related to the construction shall be the sole and exclusive responsibility of the Tenant. The additional dock, wharf and pier shall be used for purposes related to the permitted uses of the Leased Premises and shall not be used for marina type activities such as the rental or leasing of dockage to non-commercial vessels or boats or the sale of motor fuel. Landlord shall consent to any application by Tenant for all necessary permits and approvals for the construction and operation of the above specified improvements. In the event the Landlord desires to construct a dock, wharf or pier on the River Access Zone portion of the Leased Premises, the Tenant agrees to assist in the application for all necessary permits and approvals for such construction provided, that the construction will not result in the imposition of material limitations on the Tenant's use of the existing dock, wharf or pier and will not interfere with the Tenant's expansion of the facilities as contemplated under this paragraph.

F. Tenant shall have the right, subject to appropriate governmental approval, to construct fencing on the boundary between the Operations Zone and the River Access Zone to limit access to the Operational Zone of the Leased Premises. Tenant may not construct any fencing without prior written approval of Landlord. Landlord's approval right shall be limited to the location, design and specifications of the fence, and its approval shall not be unreasonably withheld.

G. Tenant agrees that it will keep the River Access Zone clean and free of trash and litter at its sole and exclusive expense. Tenant shall provide appropriate trash receptacles and shall empty same on an as-needed basis. In the event that special events sponsored by the Landlord results in Tenant incurring extra expense in the upkeep and cleaning of the River Access Zone, the Landlord shall bear the extra expense of such cleanup.



Landlord's Initials



Tenant's Initials

H. Landlord shall be responsible for the upkeep and maintenance of all improvements located in the River Access Zone other than trash receptacles.

I. Landlord shall post appropriate signs setting rules and regulations for the use of the River Access Zone. Such rules shall not, by their content or operation, interfere with Tenant's possession or use described in this Lease.

J. Landlord shall take all steps necessary to prevent the parking of vehicles within the River Access Zone and on or beside Wharf Street, except while engaged in launching and recovering boats. The parties further agree to take such action as may be required to have the appropriate governmental authority designate that portion of Wharf Street between the Premises and Bridge Street a "No Parking" zone or area.

K. Landlord agrees that it shall provide parking area(s) for persons utilizing the River Access Zone, and said parking shall not be located on the Demised Premises. The Landlord shall also be responsible for providing public restroom facilities with sewer disposal to include all necessary sewer, water and utility lines.

L. The Tenant shall have the right, as a permitted use of the Leased Premises, to engage in mariculture type activities in the Operations Zone, subject to compliance with applicable rules, regulations and laws of the State of South Carolina. Tenant shall obtain, at its sole cost, all necessary permits and authorizations from governmental authorities having jurisdiction over such activities. Tenant shall have the right to construct such improvements in the Operations Zone as may be necessary to conduct mariculture type activities in the Operations Zone.

M. Landlord expressly acknowledges that Tenant, as part of its permitted use in the Operations Zone, may conduct private parties in the Operations Zone.

In witness whereof, the Parties hereto have caused these presents to be executed in each entities' respective name and the seals to be affixed, on the date above written.


Landlord's Initials


Tenant's Initials

WITNESSES:

[Redacted]
[Redacted]
[Redacted]

WITNESSES

[Redacted]
[Redacted]

**LESSOR:
BEAUFORT COUNTY OPEN LAND
TRUST**

By: [Redacted]
It's President

Attest: [Redacted]
It's Treasurer
Attest: [Redacted]
It's Secretary

**LESSEE:
D&L SEAFOOD CORPORATION**

By: [Redacted]
It's President

Attest: [Redacted]

[Redacted]
Landlord's Initials

[Redacted]
Tenant's Initials

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) PROBATE

Personally appeared before me Sharon C. Rain, who first being duly sworn, states that they saw the within named William F. Merscher III sign, seal and as their act and deed deliver the within written document, and that they with C. Scott Greider witnessed the execution thereof.

[Redacted Signature]

SWORN to before me this 9 day of January 2002. 2003

Notary Public for South Carolina
My Commission expires: June 25, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) PROBATE

Personally appeared before me William F. Merscher III, who first being duly sworn, states that they saw the within named Larry Turner, President of D+L Services sign, seal and as their act and deed deliver the within written document, and that they with Karen Patterson witnessed the execution thereof.

[Redacted Signature]

SWORN to before me this 30th day of December 2002.

Notary Public for South Carolina
My Commission expires: 11/10/09

[Redacted] Landlord's Initials

[Redacted] Tenant's Initials

WHEREAS, on October 25, 2004, the County and the Town entered into an Agreement for the joint undertaking to share in the use and expenses associated with the Park and maintain the historic character of the Park to the extent permitted by the Conservation Easement now in effect or as may be amended from time to time by the Grantee and the County; and

WHEREAS, the parties desire to amend the October 25, 2004 Agreement (hereinafter the "2004 Agreement"); and

WHEREAS, the County and the Town agree to assign all duties and responsibilities associated with the funding, operations, maintenance, and general conditions of the Park and the adjacent Operations Zone Property to the Town.

NOW THEREFORE, for due and valuable consideration, the parties agree as follows:

1. The Park is occupied, in part, by the Tenant D&L Seafood Company, Inc., d/b/a Bluffton Oyster Company. D&L Seafood Company, Inc. operates an oyster processing/retail establishment in the an area designated in the Park as the "Operations Zone." The Operations Zone is presently committed to a use by D&L Seafood Company, d/b/a Bluffton Oyster Company under the terms and conditions of a lease and assignment of same to the County. D&L Seafood Company has been granted the use of the Operation Zone which consists of the Building in which the Bluffton Oyster Factory operates together with the land as shown and labeled on the plat attached hereto for the limited purposes provided by the Lease. The County shall assign all of its rights in interest in the Lease to the Town of Bluffton who shall accept such assign and be responsible for the enforcement of the Lease and all of its corresponding provisions.
2. The Park shall be maintained as open space, as a passive park, and open gateway to scenic vistas and accesses to the May River for recreational boating. There shall be no improvements constructed thereon without the express, written consent of the County. Furthermore, such construction shall be subject to the applicable ordinance(s) of the Town. The Park shall be made available to the general public for recreational boating; provided, however, the Town may conduct organized events within the Park upon notice.
3. Operation of the Park is under the supervisory authority of the Town.
4. This Agreement and these terms may be amended, changed, modified or altered by the Town if doing so, in its discretion, is in the public's best interests. Nothing in this Agreement shall operate to limit the County's authority, as owner of a public facility, to limit the use of the Park in a manner it deems most beneficial to the public at large.
 - a. Hours of Operation: The Park shall be open to the general public daily, during daylight hours, and at such other times as may be approved by the Town as

provided herein. The boat ramp shall be open for use by the general public daily, twenty-four (24) hours a day.

- b. **Special Events:** A special event means the congregation of persons on the Park premises, at a function hosted or approved by the Town, and where food, beverages, events, entertainment or a concert are provided.
 - c. **Process of Handling of Special Events:** Special Events at the Park will be procedurally and substantively handled like all other special events in the Town.
 - d. **Disposition of Fees from Special Events:** The gross receipts from Special Events shall inure to the benefit of the Park unless prior approval has been given to host a Special Event as a "fund-raiser" for a public or charitable purpose. Other than permitted public purpose or charitable "fund-raisers," the gross receipts from Special Events shall be remitted to the Town. Special Event funds shall be expended solely for the general upkeep, maintenance and improvement of the Park and Park facilities.
5. **Public Beach.** To the extent that the sandy area lying in and adjacent to the boat ramp in the Park premises may be used as a public beach, the County and Town agree to enforce the following restrictions. Driving or operating any motor vehicle on the public beach other than in the designated areas for purposes of launching a boat is prohibited. Using a surfboard or a motorized device including a personal watercraft in the area of the beach and in any manner as to become a hazard to bathers, swimmers, boaters or others shall be prohibited. Glass bottles, drinking glasses or other glass containers shall be prohibited on the beach.
 6. **Use of Alcoholic Beverages.** County owned recreation facilities are publicly funded and for the purpose of carrying on leisure, recreation and sporting events. As such, the Town shall regulate the Park in a manner that shall provide for the greatest public use. Alcoholic beverages may be permitted for family outings, social events, fund raising events and special events provided that its use is not in conflict with any other County or Town ordinance or state law.
 7. The Town shall regulate parking within the Park and restrict boat and boat trailer parking to the area designated for such purpose.
 8. The Town maintain the boat ramp in a condition suitable for recreation boating.
 9. The Town shall provide, at least weekly, regular refuse, litter and garbage pick-up free of charge to the County, in all the Park areas exclusive of the Operations Zone. Additionally, the Town shall be responsible for providing all maintenance and cleaning of the restroom facilities located at the Park.
 10. The County and the Town shall notify their respective property and liability

insurers, which provide the County and the Town general liability insurance now and in the future of the modifications to the initial undertaking. As the party responsible for the operation, maintenance, use and condition of the Park and all related facilities, the Town agrees to be the primary responsible party for any and all liability resulting from the use of the Park to the extent that immunity has been waived under State of South Carolina law.

11. Capital Improvements, including demolition, shall be jointly reviewed by the County and the Town. The Town shall advise the County of Town zoning and land use regulations which may apply to the subject property. Such improvements shall conform to Town regulations. In the event that a variance(s) are required, such variance shall not be unreasonably withheld. The Concept plan dated November 2002 Exhibit B shall serve as an initial and general guide concerning capital improvements. The Town shall be responsible for updating the Concept plan as necessary. Upon approval, the updated Concept plan shall replace the Concept plan dated November 2002 as Exhibit B of this Agreement. The Town shall manage all capital improvements. The Town and County agree to cooperate to secure funds for capital improvement from any available source. Funds collected from grants and/or non-profit/private entities for capital improvements may be accepted on terms acceptable to the Town.
12. The County and the Town acknowledge the presence of a structure on the southwest side of the Park with potentially historic significance. Any improvements or disposition of the structure shall conform to the Town's Historic Preservation Commission guidelines.
13. Signage and associated lighting shall be mutually agreed on by the County and the Town. Design of the signage shall be guided by the Town's sign ordinance.
14. The Town shall provide law enforcement with back up by the County Sheriff's office, as required.
15. It is agreed that either of the parties shall have the right and privilege of terminating this Agreement at any time upon giving one (1) months notice, in writing, to the other party of its intention to do so, and in the event this Agreement is terminated, then all rights and interests of the parties shall cease, and any permanent building or improvements erected by Town shall then be, and become the property of the County.

Intentionally Left Blank

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers this day and year as aforewritten.

BEAUFORT COUNTY COUNCIL


By:



Gary Kubie
County Administrator

TOWN OF BLUFFTON

By:



Marc Orlando
Town Manager

Lisa Sulka
Mayor

Larry Toomer
Mayor Pro Tempore

Marc Orlando
Town Manager



EXHIBIT E

Council Members
Fred Hamilton
Dan Wood
Harry Lutz

Kimberly Chapman
Town Clerk

August 16, 2017

Honorable Members of the Beaufort County Legislative Delegation
c/o Ms. Cynthia Maxey, Delegation Liaison
Beaufort County Legislative Delegation
P. O. Box 1228
Beaufort, SC 29901-1228

Dear Ms. Maxey:

The purpose of this letter is to formally communicate the intention of the Town of Bluffton to request two separate grants under the South Carolina Parks and Recreation Development Fund (PARF) Program.

The first request is to help offset the cost of improvements at the Oyster Factory Park, a property owned by Beaufort County and, through formal agreement, managed by the Town of Bluffton. The "Oyster Factory" itself, a focal point for tourists in the park, is the last remaining hand-shucking oyster house on the eastern seaboard. It is a Contributing Structure to the Town of Bluffton's Historic District; one of the few structures in the town to survive the burning of Bluffton by the Union Army in 1863. Costs for repairs required to maintain the facility to the standards required for continued support of tourism exceed what can be reasonably expected of its current tenant. Improvements to the roof, parking and existing dock are expected to be in excess of \$62,500. We are requesting your support in seeking \$50,000 in PARF funding to help offset the cost of these improvements.

The second request is to support continued improvements to Oscar Frazier Park. Currently the park houses a baseball facility with three fields, managed by Beaufort County; a community center built through a previous joint effort with the Rotary Club of Bluffton; a playground; and two separate open spaces measuring a total of approximately six acres. The Town, in conjunction with the Rotary Club of Bluffton, would like to enhance the current playground and also improve the larger of the two open spaces to increase its recreation value to the community. Playground enhancements include upgrading current playground equipment and consideration for artificial turf installation. Open space improvements include the addition of a measured, continuous pathway around the perimeter along with other landscape/hardscape improvements. These improvements to Oscar Frazier Park are expected to be in excess of \$62,500. We are requesting your support in seeking \$50,000 in PARF funding to offset the cost of these improvements.

A formal request will follow and will be formatted in accordance with guidelines established by the South Carolina Department of Parks, Recreation and Tourism for PARF grants. We are grateful for the opportunity to provide you with advanced notice of our intentions, and for your

consideration of support. Enclosed, you will find an overhead view of Oyster Factory Park and a Conceptual Plan for continued improvements to Oscar Frazier Park.

Thank you, once again, for your consideration of supporting these requests. Please contact me at (843) 706-4523 if you have any questions.

Sincerely,



Scott M. Marshall, MPA
Deputy Town Manager

Enclosures

CC: Town of Bluffton Town Council
Marc Orlando, ICMA-CM, Town Manager



Bridge St

Wharf St

Oyster
Factory
Park

Oyster
Factory



0 35 70 140 Feet

Date: 8/16/2017
Ryan Coleman, GISP



Oscar Frazier Park



Date: 8/16/2017
Ryan Coleman, GISP

0 100 200 400 Feet

Shults Rd



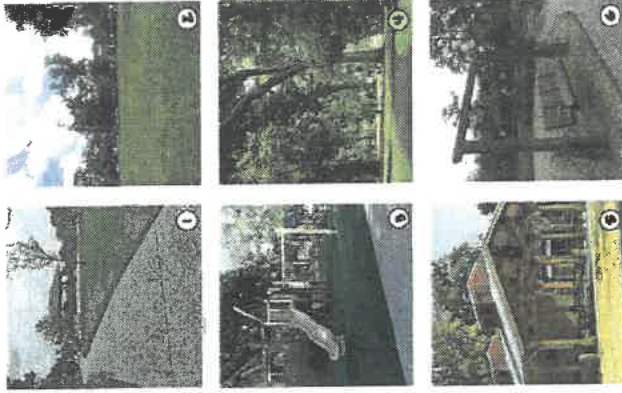
FIELD OF DREAMS AT OSCAR FRAZIER PARK

CONCEPT SKETCH PLAN
MARCH 2017

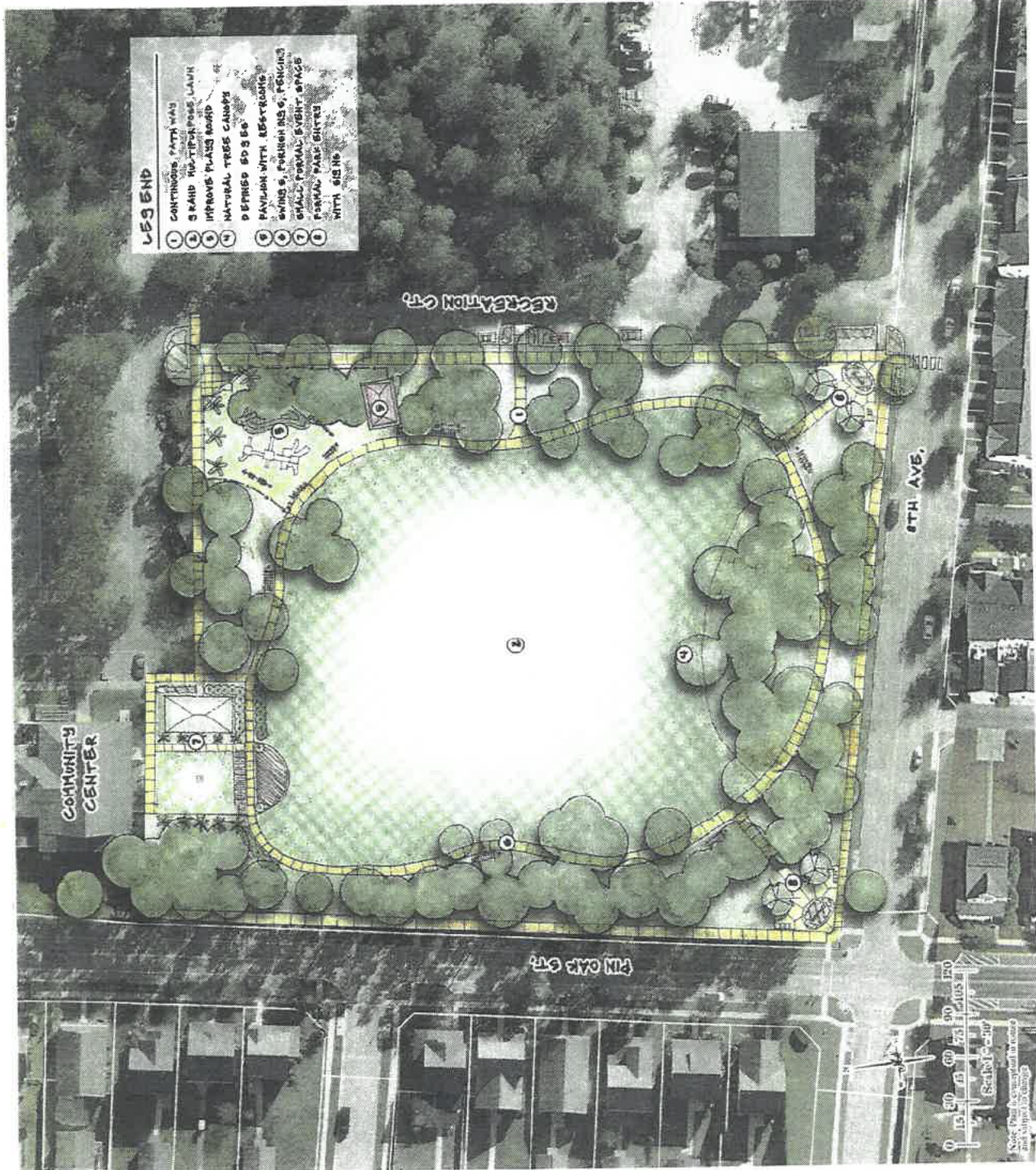


ROTARY CLUB
OF BLUFFTON

INSPIRATION IMAGES



PREPARED BY:
Williams Jones Keefer
The LLC of
LANDSCAPE ARCHITECTURE
INCORPORATED
1000 W. 13th St., Suite 100
Bluffton, SC 29910
803.885.1111



PARK AND RECREATION DEVELOPMENT FUND

EXHIBIT F

PROJECT APPLICATION

I. General Information

Project Sponsor: Town of Bluffton

Mailing Address: 20 Bridge Street

Bluffton, SC 29110

Email santhony@townofbluffton.com Zip 29910

Contact Person: Steve Anthony

Phone Number: 843 706 7829 Fax: 843 706 4533

Project Name: Oyster Factory Park - Roof Replacement

County: Beaufort

Federal Identification Number: 57-0527565

Congressional District #1st PARD Class A

Amount of Funds Requested: \$50,000.00

II. Project Description

This project will include the following work categories (Check the appropriate categories):

Development of New Facilities Renovation of Existing Facilities

Planning

This project will include the following specific work elements (Check the appropriate elements):

Athletic Fields Athletic Courts Multi-Purpose Courts

Picnic Facilities Swimming Facilities Trails

Boating/Fishing Facilities Indoor Facilities

Support Facilities Consultant Services

Other (describe) Renovation of the only working Oyster Company in SC by providing a new roof.

III. Narrative Description

The purpose of the request is to provide partial funding to re-roof a significant historic structure at Oyster Factory Park. The park is located on the May River and includes a boat ramp and courtesy ramp, boat parking, cookout pavilion, walkways and two historic structures. In April of 2017, the Town completed the restoration of the Garvin House at Oyster Factory Park. The Garvin House built in ca. 1870, is believed to be one of the earliest known freedman owned houses still extant on the May River. The other historic structure at the park is the 200 year old Oyster Factory. This building is the only hand oyster shucking operation and processing company in South Carolina and is a vital part of the history of Bluffton, South Carolina. Located on the banks of the May River in Oyster Factory Park, the Oyster Factory is a major part of the tourism experience in Bluffton. The current roof has significant wear and multiple leaks and has become hazardous to both workers and visitors. Funding of this request will allow the Town to stabilize the roof structure and re-roof the building with a corrugated roof material to match the Garvin House.

IV. Proposed Site Location:

Park Name: Oyster Factory Park

Physical address of proposed site: 63 Wharf St. Bluffton, SC

Latitude and Longitude: 32 degree 13' 53.99" N, 80 degrees 52' 01.90" W

Pictures (color) 8 ½ x 11 of the proposed site before development or renovation. See attached

Project Location Map: See attached

V. Time Table: Project construction to be start in January 2018 and be completed no later than June 30, 2018

VI. Proposed Budget Breakdown for the Project:

State Share	\$50,000.00
Local Share	\$12,500.00
Total Cost	\$62,500.00

VII. Attachments:

1. Project Photographs (5 sheets)
2. Project Location Map
3. Copy of appropriate deed or lease/joint use agreement
4. Original document showing the endorsement of County Legislative Delegation
5. Historical Significance Certification Form

SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION & TOURISM
PARK AND RECREATION DEVELOPMENT FUND

HISTORICAL SIGNIFICANCE CERTIFICATION FORM

AGENCY NAME: Town of Bluffton

PROJECT NAME: Oyster Factory Park – Roof Replacement

I hereby certify that the above named project:
(Select One)

Will Not Have an impact on existing or potentially eligible National Register site(s).

Will Have an impact on existing or potentially eligible National Register site(s).
Please explain:

The Oyster Factory building is one of two historically significant structures at the Oyster Factory Park. The new roof is required to prevent the structure from further deterioration and will be consistent with historical materials. As with the Garvin House restoration, any changes to the Oyster Factory building will require approval by the Town's Historic Review Committee and will also be required to obtain all State and Federal permits.

PRINTED NAME: Patrick M. Rooney

TITLE: Manager of Capital Improvements Program

SIGNATURE: 

DATE: 9/24/17

(Form must be completed, signed and returned to us WITH the application. Applications **cannot** be processed without this signed and dated form.)

Alesha Cushman

From: Justin Hancock
Sent: Tuesday, December 4, 2018 4:18 PM
To: Alesha Cushman
Cc: Amy Duffy
Subject: FW: recap of conversation with Trisha Greathouse at Bluffton

Hey Alesha,

Update on the Bluffton PARD issue. Will you circle back with me when you've heard from them or received the invoices for either the parking lot or dock?

Thanks!

Justin

From: Duane Parrish
Sent: Tuesday, December 4, 2018 3:27 PM
To: Justin Hancock <jhancock@scprt.com>
Subject: RE: recap of conversation with Trisha Greathouse at Bluffton

Spoke to Marc Orlando (Town Manager) today. They are going to submit an invoice for the parking lot or the dock for reimbursement. Call me if you have any questions. Thanks.

Duane Parrish
Director
SC PRT
1205 Pendleton Street #248
(803) 734-0171
dparrish@scprt.com



From: Justin Hancock
Sent: Wednesday, November 28, 2018 5:05 PM
To: Duane Parrish <dparrish@scprt.com>
Subject: recap of conversation with Trisha Greathouse at Bluffton

Hey Duane,

Thought it might be useful for your conversation with the Bluffton Mayor to send you the recap of our conversation with Trisha (CFO for Town of Bluffton) since it

gives a good overview of the situation. Hope this helps. If you need anything else, just let me know. Thanks! Justin

Hi Amy,

Here's a recap of the conversation with Trisha this morning:

Alesha relayed to Trisha, based on her most recent conversation with Mark Maxwell (project manager for the Town of Bluffton), that she is ready to send in their check as soon as she receives the invoices for the parking lot work that was done at the Oyster Park. Trisha responded that they cannot use the PARD funds for the parking lot because the parking lot was paid for with local A-tax funds (side note: there's nothing that prohibits the Town from using PARD funds for a project paid for with A-Tax funds, either state or local).

Trisha then defended the use of PARD funds for the Oyster Factory roof, saying that the factory is the primary tourism draw for the park. We explained to Trisha that PARD funds are specifically for public recreation projects (passive parks, ballfields, etc), and that since the Oyster Factory is primarily used for lease space to a for-profit business, that is outside the scope of PARD program.

Alesha also stated that PARD funds may be used for any other support facilities for the park (parking lot, sidewalks, docks, landscaping) – just not for the building itself since it is not used for recreation purposes. Trisha stated that she is confused because the Oyster Factory is a tourist attraction and SCPRT is a tourism agency, and that she doesn't understand what falls in the "R" bucket versus the "T" bucket for grants. We explained that SCPRT has several grant programs, some are for tourism projects and others for recreation, and that the PARD program is specifically for public recreation projects, and that the regs for that program are set in legislation.

Alesha then requested that the Town submit the invoices for the Oyster Factory parking lot, since that is eligible for PARD, and stated that once she has those invoices, she can send them a check for the full PARD amount. Trisha reiterated that the parking lot was paid for with another funding source, and that the Town wants the PARD funds for the Oyster Factory roof. Trisha contends that the PARD

application stated the purpose of the Oyster Factory building and that the application was approved by SCPRT. Alesha's contends that while the application states that the building is a historic structure and the only oyster hand shucking operation in SC, it did not specify that the Town is leasing the building to a for-profit company – which she realized when she conducted the project inspection. And, that had she known the current use of the building, the application for roof repairs would not have been approved initially.

Trisha also stated that she has been informed that Duane spoke with Rep. Herbkersman and that Duane said we would reimburse for the roof project for the Oyster Factory. I told Trisha that I would talk with Duane and get back to her.

Justin E. Hancock
Director
Office of Recreation, Grants & Policy
1205 Pendleton Street, Suite 248
Columbia, SC 29201
803-734-1747





Mayor
Lisa Sulka

*Council
Members*
Fred Hamilton
Larry Toomer
Dan Wood
Harry Lutz

Marc Orlando
Town Manager

Kim Chapman
Town Clerk

September 27, 2018

RE: 2018041 Oyster Factory Park – Roof Replacement

Alesha Cushman – Grants Coordinator
Department of Parks, Recreation, and Tourism
1205 Pendleton Street
Columbia, SC 29201

Dear Ms. Cushman,

The Town of Bluffton is requesting reimbursement for expenditures related to the Oyster Factory Park – Roof Replacement, Project #2018041. A breakdown of grant expense is shown in the below table. The Town of Bluffton followed its procurement procedures in these expenditures. Accompanying this letter is the documentation outlining the expenditures toward the PARD Grant associated with the Project.

Description	State Funds	Local Match	Total to Spend	Total Spent
Roof Replacement (2018041)	\$50,000	\$12,500	\$62,500	\$63,267.76

If you have any questions or want to meet on site, I can be reached at (843) 540-0045.

Sincerely,



Mark Maxwell
Project Manager

SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION & TOURISM
PARK AND RECREATION DEVELOPMENT FUND

PROCUREMENT CERTIFICATION FORM

AGENCY NAME: Town of Bluffton

PROJECT NAME: Oyster Factory Park - Roof Replacement

PROJECT NUMBER: 2018041

I hereby certify that all labor, materials and contracts acquired or performed in the accomplishment of the above named project were accomplished in accord with the named agency's established procurement guidelines. Any questions, concerns or grievances should be directed to this agency.

Mark Maxwell
PRINTED NAME

Project Manager


SIGNATURE

9/27/2018
DATE

(Form must be completed, signed and returned to us WITH the first request for reimbursement.)

BLUFFTON TOWN COUNCIL MEETING MINUTES

EXHIBIT I

January 9, 2018

Mayor Sulka called the meeting to order at 6:00 p.m. Council members present were Mayor Pro Tempore Larry Toomer, Fred Hamilton, Dan Wood and Harry Lutz. Town Manager Marc Orlando, Deputy Town Manager Scott Marshall, Director of Finance and Administration Trisha Greathouse, Director of Growth Management Heather Colin, Director of Engineering Bryan McIlwee, Police Chief Joe Manning, and Town Attorney Terry Finger were also in attendance.

Pledge of Allegiance and Invocation were given by Mayor Sulka.

Swearing in of Town Council-Elects Larry Toomer and Fred Hamilton:

Town of Bluffton Municipal Judge Clifford Bush swore in Town Council-Elects Larry Toomer and Fred Hamilton.

Appointment of Mayor Pro Tempore:

Hamilton nominated Toomer for Mayor Pro Tempore. There were no other nominations and the vote was unanimous. Mayor Sulka declared Toomer as Mayor Pro Tempore.

Standing Committee Assignments:

Wood made a motion to keep the current Council committee assignments. Lutz seconded. The motion carried unanimously.

Adoption of Agenda:

Hamilton moved to adopt the agenda as presented with the addition of Agenda Item #VII-1 – Martin Luther King Jr. Proclamation. Lutz seconded. The motion carried unanimously.

Adoption of Minutes:

Town Council Meeting Minutes of December 12, 2017

Toomer moved to adopt the minutes of December 12, 2017. Hamilton seconded. The motion carried unanimously.

Presentations, Celebrations and Recognitions:

Mayor Sulka presented a Proclamation in honor of Martin Luther King Jr. Day.

Mayor Sulka recognized Elijah Gaynor from Okatie Elementary School as the Beaufort County School District Student of the Month.

Mayor Sulka recognized outstanding performances by students from May River and Bluffton High School Youth in Government Classes.

Mayor Sulka read a Proclamation recognizing School Choice Week.

Mayor Sulka acknowledged the Bluffton Sun's 20th Anniversary.

Dot Jegar from the Bluffton Rotary Club presented conceptual plans for improvements to Oscar Frazier Park Field of Dreams.

Public Comments:

Lillian Heyward; 130 Pritchard Street, Bluffton – Stated that she supports the Town of Bluffton banning single-use plastic bags.

John Matthews; 7 Chesterfield Drive, Beaufort – Stated that he does not support the Town of Bluffton banning single-use plastic bags and recommends educating people about not littering.

Rikki Parker; 2309 Sheppard Lane, Beaufort – Stated that she supports the Town of Bluffton banning single-use plastic bags.

Jennifer Sharp; 16 Rockville Way, Beaufort – Stated that she is a member of Indivisible Beaufort and she is in support of the Town of Bluffton banning single-use plastic bags.

Nancy Johnson; 16 Pipers Pond, Bluffton – Stated that she supports the Town of Bluffton banning single-use plastic bags.

Amber Kuehn; 31 Alljoy Road, Bluffton – Stated that she is the sea turtle protection project manager for Hilton Head Island and an eco-tour business operator in Bluffton and is in support of the Town of Bluffton banning single-use plastic bags.

Samantha Davy; 110 Brown Court, Bluffton – Invited all to attend the Lowcountry Alliance for Healthy Youth Community Forum to Address the Opioid Crises on January 29, 2018 at Hilton Head High School.

Communications from Mayor and Council:

Mayor Sulka thanked the Police Department and all first responders for their efforts during our recent winter weather event.

Formal Items:

Acceptance of the Presentation of the Town of Bluffton Fiscal Year 2017 Audit by KRT, Certified Public Accountants P.C. – Trisha Greathouse, Director of Finance and Administration

Trisha Greathouse, Director of Finance and Administration introduced Tamira Munson, Audit Manager for KRT CPAs. Ms. Munson stated that KRT, Certified Public Accountants P.C. issued an unmodified opinion for the Town of Bluffton which means there were no problems or issues.

Greathouse gave an overview of the June 30, 2017 Comprehensive Annual Financial Report (CAFR).

Consideration of an Ordinance Amending the Town of Bluffton Fiscal Year 2018 Budget to Recognize Additional Expenditures and to Allocate the Sources of Revenue for All Funds – First Reading – Trisha Greathouse, Director of Finance and Administration

Trisha Greathouse, Director of Finance and Administration gave an overview. Greathouse stated that the proposed ordinance amending the FY 2018 budget to increase the General Fund by \$1,356,287 is to account for the Highway Safety Grant awards for DUI and Traffic enforcement, the effects of Hurricane Irma and funding additions for Capital Improvement Program Fund projects, to increase the Capital Improvements Program (CIP) Fund budget by \$1,337,709 to account for the Parks and Recreation Department Fund (PARC) grant awards for Oyster Factory Park and Oscar Frazier Park Improvements, the Town Hall Renovation Contract award and related funding sources, and to increase the Stormwater Utility Fund budget by \$305,000 for CIP Fund project funding modifications for a new consolidated budget of \$44,228,044.

- The Town received a grant from the South Carolina Department of Public Safety to establish a DUI Traffic Enforcement Unit. It is 100% funding with no match required by the Town and includes one traffic officer position, vehicle and equipment in the amount of \$106,410 for FY 2018. This grant includes the hiring of one additional officer for the Police Department.
- The Town also received a renewal of the South Carolina Department of Public Safety grant for the Traffic Enforcement Unit established in 2016. It also is 100% funding with no match required by the Town and includes two traffic officer positions and equipment in the amount of \$118,700. The renewal of the 2016 Traffic grant was not guaranteed during the original budget preparation and other revenue sources were initially used to continue funding this program in FY 2018.
- The impact of Hurricane Irma to expenditures of town personnel and debris clean-up totaled \$144,883 and is to be funded from the prior year fund balance set aside for Emergency Recovery according to the Town's Fund Balance Policy.
- The Capital Improvements Program (CIP) Fund budget recognizes the increase to the Town Hall Renovation project budget related to the signing of the JE Dunn Construction contract in November of 2017 and the related funding sources.
- The CIP Fund budget increase also includes the newly awarded Parks and Recreation Division (PARC) grant for structural repairs at Oyster Factory Park. This \$50,000 grant requires a \$12,500 match by the Town using Local Accommodations tax.
- The amendment includes the newly awarded PARC grant to provide playground equipment at Oscar Frazier Park. This \$50,000 grant requires a \$14,615 match by the Town using Hospitality tax.

- The Town Facility Improvements project is receiving an increase of \$13,000 based on quotes received for the bullet proof glass installation at the Law Enforcement Center. This increase is offset by the savings resulting from the Traffic Enforcement Unit Grant renewal.
- The CIP Fund budget amendment recognizes administrative funding source modifications to the May River Road Streetscape project based on contract classification costs and available fund balance resources in other funds.
- The Stormwater Utility Fund amendment is due to CIP Fund funding source modifications for May River Road Streetscape and Town Hall Renovation based on administrative adjustments and contract costs.

Wood made a motion to approve an Ordinance Amending the Town of Bluffton FY 2018 Budget Amendment Ordinance 2017-10 to increase the General Fund by \$1,356,287 to account for South Carolina Department of Public Safety Highway Safety Grant awards for DUI and Traffic enforcement, the effects of Hurricane Irma and funding changes to Capital Improvement Program Fund projects, to increase the Capital Improvements Program (CIP) Fund budget by \$1,337,709 to account for the Parks and Recreation Department Fund (PARC) grant awards for Oyster Factory Park and Oscar Frazier Park Improvements, the Town Hall Renovation Contract award and related funding sources, and to increase the Stormwater Utility Fund budget by \$305,000 for CIP Fund project funding modifications for a new consolidated budget of \$44,228,044. Lutz seconded. The motion carried unanimously.

Consideration of an Ordinance to Encourage the Use of Reusable Checkout Bags and Recyclable Paper Carryout Bags and Banning the Use of Single-Use Plastic Bags for Retail Checkout of Purchased Foods within the Town of Bluffton – First Reading - Scott Marshall, Deputy Town Manager

Scott Marshall, Deputy Town Manager gave an overview for Town Council to consider the draft ordinance presented, effectively encouraging the use of reusable checkout bags and recyclable paper carryout bags and banning the use of single-use plastic bags at point of sale.

- Beaufort County Council, after a series of public meetings and discussion at multiple County Council sessions, is considering an ordinance which effectively bans the use of single-use plastic bags at points of sale for most business establishments. At the time this staff report was drafted, the county's ordinance has been through two of the required three readings necessary to become public law. This is the version that is expected to be considered for third and final reading on January 8, 2018. The county ordinance will take effect eight months from the date County Council enacts the ordinance provided that the "same or substantially similar ordinance has been adopted by every municipality in Beaufort County."

- As of the date this report was drafted, other municipalities within Beaufort County have taken the following actions with regard to the same or substantially similar ordinances:
 - City of Beaufort passed its ordinance on first reading on November 14, 2017. Date of second and final reading is not yet known.
 - Town of Hilton Head Island passed its ordinance on first reading on December 19, 2017. Date of second and final reading is not yet known.
 - Town of Port Royal passed its ordinance on first reading on December 13, 2017. Second and final reading is expected in January.

The Town of Bluffton Draft Ordinance contains:

a. Definitions

1. Business Establishment
2. Single-Use Plastic Carryout Bag
3. Reusable Carryout Bag
4. Customer

b. Prohibitions

1. No person may provide Single-Use Plastic Carryout Bags at any Town facility, Town-sponsored event, or any event held on Town property.
2. No Business Establishment within the Town may provide Single-Use Plastic Carryout Bags to its customers.

c. Exemptions

1. Laundry dry cleaning bags, door hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste.
2. Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities.
3. Bags used by businesses to contain bulk items, wrap frozen or unwrapped prepared foods or bakery goods, flowers, potted plants and other items to prevent moisture damage to other items purchased.
4. Bags of any type brought by the Customer to the Business Establishment for their own use in transporting goods that are not placed in a bag by the Business Establishment.

d. Penalties

1. Guilty of misdemeanor if failure to comply after a written warning notice is issued.
2. First violation results in \$100 fine.
3. Second violation in a 12-month period results in \$200 fine.

e. Effective Date

1. Ordinance shall take effect eight months from the date Town Council enacts it provided the same or substantially similar ordinance has been adopted by the Beaufort County Council.
2. If the same or substantially similar ordinance has not been adopted by Beaufort County Council by the time Town Council adopts this ordinance, then the ordinance becomes effective eight months from the date the Beaufort County Ordinance is effective.

Toomer moved to adopt the Ordinance Amending Chapter 12 of the Code of Ordinances for the Town of Bluffton, South Carolina, Environment, by Adding New Sections for Reservation Purposes, Numbered Sections 12-137 Through 12-150, and Adding and Adopting Article VI, Establishing Regulations and Requirements Relating to Single-Use Plastic Bags in the Town of Bluffton, with the following additional language to further clarify exemptions in the ordinance:

- **Under Section 12-154.(c)(2), after 'fish,' insert 'to include, but not limited to, seafood and meats purchased in a grocery store, butcher shop, or seafood market or other similar Business Establishment,'**
- **Under Section 12-154.(c)(4), after 'goods,' insert 'to include, but not limited to, uneaten prepared food ordered in a restaurant or other similar Business Establishment while dining in the establishment'**

Lutz seconded. The motion carried unanimously.

Consideration of an Ordinance Revising the Town of Bluffton's Municipal Code of Ordinances, Chapter 5 – Official Construction Code to Include Portions of Article 1 – Scope and Application of the International Building Code – First Reading – Richard Spruce, Chief Building Official

Richard Spruce, Chief Building Official gave an overview. Every three years the State of South Carolina adopts the new International Codes with the exception of Chapter 1. It is the State's intention that each location jurisdiction amends and adopt Chapter 1 to meet their local needs.

The Town of Bluffton seeks to establish compliance with the South Carolina Legislation of the International Building Code and update Chapter 5 in the Code of Ordinances to reflect the latest amendments.

Town Council adopted Ordinance 2008-19 Chapter 5 of the Code of Ordinances on November 20, 2008. At that time, Town Council deleted the existing Chapter 5 of the Code of Ordinances for the Town of Bluffton which was blank and adopted the now existing Chapter 5 with the creation of the Town's Building Safety Division. Chapter 5, of the Ordinance provides the administration procedures for the daily Building Safety Division's operations and procedures.

Provisions in Chapter 5 must be updated to be aligned and in accordance with the International Building Code as adopted by the State of South Carolina Legislation.

Toomer moved to approve the First Reading of an Ordinance amending the Town of Bluffton's Municipal Code of Ordinances, Chapter 5 – Official Construction Code to include portions of Article 1 – Scope and Application of the International Building Code. Wood seconded. The motion carried unanimously.

Consent Agenda:

1. Monthly Department Reports: Police, Finance/Administration, Engineering, Don Ryan Center for Innovation, and Growth Management
2. Town Manager's Monthly Report
3. Consideration of a Resolution Adopting an Amendment to the By-Laws for the Don Ryan Center for Innovation, Inc. – David Nelems, CEO, Don Ryan Center for Innovation
4. Consideration of a Resolution In Support for the Municipal Association of South Carolina's 2018 Advocacy Initiatives – Scott Marshal, Deputy Town Manager
5. Consideration of a Resolution in Support of a Memorandum of Understanding Between the Town of Bluffton, the University of South Carolina and the University of South Carolina Beaufort for the Creation and Administration of the Bluffton Ambassador Program- Scott Marshall, Deputy Town Manager
6. Consideration of Appointment of Town of Bluffton Representative to the Beaufort County Solid Waste and Recycling Board – Bryan McIlwee, Director of Engineering
7. Consideration of Proposed Street Lighting Agreement with SCE&G Relating to Bluffton Road Lighting Improvements and Dr. Mellichamp Drive Streetscape Project

Hamilton made a motion to accept the Consent Agenda as presented. Wood seconded. The motion carried unanimously.

Public Comments:

There were none.

Executive Session:

1. Personnel Matters Regarding Town Council Appointments of Boards, Committees, and Commissions (Pursuant to SC Freedom of Information Act 30-4-70 [a][2])

Lutz made a motion to go into Executive Session to discuss the aforementioned item. Toomer seconded. The motion carried unanimously. Town Council entered Executive Session at 7:40 p.m.

Hamilton made a motion to move out of Executive Session at 7:54 p.m. Lutz seconded. The motion carried unanimously.

Action from Executive Session:

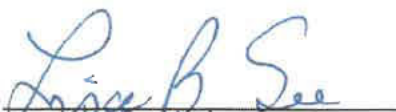
Mayor Sulka called the meeting back to order at 7:54 p.m.

Toomer made a motion to reappoint Mike Raymond as Town of Bluffton Representative to the Bluffton Township Fire District Board. Hamilton seconded. The motion carried unanimously.

The next topic was to appoint a member to the May River Watershed Action Plan Advisory Committee. Toomer recommended Chris Shoemaker and Wood recommended Rikki Parker. Toomer made a motion to appoint Chris Shoemaker. Lutz seconded. The motion carried unanimously.

Hamilton made a motion to appoint Trisha Greathouse to the Section 504 Americans with Disabilities Act Grievance Committee. Toomer seconded. The motion carried unanimously.

Hamilton made a motion to adjourn. Toomer seconded. The meeting adjourned at 7:58 p.m.



Mayor


Town Clerk



www.paypal.com



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Joseph Dunkle
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Beaufort SC 29902-3330

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COLUMBIA SC 29210-9900

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STATE ETHICS
COMMISSION

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RECEIVED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE STATE ETHICS COMMISSION

IN THE MATTER OF:)

Complaint C2020-060)

Larry Toomer)
Respondent.)

Joseph Dunkle)
Complainant.)

NOTICE OF HEARING

The State Ethics Commission has determined that there is probable cause pursuant to Section 8-13-320(10)(i), Code of Laws, South Carolina, 1976, as amended, to support the allegations made in the above-captioned complaint. The State Ethics Commission will, therefore, convene a formal hearing into the matters, in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, August 18, 2022 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

COUNT ONE
FAILURE TO REPORT INCOME ON STATEMENT OF ECONOMIC INTERESTS
SECTION 8-13-1120(A)(10) S.C. CODE ANN., 1976, AS AMENDED

That Larry Toomer, member of Bluffton Town Council, did in Richland County, fail to report Respondent's private source of income on his 2017 Statement of Economic Interests (SEI), in violation of Section 8-13-1120(A)(10).

COUNT TWO
FAILURE TO REPORT INCOME ON STATEMENT OF ECONOMIC INTERESTS
SECTION 8-13-1120(A)(10) S.C. CODE ANN., 1976, AS AMENDED

That Larry Toomer, member of Bluffton Town Council, did in Richland County, fail to report Respondent's spouse's private source of income on his 2017 SEI, in violation of Section 8-13-1120(A)(10).

COUNT THREE
FAILURE TO REPORT INCOME ON STATEMENT OF ECONOMIC INTERESTS
SECTION 8-13-1120(A)(10) S.C. CODE ANN., 1976, AS AMENDED

That Larry Toomer, member of Bluffton Town Council, did in Richland County, fail to report Respondent's private source of income on his 2018 SEI, in violation of Section 8-13-1120(A)(10).

COUNT FOUR
FAILURE TO REPORT INCOME ON STATEMENT OF ECONOMIC INTERESTS
SECTION 8-13-1120(A)(10) S.C. CODE ANN., 1976, AS AMENDED

That Larry Toomer, member of Bluffton Town Council, did in Richland County, fail to report Respondent's spouse's private source of income on his 2018 SEI, in violation of Section 8-13-1120(A)(10).

COUNT FIVE
FAILURE TO REPORT INCOME ON STATEMENT OF ECONOMIC INTERESTS
SECTION 8-13-1120(A)(10) S.C. CODE ANN., 1976, AS AMENDED

That Larry Toomer, member of Bluffton Town Council, did in Richland County, fail to report Respondent's private source of income on his 2019 SEI, in violation of Section 8-13-1120(A)(10).

COUNT SIX
FAILURE TO REPORT INCOME ON STATEMENT OF ECONOMIC INTERESTS
SECTION 8-13-1120(A)(10) S.C. CODE ANN., 1976, AS AMENDED

That Larry Toomer, member of Bluffton Town Council, did in Richland County, fail to

report Respondent's spouse's private source of income on his 2019 SEI, in violation of Section 8-13-1120(A)(10).

COUNT SEVEN
FAILURE TO REPORT INCOME ON STATEMENT OF ECONOMIC INTERESTS
SECTION 8-13-1120(A)(10) S.C. CODE ANN., 1976, AS AMENDED

That Larry Toomer, member of Bluffton Town Council, did in Richland County, fail to report Respondent's private source of income on his 2019 SEI, in violation of Section 8-13-1120(A)(10).

COUNT EIGHT
FAILURE TO REPORT INCOME ON STATEMENT OF ECONOMIC INTERESTS
SECTION 8-13-1120(A)(10) S.C. CODE ANN., 1976, AS AMENDED

That Larry Toomer, member of Bluffton Town Council, did in Richland County, fail to report Respondent's spouse's private source of income on his 2020 SEI, in violation of Section 8-13-1120(A)(10).

You have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. This hearing will be open to the public as required by Section 8-13-320(10)(j), Code of Laws, South Carolina, 1976, as amended. The procedures to be followed are set forth in the Administrative Procedures Act, Section 1-23-10, et seq., Code of Laws, South Carolina, 1976 as amended the State Ethics Act, Section 8-13-100, et seq., Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.).

A pre-hearing conference may be scheduled prior to the hearing to allow exchange of witness lists and evidence, marking of exhibits, and disposition of motions or pleadings. In the event you fail to appear, judgment by default will be rendered against you. If there are any questions concerning the above notice or hearing times, please contact the State Ethics

Commission.

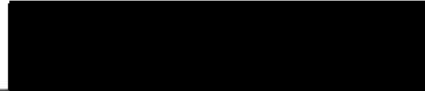


Meghan L. Walker, Executive Director
State Ethics Commission

Dated this 20th day,
of June, 2022.

Certificate of Service by Certified Mail

I hereby certify that a copy of this **NOTICE OF HEARING** was duly served on Terry A. Finger, Esquire, Post Office Box 24005, Hilton Head Island, SC 29925 by depositing said **NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 22nd day of June 2022, by **CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED**, appropriate postage affixed, and a return address clearly indicated on said envelope.



Rachael O'Bryan, Administrative Assistant

Columbia, South Carolina

State Ethics Commission

(803) 253-4192

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE MATTER OF:)
COMPLAINT C2020-060)
Joseph Dunkle,)
Complainant,)
Larry Toomer,)
Respondent.)

BEFORE THE STATE ETHICS COMMISSION

CONSENT ORDER

This matter comes before the State Ethics Commission (Commission) by way of a Complaint filed on September 3, 2020. Pursuant to Section 8-13-320(10)(i) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act (Ethics Act), the Complaint against Larry Toomer (Respondent) was considered by the Commission and probable cause was found to warrant an evidentiary hearing on eight (8) counts of violating Section 8-13-1120(A) for eight (8) instances of failing to disclose private sources of income on his Statements of Economic Interests (SEI) in 2017, 2018, 2019 and 2020.¹ Prior to the call of the case, Respondent agreed to the following:

STATEMENTS OF FACT

1. At all times relevant, Respondent served on the Bluffton Town Council.
2. On March 10, 2017, Respondent timely filed his 2017 SEI. However, Respondent did not disclose any private sources of income. On May 2, 2022, Respondent amended his 2017 SEI to disclose "D&L Seafood Corporation" as a private source of income for himself and his spouse.
3. On March 29, 2018, Respondent timely filed his 2018 SEI. However, Respondent did not

¹ The Complaint contained numerous allegations against Respondent. The Commission did not find probable cause to support any allegations aside from those outlined in the Notice of Hearing.

disclose any private sources of income. On May 2, 2022, Respondent amended his 2018 SEI to disclose “D&L Seafood Corporation” as a private source of income for himself and his spouse.

4. On February 26, 2019, Respondent timely filed his 2019 SEI. However, Respondent did not disclose any private sources of income. On May 2, 2022, Respondent amended his 2019 SEI to disclose “D&L Seafood Corporation” as a private source of income for himself and his spouse.
5. On March 25, 2020, Respondent timely filed his 2020 SEI. However, Respondent did not disclose any private sources of income. On May 2, 2022, Respondent amended his 2020 SEI to disclose “D&L Seafood Corporation” as a private source of income for himself and his spouse.
6. During the investigation, Respondent indicated he was unaware of the 2017 amendment of the Ethics Act requiring disclosure of private income.² Respondent promptly amended his SEIs following his receipt of the Complaint.

CONCLUSIONS OF LAW

Based upon the Statements of Fact, the Commission concludes, as a matter of law:

1. At all times relevant, Respondent was a “public official” pursuant to Section 8-13-100(27) of the Ethics Act. Therefore, the Commission has personal and subject matter jurisdiction.
2. As of 2017, Section 8-13-1120(A)(10) of the Ethics Act requires public officials to disclose, in part, “a listing of the private source and type of any income received in the previous year by the filer or a member of his immediate family.”

² The Commission notes that the filing instructions for the SEI include information about reporting private sources of income.

3. Section 8-13-320(10)(l) allows the Commission to require a public official to pay a civil penalty of up to \$2,000 for each violation of the Ethics Act.
4. Section 8-13-130 allows the Commission to “levy an enforcement or administrative fee on a person who is in violation” of the Ethics Act.

DISCUSSION

The Commission found probable cause to charge Respondent with eight (8) counts of violating Section 8-13-1120(A) for failing to report private sources of income on his 2017, 2018, 2019, and 2020 SEIs. Through this Consent Order, Respondent acknowledges he violated the Ethics Act when he failed to disclose the sources of private income as described herein. As mitigation, Respondent states that he was unaware of the 2017 changes made to the Ethics Act that required him to disclose private sources of income (see Finding of Fact 6 above). In exchange for Respondent’s admission, the Commission consolidates the eight (8) counts into four (4) counts, one (1) for each year Respondent failed to report the private source of income.

DISPOSITION

1. The Commission finds Respondent in violation of four (4) counts of Section 8-13-1120(A).
2. The Commission adopts the Statements of Fact, Conclusions of Law, Discussion, and Disposition as agreed upon by the Respondent.

THEREFORE, the Commission hereby issues a written warning and orders the Respondent to pay the Commission, within thirty (30) days from receipt of this Order, a reduced civil penalty of \$400 (\$100 for each violation) and an administrative fee of \$200, for a total of \$600.

By executing this Consent Order, Respondent understands that he is not only admitting to violations of the Ethics Act, but also confessing to a judgment of \$600 (less any money paid to the Commission) in the event he does not make full and timely payment as provided for in this Order.

In that event, the Commission shall file a Judgment against Respondent in the Clerk of Court's Office in the County of Respondent's last known residence. Upon said filing, the Clerk shall enter this Order in the amount of \$600 (less any money paid to the Commission) in its Judgment Rolls, without cost to the Commission.

AND IT IS SO ORDERED THIS 15th DAY OF July 2022.

STATE ETHICS COMMISSION


SCOTT FRICK, ACTING CHAIR


LARRY TOOMER
RESPONDENT


TERRY A. FINGER
RESPONDENT'S ATTORNEY