EXHIBIT 1
(Pages 1-79)

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiff, vs. Horry County, Defendant.	)	CIVIL ACTION NO. 2019-CP-26-01732 **NOTICE OF MOTION, MOTION TO AMEND AND SUPPLEMENT COMPLAINT, AND SUPPORTING MEMORANDUM**

YOU WILL PLEASE TAKE NOTICE that Plaintiff City of Myrtle Beach ("City"), individually and on behalf of a class of similarly situated plaintiffs, pursuant to Rules 15(a) and 15(d), SCRCP, will move for an order granting the City leave to file the proposed Amended and Supplemental Complaint attached hereto as Exhibit A[1] to conform to the evidence and to add grounds for declaratory and injunctive relief on the additional bases that Horry County Ordinance 105-96, as amended, (1) is void *ab initio* in its entirety based on Horry County's failure at its inception to comply with the statutory requirements to adopt an ordinance imposing the uniform service charge and (2) cannot meet the test enunciated by the Supreme Court to qualify as a validly imposed and collected uniform service charge. The City will seek a hearing on the within motion before the Honorable William H. Seals, Jr. at the Horry County Courthouse, Conway, South Carolina, or such other location as the Court may set, ten days after the date of this motion or as soon thereafter as a hearing is scheduled by the Court. In support

[1] To conserve resources, the proposed Amended and Supplemental Complaint attached to this motion does not include any of its exhibits. They remain the same as in the original Complaint except to the extent that new exhibits, consisting of the minutes of the August 6, 1996, August 20, 1996, October 15, 1996, and November 18, 2019, meetings of the Horry County Council (Exhibits "C" and "O" to the within motion), will be added. If leave is granted, the City will of course include all exhibits when filing the Amended and Supplemental Complaint.

thereof, the City submits this combined motion and supporting memorandum under Supreme Court Order 2015-09-10-01.

INTRODUCTION

Documents exchanged during discovery in this matter and the public statements and proceedings of the governing body of Defendant Horry County ("County") have brought to light two additional grounds upon which this Court should find the County's Hospitality Fee is invalid. First, because the evidence demonstrates that the County failed to give Ordinance 105-96 the requisite number of readings prior to its adoption, Ordinance 105-96 and, necessarily, all subsequent amendments are and should be deemed void *ab initio.*

Second, based on the prior arguments advanced by the City, as recognized in the Court's prior orders issued in this case, the Court is aware that the Supreme Court has enunciated clear standards to governmental entities seeking to impose a uniform service charge on payers in its jurisdiction in order for the fee to be lawful. As the City has argued since the outset of this litigation, the Hospitality Fee imposed by the County no longer complies with the Supreme Court's standard, as the express purpose for the imposition of the Hospitality Fee has expired, and the County lacks the Constitutional and statutory authority to unilaterally change the purpose of the Fee within the Municipalities without their consent, which has not been provided. However, beyond that limitation, the County has recently taken unilateral action to cancel the new road construction contract for Interstate 73 ("I-73"), which it has heretofore argued in this litigation represents the "new" purpose for the imposition of the Hospitality Fee. Thus, even under the County's theory in this case, to which the City does not subscribe but is assumed for the purposes of this argument, there now exists no "specific improvement" for which the

Hospitality Fee is imposed; therefore, it is not a valid uniform service charge that the County can lawfully impose and collect.

Justice requires that the City be given leave under Rule 15(a) to amend its complaint to add these additional grounds challenging the County's persistent unlawful conduct and refusal to abide by the law when adopting uniform service charges that enrich the County to the tune of tens of millions of dollars per year in perpetuity at the expense of all members of the proposed class. Furthermore, the Court should permit the City under Rule 15(d) to set forth the occurrences and events involving the County's cancellation of the SCDOT contract which have happened since the original complaint in this matter was filed.

FACTUAL/PROCEDURAL BACKGROUND

At the center of this case is Horry County Ordinance 105-96, as amended, which imposes a uniform service charge on accommodations, prepared food and beverage, car rentals, and admissions in Horry County.[2] On March 20, 2019, the City filed its Complaint challenging the portion of the fee imposed within Horry County municipalities. The gravamen of the Complaint was that the Hospitality Fee was no longer a valid uniform service charge based on multiple grounds, including the fact that the County needs the consent of the municipalities to impose this fee within their corporate limits, that under the plain language of Ordinance 105-96 and the respective express resolutions of Municipalities such consent expired on January 1, 2017, and that all such collections thereafter have been and will be improper. Upon the City's motion, this Court preliminarily enjoined the County's collection of this fee within all Horry County municipalities. The County appealed that order, and this Court stayed the underlying

[2] The Hospitality Fee currently has three components: (1) a 1.5% fee imposed county-wide on accommodations, prepared food and beverage, and admission; (2) a 1.0% fee imposed only in the unincorporated areas of Horry County on those same transactions; and (3) a county-wide 2.5% fee on rental cars.

proceedings pending that appeal. Recent developments have given rise to two additional grounds on which the Hospitality Fee is invalid regardless of whether consent was given by any municipality. The City concurrently moves to lift the Court's stay to permit the filing of the proposed Amended and Supplemental Complaint.

As to the first such new ground, the City has confirmed that the Horry County Council ("County Council") failed to properly enact Ordinance 105-96 at the outset, thus invalidating the entire ordinance and all of its amendments. The official copy of Ordinance 105-96 filed with the Horry County Register of Mesne Conveyances in Book 1895 at Page 838 identifies the following procedural history:

FIRST READING: August 6, 1996

SECOND READING: August 20, 1996

THIRD READING: October 15, 1996

Exhibit B, attached hereto, at p. 5. The minutes from the August 20, 1996 County Council meeting similarly claim that an unidentified hospitality fee ordinance was given a first reading on August 6. Exhibit C attached hereto, Meeting Minutes, at pp. 9-10.

In discovery, the City requested all County Council meeting minutes discussing Ordinance 105-96. The County produced only selected pages from the August 6, August 20, and October 15, 1996 meetings. *See generally* Exhibit C, attached hereto. These minutes do not reflect three readings being given to Ordinance 105-96 as required. *See id.* The City promptly informed the County that minutes indicating a first and second reading of Ordinance 105-96 had not been produced and reiterated the City's request for same. Exhibit D, attached hereto. In response, the County reasserted its position that the pages it produced from the August 6 and

August 20 meetings show what it claims to be the first and second readings of Ordinance 105-96 and, in so doing, stated as follows:

> In the apparent haste to send out the deficiency letter, the Plaintiff clearly missed several items. A careful review of the document production will reveal several of the items the Plaintiff claims are not included. Specifically, with regard to the meeting minutes for the first and second reading of Ordinance 105-96, please see documents produced by Defendant bearing Bates numbers HC_0000221 through HC_0000232.[3]

Exhibit E, attached hereto. The County's assertion notwithstanding, these pages in fact confirm that Ordinance 105-96 did not receive the required three readings. Accordingly, as set forth below, Ordinance 105-96 was not properly adopted by the County Council and is void *ab initio*.

As to the second new ground, the County no longer funds a specific improvement using the 1.5% portion of the Hospitality Fee. This portion of the Hospitality Fee was designated to fund a "comprehensive road plan adopted by the County in concert with the municipalities of the County," whereas the 1.0% fee was to "be deposited in the general fund of the County to offset the cost of public safety and public works services and infrastructure directly impacted by tourism." Ex. B at § 1(G), p. 840. There is no identified use of the 2.5% rental car fee which was added later. *See generally* Exhibit F attached hereto. Upon information and belief, however, it too was designated for the comprehensive road plan. As the Court is aware, the "comprehensive road plan" referred to in Ordinance 105-96 is the "RIDE Committee … plan." Ex. B at Recitals, p. 838

It is undisputed that all RIDE projects have been completed, and all of the borrowing obligations facilitated by the 1.5% Hospitality Fee were paid off by February 15, 2019. In an apparent effort to keep this portion of the fee alive, County Council unlawfully amended Ordinance 105-96 to remove any tether between the 1.5% Hospitality Fee and a specific

[3] Exhibit C to this motion contains these referenced pages.

improvement or project, choosing instead to allow its imposition "[f]orever" and "indefinitely" for any projects the County later identifies. Exhibit G attached hereto, Horry County Ordinance 93-16; Exhibit H, attached hereto, Horry County Ordinance 32-17; Exhibit I attached hereto, Hg. Trans. July 10, 2019, at 5:4-6:6. But even some members of County Council correctly recognized that this was legally impermissible. *See, e.g.*, Exhibit J attached hereto, Horry County Council Meeting Minutes, April 18, 2017, at 3 (statements attributed to Councilman Harold Worley that "[t]o collect a tax [sic] that they didn't know what they would spend it on didn't seem right. There was something wrong with that. . . . They were asking him to tax [sic] the people, whether tourist or locals, when he didn't know what the money would be used for."); Exhibit K attached hereto, Horry County Council Meeting Minutes, May 2, 2017, at 1 ("Mr. Prince said the reason that he was opposed to vote Yea on **Ord. 32-17** was that he thought people needed to know which projects the money would be spent on before it was approved.").

Even though it lacked the authority to do so, the County thereafter sought to tie the 1.5% Hospitality Fee to the I-73 project in Horry County. *See, e.g.*, Exhibit L attached hereto, Horry County Resolution R-82-18 (dedicating "$23,000,000 and, considering growth, up to $25,000,000 annually of the 1.5% Hospitality Fee to construct the Horry County segments of I-73"); Exhibit M attached hereto, Horry County Resolution R-36-19 (proposing to dedicate $18,000,000 of the 1.5% Hospitality Fee revenues annually to I-73 in Horry County).

In recognition of I-73's importance to the region, the November 15, 2019 settlement agreement in principle signed by the parties' representatives during the Court-ordered mediation of this case specifically pledged both municipal and County funds out of Hospitality Fee revenues to support I-73. A copy of that settlement agreement in principle is attached hereto as

Exhibit N.[4] However, just four days after the agreement was signed, County Council unanimously voted to cancel its contract with the South Carolina Department of Transportation ("SCDOT") for the I-73 project on the false premise and public assertion that the municipalities did not support it.[5] *See* Exhibit O attached hereto. Less than one month after canceling the SCDOT contract, County Council formally rejected the settlement agreement in principle that would have provided the required local funding for I-73.[6] County Council, by its sole actions,

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[4] The settlement agreement in principle is not submitted "to prove liability for or invalidity of the claim or its amount." *See Winrose Homeowners Assoc., Inc. & Regime Solutions, LLC v. Hale*, Op. No. 27934, (S.C. Sup. Ct. filed December 18, 2019) (Shearouse Adv. Sh. No. 49, at 14, 22 n. 10) (Petition for Rehearing filed January 2, 2020) (quoting Rule 408, SCRE and holding that this rule of evidence does not prevent the submission of evidence regarding settlement negotiations where it involves "manipulation" of legal proceedings for an ulterior purpose). Here, the settlement agreement in principle is submitted to support the City's motion to supplement the complaint to take into account certain recent facts which have arisen subsequent to the filing of the original complaint in March of 2019.

[5] A video recording of the County Council's November 19, 2019, meeting may be seen at https://horrycounty.granicus.com/MediaPlayer.php?view_id=3&clip_id=1660.

[6] County Council did so following a public meeting in which one misstatement after another regarding the settlement agreement in principle and the lawsuit were advanced by members of Council, including assertions that the lawsuit was "BS," a "sham," a "scam," and "bogus." *See* Exhibit P attached hereto; *see also* County Council Special Meeting – Dec 16th, 2019, *available at* https://horrycounty.granicus.com/MediaPlayer.php?view_id=3&clip_id=1680 (video recording of County Council meeting). Ultimately, County Council attempted to publicly negotiate and modify the agreement in principle after it was aware that all of the signatory municipalities had already publicly voted in favor of same and did so on contrived grounds that merely mask what the City believes to be the pertinent fact in play – i.e., that there were insufficient votes on County Council to support funding the I-73 project. Publicly, the County Council stated that it would only approve the settlement agreement in principle if there was unanimity among the municipalities and if the City's "out of town" attorneys would not be paid a class counsel fee out of the proposed common fund for the City's efforts in exposing the County's unlawful actions injuring the payers of the Hospitality Fee. *See id.*

As this Court is no doubt aware, it is customary in class action litigation for class counsel to be compensated out of a common fund of monies obtained for the benefit of those persons and entities alleged to have been harmed. This vote by County Council was little more than political theatre and a ruse to provide political talking points to mask the County Council's efforts to the public. The proposed settlement agreement in principle was structured specifically to have the consenting municipalities provide the exact same amount of funding for the I-73 project in Horry County even if there was not such unanimity; further, and contrary to the outright false statements otherwise, there was no provision to award attorneys' fees in the agreement in

has brought about the end of I-73 in Horry County. Moreover, intentionally or not, the County Council's unilateral action in both canceling the SCDOT contract for I-73 some six months after this Court enjoined the collection of the Hospitality Fee, as well as rejecting the settlement agreement in principle to fund the I-73 project, had the additional effect of directly undercutting the County's legal argument in this litigation that the Hospitality Fee is a valid uniform service charge under the standard imposed by the Supreme Court, as the sole project the County (unlawfully) sought to fund using this portion of the Hospitality Fee is now itself gone.

Through this motion, the City seeks leave to amend its complaint to add additional legal grounds for the invalidation of the Hospitality Fee, including to correct any allegations that Ordinance 105-96, and thereby any of its amendments, were properly enacted,[7] and to supplement its complaint to reflect the County's November 19 action to cancel the contract with SCDOT and December 16 action to reject the settlement agreement in principle providing funding for I-73, all of which provide additional bases for seeking further declaratory and injunctive relief on the ground that the collections under Ordinance 105-96, as amended, were invalid, as well as all future collections are invalid for the reasons stated herein.

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principle, but only a provision allowing the City to seek an award of fees in this Court's sole discretion, to be paid out of a common fund created through the sole efforts of the City in this litigation for the benefit of those who paid the illegal Hospitality Fee, up to an amount the County would not oppose. If the County Council truly wanted to proceed with the proposed I-73 project in Horry County, it would have accepted the settlement agreement in principle instead of espousing false narratives, disparaging a lawsuit that the judicial system has not seen fit to dismiss the County's efforts notwithstanding, and erecting these strawmen to reject the proposed settlement.

[7] This amendment will also encompass correcting the allegation that Ordinance 11-04, which purports to amend Ordinance 105-96, was codified, as the City previously notified the Court during the hearings in this case, as well as in other filings, conforming to the evidence that has come to light since the filing of the original complaint.

LAW/ANALYSIS

"Leave to amend pleadings pursuant to Rule 15, SCRCP, shall be liberally and freely given when justice so requires and does not prejudice any other party." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005). "Prejudice" under this formulation means "a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." *Pool v. Pool*, 329 S.C. 324, 328-29, 494 S.E.2d 820, 823 (1998). The party opposing amendment bears the burden of establishing prejudice. *Parker*, 362 S.C. at 286, 607 S.E.2d at 716. Without prejudice, denial of leave is improper so long as the proposed amendment is not clearly futile. 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1487 (3d ed. 2010), *cited with approval in Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 183, 826 S.E.2d 585, 589 (2019); *see also Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (directing that leave be given in the absence of "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.") (quoting *Forman v. Davis*, 371 U.S. 178, 182 (1962). "Even though a [motion under Rule 15(d), SCRCP, for leave to file a] supplemental pleading is technically different than a motion to amend the pleadings under Rule 15(a), SCRCP, the standard for granting or denying these motions is the same." *Tanner v. Florence County Treasurer*, 336 S.C. 552, 558, 521 S.E.2d 153, 156 (1999). "Therefore, South Carolina case law interpreting Rule 15(a), SCRCP, is authoritative in analyzing …[a] request to supplement under Rule 15(d), SCRCP." *Id.*

Because the issues raised by the within Motion and proposed Amended and Supplemental Complaint do not raise new issues, but only new grounds for the relief being sought and newly

existing facts in support thereof, the County will not be prejudiced and justice requires granting leave to amend the City's complaint.

A. Ordinance 105-96 Is Void Because County Council Did Not Give It the Required Three Readings.

"With the exception of emergency ordinances, all ordinances shall be read at three public meetings of council on three separate days . . . ." S.C. Code Ann. § 4-9-120; *see also* County Code § 2-26(b) (requiring the same). County Council is required to "keep a journal in which shall be recorded the minutes of its proceedings." *Id.* § 4-9-110. These meeting minutes "are the only competent evidence of the proceedings of the transactions of the governing body." *Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant*, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992) (discussing municipal meeting minutes under the corollary statute). "Parol evidence cannot be admitted to explain, enlarge, or contradict minutes of the proceeding . . . unless the minutes are incomplete or ambiguous. Otherwise, parol evidence could render official minutes uncertain and unreliable so that the minutes would fail to afford dependable evidence of the proceedings of the municipal body." *Id.* While local governments are given latitude to determine the procedural particulars for giving an ordinance a reading, *McSherry v. Spartanburg Cty. Council*, 371 S.C. 586, 590-91, 641 S.E.2d 431, 433-34 (2007), the minutes nevertheless must reflect formal readings by whatever process a local government mandates, s*ee Berkeley Elec. Co-op*, 308 S.C. at 209, 417 S.E.2d at 582. South Carolina courts will invalidate actions taken by a county council that do not satisfy all procedural requirements. *E.g.*, *Anderson Cty. v. Preston*, 427 S.C. 529, 831 S.E.2d 911 (2019) (invalidating ten-year-old, million-dollar severance agreement because county council acted without a quorum); *Berkeley Elec. Co-op*, 308 S.C. at 209, 417 S.E.2d at 582 (invalidating agreement because minutes do not reflect formal reading).

Here, Ordinance 105-96 unmistakably claims that County Council gave Ordinance 105-96 a first reading on August 6, 1996, a second reading on August 20, 1996, and a third reading on October 15, 1996. The meeting minutes the County produced in discovery, however, unambiguously establish that the County did not actually give the ordinance the required readings. Specifically, the meeting minutes on August 6, 1996, unquestionably do not reflect a reading of Ordinance No. 105-96, or any other ordinance arguably seeking to impose a uniform service charge.[8] Ordinance No. 105-96 therefore fails to satisfy the most basic of requirements to be a valid ordinance. As a result, Ordinance 105-96 and all amendments to it are void *ab initio* and in their entirety.

B. The Hospitality Fee Is Invalid Because It No Longer Funds Any Specific Projects.

This Court previously held that the Hospitality Fee is a uniform service charge. Order on Mots. for Prelim. Inj. at 14-15 & n. 10. The County has agreed with this holding in its briefing before the Supreme Court, arguing that the Hospitality Fee is a uniform service charge enacted under S.C. Code Ann. § 4-9-30(5)(a) and, in its opinion, authorized by S.C. Code Ann. 6-1-330(A). Final Br. of Appellant at 11-12. "A service charge is imposed on the theory that the portion of the community which is required to pay it receives some special benefit as a result of the improvement made with the proceeds of the charge." *Brown v. Horry Cty.*, 308 S.C. 180, 185, 417 S.E.2d 565, 568 (1992). In *C.R. Campbell Construction Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 427 (1997), a follow-up case to *Brown* that was also authored by Justice

[8] Nor can the County assert otherwise in view of the fact that the "RIDE Committee … new plan and [ ] new timetable" that is specifically referenced in Ordinance 105-96 was not adopted until September of 1996 – the month following the putative first two readings of Ordinance 105-96. *See* Ex. B at Recitals, p. 838.

Moore, the Supreme Court clarified the standard by which a uniform service charge would be deemed lawfully imposed. Specifically, the Supreme Court held that:

> Under *Brown*, a fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers.

Id. at ___, 481 S.E.2d at 438. "Simply put, the statutes do not allow these revenues to be treated as a slush fund." *Azar v. City of Columbia*, 414 S.C. 307, 317, 778 S.E.2d 315, 320 (2015).

The only improvement or projects specifically contemplated in Ordinance 105-96 to be funded by the 1.5% Hospitality Fee were those under RIDE Plan. Those projects have been completed and loans facilitating those projects have been paid off. Under those undisputed facts, the County's attempts to modify the purpose and duration of the Hospitality Fee fail the second and third prongs, respectively, of the express test for the validity of a uniform service charge established by the Supreme Court in *Brown* and *C.R. Campbell*.[9] Even assuming Ordinance 105-96 was adopted in accordance with the statutorily required procedure (which it was not), these failures would still end the story and the continued viability of this fee. The County's unlawful efforts to keep the fee alive by tying it to the proposed I-73 project, even if it is assumed to be a valid effort to start (which it is not, given that it expressly violates the second prong of the Supreme Court's test), did not get far as County Council unilaterally and voluntarily canceled its contract with SCDOT for the construction of I-73[10] and rejected a settlement agreement in

[9] It should also be noted that the test enunciated by the Supreme Court requires compliance with all of the elements of the test (*see* reference to "and," *supra*, in specifying the 4-part test) in order to be deemed a valid uniform service charge; thus, the failure to comply with any one element of the test would render the Hospitality Fee invalid.

[10] Even this action by the County Council was plagued with contradiction. In its August 28, 2019, decision to extend the SCDOT contract, the County Council provided that it would wait until November 26, 2019, to revisit this issue after determining whether there was adequate

principle which would have provided local government financial support for the same. It now is beyond dispute that the 1.5% Hospitality Fee no longer has a "specific improvement contemplated" as required by South Carolina law. As Councilmembers Harold Worley and Paul Prince seemed to recognize, County Council simply wants the Hospitality Fee to continue "forever" so that it can be an illegal "slush fund" the County can later draw from when it finds a need.

C. Leave to Amend and Supplement Is Required So These Issues Can Be Raised and the County Will Not Be Prejudiced.

Leave to raise this issue must be given as this is a matter of significant public importance that impacts all who reside in, visit, or transact business in Horry County. It involves a continued overreach by the County, above and beyond that already subject to this litigation, in an effort to obtain tens of millions of dollars a year in additional revenue without adhering to clear statutory procedures. The payers of these illegal fees should be given the opportunity to pursue all claims and relief, including declaratory, injunctive, monetary, and equitable relief, stemming from the invalidity of Ordinance 105-96 and of the Hospitality Fee. The County can claim no prejudice if leave is given, as the stay of these proceedings pending the County's appeal of the Court's preliminary injunction regarding collection of fees within the municipalities ensures the County has a full opportunity to respond to the Amended Complaint. Moreover, as this Court is aware from the substantial briefing in this case to date, the additional grounds and facts the City seeks to advance by way of the proposed Amended and Supplemental Complaint do not raise new or different issues from those contained in the original complaint, but instead merely add additional legal bases and newly developed supporting facts for these legal bases and the relief

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municipal support for funding I-73. Exhibit Q attached hereto. However, and for the apparently sole purpose of political theater, the County Council canceled the SCDOT contract seven days before this deadline.

sought. Given that the County Council publicly stated that it sought "clarification" and "direction" as to whether this lawsuit presented additional grounds which might call into question the validity of the Hospitality Fee county-wide beyond the question of municipal consent, amendment and supplementation to comply with the County's request is appropriate, and the County is not prejudiced by the addition of these legal grounds or newly developed facts.

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court grant it leave to file its proposed Amended and Supplemental Complaint and grant such other relief as the Court deems just and proper.

Respectfully submitted,

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Attorneys for Plaintiff City of Myrtle Beach and All Others Similarly Situated

Columbia, South Carolina
_____, 2020

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiff, vs. Horry County, Defendant.	)	CIVIL ACTION NO. 2019-CP-26-01732 **AMENDED AND SUPPLEMENTAL COMPLAINT** **(Action for Declaratory Judgment, Injunctive Relief, Unjust Enrichment, and Imposition of a Constructive Trust)** **(Jury Trial Demanded)**

Plaintiff, City of Myrtle Beach ("City"), for itself and, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), on behalf of a class of similarly situated fee payers, complains of Defendant, Horry County ("County"), and would respectfully show unto this Honorable Court as follows:

Introduction

1. Since January 1, 1997, County has, in contravention of its statutory authority and thus illegally, been collecting tens of millions of dollars per year in fees on the gross proceeds of, *inter alia*, accommodations, food and beverage, admissions, and car rentals ("Hospitality Fee") within the municipalities of Atlantic Beach, Aynor, Conway, Loris, Myrtle Beach, North Myrtle Beach, and Surfside Beach (collectively hereinafter "Municipalities") and in the unincorporated areas of the County. County has manifested its intention—and attempted to give itself the authority—to continue collecting this improper Hospitality Fee in perpetuity.

2. City, and all others who have paid the Hospitality Fee, are entitled to both declaratory and injunctive relief to prevent the illegal collection of same now and in the future. Furthermore, City and other payers of the Hospitality Fee are entitled to a refund from County

for the Hospitality Fee collected. City brings this action on behalf of itself and, pursuant to Rule 23, SCRCP, as representative of the members of the Class, as defined herein.

Parties

3. City is a political subdivision and municipal corporation organized and existing under S.C. Const. art. VIII and Title 5 of the Code of Laws of South Carolina whose municipal limits are situated wholly within in the State and County aforesaid.

4. County is a body corporate and politic existing under S.C. Const. art. VIII and Title 4 of the Code of Laws of South Carolina.

Jurisdiction

5. This Court has jurisdiction over the parties and the causes of action pursuant to the statutory and common law of this state, including S.C. Code Ann. § 15-53-20 and S.C. Code Ann. § 15-53-30.

Venue

6. Venue is proper in this Court pursuant to, *inter alia*, S.C. Code Ann. § 15-7-20.

Class Allegations

7. City brings this action on behalf of itself and all others similarly situated under Rule 23, SCRCP. City seeks to represent the following class:

> All individuals, corporations, companies, associations, firms, partnerships, societies, joint stock companies, political subdivisions, counties, municipalities, state agencies, and instrumentalities of the State of South Carolina who have paid the fee under Section 19-6(a) of the Code of Ordinances of Horry County, South Carolina, and/or are subject to paying such fee on a going forward basis, for purchases of covered accommodations, food, beverage, car rentals and amusements both within and without the Municipalities situated in Horry County.

(Hereinafter referred to collectively as "Class").

8. City's claims may be maintained under Rule 23(a), SCRCP on behalf of the members of the Class because the Class is so numerous that joinder of all members is impracticable. As described below, there are questions of law or fact in common to the Class, the claims of the City as representative party are typical of the claims of the Class, the City will fairly and adequately protect the interests of the Class, and the relief sought is primarily injunctive and declaratory.

9. The questions of law and fact that are common to the City and to all members of the Class predominate over questions, if any, that may affect only individual plaintiffs or individual members of Class, inasmuch as the unlawful activity alleged herein is of a character that is generally applicable to the City and the members of the Class. Among the questions of law common to the claims of City and the Class it represents are, *inter alia*:

a. Whether City and the members of the Class are entitled to a declaration that:

   i. County did not give the required three readings to Ordinance No. 105-96, and thus the ordinance is invalid *ab initio* and all collections under same, including all amendments, are illegal;

   ii. The portion of the Hospitality Fee imposed in the incorporated and unincorporated areas of Horry County to fund a comprehensive road plan is no longer valid as there no longer is a specific improvement contemplated to be funded by it;

   iii. County's attempted unilateral modification of the Sunset Provision and scope of permitted expenditures through its Ordinance No. 93-16 and collection and retention of the Hospitality Fee within the Municipalities after January 1, 2017 was illegal; and

iv. County's attempted unilateral repeal of the Sunset Provision through its Ordinance No. 32-17 and collection and retention of the Hospitality Fee within the Municipalities after January 1, 2017 was illegal;

b. Whether County should be permanently enjoined from collecting or retaining the Hospitality Fee collected from within the corporate limits of the Municipalities and in the unincorporated areas of County;

c. Whether a constructive trust has been imposed on County with respect to the Hospitality Fee that it has illegally collected and retained;

d. Whether County has been unjustly enriched through the illegal collection and retention of the Hospitality Fee; and

e. Whether City and the members of the Class are entitled to proportional refunds of the Hospitality Fee collected unlawfully.

10. Among the questions of fact common to the claims of City and the members of the Class it represents are, *inter alia*:

a. All factual issues related to the requested declaratory and injunctive relief;

b. The amount of the Hospitality Fees County has improperly collected which are held in constructive trust for City and the Class; and

c. The calculation of the amount of proportional refund owed each member of the Class.

11. The claims advanced by City are typical of those of each member of the Class in that the nature of the claims is the same for each Class member; the ordinance imposing the fee is the same for each Class member; the illegality of the fees County collected is the same for

each Class member; each Class member paid the illegal fee; and the anticipated defenses of Defendants are the same for each Class member.

12. City paid the Hospitality Fee just as each other member of the Class. City possesses sufficient knowledge and involvement in the matter to fairly and adequately protect the interests of each member of the Class.

13. Each member of the Class is equally entitled to declaratory and injunctive relief, as well as a proportional refund in the amount of each member's payment of the Hospitality Fee collected improperly by County.

General Background/Facts

14. In May of 1996, "the South Carolina Department of Transportation, at the direction of the Governor, created the Road Improvement and Development Effort Committee (RIDE) to determine short- and long-term transportation infrastructure needs and improvements for Horry County along with various options to fund these improvements." *Report to the Honorable David M. Beasley, Governor of South Carolina*, The Road Improvement and Development Effort, September, 1996, Preface, copy attached hereto and incorporated herein by reference as Complaint Exhibit A ("RIDE Report"). The impetus for the creation of the RIDE Committee was an unsuccessful referendum vote by the Horry County electorate on March 5, 1996, to adopt the county's "Comprehensive Road Program" which would have been funded, in part, by a local option sales tax under S.C. Code Ann. § 4-10-10. *See* Ex. A at § 1.0. The RIDE Report to the Governor, issued in September of 1996, recommended a plan by which the need for road improvements in Horry County could be addressed and funded on a short- and long-term basis.

15. The intent of Ordinance 105-96, which resulted from an unsuccessful county-wide referendum to impose a local option sales tax, was to further the goals and objectives of the RIDE Report and pursue the plan recommended therein. Ordinance No. 105-96 sought to impose a two and one-half percent "uniform service charge hereinafter referred to as the 'hospitality fee'" on the sale of accommodations, admissions, and food and beverages. A copy of Ordinance No. 105-96 is attached hereto and incorporated herein by reference as Complaint Exhibit B. Thereunder, 1.5% of this uniform service charge would apply countywide within the corporate limits of municipalities and in the unincorporated areas of Horry County. An additional 1% would apply only in the unincorporated areas of Horry County. *See* Ex. B at § 1(A).

16. Accordingly, the stated purpose of the 1.5% Hospitality Fee was "to provide needed infrastructure" to improve roads in Horry County (*see* Ex. B, recitals) and thus required that "the funds derived from the one and one-half percent fee shall be deposited into a Road Fund which will be used to implement a comprehensive road plan adopted by the County **in concert with the municipalities of the County**." *See id*. at § 1(G) ("Fee Use Provision") (emphasis added). No other use of these funds was contemplated.

17. If properly enacted, the ordinance was to be effective January 1, 1997. The ordinance further provided that "[t]he imposition of the one and one-half (1.5%) percent hospitality fee for infrastructure will terminate" either on August 1, 1997, if the State of South Carolina did not act to provide funding for "the short term funding outlined by RIDE" or "twenty years from the effective date of [the] ordinance." *See id*. at § 1(H) ("Sunset Provision").

18. On October 8, 1996, the governing body of Plaintiff, Myrtle Beach City Council ("City Council"), adopted a resolution supporting the recommendations of the RIDE Report, which City Council understood to "propose[] implementation of a 1.5 percent hospitality fee for

a period of up to 20 years in partnership with the State of South Carolina, who will contribute substantial funding" and urged the governing body of County, Horry County Council ("County Council"), to "enact the necessary ordinances to implement the RIDE committee report." A copy of this resolution is attached hereto and incorporate herein by reference as Exhibit C. Resolutions containing the same language from Exhibit C as quoted in this complaint Paragraph 19 were adopted by the Municipalities, respectively, in or about October and November 1996, copies of which resolutions are attached hereto and incorporated herein by reference as composite Exhibit D.

19. Ordinance No. 105-96, as recorded by the County pursuant to S.C. Code Ann. §4-9-120 in the office of the Horry County Register of Mesne Conveyances in Book 1895 at page 838, states that County Council gave the ordinance a first reading on August 6, 1996, a second reading on August 20, 1996, and a third reading on October 15, 1996. *See* Ex. B. However, County Council did not give Ordinance 105-96 three readings. Ordinance 105-96 therefore does not comply with S.C. Code Ann. § 4-9-120 and Horry County Code § 2-26(b), and it was void *ab initio.*

20. On February 4, 1997, County Council enacted Ordinance No. 7-97 purporting to amend § 1(A)(3)(G) and §1 (A)(3)(H) of Ordinance No. 105-96. The purpose of this amendment was, in part, to provide the County authority to use the revenues collected under Ordinance 105-96 to match State and Federal funds and re-designate the "Road Fund" holding the proceeds of the 1.5% Hospitality Fee as the "Road Special Revenue Fund," but it retained the Fee Use Provision and the Sunset Provision. A copy of Ordinance No. 7-97, recorded in the Office of the Register of Mesne Conveyances for Horry County in Book 1922 at Page 1463, is attached hereto and incorporated herein by reference as Exhibit E.

21. On October 15, 1997, the County filed an application with the South Carolina Transportation Infrastructure Bank ("SIB") for state funding in the form of a loan for the road improvement plan in Horry County recommended in the RIDE Report ("RIDE Project"), to which application the County attached, *inter alia*, the RIDE Report and the resolutions attached hereto as Exhibit C and composite Exhibit D. A copy of this SIB application, less the exhibits referenced therein, is attached hereto and incorporated herein by reference as Exhibit F. In the SIB application, Horry County referred to the 1.5% Hospitality Fee provided for in Ordinance No. 105-96 as being a "source of local revenue" to fund the RIDE Project, which would generate the approximately $368 Million County required contribution to the $774 Million estimated cost to complete the RIDE Project, such contribution being payable by the County. *See* Ex. F at 6, 9. The RIDE Plan further recommended that any surplus in funds generated to support its short-term recommended projects be used to fund the long-term projects recommended under the RIDE Plan. *See* Ex. F at § 3.0, Note.

22. On November 18, 1997, County Council adopted its Resolution Number 224-97 which, *inter alia*, reaffirmed that the 1.5% Hospitality Fee allegedly enacted under Ordinance No. 105-96 is "to be used to provide the county portion of funding for the RIDE Plan" and, at the request of the SIB, reaffirmed the County Council's "support for the RIDE Plan," stating that it "supports, endorses and approves [the County's] amended application to [SIB] to be presented on November 24, 1997." A copy of this resolution is attached hereto and incorporated herein by reference as Exhibit G.

23. On November 20, 1997, the County submitted a revised application to SIB, a copy of which is attached hereto and incorporated herein by reference as Exhibit H. Under this revised application to SIB, the estimated cost to complete the RIDE Project was reduced from

$774 Million to $545 Million and the "source of local revenue" to be generated by the 1.5% Hospitality Fee purportedly imposed by Ordinance No. 105-96 was reduced from $368 Million to $300 Million, same to be the County's required contribution to the RIDE Project and payable by the County in installments through fiscal year 2016/2017. *See* Ex. H at i. 5, and 7.

24. On or about March 10, 1998, and following its approval of the County's revised application, SIB issued a loan to County for $300 Million for the short-term projects set out in the RIDE Project, which loan was to be repaid by County from revenues in the Road Special Revenue Fund.

25. On or about April 21, 1998, County and SIB entered into a second loan agreement in the approximate amount of $247.6 Million for the long-term projects set out in the RIDE Project, same also to be repaid by revenues in the Road Special Revenue Fund.

26. County Council purported to amend Ordinance No. 105-96 on a number of occasions by the enactment of a number of subsequent ordinances, including Ordinance No. 7-97 in 1997; Ordinance No. 76-97 in 1997; Ordinance No. 80-01 in 2001 (imposing a 2.5% car rental fee), and Ordinance No. 11-04 in 2004, none of which amendments were effective given the invalidity *ab initio* of Ordinance No. 105-96. County also failed to codify Ordinance No. 11-04 as required by S.C. Code §4-9-120. Furthermore, none of these subsequent ordinances made material changes to the Fee Use Provision and the Sunset Provision.

27. On December 6, 2016, County Council enacted Ordinance No. 93-16, further purporting to amend Ordinance No. 105-96 and thereby attempted for the first time to unilaterally extend the termination date of the Sunset Provision so that "the imposition of the one and one-half (1.5%) Hospitality Fee for infrastructure will terminate on January 1, 2022." *See* Ordinance No. 93-16, a copy of which is attached hereto and incorporated herein by reference as

Exhibit I at 5, § I(E). This ordinance further granted County Council authorization to use all revenues generated thereunder—including those generated by the 1.5% Hospitality Fee imposed within the Municipalities—for a variety of purposes not set out in Ordinance No. 105-96. *See* Ex. I at 5, § I(F). Ordinance No. 93-16 is null and void because the ordinance it claims to amend, Ordinance No. 105-96, itself is void *ab initio.* Furthermore, County Council did not seek City's consent prior to the enactment of Ordinance No. 93-16. On information and belief, County Council likewise did not seek the consent of any of the other of the Municipalities prior to the enactment of Ordinance No. 93-16.

28. On May 2, 2017, County Council enacted Ordinance No. 32-17, again purporting to amend Ordinance No. 93-16 and thereby attempted to repeal the Sunset Provision altogether. *See* Ordinance No. 32-17, Section I, a copy of which is attached hereto and incorporated herein by reference as Exhibit J. Ordinance No. 32-17 is null and void because the ordinance it claims to amend, Ordinance No. 105-96, itself is void *ab initio*. County Council did not seek City's consent prior to the enactment of Ordinance No. 32-17. On information and belief, County Council likewise did not seek the consent of any of the other of the Municipalities prior to the enactment of Ordinance No. 32-17.

29. County's Code of Ordinances § 19-6, a copy of which is attached hereto and incorporated herein by reference as Exhibit K, contains the County's claimed current version of Ordinance 105-96, as purportedly adopted and amended from time to time as set forth above.

30. On July 24, 2018, County Council adopted Resolution R-82-18, by which it "dedicate[d] $30,000,000 annually of the 1.5% Hospitality Fee to construct the Horry County segments of I-73." *See* Resolution R-82-18, a copy of which is attached hereto and incorporated herein by reference as Exhibit L. At the meeting adopting the resolution, County Council

amended Resolution R-82-18 to reduce this dedication of Hospitality Fee funds to I-73 to a floor of $23,000,000 annually, with a maximum of dedication of $25,000,000 annually with growth. These "Horry County segments of I-73" were not and are not a part of the RIDE Project.

31. And, on July 24, 2018, County Council adopted Resolution R-84-18, a copy of which is attached hereto and incorporated herein by reference as Exhibit M, by which it "direct[ed] [its] staff to draft an ordinance amending Section 19-6(h) of the Horry County Code of Ordinances to allow the 1.5% hospitality fee for all eligible uses." *Id.* Resolution R-84-18 further states that "[i]n addition, the County Administrator shall include a proposal in the FY 2020 budget a plan to utilize the uncommitted balance of the 1.5% hospitality fee for eligible tourism-related public safety expenditures that lead to tourist destinations." *Id.* Resolution R-84-18 expresses County Council's belief that, as amended, "the Hospitality Fee can be used on other tourism-related purposes besides roads." *Id.* Similar to Resolution R-82-18, County Council amended Resolution R-84-18 to direct staff to create a plan for public safety using $18,000,000 and any growth above the $25,000,000 committed in Resolution R-82-18. These "eligible uses," "eligible tourism-related public safety expenditures that lead to tourist destinations," and "other tourism-related purposes besides roads" are not part of the RIDE Project.

32. In Resolutions R-82-18 and R-84-18, County Council admitted that one of the intended effects of Ordinance Nos. 93-16 and 32-17 is to "extend [the Hospitality Fee's] imposition" within the Municipalities.

33. Upon information and belief, no ordinance has been adopted by the County Council amending Section 19-6(h) of the Horry County Code of Ordinances, as contemplated by R-84-18.

34. On or about February 15, 2019, County fully and finally defeased the SIB loans for the RIDE Project. Thus, the specific project the 1.5% Hospitality Fee was intended to fund has been completed and there is no specific project that can lawfully be funded by the 1.5% Hospitality Fee. On or about November 19, 2019, County Council unanimously voted to cancel its existing contract with the South Carolina Department of Transportation regarding the construction of I-73. *See* Horry County Council Minutes, November 19, 2019, at 6, a copy of which is attached hereto and incorporated herein by reference as Exhibit N. The 1.5% Hospitality Fee does not fund a project.

35. The County staff has estimated that 71% of the revenue generated by the 1.5% hospitality fee under Ordinance No. 105-96, as purported to have been adopted and amended and appearing as Section 19-6 of the Horry County Code of Ordinances, is generated within the municipalities situated within Horry County. *See* Horry County Council Minutes, July 24, 2018 at 3, a copy of which is attached hereto and incorporated herein by reference as Exhibit O.

36. The City has not consented to the County's imposition of the 1.5% uniform service charge under Ordinance No. 105-96, as purported to have been and amended and appearing as Section 19-6 of the Horry County Code of Ordinances, within the corporate limits of the City on or after January 1, 2017, or for any purpose other than providing a revenue source to allow County to meet its loan obligations to the SIB for the RIDE Project up until that date. Upon information and belief, no other Municipality has so consented.

37. City has paid the Hospitality Fee under Ordinance 105-96, as purported to have been adopted and amended and appearing as Section 19-6 of the Horry County Code of Ordinances. Upon information and belief, members of the Class have likewise paid the

Hospitality Fee under Ordinance 105-96, as purported to have been adopted and amended and appearing as Section 19-6 of the Horry County Code of Ordinances.

First Cause of Action
(Declaratory Judgment)

38. The pertinent allegations of Paragraphs 1-37 are incorporated into this First Cause of Action by reference as fully as if set forth verbatim.

39. Pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 to 15-3-140, City is entitled to a declaration that:

a. The 1.5% Hospitality Fee within incorporated and unincorporated areas of the County is invalid because there are no specific projects contemplated to be funded by it and it therefore cannot constitute a valid uniform service charge under South Carolina law.

b. Ordinance No. 105-96, as purported to have been adopted and amended and appearing as Section 19-6 of the Horry County Code of Ordinances, imposing the 1.5% Hospitality Fee, the 1% additional hospitality fee, and the 2.5% rental car fee, are invalid as a matter of law because the County failed to give Ordinance 105-96 three readings as required by S.C. Code Ann. § 4-9-120 and County's Code of Ordinances § 2-26(b).

c. Ordinance No. 93-16 is also invalid as a matter of law because it:

i. Modifies the Sunset Provision to authorize imposition of the 1.5% Hospitality Fee within municipalities in Horry County after the date set out in the Sunset Provision of Ordinance No. 105-96 without the consent of the Municipalities;

ii. Is not a valid uniform service charge; and

iii. Is not an ordinance which was in effect on or before December 31, 1996, as contemplated by S.C. Code Ann. § 6-1-330 and/or on or after March 15, 1997, as contemplated by S.C. Code Ann. § 6-1-760;

d. Ordinance No. 32-17 is invalid as a matter of law because it:

i. Repeals the Sunset Provision to authorize imposition of the 1.5% Hospitality Fee within municipalities in Horry County after the date set out in the Sunset Provision of Ordinance No. 105-96 without the consent of the Municipalities;

ii. Is not a valid uniform service charge; and

iii. Is not an ordinance which was in effect on or before December 31, 1996, as contemplated by S.C. Code Ann. § 6-1-330 and/or on or after March 15, 1997, as contemplated by S.C. Code Ann. § 6-1-760;

e. County may not impose, collect, and retain revenues derived from the Hospitality Fee created under Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6;

f. County has, since January 1, 2017, wrongfully imposed, collected, retained, and used revenues derived from the 1.5% Hospitality Fee collected within the Municipalities under Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, in contravention of the Fee Use Provision and/or the Sunset Provision;

40. City, individually and on behalf of all members of the Class, seeks and is entitled to a refund of the Hospitality Fee paid on the sale of food, beverage, car rentals, accommodations, and or amusements based on a declaration that County has wrongfully

imposed, collected, retained, and used revenues from the Hospitality Fee created under Ordinance No. 105-96, as amended from time to time and as appearing in County Code §19-6.

Second Cause of Action
(Preliminary and Permanent Injunctive Relief)

41. The pertinent allegations of paragraphs 1-40 are incorporated into this Second Cause of Action by reference as fully as if set forth verbatim.

42. If County is permitted to continue collecting the Hospitality Fee created under Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, City and the members of the Class will suffer irreparable harm as they will be forced to pay an unlawful uniform service charge.

43. City and the members of the Class are likely to succeed on the merits of their claims against County because the continued collection and retention of the Hospitality Fee by County is unlawful, and City and other members of the Class have been subjected to payment of the Hospitality Fee to County when same was not lawfully imposed and collected.

44. City and the members of the Class have no adequate remedy at law because there is no procedure established by ordinance or by statute to protest the payment of Hospitality Fee charges to County.

45. City and the members of the Class are therefore informed and believe that they are entitled to a permanent injunction prohibiting County from imposing and collecting the Hospitality Fee provided for under Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, in both the incorporated and unincorporated areas of Horry County.

46. City and the members of the Class are therefore informed and believe that they are entitled to a preliminary and permanent injunction prohibiting County from:

a. Imposing and collecting the Hospitality Fee provided for under Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, within the Municipalities, and

b. Expending any of the revenue generated by the Hospitality Fee under Ordinance No. 105-96, as amended from time to time and as appearing in County Code § 19-6, collected within the Municipalities on and after January 1, 2017, which the County has unjustly retained under a constructive trust as described herein, including any such revenue deposited by County in the Road Special Revenue Fund described under Ordinance No. 7-97.

Third Cause of Action
(Quantum Meruit / Unjust Enrichment)

47. The pertinent allegations of paragraphs 1-46 are incorporated into this Third Cause of Action by reference as fully as if set forth verbatim.

48. In continuing to pay the Hospitality Fee imposed by County on the gross proceeds of accommodations, food and beverage, car rentals, and/or amusements, City and the members of the Class have conferred a benefit on County in the form of tens of millions of dollars per year.

49. County's continued collection and retention of the Hospitality Fee without any statutory, constitutional, or contractual basis therefore has further created a contract implied in law between City, the members of the Class, and County. This quasi-contract conferred upon County a duty and obligation not to collect or retain illegally charged Hospitality Fees. County has breached and continues to breach this obligation and accept the Hospitality Fees charged City and the members of the Class.

50. Upon information and belief, County deposited the illegally charged Hospitality Fee into the Road Special Revenue Fund and other interest earning accounts, and has thereby realized a benefit from and has been unjustly enriched through the receipt of these monies, to the detriment of City and the members of the Class.

51. Because collection and retention of the Hospitality Fee is illegal, continued collection and retention of that benefit would be unjust, inequitable, unconscionable, and would further constitute a windfall to County.

52. City and the members of the Class are therefore informed and believe that they are entitled to damages in the form of a refund from the constructive trust imposed hereunder for the Hospitality Fee illegally collected and retained by County.

Fourth Cause of Action
(Constructive Trust)

53. The pertinent allegations of paragraphs 1-52 are incorporated into this Fourth Cause of Action by reference as fully as if set forth verbatim.

54. As described herein, County never gave the required three readings to Ordinance 105-96, yet it collected and retained the Hospitality Fee on the gross proceeds of accommodations, food and beverage, car rentals, and/or amusements purchased by City and the members of the Class, amounting to tens of millions of dollars per year annually since January 1, 1997. And as further described herein, County persisted in collecting and imposing the Hospitality Fee within the Municipalities after the expiration of the City's and the Municipalities' consent on January 1, 2017.

55. In collecting and retaining the Hospitality Fee for over twenty two years without adhering to State and County law in enacting the fee to begin with, and in attempting to extend and then eliminate altogether the Sunset Provision on City's prior agreement for the collection of

the Hospitality Fee within the Municipalities, through Ordinance Nos. 93-16 and 32-17, respectively, and in contravention of the express terms of the Sunset Provision and without City's or the Municipalities' consent beyond January 1, 2017, within the Municipalities, County employed actual or constructive fraud, abuse of confidence, and/or unconscionable conduct to initiate and continue its illegal collection and retention of the Hospitality Fee.

56. Because collection and retention of the Hospitality Fee is illegal, continued collection and retention of that benefit would be unjust, inequitable, unconscionable, and would further constitute a windfall to County.

57. City and the members of the Class are therefore informed and believe that they are entitled to the Court's imposition of a constructive trust on County, in the form of a segregated, interest bearing account into which the Hospitality Fee collected by County from within the Municipalities since January 1, 2017 should be transferred to create a common fund, and from which refunds may be provided to City and the members of the Class in proportion to the Hospitality Fees each has been illegally subjected by County.

Prayer for Relief

Wherefore, City, individually and on behalf of all Class Members, prays for judgment against County as follows:

a. The issuance of an order by this Court finding that:

i. The Hospitality Fee imposed and collected by County pursuant to Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, was void *ab initio*;

ii. The 1.5% Hospitality Fee collected and imposed county-wide is invalid;

iii. The Hospitality Fee imposed and collected by County at the rate of 1.5% within the Municipalities pursuant to Ordinance No. 105-96, as purported to have been adopted and amended from time to time and as appearing in County Code § 19-6, was terminated as a matter of law on January 1, 2017;

iv. The Hospitality Fee imposed and collected by County at the rate of 1.5% within the Municipalities pursuant to said ordinance on or after January 1, 2017, was unlawfully imposed, collected, and retained;

v. County be preliminarily and permanently enjoined from imposing or collecting any fees under said ordinance;

vi. County has been unjustly enriched by said collection and retention of the Hospitality Fee;

vii. The imposition of a constructive trust on the County for all Hospitality Fees collected and retained is warranted; and

viii. City and the members of the Class be entitled to a refund of the Hospitality Fee imposed and collected by County in an amount to be shown at trial.

b. An award of prejudgment interest at the appropriate statutory rate on all fees collected by the County from the City and each of the members of the Class pursuant to Ordinance No. 105-96, as amended from time to time and as appearing in County Code § 19-6; and

c. For such other and further relief as may be just and proper.

Respectfully submitted,

_____

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Attorneys for Plaintiff City of Myrtle Beach and All Others Similarly Situated

Columbia, South Carolina
_____, 2020

EXHIBIT B

STATE OF SOUTH CAROLINA)
) ORDINANCE NO. 105-96
COUNTY OF HORRY)

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

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

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

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

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

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

NOW THEREFORE, BE IT ORDAINED IN COUNCIL DULY ASSEMBLED,

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

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

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

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

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

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

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

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

(a) fail to collect the hospitality fee;

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

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

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

or

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

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

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

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

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

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

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

SECTION 2. SEVERABILITY.

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

SECTION 3. CONFLICTING ORDINANCES REPEALED.

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

SECTION 4. EFFECTIVE DATE.

This ordinance shall be effective 1/1/97.

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

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

HORRY COUNTY COUNCIL

A. Joseph McNutt, Jr., Chairman

Ray Skidmore, Jr., District 1

John Kost, District 2

Raymond J. Brown, District 3

Chandler Brigham, District 4

Chandler C. Prosser, District 5

Terry Chambers, District 6

James R. Frazier, District 7

Elizabeth D. Gilland, District 8

Ulysses Dewitt, District 9

Johnny Shelley, District 10

Janice Jordan. District 11

ATTEST:

Rosella H. Carroll, Clerk to Council

EXHIBIT C

STATE OF SOUTH CAROLINA	)	MINUTES OF REGULAR MEETING
	)	HORRY COUNTY COUNCIL
	)	COUNTY COUNCIL CHAMBERS
	)	AUGUST 6, 1996
COUNTY OF HORRY	)	6:00 P.M.

The regular meeting of the Horry County Council was held in County Council's Chambers, 103 Elm Street, Conway, South Carolina, at 6:00 p.m. on August 6, 1996. The following Council Members were present: Chairman A. Joseph McNutt, Jr.; Terry Chambers; Chad Prosser; Ray Brown; Ulysses Dewitt; Janice Jordan; Johnny Shelley; Chandler Brigham; Ray Skidmore, Jr.; John Kost; Liz Gilland; and James Frazier. Staff present was Administrator Linda Angus and Clerk to Council Rosella Carroll. There were several department heads, citizens and members of the press also in attendance.

In accordance with the FOIA, notices of the meeting were mailed to all TV stations, radio stations and newspapers in the County stating the date, time and place of the meeting.

Chairman McNutt called the meeting to order; Council Member Frazier led in the invocation; and Council Member Jordan led in the Pledge of Allegiance to the Flag. Chairman McNutt asked that everyone join in a moment of silence in memory of Winston Gerald, an employee at the Public Works Department, who had passed away last week.

PUBLIC INPUT:

Paul Aubin and Sandy Thomas - Problems at the RMC Office. Copies of their presentation were handed out to Council, and are made a part of these minutes. Chairman McNutt stated that these issues had been addressed some time ago. He asked if Ms. Angus had had an opportunity to meet with representatives from the title abstracting people, and she had not. The Chairman asked that she meet with them and have a report on some of their concerns by the next Council meeting. Council Member

have this. Council Member Chambers said they would invite Tommy Harrison to the Public Safety Committee meeting for input and use the plan that he now has as a basis to get started. Council Member Prosser thought that during Hurricane Bertha, the decisions that were made were good, but the fact that they had to formulate them on the spot meant that they did not know what the answer was before getting into the situation. Council Member Kost supported this, but hoped the approach was not just a County plan. As they go through it, they need to extend the vision and boundaries so that there will be a coordinated plan. Council Member Brigham thought this should be implemented throughout the region by Waccamaw Regional Planning. The motion carried by unanimous vote.

Council Member Kost gave a report on the RIDE Committee. He pointed out that there had been no concrete decisions made with regard to what roads are going to be included or how it would be financed. Everything is still open to discussion and they are interested in Council's input. If, in fact, they had some specific item they felt should be considered, he asked that they communicate it to Council Member Frazier, himself or Gary Loftus because they were getting close to the time when they would have to make some decisions. They had been spending their time in public hearings, there had been 13 committee meetings besides that, input from everybody from GSATS to the municipalities to Waccamaw Regional Planning, Fluer Daniels, International Paper, the list goes on and on, just simply trying to get there concern and to be able to work with them. There was an analysis in the packets of the write-in comments. Some of the sample items the committee had discussed was the removal of traffic lights on 501 like at Forestbrook and George Bishop Parkway, setting aside rights-of-way on a long term basis for the Carolina Bays Parkway, probably include 544, how to use the developer roads to tie and link between 501 and SC 9, the feasibility of tolls, frontage roads and where could they be, the list

went on. All has been discussed, and they are ready to start putting up some concrete things, prioritize them, determine the cost and put together the Governor's recommendation. One of the things that is extremely important is the financial direction that they seem to be going in. He shared it so they could all be together as they approached the Governor in terms of all of Horry County and all of its municipalities. The first is, and he thought there was general agreement on the part of the committee, that extensive state involvement is an absolute necessity. This is not going to be roads that are going to be paid for 100 percent by whatever can be raised here in Horry County. The matching of funds is going to be there, the ratio is to be determined. They did not really know what that was going to be. They could ask two to one, three to one, one to one, they were going to have to wait and see how much work they needed to have done and how much funds they were able to get. The bonding question is open. They expected there would be heavy DOT involvement. The road plan cost and the road plan desires have to be emerged into both long term and short term. For short plan, they plan to define five years, get it done in five years; longer term, probably the 15 to 20 year mark. They have general agreements on local participation of financing. They want strong community support, and for that reason, they want to make certain that the hospitality industry, who is really going to endorse or supply the funds for the most part to do this work, are within their means. What they have come up with is a single digit cumulative tax that is under the ten percent mark. They wanted to attempt to equalize what they were doing throughout the County so that as an example, someone staying in a hotel in Surfside or in Myrtle Beach or in the unincorporated area, or in Little River, all pay the same, and it would be nine and a half percent. That would mean that the hospitality tax from which we would raise our funds would be at the one and a half percent mark for roads and one percent for the County or

municipal use. One and a half percent for roads would be on a County-wide basis, but they would be collected, and it could be done in a number of ways. One of the more popular ways is that the unincorporated municipalities report it into the County, Myrtle Beach reports it into Myrtle Beach, North Myrtle Beach into North Myrtle Beach, and then it gets turned over to the funding entity that will handle the funds to pay for the road. It is one and a half percent across the County regardless of where it is billed. It isn't the County billing over and above the city's tax. Then, that leaves one percent for County use from the municipality, or one percent for Myrtle Beach for the unincorporated area for whatever, to be used for EMS, Police, local roads, whatever. He called attention to the last segment of numbers that gave an idea of how much money would be raised totally and what Horry County's part of that would be in the unincorporated area, and then what the one percent Horry County general fund would receive. It would be proposed that with the one and a half percent across the County in 1997-98, we would raise $15,557,000, $3,608,000 would come from the unincorporated area, the remainder would come from the municipalities. The one percent would generate $2,403,000 for use by the County strictly from the unincorporated areas. He had given five or six years, going all the way down to 2012-13 which is 15 years down the road. The numbers are startling when you assume a six percent annual growth, which is what Peter Barr has done for them, and the total one and a half percent tax rate in the County at that juncture would be $37,283,000. Our part of that would be $8,646,000, and in the years 2012-13, Horry County general fund would get $5,758,000. It is a growing amount and gives us more money than anyone would believe we would have into the general fund, but it also will build us roads. If any of them had any problems with this, they really needed to talk about it because they all needed to be in concert. The municipalities seem to be very much in favor of going this route, and if we can go

this route, we will have a united front. We can go to the Governor and say here is where we are at, we can build some roads if you will do your job. Chairman McNutt thought is was a fair and equitable way as far as the hospitality fee is concerned to help pay for roads because everyone is paying the same percentage, plus we all get to keep a one percent to go for deferring some of the expense it takes to provide services to the tourism industry. What will probably come out of committee is to go ahead and get this passed and set aside fairly soon. He also anticipated looking at developer impact fee as well as business license fees. It could be that Horry County could stabilize taxes for the next eight to ten years, or may be able to actually roll back taxes. He thought it was an excellent plan. Council Member Brigham commended the RIDE Committee. He thought, from this report, that most of the local governments are going to endorse this plan wholeheartedly, in that it takes care of an issue that a lot of people have a problem with which is that the state step up to the podium and take the lead in this effort. He thought that was a wonderful undertaking, and especially on the part of the RIDE Committee. He felt it would settle a lot of inhibitions that might have existed during the referendum. He thought the committee had done a good job. Council Member Kost said they were shooting by the end of September being in front of the Governor and having the report to him. One of the things they are dealing with are logistics of how do you provide the Governor his report without first getting all the municipal governments on board. If you report to everybody in municipal governments and County governments, and then go to the Governor, he already knows what you are going to tell him. Mr. Loftus is really struggling with how to keep everybody happy. Chairman McNutt said if it was a positive thing, and everyone in Horry County was helping with it, the Governor would sign on. He asked if they had ascertained the fact whether or not the state will sponsor or issue bonds? Council Member Kost said

they were exploring that at this point in time. That is the direction they would like to go. They would like to stay out of the County authority, the County issuing bonds, the whole bit, they would like not to have to do that. Council Member Frazier said the committee met twice a week, and they would like for Council Members to come and sit in on their meetings. The meet twice a week - on Mondays at 4:00 p.m. at Craig Wall School of Business and on Thursdays. If Council Members had some concerns, they would like for them to meet with the committee and share them. He asked that Mr. Loftus speak. Mr. Loftus said they had talked to the Governor's office, and he could assure them they would go before him with a plan before the end of September. They are looking at sometime immediately after the 15th, and hopefully, they would be able to report to County Council at their regular meeting on September 17th. He hoped the Council's Administration and Finance Committee would have some deliberations on the hospitality fee by the end of this month. He thanked Council for their support, and especially Council Member Kost and Frazier for their hard work on the committee. Council Member Brigham asked about the other municipalities coming on board. He understood there were some of them on the RIDE Committee. He asked if Mr. Charles from Myrtle Beach was in approval? Mr. Loftus stated the concept seemed to be fairly universal among Council Members. They understand the implementation of it. They may have to work through some issues. The response has been positive from everyone. Council Member Brigham pointed out that a unified effort would go a long ways in Columbia. Mr. Loftus said they were going to address this to the State of South Carolina, and the reason being is that involves the General Assembly.

Administrator Angus presented a resolution creating the position of Director of Public Information. It has become clear over the short time she had been here that the County is in great need of someone to direct the public information and provide

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Johnny Shelley, District 10

Janice Jordan, District 11

ATTEST:

Rosella H. Carroll, Clerk to Council

STATE OF SOUTH CAROLINA)
)
)
)
COUNTY OF HORRY)

MINUTES OF REGULAR MEETING
HORRY COUNTY COUNCIL
COUNTY COUNCIL CHAMBERS
AUGUST 20, 1996
3:00 P.M.

The regular meeting of the Horry County Council was held in County Council's Chambers, 103 Elm Street, Conway, South Carolina, at 3:00 p.m., on August 20, 1996. The following Council Members were present: Chairman A. Joseph McNutt, Jr.; Terry Chambers; Chad Prosser; Ray Brown; Ulysses Dewitt; Janice Jordan; Johnny Shelley; Chandler Brigham; Ray Skidmore, Jr.; John Kost; and Liz Gilland. Council Member Frazier did not arrive until the 6:00 session. Staff present was Administrator Linda Angus; Clerk to Council Rosella Carroll; and Staff Attorney John Zilinsky. There were several department heads, citizens and members of the press also in attendance.

In accordance with the FOIA, notices of the meeting were mailed to all TV stations, radio stations, and newspapers in the County stating the date, time and place of the meeting.

Chairman McNutt called the meeting to order.

APPROVAL OF AGENDA CONTENTS:

Council Member Brown made a motion to defer third reading of Ordinance Number 33-96 until the next Council meeting and it come back as third reading. He had calls from people who were led to believe that this might be first reading, so in fairness to them, he wanted it deferred. Council Member Jordan seconded the motion, and the motion carried by unanimous vote.

Council Member Prosser made a motion to add the Mt. Gilead Special Tax District which was a budget amendment amending their budget. They have requested this, and it was essential to give it first reading tonight if it were going to be on schedule. Council Member Brown seconded the motion, and the motion carried by

was reviewed by the Committee, and the Committee was recommending to full Council that a resolution be passed calling for an advisory referendum of all voters in the County. The question to be asked would be - "do you favor the creation of a county-wide special tax district funded by a tax not to exceed one half of a mill for the purpose of providing services for the aged in Horry County through a board of commissioners appointed by the Horry County Council?" If voters voted yes to this, they would be voting yes to having a dedicated millage for the Council on Aging. It would not automatically create that dedicated millage, it would take an action of the County Council. The way to do this was to create a special tax district just an any other special tax district. This was the way the state statute allowed it to be done. They are looking for a dependable source so they can better plan their services and assure that the elderly in this County are taken care of. Council Member Prosser made a motion to pass the resolution to put this issue on a referendum ballot for this November's election, seconded by Council Member Kost. Council Member Frazier asked who appointed their board members now? Chairman McNutt said he was not sure, but if the referendum passed, they would have to be set up by ordinance, and they will have to restructure their make up so their board can be appointed by the Council. Council Member Prosser thought that each of the centers had a governing board, and they elect a chairman who serves on the main board of the Council on Aging. They appoint their own people, and he did not believe the legislative delegation had anything to do with their appointments. If this district is set up, there would be a commission who would be accountable to this Council. Council Member Dewitt asked if this had to be declared on the referendum? Chairman McNutt said this was an advisory referendum only. The motion carried by unanimous vote.

Council Member Prosser stated the other issue discussed by the Administration

and Finance Committee was the hospitality fee. First reading was held on August 6, 1996. In order to fund the road projects that are being contemplated currently by the RIDE Committee, a solution has been forged including all of the municipalities in the County and the state representatives to come up with a comprehensive plan. He understood this was a solution that drew broad support in the County. It would be implementing a 2.5 percent hospitality fee. That is not on top of what the cities already have. It would allow for a 2.5 percent hospitality fee in all the unincorporated areas of the County. A one percent hospitality fee would be in the municipalities so that every municipality that currently has a one percent fee, the total of the hospitality fee would be 2.5 percent, and the total in the unincorporated areas of the County would be 2.5 percent. There would be no area in the County where there would be a difference in the hospitality fee. It would apply to prepared meals, restaurant meals, golf course admissions, theater admissions as well as accommodations. This is an idea that has been discussed for some time, and probably one of the most palatable and workable solutions that has been presented. Council Member Kost stated that he believed it had the approval of the municipalities and the backing of the hospitality industry. One of the things learned in the referendum was that the people of the County really believed that the tourists ought to be paying for the lion share of the infrastructure needs, and this would do that. He thought they were well on the way to getting some solution. Chairman McNutt pointed out that not only were we trying to fund infrastructure needs with a 1.5 percent hospitality fee, but would be, in addition, proposing a one percent fee in the unincorporated areas that would go into the general fund that would be designated for such services as police, EMS and fire. Additional services had to be provided because of tourists in the County. This is a way to help subsidize some of the

services the County has to provide. He pointed out that this plan requires that before the funds are spent on a road plan, the Council and all eight municipalities in the County adopt a Comprehensive road plan of some kind. Council Member Kost made a motion to approve second reading, seconded by Council Member Frazier, and the motion carried by unanimous vote.

NEW BUSINESS FOR COUNCIL'S CONSIDERATION:

Council Member Brown discussed the possible consideration of the Horry County Sheriff's Department and the Horry County Police Departments. He said when he put this on the agenda, he put it on for discussion, and it had really been discussed all over Horry County by a lot of people. When the crowds came into Horry County for different events and occasions, if the police, including all segments, were not professionals, they could not handle the crowds. He thought the police did a good job in the County. They were as good as any County Police in the United States. He was not bringing this up for any personality reasons, he knew the Sheriff of the County, he knew Chief Goward and thought he was a very professional man. He had no axe to grind. The Horry County Police Department and the Horry County Sheriff Department had worked in the past, and they all knew that. Two years ago, this came up for a vote on the horseshoe, and the vote was 6-6. There are new leaders, new supervisors, new Chief of Police, new sheriff, so the old has gone, and the new has arrived. He was not saying whether or not they did get along, but if they believed what was in the paper and the comments they heard, there might be a little friction today between these departments. Some of that lay with the ones around the horseshoe. When there are not enough police officers in Horry County, they could not fault the Chief nor the Sheriff. If they did not budget for enough police officers, it would take one 45 minutes to respond to a call. Part of this was because Council had not budgeted for enough police

employee told him that he was not supposed to be talking to him. The Chairman said he told him he believed he was not supposed to be politicking him. He thought there was a big difference.

Council Member Brigham made a motion to adjourn, seconded by Council Member Dewitt, and the motion carried by unanimous vote.

STATE OF SOUTH CAROLINA	)	**REGULAR COUNCIL MEETING**
	)	**HORRY COUNTY COUNCIL**
	)	**OCTOBER 15, 1996**
COUNTY OF HORRY	)	**3:00 P.M.**

The regular meeting of the Horry County Council was held in County Council's Chambers, 103 Elm Street, Conway, South Carolina, on October 15, 1996, at 3:00 p.m. The following Council Members were present at the 3:00 p.m. meeting: Chairman A. Joseph McNut, Jr.; James Frazier; Liz Gilland; Ray Skidmore, Jr.; Chandler Brigham; Janice Jordan; Chad Prosser; and Terry Chambers. Council Members Shelley; Dewitt; and Brown arrived for the 6:00 p.m. portion of the meeting. Council Member Kost was out of town and did not attend the meeting. Staff present was Administrator Angus; Clerk to Council Rosella Carroll; Staff Attorney John Zilinsky; County Attorney John P. Henry; Division Directors Mary Cooper, Steve Gosnell, Carrie Shannon, Danny Knight, Doug Burns and Ron Shamblin. There were also several member of the press, citizens and staff who attended the meeting.

In accordance with the FOIA, notices of the meeting were mailed to all TV stations, radio stations and newspapers stating the date, time and place of the meeting.

Chairman McNutt called the meeting to order and welcomed everyone to the meeting.

APPROVAL OF AGENDA CONTENTS:

Administrator Angus asked that Council add two personnel issues and one legal matter to the executive session portion of the agenda. Council Member Prosser made a motion to add these items to the agenda, seconded by Council Member Gilland, and the motion carried by unanimous vote. Council Member Frazier made a motion to approve the agenda contents as amended, seconded by Council Member Prosser, and the motion carried by unanimous vote.

MINUTES:

Council Member Prosser made a motion to approve the minutes of the October 1, 1996, and the September 26, 1996, meetings, seconded by Council Member Chambers, and the motion carried by unanimous vote.

thought it was basically an expression of intent, but it did not preclude the Council from making a decision on a case by case basis. There were cases where they had entered consent orders because it was in the best interest of the County, and in the long run, it saved the County money. As part of the consent orders, they had paid attorney's fees for certain other parties involved in the lawsuits. If it were ordered by the court, they would have to pay attorney's fees. He agreed with the intent and thought it was a good statement to make. He had had several people tell him it was ridiculous for the County to pay to sue themselves. Council Member Brown thought this was a personal thing, and Council was wasting time on something that did not affect this Council. Sometimes, it was good for the County to pay attorney's fees and sometimes, it isn't. He did not think this Council intended to pay anybody's attorney fees. He thought they had more important things to do than worry about this resolution. He asked Attorney Henry if it was worth the paper it was written on? Mr. Henry said it meant very little. Council Member Gilland said it was not personal. She was simply interested in keeping a close eye on taxpayers money, and thought they sent the wrong message at the last Council meeting. This was not something that was set in concrete. The motion carried by unanimous vote.

READING OF ORDINANCES:

Chairman McNutt called for third reading and public review of Ordinance Number 105-96 imposing a two and one-half percent hospitality fee immediately. He opened the floor for public input. Mr. Bill McDonnagal, President of the Myrtle Beach Area Hospitality Association and a member of the Board of Directors of the Council of the Myrtle Beach Organization, discussed the Myrtle Beach Organization. There were 518 members representing the legal and legislative needs of hotels, restaurants, etc. The hospitality industry they represent is the driving force of the community. Over 50 percent of the citizens of Horry County are employed directly or indirectly with the tourism industry. There were four speakers who would address Council regarding the hospitality tax. Mr. Rod Swaim asked that the one percent portion of the hospitality tax be administered with the same parameters and restrictions that the state requires of the present 2.5 percent A tax. This was to say that it must be returned to that area from which it comes. Without these restrictions, the one percent tax could easily become a slush fund for the County. The funds that come from Surfside and unincorporated Georgetown are returned to these areas,

and they never come back to the area where they are collected. The money should be returned to the areas for tourism related items only. He hoped the County would show unity, and if the tax is passed, do it in a manner that gave them time to implement the tax to the incoming tourists. If they were going to pass this tax, he asked that it be done rapidly and in a manner that showed all unity for the State of South Carolina and Horry County. Mr. Birney Baum said he worked for the Kingston Plantation. He stated they were beginning to get choked because of the road situation. They supported Council and the RIDE Committee on behalf of the 500 members of the Hospitality Association. They asked that Council give the ordinance third reading and pass it so work could get started. The RIDE Committee had done their work, and it was up to us now. They needed to help Horry County grow, and it could not be done without roads. The people who pay this tax will be the people who come down and enjoy our wonderful beaches. People are investing a lot of money in Horry County. New York City had more hotel rooms and meeting places than any other place, and three years ago, they imposed a tax that went into the double figures. It got higher, and two years ago, they entertained two big conventions. They had priced themselves out of the convention business. They needed to keep in mind the 9.5 percent because once they hit the double figures, they would lose. He would like to see this tax earmarked for roads and do a budget so they would know where the money was going. Mr. Jeff LaForce represented the area of Fantasy Harbour. An additional consideration of the one percent hospitality fee would be to make sure they ensured that this fee could be submitted by the businesses and collected by the County in an effective and efficient way. The hospitality industry is now paying four to six different types of taxes now, and with each of them, there is a separate form to be filled out. At times, this becomes very burdensome to the business person. He proposed that if this one percent fee is imposed, to look at how it would be implemented by the County. They needed to look at a simplified way of submitting it to the County. They would like to have a provision within the form where there is a two to three percent incentive to those who pay the tax in a timely manner. He wanted them to move forward in unity on this and look at the implementation of it. Mr. David Brigman represented the Hospitality Association, but also wanted to represent the family businesses. Paying this additional tax is hard but he supported it. It was important that the County not price themselves out of the family market. This is a resort area and it is growing by leaps and bounds. If

they could impose this tax and earmark it for these RIDE roads, it would be a good thing for Myrtle Beach. It was critical that this is solely for the RIDE concept. It was vital that any surplus funds be put toward paying off the debt early and that it not go into the general fund. It is time for the citizens of Horry County to come together and show the State of South Carolina that everyone is together on this issue. Mr. Gary Loftus thanked the members of the RIDE Committee for serving, especially Council Members Frazier and Kost. A lot of thought went into this, and they started out by saying they wanted to form a partnership among the people of Horry County, that are in City Government of Horry County, County Government, the State of South Carolina and Federal Highways Administration. He thought that what this committee arrived at was an excellent partnership agreement. As such, it requires unity, and that was what they were looking for tonight. They needed to send to Columbia a thousand reasons why they should help us. The Governor is extremely excited about what has transpired, and they needed to make sure that the State of South Carolina lived up to their commitment, and that is to give more of their fair share than they have given in the past. He urged Council's passage of third reading, and thanked them for their time. Council Member Frazier said as a member of the RIDE Committee, he wanted to thank Gary Loftus for his expertise. Council Member Frazier made a motion to give third reading to Ordinance Number 105-96, seconded by Council Member Prosser. Council Member Brown was glad to see this coming about. He knew the RIDE Committee had meetings that people could have gone to, but he thought that after the ordinance was passed, they should one more time, hold a workshop for anybody who wanted to come before Council on it. Council Member Shelley asked what assurance did they have of the State passing this? He did not understand them rushing third reading until the State came to the plate and showed the County that they were going to play a part. He knew the local delegation supported this, but did they have assurance that the rest of the delegation would be on board with them? Representative Mark Kelley said he could not tell them that the South Carolina House and Senate would come on board and support this. If there was a fracture in Horry County, it would give reason not to support it. The Governor had said that we had the support of his office behind this. Many of the members of the General Assembly know the problems in Horry County with roads. He could not tell them that it would be easy to win. The only guarantee he could make was that if Council would pass this with a

resounding vote, he would take it and do everything in his power to make this happen for Horry County. The majority of the delegation is ready to go fight this battle. Council Member Shelley thought it was premature to go ahead with third reading until the state has a chance to meet on this. They will be carrying the bonding on this. He did not know what credibility it would give the County if they passed this, collected the money and then came back. There was already a difference of opinion on how the one percent would be spent, and Council Member Brown was talking about having a workshop. He agreed with this, but after third reading, he did not know if a workshop would do any good. He appreciated the work of the RIDE Committee. Council Member Dewitt said he was hearing something different on the one percent from what had been said before. He was ready to get on board with this until tonight's discussion. He was also concerned that nothing was going to be done north of Highway 90. If the Highway Department did not have anything planned for Highway 90, they were putting themselves in a hole again. He was very concerned because the five people who spoke wanted the one percent earmarked. He understood that the Council would be in charge of appropriating the one percent. Chairman McNutt said this was in the ordinance. It would go into the general fund to be spent on services impacted by the tourism industry. Council Member Frazier stated that some of the funds would be used for EMS and police protection. Any funds from the one percent that is not used for that purpose, can be used for roads. He did not believe that Council would vote for third reading on this ordinance and not have something in mind on what it was going to do for the western portion of Horry County. He believed that this Council would appropriate funds for paving roads on the western side. Council Member Skidmore stated the number one priority was roads. In the ordinance, there was a paragraph (G) that said the one percent would be used for public safety and public works services affected by tourism. There is wording that the one percent will go into the general fund. Council Member Prosser thought the point of confusion was that some of the speakers indicated their preference on how the one percent would be spent. It was quite clear in the ordinance, in that it went into the general fund, and there were twelve people who had control over the general fund. They all had different interpretations about what the intent for the money was. His concern was more that they dedicate these funds specifically for projects in the tourism areas and not have it spread among the general fund. He was sure whatever the ultimate outcome was, it would be something

that all twelve of them had to negotiate. Council Member Gilland said as she listened to the speakers on how the tax should go, you would have thought that Horry County only existed from the waterway to the ocean. That bothered her because nobody got up to speak for anyone on the other two thirds or more of Horry County. She did not want the citizens who did not live along the Grand Strand to think that Council was imposing a tax on them to help the other part of the County and totally ignore them. That was not the intent and the purpose of the Myrtle Beach Hospitality Association or any of the other organizations. They will also be paying this tax in Conway and Aynor or other parts of the County, and they need to benefit from the hospitality tax. She wanted to assure the citizens in the western part of the County that they would benefit from the tax. The County could not be divided. All of Horry County is affected by how many law enforcement officials, EMS personnel. fire trucks and ambulances we have or do not have on the road. She would like to see them take the one percent and leave it in the general fund, but put it in a separate bank account so they are fully aware of how much money is generated by the one percent. A large portion of her taxes went towards the education system even though she did not have children. She thought this was fair because it was important that our children got educated. In the same way, everyone in Horry County would contribute to the hospitality tax, and they needed to make sure that all of the County benefited. It bothered her that they would be putting it into the general fund and never really look at how much money it was. She had asked Ms. Angus, and it was no problem to put that one penny fund into a special bank account to be used in specific ways. Council Member Gilland made a motion to amend the ordinance to put this one percent into a separate account, seconded by Council Member Prosser. Council Member Brigham thought that paragraph G covered this pretty exclusively, and the one percent would be determined by the one and a half percent. If they knew what the one and a half was, they would know what the one percent was. Council Member Gilland said she wanted to make it clear to the citizens what they were doing with the money. If it is in a separate account, there will be no question about it. Council Member Brigham thought this was all addressed in the ordinance. It addressed public works and public safety. Council Member Chambers agreed with Council Member Gilland. When the Finance and Administration Committee discussed this issue in committee, they were insistent that a portion of it be set aside to be used for those things in county government that tourism impacted such as

police and public works. The fact that the one percent will be used to implement and supplement those areas where they are impacted by tourism, he thought it was pretty clear how it would be spent. He thought the accounting could be worked out with the Administrator. He asked that they pass the ordinance and then work this out. Council Member Prosser agreed that the money needed to be accounted for separately. Several of the speakers spoke about making sure they watched carefully how Council decided to spend the money. It needed to be transparent and clear, and the only way to do that is to have the funds maintained in a separate account. The ordinance read that the money would be deposited in the general fund to offset the costs of these particular items, but the only way to determine if it has actually been done is to look at the overall budget and compare it from one year to the other and extrapolate as to whether there has been increases in particular areas. Often it is put in ordinances that expenditures from this fund will be accounted for separately, and then, there is no question about it. It is obvious and clear and anyone can look at the fund and determine how the one percent was spent. He was afraid if it went into the large pot of the general fund there would be no way anyone could determine how the money had been spent. He supported the amendment. Council Member Dewitt said the real issue was roads. He wanted the dollar amount of money that would go to roads. The amended motion failed with Council Members Brown, Jordan, Shelley, Skidmore, Brigham, and Chairman McNutt voting no. Council Member Gilland said that golf courses had already advertised their rates nationally, and she read a letter from the Myrtle Beach Golf Association endorsing the RIDE Committee and the tax, but would like to be exempted from the tax until July 1, 1997. It made sense to her that they hold back on the golf course fees for six months because it this was passed, it would begin January 1, 1997. This was a lot of money down the drain, but for the sake of the golf courses and the fact that they have advertised, she could go along with this somewhat reluctantly. Council Member Brigham said he was a little disappointed with some of the hospitality people coming to Council at this late date opposing the one percent. He did not hear anybody talking to the municipalities when they passed theirs as to how they would use it. It was earmarked how it would be used. He commented on the I-40 connector going into Wilmington, North Carolina about three or four years ago, and thought they were aware of it. The first year that there were records taken on the impact of that connector into Wilmington, the tourist industry went up 25 to 30

percent the first year. The point was that we needed to guide that bleed off back to the Myrtle Beach area. We lost it, and the reason it was lost was because of roads. Separating the County was a little immature. Item G covered it, and some of the money could be used towards public works. Representative Kelley made reference to the state stepping up to the podium and doing their part. There was a sunset clause in Item B that covered that. The imposition of the one and a half hospitality fee for infrastructure will terminate on 8-1-97 if an appropriate agreement or legislation is not in place in the State of South Carolina to provide their share of the short term funding outlined by the RIDE Committee. He thought they needed the state stepping up to the podium and going in with the County. This was a joint effort of the state, County and municipalities. He was going to support the ordinance based on these facts. If they did not do something with the roads, and do it quickly, they would lose a lot of the tourist industry to other areas. Council Member Prosser wanted to clarify the tax on prepared foods. The way the ordinance currently reads is that it covers the gross proceeds derived from the sale of food and beverages sold in establishments which primarily have as their business purpose, the sale of prepared food. This concerned him, it was rather vague, what they meant by a business that primarily has as their business the sale of prepared food. He thought it was also a little unfair because it eliminated from the tax restaurants and cafes and any other type of food service facility that is inside another type of business. A lot of the grocery stores had restaurants. All of those operations, large chain type operations with ownership outside of the County, and all of the local Mom and Pop restaurants are having to pay the additional tax. It was unclear because by primary, did it mean that 50 percent or more of their revenue comes from prepared food. Chairman McNutt would like to see them pass third reading, and by the next meeting, he would have language for an amendment, and they could do a three reading amendment. This language was real complicated. Council Member Prosser did not have a problem coming back and addressing this retroactively, but thought they needed to ensure the entities were clarified up front. It should be clarified on the front end. If it had to go through three readings, he was afraid it would drag out, and it may never be clarified. Chairman McNutt said it would take at least that long to get this implemented. Council Member Brigham pointed out that the ordinance did not become effective until 1-1-97. The motion carried with Council Members Jordan, Shelley and Dewitt voting no.

HORRY COUNTY COUNCIL

A. Joseph McNutt, Jr., Chairman

Ray Skidmore, Jr., District 1

John Kost, District 2

Raymond J. Brown, District 3

Chandler Brigham, District 4

Chandler C. Prosser, District 5

Terry Chambers, District 6

James R. Frazier, District 7

Elizabeth D. Gilland, District 8

Ulysses Dewitt, District 9

Johnny Shelley, District 10

Janice Jordan. District 11

ATTEST:

Rosella H. Carroll, Clerk to Council

EXHIBIT D

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June 21, 2019

VIA ELECTRONIC AND U.S. MAIL
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Founders Centre
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Myrtle Beach, SC 29577

Re: *City of Myrtle Beach v. Horry County*, No. 2019-CP-26-01732

Dear Counsel:

We have reviewed the responses of your client, Horry County, to the City of Myrtle Beach's First Interrogatories, First Requests for Production, and First Requests for Admission in the above-referenced case. Please let this letter serve as the City's good faith effort under Rule 11, SCRCP, to confer with you regarding a resolution of the City's concerns regarding the sufficiency and propriety of Horry County's responses.

As a threshold matter, at various points the County's responses invoke the attorney-client and work product privileges. To the extent your client is withholding any responsive information subject to these protections, please promptly produce a qualifying privilege log for us to review these assertions as provided for by Rule 26(b)(5)(A), SCRCP.

Setting aside any claims of privilege, it appears to the City that the County has failed to sufficiently and properly respond to the following requests:

- Interrogatory No. 4: This interrogatory requests "a summary sufficient to inform Plaintiff of the important facts known to or observed by" the individuals listed in response to Interrogatory No. 1, or a copy of any recorded or written statements by them. The County's response merely incorporates the general averment that each person "may have knowledge regarding the Hospitality Fee, including its implementation, its collection, its extension, and the uses of its revenue." This is plainly insufficient.

- Interrogatory Nos. 6 and 7: Following a series of objections, the County limited its responses to "material communications made as a governmental entity by and through individuals with authority to speak on behalf of the governmental body that is Horry County." This self-imposed limitation avoids fully responding to these interrogatories and allows for the withholding of otherwise discoverable and responsive information based on a unilateral, internal, and subjective determination. The response to Interrogatory No. 7 also does not include the County's response to the FOIA request located at Bates HC_0000017.

- Interrogatory No. 8: The County's response to this interrogatory was prefaced by a series of prophylactic objections, and it is unclear whether the County withholding documents or limiting your search subject to them.

- Interrogatory Nos. 9-13: The County has refused to respond to these interrogatories under Rule 408, SCRE. This objection is meritless. Initially, the County expressly rejected a Rule 408 agreement before sending the referenced letter and adopting the resolution identified in these requests; therefore, the County is not a party to a Rule 408 agreement, it has exchanged no non-public offers, and there is no basis for it to attempt to rely upon perceived protections of the rule. Regardless, Rule 408 does not prohibit discovery into these matters concerning facts underpinning public pronouncements made by the County. In fact, Rule 408 governs only the *admissibility* of evidence of offers of compromise, not the discoverability of relevant information, which is broadly defined as "*any* matter, not privileged, which is relevant to the subject matter involved in the pending action," *see* Rule 26(b)(1), SCRCP. Discovery objections are limited to privilege and relevance, neither of which was claimed by the County with respect to these interrogatories, while the County's stated objection on the basis of the ultimate admissibility of the information is expressly rejected under the rules, rendering these objections patently frivolous. *Id.* ("It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.").

- Interrogatory No. 15: This interrogatory asks that the County "detail the factual basis" supporting any non-admission in response to the City's First Requests for Admission. The County has failed to provide a complete response with the requisite detail for Request for Admission Nos. 1, 5-6, and 8. Specifically, the response regarding Request for Admission No. 1 does not convey sufficient detail regarding the County's position that the

municipalities consented to the imposition of the Hospitality Fee after January 1, 2017. In particular, the County is obligated to identify and describe, with specificity, the "numerous occasions" on which the City and its council members "supported the Defendant with respect to the Hospitality Fee" and any other facts supporting this position. As for Request for Admission Nos. 5 and 6, the County's Resolution R-36-19 expressly states that "Horry County repaid the final loan with the State Infrastructure Bank on February 15, 2019." This directly contradicts the County's denial. Please either amend the responses to these Requests for Admission to admit same or provide the complete factual detail which qualifies the County's position that the matter asserted in the requested admission is untrue. *Cf.* Rule 36(a), SCRCP. Finally, in Request for Admission No. 8 the County denied that the RIDE Projects do not include I-73. In Interrogatory No. 15, the County refused to provide any detail pursuant to Rule 408. For the reasons explained above, this objection is wholly without merit. Please provide a complete response supporting the County's position that the RIDE Projects include I-73 or a qualification of same under Rule 36(a).

- Request for Production Nos. 11 and 13-14: The County's document production does not include minutes for the first or second reading of Ordinance 105-96, the second reading of 80-01, any minutes regarding Ordinance 50-04, and any minutes regarding Ordinance 24-18. These documents are directly responsive to these requests and must be produced. Furthermore, the copies of all minutes for meetings conducted prior to 2004 were produced as incomplete documents. We also note that the County produced few communications regarding these meetings, and no drafts of the minutes. To the extent they exist, they must be produced.

- Request for Admission Nos. 5 and 6: These requests pertain to the County's repayment of the final SIB loan on or about February 15, 2019. Recall that the County's Resolution R-36-19 expressly states that "Horry County repaid the final loan with the State Infrastructure Bank on February 15, 2019." The County's denial does not fairly meet the substance of the request as required by Rule 36. We ask that the County either amend its responses to admit these requests or provide a complete response to Interrogatory No. 15 wherein an explanation of the factual basis for denying these requests or a qualification of same in view of the plaint language of the County's Resolution R-36-19.

- Request for Admission No. 7: The County objected to this request under Rule 408, SCRE. As explained above, this objection is wholly without merit and an amended response is required.

- Request for Admission No. 8: The RIDE Projects were created in 1996, and on their face do not list I-73. Please either amend the response to this request or provide a complete factual basis for the denial of same in response to Interrogatory No. 15.

Please provide full and complete responses to these relevant, tailored, and proper discovery requests no later than June 28, 2019. If the County does not do so, the City will have no choice

but to file a motion to compel and seek recovery of its attorneys' fees and costs. In the course of supplementing the County's interrogatory responses, please also provide an additional response to Request for Production No. 7 and Request for Admission Nos. 5 and 6 as may be necessary.

Thank you in advance for your prompt attention to these matters. Please do not hesitate to contact me if you have any questions or concerns.

With best regards, I am

Respectfully,

WILLOUGHBY & HOEFER, P.A.

John M. S. Hoefer /by CWS

John M. S. Hoefer

EXHIBIT E

Adam R. Artigliere
aartigliere@burr.com

July 2, 2019

Via Email and U.S. Mail

John M.S. Hoefer, Esquire
Chad N. Johnston, Esquire
R. Walker Humphrey, II, Esquire
Willoughby & Hoefer, P.A.
P. O. Box 8416
Columbia, South Carolina 29202-8416

Re: City of Myrtle Beach v. Horry County
Civil Action No.: 2019-CP-26-01732
Our matter: 001969.101

Gentlemen:

We write in response to your letter of June 21, 2019 in which you identify perceived deficiencies in the Defendant's responses to discovery.

The Defendant has not withheld any documents; therefore, a privilege log is not warranted.

Far from "plainly insufficient," the response to Interrogatory No. 4 provides a general overview of what we have thus far determined that each witness may know. As you are aware, this case is in its early stages, and the litigation thus far has focused primarily on the injunction and legal questions. We are still investigating the facts, and as we learn anything that would require supplementing this response, we will do so to the extent required by the South Carolina Rules of Civil Procedure.

Interrogatory No. 6 asks that the Defendant identify "all communications between Defendant and any person or entity not a party or a member of the proposed class of plaintiffs regarding or pertaining to the Hospitality Fee, the Complaint or the subject matter of the Complaint." Interrogatory No. 7 asks the Defendant to identify "all communications between Defendant and any person or entity not a party or a member of the proposed class of plaintiffs regarding or pertaining to the Hospitality Fee, the Complaint or the subject matter of the Complaint." The

Defendant cannot read into the plain language of the interrogatory to ascertain what the Plaintiff seeks. The Defendant is not obligated to provide or speak to any matters outside of the direct control of the governmental body that is Horry County. That said, the Defendant has produced all communications regarding the subject matter of the Complaint that the Defendant could locate (1) between the Defendant and the Plaintiff and (2) between the Defendant and any person or entity not a party or a member of the purported class of plaintiffs. The Defendant continues to search for materials to provide in response to this interrogatory and to the requests for production. In short, the Defendant has produced the requested items it could locate.

As to the item at Bates HC_0000017, the Plaintiff misreads the document as this was a request made under the South Carolina Freedom of Information Act *from* Horry County *to* the City of Myrtle Beach, which was responded to with the documents HC_0000003 – HC_0000131 and HC_0000382 – HC_0000386. You will note that the Defendant has provided supplemental responses and provided HC_0004328 - HC_0004467, containing the specific response from the City of Myrtle Beach as well as the documents provided in response to the request made under the South Carolina Freedom of Information Act.

As to Interrogatory No. 8, the Defendant has searched for, and produced the items requested. Out of the documents located, there are no documents being withheld. The Defendant cannot read into the plain language of the interrogatory to ascertain what the Plaintiff seeks in this case. The Defendant is not obligated to provide or speak to any matters outside of the direct control of the governmental body that is Horry County, which are the documents searched for and provided in accordance with the request. The Defendant will supplement its response to the Interrogatory.

As to Interrogatory Nos. 9-13, the Defendant maintains that Rule 408 is applicable to these interrogatories.

It is impossible for the Defendant to know what "requisite detail" the Plaintiff is seeking with regard to the Defendant's responses to Interrogatory No. 15. As you well know, the Plaintiff cannot reasonably expect the Defendant to identify at this stage every single fact that may exist, as discovery is at its earliest stages. Nevertheless, as to the response to Interrogatory No. 15 and Request for Admission Nos. 1, 5, 6, and 8, the Defendant will supplement its response to the Interrogatory.

As to the Request for Production Nos. 11, 13 and 14, the Defendant has produced all documents the Defendant has been able to locate, although the Defendant continues to search for materials to provide in response to these requests for production. The Defendant has attempted to provide these documents to the Plaintiff as quickly and as efficiently as possible. In the apparent haste to send out the deficiency letter, the Plaintiff clearly missed several items. A careful review of the document production will reveal several of the items the Plaintiff claims are not included. Specifically, with regard to the meeting minutes for the first and send reading of Ordinance 105-

96, please see documents produced by Defendant bearing Bates numbers HC_0000221 through HC_0000232. With regard to the meeting minutes for the second reading of Ordinance 80-01, please see documents produced by Defendant bearing Bates numbers HC_0002249 through HC_0002252. With regard to the meeting minutes for the all readings of Ordinance 50-04, please see documents produced by Defendant bearing Bates numbers HC_0002120 through HC_0002130, HC_0002131 through HC_0002136, and HC_0002137 through HC_0002142. With regard to meeting minutes regarding Ordinance 24-18, please see the Plaintiff's supplemental response and specifically the documents produced by Defendant bearing Bates numbers HC_0003314 through HC_0003317; HC_0003730 through HC_0003737, HC_0003738 through HC_0004114, HC_0004115 through HC_0004123, HC_0004124 through HC_0004317 and HC_0004318 through HC_0004327.

As to the response to Request for Admission Nos. 5 and 6, and as stated above, the Defendant will supplement its response to Interrogatory 15.

As to the response to Request for Admission No. 7, the Defendant maintains that Rule 408 is applicable to this request.

As to the response to Request for Admission No. 8, the Plaintiff seemingly expects the Defendant to read into the plain language of the request. The language of the request is vague and unclear, and therefore, it is impossible for the Defendant to admit the same. The Defendant cannot and will not be boxed in by a poorly worded Request for Admission that attempts to say more than what is specifically requested. As to the response to Request for Admission No. 8, the Defendant will supplement its response to Interrogatory 15.

Sincerely,
Burr and Forman, LLP

Adam R. Artigliere

EXHIBIT F

Sec. 19-6. - Hospitality fee.

(a) *Establishment and imposition of hospitality fee.* There is established a uniform service charge, hereinafter referred to as the "hospitality fee," equal to one and one-half (1.5) percent within the geographic confines of the county, and an additional imposition equal to one (1) percent within the unincorporated areas of the county only; such rates shall apply to and be imposed on:

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

(2) Those paid admissions to places of amusement within the county to which the admissions tax imposed by the State of South Carolina pursuant to S.C. Code § 12-21-2420 et seq. applies; and

(3) The gross proceeds derived from the sale of prepared food and beverages sold for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine.

The hospitality fee shall be imposed at a rate equal to two and one-half (2.5) percent within the geographic confines of the county solely with regard to:

(1) The gross proceeds derived from rental companies engaged in the business of renting private passenger motor vehicles to a renter for a consideration within the county. The proceeds derived from the lease or rental of a private passenger motor vehicle supplied to the same person for a period of ninety (90) continuous days are not considered proceeds. "Rental company" means any individual, firm, partnership or corporation in the business of providing private passenger automobiles to the public under the terms of a rental agreement. "Private passenger motor vehicle" means any private passenger motor vehicle, including passenger vans and mini-vans, that is intended primarily for the transport of persons on public roads and highways.

(b) *Payment of the hospitality fee.* Payment of the hospitality fee shall be the liability of the consumer of the services. The hospitality fee shall be paid at that time of the delivery of the services to which the hospitality fee applies, shall be collected by the provider of the services, and shall be held in trust by the provider until remitted as provided for herein.

(c) *Collection of fees.*

(1) *Requirement to make filing and payment.* Each person liable for any fee shall (a) make a true and correct return to the county in such form as it may prescribe and (b) remit

such fee therewith.

(2) *When due.* Any hospitality fee imposed herein is due and payable:

a. In monthly installments on or before the twentieth day of each month; or

b. In thirteen (13) installments payable on or before the twentieth day following the period covered by the return on sales for the previous reporting period. This payment option requires thirteen (13) payments in each calendar year. For those persons electing to pay in thirteen installments (every four (4) weeks), payments for each period are due on or before the twentieth day after the conclusion of the four-calendar-week period for which payment is due.

The return shall be due at the same time the fee is due and payable.

c. When the twentieth day is a Saturday, Sunday or other day, the county is not open for regular business, the fee is due on the following day the county is open for regular business.

(3) *Manner and location of payment* . Fee payments shall be made by mail, in-person at facilities designated by the county administrator, or electronically. County council, by resolution, may establish mandatory electronic filing for certain classes of payers.

(4) *Timely filing and payment* . A return and the payment due therewith are considered to be timely if (i) the return and payment are mailed and such mailing has a postmark dated on or before the date the return is required to be filed, or (ii) the county actually receives the return and payment (a) at a physical location designated by the county administrator, or (b) electronically in a manner selected by the county administrator. The burden of demonstrating the timeliness of the filing and payment and presentation of a corroborating proof of mailing or receipt demonstrating the same is the responsibility of the person making payment.

(5) *Failure to file return.* In the case of a failure to file the return, the county shall make a return upon such information as it may be able to obtain, assess the fee due thereon, and assess a late filing penalty (the "failure to file penalty") upon the entire fee then due, whereupon the county shall mail such notice to the person liable for the fee. Such payment shall be due within ten (10) days of the postmark of such return.

The failure to file penalty shall be calculated as:

(A x B) x C = the Failure to File Penalty

Where "A" represents the amount of the entire then due fee, "B" represents the daily penalty in percentage terms calculated on the basis of a ten (10) percent per month penalty assuming a thirty-day month (0.333%), and "C" represents the number of

calendar days from the date the filing was due to the date of the filing and payment of the failure to file penalty. The amount of the failure to file penalty for any period shall not exceed twenty (20) percent of the fee due for that period.

(6) *Failure to timely file return.* In the case of late filing of the return, the county shall assess a late filing penalty (the "late filing penalty") upon the entire fee then due.

The late filing penalty shall be calculated as:

(D x E) x F = the Late Filing Penalty

Where "D" represents the amount of the entire then due fee, "E" represents the daily penalty in percentage terms calculated on the basis of a ten (10) percent per month penalty assuming a thirty-day month (0.333%), and "F" represents the number of calendar days from the date the filing was due to the date of the payment of the fee, the late filing penalty, and any late payment penalty. The amount of the late filing penalty for any period shall not exceed twenty (20) percent of the fee due for that period.

(7) *Failure to pay.* In the case of failure to pay the entirety of any fee when due, the county shall add a late payment penalty (the "late payment penalty").

The late payment penalty shall be calculated as:

(X Y) x Z = the Late Payment Penalty

Where "X" represents the amount of the entire fee due for the period in question less any accepted partial payment, "Y" represents the daily penalty in percentage terms calculated on the basis of a ten (10) percent per month penalty assuming a thirty-day month (0.333%), and "Z" represents the number of calendar days from the date the payment was due to the date of the payment of such fee, and the late payment penalty. There shall be no limit on the amount of the late payment penalty unless fees found to be due under an audit. The failure to pay penalty on fees found to be due under audit shall not exceed twenty-five (25) percent if paid within ten (10) days of the county's assessment, then the failure to pay penalty is not capped on the unpaid fee from the 11th day until the taxes are paid. An underpayment amount created by filing an amended return is subject to the failure to pay penalty for the underpayment amount.

(d) *Inspections and audit.* For the purpose of enforcing the provisions of this hospitality fee and local accommodations fee ordinance, the county administrator or other authorized agent of the county, is empowered to enter upon the premises of any person subject to this section and to make inspections, examinations and audits of books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours' written notice. In the event that an audit reveals that false information has been filed by the remitter, the costs of the audit

shall be added to the correct amount of any fees determined to be due, in addition to the penalties provided in subsection (c) above. The county administrator or other authorized agent of the county may make systematic inspection of all businesses within the county, to ensure compliance with this section. Records of inspection shall not be deemed public records.

(e) *Violations.*

(1) It is a violation of this section to:

a. Fail to collect any fee;

b. Fail to remit to the county any fee collected;

c. Fail to file any fee return;

d. Knowingly provide false information on any fee return;

e. Fail to provide books and records to the county administrator or other authorized agent of the county for the purpose of in inspection, examination, or audit after twenty-four (24) hours' written notice.

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

(3) Upon conviction of this section, the violator is guilty of a misdemeanor and subject to a fine or forfeiture not exceeding five hundred dollars ($500.00) or imprisonment for not exceeding thirty (30) days, or both.

(f) *Administration of fees.* The county administrator is responsible for the implementation, collection, and enforcement of the fees through any legally available means as may be available to the county, including, without limitation, the Setoff Debt Collection Act, codified at Title 12, Chapter 56 of the South Carolina Code and Governmental Enterprise Accounts Receivable (GEAR), codified at S.C. Code § 12-4-580.

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

(h) *Disposition of hospitality fee* . All revenues collected from the hospitality fee shall be deposited or allocated as follows:

(1) The funds derived from the one and one-half (1.5) percent hospitality fee shall be deposited into a road special revenue fund which will be used to implement a comprehensive road plan adopted by the county in concert with the municipalities of the county. Interest generated by this road special revenue fund shall accrue to the fund.

(2) The funds derived from the one (1) percent fee shall be specifically allocated within the county's budget to offset the cost of public safety and public works services and infrastructure directly impacted by tourism.

In the case of disposition of funds, the costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of one (1) percent.

(i) *Penalty waiver.*

(1) A penalty may be waived by the county administrator or his designee if the delay or failure to file or pay was caused by reliance on erroneous written or oral advice given by a county employee to the licensee or fee remitter, if accurate and complete facts were given to the employee, there is no change in law, and the licensee or fee remitter provides supporting documentation, such as a copy of the licensee or fee remitter's question to the employee and the advice provided by the employee. A penalty will not be waived if the advice was oral, unless the employee verifies that all the facts were provided and that he gave the advice.

(2) The county administrator or his designee may waive a penalty that is de minimis in nature.

(j) *Use of hospitality fee revenues* . Receipts of the hospitality fee shall be expended only for a purpose or purposes identified below:

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

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

(3) Beach access and renourishment;

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

(5) Advertisements and promotions related to tourism development;

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

(7) Operation and maintenance of police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to the forgoing (1) through (6).

(k) *Amnesty period.*

(1) In order to encourage the voluntary disclosure and payment of fees owed to the county, the county council finds it desirable to allow the county to designate an amnesty period which has a beginning and ending date from time to time as determined by a resolution of county council. During the amnesty period, the county shall waive the penalties and interest or portion of them at its discretion imposed pursuant to Chapter 12.5—Licenses and Business Regulations and 19.6—Hospitality Fee for a licensee or fee remitter who voluntarily files delinquent returns and pays all fees owed. If the county establishes an amnesty period pursuant to this section, it must adopt a resolution of the amnesty period at least sixty (60) days before the commencement of the amnesty period.

(2) The county shall grant amnesty to a licensee or fee remitter who files a request for an

amnesty form and:

a. Voluntarily files a current license or fee return and pays in full all fees due;

b. Voluntarily files an amended license or fee return to correct an incorrect or insufficient original return and pays all fees due; or

c. Voluntarily pays in full all previously assessed fee liabilities due within an extended amnesty period which begins at the close of the amnesty period and runs for a period of time as determined by the county. The administrator or his designee may set up installment agreements as long as all fees are paid within this period. An installment agreement must be agreed upon before the close of the amnesty period established.

(3) The county shall not waive penalties and interest attributable to any one filing period if the licensee or fee remitter has outstanding liabilities for other periods.

(4) A licensee or fee remitter that is currently under audit by the county is not eligible for amnesty for those periods being audited.

(5) The county may review all cases in which amnesty has been granted and may on the basis of mutual mistake of fact, fraud, or misrepresentation rescind the grant of amnesty. A licensee or fee remitter who files false or fraudulent returns or attempts in any manner to defeat or evade a fee under the amnesty program is subject to applicable civil penalties, interest, and criminal prosecution.

(Ord. No. 105-96, § 1, 10-15-96; Ord. No. 7-97, §§ 1—4, 2-4-97; Ord. No. 76-97, §§ 1, 2, 8-5-97; Ord. No. 80-01, § 1, 6-19-01; Ord. No. 93-16, §§ I, IV, 12-6-16; Ord. No. 24-18, §§ 1—3, 5, 4-3-18)

Editor's note— Ord. No. 105-96, adopted Oct. 15, 1996, did not specifically amend the Code; hence, codification of § 1 of said ordinance as § 19-6 was at the discretion of the editor.

Cross reference— Roads and bridges, Ch. 16.