AMENDED

NOTICE OF MEETING

A meeting of the Committee on Real Estate will be held beginning at 3:30 p.m. Monday, June 14, 2021, Conference Call: 1-929-205-6099; Access Code: 835 678 884. The agenda will be as follows:

AGENDA

Invocation – Councilmember Shahid

Approval of Minutes:

May 24, 2021

a. An ordinance to authorize the Mayor to execute a General Agreement between the U.S. Department of Interior; National Park Service; Fort Sumter and Fort Moultrie National Historic Parks; The South Carolina Aquarium and City of Charleston Department of Parks for Joint Operations at Liberty Square. (Liberty Square/Aquarium Site). The property is owned by the City of Charleston. [Ordinance]

b. Request for approval authorizing the Mayor to execute on behalf of the City an easement to Dominion Energy in order to construct, extend, replace, relocate, perpetually maintain and operate an overhead or underground electric line or lines consisting of any or all of the following: poles, conductors, lightning protective wires, municipal, public or private communication lines, cables, conduits, pad mounted transformers, guys, push braces and other accessory apparatus and equipment deemed by Grantee to be necessary or desirable, upon, over, across, through and under land described as follows: a lot of land containing 4.42 acres, more or less, and being the same lands conveyed to Grantor by deed of 1776, LLC, dated and recorded 6/11/2020, and filed in the Register of Deeds office for Charleston County in Deed Book 0889 at Page 478. The property is owned by City of Charleston. (River Road and Maybank Highway) (TMS No. 346-00-00-813)

c. Request for approval authorizing the Mayor to execute on the behalf of City an easement to Dominion Energy in order to construct, extend, replace, relocate, perpetually maintain and operate an overhead or underground electric line or lines consisting of any or all of the
following: poles, conductors, lightning protective wires, municipal, public or private
communication lines, cables, conduits, pad mounted transformers, guys, push braces and
other accessory apparatus and equipment deemed by Grantee to be necessary or desirable,
upon, over, across, through and under land described as follows: a tract of land containing
11.73 acres, more or less, and being the same lands conveyed to Grantor by deed of 1776,
LLC, dated or recorded 6/11/2020, and filed in the Register of Deeds office for Charleston
County in Deed Book 0889 at Page 475. The property is owned by the City of Charleston.
(River Road and Maybank Highway) (TMS No. 346-00-00-04)

d. Request approval for the Mayor to execute a Memorandum of Understanding with Transdev
Services, Inc. regarding non-exclusive use of a parking lot for CARTA driver training
purposes. The property is owned by the City of Charleston. (14 Sumar Street Parking Lot)

e. Request authorization for the Mayor to execute a Temporary Access Agreement between the
City of Charleston and GMS Cannon, LLC, granting the City access to 144 and 146 Cannon
St. as a temporary construction easement and laydown area to facilitate portion(s) of the
Spring/Fishburne stormwater project. The property is owned by GMS Cannon, LLC. (144
Cannon St. and 146 Cannon St.) (TMS Nos. 460-11-04-150 and 460-11-04-151)

f. Request authorization for the Mayor to execute the attached Easement Agreement between
the City of Charleston and the Charleston Area Regional Transportation Authority (CARTA)
for the installation and maintenance of a bus bench. The property is owned by the City of
Charleston. (44 America St.) (TMS No. 459-09-04-025)

g. Request that the City of Charleston City Council authorize the Mayor to execute the necessary
documents for the City’s acceptance of 1.1 acres of donated land on Heriot Street from HR
Charleston VI, LLC, in exchange for 48 housing credits. The property will be used for the
development of rental workforce or for sale (homeownership) housing. (2112-2114 Heriot
Street, Charleston, SC 29401) (TMS Nos. 464-13-00-008, 464-13-00-011, 464-13-00-012,
464-13-00-013, and 464-13-00-023) [Ordinance]

h. Consider the following annexations:

(i) 1351 Ashley River Road (0.25 acre) (TMS# 418-05-00-001), West Ashley, (District 7).
The property is owned by Shubh Labh of Charleston, LLC.

(ii) 1349 Ashley River Road (0.28 acre) (TMS# 418-05-00-002), West Ashley, (District 7).
The property is owned by Graphic Glamour Holdings LLC.

(iii) 420 Arlington Drive (0.25 acre) (TMS# 310-12-00-083), West Ashley, (District 5). The
property is owned by Olivia L. Vedad.

(iv) 2147 and 2151 River Road (4.78 acres) (TMS# 315-00-00-110; 315-00-00-048),
Johns Island, (District 5). The property is owned by Abbi Lake Beckford.
i. Request approval for the Mayor to execute a Memorandum of Understanding with Middle Street Partners regarding the continued use of an area under the I-26 overpass for construction storage

j. Executive Session pursuant to Section 30-4-70(a)(2) of the South Carolina Code, to discuss contractual negotiations for the purchase of a Greenbelt grant property

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.
COMMITTEE ON REAL ESTATE
GENERAL FORM

TO: Committee on Real Estate

DATE: June 3, 2021

FROM: Julia Copeland

DEPT: Legal

ADDRESS: Liberty Square/Aquarium Site

TMS: N/A

PROPERTY OWNER: City of Charleston

Ordinance to authorize Mayor to execute General Agreement between U.S. Dept. of Interior; National Park Service; Fort Sumter and Fort Moultrie National Historical Parks; The South Carolina Aquarium and City of Charleston

ACTION REQUEST: Department of Parks for Joint Operations at Liberty Square.

ORDINANCE: is an ordinance required? Yes ☒ No ☐

COORDINATION: The request has been coordinated with:

All supporting documentation must be included

Department Head

Legal Department

Chief Financial Officer

Director Real Estate Management

Signature

Attachments ☐ ☒

FUNDING: Was funding needed? Yes ☐ No ☒

If yes, was funding previously approved?* Yes ☐ No ☒

*If approved, provide the following:

Dept/Div. Acct:

Balance in Account Amount needed for this item

NEED: Identify any critical time constraint(s). N/A
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THE GENERAL AGREEMENT BETWEEN UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, FORT SUMTER AND FORT MOULTRIE NATIONAL HISTORICAL PARKS; THE SOUTH CAROLINA AQUARIUM; AND CITY OF CHARLESTON DEPARTMENT OF PARKS FOR JOINT OPERATIONS AT LIBERTY SQUARE.

THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL MEMBERS IN CITYCOUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute the necessary documents to enter into the General Agreement between United States Department of the Interior, National Park Service, Fort Sumter and Fort Moultrie National Historical Park; the South Carolina Aquarium, and City of Charleston Department of Parks for Joint Operations at Liberty Square.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of June in the year of Our Lord, 2021, in the ____ Year of the Independence of the United States of America.

John J. Tecklenburg, Mayor
City of Charleston

ATTEST:

Jennifer Cook
Clerk of Council
GENERAL AGREEMENT Between
UNITED STATES DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, FORT SUMTER AND
FORT MOULTRIE NATIONAL HISTORICAL PARK;
THE SOUTH CAROLINA AQUARIUM; and
CITY OF CHARLESTON DEPARTMENT OF PARKS
For
JOINT OPERATIONS AT LIBERTY SQUARE

ARTICLE 1: BACKGROUND AND OBJECTIVES

THIS AGREEMENT hereinafter referred to as the GA is hereby entered into this April 20, 2021, by and between the U.S. Department of the Interior, National Park Service (hereinafter referred to as the “NPS”), South Carolina Aquarium, a non-profit corporation organized and doing business under the laws of the state of South Carolina (hereinafter referred to as the “Aquarium”), and the City of Charleston Department of Parks (hereinafter referred to as the “City”), covering certain operational and maintenance activities within Liberty Square in Charleston, SC. Collectively, the above-mentioned may be referred to herein as the “Parties.”

WHEREAS, Fort Sumter and Fort Moultrie National Historical Park (hereinafter referred to as the “Park”), was established as a unit of the National Park System in accordance with the provisions of the Act of April 28, 1948, 62 Stat. 204, 16 U.S.C. Section 450ee, et seq. and Public Law 116-9 of March 12, 2019; and

WHEREAS, the Park receives multiple benefits, which are consistent with the intent of Congress when authorizing said Park as a part of the National Park System, as a direct result of the successful relationship between NPS, the City and the Aquarium; and

WHEREAS, the NPS, through the Secretary of the Interior as the Landlord, by virtue of an Act of Congress, 99-637, has been granted authority to enter into agreements with parties as the Secretary may deem necessary, pursuant to which construction, maintenance, and use of buildings, utilities, parking facilities, and other improvements may be shared among the parties to the agreement; and

WHEREAS, Public law 99-637 authorizes the NPS, through a separate agreement, to convey a leasehold interest not to exceed one and one-half acres to the State of South Carolina or City of Charleston for development of a public marine museum/aquarium and associated facilities; and

WHEREAS, on or about March 20, 1991, NPS, City, and others did enter into a Memorandum of Understanding regarding the development, construction, operation, and
maintenance of certain facilities on the Dockside II Site (subsequently renamed Liberty Square), to set forth rights and responsibilities of all Parties regarding said development, operation and maintenance of the Park facilities, the Aquarium and Liberty Square; and

WHEREAS, the City leases from NPS all that real property located at 100 Aquarium Wharf, in the City and County of Charleston, State of South Carolina, more commonly known as the South Carolina Aquarium; and

WHEREAS, the City and NPS subsequently entered into agreements regarding the construction of the Park facilities and Aquarium and the construction of Septima Clark Fountain, which are attached hereto as Exhibit A and incorporated into this GA; and

WHEREAS, the City entered into a sublease agreement with the Aquarium on May 21st 1997, detailing maintenance requirements of both parties, followed by a First Amended Sublease dated May 23, 2000, regarding the use of one food service truck, and a Second Amended Sublease dated September 24, 2002, regarding the construction and maintenance of Septima Clark Fountain, Third Amended Sublease dated May 27, 2014, regarding the use of one food service truck, and Fourth Amended Sublease dated February 24, 2015, regarding the use of one food service truck, all of which are attached hereto as Exhibit B and incorporated into this GA; and

WHEREAS, the Parties desire to consolidate all rights and responsibilities dictated in the prior agreement relating to the operation and maintenance of the Aquarium and Park; and

WHEREAS, nothing in this GA shall affect or interfere with fulfillment of the obligations or exercise of the authority of the NPS or any other Federal agency; and

WHEREAS, the NPS wishes to encourage the continued collaborative relationship between the Aquarium, City, and Park which provides a benefit to the public and believes the GA in order to ensure the success of the Aquarium and Park; and

WHEREAS, the Aquarium has the authority under the by-laws of the South Carolina Aquarium adopted January 9, 1993 to enter into such agreements.

NOW THEREFORE, in consideration of the mutual agreements herein set forth and other good and valuable consideration, the receipt of which is hereby acknowledged, the NPS, Aquarium, and City covenant and agree, on behalf of themselves, their heirs, successors and assigns, as follows.

ARTICLE II: STATEMENT OF WORK

A. General Provisions
1. Liberty Square includes all parklands beyond the property leased to the City of Charleston for the Aquarium, generally bounded by Concord Street to the west, the north curb of Aquarium Drive to the north, the Cooper River shoreline to the east, and Dockside Condominiums property line to the south, as more particularly described in the attached Exhibit C, which is attached hereto and incorporated by reference.

2. The Park, Aquarium, and City intend to support the shared goals to preserve natural, cultural, and historic resources, directly and indirectly through public education and interpretation, and provide for the enjoyment and participation of visitors to Liberty Square, the Aquarium and to the Park.

3. All activities performed under this GA will be accomplished in conformance with current Federal and State law, regulation, NPS Management Policies, approved Park General Management Plan and Foundation Document, other Park specific plans; along with City policy, regulation, and ordinances; and with the NPS Lease to the City for the maintenance and operation of the Aquarium and subsequent Sub-leases described herein.

4. Security shall be provided by the Aquarium for all Aquarium-sponsored activities when Liberty Square is used under the terms of this GA and shall conduct its event in conformance with City Ordinances. At no time will Aquarium visitors be allowed to enter into any closed Park area within Liberty Square.

5. Aquarium personnel and agents of the City shall have the right to interact with, educate and regulate any visitor using Liberty Square as outlined in City ordinances 6.36 CFR sections 1-5. In any event where violations are not satisfactorily resolved by Aquarium personnel or agent of the City with a verbal warning in the initial contact, the event shall be reported to the NPS Chief Ranger and to the City Police Department for enforcement.

6. Aquarium visitation shall be consistently reported to the Park Chief of Interpretation by the 4th of each month for the preceding month. This report shall include the number of visitors entering the Aquarium as well as any estimates for the number of visitors entering Liberty Square for special events. NPS will use these figures to estimate the visitation to Liberty Square.

7. Conducting visitor surveys on NPS property is strictly regulated by federal law and policy. The Aquarium or City may not conduct any visitor survey within Liberty Square. However, they may conduct visitor surveys of patrons within the Aquarium building.

B. Routine Operations
1. Queuing for the Aquarium shall be confined to areas within the shade shelters and under the Aquarium entry canopy or along the promenade to Aquarium Wharf. The amphitheater (the area located just north of the Septima Clark Fountain with low retaining wall seating) may be used for queuing visitors to the Aquarium during holiday weekends or special events with the concurrence and prior approval of the NPS. Temporary shade canopies may be used in the amphitheater only in conjunction with the use of the amphitheater as a queuing area. If canopies are utilized, the specific details of installation and length of use will be coordinated with NPS. No commercial advertisement may be placed on the canopy.

2. Regularly occurring sale or disbursement of food and/or beverages within Liberty Square is not permitted unless pre-approved by the Park. The utilization of food trucks or similar food service for short term or special events may be considered on a case-by-case basis. All such proposals will require review and permitting through a NPS Special Use Permit, Temporary Food Event permit, or Commercial Use Authorization approved by the Superintendent of Fort Sumter and Fort Moultrie National Historical Park (hereinafter referred to as the “Superintendent”)

3. Direct solicitation, the collection of money from activities such as selling memberships, the selling of merchandise, or similar commercial activity within Liberty Square is prohibited. Commercial activity is restricted to the interior of the Aquarium and NPS Visitor Center. Exceptions for special events, is allowed by NPS policy and regulation. All such proposals will require review and permitting through a NPS Commercial Use Authorization approved on a case-by-case basis by the Superintendent.

4. Deliveries to the Aquarium shall be made along Aquarium Drive. At no time will any employees, commercial, public or rental vehicles be allowed within Liberty Square except along Aquarium Drive. No stopping, standing, or parking will be permitted along Aquarium Drive. Temporary parking along Aquarium Drive may be extended to Special Use Permit holders for setup and take down purposes only, as long as it does not interfere with Aquarium or Park operations. Under no circumstances shall vehicles be abandoned or left overnight along Aquarium Drive.

5. No extended parking, standing or abandonment of vehicles along Gadsden’s Wharf Drive will be permitted. Short-term parking may be permitted by service vehicles or staff as needed on an occasional basis along the road shoulder, but not in the cul-de-sac.

6. The Aquarium may, on occasion, provide free golf cart type shuttle operations for those visitors needing help in reaching facilities in Liberty Square. These shuttles shall be conducted in a manner that is approved by the Park to minimize any impact to visitors to the site. No more than two shuttles shall be operated at any given time within Liberty Square. Shuttle may not go past the area of the NPS Visitor Center elevator toward the dock due to the general congestion in that area. The NPS will provide wheelchair assistance for visitors needing access to the dock or waterfront beyond that point. Visitors shall be picked up promptly and safely transported to the front of each building as appropriate.
7. The Park, to the extent practicable, agrees to arrange for and conduct tours, interpretive events and inspections for individuals or groups on official business for the Aquarium or City provided that such activities shall not, in the judgement of the Park, unduly infringe upon or detract from normal visitor activities and services to the Park. The Aquarium or City shall request such tours and other events through the Superintendent. The Superintendent shall have the final decision as to such arrangements.

8. The Aquarium, to the extent practicable, agrees to arrange for and conduct tours, for individuals or groups on official business at the request of the NPS or City provided that such activities shall not, in the judgement of the Aquarium, unduly infringe upon or detract from normal visitor activities and services to the Aquarium. The NPS or City shall request such tours and other events through the Executive Director, South Carolina Aquarium, in advance. The Executive Director shall have the final decision as to such arrangements.

C. Signs / Site Furnishings

1. Notwithstanding all uniform signage responsibilities of NPS detailed in the 1991 Memorandum of Agreement, all subsequent signs within Liberty Square must conform with NPS wayside exhibits and signage standards and regulations and be approved by the Park. Additionally, signage may also need approval from the City Architectural Review Board. Pursuant to NPS policy and regulation, commercial notices or advertisements generally cannot be displayed, posted, or distributed on federally-owned or controlled park lands unless approved by the Superintendent. All temporary signage for promotions or special events, including but not limited to signs with commercial sponsorship, will be timely reviewed on a case-by-case basis by the Superintendent.

2. The Aquarium staff shall assist the NPS and the City of Charleston in maintaining the on street directional sign program that will conform to the sign system currently in place for the Aquarium. Guidelines for this directional sign program area located in section 15 of the Aquarium lease and in Article 4, Section 5 of the Memorandum of Understanding between the City and the NPS.

3. The Aquarium or City may not construct any structures, buildings, landscape features, or other structures in Liberty Square, or otherwise make alterations to the landscaping, without written permission from the Superintendent.

4. Site amenities will conform with the NPS landscape plan for Liberty Square. No amenities will be added to the Liberty Square without Superintendent approval.

D. Special Use Permits / Events and Activities

1. All activities not specifically included in this GA shall require Park review and approval through the issuance of a Special Use Permit. A written application is required and must be received at least two weeks in advance of the planned event or activity. Events that include
a request to sell or disburse food and beverage must be submitted at least 45 days in advance to allow for required regional NPS and Public Health Service review. The Aquarium or City shall apply for, and abide by, the terms and conditions of a Special Use Permit for each such event it proposes to conduct in Liberty Square, unless the activity is authorized specifically in this GA. The Superintendent shall have the final authority over the granting of such permits.

2. Activities proposed for Liberty Square by outside organizations require a Special Use Permit. Any organization or private individuals that may approach the Aquarium or City regarding use of Liberty Square shall be referred to the Superintendent or designee. At no time will the Aquarium or City staff permit activities within Liberty Square. Should the Aquarium or City staff observe other parties attempting to use Liberty Square, they should immediately report this activity to the Park Chief Ranger or City Police Department.

3. The following annual activities are approved as part of the routine operations for the Aquarium with Liberty Square without a separate permit:
   - Anniversary celebration (May 19)
   - First Day Festival
   - Earth Day (April 22)
   - National Park Week

The Aquarium or City will provide specific details on these events to the Park as soon as possible, but no later than two weeks in advance of the event to ensure coordination of resources, prevent conflicting programming within Liberty Square, and/or to gain needed support for the event.

4. The Park will approve a blanket Special Use Permit for certain activities that are planned and scheduled in advance annually. This Permit will:
   a. Be developed outside and in addition to this GA,
   b. Be reviewed and updated annually by the Aquarium/City/Park,
   c. Cover all applicable activities and events anticipated to occur for the upcoming calendar year,
   d. Satisfy all requirements of the standard Special Use Permit process, and
   e. Be signed and in place by Jan. 31 of the calendar year.

All activities under an Annual Special Use Permit must relate to the ongoing educational and/or interpretive focus of the Aquarium and/or the Park, or support a short-term program focus or initiative, and will be evaluated on a case-by-case basis by the Superintendent to ensure these goals are met.

Activities that may be included under an Annual Special Use Permit include:
   - Animal Encounters
   - Bird Flight Demonstrations
   - Occasional use of Costumed Characters
   - Scavenger Hunts
• Outdoor Classroom Lectures
• Field/Nature Camps
• Field research such as horseshoe crab monitoring
• Movie Nights
• Health/Wellness related activities

Additional activities may be considered for this list pending approval of the Superintendent.

5. Information on any Park-sponsored or approved events scheduled for Liberty Square will be shared with the Aquarium and City in a timely manner.

6. Security for special uses shall be the responsibility of the Permittee requesting the Special Use Permit. The Park, Aquarium, or City will not provide security for Permittee, the Permittee’s material, supplies or equipment. The Park, Aquarium, or City will not assume any responsibility for the success of the permitted functions or the security of any supplies, materials or equipment used by the Permittee.

E. Maintenance

1. The Park is fully responsible for all maintenance and operation of the Park Visitor Center, dock, park shelters, flagpole, park gates, NPS entrance sign, drinking fountains, benches, and interpretive wayside signage within Liberty Square.

2. The Aquarium is fully responsible for all maintenance and operation of their facilities, including the maintenance of its service road and bluestone walkway adjacent to the Aquarium facility, as dictated in the prior Agreements between City and Aquarium, attached hereto as Exhibit B.

3. The City is fully responsible for regular landscape maintenance of Liberty Square, including, but not limited to regular mowing, trimming, replacement plantings, debris removal, tree/limb/brush removal, repair of bluestone and other surface materials, maintenance of irrigation, maintenance of lighting and electrical systems, regular trash receptacle maintenance and trash collection, and the maintenance of Septima Clark Fountain, including utilities, water, and repair.

4. The City will provide, upon request, to Park Chief of Facilities Management its regular work schedules and identified repairs, if any. The City and Park will work to develop effective communication regarding maintenance needs, including the identification of one point person for each to communicate these ongoing needs.

5. If replacement or maintenance of vegetation and/or hardscape materials is in excess of normal appropriations or operations for the City, the Park and City will engage in discussion on how to acquire the needed resources to complete the work. Funding may be provided by the NPS if available through regular allocations, but this is not guaranteed. Creative problem solving and funding options will be explored between the partners.
6. All coin collected from the Septima Clark Fountain during routine maintenance operations shall be retained by the City and applied in furtherance of public programs and the mutually agreed to joint operations at Liberty Square.

7. Major renovations of Liberty Square facilities, such as any potential redesign of the landscape and resulting construction and landscape work, will be conducted in a manner that ensures full participation of the Park, Aquarium, and City, through its Design Review Committee, in all discussions and decision making. The NPS will provide final approval for any landscape changes that are mutually agreed upon. Funding for design, construction, and maintenance will be sought from all partners through their internal funding processes and/or public donors as appropriate. This GA does not guarantee approval of or funding for any subsequent project.

F. Promotional Activities

1. The Park, Aquarium, and City agree to cooperate in promoting their facilities and activities through their appropriate outlets. Examples include, but are not limited to: providing visitors simple promotional items such as a rack card that identifies the respective facilities, placing signage at the facilities identifying the other facilities and programs, and cross posting of events for each facility on respective social media pages and websites.

2. The Park, Aquarium and City will proactively share information between staff regarding upcoming events, activities, tours, or areas of special emphasis. Emphasis will be placed on facilitating joint activities that highlight the partnerships, encourage interaction between staff, and provide better and more inclusive interpretive opportunities for visitors to take full advantage of the setting and facilities at Liberty Square.

3. Special lighting on the Aquarium building may be used on a short term basis for special events or promotional activities, or for a nationally recognized event or anniversary that relates to the mission of the Aquarium. No use of commercial or sponsorship logos will be included as part of the lighting unless approved in advance by the Superintendent. Lighting proposals should consider dark sky initiatives, urban light pollution, natural resource concerns and should adhere to all City of Charleston regulations on exterior lighting. The Superintendent reserves the right to deny the lighting proposal if any of these concerns are not adequately addressed. Information on the details of the proposed lighting will be shared with the Park as soon as they are developed, but no later than two weeks prior to the lighting event. A Special Use Permit will be issued for each lighting event. Alternately, the Park, Aquarium, and City may choose to develop a blanket permit to address multiple lighting proposals for the year, to be reviewed and renewed annually.

4. If partner logos or other identifying information are included in any joint materials prepared for public consumption, such as individual promotional activities, brochures, or any form of publicity, the items must be submitted to all partners for approval prior to issuance.
5. Any agreements the Aquarium or City proposes to enter into with third parties in promotion of activities at Liberty Square hereunder shall be subject to approval by the Superintendent.

ARTICLE III: TERM AND TERMINATION OF AGREEMENT

1. This GA may be modified solely by written agreement signed by all Parties.
2. This GA shall become effective on the date signed by all Parties and shall remain in effect for five (5) years and can be renewed for an additional five (5) years upon review and agreement of all parties.
3. This GA may be terminated in whole or in part as follows:
   a. By NPS, by giving forty-five (45) days written notice of its intent to terminate, if the City or Aquarium materially fails to comply with the terms and conditions of this GA, its attachments and/or amendments, or applicable laws and regulations. The notice of termination shall set forth the terms and conditions which the City and/or Aquarium has failed to company with and provide an opportunity to cure the stated failures. If the City fails to cure the failure within forty-five (45) days after receipt of the written notice of intent to terminate, then this GA will terminate on the 45th day after receipt of the notice;
   b. By NPS, with the consent of all Parties, in which case the Parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
   c. By the City and/or Aquarium, by giving forty-five (45) days written notice of its intent to terminate, if NPS materially fails to comply with the terms and conditions of this GA, its attachments and/or amendments, or applicable laws and regulations. The notice of termination shall set forth the terms and conditions which NPS has failed to company with and provide an opportunity to cure the stated failures. If NPS fails to cure the failure within forty-five (45) days after receipt of the written notice of intent to terminate, then this GA will terminate on the 45th day after receipt of the notice;
   d. Either Party may terminate this GA without cause upon sixty (60) days written notice.
   e. Any notice permitted or required to be given hereunder shall be in writing and shall be deemed to be effective when either personally delivered or three days after deposit in the United States Mail, Certified Mail/Return Receipt Requested, postage prepaid, and addressed to the key officials as provided for in Article IV.

ARTICLE IV: KEY OFFICIALS

The Key Official for the National Park Service:
J. Tracy Stakely, Superintendent
Fort Sumter and Fort Moultrie National Historical Park
1214 Middle Street
Sullivan's Island, SC 29482
(843) 883-3123

The Key Official for the South Carolina Aquarium:
ARTICLE V: PROPERTY UTILIZATION

1. Other than the real property described above, the NPS is not expected to furnish any equipment, supplies or materials to the Aquarium or City under this GA.

ARTICLE VI: REPORTS AND/OR DELIVERABLES

1. The Park, Aquarium, and City shall meet quarterly to discuss mutual issues, services, problems encountered, lessons learned, and suggestions for changes to Liberty Square operations to make the agreement more efficient and cost effective.

2. The Park, Aquarium, and City shall meet annually to review and renew this GA.

ARTICLE VII: SUB-LEASE AND AMENDMENTS BETWEEN AQUARIUM AND CITY

1. The requirements, duties, liability and rights stated in the Sub-Lease Agreement, and subsequent amendments attached hereto as Exhibit B, remain in full force and effect and are incorporated into this GA. If any provision of this GA, that relates solely to the rights and obligations between these two Parties, conflicts with a term of the prior Sub-Lease Agreements and Amendments, the language of the Sub-Lease and Amendments controls.

ARTICLE VIII: LIABILITY OF CITY AND NPS

1. To the extent permitted by law, and without waiving sovereign immunity, the City and NPS shall be responsible for any and all claims, demands, suits, actions, damages, and causes of action related to or arising out of or in any way connected with its own actions, and the actions of its personnel as it relates to the responsibilities stated in this GA.

2. The City and NPS shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry.
ARTICLE IX: STANDARD CLAUSES

1. Non-Discrimination: All activities pursuant to this agreement and the provisions of Executive Order 1246; shall be in compliance with requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252 42 U.S.C. § 2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 U.S.C. § 794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. § 6101 et seq.); and with all other Federal laws and regulations prohibiting discrimination on grounds of race, color, national origin, handicap, religious or sex in providing of facilities and service to the public.

2. Officials Not to Benefit: No Member of, Delegate to, Resident Commissioner in, Congress shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, unless the share or part benefit is for the general benefit of a corporation or company.

3. Disclaimers of Government Endorsement: The Partners will not publicize or circulate materials (such as advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications), suggesting expressly or implicitly, that the Government, the Department, NPS, or Government employees endorse the Partners' business, goods, or services. All materials referring to the Government must be approved by the NPS Key Official prior to publication. Nothing herein is intended to prevent the NPS or the Department of the Interior from recognizing the partnership or contributions made by the Partners to NPS, and from authorizing an inclusion of such recognition in materials generated by the Partners related to this Agreement.

4. Prior Approval: The Partners shall obtain prior written approval from the NPS before:
   1. Holding special events within the Park;
   2. Entering into third-party agreements of a material nature;
   3. Assigning or transferring this Agreement or any part thereof;
   4. Constructing any structure or making any improvements within the Park's boundaries;
   5. Releasing any public information that refers to the Department, the NPS, the Park or NPS Program, any NPS employee (by name or title), this Agreement or the projects contemplated hereunder.

5. Compliance with Applicable Laws: This Agreement and performance hereunder is subject to all laws, regulations and management policies including those governing the NPS property and resources, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as in any way impairing the general powers of the NPS for supervision, regulation, and control of its property under such applicable laws, regulations, and management policies. Nothing in this Agreement shall be deemed inconsistent with or contrary to the purpose of or intent of any Act of Congress.
6. **Liability:** The Parties will be liable to the extent provided by law for any property damage, personal injury or death, caused by the negligent or wrongful acts or omissions of their respective employees, acting within the scope of their employment.

7. **NPS Appropriations:** Pursuant to 31 U.S.C. § 1341, nothing contained in this Agreement shall be construed to obligate NPS, the Department, or the United States of America to any current or future expenditure of funds in advance of the availability of appropriations from Congress and their administrative allocation for the purposes of this Agreement, nor does this Agreement obligate NPS, the Department, or the United States of America to spend funds on any particular project or purpose, even if funds are available.

8. **Modifications:** This Agreement may be extended, renewed, supplemented or amended only when agreed to in writing by the NPS and the Partners.

9. **Waiver:** No waiver of any provisions of this Agreement shall be effective unless made in writing and signed by the waiving party. No waiver of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof.

10. **No Agency:** The Partners are not agents or representatives of the United States, the Department of the Interior, or the NPS, nor will the Partners represent themselves as such to third parties. The NPS is not an agent or representative of the Partners, nor will the NPS represent itself as such to third parties. Nothing in this Agreement shall at any time be construed so as to create the relationship of employer and employee, principal and agent, or joint venture as between Partners and the NPS.

11. **Non-Exclusive Agreement:** This Agreement in no way restricts either the NPS or the Partners from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.

12. **Partial Invalidity:** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

13. **Freedom of Information Act:** Any information provided to the NPS under this Agreement is subject to the Freedom of Information Act, 5 U.S.C. § 552.

**ARTICLE X-AUTHORIZING SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have signed their names and executed this General Agreement.
National Park Service

Signature: _______________ Date: 5/19/21

Stan Austin, Regional Director, National Park Service, DOI Region 2

South Carolina Aquarium

Signature: _______________ Date: 5/26/21

Kevin Mills, President and CEO

City of Charleston

Signature: _______________ Date: __________

John J. Tecklenburg, Mayor
Exhibit A
COOPERATIVE AGREEMENT
Between
The
NATIONAL PARK SERVICE
and the
CITY OF CHARLESTON

This Agreement is made and entered into between the City of Charleston and the United States of America, U.S. Department of the Interior, National Park Service.

Article I. Background and Objectives
The National Park Service ("NPS") is the owner of certain property (the "Dockside II Tract") located near the intersection of Calhoun and Concord Streets in Charleston, South Carolina, more particularly described in Exhibit "A" attached hereto and incorporated herein. The Dockside II Tract was acquired pursuant to P.L.99-637 (1986) (the "Act") so that NPS could develop a boat dock and visitors' facility for tour boats to take visitors to and from the City of Charleston to Fort Sumter National Monument located in Charleston Harbor. Under the Act, NPS was authorized and did lease to the City of Charleston ("City"), a local government within the State of South Carolina, a portion of the Dockside II Tract for the development of the South Carolina Aquarium. The Act further authorized the City and NPS to enter into agreements for the cooperative development of the Dockside II Tract and for the coordination and cooperation of the NPS and the City in the construction and operation of their respective facilities.

Pursuant to the Act, NPS and the City, along with George E. Campsen, Jr. ("GEC"), entered into a Memorandum of Understanding (the "MOU"), dated March 17, 1991, a copy of which is attached hereto as Exhibit "B". As set forth in the MOU, NPS intends to develop a tour boat dock and visitors' facility, as well as a common area to be shared by GEC, NPS and the City of Charleston, on the Dockside II Tract. Pursuant to the agreement of the
parties to the MOU, the common area, which was initially intended to be a parking area, will now be developed as a common park area for public use (hereinafter this area will be referred to as the "Common Area").

The City desires that a portion of the Common Area be constructed on an expedited basis to assure that it is complete at the opening of the South Carolina Aquarium. Plans and specifications for this portion of the Common Area (hereinafter this portion shall be referred to as the "Landscaped Area") have been developed by NPS. These plans and specifications are comprised of two volumes of written specifications and a set of construction drawings prepared by the National Park Service Denver Service Center. One volume is titled Specifications for the Tour Boat Facility, Package 105DA16, dated June 15, 1999, Site Improvements and Site Utilities Construction Documents; the second volume is titled Addendum to the Specifications for the Tour Boat Facility, Package 105DA16, dated June 15, 1999, Supplemental Reports for the Site Improvements and Site Utilities Construction Documents. The construction drawings consist of 28 pages referencing Drawing Number 392-41,052; the set of drawings is titled Construction Drawings Tour Boat Facility Fort Sumter National Monument, Package 105DA16 and is dated June 15, 1999. The City acknowledges receipt of the aforesaid plans and specifications (hereinafter collectively referred to as the "Plans") and the Plans are incorporated herein by reference and made a part of this Agreement as if attached hereto.

The NPS is willing to allow expedited construction but cannot undertake that work itself at this time. However, NPS does have $500,000.00 to transfer to the City to allow construction of the Landscaped Area to commence during the calendar year of 1999, provided NPS has sufficient involvement in the construction process to assure development will meet NPS's standards and authorized budget. Furthermore, NPS is willing to seek an appropriation of an additional $2,100,000.00, or such greater or
visitors' facility. Such construction will also benefit the City by providing a finished landscaped area for use by visitors to the South Carolina Aquarium and shortening the NPS construction schedule. The objectives of this Agreement are to provide funds to the City for construction of the Work in a manner and according to a design approved by NPS and agreed to by the City.

The purpose of this Agreement is to set forth the terms and conditions under which NPS will transfer funds to the City of Charleston for the construction of the Work and the terms and conditions under which the City will undertake the construction of the Work.

Article II. Authority

This Agreement is entered into pursuant to: (1) the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208 (September 30, 1996), which authorizes the NPS to use cooperative agreements for the purpose of supporting and stimulating park programs (16 U.S.C. 1(g)); (2) Section 802(1) of the National Parks Omnibus Management Act of 1998, Public Law 105-391 (November 13, 1998), which authorizes the NPS to use cooperative management agreements with local governments for the management of local park areas adjacent to or near a NPS unit and which includes authority for acquisition of goods and services for cooperative management purposes by NPS from the local governments; and (3) Section 2(a)(3) of Public Law 99-637 (November 7, 1986), which authorizes NPS to enter into cooperative agreements with the City of Charleston, pursuant to which construction, maintenance, and use of buildings, utilities, parking facilities, and other improvements at the Dockside II Tract may be shared by the City and NPS.
management of the Landscaped Area. NPS will pay all reasonable costs and permit fees for this permit and any additional storm water management permits required by the City Technical Review Committee.

5. NPS will provide access to electronic files regarding the Work, such as drawings and specifications, as reasonably necessary to allow the City to prepare contract documents and administer the construction contract for the Work.

6. NPS will promptly provide support during construction if questions regarding construction drawings and specifications or design of the Work arise.

7. NPS will review, comment upon, and approve or provide a basis for disapproval of all submittals within 10 days after receipt.

8. NPS will notify the South Carolina Department of Health and Environmental Control and the United States Environmental Protection Agency of construction plans and timetables and coordinate with those agencies regarding preservation of existing monitoring wells on the Dockside II Tract or installation of new wells.

9. NPS will name the Common Area after consultation with the City.

10. NPS will be involved in the contract oversight as an active team member for the management team to prevent and resolve problems associated with the construction program, schedules, conflicts between contractors using the site, adjacent projects, budgets, modifications, and overall quality of the work.
3. The City will submit the storm water management plans prepared by NPS pursuant to Item 4 in Part A above and obtain necessary permits from the City Technical Review Committee. As provided in Item 4 in Part A above, NPS will pay permit fees and reasonable costs connected to storm water management permits required by the City Technical Review Committee.

4. The City will provide access to its files regarding the Work, including without limitation drawings and specifications, as reasonably necessary to allow the NPS to fulfill its obligations and exercise its rights hereunder.

5. The City will, as part of its construction of Calhoun Street drain improvements, construct a lateral storm drain, connected to the City storm water management system, to serve the Landscaped Area. Construction shall include, but not be limited to street curbing at the connection point. This obligation will be undertaken at no cost to the NPS and without using funds provided pursuant to this Agreement.

6. The City will, at its own cost and at no cost to NPS and without drawing on the funds provided pursuant to this Agreement, provide all cobblestone, belgium block, or brick for the surface treatment of the amphitheater area which is shown on Exhibit "C", as Area 1. Funds provided by this Agreement shall be used to pay installation costs only. The City will also provide, at no cost to NPS, all paving within Calhoun Street and to the point of tangent for the Aquarium Drive and Gadsden's Wharf Drive, more particularly shown as Areas 2 and 3 on Exhibit "C". No funds provided pursuant to this Agreement shall be used for said paving. The City will, at its own cost and at no cost to NPS, provide the materials necessary for the surface treatment of Gadsden's Wharf Drive shown as Area 4 on Exhibit "C", which shall be used in construction by NPS of the remaining portion of the Common Area.
Article IV. Term of Agreement

Unless earlier terminated by operation of the terms of this Agreement, this Agreement shall be in effect from the date of execution until the earlier of a) the completion of the construction of the Work which shall be the date NPS delivers to the City its written acceptance of the Work; or b) September 30, 2000. The term of this Agreement may be extended by mutual agreement of the parties. The date of execution of this Agreement is the date of the last signature affixed to this Agreement. Close out procedures will be conducted in accordance with 43 C.F.R. Section 12.90.

Article V. Key Officials

The personnel specified below are considered to be essential to ensure maximum coordination and communication between the parties and the accomplishment of the project that is the subject of this Agreement.

A. The key contact for the National Park Service is:
   John Tucker, Superintendent
   Fort Sumter National Monument
   1214 Middle Street
   Sullivan's Island, SC 29482
   843-883-3123

B. The key contact for the City is:
   Steve Livingston
   Director of City Parks
   823 Meeting Street
   Charleston, South Carolina 29403
   843-724-7324

In addition to these key contacts, other personnel integral to the success of the project under this Agreement are Fred Reinhard, the City's project manager, and Bill Townsend, the NPS Environmental Inspector. The NPS Contracting Officer for this Agreement shall
of any claims thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insurer's sole risk. Prior to beginning any construction activity authorized herein, the City shall cause the contractor(s) and subcontractor(s) performing any part of the Work to provide NPS with a certificate confirming the existence and amounts of the required coverage.

2. Pay the United States the full value for all damages to the lands or other property of the United States caused by the City, its representatives, or employees, to the extent permitted by South Carolina Tort Claims Act, 1976 S.C. Code § 15-78-10 through § 15-78-200, as amended.

3. Cause the contractor(s) and subcontractor(s) to agree pay the full value for all damages to the lands or other property of the United States caused by them, their representatives or employees.

4. To the extent permitted by applicable law, indemnify, save and hold harmless, and defend the United States against all fines, claims, damages, losses, judgments, and expenses arising out of, or from, any omission or activity of the City, its representatives, or employees, arising out of or related to the Work.

5. Cause the contractor(s) and subcontractor(s) to agree to indemnify, save and hold harmless, and defend the United States against all fines, claims, damages, losses, judgments, and expenses arising out of, or from, any omission or activity of them, their employees or representatives, arising out of or related to the Work.
shall pay only for the portion of the Work performed in accordance with this Agreement.

D. Costs of the City resulting from obligations incurred by the City after termination are not allowable unless NPS expressly authorizes them in the notice of termination or subsequently. Other costs after termination which are necessary and reasonably unavoidable are allowable if: (1) the costs result from obligations which were properly incurred before the effective date of termination, are not in anticipation of it, and are noncancellable; and (2) the costs would be allowable if the award expired normally at the end of the funding period in which the termination takes effect.

Article IX. Notice of Regulatory Requirements

The City acknowledges, and agrees to comply with, the requirements set forth at 43 C.F.R. part 12, subparts A, B, C, and D, as supplemented and modified (but not replaced) by the terms of this Agreement.

Article X. Required and Special/Additional Clauses

A. Required Clauses

1. Non-discrimination

The parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex or national origin, and shall observe the provisions of Executive Order 11246, as amended by Executive Order 11375 and supplemented by regulations at 41 C.F.R. part 60; Title VI of the Civil Rights Act of 1964, as amended (78 Stat. 252; 42 U.S.C. 2000d-1 et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended (87 Stat. 394; 29 U.S.C. Section 794); the Age Discrimination Act of 1975, as amended (89 Stat. 394; 29 U.S.C. Section 6101 et seq.); and with all other Federal laws and regulations prohibiting discrimination on grounds
5. **Lobbying Prohibition**

The parties will abide by the provision of 18 U.S.C.§ 1913 which states:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or opposed, by vote or otherwise any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

6. **Minority Business Enterprise Development, Executive Order (E.O.) 12432**

It is national policy to place a fair share of contracts with minority business firms. The National Park Service is strongly committed to the objectives of this policy and encourages all State and local government recipients of its cooperative agreements to ensure such fairness by ensuring procurement procedures are carried out in accordance with 43 C.F.R. § 12.76.

8. **Special/Additional Provisions**

1. **Advertising and Endorsements**

The City shall not publicize or otherwise circulate, promotional material (such as advertisements, sales brochures, press releases, speeches, pictures, movies, articles, manuscripts or other publications) which states or implies Governmental, Departmental, bureau, or government employee endorsement of a
change in the construction contractor or the construction contractor's project manager.

4. **Performance Reports**
   The City will notify NPS in advance of any construction contract progress review meetings and include NPS in such meetings. Upon receipt, the City will provide NPS copies of all contractor requests for payment and certifications of percentage of work completed. In addition, the City will immediately notify NPS of any developments that significantly affect the activities contemplated by this Agreement. The City will notify the NPS of any difficulties or delays that materially impair its ability to meet the Agreement's objectives. In its notice, the City will describe what action it has taken or is considering taking to address the situation and what assistance it needs in so doing.

5. **Financial Management and Reporting**
   The City shall comply with all financial management and financial reporting requirements set forth in 43 C.F.R. Sections 12.60 and 12.81. Financial status reports as required by Section 12.81(b) shall be filed quarterly.

   **Article XI. Requirements in Regard to Procurement**
   The City shall comply with all requirements found at 43 C.F.R. Section 12.76 and Subpart D of Part 12 regarding Suspension and Debarment and Drug Free Workplace, including without limitation, those governing the standards for procurement procedures (12.76 (b)), those governing competition (12.76 (c)and (d)), those governing bonding requirements (12.76 (h)), and those requiring the inclusion of certain provisions in the contract for construction of the Work (12.76 (i)). In connection with the latter, the City acknowledges that the contract for construction of the Work must contain, among other provisions, provisions for: termination for convenience and for cause; legal remedies for breach; compliance with executive orders on Equal Employment Opportunity; compliance with the Copeland Anti-Kickback Act (18 U.S.C. 874); compliance
The City shall notify NPS of any contract claims or disputes or other contractual and administrative issues within 24 hours of learning of the existence of such claim, dispute or other issue. The City shall provide NPS an opportunity to participate in all meetings with the contractor regarding such claim, dispute or other issue. The City shall not approve payment of any monies in connection with the claim, dispute or other issue except after consultation and approval by NPS.

Article XIII. Remedies for Non-Compliance

If the City materially fails to comply with any term of the award contemplated under this Agreement, whether stated herein, in a Federal statute or regulation, or elsewhere, the NPS may exercise any of the following remedies, after notice and opportunity to cure as provided in Article VI: (1) temporarily withhold payment pending cure of failure; (2) disallow all or part of the cost of the activity or action not in compliance; (3) wholly or partially suspend or terminate the award under this Agreement; and (4) take any other legally available remedy. As provided in Article XI, the construction contract shall be assignable to NPS at NPS's election, if this Agreement is terminated prior to the completion of the construction of the Work.

Article XIV. Notices

Any notice permitted or required to be given hereunder shall be in writing and shall be deemed to be effective when either personally delivered or three days after deposit in the United States Mail, Certified Mail/Return Receipt Requested, postage prepaid, and addressed to the key contacts as provided for in Article V of this Agreement.

Article XV. Severability

If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions, and said provisions shall remain in full force and effect.
FOR THE NATIONAL PARK SERVICE:

[Signature]
Name and Title: Superintendent
Date of Signature: 10/12/99

Dianne Mitchell

Name and Title: Dianne Mitchell, Contracting Officer
Date of Signature: 10-18-99

[Signatures Continued on Next Page]
CITY OF CHARLESTON,
CHARLESTON COUNTY, S.C.

PLAT OF PROPERTY OWNED BY THE NATIONAL PARK SERVICE AND GEORGE E. CAMPSN SHOWING A 1.50 ACRE PARCEL ABOUT TO BE LEASED TO THE CITY OF CHARLESTON.

SCALE: 1" = 40' JUNE 29, 1990
REVIEWED MARCH 20, 1994
REvised OCT. 12, 1994
AGREEMENT
Between
The
NATIONAL PARK SERVICE
and the
CITY OF CHARLESTON
and the
SOUTH CAROLINA AQUARIUM CORPORATION

This Agreement is made and entered into between the City of Charleston, the South Carolina Aquarium Corporation and the United States of America, U.S. Department of the Interior, National Park Service.

Article I. Background and Objectives

The National Park Service ("NPS") is the owner of certain property (the "Dockside II Tract") located near the intersection of Calhoun and Concord Streets in Charleston, South Carolina, more particularly described in Exhibit "A" attached hereto and incorporated herein. The Dockside II Tract was acquired pursuant to P.L.99-637 (1986) (the "Act") so that NPS could develop a boat dock and visitors' facility for tour boats to take visitors to and from the City of Charleston to Fort Sumter National Monument located in Charleston Harbor. Under the Act, NPS was authorized to lease to the City of Charleston ("City"), a local government within the State of South Carolina, a portion of the Dockside II Tract for the development of the South Carolina Aquarium (the "Aquarium"). NPS entered into a lease (the "Lease") with the City for this purpose in 1994. Subsequent to entering into the Lease, the City subleased the Leased Premises to the South Carolina Aquarium Corporation (the "SCA Corporation") for the operation and management of the Aquarium.

The Act authorized the City and NPS to enter into agreements for the cooperative development of the Dockside II Tract and for the coordination and cooperation of the NPS and the City in the construction and operation of their respective facilities. The two facilities share a common park area known as Liberty Square. The City and NPS have agreed that installing a fountain in the common area is desirable and appropriate. The City donated $150,000.00 to the NPS for this purpose. Plans and specifications for the construction of the fountain have been developed by NPS and a contract for construction entered into by the NPS and Smalls Loading Ltd., Inc. dba/SFI Construction Company (the "Contractor"). The City and the SCA Corporation have received a copy of the Contract.

The water source and electric power for the fountain will be located in the pump room of the Aquarium and certain pipes, conduits and equipment necessary to operate the fountain will be located in the Aquarium. In order to connect the fountain to water and electricity from the Aquarium pump room and to install the fountain operating equipment in the Aquarium pump room, NPS and the Contractor will require access to the Aquarium and the assistance of the City and the SCA Corporation as hereinafter provided.
The purpose of this Agreement is to set forth the terms and conditions under which access will be granted and under which the NPS agrees to construct the fountain for the benefit of the parties.

Article II. Authority

This Agreement is entered into pursuant to Section 2(a)(3) of Public Law 99-637 (November 7, 1986), which authorizes NPS to enter into cooperative agreements with the City of Charleston, pursuant to which construction, maintenance and use of buildings, utilities, parking facilities, and other improvements at the Dockside II Tract may be shared by the City and NPS.

Article III. Grant of Access by, and Other Obligations of the City and the SCA Corporation

1. The City and the Aquarium will permit NPS, its employees, representatives and contractors, access on the property it leases (the "Leased Premises") from the NPS for the Aquarium during regular business hours for the purpose of constructing and installing water and utility lines for the fountain and installing the fountain operating facilities in the Aquarium pump room. Construction and installation on the Leased Premises (the "Work") will require, but not be limited to, some trenching across the Leased Premises, attachment of conduits and pipes to the grade beam of the Aquarium, drilling through the grade beam and the wall(s) of the Aquarium and through the walls of the Aquarium pump room, as well as installation of various pipes, conduits, and equipment in the Aquarium pump room, all as more specifically described in the plans and specifications that are part of the Contract. After completion of the construction of the fountain and installation of all fountain utilities and equipment, the City shall be solely responsible for the cost of operating and maintaining the fountain as set forth in Paragraph 10(B) of the Lease.

2. The City has had a structural engineer determine where the pipes for water and utilities will enter the Aquarium. NPS has relied on this work and the engineer's assurances that construction in compliance with the engineer's instructions will not cause structural damage to the Aquarium. The City and the SCA Corporation will jointly with NPS work together to supervise construction on the Leased Premises in accordance with the Contract.

3. Nothing herein shall authorize the City or the SCA Corporation to change the scope or cost of the Contract and their role shall be limited to technical direction only.

4. To the extent permitted by applicable law, the City shall indemnify, save and hold harmless, and defend the United States against all fines, claims, damages, losses, judgments and expenses arising out
Article VII. Authorized Signatories

The undersigned signatories to this Agreement each represent that he/she has the authority to sign this Agreement on behalf of the party he/she represents and that, upon his/her signing, this Agreement will become the binding and enforceable obligation of the party he/she represents.

[Signatures Begin on the Next Page]
Exhibit B
SUB-LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF CHARLESTON

AND

SOUTH CAROLINA AQUARIUM
SUB-LEASE AGREEMENT

THIS SUB-LEASE AGREEMENT, made as of this 21st day of __________, 1997, by and between THE CITY OF CHARLESTON, a municipal corporation of the State of South Carolina ("City") and the SOUTH CAROLINA AQUARIUM, a non-profit corporation of the State of South Carolina ("SCA")

WITNESSETH

WHEREAS, the City leases ("Lease") from the National Park Service all that real property located at 350 Concord Street, in the City and County of Charleston, State of South Carolina, more commonly known as the South Carolina Aquarium ("Aquarium"), and whereupon the City is currently constructing the Aquarium structure, all as more particularly described in Exhibit A, attached hereto and incorporated by reference herein;

WHEREAS, SCA is a charitable, educational and scientific organization incorporated under the laws of South Carolina on August 26, 1992, for the purpose of establishing, promoting, operating and maintaining the Aquarium;

WHEREAS, the Internal Revenue Service had determined that SCA is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code and contributions made by individuals or corporations are allowable as deductions under Section 170 of the Internal Revenue Code;

WHEREAS, SCA has established a comprehensive fundraising program and, as a result thereof, has received substantial private contributions dedicated to the support and maintenance of the Aquarium;

WHEREAS, it is believed that the use and enjoyment of the Aquarium can best be insured by entrusting its care, operation, management and maintenance to SCA;
WHEREAS, the parties may, in the future, desire to expand the Aquarium within the property more fully shown on Exhibit A, said expansion to be owned by the City but built with funds raised by and/or donated to SCA more fully described herein;

WHEREAS, SCA, as the fiduciary of the private funds which are being used to operate and maintain the Aquarium and which may, in the future, be used to improve or expand the buildings and improvements as hereafter described, seeks assurances on behalf of the donors of the funds that the Aquarium shall be managed and operated as a world-class aquatic cultural center by executing this long-term Sub-Lease; and

WHEREAS, the City desires to enter into this long-term Sub-Lease in order to insure the development and management of the Aquarium, utilizing properly the assets of the City for the best public purpose, and to promote the general welfare by utilizing public property for the benefit of the citizens of the community.

NOW, THEREFORE, in consideration of the mutual promises and undertakings of the City and SCA hereinafter set forth, and intending to be legally bound, the City and SCA hereby agree as follows:
1. **DEFINITIONS.**

(a) "Debt Service" is defined as: 1) debt service incurred by SCA to complete the building, exhibits, and pre-opening operations in preparation for opening the Aquarium; and 2) to finance operating deficits in any given year (where operating expenses, debt service, and depreciation exceed operating revenues and if the operating shortfall funds in the SCA Fund as hereinafter defined are insufficient to cover said shortfall), or debt to be incurred to finance the expansion of the facility and its exhibits that SCA may propose for the City’s approval.

(b) "Depreciation" shall mean capital maintenance, repair, and replacement of the Aquarium building, exhibits, systems, and equipment. The amount of the reserve shall be set annually for the term of this Sub-Lease in accordance with generally accepted accounting principles ("GAAP"). SCA shall be required to use funds collected pursuant to this Sub-Lease for depreciation purposes only unless otherwise approved by the City.

(c) "Future capital improvements". Future capital improvements are new improvements that upgrade or expand the building, exhibits, systems, equipment and furnishings.

2. **DEEMED PROPERTY: CONFIRMATORY TRANSFER.**

(a) The City does hereby sublease, demise and let unto SCA, and SCA does hereby rent, sublease and accept from the City, all of the real property and all of the buildings and improvement more fully shown on Exhibit A, subject, however, to the operation and effect of any and all instruments and matters of record or in fact and to the easements hereinafter reserved by the City unto itself, including the Lease.

(b) At such time as the City has caused to be built upon the property more fully shown on Exhibit A, the buildings and improvements as are contemplated by the parties hereto, then, as of the date of issuance by the appropriate governmental authority of a Certificate of Use and Occupancy for such
buildings and improvements, the property demised by the City to SCA hereby shall automatically be
deemed to and shall include all of the real property and all of the buildings and improvements hereinafter
constructed pursuant hereto.

(c) The parties do hereby confirm that (1) the City has granted, conveyed, transferred and
assigned to SCA any and all right, title or interest of the City in and to any and all tangible personal
property ("personal property") now or hereafter located in or about the Aquarium or the Aquarium office
building at 57 Hasell Street, in the City of Charleston, SC, which is owned by the City on the date of this
Sub-Lease and (2) that SCA shall be the sole and absolute owner of all such Animal and Plant Life which
SCA shall acquire and (3) that SCA shall be responsible for the expenses associated with the items
necessary for the pre-opening and on-going operation of the Aquarium more fully shown on Exhibit B,
attached hereto and incorporated by reference herein, with SCA having the absolute authority over the use,
acquisition and disposition of such personal property, the Animal and Plant Life Collection and the items
listed on Exhibit B; subject, however, to the obligations of SCA to reconvey such property, the Animal and
Plant Life Collection and the items listed on Exhibit B to the City upon termination of this Sub-Lease in its
"as is" condition pursuant to Section 17 hereof. As used in this Sub-Lease, the term "Animal and Plant
Life Collection" shall include all fish, birds, mammals, amphibians, reptiles, and plants exhibited at the
Aquarium, their progeny, if any, and such other fish, birds, mammals, amphibians, reptiles and plants
acquired or added by SCA, in its sole discretion.

(d) SCA, to the extent assignabl, shall have the exclusive right to use the name "South
Carolina Aquarium" and its logo.

(e) Notwithstanding the fact that the Aquarium has been demised by the City to SCA pursuant
to the terms of this Sub-Lease Agreement, the area outside the Aquarium buildings shall remain open to
pedestrian use, subject to the right of SCA to restrict pedestrian use (i) for operational reasons or (ii) with
the consent of the City or its designated representative or agent.

3 **TERM.**

The term of this Sub-Lease shall be from the date of execution of this Sub-Lease to July 6, 2045, unless terminated sooner as hereinafter provided in Section 12. The City will use its best efforts to obtain Congressional approval to allow the National Park Service to extend the term of the lease of the Aquarium property to the City for an additional fifty (50) years. If successful and if SCA is in compliance with all terms and conditions of this Sub-Lease at that time, the City shall extend the term of this Sub-Lease to coincide with the extended term of its lease of the Aquarium property upon the same terms and conditions as contained herein.

4 **RENT.**

(a) As consideration for the demise contemplated herein, SCA shall operate and manage the Aquarium and pay to the City a basic rent of One Dollar ($1.00) per year for the term as herein provided, receipt of which is hereby acknowledged by the City.

(b) **SCA Funding.**

(i) The SCA shall adopt an annual budget for each calendar year. The budget shall include an estimate of anticipated gross operating revenues derived from admission fees, rents, and sales; an estimate of anticipated operating and maintenance expenses in accordance with GAAP, a provision for Debt Service, if any, incurred for bridge financing for building and exhibit costs, pre-opening expenses and operating expenses; and a reserve for depreciation as defined by GAAP. ⇒ SCA only

(ii) To the extent SCA’s annual revenues exceed expenses, including the provision for Debt Service and the reserve for depreciation in section 4(b)(i) above, fifty percent (50%) of such amount shall be placed in an “SCA Fund” to be used for future capital improvements to the Aquarium and a reserve for operating shortfalls in the sum of $2 million dollars to be maintained during the term of this
Sub-Lease. The remaining fifty (50%) of said annual excess revenues shall be paid annually to the City of Charleston to reduce the City Bond indebtedness in the principal amount of $9.5 million, until such debt has been paid in full.

(c) Utilities. SCA shall, at its own expense, timely pay all costs of utilities to the Aquarium, said utilities to include, but not be limited to, water, electricity, sewer, heating, air conditioning, storm water retention, and municipal land fill fees.

5. PERMITTED USES.

SCA shall hold, use, operate and manage the Aquarium as and for an aquarium; for purposes related to or incidental to such use including, but not limited to, the promotion, advancement, improvement and encouragement of Animal and Plant Life and related subjects and the knowledge and the understanding thereof; the education, instruction and recreation of the public in Animal and Plant Life and the enjoyment thereof; the conduct of research in Animal and Plant Life and the enjoyment thereof; the conduct of research in Animal and Plant Life and related subjects; and the exhibition, protection, management, care, propagation and conservation of the Animal and Plant Life Collection; and, except as expressly otherwise provided in Section 6, for no other purposes except those purposes and uses that are consistent with the Lease.

6. PUBLIC PROGRAMS AND ACTIVITIES.

(a) Educational Programs. SCA agrees that as part of its education activities and programs, it will cooperate with education agencies and departments, including, but not limited to, the Charleston County school system, to develop educational programs for elementary and secondary schools. SCA agrees that it will advise educational institutions of its programs and develop and publicize a special admission fee for all students attending elementary and secondary schools in the State of South Carolina, and to arrange for free admission for all South Carolina school groups who attend the Aquarium.
(b) **Admission Charges.** Except as provided in Section 6(a) above, SCA shall have the right to determine the amount of any and all fees, charges or contributions to be charged by SCA for admission to the Aquarium. All admission charges received by SCA shall be retained by SCA to meet its obligations under this Sub-Lease.

(c) **Public Access.** The Aquarium shall be open to the public during reasonable times, as determined by SCA; subject, however, to SCA's right to restrict public visitation through or during certain periods, as SCA, in its reasonable discretion, may deem necessary or appropriate for the health and safety of the Live Animal and Plant Collection or any part thereof, or may deem to be in the best interests of the Aquarium and not inconsistent with the rights of access provided to the National Park Service in the Lease. Notwithstanding the foregoing, any closure of the Aquarium to the public for a period in excess of twenty-four (24) hours shall be subject to the following provisions:

1. SCA may close the Aquarium on any legal holiday observed by the City, the federal government or the State of South Carolina (not to exceed four (4) days per year without the consent of the City or its designated representative or agent).

2. SCA may close the Aquarium for operational reasons for up to fourteen (14) consecutive days.

3. With the consent of the City or its designated representative or agent, such consent not to be unreasonably withheld, SCA may close the Aquarium for operational reasons for a period in excess of fourteen (14) consecutive days.

4. With the consent of the City or its designated representative or agent, SCA may close the Aquarium for non-operational reasons for a period in excess of twenty-four (24) hours.

In the event that SCA intends to close the Aquarium to the public for a period in excess of twenty-four (24) hours, SCA shall so notify the City or its designated representative or agent. Such notice
shall state the reasons for the closure, the expected date the Aquarium will be reopened for public visitation and, in the case of a closure for operational reasons, the action SCA intends to take to rectify the problem requiring closure. In the case of a closure for non-operational reasons, such notice shall be delivered to the City or its designated representative or agent at least ten (10) days prior to the date of closing. In the case of a closure for operational reasons, such notice shall be delivered as soon as practical after the decision to close the Aquarium is made by SCA. If SCA contemplates that a closure for operational reasons will be fourteen (14) consecutive days or less and it subsequently appears that such operational closure will exceed fourteen (14) consecutive days, SCA shall so notify the City and the closure beyond fourteen (14) consecutive days will become subject to the provisions of subsection (c)(3) hereof at that time.

(d) **Concessions.** SCA may maintain and operate in or on the Aquarium a gift shop and food services open to the public during Aquarium operating hours. Any contracts evidencing such arrangements entered into after the effective date hereof shall contain an express clause by which SCA or its concessionaire shall hold the City harmless against any damage, claim, loss or liability arising out of any act or failure to act by SCA or its concessionaire and its agents and employees. SCA shall have the right to host or permit the use of events in all or a part of the Aquarium and to sublet all or a part of the Aquarium for all appropriate types of events, some of which may be catered, pursuant to a fee schedule set by SCA, and all such payments shall accrue to SCA as gross revenue of the Aquarium; provided, however, exercise of such right shall not unreasonably interfere with the public's access to or enjoyment of the Aquarium. Any outside concessions which are conducted by SCA or any outside vendor who contracts with SCA shall require such licenses and/or permits as are customarily issued by the City.

(e) **Fundraising.** SCA may hold general fundraising events for the benefit of SCA as a use incidental to the purposes herein contemplated; provided, however, that the exercise of such right shall not unreasonably interfere with the public's access to or enjoyment of the Aquarium.
(f) **Compliance with laws.** SCA shall, in its operation of the Aquarium, comply with all public laws, ordinances and regulations; provided, however, SCA may, after notice to the City, by appropriate proceedings conducted promptly at SCA's own expense in SCA's name, contest in good faith the validity, enforcement or assertion of violation of any such statute, ordinance, law, rule, order, regulation or requirement and may similarly contest any assertion of violation of any certificate of occupancy, permit or any consent issued for the Aquarium.

7 **USE OF THE AQUARIUM BY THE CITY AND SCE&G.**

SCA shall permit the City to use the Aquarium one (1) time per year after regular business hours during the term of this Sub-Lease after the opening date of the Aquarium. SCA shall also permit SCE&G to use the Aquarium one (1) time per year after regular business hours for the first five (5) years after the opening date of the Aquarium. SCA will charge neither the City nor SCE&G for the use of the Aquarium; however, catering expenses requested by either party shall be the responsibility of the City or SCE&G as the case may be.

8. **MANAGEMENT AND ADMINISTRATION OF THE AQUARIUM.**

(a) **Employees.** The parties hereto acknowledge that the successful and proper operation of the Aquarium requires the use of sophisticated and complex scientific and technical equipment, machinery, exhibits and life support systems. SCA shall therefore have the sole and exclusive right and power to select, hire, appoint, employ, direct, supervise, control, remove, discipline and discharge any and all personnel employed at the Aquarium. SCA's right in this respect shall include, but not be limited to, the right to establish all terms and conditions of employment, to fix compensation, and to make promotions; provided, however, that SCA shall comply with all applicable public laws concerning equal opportunity in employment. SCA agrees to hire the most qualified personnel available to operate and maintain the Aquarium and to make reasonable efforts to recruit employees who reside in the Charleston area. All
employees of SCA shall be its employees only and shall not be deemed to be employees of the City.

(b) Financing of Operations. SCA shall use all reasonable efforts to operate the Aquarium on a self-sustaining basis. SCA shall continue to solicit private and public financial support for the Aquarium. The SCA shall maintain a $2 million operating reserve account as defined in 4(b)(ii) above to the extent made possible by operating surpluses from prior years. If SCA fails to operate on a self-sustaining basis in any year, SCA shall have the right to incur and pay Debt Service to the extent necessary to finance any operating shortfalls not covered by the $2 million operating reserve account as provided.

(c) Audit. Records of SCA’s expenses pertaining to the operation of the Aquarium shall be kept in accordance with GAAP and shall be available for inspection or audit by the City or its authorized representatives at all reasonable times during normal business hours. SCA shall, at its sole cost and expense, have prepared in accordance with GAAP an annual certified audit by an independent accounting firm within 120 days after the end of each fiscal year of SCA. Whereupon, SCA shall submit to the City copies of such annual certified audits, together with all notes and exhibits thereto. SCA shall also cooperate with and furnish to the City such additional financial information, data and estimates of future expenditures as the City may reasonably request.

(d) Governance. Throughout the term of this Sub-Lease, the Mayor, or his designee, and a member of City Council as appointed by the Mayor and a member of Charleston County Council as appointed by the Chairman of Charleston County Council shall be ex officio (voting) members of SCA’s Board of Trustees.

9. SERVICES, MAINTENANCE AND REPAIR OF THE AQUARIUM.

(a) SCA shall, at its own cost and expense, throughout the term of this Sub-Lease and any renewals thereof, keep and maintain the Aquarium in good, clean and substantial condition in accordance with customary standards of routine and capital maintenance for aquariums that are open to the public and
American Zoo and Aquarium Association ("AZA") standards, ordinary wear and tear and damage by casualty excepted, and shall make all repairs, replacements and improvements necessary to keep and maintain the Aquarium, including, but not limited to, all water, electric, sewer, heating and air-conditioning apparatus, all machinery and equipment and such other fixtures as are used in the operation of the Aquarium (including any and all replacements made by SCA). SCA will be solely responsible for the care, maintenance and upkeep of the Animal and Plant Life Collection, including all displays and exhibits, and all changes thereto, and shall take all reasonable steps necessary for the care, maintenance and preservation of the Animal and Plant Life Collection. SCA shall also comply with the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. § 1361 et seq., and regulations promulgated thereunder, and in addition, shall become and remain accredited by the AZA. The City shall have no responsibility for the routine or capital maintenance or repair of the Aquarium or its contents.

(b) SCA shall, at its sole cost and expense, provide adequate security for all personal property in the Aquarium.

(c) SCA shall be responsible for the routine and capital maintenance, repair, replacement, upkeep of the interior and exterior of the Aquarium and all structural elements of the Aquarium including any cosmetic upkeep or non-substantial alterations, improvements or additions made thereto.

(d) The City shall supervise and maintain all roads, paths, sidewalks, and walkways required for access to the Aquarium, including the park adjacent to the Aquarium and the Aquarium service road, and shall be responsible for grounds maintenance and removal of debris and similar activities. SCA agrees to reimburse the City for its expenses associated therewith on an annual basis within thirty (30) days after the close of each fiscal year of SCA.
10. **RIGHT TO INSPECT.**

The City, or its designated representatives or agents, shall have the right, upon reasonable prior notice (except in the event of emergency), to inspect the Aquarium for any purposes, at any time, and from time to time, during the term of this Sub-Lease. Any such inspection shall be subject to the conditions of quarantine or similar such circumstances imposed by law and other requirements which SCA deems necessary for the health and safety of the Animal and Plant Life Collection; provided, however, in the event of quarantine or other similar circumstances, SCA shall not restrict access by public health officials investigating the conditions which resulted in the quarantine. Provided further, nothing in this Sub-Lease shall be deemed or construed as a waiver by the City of the exercise of any police powers. SCA shall, upon request, make a staff member available to the City or its designated representative or agent during such inspection.

11. **ALTERATIONS.**

SCA shall make no substantial alterations, additions or improvements on, to or about the exterior of the Aquarium ("Exterior Alterations") without the prior written consent of the City or its designated representative or agent, which consent shall not be unreasonably withheld. SCA shall bear all costs and expenses of the design, construction and completion of such Exterior Alterations. SCA shall procure or cause to be procured all permits, approvals, consents, licenses and authorizations of any kind required by any entity or agency of government having jurisdiction. SCA shall be solely responsible that all such actions shall be done in compliance with all applicable public laws, rules and regulations, including the Lease.

SCA may, at its sole cost and expense (unless otherwise agreed to in writing) and in its sole discretion, perform any cosmetic upkeep and make any non-structural alterations, additions and
improvements to the interior of the Aquarium ("Interior Alterations") as SCA deems necessary or desirable; provided, however, if a proposed Interior Alteration (1) involves an alteration which affects the structural integrity of the Aquarium or (2) is not related to the display, care or maintenance of the Animal and Plant Life Collection or the use of the Aquarium as an aquarium, SCA shall first obtain the consent of the City or its designated representative or agent which shall not be unreasonably withheld or delayed. SCA agrees that all such actions undertaken pursuant hereto shall be done in compliance with all applicable public laws, rules and regulations.

12. **INSURANCE AND INDEMNIFICATION.**

(a) SCA shall, at its own cost and expense, secure and maintain, throughout the term of this Sub-Lease, public liability and property damage insurance (also known as a comprehensive general liability insurance), issued by a commercial insurance company that has a Best's rating of "A" or better, which will protect all parties to this Sub-Lease against any claims for personal injuries, including death, and against claims for property damage which may arise out of, or in connection with, the use of the Aquarium and any operations or activities of SCA in its exercise of any of the privileges or duties granted herein. The amount of such insurance shall be as follows: Insurance with a combined aggregate limit of not less than $5,000,000 and an individual limit of not less than $3,000,000 for injuries, including death, to any one person, $5,000,000 for injuries, including death, of more than one person on account of any one accident, and property damage insurance in the amount of not less than $500,000 for each accident; provided, however, if such coverage limits become clearly inadequate for any reason, SCA shall increase the coverage limits to a reasonable level. SCA shall cause the City to be named as an additional insured on said policy. SCA shall be also responsible for the payment of any deductible under such policy in the event of a claim for loss or damage as provided herein.
(b) SCA shall, at its own cost and expense, secure and maintain, throughout the term of this Sub-Lease, fire and extended coverage insurance against any loss or damage to the Aquarium, the contents therein, including all personal property and the Animal and Plant Life Collection, from an insurance company that has a Best’s rating of "A" or better. Such policy shall be in such amount, and with such deductibles, as SCA deems prudent in the reasonable exercise of its judgment, but in an amount sufficient to prevent the City or SCA from being or becoming a co-insurer within the terms of the policy and in no event less than one hundred (100%) of the full replacement value (as reasonably mutually determined by SCA and the City), without deduction for depreciation, of the Aquarium, the contents therein and the Animal and Plant Life Collection. SCA and the City shall each be named insureds as their interests may appear. Anything in the preceding sentence to the contrary notwithstanding, SCA shall also be responsible for the payment of any deductible under such policy in the event of a claim for loss or damage to the Aquarium. SCA agrees that such policy will not contain a deductible for each occurrence covered by the policy in an amount in excess of $200,000 without first obtaining the consent of the City, such consent not to be unreasonably withheld or delayed.

(c) SCA shall also secure and maintain at its own cost and expense and as items of additional rent hereunder including the payment of any deductible associated therewith: Worker’s Compensation Insurance, as required by law, Longshoremen and Harbor Workers Insurance, as required by law; products and completed operations liability insurance; boiler and machinery insurance containing $5,000,000 in coverage with a $10,000 deductible; automobile insurance in such minimum amounts as required by law; and a fidelity bond of not less than $1,000,000 which shall cover all agents and employees of SCA who handle SCA funds in excess of $50,000.

(d) Each of the policies enumerated above shall name the City as an additional insured. Provided, however, all such insurance coverage is primary insurance as to any other insurance or self-
insurance which may be available to or carried by the City.

(e) For each of the above enumerated policies, there shall be an endorsement stating that the policies shall not be terminated, for any cause, without at least forty-five (45) days' prior written notice to all insured parties.

(f) SCA shall provide to the City certificates of insurance of each of the above enumerated policies. Additionally, at the request of the City, actual copies of the policies shall be provided to the City.

(g) All of the policies described in this Section 12 shall be kept in force at all times during the term of this Sub-Lease. The minimum amounts of insurance coverage described in subsections (a) and (b) hereof shall be reviewed by SCA and the City at least every five (5) years and may, at such times and upon the parties' mutual and reasonable agreement, be reasonably adjusted.

(h) To the extent defense representation is not provided by any SCA insurer, SCA agrees to defend the City and its trustees, officers, employees and volunteers from and against any claim, suit, cost, expense or liability which the City or its trustees, officers or employees may incur by reason of any third party seeking to assert any liability, obligation or affirmative relief against the City. Such defense shall be coordinated with any partial defense representation available through the auspices of any of the SCA insurers. The defense services provided herein shall not mean or intend that the City shall be responsible for any judgment, liability, obligation or affirmative relief obtained against SCA, its trustees, officers, employees or volunteers, which shall be the responsibility of SCA.

(i) The parties hereto hereby waive all causes of action and rights of recovery against each other for any loss resulting from any of the perils insured against under any and all casualty insurance policies in effect at the time of such loss regardless of cause or origin of such loss, to the extent of any recovery on such policies of insurance, except to the extent that any such policies of insurance are invalidated, in whole or in part, by such waiver.
13. **DAMAGE OR DESTRUCTION.**

(a) SCA shall notify the City promptly of any fire or other material damage to the Aquarium, including the accidental loss of any significant portion of the Animal and Plant Collection (excluding, however, cases of normal mortality).

(b) With respect to any damage or destruction to the Aquarium by fire or other cause, at any time during the term, the City shall promptly restore the damaged or destroyed portion or portions of the Aquarium at the City's sole expense and in a good and workmanlike manner. Anything in the preceding sentence or this Sub-Lease to the contrary notwithstanding, the City shall not be obligated to expend more than amounts actually received pursuant to claims made under any insurance policy insuring against any loss or damage to the Aquarium and other insured properties. Within forty-five (45) days of the occurrence, the City shall give SCA a schedule of completion for such restoration. If such schedule contemplates a period in excess of one hundred eighty (180) days from the date of the occurrence or such longer period as may be directed by the Board of Trustees, SCA shall have the following rights: (i) to restore the damaged or destroyed portions of the Aquarium at a cost not greater than the replacement cost of the destroyed or damaged portions of the Aquarium provided such contracts for reconstruction or repair are let by the City in accordance with applicable law and, to the full extent of insurance proceeds received (but not in excess thereof), to be reimbursed for the cost incurred by SCA for such restoration; or (ii) to terminate this Sub-Lease by notice given to the City in the same manner as is set forth in Section 17(a)(i) and subject to the conditions of Section 18.
14. **ASSIGNMENT**

SCA shall not, without the prior written approval of the City, assign or transfer this Sub-Lease whether by merger, consolidation or otherwise. Subject to the foregoing, all provisions of this Sub-Lease, whether so expressed or not, shall be binding upon the respective successors, assigns and legal representatives of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns and legal representatives.

15. **EVENTS OF DEFAULT.**

Any one or more of the following shall be an "Event of Default" or "Events of Default" under this Sub-Lease:

(a) With respect to SCA: (i) SCA shall fail to perform or observe any obligation of SCA under any provision of this Sub-Lease, and such failure shall continue and shall not be remedied within thirty (30) days after written notice from the City specifying the same, unless for causes beyond the reasonable control of SCA such failure cannot be cured within thirty (30) days, and SCA timely advises the City in writing that SCA intends to take all steps necessary to remedy such default with due diligence, duly institutes and diligently prosecutes to completion the steps necessary to remedy the same, and remedies the same within a reasonable time; or (ii) SCA abandons the Aquarium (unless a result of a casualty thereto) or ceases to exhibit the Animal and Plant Life Collection to the public; or (iii) this Sub-Lease or the Aquarium, any part thereof or estate therein, shall be taken upon execution or by other process of law directed against SCA, or shall be taken upon or subject to any attachment at the instance of any creditor of or claimant against SCA and said attachment shall not be discharged or disposed of within one hundred eight (180) days after levy thereof; or (iv) an order, judgment, or decree shall be entered by any court of competent jurisdiction appointing a receiver, trustee, or liquidator for SCA, or of all or substantially all of its assets.
(b) With respect to the City, if the City shall fail to perform or observe any obligation of the City under any provision of this Sub-Lease, and such failure shall continue and shall not be remedied within thirty (30) days after notice from SCA specifying the same, unless for causes beyond the reasonable control of the City, such failure cannot be cured within thirty (30) days, and the City timely advises SCA that the City intends to take all steps necessary to remedy such default with due diligence, duly institutes and diligently prosecutes to completion the steps necessary to remedy the same and remedies the same within a reasonable time.

16. **REMEDIES FOR DEFAULT.**

(a) If any Event of Default shall occur, the non-defaulting party, to the fullest extent permitted by law, shall have the right to pursue any or all of the following remedies: (i) if the Event of Default constitutes a material breach of this Sub-Lease, the right and option to terminate this Sub-Lease and all of its obligations hereunder by giving notice of such election to the defaulting party, whereupon this Sub-Lease shall terminate as of the date of such notice; (ii) the right to cure any such default, at the defaulting party’s cost and expense, including reasonable attorney’s fees; or (iii) the right to maintain any and all actions at law or suits in equity or other proper proceedings to enforce the curing or remedying of such default or for damages resulting from such default. In addition, if any Event of Default shall occur, the non-defaulting party to the fullest extent permitted by law shall have the right to an injunction, including a writ of mandamus, or a decree of specific performance or other comparable relief against the defaulting party (including any or all members of its governing body, and its officers, agents or representatives) in any court having jurisdiction specifically including the Circuit Court for Charleston County.

(b) Each right, remedy and privilege in this Sub-Lease shall be cumulative and will be in addition to every other right, remedy or privilege in this Sub-Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. All
such rights, remedies or privileges are cumulative and nonexclusive.

(c) Neither failure to insist on compliance with the terms, covenants or conditions of this Sub-Lease, nor any waiver of any right, remedy or privilege hereunder, at any one or more times, shall be deemed a waiver or relinquishment of such rights, remedies or privileges at any other time or times or under any other circumstances.

17 TERMINATION

Upon expiration of this Sub-Lease, or termination pursuant to Section 15, SCA shall promptly surrender to the City the Aquarium, all personal property and fixtures related to the use and operation of the Aquarium and the Animal and Plant Life Collection as well as reassign, to the extent necessary, the right to use the name “South Carolina Aquarium” and its logo to the City. The Animal and Plant Life Collection and all machinery and equipment, exhibits, furniture and furnishings, manuals, supplies and fixtures, whenever acquired and wherever located, shall automatically become the property of the City at the time of the expiration or termination of this Sub-Lease, unless owned by third parties or otherwise restricted by terms of a grant, donation or a loan to SCA. SCA shall execute a confirmatory conveyance of such property to the City in its “as is” condition.

In the event that this Sub-Lease is terminated due to no fault of SCA or if the City’s lease of the Aquarium property from the National Park Service cannot be extended beyond its original term, SCA shall have the right to retain all other assets of SCA not enumerated above, including but not limited to, any cash, instruments, securities, accounts, grants, bequests, and contributions and funds held by it ("Retained Assets"), subject to any restrictions placed on same by any grants, bequests or contributions by the applicable gift instrument. In the event that this Sub-Lease is breached by SCA and is thereafter terminated by the City, then, subject to any restrictions placed on any grants, bequests, or contributions by the applicable gift instrument or other financial obligations of SCA, SCA shall convey the Retained Assets.
to the City (together with all investment income, gains or losses thereon, and all expenses chargeable thereto) for the support or benefit of the Aquarium or for programs which support or benefit the Aquarium, and the City shall not use the Retained Assets for any activities which are not consistent with such support. For purposes of this Section, the Aquarium shall be considered to be used and operated as an aquarium only if (1) the Aquarium is operated by the City or a non-profit charitable organization which is (i) exempt from tax under the provisions of Section 501(c)(3) of the Internal Revenue Code, as amended, and (ii) described in Section 509 (a) (1) and (2) of the Internal Revenue Code, as amended; (2) all income, gains, revenues, funds or assets generated by the operations or assets of the Aquarium and all grants, gifts and bequests to the Aquarium are dedicated and used exclusively for the Aquarium or for programs which directly support or benefit the Aquarium; (3) the Aquarium is used for the uses permitted by Sections 5 and 6 of this Sub-Lease and it is not used for any other purpose. Notwithstanding anything to the contrary, the Aquarium will not be deemed to have ceased operating as an aquarium merely because the Aquarium has temporarily ceased public visitation for a period not to exceed four (4) months during any twelve (12) month period; and provided further, that such four (4) month period shall be extended to any longer period necessary as long as the City (or such other non-profit charitable organization designated by the City to operate the Aquarium) is in good faith endeavoring to reopen the Aquarium for public visitation.

18. **NOTICES.** All notices, requests, demands, elections, consents, approvals, designations, and other communications of any kind hereunder ("Notices") shall be in writing and addressed to the parties as follows:

If to the City:

Mayor, City of Charleston
City Hall
80 Broad Street
Charleston, SC 29401
If to SCA:
Executive Director
South Carolina Aquarium
350 Concord Street
Charleston, SC 29401

In order to be effective, any Notice required by this Sub-Lease to be given or made within a specified period of time, on or before a date certain, shall be deemed given or made only if hand delivered or sent by certified mail, return receipt requested, postage prepaid. A Notice so sent by certified mail shall be deemed given on the third day following the date of mailing.

19. MISCELLANEOUS.

(a) This Sub-Lease shall be construed and enforced in accordance with, and governed by, the laws of the State of South Carolina, without regard to principles of conflicts of laws.

(b) During the term of this Sub-Lease and any renewals thereof, the City represents and warrants that, provided SCA has not committed an Event of Default, SCA shall lawfully and quietly hold, occupy, enjoy, manage and operate the Aquarium, subject to the terms of this Sub-Lease, without hinderance or interference by the City or any person or persons claiming under the City.

(c) Upon observing the provisions of this Sub-Lease, SCA shall and may lawfully hold and enjoy the Aquarium during the initial term and any renewals thereof without hinderance, molestation or interruption.

(d) Nothing herein shall be deemed to create any joint venture or principal-agent relationship between the parties, and neither party is authorized to, and neither party shall act toward third parties or the public in any manner which would indicate any such relationship with the other. SCA is an independent contractor in terms of managing and operating the Aquarium.

(e) If any subsection, sentence, clause, phrase, or portion of this Sub-Lease is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Sub-Lease.

(f) SCA, for itself and its successors and assigns, agrees that in the performance of its obligations hereunder, it will fully comply with the applicable provisions of all Ordinances, Executive Orders, laws of the City of Charleston, State of South Carolina, or United States of America relating to
non-discrimination and equal opportunity.

(g) No member of the governing body of the City, and no other officer, employee, or agent of the City who exercises any functions or responsibility in connection with the services to be performed under this Sub-Lease shall have any personal financial interest, direct or indirect, in this Sub-Lease, or in the Aquarium, or in SCA.

(h) Anything in this Sub-Lease contained to the contrary notwithstanding, neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by a fire, earthquake, flood, Act of God, riot, civil commotion, or other matter or condition of nature, including the unavailability of sufficient fuel or energy to operate the Aquarium, or of any law, ordinance, rules, regulation or order of any public or military authority stemming from the existence of economic controls, riots, hostilities, war or governmental law and regulation. In the event of a labor dispute which results in a strike, picket or boycott affecting the Aquarium's operation or any services described in this Sub-Lease, SCA shall not be deemed to be in default or breach of any part of this Law, and SCA shall continue to be entitled to the use and the quiet enjoyment of the Aquarium.

(i) The City and SCA each agree to cooperate in the preparation of and to execute such further documents, confirmations and assurances as the other may deem necessary or desirable in order to carry out the intent and purposes of this Sub-Lease.

(j) This Sub-Lease embodies the entire agreement and understanding between the parties. This Sub-Lease may not be modified and amended or any provision hereof waived or discharged except in writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced.

(k) Headings of this Sub-Lease are for purposes of convenience only and shall not limit or otherwise affect the meaning of any provision of this Sub-Lease.

(l) This Sub-Lease may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(m) The City hereby represents that the terms hereof and the execution and delivery of this Sub-Lease Agreement have been duly authorized by all necessary actions required by the Charter and any other public laws, ordinances, regulations, or requirements, and is valid, binding and enforceable against the City in accordance with its terms.

(n) The City, or its agents, servants and employees, shall not be liable for any injury or
damage to SCA's servants, agents, or employees or to property on or at the demised premises resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, or snow, or leaks from any portion of the building, or from the roof, street, or sub-surface, or from any other place, or by dampness, or by any other cause of whatsoever nature unless caused by or due to the negligence of the City or its agents, servants, and employees or as a result of a breach of any of the City's obligations under this Sub-Lease.

Notwithstanding any policy or policies of insurance, SCA will save City harmless from and against any and all claims or demands at law, in equity or before administrative tribunals arising out of or in connection with an act or omission of SCA relating to its use and occupation of the Aquarium including, without limitation, injury or death to persons and damage to property. The word SCA for this paragraph includes, without limitation, SCA's agents, servants, employees, contractors, and business invitees.

(o) Promptly after execution of this Agreement, the City shall provide SCA with a written list of all of its designated representatives or agents for purposes of this Agreement. Such list shall delineate the authority of each such representative or agent to act on behalf of the City under this Agreement. Unless it has received actual written notification to the contrary, SCA may assume that the most recent written designation of the City is complete and accurate, and SCA shall be entitled to rely conclusively on such designation without any duty to make any investigation or inquiry.
IN WITNESS WHEREOF, this Sub-Lease has been duly executed by the parties hereto as of the
date first written above.

WITNESS:

Jane A. Schar
Victoria Rehl

SOUTH CAROLINA AQUARIUM

By: James W. Rogers
   Chairman of the Board
   (SEAL)

Attest: Jean F. Riley
   Secretary

THE CITY OF CHARLESTON

By: John W.
   Mayor

Attest: Veronica Simms-Mayfield
   Clerk of Council

24
EXHIBIT B

"Capital Equipment"

1. Exhibit displays and graphics excluded from General Contractor's contract
2. Computer hardware
3. Computer software
4. Gift store fixtures
5. Gift store inventory
6. Plant and Animal Collection
7. Husbandry equipment
8. Vehicles and boats
9. Life-support equipment excluded from General Contractor's contract
10. Office equipment
11. Gift store POS hardware and software
12. Ticketing POS hardware and software
13. Library
14. Storage equipment
15. Maintenance equipment
City of Charleston
South Carolina 29402
Legal Department

June 14, 2000

Mr. James L. Ferguson
Chairman of the Board
South Carolina Aquarium
134 Meeting Street
Suite 202
Charleston, SC 29401

Re: South Carolina Aquarium Sublease Amendment

Dear Mr. Ferguson:

Enclosed herewith are three (3) originals of the Sublease Amendment executed by the Mayor and one copy of the Ordinance. Would you please sign all three (3) originals, keep one (1) for your files and forward two (2) back to us for filing with the Clerk of Council. You may also keep the copy of the Ordinance.

Thank you, I remain

Sincerely,

Adelaide S. Andrews
Deputy Corporation Counsel

ASA/msa
Enclosures

cc: Jack Higgins
Director of Finance & Administration

C:/My Documents/Letters/Ferguson, James L. re SC Aquarium Sublease Amendment 06-14-00
STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  

SUB-LEASE AMENDMENT

THIS SUB-LEASE AMENDMENT entered into this 23rd day of May, 2000, by
and between THE CITY OF CHARLESTON, (hereinafter referred to as the "City"), and
the SOUTH CAROLINA AQUARIUM (hereinafter referred to as "SCA").

WHEREAS, the City and SCA entered into a Sub-Lease Agreement (hereinafter
referred to as the "Sub-Lease") on May 27, 1997, wherein the City sub-leased to SCA the
property known as the South Carolina Aquarium, situate, lying and being in the City and
County of Charleston, State of South Carolina; and

WHEREAS, the parties desire to amend the aforesaid Sub-Lease to allow SCA
the right to operate a food service cart within an area of property owned by the City more
fully shown on Exhibit A, attached hereto and incorporated by reference herein and to
modify the insurance requirements for the building, more fully described below.

NOW THEREFORE, for and in consideration of the sum of One ($1.00) Dollar and
other valuable consideration, the receipt and sufficiency of which are hereby
acknowledged, the City and SCA agree as follows:

1. Paragraph 6(d) of the Sub-Lease is hereby amended to provide that SCA
shall have the right to operate one (1) food service cart within that certain
8' x 20' area of City-owned property adjacent to the Aquarium Garage on
Calhoun Street more fully shown on Exhibit A during Aquarium operating
hours. The City reserves the right to relocate the area to another location
near the Aquarium in the City's sole discretion.

2. Paragraph 12(b) of the Sub-Lease is hereby amended by deleting same in
its entirety and substituting in its place and stead the following Paragraph
12(b):

"The City shall secure and maintain, throughout the term of this Sub-
Lease, "Special Cause of Loss" or "All Risk Property Insurance"
coverage, including flood, wind and earthquake damage coverage, on the
Aquarium building and its exhibits and fixtures. Such policy shall be in
the amount of $45,000,000 and in no event less than one hundred (100%)
of the full replacement value (as reasonably mutually determined by SCA
and the City) without deduction for depreciation, of the Aquarium
building and its exhibits and fixtures. SCA shall not be named as an
additional insured on said policy. SCA agrees to reimburse the City for all
costs associated with said insurance coverage, including all premiums and
deductible(s) under such policy in the event of claim(s) for loss or damage
to the Aquarium building or its exhibits and fixtures, within thirty (30)
days from its receipt of invoices for same from the City. SCA further
agrees to secure and maintain throughout the term of this Sub-Lease, at its
own cost and expense, insurance coverage against any loss or damage to
its contents within the Aquarium, including all personal property owned
by SCA, the Animal and Plant Life Collection and art work, from an
insurance company that has a Best’s rating of “A” or better. Such policy
shall be in such amount, and with such deductibles, as SCA deems prudent
in the reasonable exercise of its judgment. SCA shall be responsible for
the payment of any deductible under such policy in the event of a claim
for loss or damage to its insured property. The City shall be named as an
additional insured on said policy.”

In all other respects, the Sub-Lease entered into by and between the City
and SCA remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereto set their Hands and
Seals the day and year first above written.

IN THE PRESENCE OF:

THE CITY OF CHARLESTON

By:

Joseph P. Riley, Jr., Mayor

ATTEST:

Clerk of Council

SOUTH CAROLINA AQUARIUM

By:

Chairman of the Board

Attest:

Secretary
City of Charleston
South Carolina
Office of the Clerk
September 30, 2002

Mr. Steve Bedard, CFO
116 Meeting Street
Charleston, SC 29401

Re: Ordinance #2002-111: Second Amendment to Sublease Agreement with South Carolina Aquarium

Dear Mr. Bedard:

City Council ratified the above captioned ordinance at the September 24, 2002, meeting authorizing the Mayor to execute the necessary documents to enter into a Second Amendment to Sublease Agreement between the City of Charleston and the South Carolina Aquarium. Enclosed please find an original agreement and a copy of the following ordinance:

2002-111 AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN SECOND AMENDMENT TO SUBLEASE BETWEEN THE CITY OF CHARLESTON AND THE SOUTH CAROLINA AQUARIUM, SAID SECOND AMENDMENT BEING MARKED AS EXHIBIT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREBIN.

Along with a copy of this letter, I am returning one copy ordinance and one original agreement to Adelaide Andrews for distribution to the vendor.

Sincerely,

Vanessa Turner-Maybank, CMC
Clerk of Council

Enclosure: As Stated

cc: Mayor Joseph P. Riley, Jr. (two documents)
   Stephanie Wagner (two copies of ordinance and agreement)
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN SECOND AMENDMENT TO SUB-LEASE BETWEEN THE CITY OF CHARLESTON AND THE SOUTH CAROLINA AQUARIUM, SAID SECOND AMENDMENT BEING MARKED AS EXHIBIT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute the necessary documents to enter into that certain Second Amendment to Sub-Lease between the City of Charleston and the South Carolina Aquarium, said Second Amendment being marked as Exhibit A, attached hereto and incorporated by reference herein.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this 29th day of September, in the Year of Our Lord, 2002, and in the 227th Year of the Independence of the United States of America.

BY: Joseph P. Riley, Jr.
Mayor, City of Charleston

ATTEST:

BY: Vanessa Turner-McPherson
Clerk of Council
SECOND AMENDMENT TO SUB-LEASE

STATE OF SOUTH CAROLINA  )
)  COUNTY OF CHARLESTON  
)  SECOND AMENDMENT TO SUB-LEASE

THIS SECOND AMENDMENT TO THE SUB-LEASE entered into this 24th day of September, 2002, by and between THE CITY OF CHARLESTON, (hereinafter referred to as the "City"), and the SOUTH CAROLINA AQUARIUM (hereinafter referred to as "SCA").

WHEREAS, the City and SCA entered into a Sub-Lease Agreement (hereinafter referred to as the "Sub-Lease") on May 27, 1997, wherein the City sub-leased to SCA the property known as the South Carolina Aquarium, situate, lying and being in the City and County of Charleston, State of South Carolina; and

WHEREAS, the parties amended the Sub-Lease on May 23, 2000 to allow SCA the right to operate a food service cart within an area adjacent to the South Carolina Aquarium Garage and to modify certain insurance requirements for the South Carolina Aquarium building; and

WHEREAS, the parties desire to further amend the Sub-Lease to clarify certain maintenance responsibilities for the Septima Clark Fountain, bluestone sidewalks and Liberty Square.

NOW THEREFORE, for and in consideration of the sum of One ($1.00) Dollar and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and SCA agree as follows:

1. Paragraph 9(d) of the Sub-Lease is hereby amended by deleting same in its entirety and substituting in its place and stead the following:

"9(d) SCA agrees to allow the water supply and electrical connections for the Septima Clark Fountain ("Fountain") to be made through the exterior of the Aquarium to connect to the pumps and electrical outlets in the basement of the Aquarium. In exchange, the City agrees to be responsible for the cost of maintaining the Fountain in the walkway between the Aquarium and the NPS tour boat facility, including but not limited of the cost of utilities, water and repair associated with the Fountain and its connections to the Aquarium. SCA shall be responsible for maintaining the service road and the bluestone walkway immediately adjacent to the Aquarium. The City shall maintain the remaining bluestone walkways
and provide the grounds maintenance and debris removal within Liberty Square."

In all other respects, the Sub-Lease entered into by and between the City and SCA, as amended, remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their Hands and Seals the day and year first above written.

WITNESSES:

Debra Matthews

James Sease

WITNESSES:

Jesse B. Lee

Marina Palmer

THE CITY OF CHARLESTON

By:

Joseph P. Riley, Jr., Mayor

SATTEST:

Vanessa L. Taylor
Clerk of Council

SOUTH CAROLINA AQUARIUM

By:

Chairman of the Board

Attent: [Signature]
Secretary
City of Charleston
South Carolina
Clerk of Council Department

June 12, 2014

Mr. Stephen Bedard, CFO
City of Charleston
116 Meeting Street
Charleston, SC 29401

Re: REAL ESTATE
City of Charleston Aquarium Garage property located at the corner of Calhoun and Concord Streets in the City and County of Charleston, SC
TMS: 459-13-04-001

Dear Mr. Bedard:

The Committee on Ways and Means and City Council, at their respective meetings on May 27, 2014, approved the Third Amendment to the Sub-Lease between the City of Charleston and the South Carolina Aquarium to allow the South Carolina Aquarium to use a portion of the Aquarium Garage property for the operation of a food truck.

Enclosed please find one original Amendment for your records. One original Amendment will be given to Adelaide Andrews, and one original Amendment will be retained in the Clerk of Council’s office.

Sincerely,

Vanessa Turner Maybank
Clerk of Council

Enclosure. As Stated

Mayor Joseph P. Riley, Jr. (w/o documents)
Amy Wharton (w/o documents)
Adelaide Andrews, Esq. (w/one (1) original document)
Colleen Carducci (w/one (1) copy of document)
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Joseph P. Riley, Jr., Mayor
DATE: May 13, 2014

FROM: Adelaide S. Andrews
DEPT: Legal

ADDRESS: City of Charleston Aquarium Garage property located at the corner of Calhoun and Concord Streets in the City and County of Charleston, SC

TMS: #459-13-04-001

Approve the Third Amendment to the Sub-Lease between the City of Charleston and the South Carolina Aquarium to allow the South Carolina Aquarium to use a portion of the Aquarium Garage property for the operation of a food truck.

ACTION REQUEST: ________________________________

COORDINATION: The request has been coordinated with: All supporting documentation must be included

<table>
<thead>
<tr>
<th>Department Head</th>
<th>Signature</th>
<th>Attachments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Dept</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chief Financial Officer</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Property Manager</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Funding: Was funding needed? Yes ☐ No ☐ X ☑ |
| If yes, was funding previously approved? Yes ☐ No ☐ |

*If approved, provide the following: Dept/Div. Acct: Balance in Account Amount needed for this item

NEED: Identify any critical time constraint(s).

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED PACKAGE IS DUE IN THE CLERK OF COUNCIL’S OFFICE NO LATER THAN 10:00 ARE THE DAY OF THE CLERK’S AGENDA MEETING.

*Commercial-Property and Community & Housing Development have an additional form.
COMMERCIAL REAL ESTATE FORM

TO: Joseph P. Riley, Jr., Mayor
DATE: May 13, 2014

FROM: Adelaide S. Andrews
DEPT: Legal

City of Charleston Aquarium Garage property located at the corner of Calhoun and Concord Streets in the City and County of Charleston, SC

TMS: #459-13-04-001

Approve the Third Amendment to the Sub-Lease between the City of Charleston and the South Carolina Aquarium to allow the South Carolina Aquarium to use a portion of the Aquarium Garage property for the operation of a food truck

ACTION REQUEST:

ACTION: What action is being taken on the Property mentioned?

☐ ACQUISITION BY
☐ DONATION
Donated By:
☐ PURCHASE
Terms:
☐ TRANSFER OF TITLE
Terms:
☐ OTHER – Assignment – see attached

☐ SALE
Terms:

☐ SUB-LEASE
☐ INITIAL
Lessor: Lessee:
Terms:
☐ RENEWAL – Third
Amendment
Lessor: City of Charleston Lessee: South Carolina Aquarium
Terms: Third Amendment to the Sub-Lease allows the Lessee to use a portion of the Aquarium Garage property for the operation of a food truck
☐ AMENDMENT
STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THIRD AMENDMENT TO SUB-LEASE

THIS THIRD AMENDMENT TO THE SUB-LEASE entered into this 27th day of May, 2014, by and between THE CITY OF CHARLESTON, (hereinafter referred to as the "City"), and the SOUTH CAROLINA AQUARIUM (hereinafter referred to as "SCA").

WHEREAS, the City and SCA entered into a Sub-Lease Agreement (hereinafter referred to as the "Sub-Lease") on May 27, 1997, wherein the City sub-leased to SCA the property known as the South Carolina Aquarium, situate, lying and being in the City and County of Charleston, State of South Carolina; and

WHEREAS, the parties amended the Sub-Lease on May 23, 2000 to provide, inter alia, for one (1) food service cart to operate on lands of the City (hereinafter referred to as the "Sub-Lease Amendment"); and

WHEREAS, the parties further amended the Sub-Lease on September 24, 2002, to clarify certain maintenance responsibilities for the Septima Clark Fountain, bluestone sidewalk and Liberty Square owned by the National Park Service adjacent to the SCA facility (hereinafter referred to as the “Second Amendment to Sub-Lease”); and

WHEREAS, the parties desire to further amend the Sub-Lease Amendment to delete Paragraph 1 in said Sub-Lease Amendment and to replace Paragraph 1 in said Sub-Lease Amendment to allow SCA the right to operate a food truck in the bus parking area of City-owned land more commonly known as the Aquarium Garage upon terms more fully set forth below.

NOW THEREFORE, for and in consideration of the sum of One ($1.00) Dollar and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and SCA agree as follows:

1. The Sub-Lease Amendment is hereby amended by deleting Paragraph 1 in its entirety and replacing Paragraph 1 with the following Paragraph 1 which shall read as follows:

   "SCA shall be permitted to operate one (1) food truck in the bus parking area of City-owned land more commonly known as the Aquarium Garage property bearing TMS #459-13-04-001 more fully shown on Exhibit A, attached hereto and incorporated by reference herein (hereinafter
referred to as the “Food Truck Area”) from the commencement date of this Third Amendment to Sub-Lease until the date the certificate of occupancy for the International African American Museum on the Aquarium Garage property is issued or upon the City’s termination of this Third Amendment to Sub-Lease upon 60 days’ notice to SCA, in the City’s sole discretion and at no cost to the City, whichever is sooner. Until such time as this Third Amendment to Sub-Lease is terminated as provided herein, the City, in its sole discretion and at no cost to the City, shall have the right to require SCA to vacate the Food Truck Area for up to 24 hours at a time in order to allow the City to show the site for the International African American Museum to prospective donors provided the City gives SCA at least 7 days’ advance notice to vacate the Food Truck Area in accordance with the terms set forth above.”

In all other respects, the Sub-Lease, as amended by the First and Second Amendments to Sub-Lease, entered into by and between the City and SCA remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their Hands and Seals the day and year first above written.

IN THE PRESENCE OF:

THE CITY OF CHARLESTON

By:

Joseph P. Riley, Jr., Mayor

ATTEST:

Clerk of Council

SOUTH CAROLINA AQUARIUM

By:

Kenneth T Seeger, Chair

Dixon Woodward, Secretary
referred to as the “Food Truck Area”) from the commencement date of
this Third Amendment to Sub-Lease until the date the certificate of
occupancy for the International African American Museum on the
Aquarium Garage property is issued or upon the City’s termination of this
Third Amendment to Sub-Lease upon 60 days’ notice to SCA, in
the City’s sole discretion and at no cost to the City, whichever is sooner.
Until such time as this Third Amendment to Sub-Lease is terminated as
provided herein, the City, in its sole discretion and at no cost to the City,
shall have the right to require SCA to vacate the Food Truck Area for up
to 24 hours at a time in order to allow the City to show the site for the
International African American Museum to prospective donors
provided the City gives SCA at least 7 days’ advance notice to vacate the
Food Truck Area in accordance with the terms set forth above.”

In all other respects, the Sub-Lease, as amended by the First and Second
Amendments to Sub-Lease, entered into by and between the City and SCA remains
unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their Hands and
Seals the day and year first above written.

IN THE PRESENCE OF:


THE CITY OF CHARLESTON

By: ____________________________

Joseph P. Riley, Jr., Mayor

ATTEST:

Clerk of Council

SOUTH CAROLINA AQUARIUM

By: ____________________________

Kenneth T Seeger, Chair

Dixon Woodward, Secretary
EXHIBIT A

(Location of the Food Truck Area)
Relocate bus parking to south side of Aquarium bus parking lane.

Install 7' x 40'
SC Aquarium Food Truck Space
March 26, 2015

Ms. Adelaide Andrews, Esq
Deputy Corporation Counsel
50 Broad Street
Charleston, SC 29401

Dear Ms. Andrews:

At the March 10, 2015 City Council meeting, Council ratified the following ordinance:

**2015-013** An ordinance authorizing the Mayor to execute the necessary documents to enter into that certain Fourth Amendment to the Sub-Lease between the City of Charleston and the South Carolina Aquarium in order to allow the South Carolina Aquarium to use a portion of the aquarium garage property owned by the City of Charleston for the operation of a food service cart, said aquarium garage property bearing TMS# 459-13-04-001 and being located in the City and County of Charleston, State of South Carolina, said Fourth Amendment to the Sub-Lease being marked as Exhibit I, attached hereto and incorporated by reference herein.
Please find enclosed one original Fourth Amendment to the Sub-Lease ("Amendment") and a copy of the ratified ordinance. By copy of this letter, I am returning one original Amendment to Stephen Bedard and a copy to Colleen Carducci. One original Amendment will be retained in the Clerk of Council's office. Please let me know if I can be of any further assistance.

Sincerely,

[Signature]

Vanessa Turner Maybank, CMG
Clerk of Council

Enclosures: As Stated

c: Mayor Joseph P. Riley, Jr. (w/ copy of ordinance)
   Stephen Bedard, CFO (w/ copy of ordinance and original contract)
   Amy Wharton (w/ copy of ordinance)
   Colleen Carducci (w/ copy of ordinance and copy of contract)
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN FOURTH AMENDMENT TO THE SUB-LEASE BETWEEN THE CITY OF CHARLESTON AND THE SOUTH CAROLINA AQUARIUM IN ORDER TO ALLOW THE SOUTH CAROLINA AQUARIUM TO USE A PORTION OF THE AQUARIUM GARAGE PROPERTY OWNED BY THE CITY OF CHARLESTON FOR THE OPERATION OF A FOOD SERVICE CART, SAID AQUARIUM GARAGE PROPERTY BEARING TMS #459-13-04-001 AND BEING LOCATED IN THE CITY AND COUNTY OF CHARLESTON, STATE OF SOUTH CAROLINA, SAID FOURTH AMENDMENT TO THE SUB-LEASE BEING MARKED AS EXHIBIT I, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute the necessary documents to enter into that certain Fourth Amendment to the Sub-Lease between the City of Charleston and the South Carolina Aquarium in order to allow the South Carolina Aquarium to use a portion of the Aquarium Garage Property owned by the City of Charleston for the operation of a food service cart, said Aquarium Garage property bearing TM #459-13-04-001 and being located in the City and County of Charleston, State of South Carolina, said Fourth Amendment to the Sub-Lease being marked as Exhibit I, attached hereto and incorporated by reference herein.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this 31st day of February in the year of Our Lord, 2015, in the 239th Year of the Independence of the United States of America.

Joseph P. Riley, Jr., Mayor
Mayor, City of Charleston

ATTEST:

Vanessa Turner-Maybank
Clerk of Council
STATE OF SOUTH CAROLINA  )
COUNTY OF CHARLESTON  )

FOURTH AMENDMENT
TO SUB-LEASE

THIS FOURTH AMENDMENT TO SUB-LEASE entered into this 21st day of February, 2015, by and between THE CITY OF CHARLESTON, (hereinafter referred to as the “City”), and the SOUTH CAROLINA AQUARIUM (hereinafter referred to as “SCA”).

WHEREAS, the City and SCA entered into a Sub-Lease Agreement (hereinafter referred to as the “Sub-Lease”) on May 27, 1997, wherein the City sub-leased to SCA the property known as the South Carolina Aquarium, situate, lying and being in the City and County of Charleston, State of South Carolina, said Sub-Lease having been subsequently amended; and

WHEREAS, the parties desire to further amend the aforesaid Sub-Lease to allow SCA the right to operate a food service cart within an area of property owned by the City more fully shown on Exhibit A, attached hereto and incorporated by reference herein in accordance with the terms set forth herein.

NOW THEREFORE, for and in consideration of the sum of One ($1.00) Dollar and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and SCA agree as follows:

1. Paragraph 6(d) of the Sub-Lease is hereby amended to provide that SCA shall have the right to operate one (1) food service cart within that certain 8’ x 20’ area of City-owned property adjacent to the Aquarium Garage on Calhoun Street more fully shown on Exhibit A, attached hereto and incorporated by reference herein (the "Food Service Cart Area") during Aquarium operating hours. The City reserves the right to relocate the Food Service Cart Area to another location near the Aquarium in the City’s sole discretion.

SCA’s right to operate the Food Service Cart as provided in this Sub-Lease shall commence on the date of this Fourth Amendment to Sub-Lease and shall expire one (1) year thereafter; provided, SCA’s right to operate the Food Service Cart may be renewed on an annual basis thereafter if approved by the City in the City’s sole discretion; and further provided, the City shall have the right to terminate this Fourth Amendment to Sub-Lease in the City’s sole discretion by providing SCA a 90-day written notice of termination prior to the date of termination.
SCA shall cause any vendor who operates out of the food service cart area to acquire and maintain, throughout the term of this Sub-Lease, public liability insurance insuring against personal injury, death and property damage, with minimum limits of $300,000.00 for personal injury or death per person, per occurrence, $600,000.00 for personal injury or death per occurrence in the aggregate, and $300,000.00 for property damage, per occurrence. The City of Charleston shall be named as an Additional Insured on any policy written pursuant to this provision, and the policy shall provide that the City of Charleston shall be notified, with at least ten (10) days advance notice, of any cancellation of the policy. Proof of insurance shall be filed with the City of Charleston if requested by the City. Notwithstanding this requirement for insurance, SCA agrees to indemnify and hold harmless the City of Charleston, its agents, officers and employees from and against any and all claims and expenses that may arise, or be alleged to have arisen, as a result of SCA placing a vendor to operate in the Food Service Cart Area.

In all other respects, the Sub-Lease entered into by and between the City and SCA remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their Hands and Seals the day and year first above written.

IN THE PRESENCE OF:

Debra Matthews

Jennifer Cook

THE CITY OF CHARLESTON

By: _________________

Joseph P. Riley, Jr., Mayor

ATTEST:

Vanessa Lewis Maybank

Clerk of Council

SOUTH CAROLINA AQUARIUM

By: _________________

Vice Chairman

Chairman of the Board

Attest: _________________

Secretary

[Stamp: B. Ross Jenkins III, Notary Public, South Carolina]
SCA shall cause any vendor who operates out of the food service cart area to acquire and maintain, throughout the term of this Sub-Lease, public liability insurance insuring against personal injury, death and property damage, with minimum limits of $300,000.00 for personal injury or death per person, per occurrence, $600,000.00 for personal injury or death per occurrence in the aggregate, and $300,000.00 for property damage, per occurrence. The City of Charleston shall be named as an Additional Insured on any policy written pursuant to this provision, and the policy shall provide that the City of Charleston shall be notified, with at least ten (10) days advance notice, of any cancellation of the policy. Proof of insurance shall be filed with the City of Charleston if requested by the City. Notwithstanding this requirement for insurance, SCA agrees to indemnify and hold harmless the City of Charleston, its agents, officers and employees from and against any and all claims and expenses that may arise, or be alleged to have arisen, as a result of SCA placing a vendor to operate in the Food Service Cart Area.

In all other respects, the Sub-Lease entered into by and between the City and SCA remains unmodified and in full force and effect. IN WITNESS WHEREOF, the parties hereto have hereunto set their Hands and Seals the day and year first above written.

IN THE PRESENCE OF:

[Signatures and stamps]

THE CITY OF CHARLESTON

By: [Signature]
Joseph P. Riley, Jr., Mayor

ATTEST:

[Signature]
Clerk of Council

SOUTH CAROLINA AQUARIUM

By: [Signature]
Chairman of the Board

Attest: [Signature]
Secretary

[Names]

2
TO: Committee on Real Estate  DATE: June 3, 2021
FROM: Julia Copeland  DEPT: Legal
ADDRESS: River Road and Maybank Highway
TMS: 346-00-00-813

PROPERTY OWNER: City of Charleston
Request for approval authorizing Mayor to execute on behalf of City an easement to Dominion Energy in order to construct, extend, replace, relocate, perpetually maintain and operate an overhead or underground electric line or lines consisting of any or all of the following: poles, conductors, lightning protective wires, municipal, public or private communication lines, cables, conduits, pad mounted transformers, guys, push braces and other accessory apparatus and equipment deemed by Grantee to be necessary or desirable, upon, over, across, through and under land described as follows: a lot of land containing 4.42 acres, more or less, and being the same lands conveyed to Grantor by deed of 1776, LLC, dated or recorded 6/11/2020, and filed in the Register of Deeds office for Charleston County in Deed Book 0889 at Page 478.

ACTION REQUEST:

ORDINANCE: Is an ordinance required? Yes ☐ No ☐

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

Department Head
Legal Department
Chief Financial Officer
Director Real Estate Management

Signature  Attachments

FUNDING: Was funding needed? Yes ☐ No ☐ ☒
If yes, was funding previously approved?* Yes ☐ No ☐ ☒
*If approved, provide the following:
Dept/Div. ________ Acct: ________
Balance in Account ________ Amount needed for this item ________

NEED: Identify any critical time constraint(s). N/A
Easement # 901341

INDENTURE, made this ______________ day of ______________, 2021 by and between City of Charleston of the County of Charleston and State of South Carolina, hereinafter called “Grantor” (whether singular or plural), and the DOMINION ENERGY SOUTH CAROLINA, Inc., a South Carolina corporation, having its principal office in Cayce, South Carolina, hereinafter called “Grantee”.

WITNESSETH:

That, in consideration of the sum of One Dollar ($1.00) received from Grantee, Grantor, being the owner of land situate in the County of Charleston, State of South Carolina, hereby grants and conveys to Grantee, its successors and assigns, the right to construct, extend, replace, relocate, perpetually maintain and operate an overhead or underground electric line or lines consisting of any or all of the following: poles, conductors, lightning protective wires, municipal, public or private communication lines, cables, conduits, pad mounted transformers, guys, push braces and other accessory apparatus and equipment deemed by Grantee to be necessary or desirable, upon, over, across, through and under land described as follows: a lot of land containing 4.42 acres, more or less, and being the same lands conveyed to Grantor by deed of 1776, LLC, dated or recorded 6/11/2020, and filed in the Register of Deeds office for Charleston County in Deed Book 0899 at Page 478.

The Right of Way is generally shown on Dominion Energy South Carolina, Inc. drawing #D-83830, and is by reference made a part hereof, with the actual final Right of Way to be determined by the facilities as installed in accordance with the easement. A Dominion Energy South Carolina, Inc. drawing, approved by the Grantor, its successors or assigns, will provide authorization for revisions and or future lines.

TMS: 346-00-09-813 River Rd & Maybank Hwy

Together with the right from time to time to install on said line such additional lines, apparatus and equipment as Grantee may deem necessary or desirable and the right to remove said line or any part thereof.

Together also with the right to lay, construct, maintain, operate, repair, alter, replace and remove pipe lines, together with valves, tiecovers and appurtenant facilities for the transportation of gas, oil petroleum products or any other liquids, gases or substances which can be transported through a pipe line.

Together also with the right (but not the obligation) from time to time to trim, cut or remove trees, underbrush and other obstructions that are within, over, under or through a strip of land (“Easement Space”) extending Fifteen (15) feet on each side of any pole lines and Five (5) feet on each side of any underground wires or pipe lines and within, over, under or through a section of land extending Twelve (12) feet from the door side(s) of any pad mounted transformers, elbow cabinets, switchgears or other devices as they are installed; provided, however, any damage to the property of Grantor (other than that caused by trimming, cutting or removing) caused by Grantee in maintaining or repairing said lines, shall be borne by Grantee; provided further, however, that Grantors agree for themselves, their successors and assigns, not to build or allow any structure to be placed on the premises in such a manner that any part thereof will exist within the applicable above specified Easement Space, and in case such structure is built, then Grantor, or such successors and assigns as may be in possession and control of the premises at the time, will promptly remove the same upon demand of Grantee herein. Grantor further agrees to maintain minimum ground coverage of thirty six (36) inches and maximum ground coverage of fifty four (54) inches over all underground primary electric lines. Grantor further agrees to maintain minimum ground coverage of twenty four (24) inches and maximum ground coverage of forty two (42) inches over all underground pipe (gas) lines. Together also with the right of entry upon said lands of Grantor for all of the purposes aforesaid.

The words “Grantor” and “Grantee” shall include their heirs, executors, administrators, successors and assigns, as the case may be.

IN WITNESS WHEREOF, Grantor has caused this indenture to be duly executed the day and year first above written.

WITNESS:

City of Charleston

By: ________________________________

Print: ________________________________

Title: ________________________________

1st Witness

2nd Witness
Easement # 901342

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA )
)
COUNTY OF Charleston )
)

The foregoing instrument was acknowledged before me, the undersigned Notary, and I do hereby certify that the within named , of City of Charleston, personally appeared before me this day and that the above named acknowledged the due execution of the foregoing instrument.

Sworn to before me this _____ day of ____________, 2021

______________________________
Signature of Notary Public State of SC

My commission expires: ____________

______________________________
Print Name of Notary Public

RIGHT OF WAY GRANT TO
DOMINION ENERGY SOUTH CAROLINA, INC.

Line: Stono Oaks (formerly Fenwick Apartments)
County: Charleston
R/W File Number: 24361
Grantor(s): City of Charleston

Return to: Dominion Energy South Carolina, Inc.
Right-of-Way
2392 West Aviation Avenue MC: CH-29
North Charleston, SC 29406
TO: Committee on Real Estate  DATE: June 3, 2021
FROM: Julia Copeland  DEPT: Legal
ADDRESS: River Road and Maybank Highway
TMS: 346-00-00-004
PROPERTY OWNER: City of Charleston
Request for approval authorizing Mayor to execute on behalf of City an
easement to Dominion Energy in order to construct, extend, replace, relocate,
perpetually maintain and operate an overhead or underground electric line or
lines consisting of any or all of the following: poles, conductors, lightning
protective wires, municipal, public or private communication lines, cables,
conduits, pad mounted transformers, guys, push braces and other accessory
apparatus and equipment deemed by Grantee to be necessary or desirable,
upon, over, across, through and under land described as follows: a tract of
land containing 11.73 acres, more or less, and being the same lands conveyed
to Grantor by deed of 1776, LLC, dated or recorded 6/11/2020, and filed in the
Register of Deeds office for Charleston County in Deed Book 0889 at Page
475.

ACTION REQUEST:

ORDINANCE: Is an ordinance required? Yes [ ] No [ ]

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

Department Head

Legal Department

Chief Financial Officer

Director Real Estate Management

Signature

Attachments

FUNDING: Was funding needed? Yes [ ] No [ ] [ ]
If yes, was funding previously approved?* Yes [ ] No [ ] [ ]
*If approved, provide the following:
Dept/Div. _______________ Acct: _______________
Balance in Account _______________ Amount needed for this item _______________

NEED: Identify any critical time constraint(s). N/A
Easement # 901342

INDENTURE, made this __________ day of ____________________, 2021 by and between City of Charleston of the County of Charleston and State of South Carolina, hereinafter called “Grantor” (whether singular or plural), and the DOMINION ENERGY SOUTH CAROLINA, INC., a South Carolina corporation, having its principal office in Cayce, South Carolina, hereinafter called “Grantee”.

WITNESSETH:

That, in consideration of the sum of One Dollar ($1.00) received from Grantee, Grantor, being the owner of land situate in the County of Charleston, State of South Carolina, hereby grants and conveys to Grantee, its successors and assigns, the right to construct, extend, replace, relocate, perpetually maintain and operate an overhead or underground electric line or lines consisting of any or all of the following: poles, conductors, lightning protective wires, municipal, public or private communication lines, cables, conduits, pad mounted transformers, guys, push braces and other accessory apparatus and equipment deemed by Grantee to be necessary or desirable, upon, over, across, through and under land described as follows: a tract of land containing 11.73 acres, more or less, and being the same lands conveyed to Grantor by deed of 1776, LLC, dated or recorded 6/11/2020, and filed in the Register of Deeds office for Charleston County in Deed Book 0889 at Page 475.

The Right of Way is generally shown on Dominion Energy South Carolina, Inc. drawing #D-83830, and is by reference made a part hereof, with the actual final Right of Way to be determined by the facilities as installed in accordance with the easement.

A Dominion Energy South Carolina, Inc. drawing, approved by the Grantor, its successors or assigns, will provide authorization for revisions and or future lines.

TMS: 346-00-00-004        River Rd & Maybank Hwy

Together with the right from time to time to install on said line such additional lines, apparatus and equipment as Grantee may deem necessary or desirable and the right to remove said line or any part thereof.

Together also with the right to lay, construct, maintain, operate, repair, alter, replace and remove pipe lines, together with valves, tieovers and appurtenant facilities for the transportation of gas, oil, petroleum products or any other liquids, gases or substances which can be transported through a pipe line.

Together also with the right (but not the obligation) from time to time to trim, cut or remove trees, underbrush and other obstructions that are within, over, under or through a strip of land ("Easement Space") extending Fifteen (15) feet on each side of any pole lines and Five (5) feet on each side of any underground wires or pipe lines and within, over, under or through a section of land extending Twelve (12) feet from the door side(s) of any pad mounted transformers, elbow cabinets, switchgear or other devices as they are installed; provided, however, any damage to the property of Grantor (other than that caused by trimming, cutting or removing) caused by Grantee in maintaining or repairing said lines, shall be borne by Grantee; provided further, however, that Grantors agree for themselves, their successors and assigns, not to build or allow any structure to be placed on the premises in such a manner that any part thereof will exist within the applicable above specified Easement Space, and in case such structure is built, then Grantor, or such successors and assigns as may be in possession and control of the premises at the time, will promptly remove the same upon demand of Grantee herein. Grantor further agrees to maintain minimum ground coverage of thirty six (36) inches and maximum ground coverage of fifty four (54) inches over all underground primary electric lines. Grantor further agrees to maintain minimum ground coverage of twenty four (24) inches and maximum ground coverage of forty two (42) inches over all underground pipe (gas) lines. Together also with the right of entry upon said lands of Grantor for all of the purposes aforesaid.

The words “Grantor” and “Grantee” shall include their heirs, executors, administrators, successors and assigns, as the case may be.

IN WITNESS WHEREOF, Grantor has caused this indenture to be duly executed the day and year first above written.

WITNESS:

City of Charleston

By: ____________________________________________  

Print: ____________________________________________  

Title: ____________________________________________  

1st Witness

2nd Witness
Easement # 901341

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA  
COUNTY OF Charleston

The foregoing instrument was acknowledged before me, the undersigned Notary, and I do hereby certify that the within named, of City of Charleston, personally appeared before me this day and that the above named acknowledged the due execution of the foregoing instrument.

Sworn to before me this _____ day of _____________, 2021

______________________________
Signature of Notary Public State of SC

My commission expires: ___________

______________________________
Print Name of Notary Public

RIGHT OF WAY GRANT TO
DOMINION ENERGY SOUTH CAROLINA, INC.

Line: Stono Oaks (formerly Fenwick Apartments)
County: Charleston
R/W File Number: 24361
Grantor(s): City of Charleston

Return to:  Dominion Energy South Carolina, Inc.
Right-of-Way
2392 West Aviation Avenue MC: CH-29
North Charleston, SC 29406
COMMITTEE ON REAL ESTATE
GENERAL FORM

TO: Committee on Real Estate             DATE: June 4, 2021
FROM: Julia Copeland                    DEPT: Legal
ADDRESS: 14 Sumar Street Parking Lot
TMS: N/A

PROPERTY OWNER: City of Charleston
Request for approval for Mayor to execute Memorandum of Understanding with Transdev Services, Inc. regarding non-exclusive use of parking lot for CARTA driver training purposes.

ACTION REQUEST:

ORDINANCE: Is an ordinance required? Yes ☐ No ☒

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

<table>
<thead>
<tr>
<th>Department Head</th>
<th>Signature</th>
<th>Attachments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Department</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>Chief Financial Officer</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Director Real Estate Management</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

FUNDING: Was funding needed? Yes ☐ No ☒
If yes, was funding previously approved?* Yes ☐ No ☒

*If approved, provide the following:
Dept/Div. ___________ Acct: ___________
Balance in Account ___________ Amount needed for this item ___________

NEED: Identify any critical time constraint(s). N/A
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "MOU") is made and entered into this ___ day of June 2021 between the City of Charleston, South Carolina (the "City") and Transdev Services, Inc. a Maryland corporation ("Transdev") (collectively, the "Parties").

A. Transdev seeks a location to conduct bus operator training to support its agreement with the Charleston Area Regional Transportation Authority.

B. The City has agreed to provide to Transdev access to the parking lot located at 14 Sumar Street in Charleston, South Carolina (the "Premises") for Transdev's use in training bus operators.

NOW THEREFORE, in consideration of the mutual promises and covenants recited herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Use of Premises.
The City hereby grants Transdev non-exclusive access to the Premises to conduct training of bus operators. This use shall be limited to dates and times when the City’s Fire Department is not using the Premises for its training purposes; however, City will make reasonable efforts to coordinate with Transdev’s scheduled use.

2. Term and Termination.
This MOU is effective from June 7, 2021 through June 6, 2022. City reserves the right to terminate this MOU for convenience, upon thirty (30) days’ written notice to Transdev. Upon termination, City will return any remaining balance of the use fee, exempting any reasonable costs associated with damage caused by Transdev’s use of the Premises.

3. Compensation.
Transdev shall pay a fee of $250/month for the use of the Premises, payable in advance in a lump sum within five days after the execution of this MOU.

4. Insurance.
Transdev agrees to have adequate insurance coverage for property damage and personal injury related to the Site in an amount that is standard in the industry but no less than $300,000 for property damage and $600,000 for personal injury. Proof of insurance will be provided to the City showing that it is included as an additional insured.
5. **Hold Harmless.**
Except for expenses or liabilities incurred by Transdev arising from the negligence of the City, Transdev hereby expressly agrees to indemnify and hold the City harmless against any and all expenses and liabilities arising out of the performance or default of this MOU.

6. **Entire Agreement.**
This document contains the entire agreement between the parties hereto and all previous negotiations leading thereto. This agreement shall not be modified orally and shall only be altered by an agreement in writing signed by the parties.

7. **Governing Law.**
The laws of South Carolina shall govern this agreement.

8. **Notice.**
For purposes of notice, the representatives for the parties are:

FOR THE CITY:

________________________
________________________
________________________

FOR Transdev:

________________________
________________________
________________________

IN WITNESS WHEREOF, the Parties have caused their duly authorized agents to execute this Agreement as of the day and year first written above.

**CITY OF CHARLESTON**

By: __________________________
Title: __________________________

**TRANSDEV SERVICES, INC.**

By: __________________________
Title: William Spraul-Regional Vice President
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: June 15, 2021
FROM: Real Estate Division DEPT: BFRC
ADDRESS: 144 Cannon St. and 148 Cannon St.
TMS: 460-11-04-150 and 460-11-04-151
PROPERTY OWNER: GMS Cannon, LLC
ACTION REQUEST: Request authorization for the Mayor to execute the attached
Temporary Access Agreement between the City of Charleston and
GMS Cannon, LLC.

ORDINANCE: Is an ordinance required? Yes ☐ No ☒

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

Department Head
Legal Department
Chief Financial Officer
Director Real Estate Management

Signature

Attachments

FUNDING: Was funding needed? Yes ☐ No ☐
If yes, was funding previously approved? Yes ☐ No ☐
*If approved, provide the following: Dept/Div. Acct:
Balance in Account Amount needed for this item

NEED: Identify any critical time constraint(s).

*Commercial Property and Community & Housing Development have an
additional form.
COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: June 15, 2021
FROM: Real Estate Division DEPT: BFRC
ADDRESS: 144 Cannon St. and 146 Cannon St.
TMS: 460-11-04-150 and 460-11-04-151
PROPERTY OWNER: GMS Cannon, LLC
Request authorization from the Mayor to execute the attached Temporary Access Agreement between the City of Charleston and
ACTION REQUEST: GMS Cannon, LLC.

ORDINANCE: Is an ordinance required? Yes □ No X

ACTION: What action is being taken on the Property mentioned?

□ ACQUISITION Seller (Property Owner) _______________ Purchaser _______________

□ DONATION/TRANSFER
Donated By: _______________

□ FORECLOSURE
Terms: _______________

□ PURCHASE
Terms: _______________

□ CONDEMNATION
Terms: _______________

□ OTHER
Terms: _______________

□ SALE Seller (Property Owner) _______________ Purchaser _______________

□ NON-PROFIT ORG, please name _______________
Terms: _______________

□ OTHER
Terms: _______________

□ EASEMENT
Grantor (Property Owner) _______________
GMS Cannon, LLC Grantee _______________
City of Charleston

□ PERMANENT _______________
COMMERCIAL REAL ESTATE FORM

Terms:

X TEMPORARY

GMS Cannon, LLC agrees to grant the City access to 144 and 146 Cannon St. as a temporary construction easement and laydown area to facilitate portion(s) of the Spring/Fishburne stormwater project. Payment to GMS Cannon, LLC will be $9,000 a month for a term of thirty (30) months. City may extend the term for an additional six (6) months at its sole discretion.

Terms:

☐ LEASE

☐ INITIAL

Terms:

☐ RENEWAL

Terms:

☐ AMENDMENT

Terms:

☐ Improvement of Property

Owner:

Terms:

BACKGROUND CHECK: If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☐

Results:

Signature: [Signature]

Director Real Estate Management

ADDITIONAL: Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

NEED: Identify any critical time constraint(s).
TEMPORARY ACCESS AGREEMENT

This Temporary Access Agreement is made and entered into this _____ day of _________, 2021 (the "Effective Date"), by and between the City of Charleston, a South Carolina municipal corporation (herein the "City"), and GMS Cannon, LLC, a Virginia limited liability company (herein the "Owner").

RE bâtAL

WHEREAS, the undersigned owns those certain parcels bearing Charleston County Tax Map Numbers 460-11-04-151 and 460-11-04-150, located at the northeast corner of President and Cannon Streets in the City of Charleston, County of Charleston, State of South Carolina, and more particularly described on Exhibit A incorporated herein by reference (the "Property"); and

WHEREAS, the City and Owner previously entered into an Easement and Environmental Conditions Agreement, dated January 17, 2019, which established a Temporary Construction Easement and Exclusive Permanent Easement on, across, and under the Property, and is incorporated herein as Exhibit B; and

WHEREAS, the City has requested to extend its temporary access on, across, and under the Property which the Owner has agreed to grant;

NOW, THEREFORE, in consideration of the foregoing and the benefits to be derived by the Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth above are hereby incorporated into this Agreement in their entirety.

2. Temporary Access. The Owner hereby grants, transfers, and conveys to the City exclusive, temporary access upon, over, across, under and through the entirety of the Property for the use and benefit of the City and its successors and assigns. Additionally, the City shall have the non-exclusive right of ingress and egress to and from the Property from the adjacent public streets.

   The City shall have access to the Property twenty-four (24) hours a day, seven (7) days a week, and the City may, at its sole discretion, conduct any construction or operational activities at any time. The City shall use commercially reasonable efforts to minimize construction and operational noise (unless in the case of an emergency).

3. Payment. The City shall pay to the Owner, as consideration for entering into this Agreement, the amount of Nine Thousand and no/100 Dollars ($9,000.00) per month,
to be paid until the expiration date of this Agreement. The Owner shall provide to the City, in writing, the address to remit payment.

4. **Term.** The Term of this Agreement shall commence on the Effective Date and shall continue for thirty (30) months. The Agreement shall be deemed to automatically terminate without need for any further action by either party hereto.

5. **Notices.** All notices and other communications relating to this Agreement shall be in writing sent by hand delivery, registered or certified mail, overnight courier service or telex and addressed as follows:

   To the City:  
   City of Charleston  
   Real Estate Division  
   2 George Street, Suite 2601  
   Charleston, SC 29401

   with a copy to:  
   City of Charleston  
   Corporation Counsel  
   50 Broad Street  
   Charleston, SC 29401

   To the Owner:  
   ________________________________
   ________________________________
   ________________________________

   with a copy to:  
   ________________________________
   ________________________________
   ________________________________

6. **Property Taxes.** The City shall reimburse the Owner for all real estate property taxes on the Property during the Term of this Agreement and any extension thereof within thirty (30) days of the Owner providing the City a written request for reimbursement.

7. **Extension of Agreement.** The City may, at its sole discretion, extend the Term of this Agreement for an additional six (6) months by providing written notice to the Owner sixty (60) days prior to the expiration date of this Agreement.

8. **Use of Property.** The City and its contractors, agents, employees, and representatives may use the entirety of the surface area of the Property for construction laydown and staging area, truck loading and offloading, parking, and such other use(s) as determined by the City. Additionally, the City may conduct subsurface construction activity at any location within the Property.
The City may, at its sole discretion, lease the Property for surface parking. Any parking leases entered into by the City shall terminate on or prior to the expiration of the Term of this Agreement.

9. **Restoration of Property.** Upon completion of the City’s construction project, the City shall restore the Property to good condition, including the removal of all material that does not constitute the stormwater drainage project.

10. **Agreement to Run with the Land.** With or without specific reference thereto, the conveyance of an interest in any portion of the Property shall be subject to the respective obligations and benefits of the terms of this Agreement to the same extent as if all of the terms of this instrument were set forth in such conveyance in full. The covenants, agreements, and conditions contained or expressed herein shall not be personal but shall run with the land and shall be binding upon and inure to the benefit of the owners of all or any portion of the Property and their mortgagees, any purchaser at a foreclosure sale, and each of the successors and assigns of all such parties, as well as the agents, employees, tenants, invitees and licensees of each of them.

11. **Governing Law.** This Agreement shall be governed by, construed and enforced according to the laws of the State of South Carolina.

12. **Authority.** Each party hereto represents, warrants and covenants to the other party that the person(s) signing this Agreement on behalf of each party have full power and authority to enter into this Agreement and to perform its obligations hereunder.

13. **Counterparts.** This Agreement may be executed in one or more counterparts, by original, and when executed by all parties shall constitute one and the same instrument.

14. **Exclusive Permanent Easement.** It is hereby expressly acknowledged and agreed by both parties that this Agreement does not alter, amend, terminate, or otherwise affect the Exclusive Permanent Easement granted to the City by the Owner as shown on Exhibit B of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the parties have set their Hands and Seals the day and year above written.

WITNESSES:                      GMS CANNON, LLC

__________________________________ By: ____________________________

__________________________________ Its: ____________________________

WITNESSES:                      CITY OF CHARLESTON

__________________________________ By: ____________________________

__________________________________ Its: ____________________________
EXHIBIT B
STATE OF SOUTH CAROLINA

COUENTY OF CHARLESTON

EASEMENT AND ENVIRONMENTAL CONDITIONS AGREEMENT

This Easement and Environmental Conditions Agreement (the "Agreement") is dated as of the 7th day of January, 2019 (the "Effective Date"), and is between THE CITY OF CHARLESTON, a South Carolina municipal corporation (the "City") and GMS Cannon, LLC, a South Carolina limited liability company and the assignee of The Gathering at Morris Square, LLC, a Virginia limited liability company (hereinafter referred to as the "Owner").

WHEREAS, that certain Settlement Agreement dated as of May 4, 2017 by and between the City and The Gathering at Morris Square, LLC (the "Settlement Agreement") contains, inter alia, certain obligations of the City in Sections 4(vi) through 4(ix) (the "Section 4 Obligations"); and

WHEREAS, in accordance with the terms and conditions of the Settlement Agreement, the City has, simultaneously herewith, conveyed to Owner by Limited Warranty Deed (the "Deed") that certain real property, together with the improvements thereon, bearing Charleston County Tax Map numbers 460-11-04-151 and 460-11-04-150, located at the northeast corner of President and Cannon Street in the City of Charleston, County of Charleston, State of South Carolina, and being more particularly described on Exhibit A (the "Owner Parcels Legal Description"), attached hereto and incorporated herein by reference (the "Owner Parcels"); and

WHEREAS, as contemplated in the Settlement Agreement, and as a condition to its conveyance of the Owner Parcels to the Owner, the City reserved the right to construct and maintain public storm drainage improvements on and under a portion of the Owner Parcels (the "Drainage Project"), such Drainage Project to include, without limitation, the construction of a stormwater conveyance tunnel (the "Tunnel"), stormwater access shaft (the "Shaft"), manholes, manhole covers, tunnels, underground piping, drainage pipes, and outflow pipes; and in connection with the foregoing, the parties have agreed to establish a temporary construction easement (as further defined below, the "Temporary Construction Easement"), and an exclusive permanent easement (as further defined below, the "Exclusive Permanent Easement" and together with the Temporary Construction Easement, the "Easements") all as more particularly set forth hereinbelow; and

WHEREAS, as contemplated in the Settlement Agreement the parties agreed to releases, apportionment of responsibilities, and other conditions with regard to the environmental conditions or matters of or relating to the Owner Parcels, all as more particularly set forth hereinbelow; and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, in consideration of the sum of Three Dollars ($3.00), the foregoing premises, the terms of the Settlement Agreement, and other good
and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. EASEMENTS

A. Grant of Easement. Owner hereby grants, bargains, sells, transfers, releases and conveys, the following Easements unto the City:

i. Effective upon the Effective Date, and subject to the remaining terms thereof, an exclusive, temporary construction easement (the "Temporary Construction Easement") upon, over, across, under and through the entirety of the Owner Parcels (the "Temporary Easement Area") for the use and benefit of the City and its successors and assigns.

ii. Effective upon the Construction Easement Expiration Date (as defined below), an exclusive permanent easement (the "Exclusive Permanent Easement") upon, over, across, under and through the area of the Owner Parcels more fully shown and designated as "New Permanent Exclusive Stormwater Easement, 0.062 ACRE/2,695 SQ. FT., PORTION OF T.M.S. NO. 460-11-04-150" (the "Permanent Easement Area" and together with the Temporary Easement Area, the "Easement Areas") as further shown and designated on that certain plat entitled "PLAT OF A NEW PERMANENT EXCLUSIVE STORMWATER EASEMENT OVER A PORTION OF T.M.S. NO. 460-11-04-150 AND A NEW TEMPORARY CONSTRUCTION EASEMENT OVER T.M.S. NO. 460-11-04-151 AND A PORTION OF T.M.S. NO. 460-11-04-150 PREPARED AT THE REQUEST OF THE CITY OF CHARLESTON, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" by Joddie R. Porth, SCPLS No.: 16820, with HGBD Surveyors, LLC, dated April 5, 2017, last revised December 18, 2018 (hereinafter, the "Plat", a copy of which is attached hereto as Exhibit B and incorporated herein by reference) for the use and benefit of the City of Charleston, its successors and assigns.

The Easements having such sizes, shapes, buttoings, boundings, dimensions and locations as will more fully and at large appear by reference to the Owner Parcels Legal Description (with regard to the Temporary Easement Area) and the Plat (with regard to the Permanent Easement Area).

IT IS UNDERSTOOD AND AGREED that the Easements above described are granted and accepted upon the following terms and conditions, to wit:

B. Temporary Construction Easement. The following provisions, limitations and conditions shall apply with respect to the Temporary Construction Easement:

i. Duration. The term of the Temporary Construction Easement shall commence beginning on the Effective Date hereof and continuing until the completion of the Drainage Project (the "Construction Easement Expiration Date"), at which time the Temporary Construction Easement shall be deemed to automatically terminate without need for any further action by either party hereto; provided, however, that upon request by Owner a written agreement in recordable form acceptable to the City and prepared at the cost of Owner shall be
executed by the City to evidence such termination. In the event the Drainage Project is not completed prior to December 1, 2019, commencing January 1, 2020 the City shall pay a fee to the Owner at the rate of $3,500 per month, such fee to be paid until the Construction Easement Expiration Date.

ii. Purpose. Throughout its duration, the City may use the entirety of the surface area of the Temporary Easement Area for construction laydown and staging area and for truck loading and offloading in connection with construction of the Drainage Project and such other purposes required to construct to complete the Drainage Project. In addition, during the duration of the Temporary Construction Easement, the City may conduct subsurface construction activity at any location within the Temporary Easement Area as necessary in order to construct and install the Drainage Project. The Shaft shall be constructed and installed as depicted on the Plat and the Tunnel shall be constructed and installed in the Permanent Easement Area. During the term of the Temporary Construction Easement, the City shall post and maintain in the Temporary Easement Area signage visible from the adjacent public right-of-way stating conspicuously that the Drainage Project is a “City of Charleston Public Works Project” together with a telephone number for contacting City personnel concerning the Drainage Project.

iii. Restoration. Upon the occurrence of the Construction Easement Expiration Date, the City shall restore the Temporary Construction Easement Area to good condition including the removal of all material that does not constitute the Drainage Project.

iv. Access. During the term of the Temporary Construction Easement, in addition to the Temporary Construction Easement Area, the City shall have the non-exclusive right of ingress and egress to and from the Temporary Construction Easement Area from the public streets adjacent to the Owner Parcels. In addition, during the term of the Temporary Construction Easement, the City may, at the City’s option and in the City’s sole discretion, conduct its construction activities and subsequent maintenance, repair and replacement activities in connection with the Drainage Project twenty-four (24) hours a day, seven days a week. The City shall use commercially reasonable efforts to minimize construction and operational noise (unless in the case of emergency).

C. Exclusive Permanent Easement. The following provisions, limitations, and conditions shall apply with respect to the Exclusive Permanent Easement:

i. Duration. The Exclusive Permanent Easement shall commence upon the Construction Easement Expiration Date and shall be perpetual in duration for so long as Drainage Project (and any modification or restoration thereof) is in use.

ii. Purpose. During the term of the Exclusive Permanent Easement, the City shall have the right to access and enter upon the Permanent Easement Area (and such other portions of the Owner Parcels as reasonably necessary, provided, however, any such access and entry by the City shall not unreasonably interfere with the construction and operation of improvements
on the Owner Parcels) in order to use, operate, maintain, improve, repair and replace the Drainage Project.

iii. Owner Use and Access. Throughout the duration of the Exclusive Permanent Easement, and notwithstanding the exclusive nature thereof, the Owner shall have the right to use the Permanent Easement Area for surface parking and for access by foot and vehicular traffic to and from the remainder of the Owner Parcels and for any other purpose that does not materially interfere with the utility of the Drainage Project. Owner shall not make any alterations, modifications, or other improvements to the Permanent Easement Area, without the prior written approval of the City, such approval not to be unreasonably withheld; provided, however, that the Owner may pave the Permanent Easement Area so long as any such paving does not interfere with the City’s access to the Drainage Project and the operation thereof, including without limitation the Shaft and Tunnel.

iii. Access. Except as otherwise provided below, the City shall have access to the Permanent Easement Area on a twenty-four hour a day, seven day per week basis, and shall have no obligation to provide prior written notice to Owner of any entry thereupon. The City shall provide Owner with no less than three (3) days prior written notice in the event any of the activities to be undertaken by the City as provided in this Agreement necessitate Owner to cease its activities upon the Permanent Easement Area during the pendency thereof, provided, however, that in the event of an emergency, the City shall have no obligation to provide the foregoing notice. The City shall use commercially reasonable efforts to minimize construction and operational noise (except in the case of emergency).

iv. Maintenance Standard. The City shall keep the Drainage Project in a good, safe and, to the extent any components of the Drainage Project are visible from the surface of the ground, neat and clean appearance. If the City shall fail to maintain the Drainage Project in accordance with the foregoing, the Owner, after providing to the City written notice specifying in reasonable detail the deficiencies to be corrected and thirty (30) days to cure same, in addition to any other remedy may, but shall not be obligated to, cure such deficiency on behalf of the City, in which event the City shall be liable to the Owner for the actual costs incurred by Owner of same, to include without limitation reasonable attorney’s fees and costs, plus interest at the prevailing pre-judgment legal rate from date of expenditure.

D. Damage to Owner Parcels. Except as expressly provided in Section II hereinbelow, any damage caused to the Owner Parcels by the City or its agents, contractors and representatives, or any one or more of them in connection with the Easements, shall be the responsibility of the City; at Owner’s election, City shall repair such damage or pay to Owner the reasonable cost to repair any and all such damage upon demand.

E. Termination; Assignment; Development Rights. Notwithstanding any other provision of this Agreement to the contrary, if the City elects to remove, abandon, or discontinue use of the Drainage Project, in the City’s sole discretion, the City shall provide notice of such
election to the Owner in writing, and upon receipt of such notice by Owner this Agreement shall be deemed to terminate automatically and as of the date Owner receives such notice, and shall be deemed to be of no further force or effect. This Agreement shall only be assigned by the City to a public governmental entity (a “Permitted Assignee”), and for such assignment to be valid it must be in writing and recorded in the ROD Office for Charleston County. In addition, such assignment must provide that the Permitted Assignee shall assume all obligations, liabilities and responsibilities of the City hereunder, to include without limitation the obligation to operate and maintain the Drainage Project. The Owner retains all surface, air, and development rights as to the Owner Parcels that are not inconsistent with the terms and conditions of this Agreement.

F. Contractor Compliance. City shall cause each contractor with whom City contracts concerning the Drainage Project from and after the Effective Date hereof to acknowledge the provisions of this Easement Agreement, to abide by the relevant provisions of this Easement Agreement and to cause each of its subcontractors and subcontractors of subcontractors both to acknowledge all provisions of this Easement Agreement and to abide by all relevant provisions of this Easement Agreement.

G. Permits. The City shall have the obligation to obtain, and to comply with all provisions of, any permits which may now or in the future be required for the construction, operation, repair and replacement of the Drainage Project.

II. Environmental.

A. Remediation. The City shall have no obligation to undertake environmental remediation on the Owner Parcels for known or unknown pre-existing contamination or conditions other than remediation required by the South Carolina Department of Health and Environmental Control (“SCDHEC”) for the Drainage Project. The City shall be responsible for (1) the remediation, cleanup, transport and disposal of any hazardous waste contamination required by SCDHEC for the construction of its planned drainage project on the Properties; or (2) the introduction, by way of use, storage or release, of any new solid wastes, hazardous wastes, hazardous substances, toxic chemicals, pollutants or other environmentally regulated substance. The City shall conduct such remediation in compliance with all environmental laws.

B. Environmental Investigation. Owner hereby agrees that it shall not perform a Phase II environmental investigation (any intrusive testing) on the Owner Parcels until after completion of the City's Drainage Project and will be solely responsible for any environmental remediation that may be required by SCDHEC or the United States Environmental Protection Agency (“USEPA”) as a result of its Phase II. The completion date of the City's Drainage Project shall be at the sole and absolute discretion of the City. The City shall provide written documentation to the Owner when the Drainage Project is complete. The Owner shall indemnify and hold harmless the City from any losses, claims, causes of action damages, demands, costs, and expenses, including reasonably attorneys’ fees, arising from the Owner’s release, as defined under the Comprehensive Environmental Response, Compensation, and
Liability Act, and/or exacerbation of any known or unknown pre-existing environmental condition on the Owner Parcels.

C. Except as expressly provided in Section II A above, the Owner does hereby release the City from all other environmental claims it may have against the City, including but not limited to CERCLA and any release, or claims of exacerbating site conditions, on the Owner Parcels. The Owner acknowledges responsibility for any and all costs, remediation and cleanup, including those related to its NRP-VCC and SCDHEC and any existing and future monitoring wells and the abandonment thereof.

D. This Agreement and those portions of the Settlement Agreement regarding the Owner Parcels together constitute the entire agreement of the parties on the specific subject matter hereof. This Agreement and the Settlement Agreement shall be read together to determine the parties' intent, provided, however, if there is a conflict between any provision of this Agreement and any provision of the Settlement Agreement, the provision of this Agreement shall control and the remainder of this Agreement and the Settlement Agreement shall be read together.

III. MISCELLANEOUS.

A. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the City and the Owner and their respective heirs, successors and assigns.

B. Governing Law. This Agreement shall be governed by, interpreted under and enforced in accordance with the laws of the State of South Carolina.

C. Amendment. This Agreement may only be amended or modified by a writing signed by all of the parties hereto.

D. Agreement to Run with the Land. With or without specific reference thereto, the conveyance of an interest in any portion the Owner Parcels shall be subject to the respective burdens and benefits of the terms of this Agreement to the same extent as if all of the terms of this instrument were set forth in such conveyance in full. The easement, covenants, agreements and conditions contained or expressed herein shall not be personal but shall run with the land and shall be binding upon and inure to the benefit of the owners of all or any portion of the Owner Parcels and their mortgagees, any purchaser at a foreclosure sale, each of the successors and assigns of all such parties, as well as the agents, employees, tenants, invitees and licensees of each of them.

E. Counterparts. This Agreement may be executed in duplicate counterparts or in multiple originals or both, all of which, taken as a whole, shall constitute a single agreement.

F. Recordation. This Agreement may be recorded by either party in the ROD Office for Charleston County, South Carolina.
G. **Future Alteration.** City and Owner agree to consider in good faith any commercially reasonable request made by the other for change, alteration, amendment or modification of the terms of this Easement Agreement, provided, however, neither party shall be obligated to agree to any such requested change, alteration, amendment or modification.

H. **Paragraph Headings.** Paragraph headings are for convenience only and do not constitute a substantive part of this Agreement.

I. **Section 4 Obligations.** It is the intent of the parties that this Agreement and the Deed recorded simultaneously herewith shall embody the full obligations of the parties as to the Section 4 Obligations, and as such, to the extent of any conflict between the terms of the Section 4 Obligations and this Agreement, the terms of this Agreement shall control. It is hereby expressly acknowledged and agreed that (i) the parties shall not enter into a lease or leaseback for all or any portion of the Owner Parcels, and (ii) there are currently no parking leases in effect for the Owner Parcels as contemplated by Section 4(ix) of the Settlement Agreement and, as such, the parties shall have no further obligations pursuant to Section 4(ix) with regards to same.

[Signatures on following page]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement in manner and form sufficient to bind them as of the day and year first above written.

WITNESSETH:

#1

Print Name: Adam Ferrillo

#2

Print Name: William Booje

OWNER:

GMS CANNON, LLC,
a South Carolina limited liability company
By: __________________________

Its: __________________________

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, William Booje, a Notary Public for the State of South Carolina, do hereby certify that Chris K. Phillips, the Member of Gathering at Morris Square, LLC, a Virginia limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 12 day of January 2019.

[Notary Public's Signature]

Notary Public, State of South Carolina
Printed name: William Booje
My Commission expires: 2/12/2020
WITNESSETH:

#1 [Signature]

Print Name: Richard T. Tecklenburg

#2 [Signature]

Print Name: Jane Bouch-Stoney

CITY:

CITY OF CHARLESTON,
a South Carolina municipal corporation

By: [Signature]

Its: Mayor

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, Jane Bouch-Stoney, a Notary Public for the State of South Carolina, do hereby certify that John J. Tecklenburg, the Mayor of the City of Charleston, a South Carolina municipal corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 17th day of January, 2019.

[Signature]
Notary Public, State of South Carolina
Printed name: Jane Bouch-Stoney
My Commission expires: 1-05-2027

[NOTARIAL SEAL]
EXHIBIT A

Owner Parcels Legal Description
EXHIBIT A
Owner Parcels Legal Description

ALL that certain lot, piece or parcel of land, with improvements located thereon, situate, lying and being at the northeast corner of Cannon and President Streets in the City of Charleston, County of Charleston, South Carolina, and the parcel adjacent and to the East of the said corner parcel, with improvements thereon, said two parcels known in the present numbering system as 144 and 146 Cannon Street, said 146 Cannon Street (the corner parcel) containing approximately 0.18 acres and said 144 Cannon Street containing approximately 0.11 acres; the dimensions, butttings and boundings of said parcels are more fully described in the survey of Stephens Engineering, Inc., dated April 5, 2000, and recorded in Plat Book DC, Page 313, in the RMC Office for Charleston County, S.C., be all the dimensions a little more or less.

BEING the same property conveyed to The City of Charleston by deed of Cannonball 2012, LLC, a South Carolina limited liability company, dated January 13, 2014, and recorded January 13, 2014 in Book 0383 at Page 735, in the ROD Office for Charleston County, South Carolina.

TMS# 460-11-04-150 and 460-11-04-151
EXHIBIT B

Plat
**RECORDER'S PAGE**

*NOTE:* This page MUST remain with the original document

**FILED BY:**
HELLMAN YATES & TISDALE
105 BROAD STREET, 3 FLOOR
CHARLESTON SC 29401 (BOX)

**MAKER:**
CITY OF CHARLESTON

**RECIPIENT:**
GMS CANNON LLC

<table>
<thead>
<tr>
<th>Original Book</th>
<th>Original Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**RECORDED**

- **Date:** February 6, 2019
- **Time:** 2:26:42 PM
- **Book:** 0776
- **Page:** 266
- **Doc Type:** Agmt

- **# of Pages:** 14
- **# of Sats:**
- **# of References:**

**Note:**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recording Fee</td>
<td>$10.00</td>
</tr>
<tr>
<td>Extra Reference Cost</td>
<td>-</td>
</tr>
<tr>
<td>Extra Pages</td>
<td>$9.00</td>
</tr>
<tr>
<td>Postage</td>
<td>-</td>
</tr>
<tr>
<td>Chattel</td>
<td>-</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$19.00</td>
</tr>
</tbody>
</table>

**DRAWER** Drawer 2
**CLERK** JBA

0776  266  02/06/2019  14  14:26:42
Original Book  Original Page  Doc Type  Recorded Date  # Pgs  Recorded Time
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee
DATE: June 15, 2021
FROM: Real Estate Division
DEPT: BFRC
ADDRESS: 44 America St.
TMS: 459-09-04-025

PROPERTY OWNER: City of Charleston

Request authorization for the Mayor to execute the attached Easement Agreement between the City of Charleston and the Charleston Area Regional Transportation Authority (CARTA).

ACTION REQUEST: (Blank)

ORDINANCE: Is an ordinance required? Yes ☐ No ☐

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

<table>
<thead>
<tr>
<th>Department Head</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
</tr>
<tr>
<td>Attachments</td>
</tr>
<tr>
<td>Legal Department</td>
</tr>
<tr>
<td>Signature</td>
</tr>
<tr>
<td>Attachments</td>
</tr>
<tr>
<td>Chief Financial Officer</td>
</tr>
<tr>
<td>Signature</td>
</tr>
<tr>
<td>Attachments</td>
</tr>
<tr>
<td>Director Real Estate Management</td>
</tr>
<tr>
<td>Signature</td>
</tr>
<tr>
<td>Attachments</td>
</tr>
</tbody>
</table>

FUNDING: Was funding needed? Yes ☐ No ☐
If yes, was funding previously approved?* Yes ☐ No ☐
*If approved, provide the following: Dept/Div. _______ Acct: _______
Balance in Account _______ Amount needed for this item _______

NEED: Identify any critical time constraint(s).

*Commercial Property and Community & Housing Development have an additional form.
COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: June 15, 2021
FROM: Real Estate Division DEPT: BFRC
ADDRESS: 44 America St.
TMS: 459-09-04-025

PROPERTY OWNER: City of Charleston
Request authorization from the Mayor to execute the attached Easement Agreement between the City of Charleston and the Charleston Area Regional Transportation Authority (CARTA).

ACTION REQUEST:

ORDINANCE: Is an ordinance required? Yes ☐ No ☑

ACTION: What action is being taken on the Property mentioned?

☐ ACQUISITION Seller (Property Owner) __________________ Purchaser __________________

☐ DONATION/TRANSFER
Donated By: __________________

☐ FORECLOSURE
Terms: __________________

☐ PURCHASE
Terms: __________________

☐ CONDEMNATION
Terms: __________________

☐ OTHER
Terms: __________________

☐ SALE Seller (Property Owner) __________________ Purchaser __________________

☐ NON-PROFIT ORG, please name __________________
Terms: __________________

☐ OTHER
Terms: __________________

☒ EASEMENT Grantor (Property Owner) __________________ Grantee CARTA

City of Charleston __________________
COMMERICAL REAL ESTATE FORM

☐ PERMANENT
Terms: ________________________________

☐ TEMPORARY
Terms: ________________________________

☐ LEASE
☐ INITIAL
Terms: ________________________________

☐ RENEWAL
Terms: ________________________________

☐ AMENDMENT
Terms: ________________________________

☐ Improvement of Property
Owner: ________________________________
Terms: ________________________________

BACKGROUND CHECK: If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☐ ☒

Results: ________________________________

Signature: ________________________________
Director Real Estate Management

ADDITIONAL: Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

______________________________

NEED: Identify any critical time constraint(s).
KNOWNG BY ALL PRESENT, that on this ___ day of __________, 2021, for and in consideration of the sum of one dollar ($1.00), cash in hand paid to the CITY OF CHARLESTON, a South Carolina municipal corporation (hereinafter referred to as “Grantor”) by the CHARLESTON AREA REGIONAL TRANSPORTATION AUTHORITY (hereinafter referred to as “CARTA” or “Grantee”), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant, convey, bargain, and sell unto CARTA, its successors and assigns, a permanent easement for the installation, construction, and maintenance of bus benches over, under, across, and upon certain real property owned by Grantor located at 44 America Street, Charleston, South Carolina, and having Charleston County TMS No. 459-09-04-025, which is more fully described in Exhibit A and depicted on Exhibit B (“Easement Area”), together with a temporary construction easement, contiguous to the boundary lines of the Easement Area for the purpose of access by contractors for construction and installation.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, Grantor and CARTA hereby agree as follows:

1. The aforesaid recitals are incorporated herein verbatim.

2. Grantor. The term Grantor includes the City of Charleston, its respective agents, heirs, legal representatives, successors, assigns, transferees, and subsequent owners of the Easement Area.

3. Grantee. The term Grantee includes CARTA, its successors and assigns.

4. Easement. The easement granted, conveyed, bargained, and sold by Grantor to CARTA is a permanent easement for the purpose of installing, constructing, and maintaining bus benches, together with a temporary construction easement, contiguous to the boundary lines of the Easement Area for the purpose of access by contractors for construction and installation. The bus benches shall be properly installed in a commercially reasonable manner and properly maintained. The permanent easement granted herein shall constitute an easement running with the land and shall burden the land described herein, unless otherwise agreed to by the parties or terminated by CARTA. The permanent easement granted shall inure to the benefit of and be binding upon Grantor and CARTA, their respective successors and assigns, and upon any person or entity acquiring all or any portion of Grantor’s Property and/or Easement Area, or any interest therein, whether by operation of law or otherwise.

5. Easement Area. The Easement Area subject to this Agreement is owned by Grantor and located at 44 America Street, Charleston, South Carolina, and having Charleston County TMS No. 459-09-04-025. The Easement Area is more fully described in Exhibit A and depicted on Exhibit B attached hereto, both of which are incorporated herein by reference.
6. **Consideration.** The sum of One and NO/100 ($1.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged has been paid by CARTA to Grantor. Grantor and CARTA agree that each is giving and receiving material benefits in addition to and exceeding the monetary value.

7. **Term.** The permanent and temporary construction easement granted herein are for public purposes, and CARTA shall have use of the Easement and Easement Area forever as a location for bus benches. CARTA will notify Grantor in writing if and when CARTA has decided that it will no longer use the Easement and Easement Area for purposes of installing and maintaining bus benches. The actual termination of the easement rights shall occur at a reasonable time after CARTA has officially and permanently ceased using the Easement Area as a location for bus benches. CARTA shall remove the bus benches, and any associated structures, at its expense upon the termination of the Easement and restore the area as reasonably as possible to its original condition. Following termination, the parties shall execute a mutually acceptable recordable termination of this Agreement to be prepared by CARTA and to be recorded by CARTA at its sole expense.

8. **Maintenance/Repair of Easement Area.** CARTA, at its sole expense, shall maintain the Easement Area in a good and safe condition, free of litter, debris, and obstructions, as long as the Easement remains on Grantor’s property. Further, CARTA understands and acknowledges that it shall be responsible for repairing the Easement Area to the extent that CARTA has damaged and/or disturbed the Easement Area or the Easement Area becomes in a state of disrepair.

9. **Interference with Easement.** Grantor, its respective agents, heirs, legal representatives, successors, and assigns shall not interfere in any way with CARTA’s access to, quiet enjoyment, and use of the Easement and Easement Area. Grantor shall not alter the slope or elevation of the Easement Area, alter the vegetation or landscape on the Easement Area, or install or construct any structures or improvements within the Easement Area absent written permission from CARTA.

10. **Insurance.** During the term of this Agreement, CARTA shall obtain and maintain, in full force and effect, workers’ compensation insurance covering all individuals directly or indirectly employed by CARTA or in any way involved in the use or operation of the bus shelter on the Easement Area on behalf of CARTA. In addition, during the term of this Agreement, CARTA shall obtain and maintain, in full force and effect, commercial general liability insurance protecting Grantor and CARTA from claims for injury or death of persons and for damage to or loss of property pertaining to the use and occupancy of the Easement Area.

11. **Indemnification.** To the extent permitted by law, CARTA shall indemnify, defend, and hold harmless Grantor against any and all claims or suits for damages or injury arising from CARTA’s operation or use of the Easement and Easement Area unless the damage or injury is otherwise caused by Grantor, its agents, representatives, or employees. Grantor shall indemnify, defend, and hold harmless CARTA against any and all claims or suits for damages or injury arising from the use of Grantor’s property outside of the Easement Area. No party shall be liable for or be required to indemnify the other for claims based upon the intentional or negligent acts of third persons.
12. **Assignment.** Grantor shall not assign this Agreement without the prior written consent of CARTA.

13. **Notice.** All notices herein shall be in writing and sent via certified mail, return receipt requested with postage prepaid thereon to the parties as listed below. Notice shall be deemed effectively served upon proof of receipt. Changes to the addresses below shall be made in writing to the other party.

<table>
<thead>
<tr>
<th>TO CARTA:</th>
<th>TO GRANTOR:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ronald E. Mitchum</td>
<td>City of Charleston</td>
</tr>
<tr>
<td>5790 Casper Padgett Way</td>
<td>Real Estate Management Division</td>
</tr>
<tr>
<td>North Charleston, SC 29406</td>
<td>2 George Street, Suite 2600</td>
</tr>
<tr>
<td></td>
<td>Charleston, SC 29401</td>
</tr>
<tr>
<td>Telephone: 843.529.0400</td>
<td>Telephone: 843.724.7154</td>
</tr>
<tr>
<td>Fax: 843.529.0305</td>
<td>Email: <a href="mailto:bailey@charleston-sc.gov">bailey@charleston-sc.gov</a></td>
</tr>
<tr>
<td>E-Mail: <a href="mailto:rmitchum@ridecarta.com">rmitchum@ridecarta.com</a></td>
<td></td>
</tr>
</tbody>
</table>

14. **Signs/Advertisements.** The easement granted herein shall include the right for CARTA to place CARTA identification signs, bus routes and schedules, and advertisements within the Easement Area.

15. **Governing Law/Venue.** This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of South Carolina. Venue for any action regarding this Agreement shall be Circuit Court of Charleston County, South Carolina, or if a federal court action, then the Charleston District of United States District Court for the District of South Carolina.

16. **Amendments.** This Agreement may not be amended or modified except by a written instrument executed by Grantor and CARTA and recorded with the applicable Register of Deeds Office.

17. **Severability.** If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be determined to be invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall remain valid and enforceable to the fullest extent permitted by law.

18. **Default.** If either Grantor or CARTA reasonably believes that the terms of this Agreement have been breached, then written notification of the alleged breach shall be delivered to the other party in accordance with the Notice Provision herein. The party alleged to have breach this Agreement shall have thirty (30) days to cure any actual breach, unless otherwise extended beyond thirty (30) days upon mutual consent and agreement of the parties. However, CARTA may take immediate action when it believes that conditions materially interfere with its lawful use of the Easement Area and/or pose an immediate danger or hazard to the public.

19. **No Third Party Rights.** This Agreement does not and shall not be deemed to confer upon or grant to any third party any right enforceable at law or equity arising out of any term, covenant, or condition herein or a breach thereof.
20. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by any party hereto.

21. **Authority to Execute.** Each party hereto covenants to the other party that it has lawful authority to enter into this Agreement and that the party’s representative executing this Agreement is authorized to do so on behalf of the party.

**IN WITNESS WHEREOF,** both parties have caused this to be duly executed this Easement Agreement as of the date first above written and agree to all provisions as stipulated above.
<table>
<thead>
<tr>
<th>SIGNED AND DELIVERED IN THE PRESENCE OF:</th>
<th>CARTA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>BY:</td>
</tr>
<tr>
<td></td>
<td>ITS:</td>
</tr>
<tr>
<td>Witnesses of the Executive Director</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Executive Director</td>
</tr>
<tr>
<td>The foregoing instrument was acknowledged before me by its maker.</td>
<td>Date:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Signature of Notary</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commission Expires</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SIGNED AND DELIVERED IN THE PRESENCE OF:</th>
<th>THE GRANTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name of Grantor</td>
</tr>
<tr>
<td></td>
<td>BY:</td>
</tr>
<tr>
<td></td>
<td>ITS:</td>
</tr>
<tr>
<td>Witnesses of Grantor's Signature</td>
<td>Date:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>The foregoing instrument was acknowledged before me by its maker.</td>
<td>Date:</td>
</tr>
<tr>
<td></td>
<td>Signature of Notary</td>
</tr>
<tr>
<td></td>
<td>Commission Expires</td>
</tr>
</tbody>
</table>
Exhibit B

Easement Plat/Survey(s) by Surveyor
<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>ITEM</th>
<th>QUANTITY</th>
<th>UNIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>000000</td>
<td>EROSION CONTROL</td>
<td>REG</td>
<td>LS</td>
</tr>
<tr>
<td>100000</td>
<td>ROCKS AND INSULATION</td>
<td>REG</td>
<td>LS</td>
</tr>
<tr>
<td>200000</td>
<td>DRAINAGE LINES &amp; CURBWAYS</td>
<td>REG</td>
<td>LA</td>
</tr>
<tr>
<td>300000</td>
<td>SAFETY LINES</td>
<td>REG</td>
<td>LS</td>
</tr>
<tr>
<td>400000</td>
<td>STRUCTURAL EARTHWORKS</td>
<td>1000</td>
<td>CY</td>
</tr>
<tr>
<td>500000</td>
<td>PERMANENT GIRDERS FOR SMALL PROJECTS</td>
<td>100</td>
<td>AC</td>
</tr>
<tr>
<td>600000</td>
<td>OPEN LUNCHEON</td>
<td>10</td>
<td>LF</td>
</tr>
<tr>
<td>700000</td>
<td>KERBS</td>
<td>100</td>
<td>LF</td>
</tr>
<tr>
<td>800000</td>
<td>SINGLE PREP ROOF AT GABLES</td>
<td>100</td>
<td>LF</td>
</tr>
<tr>
<td>900000</td>
<td>DRAINAGE EROSION CONTROL</td>
<td>1</td>
<td>GA</td>
</tr>
<tr>
<td></td>
<td>DRAINAGE EROSION CONTROL</td>
<td>1</td>
<td>GA</td>
</tr>
</tbody>
</table>
GENERAL CONSTRUCTION NOTE

THE CONTRACT REPRESENTATIVE MUST SPECIFICALLY AUTHORIZE CHANGES INVOLVING INCREASED COST OF PROJECT OR CHANGES IN MATERIALS LOCATION, FORWARD INFORMATION ON ANY PROPOSED CHANGES TO THE CONTRACTOR AS SOON AS POSSIBLE.

THE FOLLOWING QUANTITIES ARE NOT SHOWN IN DETAIL ON THE PLANS BUT ARE INCLUDED IN THE SUMMARIZED ESTIMATED QUANTITIES AND MAY BE ADJUSTED DURING CONSTRUCTION AS DIRECTED BY THE ENGINEER.

MOBILIZATION
1 LS PER CONTRACT DOCUMENTS

BONDS AND INSURANCE
1 LS PER CONTRACT DOCUMENTS

CONSTRUCTION STAKES, LINES & GRADES
1 LS PER CONTRACT DOCUMENTS

UNCLASSIFIED ERUGRATION
5 CY FOR GRADING AND PREPARING PROPOSED RELOCATED SUBWAY PAD

EROSION CONTROL ITEMS
PERMANENT GRASSING FOR SMALL AREAS 0.002 AC FOR ALL DISTURBED AREAS
SILT FENCE 50 LF FOR EROSION CONTROL

NOTES TO CONTRACTOR

1 ALL WORK SHALL BE IN ACCORDANCE WITH THE APPLICABLE FEDERAL, SOUTH CAROLINA, AND LOCAL ORDINANCES, REGULATIONS, SPECIFICATIONS, AND PERMITS.

2 ELEVATIONS SHOWN HEREIN ARE BASED ON THE NORTH AMERICAN VERTICAL Datum of 1988 (NAD 88). THE BOUNDARIES AND DISTANCES SHOWN HEREIN ARE GRID VALUES BASED ON THE NAD 92 (2000 ADJUSTMENTS) SOUTH CAROLINA STATE PLAN COORDINATE SYSTEM.

3 THE CONTRACTOR SHALL CONSULT THE SCOTD ENGLISH STANDARDS (LATEST EDITION) AND THE SCOTD SPECIFICATION STANDARDS (2007) TO ENSURE THE MOST UP TO DATE STANDARDS ARE BEING UTILIZED DURING CONSTRUCTION.

4 PROVISIONS MANDATE TO MAINTAIN POSITIVE DRAINSAGES ON THE PLANS SHOWN WITHIN THE SITE. ALL NATURAL DRAINAGE FEATURES TO ENSURE THE MOST APPROPRIATE DRAINAGE PERMITS WILL BE USED.

5 CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL ELEUTHERA UTILITIES AND FOR MAKING ANY DAMAGE TO SAME.

6 CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING ALL UTILITIES LOCATING, RELOCATING, AND CONSTRUCTION AND SERVICES WITH THE RESPECTIVE UTILITIES COMPANY OR THE LOCAL AREA ENGINEERING DEPARTMENT AS APPLICABLE.

7 WHEN THE CONTRACTOR IS UNABLE TO COMPLETE HIS WORK AS SHOWN ON THE PLANS BECAUSE OF AN EXISTING UTILITY, THE CONTRACTOR SHALL BE RESPONSIBLE FOR NOTIFYING THE ENGINEER PRIOR TO PROCEEDING AND CONTACT THE ENGINEER.

8 ALL EROSION AND SEDIMENT CONTROL MEASURES SHALL BE INSTALLED PRIOR TO GRADING.

9 THE CONTRACTOR IS RESPONSIBLE TO INSTALL, MANTAIN, REPLACE AS NEEDED, AND CLEANS SILT FENCE THROUGHOUT THE PROJECT.

10 ALL DISTURBED AREAS SHALL BE GRASSED AND STABILIZED IMMEDIATELY AFTER FINAL GRADING. PRICE TO BE INCLUDED UNDER ITEM 10000 - GRADING FOR SMALL PROJECT, SHOULD CONSTRUCTION ACTIVITIES STAND IN A SPECIFIC AREA FOR AN EXTENDED PERIOD OF TIME AS DETERMINED BY THE ENGINEER ALL DISTURBED AREAS WHERE CONSTRUCTION IS BEING DELAYED SHALL BE GRASSED AND STABILIZED.

11 THE CONTRACTOR SHALL INSTALL AND MAINTAIN SILT BARRIERS AROUND ALL DRAINAGE STRUCTURES UNTIL ALL CONSTRUCTION HAS BEEN COMPLETED.

12 PROVISIONS TO PREVENT EROSION OF SOIL FROM THE SITE SHALL BE AS MINIMUM, IN COMPLIANCE WITH THE REQUIREMENTS OF SCOTD-DORM SPECIFICATIONS AND EROSION AND SEDIMENTATION CONTROL AGREEMENT, WHICH ARE ATTACHED TO THIS DRAWING.

13 MINIMUM GRADING AT SUB LEVEL FOUNDATION TO ENSURE A FLAT LEVELING ASSUMING NO CLOSING IN OF MUD IS OCCURRING.

14 SCOTD 2007 STANDARDS SPECIFICATIONS FOR HIGHWAY CONSTRUCTION SPECIFY 200' AREA AROUND THE HIGHWAY TO BE GRASSED TO PREVENT THE SOIL FROM THE ROADWAY.

15 LANE CLOSURE REQUIRED FOR CONSTRUCTION OF PROPOSED WORK SHALL COMPLY WITH SCOTD STANDARDS SPECIFICATIONS.

SEEDING SCHEDULE - PERMANENT VEGETATION

<table>
<thead>
<tr>
<th>GERMINATION</th>
<th>SEEDING</th>
<th>TRANSPLANTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>10-20 May</td>
<td>10-20 May</td>
<td>10-20 May</td>
</tr>
</tbody>
</table>

CONSTRUCTION SEQUENCE

1. INITIAL GROUND & EROSION CONTROL MEASURES
2. GRADE WORK & TRANSPLANTATION
3. TYPICAL TRANSPORTATION
4. HALT TRANSPLANTATION
5. COMPLETE GROUND & EROSION CONTROL MEASURES

SEEDING SCHEDULE - PERMANENT VEGETATION

<table>
<thead>
<tr>
<th>SEEDING</th>
<th>SEEDING</th>
<th>SEEDING</th>
</tr>
</thead>
<tbody>
<tr>
<td>10-20 May</td>
<td>10-20 May</td>
<td>10-20 May</td>
</tr>
</tbody>
</table>

CDM Smith
CONSTRUCT NEW 16' X 5' SIDEWALK PAD.
INSTALL ONE (1) BENCH AND ONE (1) SINGLE HOOP BIKE RACK SUPPLIED BY CARTA.

NOTES:
1) SIDEWALK PAD SHALL HAVE A MAX. CROSS SLOPE OF 50:1.
REAL ESTATE COMMITTEE
GENERAL FORM

TO: John T. Tecklenburg, Mayor  DATE: June 7, 2021
FROM: Geona Shaw Johnson  DEPT: Housing and Community Development
ADDRESS: 2112-2114 Heriot Street, Charleston, SC 29401
TMS: 464-13-00-008, 464-13-00-011, 464-13-00-012, 464-13-00-013, and 464-13-00-023
Request that the City of Charleston City Council authorize the Mayor to execute the necessary documents for the City's acceptance of 1.1 acres of donated land on Heriot Street from HR Charleston VI, LLC. In exchange for 48 housing credits. The property will be used for the development of rental workforce or for-sale (homeownership) housing.

ACTION REQUEST:

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

Department Head
Signature

Legal Dept

Property Coordinator

Property Manager

Attachments
X

FUNDING: Was funding needed? Yes □ No X □
If yes, was funding previously approved? Yes □ No □
*If approved, provide the following: Dept/Div. _______ Acct: _______
Balance in Account ________________ Amount needed for this item ____________

NEED: Identify any critical time constraint(s).

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00A.M. THE DAY OF THE CLERK'S AGENDA MEETING.

*Commercial Property and Community & Housing Development have an additional form.
COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: June 7, 2021
FROM: Geona Shaw Johnson DEPT: HCD
ADDRESS: 2112-2114 Heriot Street, Charleston, SC 29403
TMS: 464-13-00-008, 464-13-00-011, 464-13-00-012, 464-13-00-013, and 464-13-00-023
PROPERTY OWNER: HR Charleston VI, LLC,

Request that the City of Charleston City Council authorize the Mayor to execute the necessary documents for the City’s acceptance of 1.1 acres of donated land on Heriot Street from HR Charleston VI, LLC. In exchange for 48 housing credits. The property will be used for the development of 24 to 26 rental workforce or for-sale (homeownership) housing.

ACTION REQUEST:

ORDINANCE: Is an ordinance required? Yes ☑ No ☐

ACTION: What action is being taken on the Property mentioned?

☑ ACQUISITION

☑ DONATION/TRANSFER

Donated By: As outlined in the attached Donation Agreement

☐ FORECLOSURE

Terms:

☐ PURCHASE

Terms:

☐ CONDEMNATION

Terms:

☐ OTHER

Terms:

☑ SALE

Seller (Property Owner) Purchaser

☐ NON-PROFIT ORG, please name

Terms:

☐ OTHER

Terms:
COMMERCIAL REAL ESTATE FORM

☐ EASEMENT | Grantor
(Property Owner) | Grantee

☐ PERMANENT
Terms:

☐ TEMPORARY
Terms:

☐ LEASE
Lessor: ___________________________ Lessee: ___________________________

☐ INITIAL
Terms:

☐ RENEWAL
Terms:

☐ AMENDMENT
Terms:

☐ Improvement of Property
Owner: ___________________________
Terms:

BACKGROUND CHECK: If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

Results: ________________________________________________________________

Signature: ______________________________________________________________
Director Real Estate Management

ADDITIONAL: Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

_____________________________________________________________________

NEED: Identify any critical time constraint(s).
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF CHARLESTON ("CITY"), A DONATION AGREEMENT UNDER WHICH HR CHARLESTON VI, LLC WILL CONVEY TO THE CITY APPROXIMATELY 1.1 ACRES OF REAL PROPERTY ON HERIOT STREET, DESIGNATED AS CHARLESTON COUNTY TMS NOS. 464-13-00-008, 464-13-00-011, 464-13-00-012, 464-13-00-013, AND 464-13-00-023, FOR THE DEVELOPMENT OF WORKFORCE HOUSING UNITS TO SATISFY A LAND DONATION REQUIREMENT IN THE MAGNOLIA DEVELOPMENT AGREEMENT, ADOPTED BY ORDINANCE NO. 2015-162, AS AMENDED BY ORDINANCE NO. 2018-005, AND TO RECEIVE FORTY-EIGHT (48) CREDITS TOWARD THE WORKFORCE HOUSING REQUIREMENT IN THE MAGNOLIA DEVELOPMENT AGREEMENT.

INCIDENT TO THE ADOPTION OF THIS ORDINANCE, CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT:

1. On November 10, 2015, the City Council of Charleston ("City Council") enacted Ordinance No. 2015-162, adopting the Magnolia Development Agreement (the "Development Agreement"), which was recorded in Deed Book 0530 at Page 704 in the ROD Office for Charleston County, South Carolina.

2. The property described herein (the "Property") is included within the Development Agreement.

3. Section 12.D.(i)(1) of the Development Agreement requires the developer to donate certain land to the City for the construction of Workforce Housing Units (as defined in the Development Agreement), with the developer receiving credits toward the Workforce Housing Requirement (as defined in the Development Agreement).

4. On January 23, 2018, City Council enacted Ordinance No. 2018-005, adopting the First Amendment to the Development Agreement (the "First Amendment"), which was recorded in Deed Book 0704 at Page 670 in the ROD Office for Charleston County, South Carolina.

5. On March 14, 2018, the developer assigned the Development Agreement to various entities, including HR Charleston VI, LLC ("Donor"), by assignment and assumption.
agreements recorded in Deed Book 0704 at Pages 678 and 837 in the ROD Office for Charleston County, South Carolina.

6. Donor holds fee simple title to the Property.

7. Donor desires to donate the Property to the City in satisfaction of the requirement related to land donation in Section 12 of the Development Agreement, with Donor to receive a credit for forty-eight (48) Workforce Housing Units toward the Workforce Housing Requirement.

8. The City desires to accept the foregoing donation of the Property and to recognize the credits requested by Donor, in accordance with the Development Agreement and the First Amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. That the Mayor is authorized to executed, on behalf of the City of Charleston (the “City”), the donation agreement (the “Donation Agreement”), a copy of which is attached hereto and incorporated herein by reference as Exhibit 1, under which HR Charleston VI, LLC (the “Donor”) will convey to the City approximately 1.1 acres of real property, designated as Charleston County TMS Nos. 464-13-00-008, 464-13-00-011, 464-13-00-012, 464-13-00-013, and 464-13-00-023 (the “Property”), for the development of workforce housing units.

Section 2. That the conveyance of the Property to the City in accordance with the terms of the Donation Agreement will satisfy the donation requirement in Section 12.D.(i).(1) of the Magnolia Development Agreement, as amended (the “Development Agreement”)

Section 3. That the Donor will receive credits for forty-eight (48) Workforce Housing Units (as defined in the Development Agreement) toward the Workforce Housing Requirement (as defined in the Development Agreement).

Section 4. That the Mayor is authorized to execute, on behalf of the City, all necessary documents, approved as to form by Corporation Counsel, to consummate the transaction set forth in the Donation Agreement.

Section 5. That this Ordinance shall become effective upon ratification.
Ratified in City Council this ___ day of ____ in the year of Our Lord, 2021, in the ____ Year of the Independence of the United States of America.

By: __________________________
    John J. Tecklenburg, Mayor
    City of Charleston

ATTEST: By: __________________________
         Jennifer Cook
         Clerk of Council
AGREEMENT TO DONATE PROPERTY

This Agreement to Donate Property (the "Agreement") is made and entered into as of the ______ day of ________________, 2021 (the "Effective Date") by and between HR Charleston VI, LLC, a South Carolina limited liability company (the "Donor") and the City of Charleston, a political subdivision of the State of South Carolina (the "Donee").

WITNESSETH:

WHEREAS, the Donor owns certain real property consisting of approximately 1.1 acres, located on Heriot Street, Charleston, South Carolina, and bearing Charleston County TMS Nos. 464-13-00-008, 464-13-00-011, 464-13-00-012, 464-13-00-013, and 464-13-00-023 (collectively, the Property”), as further described on Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, Donor (by way of assignment from Ashley River Investors, LLC, a South Carolina limited liability company ("ARI")), and Donee, among others, are parties to that certain Development Agreement dated on or about January 16, 2016 and recorded in the Office of the Register of Deeds for Charleston County at Book 0530, page 704 (as may be amended from time to time, the "Development Agreement"); and

WHEREAS, the Property is subject to the Development Agreement; and

WHEREAS, Section 12(D)(i)(1) of the Development Agreement contemplates that ARI would donate certain land subject to the Development Agreement to the City for the construction of rental and owner-occupied Workforce Housing Units (as such term is defined therein), whereupon ARI would receive Workforce Housing Unit credits applicable toward the Workforce Housing Requirement (the "Donation Requirement"); and

WHEREAS, Donor has agreed to donate the Property to the Donee in satisfaction of the Donation Requirement in exchange for 48 Workforce Housing Unit credits (the "Housing Credits"), and the Donee has agreed to accept the foregoing donation of the Property and to grant the Housing Credits to Donee.

NOW, THEREFORE, for and in consideration of the above premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Donee and Donor hereby agree as follows.

1. Incorporation of Recitals. The recitals set forth above are incorporated herein by reference.

2. Conveyance of the Property. Subject to the terms and conditions herein, Donor agrees to convey and Donee agrees to accept the donation by conveyance by Donor of all rights, title and interest of Donor in and to the Property. At Closing, Donor shall automatically receive the Housing Credits. The Housing Credits shall be received by Donor as of Closing and apply to the
requirements for Workforce Housing Units under the Development Agreement notwithstanding any subsequent transfer or use of the Property for purposes other than Workforce Housing Units.

3. **Inspection; Right of Termination.** Donee shall have until 60 days after the Effective Date (the "Inspection Period") to conduct any and all physical and other inspections or investigations it deems necessary to insure material compliance of the Property with Donee’s intended use of the Property, including, without limitation, the review and inspection of (i) documentation of any covenants, conditions and restrictions and other exceptions of title of record, and including, without limitation, documentation regarding any and all leases, covenants and restrictions and other agreements affecting the Property (including terms, conditions and assignability of the foregoing), (ii) the condition of title to the Property, (iii) physical inspection of the Property including engineering investigation, (iv) valuation appraisal of the Property, (v) environmental condition of the Property and (vi) any and all other documentation or evidence relating to the ownership, value, construction, income, expense, operation, leasing, options and maintenance and repair of the Property; provided that, except for soil borings for geotechnical reports which shall be permitted, any other intrusive or destructive testing or inspection or environmental sampling shall be subject to Donor’s prior written approval, which may be withheld in Donor’s sole discretion. Donee shall pay all costs incurred by Donee in making any inspections and investigations, shall repair any damage to the Property, and shall be responsible for any liens, claims and liabilities arising out of the Donee’s exercise of such right and privilege to go upon the Property. Prior to entering upon the Property, if requested by Donor, Donee’s agents and contractors shall provide evidence of liability insurance, in form and substance reasonably satisfactory to Donor. Donee shall be permitted to conduct interviews with any persons involved in the auditing or accounting of any books and records pertaining to the Property as Donee deems necessary or advisable. Donor shall provide or make available for inspection by Donee, no later than the date which is five (5) days after the Effective Date hereof, the following information relating to the Property, if any, in Donor’s possession or control: copies of current or most recent, as applicable, leases, rent rolls, surveys, topography, soil analysis, policies of title insurance, and environmental surveys or studies and correspondence (other than ordinary course notices) with regulatory agencies (collectively, the “Due Diligence Items”). Donor makes no warranty or representation with respect to the truth or accuracy of the Due Diligence Items; provided, however, that Donor represents and warrants that the copies of such Due Diligence Items provided to Donee are true, unaltered, and correct copies of such documents as held or controlled by Donor. Anything contained herein to the contrary notwithstanding, Donee shall be entitled to terminate this Agreement for any reason or no reason, in Donee’s sole discretion, by providing Donor written notice of such termination prior to the expiration of the Inspection Period. Upon termination, this Agreement shall be null and void, except for any rights or obligations that expressly survive termination. This section shall survive the Closing or any prior termination hereof.

4. **Closing.** The closing of this transaction (the “Closing”) shall occur at the offices of Donee’s attorney, in Charleston, South Carolina, unless otherwise agreed to by the parties, on or before the date that is thirty (30) days after the expiration of the Inspection Period, subject to the condition, in favor of Donor, that Donor shall have obtained any third party consents necessary for the conveyance of the Property to Donee, and subject to the condition, in favor of Donee, that Donee shall have obtained the approval of City Council to receive the donation of the
Property. **TIME IS OF THE ESSENCE.**

5. **Closing Documents.** At Closing, Donor shall execute and deliver to Donee’s attorney in trust the following items, in form and substance reasonably acceptable to Donee:

   (A) limited warranty deed conveying fee simple title to the Property, free and clear of all liens and encumbrances except (i) ad valorem real property taxes for the fiscal year in which the closing occurs (to be prorated as of the Closing date); and (ii) those easements, covenants, conditions and restrictions and other exceptions to title of record as of the Effective Date, including without limitation the Development Agreement; and (iii) matters shown on a current survey or the most recent survey of the Property;

   (B) a Partial Assignment and Assumption of Rights and Obligations under the Development Agreement, in form and substance acceptable to both Donor and Donee, assigning to Donee the right to develop up to forty-eight (48) residential dwelling units on the Property pursuant to the Magnolia Planned Unit Development zoning, as amended;

   (C) any and all customary affidavits, certificates or other documents reasonably required by Donee’s title insurance company, limited to Donee’s knowledge and period of ownership of the Property, in order to cause it to issue an owner’s title insurance policy in form reasonably suitable to Donee;

   (D) evidence of termination of all service contracts, including any and all management contracts affecting the Property, and any and all leases affecting the Property, if any;

   (E) a Certificate of Tax Compliance for Donor issued by the South Carolina Department of Revenue dated no more than thirty (30) days prior to the date of Closing or affidavit in lieu thereof;

   (F) Donor’s affidavit stating, under penalty of perjury, Donor’s U.S. taxpayer identification number and that Donor is not a foreign person within the meaning of Paragraph 1445 of the Internal Revenue Code;

   (I) Such other documents or instruments as may be customarily and reasonably required by Donee or the Donee’s title insurer, required by other provisions of this Agreement, or reasonably necessary to effectuate the Closing.

7. **Closing Expenses.** Each party shall be responsible for the following closing expenses: Donor shall be responsible for all recording costs, documentary stamp or transfer fees on the deed of conveyance and for all the title insurance search fees and premiums. Each party shall pay its own costs and attorneys’ fees. All other costs shall be assessed as is customary for real estate transactions in South Carolina.

8. **Ad Valorem Taxes.** Ad valorem taxes ("Taxes") assessed against the Property for the year in which Closing occurs shall be initially prorated on the basis of 100% of the most recent ascertainable bill (and repropared upon receipt of the actual bills or invoices).
9. **Donor's Representations and Warranties.** Donor hereby represents and warrants to Donee as follows, each of which are made as of the Effective Date and shall be deemed to have been made again as of the date of Closing:

   (A) Donor possesses all requisite right, authority and power to execute and perform this Agreement in accordance with its terms.

   (B) To the best of Donor’s knowledge, there are no actions, suits or proceedings pending or threatened against Donor or the Property affecting any portion of the Property, at law or in equity or before or by any federal, state, municipal or other governmental entity, department, commission, board, bureau, agency or instrumentality, domestic or foreign.

   (C) Donor has not received any notice of any violation of any ordinance, regulation, law or statute of any governmental entity pertaining to the Property or any portion thereof which has not been complied with in all material respects.

   NOTWITHSTANDING THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENT SIGNED AND DELIVERED BY DONOR AT CLOSING, IT IS UNDERSTOOD AND AGREED THAT DONOR IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF TITLE (OTHER THAN ANY WARRANTY OF TITLE SET FORTH IN THE LIMITED WARRANTY DEED THAT MAY BE DELIVERED BY DONOR AT CLOSING), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS, THE COMPLIANCE OF THE PROPERTY WITH ENVIRONMENTAL LAWS OR ANY OTHER APPLICABLE LAWS, THE ABSENCE OR PRESENCE OF HAZARDOUS MATERIALS OR OTHER TOXIC SUBSTANCES, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (1) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY; (2) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE PROPERTY (IF ANY); AND (3) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, DONEE ACKNOWLEDGES AND AGREES THAT UPON CLOSING DONOR SHALL SELL AND CONVEY TO DONEE AND DONEE SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", AND DONEE HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF DONOR OR ANY AGENT OF DONOR (OTHER THAN ANY WARRANTY OF TITLE SET FORTH IN THE LIMITED WARRANTY DEED OR WARRANTY SET FORTH IN ANY OTHER DOCUMENT THAT MAY BE SIGNED AND DELIVERED BY DONOR AT CLOSING). DONEE REPRESENTS THAT IT IS A
KNOWLEDGEABLE DONEE OF REAL ESTATE AND THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND KNOWLEDGE AND THAT OF DONEE’S CONSULTANTS IN PURCHASING THE PROPERTY. DONEE HAS CONDUCTED OR SHALL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS DONEE DEEMS NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON THE SAME. UPON CLOSING, DONEE SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY DONEE’S INSPECTIONS AND INVESTIGATIONS. THE TERMS AND CONDITIONS OF THIS PARAGRAPH SHALL EXPRESSLY SURVIVE THE CLOSING, SHALL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND, OTHER THAN IN THE EVENT OF A CLOSING BY ASSIGNMENT, SHALL BE DEEMED INCORPORATED INTO ANY LIMITED WARRANTY DEED (EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN SUCH LIMITED WARRANTY DEED OR OTHER DOCUMENTS THAT MAY BE SIGNED AND DELIVERED BY DONOR AT CLOSING). DONOR IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO IN THIS AGREEMENT.

10. **Donee’s Representations and Warranties.** Donee hereby represents and warrants to Donor as follows, each of which are made as of the Effective Date and shall be deemed to have been made again as of the date of Closing:

   (A) Donee possesses all requisite right, authority and power to execute and perform this Agreement in accordance with its terms.

11. **Real Estate Commission.** The parties represent and warrant to each other that neither party has dealt with a broker, agent, or other individual or entity entitled to a commission in connection with this transaction. Each party shall be responsible for any commissions or fees payable to any brokers or finders claiming by, through or under said party and in any way related to the donation of the Property pursuant to this Agreement

12. **Assignment.** Neither party shall assign any interest in this Agreement without the consent of the other, which may be withheld in each party’s discretion, provided that Donee may assign this Agreement to any nonprofit entity for purposes of development of Workforce Housing Units.

13. **Default.** In the event either party shall default under this Agreement, the other party shall notify the defaulting party of such default, whereupon the defaulting party shall have seven (7) days to cure such default. If Donor defaults in any material respect under this Agreement prior to Closing and fails to cure such default within seven (7) days of notice thereof, at Donee’s option, Donee may elect, as its sole and exclusive remedy, either (i) to terminate this Agreement, in which case Donee shall be entitled to reimbursement from Donor of all actual and documented out of pocket costs and expenses reasonably incurred by Donee in connection with this
Agreement (including without limitation attorneys’ fees, due diligence expenses, and other out of pockets costs) in an aggregate amount not to exceed $20,000.00, whereupon neither party shall have any further rights or obligations under this Agreement except as expressly provided herein, or (ii) to bring a lawsuit seeking specific performance of the donation of the Property in accordance with the terms of this Agreement. If Donee defaults in any material respect under this Agreement prior to Closing and fails to cure such default within seven (7) days of notice thereof, at Donor’s option, Donor may elect, as its sole and exclusive remedy, to terminate this Agreement, in which case Donor shall be entitled to reimbursement from Donee of all actual and documented out of pocket costs and expenses reasonably incurred by Donor in connection with this Agreement (including without limitation attorneys’ fees, due diligence expenses, and other out of pockets costs) in an aggregate amount not to exceed $20,000.00, whereupon neither party shall have any further rights or obligations under this Agreement except as expressly provided herein. Donor shall have no liability after Closing for the breach of any of the Donor’s representations or warranties or covenants if Donee had actual knowledge thereof as of Closing and elects to close, and the Donor’s representations, warranties and covenants shall be deemed modified by any and all information and knowledge obtained by Donee prior to Closing. Except as to any fraudulent or intentional misrepresentation hereunder made with actual knowledge of the falsity thereof, the parties shall not have any liability for punitive, exemplary, consequential, indirect or speculative damages.


14. Environmental Acknowledgment and Release. The Donee agrees and acknowledges that Donee agrees to accept the Property in its “AS IS, WHERE IS” condition and shall rely solely upon its own independent review of the public regulatory record with respect to the environmental condition of the Property, and Donor makes no representation or warranty concerning physical or environmental conditions related to the Property or any part thereof. At and following Closing, Donor and Donee, each on behalf of itself and its affiliates, and their respective officers, directors, shareholders, members, parent, subsidiary companies, managers, partners, employees, agents, heirs, successors, successors-in-title, and assigns, hereby releases, remises, forever discharges and covenants not to sue the other or its affiliates, and their respective officers, directors, shareholders, members, parent, subsidiary companies, managers, partners, employees, agents, heirs, successors, successors-in-title, and assigns (“Released Parties”), of and from any and all claims, losses, damages, demands, actions, suits, proceedings, causes of action, injunctive or other equitable relief, costs, expenses, fines or penalties of any kind or nature whatsoever which the releasing party now has, ever had or may in the future have, whether known or unknown, suspected or unsuspected, which arise from or pertain in any way to Hazardous Materials on, about, under or migrating from the Property. This release and covenant not to sue shall survive Closing, run with the land and be binding upon successors-in-title to the Property. If requested by Donor, at closing, Donee and Donor shall execute and deliver a waiver, release and covenant not to sue reflecting the terms of this paragraph, which shall be recorded in the Register of Deeds Office for Charleston County at Closing. For purposes of this Agreement, the phrase “Environmental Laws” shall mean any federal, state or local law, statute, ordinance, order, decree, rule or regulation and any common law regarding health, safety, radioactive materials, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq. (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et
15. **Time of the Essence.** The parties agree that time shall be of the essence in the performance of all of the terms and conditions of this Agreement. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act must be performed, or by which Closing must be held, expires on a Saturday, Sunday or a holiday, then such time period shall be automatically extended to and through the next day which is not a Saturday, Sunday or a holiday.

16. **Counterparts and Electronic Transmission.** This Agreement may be executed by all parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same agreement. Facsimile or e-mail copies of this Agreement containing signatures of the parties shall be deemed to be originals and shall be binding.

17. **Captions.** Section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

18. **Entire Agreement; Legally Binding.** The parties acknowledge that this Agreement contains the entire agreement between the parties with respect to the Property, supersedes any prior oral or written understandings, and is legally binding. No modification of this Agreement and no waiver of any of its terms or conditions shall be effective unless made in writing and duly executed by both parties.

19. **Successors and Assigns.** This Agreement shall be binding on the parties and their respective heirs, successors and permitted assigns.
20. **Notices.** All notices or elections required or permitted to be given, delivered or served by any party shall be deemed given, delivered or served in accordance with the provisions of this Agreement (a) when delivered to the intended party personally, (b) at 5:00 p.m. on the business day after the date delivered to a nationally recognized delivery service including, without limitation, Federal Express, United Parcel Service, Airborne Express, postage prepaid and sent for next day delivery, or (c) at 5:00 p.m. on the third business day after the date deposited in the registered or certified United States mail, return receipt requested, postage prepaid, and addressed as follows:

**If to Donor:**
HR Charleston VI, LLC  
c/o Highland Resources, Inc.  
211 E. Seventh Street, Suite 709  
Austin, TX 78701  
Attn: Jeff Simmons

**with a copy to:**
Womble Bond Dickinson (US) LLP  
5 Exchange Street  
Charleston, South Carolina 29401  
Attn: James Wilson, Esq.  
James.Wilson@wbd-us.com

**If to Donee:**
City of Charleston  
P.O. Box 30  
Charleston, South Carolina 29402  
Attn: Legal Department

AND

City of Charleston  
116 Meeting Street  
Charleston, SC 29401  
Attention: Chief Financial Officer

**with a copy to:**
Haynsworth Sinkler Boyd, PA  
134 Meeting Street, 3rd floor  
Charleston, South Carolina 29401  
Attn: Jane B. Stoney  
jstoney@hsblawfirm.com

21. **Controlling Law.** This Agreement shall be construed, and the rights of Donor and Donee under this Agreement shall be determined in accordance with the laws of the State of South Carolina.

22. **Construction of Terms.** Where appropriate, any word denoting the singular shall be deemed to denote the plural, and vice versa.
23. **Execution of Documents.** Each party hereto covenants and agrees that it shall at or prior to Closing, do such acts and execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered such documents in order to carry out fully and effectuate the transaction herein contemplated.

24. **Attorneys' Fees.** In the event that either party obtains a judgment against the other as a result of a suit or other proceeding instituted to enforce rights hereunder, such prevailing party shall also be entitled to recover all costs, expenses, and attorneys' fees incurred by such party in connection with such suit or proceeding.

25. **Interpretation.** No ambiguity in this Agreement shall be construed against the draftsman or principal draftsman of this Agreement.

26. **Miscellaneous.** If either party is a corporation, municipal corporation, limited liability company, trust, partnership or other entity, it shall provide evidence at Closing that: (i) the persons executing this Agreement are authorized to act on behalf of the entity, and (ii) that the entity is validly and legally existing and in good standing under the laws of the state of its organization and authorized to do business in the State of South Carolina.

27. **Recordation.** This Agreement may not be recorded by either party. If this Agreement shall be recorded notwithstanding the prior provisions of this paragraph, such recording shall be deemed a nullity and shall not constitute notice to any third person. Notwithstanding the foregoing, Donor shall be entitled to record a memorandum of this Agreement at Donor's sole cost and expense.

28. **Survival of Closing.** The representations and warranties contained in this Agreement shall survive Closing for a period of nine (9) months following the Closing date and shall thereafter terminate and be of no further force or effect. The other terms of this Agreement that are expressly provided herein to survive Closing shall survive Closing.

29. **Future Land Donations.** Any future donations of land for Workforce Housing Units pursuant to the Development Agreement shall be made pursuant to separate donation agreements substantially similar to this Agreement, at such time as applicable streets and other infrastructure have been completed, subject to such modifications as may be mutually agreed by the parties thereto, and subject to any applicable declaration of covenants, conditions, and restrictions for Magnolia.

30. **JURY WAIVER.** IN ANY LAWSUIT OR OTHER PROCEEDING INITIATED BY EITHER PARTY UNDER OR WITH RESPECT TO THIS AGREEMENT, DONOR AND DONEE EACH WAIVE ANY RIGHT IT MAY HAVE TO TRIAL BY JURY.
IN WITNESS WHEREOF, the Donor and Donee have executed this Agreement to Donate Property under seal as of the date first set forth above.

WITNESSES: 

DO NOR:

HR CHARLESTON VI, LLC
a South Carolina limited liability company

By
Name: __________________________
Title: __________________________

WITNESSES: 

DONEE:

THE CITY OF CHARLESTON,
a political subdivision of the State of South Carolina

By
Name: __________________________
Title: __________________________
EXHIBIT A

Parcel 1

Property Description

ALL that piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, shown and designated as "NEW LOT C" on a plat entitled "SUBDIVISION PLAT SHOWING THE RECONFIGURATION OF EXISTING RIGHT-OF-WAY ON HERIOT AND PETTY STREET BY THE ABANDONMENT OF PARCELS 67-70 TO CREATE NEW HERIOT STREET RIGHT-OF-WAY AND LOT "A" AND THE COMBINATION OF LOTS 28-30 AND LOTS 33 & 34 TO CREATE NEW LOT "B" AND "C" AND THE RECONFIGURATION OF LOT 31 & 32 ON THE MAGNOLIA DEVELOPMENT PROPERTY OF ASHLEY I, LLC & ASHLEY II OF CHARLESTON, LLC LOCATED CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA", prepared under seal of Kevin Theves, S.C.R.L.S No. 21627, of Davis & Floyd, Inc., dated December 10, 2007, last revised March 22, 2010, and recorded June 25, 2010, in Plat Book L10, Pages 173 through 174, in the RMC Office for Charleston County, South Carolina, reference to which is hereby craved for a more complete description.

TMS # 464-13-00-013

Parcel 2

ALL that piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, shown and designated as "LOT 32" on a plat entitled "SUBDIVISION PLAT SHOWING THE RECONFIGURATION OF EXISTING RIGHT-OF-WAY ON HERIOT AND PETTY STREET BY THE ABANDONMENT OF PARCELS 67-70 TO CREATE NEW HERIOT STREET RIGHT-OF-WAY AND LOT "A" AND THE COMBINATION OF LOTS 28-30 AND LOTS 33 & 34 TO CREATE NEW LOT "B" AND "C" AND THE RECONFIGURATION OF LOT 31 & 32 ON THE MAGNOLIA DEVELOPMENT PROPERTY OF ASHLEY I, LLC & ASHLEY II OF CHARLESTON, LLC LOCATED CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA", prepared under seal of Kevin Theves, S.C.R.L.S No. 21627, of Davis & Floyd, Inc., dated December 10, 2007, last revised March 22, 2010, and recorded June 25, 2010, in Plat Book L10, Pages 173 through 174, in the RMC Office for Charleston County, South Carolina, reference to which is hereby craved for a more complete description.

TMS # 464-13-00-012

Parcel 3

ALL that piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, shown and designated as "LOT 31" on a plat entitled "SUBDIVISION PLAT SHOWING THE RECONFIGURATION OF EXISTING RIGHT-OF-WAY ON HERIOT AND PETTY STREET BY THE ABANDONMENT OF PARCELS 67-70 TO CREATE NEW HERIOT STREET RIGHT-OF-WAY AND LOT "A" AND THE COMBINATION OF LOTS 28-30 AND LOTS 33 & 34 TO CREATE NEW LOT "B" AND "C" AND THE RECONFIGURATION OF LOT 31 & 32 ON THE MAGNOLIA DEVELOPMENT PROPERTY OF ASHLEY I, LLC & ASHLEY II OF CHARLESTON, LLC LOCATED CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA", prepared under seal of Kevin Theves, S.C.R.L.S No. 21627, of Davis & Floyd, Inc., dated December 10, 2007, last revised March 22, 2010, and recorded June 25, 2010, in Plat Book L10, Pages 173 through 174, in the RMC Office for Charleston County, South Carolina, reference to which is hereby craved for a more complete description.

TMS # 464-13-00-011

Parcel 4
ALL that piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, shown and designated as "NEW LOT B" on a plat entitled "SUBDIVISION PLAT SHOWING THE RECONFIGURATION OF EXISTING RIGHT-OF-WAY ON HERIOT AND PETTY STREET BY THE ABANDONMENT OF PARCELS 67-70 TO CREATE NEW HERIOT STREET RIGHT-OF-WAY AND LOT "A" AND THE COMBINATION OF LOTS 28-30 AND LOTS 33 & 34 TO CREATE NEW LOT "B" AND "C" AND THE RECONFIGURATION OF LOT 31 & 32 ON THE MAGNOLIA DEVELOPMENT PROPERTY OF ASHLEY I, LLC & ASHLEY II OF CHARLESTON, LLC LOCATED CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA", prepared under seal of Kevin Thewes, S.C.R.L.S No. 21627, of Davis & Floyd, Inc., dated December 10, 2007, last revised March 22, 2010, and recorded June 25, 2010, in Plat Book L 10, Pages 173 through 174, in the RMC Office for Charleston County, South Carolina, reference to which is hereby craved for a more complete description.

TMS # 464-13-00-008

Parcel 5:

ALL that piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, shown and designated as "NEW LOT A" on a plat entitled "SUBDIVISION PLAT SHOWING THE RECONFIGURATION OF EXISTING RIGHT-OF-WAY ON HERIOT AND PETTY STREET BY THE ABANDONMENT OF PARCELS 67-70 TO CREATE NEW HERIOT STREET RIGHT-OF-WAY AND LOT "A" AND THE COMBINATION OF LOTS 28-30 AND LOTS 33 & 34 TO CREATE NEW LOT "B" AND "C" AND THE RECONFIGURATION OF LOT 31 & 32 ON THE MAGNOLIA DEVELOPMENT PROPERTY OF ASHLEY I, LLC & ASHLEY II OF CHARLESTON, LLC LOCATED CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA", prepared under seal of Kevin Thewes, S.C.R.L.S No. 21627, of Davis & Floyd, Inc., dated December 10, 2007, last revised March 22, 2010, and recorded June 25, 2010, in Plat Book L 10, Pages 173 through 174, in the RMC Office for Charleston County, South Carolina, reference to which is hereby craved for a more complete description.

TMS # 464-13-00-023
AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 1351 ASHLEY RIVER ROAD (0.25 ACRE) (TMS# 418-05-00-001), WEST ASHLEY, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 7. THE PROPERTY IS OWNED BY SHUBH LABH OF CHARLESTON LLC.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 7 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 1351 Ashley River Road, (0.25 acre) is identified by the Charleston County Assessors Office as TMS# 418-05-00-001, (see attached map) and includes public rights-of-way, shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of ________, in the Year of Our Lord, ________, in the _____ Year of the Independence of the United States of America.

By:

John J. Tecklenburg
Mayor

Attest:

Jennifer Cook
Clerk of Council
Annexation Profile

Parcel Address: 1351 Ashley River Road
Owner Names: Shubh Labh of Charleston LLC
Parcel ID: 4180500001
Presented to Council: 6/15/2021
Status: Received Signed Petition
Year Built: 2003
Number of Units: 1
Number of Persons: 0
Race: Commercial
Acreage: 0.25
Current Land Use: Commercial
Current Zoning: OD_STA (CC)
Requested Zoning: GB
Recommended Zoning: GB
Appraised Value: $310,000.00
Assessed Value: $18,600.00
Stormwater Fees: To Be Calculated

| Police | Located in existing service area - Team 4 |
| Fire | Located in existing service area - Station 10 |

Public Service

| Sanitation | Located in existing service area. One additional stop. |
| Storm Water | Contiguous to existing service area. |
| Streets and Sidewalks | Additional State-maintained right-of-way |

Traffic and Transportation

| Signalization | Good Condition |
| Signage | Good Condition |
| Pavement Markings | Good Condition |

Charleston Water System

| CWS service area. |

Planning

| Urban Growth Line | Property is a developed site within the line. |
| City Plan (Century Five) | Highway |
| Elevation Range | 11-16 ft |

Parks

| Already being served. |

Notes/Comments:

City Plan Recommendation: The existing development and proposed zoning is consistent with the City Plan. Recommend annexation.
TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area or property which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

SAID PROPERTY, located in West Ashley (approximately 0.25 acres) to be annexed is identified by the Charleston County Assessors Office as Property Identification Number: TMS# 418-05-00-001 (Address: 1351 Ashley River Rd, Charleston, SC 29407).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDERS (OWNERS) SIGNED

(Signature)

(Signature)

(Print Name)

(Print Name)

DATE OF SIGNATURE

6/2/2021

6/2/2021

(Date)

(Date)
Annexation Map

Location: West Ashley

Property Address: 1351 Ashley River Rd

Tax Map # (TMS): 4180500001

Area (Acres): approx. 0.25

Council District: 7
AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 1349 ASHLEY RIVER ROAD (APPROXIMATELY 0.28 ACRE) (TMS# 418-05-00-002), WEST ASHLEY, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 7. THE PROPERTY IS OWNED BY GRAPHIC GLAMOUR HOLDINGS LLC.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 7 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 1349 Ashley River Road, (0.28 acre) is identified by the Charleston County Assessors Office as TMS# 418-05-00-002, (see attached map) and includes public rights-of-way, shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of
________________ in the Year of Our Lord,
__________ in the _____ Year of the Independence of
the United States of America.

By:

__________________________
John J. Tecklenburg
Mayor

Attest:

_____________________________
Jennifer Cook
Clerk of Council
Annexation Profile

Parcel Address: 1349 Ashley River Road

Presented to Council: 6/15/2021
Status: Received Signed Petition
Year Built: 1950

Owner Names: Graphic Glamour Holdings LLC

Number of Units: 1
Number of Persons: 0
Race: Commercial
Acreage: 0.28

Parcel ID: 4180500002

Current Land Use: Commercial
Current Zoning: OD_STA (CC)
Requested Zoning: GB
Recommended Zoning: GB

Mailing Address: 1349 Ashley River Rd
Charleston, SC 29407

Appraised Value: $324,750.00
Assessed Value: $17,850.00
Stormwater Fees: To Be Calculated

City Area: West Ashley
Subdivision: Washington Park
Council District: 7
Within UGB: Yes

<table>
<thead>
<tr>
<th>Police</th>
<th>Located in existing service area - Team 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire</td>
<td>Located in existing service area - Station 10</td>
</tr>
<tr>
<td>Public Service</td>
<td></td>
</tr>
<tr>
<td>Sanitation</td>
<td>Located in existing service area. One additional stop.</td>
</tr>
<tr>
<td>Storm Water</td>
<td>Contiguous to existing service area.</td>
</tr>
<tr>
<td>Streets and Sidewalks</td>
<td>Additional State-maintained right-of-way</td>
</tr>
<tr>
<td>Traffic and Transportation</td>
<td></td>
</tr>
<tr>
<td>Signalization</td>
<td>Good Condition</td>
</tr>
<tr>
<td>Signage</td>
<td>Good Condition</td>
</tr>
<tr>
<td>Pavement Markings</td>
<td>Good Condition</td>
</tr>
<tr>
<td>Charleston Water System</td>
<td>CWS service area.</td>
</tr>
<tr>
<td>Planning</td>
<td></td>
</tr>
<tr>
<td>Urban Growth Line</td>
<td>Property is a developed site within the line.</td>
</tr>
<tr>
<td>City Plan (Century Five)</td>
<td>Highway</td>
</tr>
<tr>
<td>Elevation Range</td>
<td>12-16 ft</td>
</tr>
<tr>
<td>Parks</td>
<td>Already being served.</td>
</tr>
</tbody>
</table>

Notes/Comments:

City Plan Recommendation: The existing development and proposed zoning is consistent with the City Plan. Recommend annexation.
TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area or property which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

SAID PROPERTY, located in West Ashley (approximately 0.28 acres) to be annexed is identified by the Charleston County Assessors Office as Property Identification Number: TMS# 418-05-00-002 (Address: 1349 Ashley River Rd, Charleston, SC 29407).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDERS (OWNERS) SIGNED

[Signature]

(Print Name)

DATE OF SIGNATURE

6/11/21

(Date)
Annexation Map

Location: West Ashley

Property Address: 1349 Ashley River Rd

Tax Map # (TMS): 4180500002

Area (Acres): approx. 0.28

Council District: 7
AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF A PORTION OF THE PROPERTY KNOWN AS 420 ARLINGTON DRIVE (APPROXIMATELY 0.25 ACRE) (TMS# 310-12-00-083), WEST ASHLEY, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 5. THE PROPERTY IS OWNED BY OLIVIA L. VEDAD.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 5 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, a portion of 420 Arlington Drive, (0.25 acre) is identified by the Charleston County Assessors Office as TMS# 310-12-00-083, (see attached map).

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this ____ day of __________, in the Year of Our Lord, __________, in the ______ Year of the Independence of the United States of America.

By:

John J. Tecklenburg
Mayor

Attest:

Jennifer Cook
Clerk of Council
Annexation Profile

Parcel Address: 420 Arlington Drive

Owner Names: Olivia L. Vedad

Parcel ID: 3101200083

Presented to Council: 6/15/2021
Status: Received Signed Petition
Year Built: 1960
Number of Units: 1
Number of Persons: 3
Race: Caucasian/Other/Asian
Acreage: 0.25
Current Land Use: Residential
Current Zoning: R-4
Requested Zoning: SR-1
Recommended Zoning: SR-1
Appraised Value: $206,000.00
Assessed Value: $6,240.00
Stormwater Fees: To Be Calculated

Mailing Address: 420 Arlington Dr
City Area: West Ashley
Subdivision: Oakland
Council District: 5
Within UGB: Yes

Police
Located in existing service area - Team 4

Fire
Located in existing service area - Station 11

Public Service

Sanitation
Located in existing contract area. One additional stop.

Storm Water
Contiguous to existing service area.

Streets and Sidewalks
No additional City-maintained right-of-way

Traffic and Transportation

Signalization
None

Signage
None

Pavement Markings
Fair Condition

Charleston Water System
CWS service area.

Planning

Urban Growth Line
Property is a developed site within the line.

City Plan (Century Five)
Suburban Edge

Elevation Range
7-12 ft

Parks
Already being served.

Notes/Comments:

City Plan Recommendation: The existing development and proposed zoning is consistent with the City Plan. Recommend annexation.
STATE OF SOUTH CAROLINA )
COUNTY OF CHARLESTON )

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the
annexation of an area or property which is contiguous to a City by filing with the municipal
governing body a petition signed by all persons owning real estate in the area requesting
annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting
annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

SAID PROPERTY, located in West Ashley (approximately 0.43 acre) to be annexed
is identified by the Charleston County Assessors Office as Property Identification Number:
TMS# : 310-12-00-083 (Address: 420 Arlington Drive).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the
above described area into the municipal limits of the City of Charleston.

Dated this 21st day of
May, 2021

FREEHOLDERS (OWNERS) SIGNED

Olivia Z Vedad
(Signature)

OLIVIA Z VEZAD
(Print Name)

DATE OF SIGNATURE

05/24/2021
(Date)

(Signature)

(Date)

(Print Name)
Annexation Map

Location: West Ashley

Property Address: 420 Arlington Dr

Tax Map # (TMS): 3101200083 (a portion)

Area (Acres): approx. 0.25

Council District: 5
AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 2147 AND 2151 RIVER ROAD (APPROXIMATELY 4.78 ACRES) (TMS# 315-00-00-110; 315-00-00-048), JOHNS ISLAND, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 5. THE PROPERTY IS OWNED BY ABBI LAKE BEEKFORD.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 5 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 2147 and 2151 River Road, (4.78 acre) is identified by the Charleston County Assessors Office as TMS# 315-00-00-110, 315-00-00-048 (see attached map) and includes public rights-of-way, shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of ________________________ in the Year of Our Lord, ________________________, in the _______ Year of the Independence of the United States of America.

By:

John J. Tecklenburg
Mayor

Attest:

Jennifer Cook
Clerk of Council
# Annexation Profile

**Parcel Address:** 2147 and 2151 River Road  
**Presented to Council:** 6/15/2021  
**Status:** Received Signed Petition  
**Year Built:** 1970  
**Number of Units:** 1  
**Number of Persons:** 1  
**Race:**  
**Acreage:** 4.78  
**Current Land Use:** Residential and Vacant  
**Current Zoning:** R-4  
**Requested Zoning:** SR-1  
**Recommended Zoning:** SR-1  
**Appraised Value:** $309,100.00  
**Assessed Value:** $115,530.00  
**Stormwater Fees:** To Be Calculated

<table>
<thead>
<tr>
<th>Police</th>
<th>Located in existing service area - Team 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire</td>
<td>Located in existing service area - Station 17</td>
</tr>
<tr>
<td><strong>Public Service</strong></td>
<td></td>
</tr>
<tr>
<td>Sanitation</td>
<td>Located in existing contract area. One additional stop.</td>
</tr>
<tr>
<td>Storm Water</td>
<td>Contiguous to existing service area.</td>
</tr>
<tr>
<td>Streets and Sidewalks</td>
<td>Additional State-maintained right-of-way</td>
</tr>
<tr>
<td><strong>Traffic and Transportation</strong></td>
<td></td>
</tr>
<tr>
<td>Signalization</td>
<td>None</td>
</tr>
<tr>
<td>Signage</td>
<td>None</td>
</tr>
<tr>
<td>Pavement Markings</td>
<td>Good Condition</td>
</tr>
<tr>
<td><strong>Charleston Water System</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>St. Johns Water Service Area, CWS Sewer Service Area.</td>
</tr>
<tr>
<td><strong>Planning</strong></td>
<td></td>
</tr>
<tr>
<td>Urban Growth Line</td>
<td>Property is a partially developed site within the line.</td>
</tr>
<tr>
<td>City Plan (Century Five)</td>
<td>Suburban/Suburban Edge</td>
</tr>
<tr>
<td>Elevation Range</td>
<td>12-19 ft</td>
</tr>
<tr>
<td>Parks</td>
<td>Already being served.</td>
</tr>
</tbody>
</table>

**Notes/Comments:**

**City Plan Recommendation:** The existing development and proposed zoning is consistent with the City Plan. Recommend annexation.
STATE OF SOUTH CAROLINA )
COUNTY OF CHARLESTON )

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area or property which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

SAID PROPERTY, located on Johns Island (approximately 4.78 acres) to be annexed is identified by the Charleston County Assessors Office as Property Identification Numbers: TMS# 315-00-00-110 and 315-00-00-048 (Address: 2147 and 2151 River Road).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

FREEHOLDERS (OWNERS) SIGNED

Abbi L. Buckford

(Signature)

Abbi L. Buckford

(Print Name)

DATE OF SIGNATURE

5-20-2021

(Date)
Annexation Map

Location: Johns Island

Property Address: 2147 and 2151 River Rd

Tax Map # (TMS): 315000110 and 048

Area (Acres): approx. 4.78

Council District: 5
COMMITTEE ON REAL ESTATE
GENERAL FORM

TO: Committee on Real Estate  DATE: June 4, 2021
FROM: Julia Copeland  DEPT: Legal
ADDRESS: 126 Overpass between Riker and Cypress Street
TMS: N/A

PROPERTY OWNER: City of Charleston
REQUEST for approval for Mayor to execute Memorandum of Understanding with Middle Street Partners regarding the continued use of an area under the I-26 overpass for construction storage.

ACTION REQUEST:
ORDINANCE: Is an ordinance required? Yes ☐ No ☒

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

<table>
<thead>
<tr>
<th>Department Head</th>
<th>Signature</th>
<th>Attachments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Department</td>
<td>☒</td>
<td></td>
</tr>
<tr>
<td>Chief Financial Officer</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>Director Real Estate Management</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

FUNDING: Was funding needed? Yes ☐ No ☒ If yes, was funding previously approved? Yes ☐ No ☐

*If approved, provide the following:
- Dept/Div.
- Acct:
- Balance in Account
- Amount needed for this item

NEED: Identify any critical time constraint(s). N/A
MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “Agreement”) is made effective on __________, 2021 (the “Effective Date”), by and between the Middle Street Partners, LLC, a Delaware limited liability company with its principal place of business in Charleston County, South Carolina (“MSP”), and the City of Charleston, a South Carolina corporation (“Site Owner”). MUHA and Site Owner are sometimes referred to herein individually as a “Party” and together as the “Parties.”

RECITALS

WHEREAS, MSP is constructing an office building at 741 Meeting, between Riker Street and Kinlock Court;

WHEREAS, MSP desires to use an area located under the I-26 overpass, detailed in the site plan prepared by Sitecast dated February 4, 2021, attached hereto and incorporated by reference as Exhibit A (“the Site”);

WHEREAS, the City maintains and is responsible for the Site pursuant to an agreement with the SCDOT and its rights and restrictions, including no use of the space within five feet (5’) of any bridge pier or column;

WHEREAS, the City is agreeable to allowing MSP to use the Site for temporary access and storage under the following conditions:

(1) The Site will be used by MSP until March 1, 2022. MSP agrees to return the Site to its original condition within 30 days of completing its construction activity.
(2) MSP is responsible for all costs associated with regrading, re-grassing and providing positive drainage to any route used, repairing sidewalks or drainage improvements. All repairs described herein and any damage that may occur that is not described herein, will be repaired within 30 days of completing construction activity to the satisfaction of the City. City may withhold final Certificate of Occupancy until said repairs are completed.
(3) MSP will comply with all local, state and federal laws and any condition of any agreement between SCDOT and the City in the performance of this MOU.
(4) MSP’s use of the area must satisfy the requirements associated with the NPDES construction general permit from SCDHEC.
(5) MSP shall use only the access point from Riker Street to enter and exit the site, and not through Cypress Street.
(6) If MSP is not performing under the MOU to the satisfaction of the City, the City has the right to terminate the agreement and the City will be compensated for any costs and damages in connection with the termination, including the costs of repairs of the Site.
(7) Except for expenses or liabilities incurred by MSP arising from the negligence of the City, MSP hereby expressly agrees to indemnify and hold the City harmless against any and all expenses and liabilities arising out of the performance or default of this MOU.

Page 1 of 3
(8) MSP agrees to have adequate insurance coverage for property damage and personal injury related to the Site in an amount that is standard in the industry but no less than $300,000 for property damage and $600,000 for personal injury. Proof of insurance will be provided to the City showing that it is included as an additional insured.

(9) The perimeter of the site must have a chain-link security fence, minimum of 8’ in height, with a wind screen.

(10) This document contains the entire agreement between the parties hereto and all previous negotiations leading thereto. This agreement shall not be modified orally and shall only be altered by an agreement in writing signed by the parties.

(11) The laws of South Carolina shall govern this agreement.

(12) For purposes of notice, the representatives for the parties are:

FOR THE CITY:
Jason Kronsberg, Director
Department of Parks
823 Meeting Street
Charleston, SC 29403
kronsbergj@charleston-sc.gov

FOR MSP:
Adam Monroe
146 Williman Street
Suite 100
Charleston, SC 29403
amonroe@middlestreetpartners.com

MASHBURN CONSTRUCTION:
Jonathan Yuchmow
Project Engineer
1202 Chuck Dawley Blvd.
Mt. Pleasant, SC 29464
jyuchmow@mashburnconstruction.com

IN WITNESS WHEREOF, the Parties have caused their duly authorized agents to execute this Agreement as of the day and year first written above.

CITY OF CHARLESTON

By: ________________________________
Title: ______________________________

MIDDLE STREET PARTNERS, LLC

By: ________________________________