



City of Charleston
South Carolina
Department of Public Service

JOHN J. TECKLENBURG
Mayor

THOMAS F. O'BRIEN
Director
of Public Service

**PUBLIC WORKS AND UTILITIES COMMITTEE
AGENDA**

There will be a meeting of the Public Works and Utilities Committee on Monday, February 8, 2021 to begin at 4:30 pm. The following items will be heard via call-in number 1-929-205-6099 and access code 592 385 519:

A. Invocation

B. Approval of Public Works and Utilities Committee Minutes

October 12, 2020

October 26, 2020

January 11, 2021 – Deferred

January 25, 2021 – Deferred

C. Request to Set a Public Hearing

None

D. Old Business

None

E. Acceptance and Dedication of Rights-of-Way and Easements

None

**F. Temporary Encroachments Approved by The Department of Public Service
(For information only)**

1. **113 Integrity Ln.** - Installing 3 irrigation sprinkler heads encroaching in the City right-of-way. This encroachment is temporary. **Approved January 29, 2021**
2. **117 Falaise St.** - Installing 4 irrigation sprinkler heads encroaching in the City right-of-way. This encroachment is temporary. **Approved January 29, 2021**
3. **117 Integrity Ln.** - Installing 3 irrigation sprinkler heads encroaching in the City right-of-way. This encroachment is temporary. **Approved January 29, 2021**
4. **535 Merrywood Rd.** - Installing 6ft wood fence encroaching in City drainage easement. This encroachment is temporary. **Approved January 29, 2021**
5. **1012 Harriman Ln.** - Installing 4 irrigation sprinkler heads encroaching in the City right-of-way. This encroachment is temporary. **Approved January 29, 2021**
6. **1016 Harriman Ln.** - Installing 5 irrigation sprinkler heads encroaching in the City right-of-way. This encroachment is temporary. **Approved January 29, 2021**
7. **1040 Harriman Ln.** - Installing 4 irrigation sprinkler heads encroaching in the City right-of-way. This encroachment is temporary. **Approved January 29, 2021**
8. **1182 Elliotts Cut Dr.** - Installing 4 irrigation sprinkler heads encroaching in the City right-of-way. This encroachment is temporary. **Approved January 29, 2021**
9. **1443 River Cotton Rd.** - Installing 4 irrigation sprinkler heads encroaching in the City right-of-way. This encroachment is temporary. **Approved January 29, 2021**
10. **2799 McFadden Way** - Installing 4ft aluminum fence encroaching in City drainage easement. This encroachment is temporary. **Approved January 29, 2021**

G. Public Service Department Update

Presentation on new tablet systems being used by Environmental Services.

H. Stormwater Management Department Update

1. Low Battery Phase 2 – Approval of a Memorandum of Agreement with CPW for in-contract utility work on the Low Battery Seawall Repairs Phase II project.
2. Stormwater Project Updates
3. West Edge Area Drainage and Northern Peninsula Rehabilitation Updates (Requested by CMs Sakran and Gregorie)

Councilmember Keith Waring,
Chairperson

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) Interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to schumacherj@charleston-sc.gov three business days prior to the meeting.

**MEMORANDUM OF AGREEMENT
REGARDING IN-CONTRACT UTILITY WORK FOR THE MURRAY BOULEVARD
AND LOW BATTERY SEAWALL RECONSTRUCTION PROJECT**

This Memorandum of Agreement (this “MOA” or “Agreement”) is made by and between the Commissioners of Public Works of the City of Charleston, South Carolina, d/b/a Charleston Water System (“CWS”), and the City of Charleston, a South Carolina municipality (the “City”).

RECITALS

WHEREAS, in 2015, the City began the process of assessing the condition of the Low Battery Seawall (the “Seawall”) and obtaining a recommended course of action to rehabilitate the Seawall;

WHEREAS, in addition to the rehabilitation of the Seawall, it was determined that the entire corridor along Murray Boulevard should be reconstructed to improve drainage conveyance, parking, pedestrian safety, and public access;

WHEREAS, the City has completed construction documents for the repair and reconstruction of the Seawall from approximately Station 8+50 to Station 19+50, along with the Murray Boulevard roadway, utility, and drainage reconstruction with associated streetscape elements (the “Project”) and is in the process of finalizing civil and environmental permits to initiate the work for the second phase of the Project, running along Murray Boulevard, adjacent to the Ashley River, on the western edge of the peninsula of Charleston, South Carolina, starting east of the intersection of Ashley Avenue and Murray Boulevard and extending approximately 1,100 linear feet along Murray Boulevard to a point just past the intersection of Murray Boulevard and Council Street (“Phase 2”);

WHEREAS, the City is in the process of awarding a bid to the apparent low-bid contractor for Phase 2;

WHEREAS, CWS and the City desire that numerous lateral and longitudinal water and sanitary sewer conflicts between proposed drainage infrastructure be relocated and that existing sanitary gravity sewer and water main infrastructure within Murray Boulevard associated with Phase 2 and planned future phases of the Project be replaced, with the work to be performed by subcontractors approved by CPW under the supervision of the contractor to be selected by the City for the Project or any phase thereof (the “Contractor”);

WHEREAS, CWS and the City are bodies politic, with all the rights and privileges of such bodies, including the power to contract as necessary and incidental to the carrying out of the functions covered under this Agreement;

WHEREAS, CWS and the City agree to coordinate and cooperate with respect to the Project, including without limitation all phases of the Project;

Agreement for In-Contract Utility Work

NOW THEREFORE, in consideration of the above Recitals, and the several promises set forth herein to be faithfully performed by the parties hereto, the sufficiency of which is hereby acknowledged, CWS and the City agree as follows:

I. DESCRIPTION OF THE UTILITY WORK:

The scope of work under this Agreement shall include the relocation of lateral and longitudinal water and sanitary sewer conflicts and the replacement of existing sanitary gravity sewer and water main infrastructure within Murray Boulevard (the "Utility Work"), as shown in the construction plans associated with the Project (the "Plans"). The parties acknowledge that they have had the opportunity to review and have reviewed the Plans prior to executing this Agreement.

II. SCHEDULE:

This Agreement will become effective when all parties have signed it, as indicated by the date associated with each party's signature. The City shall include the Utility Work in the construction schedule for each phase of the Project, including but not limited to Phase 2. The sequence and timing of the Utility Work within each phase of the Project will be determined by the Contractor. The City reserves the right to amend the construction schedule for each phase of the Project in the City's sole discretion. The City will provide reasonable notification to CWS of changes to the construction schedule for each phase of the Project.

III. THE CITY SHALL:

- a. Include the Utility Work in the contract documents for the construction of each phase of the Project, including but not limited to Phase 2.
- b. Include a provision in the contract documents for each phase of the Project that the Contractor shall utilize only subcontractors who have been approved by CWS to perform the Utility Work.
- c. Provide to CWS timely notice concerning Project design changes, changes in schedules, routine communications, or any other activities that may impact the Utility Work.
- d. Include CWS in all Pre-Bid, Pre-Construction and recurring progress meetings to the extent any such meetings pertain to the Utility Work.
- e. Provide reasonable access to the Project site for CWS to inspect the Utility Work.
- f. Allow CWS to review pay requests from the Contractor relating to the Utility Work prior to payment and allow CWS to review any change orders which affect the cost of the Utility Work.
- g. Require the Contractor to coordinate with other utility providers occupying the Project site to ensure that the Utility Work is compatible with the relocation or other plans of any such providers.

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IV. CWS SHALL:

- a. Provide to the City a copy of CWS's standard technical specifications for the Utility Work. CWS represents that such specifications will be complete, comply with applicable standards and codes, and will be ready for construction. The City shall include these technical specifications in the contract documents for each phase of the Project, including but not limited to Phase 2.
- b. Provide to the City a list of approved utility subcontractors licensed and qualified to perform the Utility Work.
- c. Promptly inspect or have inspected all Utility Work necessary to ensure proper installation in accordance with the Plans and specifications.
- d. Promptly accept any Utility Work upon completion satisfactory to CWS specification and standards.
- e. Promptly provide assistance with respect to issues arising during construction, to the extent such issues arise from or relate to the Utility Work.
- f. Promptly review and recommend approval (if appropriate) of all pay requests from the Contractor related to the Utility Work prior to payment and prior to approval of any change orders that affect the cost of the Utility Work.
- g. Obtain all necessary permits, including but not limited to encroachment permits from the South Carolina Department of Transportation, as required for the Utility Work, except such permits that have already been applied for by the City, as of the Effective Date.
- h. Retain non-prior rights designation as stated in any SCDOT encroachment permits for the Project and abide by all provisions included in such encroachment permits.
- i. Remove and dispose of, or otherwise handle in a manner approved by the City, any salvaged material (e.g., pipes, fittings, etc.) not incorporated into the Utility Work.
- j. Provide a full-time CWS construction representative for the duration of the Project with respect to construction activities arising from or relating to the Utility Work.

V. FUNDING:

- a. The City and CWS understand that the total cost of the Utility Work for each phase of the Project will be based upon estimates of probable construction costs prepared by the City's engineer for the Project just prior to bidding for each phase.
- b. CWS shall provide funds to the City for 100% of the costs of all construction items associated with the Utility Work; provided, however, prior to the City soliciting bids under

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the construction contract documents for any phase of the Project, CWS shall have consented to the estimate of probable construction costs prepared by the City's engineer. CWS shall remit payment to the City in the amount equal to the Contactor's pay request for the Utility Work accepted by CWS. Such payment to the City shall be made within thirty (30) calendar days of receipt by CWS of the Contactor's invoice for payment. If CWS does not approve any portion of the Utility Work or any pay request, the reasons therefore must be clearly stated in writing delivered to the City along with corrective recommendations. In case of any unresolved disputes, CWS will provide all reasonable assistance in resolution of such disputes, including, but not limited to legal support, technical support, documentation and financial support (including, but not limited to the payment of any and all fees, costs, losses, demands or other pecuniary liability which is either adjudicated or agreed upon to resolve the dispute).

- c. The City will be responsible for all engineering and design services costs associated with preparation of the Plans and specifications for the Utility Work, including bidding, awarding, and overall management and construction administration of the Project. All other actual costs associated with the Utility Work (e.g., right-of-way acquisitions, construction inspection, etc.) will be the responsibility of CWS.
- d. The City will provide CWS the opportunity to review any cost increase of the Utility Work resulting from a change in the scope of the Utility Work or a change in the Project that impacts the Utility Work prior to approval of such changes. Should the total construction price for the Utility Work exceed the amount of the accepted bid for any phase, the City will provide CWS the opportunity to seek approval from its Commissioners prior to approving the increased cost. If CWS does not concur with the increased cost, the City will remove the changed portion of the Utility Work from the scope set forth in the contract documents for the Project, and CWS will be expected to perform or have performed all such work in a timely manner so as to not affect the cost, phasing or schedule of the Project or any phase thereof.

VI. GENERAL:

- a. Upon CWS's acceptance of the Utility Work, or any specific portion thereof, CWS will assume sole and complete responsibility for such facilities, and CWS shall receive the benefit of all warranties and contractual rights as the owner of such facilities. For purposes of this Agreement, CWS will be considered to have accepted the Utility Work, or any specific portion thereof, by (1) assuming control of the Utility Work; (2) commencing to utilize the Utility Work; or (3) accepting the Utility Work in writing.
- b. All notices or other communications under this Agreement shall be sufficiently given and shall be given when delivered in person, or mailed by certified mail, return receipt requested, postage prepaid, addressed as follows, or to such other places may be designed in writing by the parties:

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AS TO THE CITY:

Matt Fountain, PE, PG
City of Charleston
Department of Stormwater Management
2 George Street, Suite 2100
Charleston, SC 29401

AS TO CWS:

Donald E. Benjamin, Jr., PE
Charleston Water System
Director of Engineering & Construction
103 St. Philip Street
Charleston, SC 29403

- c. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of South Carolina.
- d. Entire Understanding. This Agreement embodies the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written or otherwise, relating to thereto; provided, however, this Agreement shall not be interpreted to supersede or amend any previous written agreements between the parties unless (1) any such previous written agreement is completely inconsistent with the terms of this Agreement; or (2) expressly provided in this Agreement.
- e. Amendment. This Agreement may be amended only by a written instrument executed by the parties. An implied amendment, modification, or repeal of this Agreement shall not be presumed by a merger or integration clause in a subsequent written agreement between the parties unless this Agreement is expressly referenced as being amended, modified or repealed in the subsequent written agreement or the pertinent provisions of the subsequent written agreement would be completely inconsistent with pertinent provisions of this Agreement, in which case the pertinent provisions of the subsequent written agreement shall control, but the remainder of this Agreement shall remain in full force and effect.
- f. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.
- g. No Third Party Rights. Notwithstanding any other provision of this Agreement, this Agreement shall not be construed to create any rights enforceable by the general public or others who are not parties to this Agreement. This Agreement does not confer any new right, title, or interest in private property, property owned by the City, City rights-of-way, or the property of CWS to the City or to CWS.
- h. Forum Selection. Any action or proceeding to enforce or interpret this Agreement and any action or proceeding arising from or relating to this Agreement or its breach shall be

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brought exclusively in the federal or state courts located in Charleston County, South Carolina, and the parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

- i. Recitals. The Recitals are an integral part of this Agreement.
- j. Appropriations. Notwithstanding any other provision of this Agreement, any appropriations for the Project or any phase thereof must be approved by City Council, and City Council shall have sole discretion as to whether or not to appropriate funds toward the Project or any phase thereof. Likewise, any appropriations for the Utility Work for the Project or any portion thereof must be approved by CWS, and CWS shall have sole discretion as to whether or not to appropriate funds toward the Utility Work; provided, however, the City shall not assume any responsibility for any Utility Work which is not funded by CWS. Nothing in this Agreement obligates City Council to approve the Project or any phase thereof. Nothing in this Agreement obligates the CWS Board of Commissioners to approve the Utility Work.

IN WITNESS WHEREOF, the parties have caused these presents to be executed on the date indicated below.

WITNESSES:
SOUTH CAROLINA

CITY OF CHARLESTON,

Print Name:

By: _____
Print Name: John J. Tecklenburg
Its: Mayor
Date: _____, 2021

Print Name:

WITNESSES:

COMMISSIONERS OF PUBLIC WORKS
OF THE CITY OF CHARLESTON,
SOUTH CAROLINA, d/b/a Charleston
Water System

Print Name:

By: _____
Name: F.K. Hill, Jr., PE
Title: Chief Executive Officer
Date: _____, 2021

Print Name:

[END OF DOCUMENT]