

Exhibit 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

School District of Horry County
and Horry County,

) CIVIL ACTION NO. 2018-CP-26-07249

Plaintiffs,

vs.

**AFFIDAVIT OF
MICHAEL W. SHELTON**

City of Myrtle Beach, South Carolina,
and Myrtle Beach Air Force Base
Redevelopment Authority,

Defendant.

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

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

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

3. I have previously given an October 17, 2019, affidavit to the Court describing the circumstances under which (a) a "forensic audit" of the City's financial records concerning the redevelopment of the former United States Myrtle Beach Air Force Base property was threatened by representatives of Plaintiff School District of Horry County ("District") unless the City would allow the District to forego its statutory obligation to pay over to the Horry County Treasurer certain funds distributed to the District by the State of South Carolina under S.C. Code Section 11-11-156(D), (b) the City's willingness to make available to the District (i) the City's records

pertaining to the Special Tax Allocation Fund (STAF) established under S.C. Code Section 31-12-270(A)(2)(b) and (ii) City finance and accounting personnel for purposes of such audit, even though the City believed it unnecessary, (c) the District's delay of some six (6) weeks in contacting the City about such audit, and (d) the City's response to assertions made by the District that the documents produced by the City in response to written discovery in this matter were inadequate.

4. The purpose of this affidavit is to respond to the undated, unpaginated letter addressed to the Court by the District's outside audit firm, McAbee, Schwarz, Halliday & Co. ("MSH"), submitted on October 25, 2019, regarding its involvement to date in this "forensic audit" of the records of the City and the Myrtle Beach Air Force Base Redevelopment Authority ("RDA"). I note MSH's reference to its involvement as an auditor in the case of *Pickens County and School District of Pickens County v. City of Clemson*, Civil Action Number 2012-CP-39-743. I have reviewed the order of the circuit court in that matter and note that it addressed a challenge to tax increment financing ("TIF") expenditures under S.C. Code Section 31-6-10 through 31-6-120 ("Standard TIF Statute"). The TIF undertaken by the RDA and City that is the subject of this lawsuit, on the other hand, does not arise under that statute but under S.C. Code Sections 31-12-10 through 31-12-320, which applies to redevelopment of property on a former Federal defense installation ("Former Base TIF Statute").

5. In the third paragraph of the first un-numbered page of its letter to the Court, MSH complains about the format in which certain documents were produced by the City in response to the District's discovery requests. These documents have been produced in the form in which they are ordinarily maintained by the City. As I read the MSH letter, it is asking the Court to require that the City convert two hundred fifty-nine (259) pages of documents into a different electronic format. This will require the City to create a separate general ledger ("G/L") report for twelve (12)

years of data and would require the City to devote at least one accounting staff member to this project. In addition to the expense associated with such an undertaking, the City will be required to divert this staff member from the currently ongoing City budget process and the annual audit and preparation of the Comprehensive Annual Financial Report. Further, the City is presently involved in an information technology (“IT”) project by which it is converting its financial and accounting systems to new software and such an undertaking will interfere with that process as well. Also at this time, the Accounting Manager is out on medical leave and is not expected to return before November 15, 2019, at the earliest. It is my understanding that the City has no obligation to undertake such an effort.

6. At the beginning of the second un-numbered page of its letter, MSH also contends that the City should provide information in an electronic format preferred by MSH because there are “several matters that raise concerns in the material already provided.” As I explain below, these “concerns” arise out of the fact that MSH fails to comprehend the documents that have been produced and is not reviewing same in the context of redevelopment under the Former Base TIF Statute.

7. As an initial matter, it appears from its letter that MSH does not recognize that there are differences between the Standard TIF Statute and the Former Base TIF Statute. While the Standard TIF Statute may only allow for distributions of surplus funds, the distributions undertaken here were the annual distributions of the taxes arising from the Baseline Equalized Assessed Value of all taxable property in the district, as that term is defined in the Bond Ordinance, as permitted by S.C. Code Sections 31-12-210(B), 31-12-210(D)(14), and 31-12-300. In my letter to MSH, I have detailed the rationale and the procedures by which this distribution is made.

8. Further in regard to the “Community Development Expenditures,” paragraph number 1 of the MSH letter reflects that it has compared the City’s comprehensive annual financial report (“CAFR”) with a single page (Bates Number 10021) from a document prepared by the City for internal use for a specific one-time purpose and which was produced to Plaintiffs in discovery. This is neither a relevant document nor a pertinent comparison for purposes of an audit with respect to the City and RDA TIF as it does not compare the CAFR with the City’s general ledger – which explains why the MSH letter is inaccurate in its assertion that the CAFR has misstated the information. Moreover, even assuming that a comparison of the CAFR and the produced document was pertinent, MSH has not undertaken the effort needed to make the desired reconciliation. I have set forth in Exhibit A to my affidavit an explanation to MSH of how such a reconciliation may be made.

9. Also with respect to paragraph number 1 of the MSH letter, it bespeaks a lack of understanding by MSH of the Former Base TIF Statute and an apparent ignorance of the facts regarding the distributions described therein. As to the Former Base TIF Statute, it specifically allows for all or part of incremental tax revenues (“ITR”) to be used for debt service on projects. See Section 31-12-210(B). As explained in Exhibit A to my affidavit, the tax distributions to the District, the County and the City were not surplus distributions, but distributions of revenues arising from the Baseline Equalized Assessed Values as provided for in the 2006 bond ordinance adopted by the City after it first concurred in the RDA’s redevelopment plan as authorized under S.C. Code Sections 31-12-210 and 31-12-300. (See Bates Number 18812.) I have also set forth in Exhibit A to my affidavit an explanation to MSH of the facts which lead to this distribution – one which commenced in 2010 and from which the Plaintiffs have benefitted since on an annual basis without complaint. Rather than demonstrating the “kind of inconsistency [that] was one of

the core concerns underlying this lawsuit” that forms the basis of MSH’s understanding in this regard, this section of the MSH letter demonstrates to me that neither the Plaintiffs, their counsel, nor MSH, have bothered to familiarize themselves with the Former Base TIF Statute (either before or after the filing of this lawsuit) or with the documents already produced by the City in discovery.

10. In paragraph number 2 of its letter, MSH makes reference to an entry on a document produced by the City in discovery that references “Debt Service – 2012 Bonds” and which shows a \$1.161 Million transfer from what MSH refers to as the “TIF fund.” MSH then states that “[w]e are not aware of any 2012 bond issuance related to the TIF, nor can we find any included in the discovery information provided by the City.” MSH concludes from this that “it appears monies are being transferred out of the ‘TIF fund’ for the servicing of other City-related debt.” This is yet another instance where MSH has failed to review documents previously identified in discovery and demonstrates its lack of basic understanding of the Former Base TIF Statute. As to the former, the City’s response to Plaintiff’s Interrogatory Number 2(d) identifies a link on the City’s website where the City’s comprehensive annual financial reports (“CAFRs”), including that for fiscal year 2012, may be found. At page 67 of this document, there is a specific entry regarding the City’s issuance of a \$4,030,000 **general obligation** (“GO”) bond to finance the final phase construction of the multi-field complex at Grand Park.

<http://cms6.revize.com/revize/myrtlebeachsc/departments/docs/Comprehensive%20Annual%20Financial%20Report%20June%2030%202012.pdf>. Further, the multi-field complex at Grand Park is specifically identified as a redevelopment project Estimate 12 in the 2005 redevelopment plan issued by the RDA and concurred in by the City which have been produced to the plaintiffs in discovery. See, e.g., Bates page numbers 039764. The circumstances giving rise to the City’s decision to issue a GO bond – and thereby pledge its own full faith and credit toward further redevelopment of the former air base property – are fully explained to MSH in my letter attached

as Exhibit A to this affidavit. As to the latter, S.C. Code Section 31-12-80(A)(h) provides that the City may “do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment plan,” which under the circumstances included issuing GO debt to further a redevelopment project. Under the Former Base TIF Statute, the City is therefore entitled to recover this expense and MSH’s questions in this regard do not reveal any inconsistency which can form the basis for the plaintiffs’ “core concerns underlying this lawsuit” as MSH claims.

11. With regard to paragraph number 3 of the MSH letter, details regarding the manner in which the “breakout amounts” were determined as shown at Bates Page number 10022 are provided to MSH in my letter attached as Exhibit A to this affidavit. Although it is unclear, MSH’s comment on this point appears to be directed toward a suggestion that funds were set aside for the construction of a school but have now been used instead to fund a surplus distribution. That would be an incorrect suggestion for two reasons. First, the document produced was simply prepared by the City’s Director of Financial Management and Reporting for her own use following the institution of this lawsuit and do not represent assignment of funds to specific projects. In short, there are no “earmarks” of funds associated with this breakout of bank statement balances. Second, the author of the document has no authority to make any such earmarks and none exist.

[SIGNATURE AND NOTARIZATION ON FOLLOWING PAGE]

FURTHER THE AFFIANT SAYETH NAUGHT.

Michael W. Shelton
Michael W. Shelton

Sworn to and subscribed before me this
29th day of October, 2019.

Lisa L. Wallace
Notary Public for South Carolina

My Commission Expires: 7-19-2022
[NOTARIAL SEAL]



EXHIBIT A



City of Myrtle Beach
SOUTH CAROLINA

October 29, 2019

McAbee, Schwartz, Halliday & Co.
824 East Main Street
Spartanburg, South Carolina
29302

RE: "Forensic Audit" of the City of Myrtle Beach

Gentlemen:

I am writing to address various matters raised in your undated letter to the Honorable Carmen T. Mullen with respect to the above-referenced matter, which I understand was filed by counsel for the School District of Horry County ("District") and Horry County ("County") in Civil Action No. 2018-CP-26-07249. Please be advised that this letter is being filed with the Court in that lawsuit as an attachment to an affidavit I have given on this date on behalf of the Defendant City of Myrtle Beach ("City"), a copy of which is also attached for your reference.

After having read your letter to the Court, I am convinced that you have not reviewed the documents produced in discovery by the City to your clients and that you do not appreciate certain salient differences between the statute governing the City's conduct that is the subject of this lawsuit and a different statute governing the conduct of other governmental entities (including those that were parties in the Pickens County litigation referenced in your letter to the Court). I have addressed the shortcomings of your analysis in these regards in my affidavit. The purpose of this letter is to provide you with additional information which pertains to the background facts of which you appear unaware.

A. COMMUNITY DEVELOPMENT EXPENDITURES

With respect to the "Community Development Expenditures" referenced in paragraph number 1 of your letter to the Court, please be advised that the distributions to the District, County, and City are not surplus funds as characterized in your letter. These amounts are not and never have been pledged for debt service or redevelopment purposes. S.C. Code Section 31-12-210(b) expressly provides that not all incremental revenues are required to be pledged for bonds. The 2006 and 2016 Bond Ordinances provide for taxes arising from the "Baseline Equalized Assessed Value," (see definition section of bond ordinance at Bates page 18812) of which no funds are pledged, to be distributed to the taxing districts annually and these distributions have been made in every year since the adoption of the bond ordinance. See Sec. 8.2 of the referenced bond ordinances at pages 18835 and 22900. The facts underlying these distributions are as follows:

1. The Horry County Auditor established the Initial Equalized Assessed Value to be in the amount of \$15,600 as of September 30, 1994. (See Bates pages 23938-23942 regarding the certification of this and the Baseline Equalized Assessed Values.)
2. Approximately 12 years passed between the creation of the Myrtle Beach Air Force Base Redevelopment Project Area and the City's initial concurrence in the Redevelopment Plan, as amended, under SC Code Sec.31-12-280. In that interim period between 1993 and 2005, much of the AFB property had been transferred into private hands and, although significant parts of it were still raw land, property values

on these properties had grown such that local governments, including the District, County and City, were receiving approximately \$1 Million per year in ad valorem tax revenues.

3. As of January 1, 2004, the County Auditor certified the Total Equalized Assessed Value of all taxable real property within the Redevelopment Project Area as \$4,247,212.
4. As permitted by the S.C. Code Sections 31-12-210(B), 31-12-210(D)(14) and 31-12-300, and as required by the City's AFB TIF Bond Ordinances, the taxes arising from the "Baseline Equalized Assessed Value" of the properties at their January 2004 levels, are distributed annually to the taxing districts. This allows incremental values, and therefore the incremental tax revenues, to be measured from and after January 2004 and thereby preserves for the District, County and City the ad valorem property tax revenues they were already receiving.
5. To facilitate this aspect of the 2005 bond ordinance, the following procedure was adopted:
 - The County Treasurer withholds and distributes ad valorem property taxes collected on properties within the Redevelopment District based upon the Initial Equalized Assessed Value of \$15,600, and the remaining funds go into the Special Tax Allocation Fund ("STAF").
 - Each year, the City processes a distribution of taxes equaling revenue generated by the Baseline Equalized Assessed Value and instructs the Trustee of the STAF to make that distribution.
 - The baseline distribution to the County and School District is classified as Community Development expenditure in the CAFR. The City's share of the baseline distribution is not an expenditure but an interfund transfer in the CAFR, as the City is the custodian of the Fund, operating through a Trustee.

This is a procedure which is spelled out in Section 1.1 and in Section 8.2 of the 2006 Bond Ordinance (Bates page number 18812 and 18835) and which your clients have participated in and benefitted from since 2006. It is surprising to me that they would not have made you aware of same. Further, had the underlying accounting records and the 2006 Bond Ordinance been reviewed by you prior to the submission of your letter to the Court, MSH would have known that there is no issue with the accuracy of the descriptions about which you have expressed concern to the Court. They are correctly labeled as distributions to the various taxing districts, but are distributions of taxes arising from the Baseline Equalized Assessed Value and not as the result of a declared surplus.

B. DEBT SERVICE – 2012 BONDS

As explained in my affidavit to the Court, the bond issue about which you have questions is not a TIF bond, but a general obligation (“GO”) bond. The heading “Transfers (Capital)” refers to the transfer of an allocable share of 2012 Debt Service related to the Grand Park project, a planned Redevelopment Project set out in the 2005 Plan Amendment (see Bates Page numbers 39915-39917, referencing Construction of multi-sport athletic complex and Alternative Recreational Facilities). Construction funds from that GO bond issue were used to continue work on that project at a time when the TIF revenues were insufficient to leverage another TIF issue. So, the reality is that the City used its own full faith and credit and its own GO debt capacity to ensure that this redevelopment project could continue. The statute, specifically S.C.

Code Section 31-12-80(h), clearly allows the City to use legal means, such as the issuance of its General Obligation bonds, to accomplish the purposes of the redevelopment plan.

Once TIF revenues became available in amounts sufficient to support the debt service attributable to the project, the City began to recover that amount of debt service from incremental revenues. Your statements in this regard fail to recognize that tax increment revenue can be used to support an approved project under the redevelopment plan and the suggestion that the City might be using incremental revenue outside the intent of the statute and the redevelopment plan is therefore incorrect.

C. CASH ON HAND

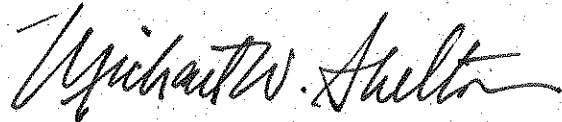
As I indicated in my affidavit to the Court, an explanation of the breakout of cash on hand shown on Bates page number 10022 is as follows:

- “2016 Construction” is the author’s shorthand title for the Capital Projects Fund established under the 2016 Bond Ordinance (Bates page number 18835) and is money available for future debt retirement or construction of approved redevelopment projects. See the bank statement provided at Bates page 10028, which agrees with the amount listed beside this title.
- “2016 Debt Service Reserve Fund” is the amount in the 2016 Debt Service Reserve Account as of 6/30/2019. See the bank statement at Bates page 10027.
- “2016 Special Allocation” is the \$9.9 million collected in the Special Tax Allocation Fund under the 2016 Bond Ordinance and shown on the bank statement at Bates page 10026. (It has now been used, per the bond ordinance, to pay the October 2016 Debt service payment, and the remainder has been moved into the 2016 Capital Project account. The Baseline Distribution for this year will be made from that account shortly.)

Accordingly, at June 30, the \$13.6 million was all that was in any way earmarked for capital projects and it was not earmarked for specific projects but for any projects approved in the

Redevelopment Plan as amended through 2018. Further, all of the 2016 headings relate to amounts we are monitoring administratively under the 2016 Bonds Ordinance. Prior to the 2016 Bond Ordinance, everything was labeled as 2006 accounts because they related to the 2006 Bond issue.

I believe that the foregoing information fully explains the matters referenced in my affidavit to the Court. I am happy to answer any questions that you may have and you may contact me at my number shown herein.



Michael W. Shelton