



WILLIAM S. COGSWELL, JR  
Mayor

*City of Charleston  
South Carolina*

MANDI HERRING  
Interim Section Chief -  
Planning, Permitting, and  
Engineering  
ROBERT SOMERVILLE  
Section Chief - Public Works

Chair: Keith Waring  
Vice Chair: William Dudley Gregorie  
Members: Boyd Gregg, Michael Seekings, Caroline Parker

**PUBLIC WORKS AND UTILITIES COMMITTEE  
AGENDA**

There will be a meeting of the Public Works and Utilities Committee on November 17, 2025 to begin at 5:00 pm. The following items will be heard via call-in number 1-929-205-6099 and access code 592 385 519:

**A. Invocation**

**B. Approval of Public Works and Utilities Committee Minutes**

October 27, 2025

**C. Request to Set a Public Hearing**

None

**D. Old Business**

None

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

1. Authorization to notify SCDOT that the City intends to accept maintenance of 500 LF of concrete sidewalk on Mutual Drive to connect the existing sidewalk that currently terminates at the Ashley Preserve HOA property to Savannah Highway (US-17) in conjunction with the Mutual Drive Sidewalk Improvement project.
2. Authorization to notify SCDOT that the City intends to accept maintenance of 280 LF of 5' concrete sidewalk on Forrest Acres Circle (S-1312) in conjunction with the Pointe at Governor's Cay project.

## **F. Temporary Encroachments Approved by The Department of Development Services (For information only)**

1. **120 Meeting St. (Duckworth Gallery)** - Installing right angle sign encroaching into City right of way. This encroachment is temporary.
2. **471 King St. (Sweet Palm Coffee)** – Installing circular blade sign encroaching into City right or way. This encroachment is temporary.
3. **409 King St. (Sloane Boutique)** – Installing right angle sign encroaching into City right of way. This encroachment is temporary.
4. **41 Church St.** – Installing front stairs that extend into the City right of way. This encroachment is temporary.
5. **416 Oak Hammock Ct.** – Installing fence encroaching into City maintained drainage easement. This encroachment is temporary.
6. **844 Bent Hickory Rd.** – Installing fence encroaching into City maintained drainage easement. This encroachment is temporary.
7. **1168 Blakeway St.** – Installing fence encroaching into City maintained drainage easement. This encroachment is temporary.
8. **2018 Pierce St.** – Installing fence encroaching into City maintained drainage easement. This encroachment is temporary.
9. **1265 Harriman Ln.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
10. **263 Newsday St.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
11. **241 Newsday St.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
12. **256 Newsday St.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
13. **264 Newsday St.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
14. **417 Kandinsky St.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
15. **612 Satum Rocket St.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
16. **549 Spiral Ramp Ct.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.

17. **521 Spiral Ramp Ct.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
18. **420 Kandinsky St.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
19. **1233 Harriman Ln.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
20. **357 Glide Slope St.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
21. **251 Newsday St.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
22. **405 Kandinsky St.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
23. **236 Newsday St.** – Installing irrigation encroaching into City right of way. This encroachment is temporary
24. **130 Fairbanks Oak Aly, Unit 4B.** – Installing irrigation encroaching into City right of way. This encroachment is temporary
25. **1213 Harriman Ln.** – Installing irrigation encroaching into City right of way. This encroachment is temporary.
26. 2318 Sunnyside Ave. – Installing drainage pop up emitter encroaching into City right of way. This encroachment is temporary.

## **G. Request for Permanent Encroachments**

1. None

## **H. Public Service Department Update**

### **I. Department of Development Services Update**

#### **1. Ordinance to Adopt Magnolia Trip Wall O&M Plan**

The agenda item is to pass an ordinance authorizing the Mayor to adopt on behalf of the City an Operations and Maintenance agreement for the Magnolia Landing Trip Wall. A trip wall is a coastal structure that can be used to alter flood risk and revise the effective FEMA Flood Insurance Rate Maps (FIRMs) of the adjacent area once reviewed and approved by FEMA in a Letter of Map Revision (LOMR). For more information on the overview of the project scope, refer to the Director of Development Services Memo included in the agenda documents. The Ordinance is finalized, however, the City and developer are still working on finalizing O&M language regarding the physical inspection frequency and wall crest elevation maintenance criterion.

#### **2. FEMA FMA Elevation Grant Formal City – Owner Agreement**

The City and Owner have entered into a Memorandum of Agreement (MOA) that was previously brought to Council when the grant award was accepted. The item on the agenda is for the City to enter into a formal agreement with the property owners that are committed to moving the

project forward. We ask Council to approve as to form subject to Legal Department review and approval. The grant has an extremely tight timeline with a Period of Performance expiration in June 2026.

### **3. FEMA HMGP Elevation Grant MOA and Formal City – Owner Agreements**

The Owner has signed a Memorandum of Agreement (MOA) that was not previously brought to council when the HMGP grant award was accepted in 2023, however, the MOA was brought to council in the context of the other elevation grant earlier this year. We are bringing the owner signed MOA back to council so that the Mayor may execute the agreement. Additionally, we present a drafted formal City-Owner agreement for the City to enter into a formal agreement with the property owner that is committed to moving the project forward. We ask Council to approve as to form subject to Legal Department review and approval. The grant Period of Performance has expired in November 2025, and we are awaiting to hear back from FEMA on if the grant will be extended.

## **J. Stormwater Management Department Update**

1. Update on Howle Ave Project
2. Update on Cooper/Jackson Project

## **K. Miscellaneous Business**

1. Discussion regarding Charleston Water System Possible Rate Increase (***Requested by Councilmember Caroline Parker***)

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

E1.)



WILLIAM S. COGSWELL, JR  
Mayor

RON BUCCI  
Director

*City of Charleston  
South Carolina  
Department of Development Services*

November 18<sup>th</sup>, 2025

JuLeigh Flemming, P.E.  
District Permit Engineer  
SCDOT District 6  
6355 Fain Street, North Charleston, SC 29405

Subject: Maintenance of concrete sidewalk on Mutual Drive (S-10-737) in conjunction with the Mutual Drive Sidewalk Improvements projects.

Dear Ms. Flemming:

This letter concerns the proposed Maintenance of 500 LF of concrete sidewalk on Mutual Drive (S-10-737) to connect the existing sidewalk that currently terminates at the Ashley Preserve HOA property to Savannah Highway (US-17) in conjunction with Mutual Drive Sidewalk Improvement project. The City Council of Charleston at its meeting held on November 18th, 2025, agreed to accept maintenance responsibility for this item.

The work will be constructed under a valid SCDOT Encroachment Permit. The City of Charleston agrees to maintain these improvements in compliance with current ADA and SCDOT standards. (ADA Standards for Transportation Facilities, SC Highway Design Manual, SCDOT Standard Drawings, AASHTO Guide for Development of Pedestrian Facilities).

Should there be any questions please contact me at [buccir@charleston-sc.gov](mailto:buccir@charleston-sc.gov).

Sincerely,

Ron Bucci, PE  
Director  
Development Services

CC: Christopher Orofino, P.E., PMP, Transportation Project Manager, Charleston County  
Brian Pokrant, GIS Analyst, City of Charleston

Christopher Orofino, P.E., PMP  
Transportation Project Manager  
Public Works



843.202.7607  
Fax: 843.202.6152  
[CJOrofino@charlestoncounty.org](mailto:CJOrofino@charlestoncounty.org)  
3681 A Leeds Ave., 2nd Floor  
North Charleston, SC 29405

October 23, 2025

City of Charleston  
Attn: James Wallace  
180 Lockwood Drive, Suite C  
Charleston, SC 29403

RE: Mutual Drive Sidewalk Improvements – Maintenance of sidewalk

Dear Mr. Wallace:

Charleston County is in the process of improving Mutual Drive. The project includes constructing approximately 500 feet of sidewalk to connect the existing sidewalk that currently terminates at the Ashley Preserve HOA property to Savannah Highway (US 17). This improvement will enhance pedestrian access and connectivity for residents in the vicinity.

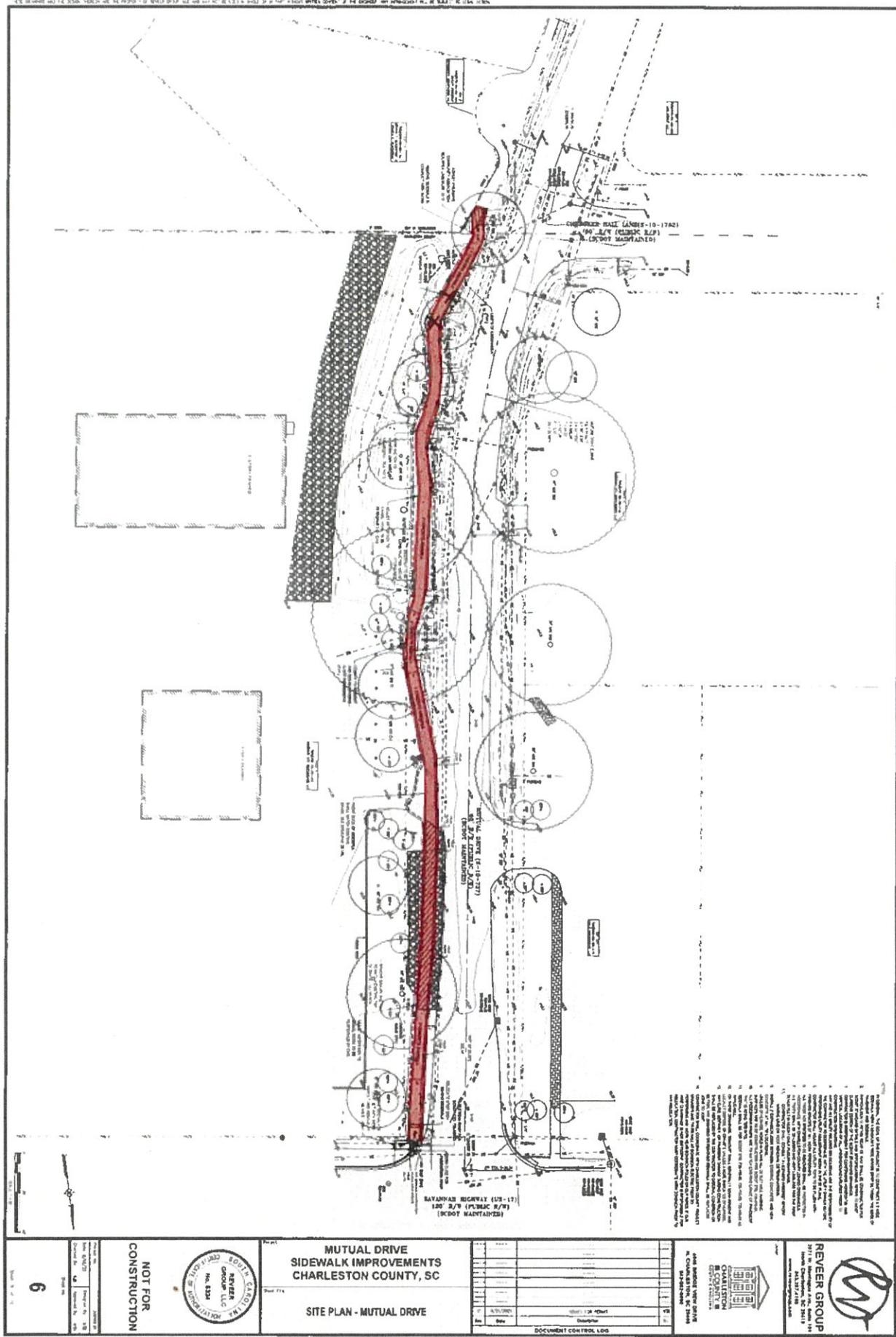
The proposed sidewalk will connect to existing sidewalk located on private property owned by Ashley Preserve HOA (TMS 310-06-00-106). Please see the attached plan showing the limits of the new sidewalk installation.

During review of the encroachment permit application, SCDOT stated that they will not assume maintenance responsibility for this sidewalk segment, as the proposed sidewalk is not entirely within SCDOT right-of-way. SCDOT further clarified that they will not maintain even the portion located within their ROW.

Given these conditions, Charleston County respectfully requests that the City of Charleston provide a Maintenance and Liability Letter stating that the City agrees to assume ownership, maintenance, and liability for the new sidewalk along Mutual Drive. This letter will be included in our submittal to SCDOT as part of their encroachment permit review. Thank you for your continued partnership and support in advancing this community improvement project.

Sincerely,

Christopher John  
Orofino  
2025.10.23  
14:22:51-04'00'  
Christopher Orofino, P.E.





WILLIAM S. COGSWELL, JR  
Mayor

RON BUCCI  
Director

*City of Charleston  
South Carolina  
Department of Development Services*

November 18<sup>th</sup>, 2025

JuLeigh Flemming, P.E.  
District Permit Engineer  
SCDOT District 6  
6355 Fain Street, North Charleston, SC 29405

Subject: Maintenance of concrete sidewalk on Forrest Acres Circle (S-1312) in conjunction with the Pointe at Governor's Cay project.

Dear Ms. Flemming:

This letter concerns the proposed Maintenance of 280 LF of 5' concrete sidewalk on Forrest Acres Circle (S-1312) conjunction with the Pointe at Governor's Cay project. The City Council of Charleston at its meeting held on November 18th, 2025, agreed to accept maintenance responsibility for this item.

The work will be constructed under a valid SCDOT Encroachment Permit. The City of Charleston agrees to maintain these improvements in compliance with current ADA and SCDOT standards. (ADA Standards for Transportation Facilities, SC Highway Design Manual, SCDOT Standard Drawings, AASHTO Guide for Development of Pedestrian Facilities).

Should there be any questions please contact me at [buccir@charleston-sc.gov](mailto:buccir@charleston-sc.gov).

Sincerely,

Ron Bucci, PE  
Director  
Development Services

CC: Jacob Cordray, Sitecast, LLC  
Brian Pokrant, GIS Analyst, City of Charleston



October 23, 2025

To: City of Charleston- Engineering Department  
C/O Tracey Rennel

**Subject: Maintenance of 5' Concrete Sidewalk & Street Trees on Forrest Acres Circle (S-1312) in Conjunction with The Pointe at Governor's Cay**

Dear Sir/Madam:

SCDOT has requested a maintenance and liability letter from the City of Charleston for maintenance of approximately 280 linear feet of 5' concrete sidewalk and (3) Three "Hightower" Willow Oak street trees on Forrest Acres Circle (S-1312) in conjunction with the Pointe at Governor's Cay project. The aforementioned items are being required by the City of Charleston Technical Review Committee.

Should there be any questions please contact me at [jcordray@sitecastsc.com](mailto:jcordray@sitecastsc.com).

Sincerely,

H. Conkay

Jacob Cordray  
Sitecast, LLC



## COMMITTEE / COUNCIL AGENDA

**TO:** William S. Cogswell Jr., Mayor  
**FROM:** RON BUCCI DEPT. DEVELOPMENT SERVICES  
**SUBJECT:** **ORDINANCE TO ADOPT MAGNOLIA 'FEMA' TRIP WALL OPERATIONS AND MAINTENANCE (O&M) PLAN**  
**REQUEST:** To pass an ordinance authorizing the Mayor to adopt on behalf of the City an Operations and Maintenance agreement for the Magnolia Landing trip wall. A trip wall is a coastal structure that can be used to alter flood risk and revise the effective FEMA Flood Insurance Rate Maps (FIRMs) of the adjacent area once reviewed and approved by FEMA in a Letter of Map Revision (LOMR).

**COMMITTEE OF COUNCIL:** PW&U/W&M **DATE:** November 17, 2025

**COORDINATION:** This request has been coordinated with: (attach all recommendations/reviews)

	Yes	N/A	Signature of Individual Contacted	Attachment
Corporate Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Julia Copeland	<input type="checkbox"/>
Floodplain Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Caroline Schnell <i>Caroline Schnell</i>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

**FUNDING:** Was funding previously approved? Yes  No  N/A

If yes, provide the following: Dept./Div.: \_\_\_\_\_ Account #: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**Does this document need to be recorded at the RMC's Office?** Yes  No

**NEED:** Identify any critical time constraint(s).

Expedite to November 18<sup>th</sup> W&M per developer request and timeline.

CFO's Signature: Jamy Wharton

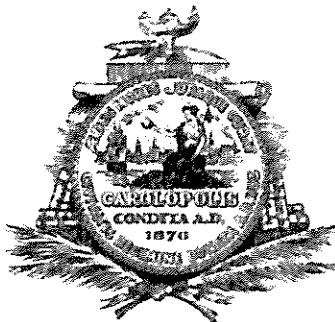
**FISCAL IMPACT:**

While the trip wall must be under the long-term ownership of City of Charleston per FEMA requirements, the Magnolia Landing Property Association ("MPOA") is responsible for the inspections and maintenance costs detailed in the O&M.

Mayor's Signature: \_\_\_\_\_

William S. Cogswell, Jr., Mayor

**ORIGINATING OFFICE PLEASE NOTE:** A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.



AN ORDINANCE

AUTHORIZING THE MAYOR TO ADOPT ON BEHALF OF THE CITY AN OPERATIONS AND MAINTENANCE AGREEMENT FOR THE MAGNOLIA LANDING TRIP WALL.

WHEREAS, pursuant to that Third Amendment to the Development Agreement between the City and HR CHARLESTON I, LLC, HR CHARLESTON II, LLC, HR CHARLESTON III, LLC, HR CHARLESTON VII, LLC, AND HR CHARLESTON IX, LLC, the area bearing TMS No. 466-00-00-018 and designated as "Open Space" therein shall be dedicated to and owned by the City;

WHEREAS, the Open Space shall include a flood wall ("Magnolia Trip Wall"), as approved by the City in location and design, which shall be maintained solely by the Master Property Owners Association ("MPOA") after its dedication to the City and governed by signed, recorded covenant setting forth the maintenance obligations of the MPOA;

WHEREAS, HR CHARLESTON I, LLC, HR CHARLESTON II, LLC, HR CHARLESTON III, LLC, HR CHARLESTON VII, LLC, AND HR CHARLESTON IX, LLC have requested a Letter of Map Revision ("LOMR") from FEMA based upon the Magnolia Trip Wall serving as a physical modification that alters the flood hazards of the Open Space;

WHEREAS, the Magnolia Trip Wall is a permanent, passive structure and does not depend upon any emergency warning system or human intervention to function during a flood event;

WHEREAS, pursuant to 44 CFR Sec. 65.10, an operations and maintenance plan is required for a LOMR enabling structure such as the Magnolia Trip Wall, so as to ensure that the stability, height, and overall integrity of the structure and its associated structures and systems are maintained;

WHEREAS, FEMA requires that all operation and maintenance activities be under the jurisdiction of a federal or state agency, an agency created by federal or state law, or any agency of a community participating in the NFIP that must assume ultimate responsibility for maintenance; and,

WHEREAS, FEMA requires the appointment of a Responsible Community Official ("RCO") who will be responsible for ensuring that the maintenance activities are accomplished and sufficient to maintain FEMA certification.

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

Section 1. That the Mayor is hereby authorized to adopt on behalf of the City an Operations and Maintenance Plan for the Magnolia Trip Wall, a copy of said Operations and Maintenance Plan being attached to this Ordinance as Exhibit A and made a part hereof.

Section 2. That the City's Floodplain Manager and Infrastructure Management Director shall jointly serve as the RCO for purposes of implementing the Operations and Maintenance Plan for the Magnolia Trip Wall.

Section 3. That the MPOA is responsible for the inspections and maintenance costs associated with the Operations and Maintenance Plan for the Magnolia Trip Wall, which shall be set forth in a covenant describing such obligations to be recorded in the Charleston County Register of Deeds.

Section 4. That this Ordinance shall be effective upon ratification.

Ratified in City Council this \_\_\_\_ day of \_\_\_\_ in the year of Our Lord, 2025, in the \_\_\_\_ Year of the Independence of the United States of America.

By: \_\_\_\_\_  
William S. Cogswell, Jr., Mayor

ATTEST: By: \_\_\_\_\_  
Jennifer Cook  
Clerk of Council



WILLIAM S. COGSWELL, JR.  
Mayor

*City of Charleston  
South Carolina  
Department of Development Services*

Ron Bucci, PE  
Director

11/07/2025

**RE: Magnolia Trip Wall Operation and Maintenance (O&M) Plan**

Dear Council,

The item being presented to Council at Public Works and Utilities is for the adoption of the Operation and Maintenance (O&M) Plan for the Magnolia Trip Wall, associated with the development of the Magnolia Landing site. A trip wall is a coastal structure that can be used to alter flood risk and revise the effective Flood Insurance Rate Maps (FIRMs) of the adjacent area once reviewed and approved by FEMA in a Letter of Map Revision (LOMR). The trip wall LOMR is being requested by the development team due to unique site conditions and to construct to less restrictive flood design building requirements. The O&M document being presented describes the maintenance and operations requirements that are required for this infrastructure. While the trip wall must be under the long-term ownership of City of Charleston per FEMA requirements, the Magnolia Landing Property Association ("MPOA") is responsible for the inspections and maintenance costs detailed in O&M.

The above information has been coordinated with Legal and the City's Floodplain Manager. Please also see the exhibit below showing the general location of the trip wall.

If you have any questions or comments regarding this information, please contact me at [buccir@charleston-sc.gov](mailto:buccir@charleston-sc.gov) or (843) 724-3785.

Sincerely,

Ron Bucci  
Director of Development Services

Cc: Mandi Herring  
Caroline Schnell  
Magalie Creech



WILLIAM S. COGSWELL, JR.  
Mayor

*City of Charleston  
South Carolina  
Department of Development Services*

Ron Bucci, PE  
Director

**EXHIBIT A**

**MAGNOLIA LANDING TRIP WALL LOCATION**



Exhibit A

**Operations and Maintenance Plan, Magnolia Trip Wall**  
**October 29, 2025; April 21, 2025 (Rev. 2); July 31, 2024 (Orig.)**  
***Language in Red is still under review as of 11/10/2025***

This Operations and Maintenance Plan for the Magnolia Trip Wall is for the FEMA CLOMR (Case No. 25-04-0897R) and LOMR (Case No. TBD) and describes maintenance activities, the frequency of maintenance activities, and title of the Responsible Community Official (RCO) who will be responsible for ensuring that the maintenance activities are accomplished. Annual inspections of the trip wall will be performed and certified by a South Carolina licensed professional engineer who is qualified to conduct structural inspections (a.k.a., qualified professional engineer).

Additionally, this Operations and Maintenance (O&M) Plan will focus on those factors necessary to the future stability, height and integrity of the wall, as stipulated under 44 CFR Sec. 65.10. This O&M Plan may be updated as necessary to incorporate regulatory changes, site modifications, or lessons learned from inspections.

The trip wall constructed on the property at Magnolia Landing is a permanent, passive structure and does not depend upon any emergency warning system or human intervention to function during a flood event. For implementation of this Plan, the following designees are assigned (and can be updated accordingly with City approval):

- a. Responsible Community Official (RCO): City of Charleston Floodplain Manager and Infrastructure Management Director
- b. SC Licensed Professional Engineer: Marc Gold, PE, CFM\_

**Inspections**

Annual inspections of the trip wall will be performed by a SC Licensed professional engineer, referred to herein as professional engineer. Magnolia Landing Property Association (“MPOA”) is responsible for costs associated with the inspections and maintenance per the 3<sup>rd</sup> Amendment to the Development Agreement between the City and HR Charleston VII, LLC, et al dated February 21, 2025, including the covenant of such obligations of the MPOA with respect to the Trip Wall (aka Flood Wall) recorded in the Charleston County Register of Deeds. The inspections will include observations of wall condition, vertical and horizontal alignment, and crest elevation. Any deterioration, damage or settlement will be identified and located. The presence and location of any scour or erosion at the face of the wall will be determined through field observations and measurements. The condition and elevation of fill on either side of the wall, if applicable, will also be assessed. **Inspections will utilize data obtained at established monitoring locations and visual inspections of surface conditions of fill on both sides of the wall to determine if a subsurface inspection is required.** The annual inspections will be documented in the professional engineer’s inspection reports.

Other inspections will be conducted by the professional engineer following events such as:

- Severe Storm Events (where scour may occur with breaking waves reaching the face of the wall (i.e., measured Water Elevations of +7 feet NAVD88 or higher, as measured by the NOAA Charleston, SC Gauge Station ID: 8665530),
- Extreme tide events with nearshore setup causing scour and exposure of the seawall,

- Debris impacts whether occurring during storm events or extreme tide events, or
- Significant Earthquakes (Magnitude 5 or greater).

Inspections shall be conducted (and any subsequent required repairs shall be made) on the wall prior to grading that would cover the landward or waterward face of the wall. These inspections will include the same parameters as the annual inspections and will be documented in the professional engineer's inspection reports.

Prior to conducting regular or post-event inspections, the professional engineer will submit to the RCO for approval examples of the proposed inspection forms, field data collection methods, and reporting formats. The initial post-event inspections will be performed within 7 days following an impacting storm, or seismic event or when the area is deemed safe to enter, whichever comes first. Inspections and corrective actions will be in accordance with engineering guidelines and recommendations (e.g., ACI, ASCE, USACE, UFC, etc.) and will provide the City an Assessment and Recommendations Report. A final follow-up inspection of the wall will be conducted after all repairs and adjacent remediation efforts have been completed. Updated as-builts will be provided documenting repairs of the wall.

In addition to event-based inspections, regular inspections should be conducted within the period of warranty (i.e., 5 years from dedication), and should include the following observations to be recorded in inspection reports:

- Settlement should be measured twice in the first year at an approximate 6-month interval and annually thereafter and should be measured at the designated structure monitoring points (SMPs) as shown on the design drawings issued for construction on 09/05/2025 by ATM, a Geosyntec Company.
- Seepage on the seaward side should be documented with photos, field notes, and relevant measurements which could indicate a possible crack within the vicinity of the seepage to the trip wall.
- If determined necessary based on monitoring data and surface inspections and in coordination with the RCO, physical observations should be documented with photos, field notes, and measurements made by excavating soil from the trip wall at locations of concern.
- Repaired sections should be physically inspected initially and each year after initial repairs.

### Maintenance and Repairs

During each inspection, the professional engineer will document any defects including but not limited to deterioration, corrosion, damage, settlement, rotation, scour or erosion that is evident during an annual or post-event inspection relative to both: 1) the original design, 2) changes since previous inspections, and changes since most recent 3) As-builts. The minimum crest elevation that must be maintained in accordance with the FEMA LOMR is discussed in **Attachment A**. The professional engineer will submit to the City prior to inspections RCO-approved criterion for differential settlement, total settlement, rotation, cracking, and spalling (i.e., total and/or rates) that will be used for triggering corrective actions. Inspections will assess deviations from horizontal/vertical alignment, deflections, and settlement to ensure continued structural integrity. If the professional engineer determines that the wall can no longer provide a level of base flood protection consistent with that of the original wall, then the engineer shall specify required maintenance and repairs to restore the wall to the required level of

base flood protection. Prior to beginning any repairs, the professional engineer will submit to the RCO the proposed repair plan, which will be reviewed and approved by the City prior to making repairs.

The specified maintenance and repairs shall be carried out within 4 months, and upon completion, the work will be inspected by the professional engineer. If the professional engineer and RCO determine that the wall repair work to be satisfactory, the work will be documented and photographed, a post-maintenance or post-repair report shall be prepared by the engineer, and the engineer will certify the wall as providing the required level of flood protection. For any sections that are repaired or modified, "As-built Drawings" should be furnished by the certifying professional engineer.

The portion of the wall utilizing micropiles in the NW corner of the site is on in-situ stabilization (ISS). The ISS in the NW corner of the site is a no dig zone due to environmental contamination. Additionally, the trip wall has been checked for surcharge of 250 psf. to account for active loads; however, it is not designed to handle vehicles within ten (10) feet of the wall (e.g., emergency vehicles/ambulances, maintenance vehicles).

#### Documentation

The Master Property Owners Association (MPOA) shall conduct the required inspections and maintenance at its sole cost and expense, following standards set forth in this O&M Plan. All trip wall documentation (inspection reports, condition evaluations, maintenance and repair plans, post-maintenance and post-repair inspections and documentation, and trip wall certifications) will be submitted by the professional engineer performing the work to the owners and the City of Charleston RCO and Floodplain Manager. The trip wall is within the jurisdictional boundaries of the City of Charleston.

Within the scope of the FEMA LOMR requirements, the community (City of Charleston) is responsible for assuring implementation of this Plan sufficient to maintain FEMA certification.



## ATTACHMENT A to Trip Wall O&M PLAN

# MEMORANDUM

A Geosyntec Company

941 Houston Northcutt Blvd, Suite 201  
Mount Pleasant, SC 29464  
843.414.1040

**To:** Magnolia Landing Project Team

**From:** Will Tanner (ATM, a Geosyntec Company); Marc Gold (ATM, a Geosyntec Company)

**CC:**

**Date:** November 10, 2025

**Re:** ATTACHMENT A to Trip Wall O&M PLAN - Trip Wall Design Elevation and Maintenance

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ATM, a Geosyntec Company has provided this technical memorandum to summarize the design elevation, construction tolerance, action threshold, and minimum elevation required for the FEMA Trip Wall to maintain CLOMR/LOMR certification.

### **Design Elevation and Construction Tolerance**

The design elevation for the crest of the trip wall is +10.0 ft NAVD88 with a vertical construction tolerance of  $\pm 0.04$  ft.

### **As-Built Baseline Elevation**

Due to construction tolerances, the As-built trip wall elevations constructed within this tolerance will serve as the baseline for future monitoring.

### **Settlement Action Threshold**

As part of the Deep Soil Mixing (DSM) foundation design, Keller North America performed settlement analyses which included future upland development planning on the site, documented in their final design submittal - "Magnolia FEMA Trip Wall DSM Deep Soil Mix Slope Stabilization Submittal, Rev 3; July 22, 2025" reviewed by ATM and approved by the City. These analyses estimate that the total vertical settlement of the trip wall will be a maximum of 2.0 inches over the 50-year design life of the wall. The settlement estimate of 2.0 inches was provided to the FEMA technical reviewer on June 5, 2025.

Settlement will be monitored at designated structure monitoring points (SMPs) installed along the wall, as shown on the ATM design drawings issued for construction (9/5/2025). A 3-inch settlement criteria was established when corrective repair or remediation action may be taken to return the wall crest to its originally As-built elevation.

### **Minimum Elevation to Maintain CLOMR/LOMR: +9.5 ft NAVD88**

FEMA WHAFIS modeling by ATM demonstrated the trip wall works as intended for a trip wall crest elevation of +9.5 ft NAVD88 (i.e., an assumed 6 inches of settlement below design elevation). This was provided with accompanying model files to the City for review in the memo "Magnolia Trip Wall Settlement Model Runs Summary; April 24, 2025" which will be provided to FEMA at final LOMR submittal as was discussed with the FEMA technical reviewer on June 5, 2025.

**Summary**

In summary, the As-built crest elevation of the trip wall will serve as the baseline for monitoring settlement at the designated SMPs. If monitoring shows 3 inches of settlement from the baseline, corrective repair or remediation action may be taken to return the wall crest to its original As-built/baseline elevation.

**COMMITTEE / COUNCIL AGENDA**

TO: William S. Cogswell Jr., Mayor

FROM: RON BUCCI DEPT. DEVELOPMENT SERVICES

SUBJECT: **FEMA FMA ELEVATION GRANT, FORMAL CITY – OWNER AGREEMENTS**

REQUEST: The grant award has already been accepted by Council; however, the formal City-Owner Agreement was not included in the previous council agenda item.

To enter into a City-Owner agreement for the FEMA FMA (2019) elevation grant.

COMMITTEE OF COUNCIL: PW&U/W&M DATE: November 18, 2025

**COORDINATION:** This request has been coordinated with: (attach all recommendations/reviews)

	Yes	N/A	Signature of Individual Contacted	Attachment
Corporate Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Julia Copsland</u>	<input type="checkbox"/>
Floodplain Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Caroline Schnell</u>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

**FUNDING:** Was funding previously approved? Yes  No  N/A

If yes, provide the following: Dept./Div.: \_\_\_\_\_ Account #: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**Does this document need to be recorded at the RMC's Office?** Yes  No

**NEED:** Identify any critical time constraint(s).

**Expedite to November 18<sup>th</sup> W&M due to Period of Performance Timeline Constraints.**

CFO's Signature: Jamy Wharton

**FISCAL IMPACT:**

There is no fiscal impact to the City; all costs are the responsibility of the property owners. This reimbursable grant requires homeowners to cover the entire project cost, to be reimbursed based on FEMA cost-shares.

Mayor's Signature: \_\_\_\_\_

William S. Cogswell, Jr., Mayor

**ORIGINATING OFFICE PLEASE NOTE:** A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.

**ELEVATION PROJECT AGREEMENT DRAFT**  
*Approve as to form subject to Legal Department review and approval*

THIS ELEVATION PROJECT AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date") by and between THE CITY OF CHARLESTON, SC (the "CITY") and \_\_\_\_\_, the Owner of the property located at \_\_\_\_\_, Charleston, SC 29401 (the "OWNER").

WHEREAS, on January 20, 2020, the CITY submitted an application to the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA) on behalf of OWNER for a Fiscal Year 2019 Flood Mitigation Assistance (FMA) grant to elevate the OWNER's property, which was approved by City Council on January 14, 2020; and

WHEREAS, the goals of the FMA grant program are to assist communities in their efforts to reduce or eliminate the risk of repetitive flood damage to buildings and structures insurable under the National Flood Insurance Program (NFIP), thereby reducing future losses to the National Flood Insurance Program; and

WHEREAS, on July 11, 2024, FEMA awarded a grant in the amount of \$871,819.98 (the "Grant Award") for the elevation of 5 Repetitive Loss (RL) and Severe Repetitive Loss (SRL) properties in the City of Charleston (FMA-PJ-04-SC-2019-003), including the OWNER's property, under the FMA grant program pursuant to the Congressional appropriation for Fiscal Year 2019; and

WHEREAS, the Grant Award is administered through the South Carolina Department of Natural Resources (SCDNR), and the CITY and SCDNR have entered into a Subrecipient Agreement, attached hereto and incorporated herein as Attachment A, which was approved by City Council on August 19, 2025 and executed on September 8, 2025; and

WHEREAS, OWNER and CITY have entered into a Memorandum of Agreement dated \_\_\_\_\_, and now desire to enter into this Elevation Project Agreement to formalize their respective duties, obligations, and liabilities with regard to the Grant Award and elevation project.

WHEREAS, the OWNER has submitted a letter, documenting the building is feasible to be raised.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions as are hereinafter set forth, it is agreed, by and between the Parties, as follows:

**ARTICLE 1. SCOPE OF WORK**

1.01 The OWNER shall fully perform the elevation project in accordance with the Subrecipient Agreement in Attachment A and the terms and conditions of this Agreement (the "Elevation Project" or "Project"). OWNER shall comply with all applicable federal, State and CITY codes and standards in performing the work under this Agreement.

1.02 OWNER represents and warrants that the structure proposed for the Elevation Project under this Agreement (\_\_\_\_\_, Charleston, SC 29401) is currently covered by a National Flood Insurance Program (NFIP) flood insurance policy and shall remain so insured for the life of the property. The OWNER shall also maintain general liability and property coverage during construction sufficient to protect against claims arising from the Project.

1.03 OWNER acknowledges and warrants that the Project must follow all applicable federal, State, and CITY laws, regulations, and requirements including but not limited to ASCE 24; IBC: 801, 1107, 1203, 1403, 1603, G103, G105; IRC: IFGC301, R105, R309, R322, R408, RG2404, RM1301, RM1401, RM1601, RM1701, RM2001, RM2201, RP2601, RP2602; NFIP: 60.3; City Code of Ordinances: Chapter 27, Article 2, Division 3., and that the OWNER will obtain, prior to commencement of Project work, and comply with all required permits and approvals.

1.04 OWNER shall submit to the CITY a Certificate of Occupancy and Final Elevation Certificate to certify that the structure is elevated to meet the requirements set forth in the CITY's Floodplain Management Ordinance. These documents shall be submitted before grant closeout can be completed. Final reimbursement to the OWNER will not be made until all grant closeout documents have been finalized.

1.05 OWNER agrees to have a deed restriction, in the format provided in Attachment C, recorded at the Charleston County Register of Deeds Office. Deed recordation shall be completed prior to the Period of Performance expiration. Proof of recordation of the deed restriction and a copy of the active NFIP policy shall be submitted with grant closeout documents. Final reimbursement to the OWNER will not be made until all grant closeout documents have been finalized.

## ARTICLE 2. TIME OF PERFORMANCE

2.01 OWNER agrees to complete the Project within the Period of Performance (POP) established under the Grant Award, which is currently set to expire on **June 3, 2026**. All closeout documentation must be submitted by the CITY to SCDNR within 90 days of the POP expiration, which is **August 31, 2026** based on the POP expiration date.

## ARTICLE 3. FUNDING

3.01 The CITY shall serve as a pass-through entity for the funds identified in the Grant Award, which is administered by SCDNR. The CITY will not contribute any funds to the Project.

3.02 The OWNER's property located at \_\_\_\_\_ Street, designated by FEMA as a \_\_\_\_\_ has been allocated a federal grant share of \$ \_\_\_\_\_ ("OWNER's Federal Share") as part of the total approved Grant Award, with no non-federal match requirement.

3.03 OWNER used a competitive method to select an elevation contractor by obtaining three (3) quotes from contractors who have relevant experience and the necessary skills and knowledge

for the project, who are licensed and bonded, and who have liability insurance. After carefully reviewing the quotes received from the contractors, OWNER has selected W. H. Howerton, LLC (the "CONTRACTOR") to elevate OWNER's property. OWNER has entered into a written agreement with the CONTRACTOR, which is attached hereto and incorporated herein as Attachment B ("Contract between OWNER and CONTRACTOR").

3.04 The total estimated Project costs associated with the OWNER's chosen CONTRACTOR, as detailed in Attachment B, are \$ \_\_\_\_\_ (the "Total Project Cost").

3.05 No additional grant funds will be awarded to OWNER for any costs in excess of the OWNER's Federal Share. All Project costs more than the OWNER's Federal Share and all cost overages for the Project in excess of the Total Project Cost shall be the sole responsibility of the OWNER.

3.06 The OWNER shall, prior to commencement of the Project, remit to the CITY the sum of \$ \_\_\_\_\_, representing the Total Project Cost less the Owner's Federal Share, to ensure that sufficient funds are available to complete the Project. The funds shall be transferred via wire to CITY within fifteen (15) days of the Effective Date of this Agreement. All funds remitted by the OWNER may, at the discretion of the CITY, be placed in a segregated project account established solely for the purpose of administering Project payments or in the CITY's general operating account. The CITY shall not be obligated to track, calculate, or pay interest on the funds.

3.07 In addition, the OWNER shall provide to the CITY a written certification from the OWNER's financial institution verifying that the amount of the OWNER's Federal Share (\$ \_\_\_\_\_) is currently on deposit and available for use toward the Project. The certification shall identify the account in which such funds are held and shall confirm that said funds are reserved for the completion of the Project. This certification shall serve as evidence that the OWNER possesses sufficient non-federal funds to complete the Project in its entirety, regardless of the timing or availability of reimbursement of the Federal Share by the State or FEMA.

3.08 The CITY shall submit reimbursement requests to FEMA on a quarterly basis for the OWNER's Federal Share to be used toward payments to CONTRACTOR for eligible costs incurred in the satisfactory performance of work required to complete the Project. If the timing or availability of reimbursement of the Federal Share from the State or FEMA is delayed or otherwise unavailable, the OWNER shall be responsible for providing such funds to the CITY within fifteen (15) days of written notice from the CITY, to ensure completion of the Project without interruption and without delay to the CONTRACTOR payment schedule.

3.09 If the actual cost of the Project exceeds the Total Project Cost, the OWNER shall promptly provide payment to the CITY for the full amount of such overage. The OWNER shall transfer said funds to the CITY within fifteen (15) days of written notice of the overage to ensure that construction activities continue without interruption and that all obligations to the CONTRACTOR are satisfied in a timely manner. The OWNER agrees that the CITY shall not be responsible for any cost overruns.

3.10 CONTRACTOR will register as a supplier through the CITY online at <https://wd5.myworkdaysite.com/supplier/charlestonsc/Supplier Registration>. The CONTRACTOR will submit invoices to the CITY through the CITY's FLOODPLAIN MANAGER for review of eligible grant activities and invoice processing. The CITY shall process and remit payment of approved invoices to the CONTRACTOR. A Phasing and Remittance Schedule outlining the timing of payments and project milestones shall be determined prior to commencement of the Project and mutually agreed upon by the CITY, OWNER, and CONTRACTOR. Eligible costs must be incurred within by the POP.

3.11 The CITY shall withhold ten percent (10%) of the Total Project Cost as retainage from reimbursement to the OWNER. The retained amount shall be released only upon final completion and acceptance of the Project, and after all required inspections, approvals, closeout documentation, and certifications have been received and approved by the CITY, the OWNER, and, where applicable, the State and FEMA. Final payment shall not be due or payable until all contractual obligations have been satisfactorily fulfilled and all necessary approvals have been obtained.

3.12 Allowable costs shall be determined in accordance with the 2 Code of Federal Regulations (CFR) 200, and 44 CFR Part 79, the latest version of the FEMA Hazard Mitigation Assistance Program and Policy Guide and other applicable FMA program guidance. Payment to the selected CONTRACTOR shall be made upon approval of inspections completed by the building inspection department and submission of required receipts.

3.13 Funds may be recaptured from the OWNER by the CITY or FEMA in the event of non-compliance with the terms and conditions of this Agreement. The OWNER consents and agrees that in the event of a final determination of non-compliance, the OWNER shall immediately remit repayment of the ineligible expenses to the CITY. In the alternative, any funds being held by the CITY for the Project may be retained for purposes of recapture. Recapture may result from any non-compliance, including, but not limited to, failure to complete the Project within the Period of Performance or failure to complete the Project in accordance with applicable provisions of this Agreement, the Grant Award documents, FEMA regulations, or other applicable law or guidance.

Should SCDNR or FEMA refuse to reimburse the CITY for items determined by either agency to be ineligible expenses or activities, the OWNER shall be in non-compliance with this Agreement and funds shall be repaid or recaptured from the OWNER.

3.14 Upon final grant closeout, any funds remaining after payment of all approved and eligible Project costs shall be refunded to the OWNER, unless otherwise required by FEMA or SCDNR.

#### ARTICLE 4. TERM OF AGREEMENT

4.01 This Agreement shall commence upon the Effective Date and shall remain in full force and effect as to its provisions, terms and conditions until final closeout of the grant by FEMA, unless terminated earlier in accordance with the provisions of this Agreement.

#### ARTICLE 5. RECORDKEEPING

5.01 All original records pertinent to this Agreement shall be retained by the OWNER for three (3) years following the date of termination of this Agreement in Section 4.01, whichever is later, with the following exception:

If any litigation, claim or audit is started before the expiration of the three-year period and extends beyond the three-year period, the records will be maintained until all litigation, claims or audit findings involving the records have been resolved, or until the expiration of any minimum record retention requirement required by law, whichever is greater.

5.02 All records, including the supporting financial documentation of all program costs, shall be sufficient to determine compliance with the requirements of the Project budget, scope of work and schedule and all other applicable laws and regulations. The OWNER agrees to implement and maintain a recordkeeping and financial management system sufficient to meet FEMA and State of South Carolina financial reporting requirements and to document that FMA funds have been used in accordance with applicable law.

5.03 The OWNER, its employees or agents, including all contractors, subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to OWNER's records at reasonable times to the CITY, its employees or agents. "Reasonable" shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the CITY. The OWNER shall also allow access by representatives of SCDNR, FEMA, the U.S. Department of Homeland Security, and the Comptroller General of the United States for audit or inspection of records related to this Project.

5.04 The OWNER shall also provide the CITY with any records, reports, or financial statements requested by the CITY as necessary to support the CITY's application for reimbursement from FEMA and for purposes of auditing and monitoring the use of grant funds. The OWNER shall respond in writing to the CITY within ten (10) business days of any written or oral request.

5.05 The obligations of the OWNER under this Article shall survive termination or expiration of this Agreement until all applicable record retention and audit requirements have been satisfied.

## ARTICLE 6. REPORTING

6.01 The OWNER shall keep in close contact with the CITY and will notify the CITY of any contact information or Project circumstance changes. The CITY will issue official letters, call official meetings and require documentation to be submitted on a periodic basis. OWNER shall respond in writing to the CITY within ten (10) business days of the date of any written or oral inquiry by the CITY to ensure Project timelines are met and compliance with the State and federal government requirements are achieved. If all required documentation and cooperation are not provided by the OWNER to the CITY, the CITY may withhold further payments until such documentation and cooperation are completed or the CITY may take such other action as set forth in this Agreement.

## ARTICLE 7. PROJECT MANAGEMENT

7.01 The CITY shall have no managerial responsibility for the Project beyond administering the grant process and ensuring compliance with applicable requirements. CITY will not manage, supervise, or direct construction activities. The OWNER shall act as sole Project Manager.

7.02 The OWNER shall constantly monitor the Project performance to ensure that time schedules are being met and the work included in Attachment B is completed within specified time periods in accordance with the Phasing and Remittance Schedule agreed to by the Parties.

7.03 Right of Entry to the property will be granted to the CITY. The CITY may perform on-site inspections or other types of Project monitoring as it deems necessary. Should the Project be found to be insufficient in meeting the stated terms of this Agreement, the CITY may request explanations, amendments or further specifications to the submitted report to which the OWNER shall respond in writing to the CITY within ten (10) business days of the date of any written or oral inquiry.

7.04 Work shall not commence until all appropriate permits have been obtained and the CITY has issued a formal notice to commence work.

7.05 If human remains or intact archaeological deposits are uncovered, work in the vicinity of the discovery will stop immediately and the appropriate authorities will be notified of the finding.

#### ARTICLE 8. CONTRACTOR AND SUBCONTRACTORS

8.01 The OWNER agrees to include in any contracts with CONTRACTOR or subcontractors that the CONTRACTOR or subcontractors are bound by the terms and conditions of this Agreement with the CITY.

8.02 The OWNER agrees to include in any contracts with CONTRACTOR or subcontractors that the CONTRACTOR or subcontractors agree and acknowledge that they are subject to all applicable requirements of the Subrecipient Agreement between the CITY and SCDNR in Attachment A.

8.03 The OWNER agrees to include in the contract with CONTRACTOR and any subcontractors that the CONTRACTOR and subcontractors shall hold the CITY and the SCDNR harmless against all claims of whatever nature arising out of the CONTRACTOR's or subcontractor's performance of work for the OWNER.

8.04 Payment and Performance bonds shall be required for the Total Project Cost. CONTRACTOR will not be given notice to proceed and the work will not begin until said Payment and Performance Bonds are provided. If CONTRACTOR is unable to meet the bond requirements, the OWNER will be instructed to choose another contractor.

8.05 OWNER's contractors and subcontractors shall meet the Insurance and Indemnity Requirements provided in Attachment D.

8.06 The Contract between OWNER and CONTRACTOR indicates OWNER is responsible for payment under this Project, however, as indicated above, payment for work completed under the terms of this Agreement will be made from the CITY directly to the CONTRACTOR, on the OWNER's behalf. Therefore, in the Contract the OWNER and CONTRACTOR, the OWNER has assigned its right for all monies the OWNER is entitled to be paid by the CITY for the work performed by CONTRACTOR.

8.07 Nothing in this Agreement shall be construed to create any contractual relationship or privity of contract between the CITY and any contractor, subcontractor, or supplier of the OWNER, nor to render the CITY liable for any claims or damages arising from the acts, omissions, or obligations of the OWNER, its contractors, subcontractors, or suppliers. The CITY shall not be joined as a party to any dispute between the OWNER and its contractors or subcontractors, and the OWNER shall cause all contracts entered into for the Project to include a similar provision prohibiting such joinder.

8.08 In the event the CONTRACTOR fails to perform or defaults on its obligations, the OWNER shall promptly notify the CITY and obtain an alternate contractor meeting all insurance, bonding, and licensing requirements. Any resulting additional costs shall be the sole responsibility of the OWNER.

#### ARTICLE 9. LIABILITY

9.01 The OWNER agrees to be fully responsible for their own negligent acts or omissions or tortious acts. Nothing herein shall be construed as consent by the CITY, State or FEMA to be sued by third parties in any matter arising out of this Agreement.

9.02 The OWNER represents and warrants that hazardous and toxic materials, if present at any locations where the Project will be performed, are at levels within regulatory limits and do not trigger action by the Federal, State or local laws or regulations. The OWNER further represents and warrants that the presence of any condition(s) or material(s) on site, which are subject to Federal, State or local laws or regulations (including, but not limited to: above ground or underground storage tanks or vessels, or asbestos, pollutants, irritants, pesticides, contaminants, petroleum products, waste, chemicals and septic tanks) shall be handled and disposed of in accordance with federal, State or local laws or regulations.

#### ARTICLE 10. INDEMNIFICATION

10.01 The OWNER agrees to and will at all times indemnify, save and hold harmless the CITY, SCDNR and FEMA from all liability and claims, demands, damages and costs of every kind and nature, including attorney's fees at trial or appellate levels, and all court costs arising out of injury to or death of persons and damages to any and all property including loss of use thereof resulting from or in any manner arising out of the OWNER's relationship with its employees, agents, contractors, and/or subcontractors, or those under their control's performance under this Agreement.

10.02 The OWNER shall, upon request from the CITY, defend and satisfy any and all suits arising from its use of the premises.

10.03 The OWNER agrees to and will at all times indemnify, defend and hold harmless the CITY, including, without limitation, from any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or in connection with (a) the actions or activities of the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control that result in a violation of any environmental law, ordinance, rule or regulation or that leads to an environmental claim or citation or to damages due to such actions or activities, (b) any environmental, health and safety liabilities arising out of or relating to the operation or other activities performed in connection with this Agreement by the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control at any time or on prior to the day and year first above written or (c) any bodily injury, (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction, and deprivation of the use of real property) or other damage of or to any person in any way arising from any hazardous activity conducted by the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control. The CITY will be entitled, but not required, to control any remedial action or any proceeding related to an environmental claim.

10.04 The OWNER agrees to and will at all times indemnify, defend and hold harmless the CITY, including without limitation, from any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or based upon the violation of any federal, state or local laws, statutes, ordinances, resolutions, rules or regulations, by the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control.

10.05 The OWNER agrees to, and will at all, times indemnify, defend and hold harmless the CITY, including, without limitation, from any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) which may be incurred by, charged to or recovered from any of the foregoing, arising directly or indirectly out of (a) any breach of any representation or warranty made by the OWNER, its employees, agents, contractors, and/ or subcontractors, or those under their control pursuant to this Agreement or (b) any breach of any covenant or obligation of the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control set forth in this Agreement or any other certificate, document, writing or other instrument delivered by the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control pursuant to this Agreement.

10.06 The CITY shall have no responsibility or liability whatsoever for any claims, disputes, or causes of action arising out of or relating to any contract or agreement between the OWNER and any contractor, subcontractor, consultant, or supplier engaged in connection with the Project. In

the event the CITY is named as a party in any such claim or dispute, the OWNER shall immediately defend, indemnify, and hold harmless the CITY, its officers, employees, and agents from and against any and all losses, costs, damages, expenses, or liabilities (including reasonable attorney's fees and court costs) arising therefrom, regardless of whether such claims arise in tort, contract, or otherwise.

10.07 The OWNER's obligations to defend, indemnify, and hold harmless the CITY, SCDNR, and FEMA as set forth in this Article shall survive termination or expiration of this Agreement, regardless of the cause or timing of any claim.

#### ARTICLE 11. DEFAULT, REMEDIES, TERMINATION

11.01 If any of the following events occur (the "Events of Default"), all obligations on the part of the CITY to make any further payment of funds hereunder shall, if the CITY so elects, terminate and the CITY may at its option exercise any of the remedies set forth herein:

11.01.01 If any warranty or representation made by OWNER in this Agreement or any previous Agreement with the CITY shall at any time be false or misleading in any respect;

11.01.02 If the OWNER shall fail to keep, observe or perform any of the terms or covenants contained in this Agreement or any previous agreement with the CITY, and the OWNER has not cured such Event of Default within thirty (30) days of the date of written notice to the OWNER from the CITY;

11.01.03 If Project funds are not received from the OWNER when due and the OWNER has not cured such Event of Default within thirty (30) days of the date of written notice to the OWNER from the CITY;

11.01.04 If any reports required by this Agreement have not been submitted to the CITY or have been submitted with incorrect, incomplete or insufficient information and the OWNER has not cured such Event of Default within thirty (30) days of the date of written notice to the OWNER from the CITY;

11.01.05 If the OWNER failed to perform and complete in a timely fashion any of the Project work required under this Agreement and the OWNER has not cured such Event of Default within thirty (30) days of the date of written notice to the OWNER from the CITY;

11.01.06 If the funds required to carry out this Agreement are not appropriated, allocated, or otherwise made available due to any action or inaction by FEMA or the State of South Carolina.

11.02 Upon the happening of an Event of Default, and upon the OWNER's failure to timely cure, where applicable, the CITY may exercise any one or more of the following remedies, either concurrently or consecutively, and the pursuit of any one of the following remedies shall not preclude the CITY from pursuing any other remedies contained herein or otherwise provided at law or in equity:

11.02.01 Terminate this Agreement;

11.02.02 Commence an appropriate legal or equitable action to enforce performance of this Agreement;

11.02.03 Withhold or suspend payment of all or any part of a request for payment;

11.02.04 Exercise any corrective or remedial actions, to include but not be limited to, requesting additional information from the OWNER to determine the reasons for or the extent of noncompliance or lack of performance, issuing a written warning to advise that more serious measures may be taken if the situation is not corrected, advising the OWNER to reimburse the CITY for the amount of costs incurred for any items determined to be ineligible; and,

11.02.05 Exercise any other action or remedies which may be otherwise available under law.

11.03 The OWNER shall return funds to the CITY if found in non-compliance with laws, rules, and regulations governing the use of the funds made available pursuant to this Agreement. Funds shall be delivered by certified check or money order made payable to the CITY within thirty (30) days from the date of the written demand from the CITY. The OWNER's obligation to return funds or reimburse the CITY for ineligible or disallowed costs shall survive termination or expiration of this Agreement.

11.04 This Agreement may be terminated by the written mutual consent of both parties.

11.05 Notwithstanding the above, the OWNER shall not be relieved of liability to the CITY by virtue of any breach of Agreement by the OWNER. The CITY may withhold any payments under this Agreement for purpose of set-off until such time as the exact amount of damages due the CITY from the OWNER is determined.

11.06 Neither Party shall be liable for any delay or failure in performance caused by circumstances beyond its reasonable control, including but not limited to acts of God, war, terrorism, natural disasters, pandemic, governmental actions, or labor disputes, provided that the affected Party provides prompt written notice to the other Party and resumes performance as soon as practicable.

## ARTICLE 12. ATTACHMENTS

12.01 All attachments to this Agreement are incorporated as if set out fully herein.

12.02 In the event of any inconsistencies or conflict between the language of this Agreement and the attachments hereto, the language of such attachments shall be controlling but only to the extent of such conflict or inconsistency.

12.03 This Agreement includes the following attachments:

- Attachment A: Subrecipient Agreement between CITY and SCDNR
- Attachment B: Contract between OWNER and CONTRACTOR

- Attachment C: FEMA Model Deed Restriction
- Attachment D: Contractor Insurance and Indemnity Requirements

## ARTICLE 13. LEGAL AUTHORIZATION

13.01 The OWNER certifies with respect to this Agreement that the OWNER possesses the authority to legally execute and bind the OWNER to the terms of this Agreement, and that the OWNER is the only person having legal or equitable title to the property on which the Project is being accomplished.

## ARTICLE 14. MISCELLANEOUS

14.01 Section headings appearing herein are inserted for convenience of reference only and shall in no way be construed to be interpretations of text.

14.02 Both the OWNER and the CITY shall be governed by applicable federal, State of South Carolina and City of Charleston laws, rules, regulations and ordinances.

14.03 This Agreement constitutes the entire agreement between the Parties hereto for the services to be performed and furnished by either party hereunder. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party, or any representative of either party, which is not expressed herein shall be binding.

14.04 This Agreement may be amended, changed, modified, or altered, only by an instrument in writing executed by both Parties.

14.05 Neither Party shall assign nor transfer its interest in this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, and any such attempted assignment or transfer shall be void and of no force or effect.

14.06 Nothing contained in this Agreement shall be deemed to create a partnership or joint venture between the Parties.

14.07 Nothing contained in this Agreement entitles any person other than the Parties or their permitted successors and assigns to any Claim, remedy or right of any kind whatsoever.

14.08 This Agreement shall be construed under the laws of the State of South Carolina and venue for any actions arising out of this Agreement shall lie exclusively in the courts of Charleston County. If any provision hereof is in conflict with any applicable law or is otherwise unenforceable, then such provision shall be deemed severable but shall not invalidate any other provision of this Agreement.

14.09 No waiver by the CITY of any right or remedy granted hereunder or failure to insist on strict performance by the OWNER shall affect or extend or act as a waiver of any other right or remedy of the CITY hereunder, or affect the subsequent exercise of the same right or remedy by the CITY for any further or subsequent default by the OWNER. Any power of approval or

disapproval granted to the CITY under the terms of this Agreement shall survive the terms and life of this Agreement as a whole.

14.10 All notices or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified mail postage prepaid, return receipt requested, or given when dispatched by electronic mail (with return receipt requested and received) or by personal delivery addressed as follows:

If to the CITY:                   Caroline Schnell, Floodplain Manager  
  City of Charleston  
  2 George Street, Suite 2100  
  Charleston, SC 29401

If to the OWNER: \_\_\_\_\_  
  Charleston, SC 29401

14.11 This Agreement may be executed in any number of counterparts any one of which may be taken as an original.

14.12 All obligations of the OWNER and CITY that by their nature are intended to survive termination or expiration of this Agreement, including without limitation those relating to indemnification, insurance, recordkeeping, audit, reporting, liability, and reimbursement of funds, shall survive such termination or expiration and remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their undersigned officials as duly authorized.

\_\_\_\_\_, OWNER

By: \_\_\_\_\_

Print: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

By: \_\_\_\_\_

Print: \_\_\_\_\_

STATE OF SOUTH CAROLINA     )  
  )  
  )     ACKNOWLEDGMENT  
COUNTY OF CHARLESTON         )  
  )

I, \_\_\_\_\_, a Notary Public for the State of South Carolina, do hereby certify that \_\_\_\_\_, personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, and acknowledged the execution of the foregoing instrument as his/her act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

\_\_\_\_\_  
(Signature of Notary Public)  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_  
(Seal)

CITY OF CHARLESTON

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

By: \_\_\_\_\_

Print: \_\_\_\_\_

Attachment A  
Subrecipient Agreement between CITY and SCDNR

**Attachment B**  
**Contract between OWNER and CONTRACTOR**

Attachment C  
FEMA Model Deed Restriction

**Attachment D**  
**Contractor and Subcontractor Insurance and Indemnity Requirements**

A. During the Term of this Agreement, OWNER's Contractors and Subcontractors shall, at their own expense, carry adequate liability and property damage insurance for the benefit of the City and its directors, officers, employees, and agents.

B. All Contractors and Subcontractors employed by OWNER and any subcontractors employed by the Contractor shall purchase and maintain insurance to protect against claims that may arise out of the Contractor's or Subcontractor's operations under this Agreement. The limits shall be for not less than the limits set forth below, shall be written on an occurrence basis, and shall be in force for the duration of this Agreement.

C. All liability insurance required herein shall include all major divisions of coverage and is to be based on a Commercial basis including the following:

1. Premises – Operations.
2. Independent Contractor's Protective.
3. Products and Completed Operations.
4. Personal and Advertising Injury.
5. Contractual, including specified provisions for Contractor's obligations.
6. Broad Form Property Damage, including Completed Operations.
7. Owned, Non-Owned and Hired Vehicles.
8. Errors and Omissions.

D. The Insurance required by this Exhibit shall be written for not less than the following limits or greater if required by law or other provisions in this Agreement:

1. Commercial General Liability:

a. General Aggregate (per project)	\$ 2,000,000
b. Products/Completed Operations	\$ 2,000,000
c. Personal and Advertising Injury	\$ 1,000,000
d. Each Occurrence	\$ 1,000,000
e. Fire Damage	\$ 50,000
f. Medical Expense (any one person)	\$ 5,000
2. Business Auto Liability (including all owned, non-owned, and hired vehicles):

a. Combined Single Limit	\$ 1,000,000
-OR-	
b. Bodily Injury & Property Damage (each)	\$ 1,000,000
3. Workers Compensation

a. State	Statutory
b. Employer's Liability	\$100,000 Per Accident; \$500,000 Disease, Policy
Limit \$100,000 Disease, Each Employee	

E. The aggregate limits of the insurance shall apply, in total for this Agreement. This shall be indicated on the Certificate of Insurance as "Per Project", or in an attached policy amendment.

F. The City shall be listed as the certificate holder on all Liability Insurance required herein.

G. Certificates of Insurance shall be in the form of the latest edition of the ACORD 25 and shall be filed with the City prior to commencement of any Work. In addition to Certificates of Insurance, the Contractor and any subcontractors shall supply a written endorsement to the Contractor's and any subcontractor's general liability insurance policy that names the City as an additional insured. The endorsement shall provide that the Contractor's and any subcontractor's liability insurance policy shall be primary, and that any liability insurance of the City shall be secondary and noncontributory. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City.

H. In no event shall any failure of the City to receive certified copies or certificates of policies required under this Exhibit or to demand receipt of such certified copies or certificates prior to the commencement of any Work be construed as a waiver by the City of the Contractor's or Subcontractor's obligations to obtain insurance pursuant to this Exhibit. The obligation to procure and maintain any insurance required by this Agreement is a separate responsibility of the Contractor and any sub-contractors and shall be independent of the duty to furnish a certified copy or certificate of such insurance policies. Cancellation of insurance shall be grounds for the immediate termination of this Agreement.

I. All Contractors and Subcontractors employed by OWNER and any subcontractors employed by the Contractor shall indemnify and save harmless the City and the City's officers, agents, and employees, from and against all losses and claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought or recovered against them by reason of any act, omission, or default of the Contractors or Subcontractors, their agents, subcontractors, or employees in the execution of the Services under this Agreement. When the City submits notice, the Contractors and/or Subcontractors shall promptly defend any aforementioned action at no cost to the City. This obligation shall survive the suspension or termination of this Agreement. The limits of insurance coverage required herein shall not serve to limit this indemnity obligation. The recovery of costs and fees shall extend to those incurred in the enforcement of this indemnity.

**COMMITTEE / COUNCIL AGENDA**

TO: William S. Cogswell Jr., Mayor

FROM: RON BUCCI DEPT. DEVELOPMENT SERVICES

SUBJECT: **FEMA HMGP ELEVATION GRANT CITY – OWNER AGREEMENTS**

REQUEST: The grant award has already been accepted by Council; however, the City-Owner Agreement was not included in the previous council agenda item.

To enter into a City-Owner agreement for the FEMA HMGP (2016) elevation grant.

COMMITTEE OF COUNCIL: PW&U/W&M DATE: November 18, 2025

**COORDINATION:** This request has been coordinated with: (attach all recommendations/reviews)

	Yes	N/A	Signature of Individual Contacted	Attachment
Corporate Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	J. Copeland and S. Halversen	<input type="checkbox"/>
Floodplain Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Caroline Schnell <i>Caroline Schnell</i>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

**FUNDING:** Was funding previously approved? Yes  No  N/A

If yes, provide the following: Dept./Div.: \_\_\_\_\_ Account #: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**Does this document need to be recorded at the RMC's Office?** Yes  No

**NEED:** Identify any critical time constraint(s).

**Expedite to November 18<sup>th</sup> W&M due to Period of Performance Timeline Constraints.**

CFO's Signature: Jamy Whartm

**FISCAL IMPACT:**

There is no fiscal impact to the City; all costs are the responsibility of the property owners. This reimbursable grant requires homeowners to cover the entire project cost, to be reimbursed based on FEMA cost-shares.

Mayor's Signature: \_\_\_\_\_

William S. Cogswell, Jr., Mayor

**ORIGINATING OFFICE PLEASE NOTE:** A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

MEMORANDUM OF AGREEMENT

THIS Memorandum of Agreement (MOA) is entered into this 12 day of October, 2025, by and between the City of Charleston (the "City") and The Grey Living Trust dated October 30, 2007, the Owner of the property located at 4 Michel Place, Charleston, SC 29401 (the "Owner"), (collectively, the "Parties").

WHEREAS, on October 11, 2016, U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA), issued a federal disaster declaration designated as FEMA04286-DR-SC for the State of South Carolina as a result of Hurricane Matthew; and

WHEREAS, FEMA, as a result of the disaster declaration, made funding available under the Hazard Mitigation Grant Program (HMGP); and

WHEREAS, on August 1, 2017, the City submitted an application on behalf of Owner for an HMGP grant to elevate the Owner's primary structure; and

WHEREAS, on September 7, 2022, FEMA awarded a grant for the elevation of 2 properties in the City of Charleston (FEMA-4286-DR-SC-0054) under the HMGP, including Owner's property (the "Grant Award"); and

WHEREAS, the Grant Award is administered through the South Carolina Emergency Management Division (SCEMD), and the City and SCEMD have entered into a Subrecipient Agreement dated May 11, 2023, incorporated herein as Attachment A, which was approved by City Council on May 9, 2023; and

WHEREAS, the City was notified by SCEMD on July 1, 2025, that the City's June 2023 request for a budget modification for the Grant Award was approved by FEMA and the City and Owner are now ready to move forward with the elevation project (the "Project"); and

WHEREAS, the Parties desire to enter into this MOA to set forth their respective duties, obligations, and liabilities with regard to the Grant Award and Project.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions as are hereinafter set forth, it is agreed, by and between the Parties, as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth herein and made a part hereof.

2. Grant Award:

- a. The total amount of the federal Grant Award for the 2 participating properties is \$883,634.90, with a Federal Share of \$662,726.18 (75% of eligible expenditures) and a Non-Federal Share of \$220,908.72 (25% of eligible expenditures). For the property at 4 Michel Place, the federal cost share is \$342,101.73 and the owner cost share is \$114,033.91. The Grant Award is a reimbursement-based process, where the actual release of funds occurs after the work has been completed and properly documented in accordance with FEMA requirements. Refer to Attachment B for the approved budget line items.
- b. Each participating Owner will be eligible for reimbursement of their pro rata share of the Federal Share based on the estimated project budget approved by FEMA for their property.
- c. Each participating Owner shall be solely responsible for paying their pro rata share of the Non-Federal Share based on the estimated project budget approved by FEMA for their property.
- d. Costs of work not performed within the approved scope of work shall not be eligible for funding. Eligible costs are determined by FEMA and the approved budget, see Attachment C.
- e. The Owner may not receive funding under this grant to pay for damage covered by insurance, nor may the Owner receive any other duplicate benefits under this Agreement.
- f. No additional grant funds will be awarded by the City for any costs in excess of the total estimated project budget approved by FEMA. All cost overages for the Project shall be the sole responsibility of the Owner.
- g. The City will not contribute any funds to the Project. The City's role is limited to administrative functions and serving as a pass-through entity for the grant funds.

3. Project Funding by Owner:

- a. Owner shall provide 100% of the total estimated project budget for their property to the City in advance, to be held in a separate account for the sole purpose of Project payments.
- b. Funds shall be transferred via wire to the City no later than **January 10, 2026**. In the event that FEMA has not approved the City's request for a one-year Period of Performance extension by that date, the Owner shall

transfer the funds within thirty (30) days of receiving notification from FEMA that the extension has been approved.

- c. Owner affirms that they have or will have the funds available to transfer by the date specified in subparagraph b.

4. Project Management:

- a. Owner shall act as sole Project Manager.
- b. The City will not manage, supervise, or direct construction activities.
- c. Owner shall contract directly with the contractor for the Project. The selection of the contractor and the contract terms are subject to approval by the City to ensure compliance with the Grant Award requirements. Owner shall incorporate into its contract with such contractor an indemnification clause holding Grant Award Recipient, SCEMD, and Grant Award Subrecipient, City of Charleston, harmless from liability to third parties for claims asserted under such contract.
- d. Owner shall obtain and submit a letter from a SC Licensed Structural Engineer or qualified professional that the building is structurally sound and feasible to be elevated by **October 24, 2025**. If the building is not sound to be elevated, then grant progress and costs will cease for the property, and the owner shall complete the Notice of Withdrawal.
- e. Owner shall obtain all necessary engineering drawings and permits no later than **January 10, 2026**.
- f. The City's Permitting, Floodplain Management and Building Inspections Division will conduct inspections throughout the construction period of the Project in accordance with applicable laws, building codes and local ordinances.
- g. Right of Entry of the property will be granted to the City of Charleston.

5. Project Timeline:

- a. The Period of Performance (POP) established under the Grant Award is currently set to expire on **November 9, 2025**. The City has requested an extension from FEMA; however, such extension is not guaranteed. This MOA shall be null and void if the POP is not extended at least one year to November 9, 2026. Owner assumes all risk associated with Project completion deadlines.
- b. Work shall not commence until all appropriate permits have been obtained and the City has issued a notice to commence work.

- c. If human remains or intact archaeological deposits are uncovered, work in the vicinity of the discovery will stop immediately and the appropriate entities will be notified of the finding.

6. Flood Insurance and Deed Restriction:

- a. The Owner shall complete, sign, and notarize the *FEMA Acknowledgement of Conditions for Properties Using FEMA Hazard Mitigation Assistance* form (Attachment D to this MOA) and return it to the City with this MOA. This FEMA form includes the Owner's agreement to maintain flood insurance through the National Flood Insurance Program (NFIP) for the duration of the Project and for as long as the Owner holds title to the property, as well as to accept a deed restriction requiring continued NFIP flood insurance for the life of the property, regardless of transfer of ownership. The deed restriction will be recorded at the Register of Deeds Office.

7. Indemnification:

- a. Owner assumes all risk associated with the administration of the FEMA Grant Award, including, but not limited to:
  - i. The failure of the State of South Carolina and/or FEMA to reimburse any portion of the Project costs;
  - ii. The denial, revocation, or limitation of any FEMA or State extension to the Period of Performance;
  - iii. Any reduction or cancellation of the Owner's pro rata share of the Grant Award;
  - iv. Any cost overruns, delays, scope changes, or disallowed expenses under the Grant Award; and
  - v. Any administrative or compliance actions taken by FEMA, the State, or other agencies.
- b. Owner, on behalf of itself, and its successors and assigns, shall indemnify, defend, and hold harmless the Grant Award Recipient, SCEMD, and Grant Award Subrecipient, City of Charleston, their officers, employees, representatives, and agents from and against any and all claims, demands, liabilities, damages, losses, costs, expenses, and causes of action of any kind (including reasonable attorneys' fees) arising from or related to:
  - i. The Project, including, but not limited to, construction activities, contractor actions, or site conditions;
  - ii. Any failure by the State of South Carolina and/or FEMA to reimburse the Project in whole or in part;

- iii. Any denial of and/or failure to secure extensions of the Period of Performance;
- iv. Any cost overruns, delays, or noncompliance with grant requirements;
- v. Any failure to meet deadlines, requirements, or conditions of the Grant Award;
- vi. The use or handling of grant funds;
- vii. Any actions or inactions by the State and/or FEMA; and
- viii. Any disputes with contractors, subcontractors, or third parties engaged by the Owner.

- c. This indemnification obligation shall survive completion of the Project, termination of this MOA, and the closeout of the Grant Award.

8. City-Owner Agreement:

- a. Owner shall enter into a formal contract with the City covering additional project details, compliance requirements, and disbursement procedures.
- b. This MOA serves as a preliminary understanding of the Parties' responsibilities and will be superseded by the formal contract.

9. City's Role:

- a. Other than administrative tasks required under the Grant Award, the City's sole role is to act as a pass-through entity for the grant funds.
- b. The City shall have no financial or managerial responsibility for the Project beyond administering the grant process and ensuring compliance with applicable requirements.

10. Acknowledgment of Risk:

- a. Owner acknowledges and understands that:
  - i. FEMA deadlines for the Project may not be extended;
  - ii. FEMA and/or the State may reduce, delay, or deny reimbursement of Project costs;
  - iii. The Owner's pro rata share of the Grant Award is not guaranteed and may be adjusted; and
  - iv. The City has no obligation to fund any portion of the Project.
- b. Owner expressly assumes all financial risk associated with any reduction, denial, delay, or loss of FEMA and/or State funding.

- c. Owner acknowledges that all obligations under this section are in addition to, and not in limitation of, the Indemnification obligations set forth in Section 7.

11. Project Closeout:

- a. Owner and contractors shall grant the City access to documents, papers, letters or other materials in connection with this grant including invoices, canceled checks, daily activity reports, payroll records, time sheets, executed contracts, receipts, purchase orders, billing statements, etc.

12. Owner agrees that the City's ability to administer the grant funding is dependent on Owner's full and prompt submission of all information required of the Owner.

13. This MOA shall be governed by the laws of the State of South Carolina.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of the date set forth above.

WITNESS:

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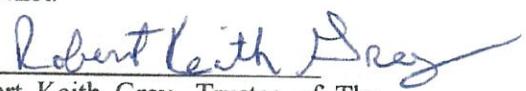
CITY OF CHARLESTON

By: \_\_\_\_\_  
Mayor William S. Cogswell, Jr.

WITNESS:



OWNER:

By:   
Robert Keith Grey, Trustee of The  
Grey Living Trust dated October 30,  
2007

**ELEVATION PROJECT AGREEMENT DRAFT**  
**Approve as to form subject to Legal Department review and approval**

THIS ELEVATION PROJECT AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date") by and between THE CITY OF CHARLESTON, SC (the "CITY") and \_\_\_\_\_, the Owner of the property located at \_\_\_\_\_, Charleston, SC 29401 (the "OWNER").

WHEREAS, on October 11, 2016, U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA), issued a federal disaster declaration designated as FEMA04286-DR-SC for the State of South Carolina as a result of Hurricane Matthew; and

WHEREAS, FEMA, as a result of the disaster declaration, made funding available under the Hazard Mitigation Grant Program (HMGP); and

WHEREAS, on August 1, 2017, the City submitted an application on behalf of Owner for an HMGP grant to elevate the Owner's primary structure; and

WHEREAS, on September 7, 2022, FEMA awarded a grant for the elevation of 2 properties in the City of Charleston (FEMA-4286-DR-SC-0054) under the HMGP, including Owner's property (the "Grant Award"); and

WHEREAS, the Grant Award is administered through the South Carolina Emergency Management Division (SCEMD), and the City and SCEMD have entered into a Subrecipient Agreement dated May 11, 2023, incorporated herein as Attachment A, which was approved by City Council on May 9, 2023; and

WHEREAS, the City was notified by SCEMD on July 1, 2025, that the City's June 2023 request for a budget modification for the Grant Award was approved by FEMA and the City and Owner are now ready to move forward with the elevation project (the "Project"); and

WHEREAS, OWNER and CITY have entered into a Memorandum of Agreement dated \_\_\_\_\_, and now desire to enter into this Elevation Project Agreement to formalize their respective duties, obligations, and liabilities with regard to the Grant Award and elevation project.

WHEREAS, the OWNER has submitted a letter, documenting the building is feasible to be raised.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions as are hereinafter set forth, it is agreed, by and between the Parties, as follows:

**ARTICLE 1. SCOPE OF WORK**

1.01 The OWNER shall fully perform the elevation project in accordance with the Subrecipient Agreement in Attachment A and the terms and conditions of this Agreement (the "Elevation

Project" or "Project"). OWNER shall comply with all applicable federal, State and CITY codes and standards in performing the work under this Agreement.

1.02 OWNER represents and warrants that the structure proposed for the Elevation Project under this Agreement (\_\_\_\_\_, Charleston, SC 29401) is currently covered by a National Flood Insurance Program (NFIP) flood insurance policy and shall remain so insured for the life of the property. The OWNER shall also maintain general liability and property coverage during construction sufficient to protect against claims arising from the Project.

1.03 OWNER acknowledges and warrants that the Project must follow all applicable federal, State, and CITY laws, regulations, and requirements including but not limited to ASCE 24; IBC: 801, 1107, 1203, 1403, 1603, G103, G105; IRC: IFGC301, R105, R309, R322, R408, RG2404, RM1301, RM1401, RM1601, RM1701, RM2001, RM2201, RP2601, RP2602; NFIP: 60.3; City Code of Ordinances: Chapter 27, Article 2, Division 3., and that the OWNER will obtain, prior to commencement of Project work, and comply with all required permits and approvals.

1.04 OWNER shall submit to the CITY a Certificate of Occupancy and Final Elevation Certificate to certify that the structure is elevated to meet the requirements set forth in the CITY's Floodplain Management Ordinance. These documents shall be submitted before grant closeout can be completed. Final reimbursement to the OWNER will not be made until all grant closeout documents have been finalized.

1.05 OWNER agrees to have a deed restriction, in the format provided in Attachment C, recorded at the Charleston County Register of Deeds Office. Deed recordation shall be completed prior to the Period of Performance expiration. Proof of recordation of the deed restriction and a copy of the active NFIP policy shall be submitted with grant closeout documents. Final reimbursement to the OWNER will not be made until all grant closeout documents have been finalized.

## ARTICLE 2. TIME OF PERFORMANCE

2.01 OWNER agrees to complete the Project within the Period of Performance (POP) established under the Grant Award, which is currently set to expire on \_\_\_\_\_. All closeout documentation must be submitted by the CITY to SCDNR within 90 days of the POP expiration, which is \_\_\_\_\_ based on the POP expiration date.

## ARTICLE 3. FUNDING

3.01 The CITY shall serve as a pass-through entity for the funds identified in the Grant Award, which is administered by SCDNR. The CITY will not contribute any funds to the Project.

3.02 The OWNER's property located at \_\_\_\_\_ Street, designated by FEMA as a \_\_\_\_\_, has been allocated a federal grant share of \$ \_\_\_\_\_ ("OWNER's Federal Share") as part of the total approved Grant Award, with no non-federal match requirement.

3.03 OWNER used a competitive method to select an elevation contractor by obtaining three (3) quotes from contractors who have relevant experience and the necessary skills and knowledge for the project, who are licensed and bonded, and who have liability insurance. After carefully reviewing the quotes received from the contractors, OWNER has selected W. H. Howerton, LLC (the "CONTRACTOR") to elevate OWNER's property. OWNER has entered into a written agreement with the CONTRACTOR, which is attached hereto and incorporated herein as Attachment B ("Contract between OWNER and CONTRACTOR").

3.04 The total estimated Project costs associated with the OWNER's chosen CONTRACTOR, as detailed in Attachment B, are \$ \_\_\_\_\_ (the "Total Project Cost").

3.05 No additional grant funds will be awarded to OWNER for any costs in excess of the OWNER's Federal Share. All Project costs more than the OWNER's Federal Share and all cost overages for the Project in excess of the Total Project Cost shall be the sole responsibility of the OWNER.

3.06 The OWNER shall, prior to commencement of the Project, remit to the CITY the sum of \$ \_\_\_\_\_, representing the Total Project Cost less the Owner's Federal Share, to ensure that sufficient funds are available to complete the Project. The funds shall be transferred via wire to CITY within fifteen (15) days of the Effective Date of this Agreement. All funds remitted by the OWNER may, at the discretion of the CITY, be placed in a segregated project account established solely for the purpose of administering Project payments or in the CITY's general operating account. The CITY shall not be obligated to track, calculate, or pay interest on the funds.

3.07 In addition, the OWNER shall provide to the CITY a written certification from the OWNER's financial institution verifying that the amount of the OWNER's Federal Share (\$ \_\_\_\_\_) is currently on deposit and available for use toward the Project. The certification shall identify the account in which such funds are held and shall confirm that said funds are reserved for the completion of the Project. This certification shall serve as evidence that the OWNER possesses sufficient non-federal funds to complete the Project in its entirety, regardless of the timing or availability of reimbursement of the Federal Share by the State or FEMA.

3.08 The CITY shall submit reimbursement requests to FEMA on a quarterly basis for the OWNER's Federal Share to be used toward payments to CONTRACTOR for eligible costs incurred in the satisfactory performance of work required to complete the Project. If the timing or availability of reimbursement of the Federal Share from the State or FEMA is delayed or otherwise unavailable, the OWNER shall be responsible for providing such funds to the CITY within fifteen (15) days of written notice from the CITY, to ensure completion of the Project without interruption and without delay to the CONTRACTOR payment schedule.

3.09 If the actual cost of the Project exceeds the Total Project Cost, the OWNER shall promptly provide payment to the CITY for the full amount of such overage. The OWNER shall transfer said funds to the CITY within fifteen (15) days of written notice of the overage to ensure that construction activities continue without interruption and that all obligations to the CONTRACTOR

are satisfied in a timely manner. The OWNER agrees that the CITY shall not be responsible for any cost overruns.

3.10 CONTRACTOR will register as a supplier through the CITY online at [https://wd5.myworkdaysite.com/supplier/charlestonsc/Supplier Registration](https://wd5.myworkdaysite.com/supplier/charlestonsc/Supplier%20Registration). The CONTRACTOR will submit invoices to the CITY through the CITY's FLOODPLAIN MANAGER for review of eligible grant activities and invoice processing. The CITY shall process and remit payment of approved invoices to the CONTRACTOR. A Phasing and Remittance Schedule outlining the timing of payments and project milestones shall be determined prior to commencement of the Project and mutually agreed upon by the CITY, OWNER, and CONTRACTOR. Eligible costs must be incurred within by the POP.

3.11 The CITY shall withhold ten percent (10%) of the Total Project Cost as retainage from reimbursement to the OWNER. The retained amount shall be released only upon final completion and acceptance of the Project, and after all required inspections, approvals, closeout documentation, and certifications have been received and approved by the CITY, the OWNER, and, where applicable, the State and FEMA. Final payment shall not be due or payable until all contractual obligations have been satisfactorily fulfilled and all necessary approvals have been obtained.

3.12 Allowable costs shall be determined in accordance with the 2 Code of Federal Regulations (CFR) 200, and 44 CFR Part 79, the latest version of the FEMA Hazard Mitigation Assistance Program and Policy Guide and other applicable FEMA program guidance. Payment to the selected CONTRACTOR shall be made upon approval of inspections completed by the building inspection department and submission of required receipts.

3.13 Funds may be recaptured from the OWNER by the CITY or FEMA in the event of non-compliance with the terms and conditions of this Agreement. The OWNER consents and agrees that in the event of a final determination of non-compliance, the OWNER shall immediately remit repayment of the ineligible expenses to the CITY. In the alternative, any funds being held by the CITY for the Project may be retained for purposes of recapture. Recapture may result from any non-compliance, including, but not limited to, failure to complete the Project within the Period of Performance or failure to complete the Project in accordance with applicable provisions of this Agreement, the Grant Award documents, FEMA regulations, or other applicable law or guidance.

Should SCDNR or FEMA refuse to reimburse the CITY for items determined by either agency to be ineligible expenses or activities, the OWNER shall be in non-compliance with this Agreement and funds shall be repaid or recaptured from the OWNER.

3.14 Upon final grant closeout, any funds remaining after payment of all approved and eligible Project costs shall be refunded to the OWNER, unless otherwise required by FEMA or SCDNR.

#### ARTICLE 4. TERM OF AGREEMENT

4.01 This Agreement shall commence upon the Effective Date and shall remain in full force and

effect as to its provisions, terms and conditions until final closeout of the grant by FEMA, unless terminated earlier in accordance with the provisions of this Agreement.

#### ARTICLE 5. RECORDKEEPING

5.01 All original records pertinent to this Agreement shall be retained by the OWNER for three (3) years following the date of termination of this Agreement in Section 4.01, whichever is later, with the following exception:

If any litigation, claim or audit is started before the expiration of the three-year period and extends beyond the three-year period, the records will be maintained until all litigation, claims or audit findings involving the records have been resolved, or until the expiration of any minimum record retention requirement required by law, whichever is greater.

5.02 All records, including the supporting financial documentation of all program costs, shall be sufficient to determine compliance with the requirements of the Project budget, scope of work and schedule and all other applicable laws and regulations. The OWNER agrees to implement and maintain a recordkeeping and financial management system sufficient to meet FEMA and State of South Carolina financial reporting requirements and to document that FEMA funds have been used in accordance with applicable law.

5.03 The OWNER, its employees or agents, including all contractors, subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to OWNER's records at reasonable times to the CITY, its employees or agents. "Reasonable" shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the CITY. The OWNER shall also allow access by representatives of SCDNR, FEMA, the U.S. Department of Homeland Security, and the Comptroller General of the United States for audit or inspection of records related to this Project.

5.04 The OWNER shall also provide the CITY with any records, reports, or financial statements requested by the CITY as necessary to support the CITY's application for reimbursement from FEMA and for purposes of auditing and monitoring the use of grant funds. The OWNER shall respond in writing to the CITY within ten (10) business days of any written or oral request.

5.05 The obligations of the OWNER under this Article shall survive termination or expiration of this Agreement until all applicable record retention and audit requirements have been satisfied.

#### ARTICLE 6. REPORTING

6.01 The OWNER shall keep in close contact with the CITY and will notify the CITY of any contact information or Project circumstance changes. The CITY will issue official letters, call official meetings and require documentation to be submitted on a periodic basis. OWNER shall respond in writing to the CITY within ten (10) business days of the date of any written or oral inquiry by the CITY to ensure Project timelines are met and compliance with the State and federal government requirements are achieved. If all required documentation and cooperation are not provided by the OWNER to the CITY, the CITY may withhold further payments until such

documentation and cooperation are completed or the CITY may take such other action as set forth in this Agreement.

#### ARTICLE 7. PROJECT MANAGEMENT

7.01 The CITY shall have no managerial responsibility for the Project beyond administering the grant process and ensuring compliance with applicable requirements. CITY will not manage, supervise, or direct construction activities. The OWNER shall act as sole Project Manager.

7.02 The OWNER shall constantly monitor the Project performance to ensure that time schedules are being met and the work included in Attachment B is completed within specified time periods in accordance with the Phasing and Remittance Schedule agreed to by the Parties.

7.03 Right of Entry to the property will be granted to the CITY. The CITY may perform on-site inspections or other types of Project monitoring as it deems necessary. Should the Project be found to be insufficient in meeting the stated terms of this Agreement, the CITY may request explanations, amendments or further specifications to the submitted report to which the OWNER shall respond in writing to the CITY within ten (10) business days of the date of any written or oral inquiry.

7.04 Work shall not commence until all appropriate permits have been obtained and the CITY has issued a formal notice to commence work.

7.05 If human remains or intact archaeological deposits are uncovered, work in the vicinity of the discovery will stop immediately and the appropriate authorities will be notified of the finding.

#### ARTICLE 8. CONTRACTOR AND SUBCONTRACTORS

8.01 The OWNER agrees to include in any contracts with CONTRACTOR or subcontractors that the CONTRACTOR or subcontractors are bound by the terms and conditions of this Agreement with the CITY.

8.02 The OWNER agrees to include in any contracts with CONTRACTOR or subcontractors that the CONTRACTOR or subcontractors agree and acknowledge that they are subject to all applicable requirements of the Subrecipient Agreement between the CITY and SCDNR in Attachment A.

8.03 The OWNER agrees to include in the contract with CONTRACTOR and any subcontractors that the CONTRACTOR and subcontractors shall hold the CITY and the SCDNR harmless against all claims of whatever nature arising out of the CONTRACTOR's or subcontractor's performance of work for the OWNER.

8.04 Payment and Performance bonds shall be required for the Total Project Cost. CONTRACTOR will not be given notice to proceed and the work will not begin until said Payment and Performance Bonds are provided. If CONTRACTOR is unable to meet the bond requirements, the OWNER will be instructed to choose another contractor.

8.05 OWNER's contractors and subcontractors shall meet the Insurance and Indemnity Requirements provided in Attachment D.

8.06 The Contract between OWNER and CONTRACTOR indicates OWNER is responsible for payment under this Project, however, as indicated above, payment for work completed under the terms of this Agreement will be made from the CITY directly to the CONTRACTOR, on the OWNER's behalf. Therefore, in the Contract the OWNER and CONTRACTOR, the OWNER has assigned its right for all monies the OWNER is entitled to be paid by the CITY for the work performed by CONTRACTOR.

8.07 Nothing in this Agreement shall be construed to create any contractual relationship or privity of contract between the CITY and any contractor, subcontractor, or supplier of the OWNER, nor to render the CITY liable for any claims or damages arising from the acts, omissions, or obligations of the OWNER, its contractors, subcontractors, or suppliers. The CITY shall not be joined as a party to any dispute between the OWNER and its contractors or subcontractors, and the OWNER shall cause all contracts entered into for the Project to include a similar provision prohibiting such joinder.

8.08 In the event the CONTRACTOR fails to perform or defaults on its obligations, the OWNER shall promptly notify the CITY and obtain an alternate contractor meeting all insurance, bonding, and licensing requirements. Any resulting additional costs shall be the sole responsibility of the OWNER.

#### ARTICLE 9. LIABILITY

9.01 The OWNER agrees to be fully responsible for their own negligent acts or omissions or tortious acts. Nothing herein shall be construed as consent by the CITY, State or FEMA to be sued by third parties in any matter arising out of this Agreement.

9.02 The OWNER represents and warrants that hazardous and toxic materials, if present at any locations where the Project will be performed, are at levels within regulatory limits and do not trigger action by the Federal, State or local laws or regulations. The OWNER further represents and warrants that the presence of any condition(s) or material(s) on site, which are subject to Federal, State or local laws or regulations (including, but not limited to: above ground or underground storage tanks or vessels, or asbestos, pollutants, irritants, pesticides, contaminants, petroleum products, waste, chemicals and septic tanks) shall be handled and disposed of in accordance with federal, State or local laws or regulations.

#### ARTICLE 10. INDEMNIFICATION

10.01 The OWNER agrees to and will at all times indemnify, save and hold harmless the CITY, SCDNR and FEMA from all liability and claims, demands, damages and costs of every kind and nature, including attorney's fees at trial or appellate levels, and all court costs arising out of injury to or death of persons and damages to any and all property including loss of use thereof resulting from or in any manner arising out of the OWNER's relationship with its employees, agents,

contractors, and/or subcontractors, or those under their control's performance under this Agreement.

10.02 The OWNER shall, upon request from the CITY, defend and satisfy any and all suits arising from its use of the premises.

10.03 The OWNER agrees to and will at all times indemnify, defend and hold harmless the CITY, including, without limitation, from any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or in connection with (a) the actions or activities of the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control that result in a violation of any environmental law, ordinance, rule or regulation or that leads to an environmental claim or citation or to damages due to such actions or activities, (b) any environmental, health and safety liabilities arising out of or relating to the operation or other activities performed in connection with this Agreement by the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control at any time or on prior to the day and year first above written or (c) any bodily injury, (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction, and deprivation of the use of real property) or other damage of or to any person in any way arising from any hazardous activity conducted by the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control. The CITY will be entitled, but not required, to control any remedial action or any proceeding related to an environmental claim.

10.04 The OWNER agrees to and will at all times indemnify, defend and hold harmless the CITY, including without limitation, from any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or based upon the violation of any federal, state or local laws, statutes, ordinances, resolutions, rules or regulations, by the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control.

10.05 The OWNER agrees to, and will at all, times indemnify, defend and hold harmless the CITY, including, without limitation, from any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) which may be incurred by, charged to or recovered from any of the foregoing, arising directly or indirectly out of (a) any breach of any representation or warranty made by the OWNER, its employees, agents, contractors, and/ or subcontractors, or those under their control pursuant to this Agreement or (b) any breach of any covenant or obligation of the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control set forth in this Agreement or any other certificate, document, writing or other instrument delivered by the OWNER, its employees, agents, contractors, and/or subcontractors, or those under their control pursuant to this Agreement.

10.06 The CITY shall have no responsibility or liability whatsoever for any claims, disputes, or causes of action arising out of or relating to any contract or agreement between the OWNER and any contractor, subcontractor, consultant, or supplier engaged in connection with the Project. In the event the CITY is named as a party in any such claim or dispute, the OWNER shall immediately defend, indemnify, and hold harmless the CITY, its officers, employees, and agents from and against any and all losses, costs, damages, expenses, or liabilities (including reasonable attorney's fees and court costs) arising therefrom, regardless of whether such claims arise in tort, contract, or otherwise.

10.07 The OWNER's obligations to defend, indemnify, and hold harmless the CITY, SCDNR, and FEMA as set forth in this Article shall survive termination or expiration of this Agreement, regardless of the cause or timing of any claim.

#### ARTICLE 11. DEFAULT, REMEDIES, TERMINATION

11.01 If any of the following events occur (the "Events of Default"), all obligations on the part of the CITY to make any further payment of funds hereunder shall, if the CITY so elects, terminate and the CITY may at its option exercise any of the remedies set forth herein:

11.01.01 If any warranty or representation made by OWNER in this Agreement or any previous Agreement with the CITY shall at any time be false or misleading in any respect;

11.01.02 If the OWNER shall fail to keep, observe or perform any of the terms or covenants contained in this Agreement or any previous agreement with the CITY, and the OWNER has not cured such Event of Default within thirty (30) days of the date of written notice to the OWNER from the CITY;

11.01.03 If Project funds are not received from the OWNER when due and the OWNER has not cured such Event of Default within thirty (30) days of the date of written notice to the OWNER from the CITY;

11.01.04 If any reports required by this Agreement have not been submitted to the CITY or have been submitted with incorrect, incomplete or insufficient information and the OWNER has not cured such Event of Default within thirty (30) days of the date of written notice to the OWNER from the CITY;

11.01.05 If the OWNER failed to perform and complete in a timely fashion any of the Project work required under this Agreement and the OWNER has not cured such Event of Default within thirty (30) days of the date of written notice to the OWNER from the CITY;

11.01.06 If the funds required to carry out this Agreement are not appropriated, allocated, or otherwise made available due to any action or inaction by FEMA or the State of South Carolina.

11.02 Upon the happening of an Event of Default, and upon the OWNER's failure to timely cure, where applicable, the CITY may exercise any one or more of the following remedies, either concurrently or consecutively, and the pursuit of any one of the following remedies shall not

preclude the CITY from pursuing any other remedies contained herein or otherwise provided at law or in equity:

11.02.01 Terminate this Agreement;

11.02.02 Commence an appropriate legal or equitable action to enforce performance of this Agreement;

11.02.03 Withhold or suspend payment of all or any part of a request for payment;

11.02.04 Exercise any corrective or remedial actions, to include but not be limited to, requesting additional information from the OWNER to determine the reasons for or the extent of noncompliance or lack of performance, issuing a written warning to advise that more serious measures may be taken if the situation is not corrected, advising the OWNER to reimburse the CITY for the amount of costs incurred for any items determined to be ineligible; and,

11.02.05 Exercise any other action or remedies which may be otherwise available under law.

11.03 The OWNER shall return funds to the CITY if found in non-compliance with laws, rules, and regulations governing the use of the funds made available pursuant to this Agreement. Funds shall be delivered by certified check or money order made payable to the CITY within thirty (30) days from the date of the written demand from the CITY. The OWNER's obligation to return funds or reimburse the CITY for ineligible or disallowed costs shall survive termination or expiration of this Agreement.

11.04 This Agreement may be terminated by the written mutual consent of both parties.

11.05 Notwithstanding the above, the OWNER shall not be relieved of liability to the CITY by virtue of any breach of Agreement by the OWNER. The CITY may withhold any payments under this Agreement for purpose of set-off until such time as the exact amount of damages due the CITY from the OWNER is determined.

11.06 Neither Party shall be liable for any delay or failure in performance caused by circumstances beyond its reasonable control, including but not limited to acts of God, war, terrorism, natural disasters, pandemic, governmental actions, or labor disputes, provided that the affected Party provides prompt written notice to the other Party and resumes performance as soon as practicable.

## ARTICLE 12. ATTACHMENTS

12.01 All attachments to this Agreement are incorporated as if set out fully herein.

12.02 In the event of any inconsistencies or conflict between the language of this Agreement and the attachments hereto, the language of such attachments shall be controlling but only to the extent of such conflict or inconsistency.

12.03 This Agreement includes the following attachments:

- Attachment A: Subrecipient Agreement between CITY and SCDNR
- Attachment B: Contract between OWNER and CONTRACTOR
- Attachment C: FEMA Model Deed Restriction
- Attachment D: Contractor Insurance and Indemnity Requirements

#### ARTICLE 13. LEGAL AUTHORIZATION

13.01 The OWNER certifies with respect to this Agreement that the OWNER possesses the authority to legally execute and bind the OWNER to the terms of this Agreement, and that the OWNER is the only person having legal or equitable title to the property on which the Project is being accomplished.

#### ARTICLE 14. MISCELLANEOUS

14.01 Section headings appearing herein are inserted for convenience of reference only and shall in no way be construed to be interpretations of text.

14.02 Both the OWNER and the CITY shall be governed by applicable federal, State of South Carolina and City of Charleston laws, rules, regulations and ordinances.

14.03 This Agreement constitutes the entire agreement between the Parties hereto for the services to be performed and furnished by either party hereunder. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party, or any representative of either party, which is not expressed herein shall be binding.

14.04 This Agreement may be amended, changed, modified, or altered, only by an instrument in writing executed by both Parties.

14.05 Neither Party shall assign nor transfer its interest in this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, and any such attempted assignment or transfer shall be void and of no force or effect.

14.06 Nothing contained in this Agreement shall be deemed to create a partnership or joint venture between the Parties.

14.07 Nothing contained in this Agreement entitles any person other than the Parties or their permitted successors and assigns to any Claim, remedy or right of any kind whatsoever.

14.08 This Agreement shall be construed under the laws of the State of South Carolina and venue for any actions arising out of this Agreement shall lie exclusively in the courts of Charleston County. If any provision hereof is in conflict with any applicable law or is otherwise unenforceable, then such provision shall be deemed severable but shall not invalidate any other provision of this Agreement.

14.09 No waiver by the CITY of any right or remedy granted hereunder or failure to insist on strict performance by the OWNER shall affect or extend or act as a waiver of any other right or remedy of the CITY hereunder, or affect the subsequent exercise of the same right or remedy by the CITY for any further or subsequent default by the OWNER. Any power of approval or disapproval granted to the CITY under the terms of this Agreement shall survive the terms and life of this Agreement as a whole.

14.10 All notices or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified mail postage prepaid, return receipt requested, or given when dispatched by electronic mail (with return receipt requested and received) or by personal delivery addressed as follows:

If to the CITY:                   Caroline Schnell, Floodplain Manager  
   City of Charleston  
   2 George Street, Suite 2100  
   Charleston, SC 29401

If to the OWNER: \_\_\_\_\_  
   Charleston, SC 29401

14.11 This Agreement may be executed in any number of counterparts any one of which may be taken as an original.

14.12 All obligations of the OWNER and CITY that by their nature are intended to survive termination or expiration of this Agreement, including without limitation those relating to indemnification, insurance, recordkeeping, audit, reporting, liability, and reimbursement of funds, shall survive such termination or expiration and remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their undersigned officials as duly authorized.

\_\_\_\_\_, OWNER

By: \_\_\_\_\_

Print: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

By: \_\_\_\_\_

Print: \_\_\_\_\_

STATE OF SOUTH CAROLINA      )  
                                    )      ACKNOWLEDGMENT  
COUNTY OF CHARLESTON      )

I, \_\_\_\_\_, a Notary Public for the State of South Carolina, do hereby certify that \_\_\_\_\_, personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, and acknowledged the execution of the foregoing instrument as his/her act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

\_\_\_\_\_  
(Signature of Notary Public)  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_  
(Seal)

CITY OF CHARLESTON

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

By: \_\_\_\_\_

Print: \_\_\_\_\_

Attachment A  
Subrecipient Agreement between CITY and SCDNR

Attachment B  
Contract between OWNER and CONTRACTOR

Attachment C  
FEMA Model Deed Restriction

**Attachment D**  
**Contractor and Subcontractor Insurance and Indemnity Requirements**

A. During the Term of this Agreement, OWNER's Contractors and Subcontractors shall, at their own expense, carry adequate liability and property damage insurance for the benefit of the City and its directors, officers, employees, and agents.

B. All Contractors and Subcontractors employed by OWNER and any subcontractors employed by the Contractor shall purchase and maintain insurance to protect against claims that may arise out of the Contractor's or Subcontractor's operations under this Agreement. The limits shall be for not less than the limits set forth below, shall be written on an occurrence basis, and shall be in force for the duration of this Agreement.

C. All liability insurance required herein shall include all major divisions of coverage and is to be based on a Commercial basis including the following:

1. Premises – Operations.
2. Independent Contractor's Protective.
3. Products and Completed Operations.
4. Personal and Advertising Injury.
5. Contractual, including specified provisions for Contractor's obligations.
6. Broad Form Property Damage, including Completed Operations.
7. Owned, Non-Owned and Hired Vehicles.
8. Errors and Omissions.

D. The Insurance required by this Exhibit shall be written for not less than the following limits or greater if required by law or other provisions in this Agreement:

1. Commercial General Liability:

a. General Aggregate (per project)	\$ 2,000,000
b. Products/Completed Operations	\$ 2,000,000
c. Personal and Advertising Injury	\$ 1,000,000
d. Each Occurrence	\$ 1,000,000
e. Fire Damage	\$ 50,000
f. Medical Expense (any one person)	\$ 5,000
2. Business Auto Liability (including all owned, non-owned, and hired vehicles):

a. Combined Single Limit	\$ 1,000,000
-OR-	
b. Bodily Injury & Property Damage (each)	\$ 1,000,000
3. Workers Compensation

a. State	Statutory
b. Employer's Liability	\$100,000 Per Accident; \$500,000 Disease, Policy
Limit \$100,000 Disease, Each Employee	

E. The aggregate limits of the insurance shall apply, in total for this Agreement. This shall be indicated on the Certificate of Insurance as "Per Project", or in an attached policy amendment.

F. The City shall be listed as the certificate holder on all Liability Insurance required herein.

G. Certificates of Insurance shall be in the form of the latest edition of the ACORD 25 and shall be filed with the City prior to commencement of any Work. In addition to Certificates of Insurance, the Contractor and any subcontractors shall supply a written endorsement to the Contractor's and any subcontractor's general liability insurance policy that names the City as an additional insured. The endorsement shall provide that the Contractor's and any subcontractor's liability insurance policy shall be primary, and that any liability insurance of the City shall be secondary and noncontributory. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least thirty (30) days prior written notice has been given to the City.

H. In no event shall any failure of the City to receive certified copies or certificates of policies required under this Exhibit or to demand receipt of such certified copies or certificates prior to the commencement of any Work be construed as a waiver by the City of the Contractor's or Subcontractor's obligations to obtain insurance pursuant to this Exhibit. The obligation to procure and maintain any insurance required by this Agreement is a separate responsibility of the Contractor and any sub-contractors and shall be independent of the duty to furnish a certified copy or certificate of such insurance policies. Cancellation of insurance shall be grounds for the immediate termination of this Agreement.

I. All Contractors and Subcontractors employed by OWNER and any subcontractors employed by the Contractor shall indemnify and save harmless the City and the City's officers, agents, and employees, from and against all losses and claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought or recovered against them by reason of any act, omission, or default of the Contractors or Subcontractors, their agents, subcontractors, or employees in the execution of the Services under this Agreement. When the City submits notice, the Contractors and/or Subcontractors shall promptly defend any aforementioned action at no cost to the City. This obligation shall survive the suspension or termination of this Agreement. The limits of insurance coverage required herein shall not serve to limit this indemnity obligation. The recovery of costs and fees shall extend to those incurred in the enforcement of this indemnity.