NOTICE OF MEETING

A meeting of the Committee on Real Estate will be held beginning at 2:30 p.m. Monday, March 21, 2022, Conference Call: 1-929-205-6099; Access Code: 835 678 884. The agenda will be as follows:

AGENDA

Invocation – Councilmember Gregg

Approval of Minutes:

March 7, 2022

a. Request to authorize the Mayor to execute on behalf of the City of Charleston a Memorandum of Agreement regarding PEN 3A Water Transmission Main Project between City of Charleston and Charleston Water System.

b. An ordinance to authorize the Mayor to execute on behalf of the City an Amended and Restated Lease between the City of Charleston and Charleston Water System regarding the use of the recreational Greenway.

c. An ordinance to authorize the Mayor to execute a deed and any other necessary documents, approved as to form by the Office of Corporation Counsel, Quit-claiming to Children’s Museum of Charleston the City of Charleston’s right, title, interest, if any, to that certain portion of property bearing Tax Map Number: 460-16-02-010, and subject to certain exceptions and other matters to be approved by the Office of Corporation Counsel.

d. Approval to authorize the Mayor to execute the necessary documents for the purchase of 11 Cunnington Avenue, a 0.08 acre property, which includes a recently renovated building of 3,316 total square feet, located in the Neck Area of the City, for $1,300,000 subject to the conditions outlined in the attached Agreement of Purchase & Sale. (TMS No. 464-14-00-118) (11 Cunnington Avenue, Charleston, SC 29405) (Deferred to the Committee on Ways and Means)

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) Interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to schumacherj@charleston-sc.gov three business days prior to the meeting.
TO: Committee on Real Estate
FROM: Julia Copeland
DATE: March 10, 2022
DEPT: Legal
ADDRESS: N/A
TMS: N/A

PROPERTY OWNER: City of Charleston

"Authorizing Mayor to execute on behalf of the City of Charleston a Memorandum of Agreement regarding PEN 3A water transmission main project between City of Charleston and Charleston Water System."

ACTION REQUEST:

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

COORDINATION: The request has been coordinated with:

All supporting documentation must be included

Department Head
Legal Department
Chief Financial Officer
Director Real Estate Management

FUNDING: Was funding needed? Yes [ ] No [ ]

If yes, was funding previously approved?*

[ ] Yes [ ] No

*If approved, provide the following:

Dept/Div. Acct: 
Balance in Account 
Amount needed for this item 

NEED: Identify any critical time constraint(s). N/A
MEMORANDUM OF AGREEMENT
REGARDING PEN 3A WATER TRANSMISSION MAIN PROJECT

THIS MEMORANDUM OF AGREEMENT (this “Agreement”), dated as of the ___ date of __________, 2022, is made by and between the Commissioners of Public Works of the City of Charleston, South Carolina, d/b/a Charleston Water System (“CWS”), and the City of Charleston, South Carolina (the “City”).

RECITALS

WHEREAS, CWS is in the process of designing the PEN3A Water Transmission Main Project (the “Project”) and acquiring rights in real property for the proposed PEN3A alignment along a corridor running adjacent to a railroad right-of-way from approximately the intersection of Morrison Drive and Romney Street to just northwest of Naval Air Base Road; and

WHEREAS, a portion of the Project is proposed in an area commonly referred to as the City 60’ Right of Way, which follows the corridor running adjacent to a railroad right-of-way; and

WHEREAS, a review of records in the Charleston County Register of Deeds reveals that the City conveyed the 60’ Right of Way to Norlina Construction Company by deeds C28-156 and C28-165 in 1914; and

WHEREAS, the conveyance was subject to certain conditions and trust terms which provided that if work for the development of a railroad was not commenced or completed timely, the 60’ Right of Way shall be forfeited and automatically revert to the City; and

WHEREAS, City Council records from 1913 to 1921 reflect that the required work was not timely completed by July 1, 1921, as required by the deeds C28-156 and C28-165 and the City Council resolution dated June 8, 1920; and

WHEREAS, notwithstanding the work not being completed and the City Council acknowledging the title reverted in the 1920 resolution, no document reflecting the reversion has been filed with the Charleston County Register of Deeds; and

WHEREAS, CWS and the City desire to take legal action to clear any cloud of title on the 60’ Right of Way as a result of the conveyance to Norlina Construction Company and for the City to convey easements rights to CWS within the 60’ Right of Way for the Project; and

WHEREAS, CWS and the City are bodies politic, with all the rights and privileges of such bodies, including the power to contract as necessary and incidental to the carrying out of the functions covered under this Agreement.
NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by reference, and the several promises set forth herein to be faithfully performed by the parties hereto, the sufficiency of which is hereby acknowledged, CWS and the City agree as follows:

I. DESCRIPTION OF THE CWS PROJECT:

The proposed Project alignment is as set forth on the drawing prepared by Hussey Gay Bell & DeYoung dated March 15, 2021, entitled “Exhibit Showing 60’ City R/W along proposed PEN3A Alignment” prepared for Charleston Water Sewer System, as revised on March 18, 2021 and __________. CWS intends to use portions of the 60’ City R/W for the installation, maintenance and operation of a new water main and related utilities and facilities. The parties acknowledge that they have had the opportunity to review and have reviewed the drawing and preliminary design plans for the Project prior to executing this Agreement.

II. DESCRIPTION OF THE CITY 60’ RIGHT OF WAY:

The 60’ Right of Way is as described in those certain deeds conveyed to Norlina Construction Company in 1914, deeds C28-156 and C28-165. The 60’ Right of Way is reflected on the drawing prepared by Hussey Gay Bell & DeYoung dated March 15, 2021 entitled “Exhibit Showing 60’ City R/W along proposed PEN3A Alignment” prepared for Charleston Water Sewer System, as revised on March 18, 2021 and __________. The parcels of property potential affected by the cloud on title to the 60’ Right of Way include, but are not limited to:

| A | 469-16-00-004 | OLMSTEAD US IV LLC |
| B | 466-04-00-017 | 253 SPP LLC |
| C | 466-04-00-003 | MIMS KENNETH L |
| A1 | 466-04-00-013 | KRM PARK SOUTH LLC |
| D | 466-04-00-007 | CAROLINA MARITIME COMPANY |
| E | 466-08-00-499 | 123 PITT LLC |
| G | 466-08-00-507 | NORTH CHARLESTON SEWER DISTRICT |
| B1 | 466-16-00-017 | JENNINGS MICHAEL |
| C1 | 466-16-00-016 | JENNINGS MICHAEL |
| D1 | 466-16-00-014 | JENNINGS MICHAEL |
| E1 | 466-16-00-013 | JENNINGS MICHAEL |
| H | 466-16-00-111 | FINE HOUSING INC |
| F1 | 466-16-00-010 | NILSON PHYLLIS L |
| G1 | 466-00-00-026 | CHERRY HILL LANE LLC |
| H1 | 466-00-00-025 | C AND A RENTALS LLC |
| I1 | 464-02-00-051 | CITY OF CHARLESTON |
| I | 466-00-00-004 | CHEVRON USA INC |
| J | 466-00-00-003 | KINDER MORGAN OPERATING LP |
| K | 464-00-00-035 | KINDER MORGAN OPERATING LP |
| J1 | 464-00-00-005 | HOM BV MANAGER LLC |
| L | 464-00-00-004 | HOM BV MANAGER LLC |
| M | 464-00-00-050 | 107 BRIGADE STREET LLC |
| N | 459-02-00-013 | GINN-LA FUND IV PROMENADE NORTH LLC |
III. UNDERTAKINGS GENERALLY:

CWS and the City agree that the City will file and participate in any legal action in the City’s name, including a quiet title action, necessary to obtain clear title to the portion of the 60’ Right of Way, which has not otherwise transferred out by the City between 1921 and the present. The City further agrees to grant CWS access and utility easement rights in the 60’ Right of Way as necessary for the Project. In exchange, CWS agrees to prepare legal research, title research, draft documents, including pleadings, service documents, and be financial responsible for service costs and other costs related to any legal action, and provide legal assistance to the City necessary for any legal action in the City’s name, including a quiet title action, to obtain clear title to the portion of the 60’ Right of Way, which has not otherwise transferred out by the City between 1921 and the present, subject to the City’s ultimate strategic approval and control.

a. The City shall:

i. Take all action necessary, including any legal action or quiet title action, to obtain clear title to the portion of the 60’ Right of Way, which has not otherwise transferred out by the City between 1921 and the present.

ii. Cooperate with CWS related to pursuing any legal action or quiet title action, to obtain clear title to the portion of the 60’ Right of Way, which has not otherwise transferred out by the City between 1921 and the present.

iii. Timely review any work product prepared by CWS related to any legal action or quiet title action, to obtain clear title to the portion of the 60’ Right of Way, which has not otherwise transferred out by the City between 1921 and the present.

iv. Provide CWS reasonable access to the 60’ Right of Way as needed for the Project.

v. Prior to instituting the quiet title actions, the City agrees to provide a permanent easement, in the form attached hereto as Exhibit __, to CWS for all affected parcels to provide CWS with an interest of record immediately, and CWS will be a plaintiff along with the City in such quiet title action.

b. CWS shall:

i. Prepare legal research, title research, draft documents, including pleadings, service documents, and be financially responsible for service costs and other costs related to any legal action, and provide legal assistance to the City necessary for any legal action in the City’s name, including a quiet title action, to obtain clear title to the portion of the 60’ Right of Way, which has not otherwise transferred out by the City between 1921 and the present, subject to the City’s ultimate strategic approval and control.

ii. Cooperate with the City related to pursuing any legal action or quiet title action to obtain clear title to the portion of the 60’ Right of Way, which has not otherwise transferred out by the City between 1921 and the present.
iii. Provide to the City a copy of CWS’s standard design drawings for the Project.

IV. FUNDING:

a. The Parties agree and acknowledge that CWS and the City are separately represented by counsel and agree that each Party shall bear the cost of their own attorney’s fees.

b. It is the intent of the Parties that CWS shall prepare, at its own expense, legal research, title research, draft documents, including pleadings, service documents, and be financially responsible for service costs and other costs related to any legal action, and provide legal assistance to the City necessary for any legal action in the City’s name, including a quiet title action, to obtain clear title to the portion of the 60’ Right of Way, which has not otherwise transferred out by the City between 1921 and the present, subject to the City’s ultimate strategic approval and control.

V. GENERAL:

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

b. Entire Understanding. This Agreement embodies the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written or otherwise, relating to thereto; provided, however, this Agreement shall not be interpreted to supersede or amend any previous written agreements between the parties unless (1) any such previous written agreement is completely inconsistent with the terms of this Agreement; or (2) expressly provided in this Agreement.

c. Amendment. This Agreement may be amended only by a written instrument executed by the parties. An implied amendment, modification, or repeal of this Agreement shall not be presumed by a merger or integration clause in a subsequent written agreement between the parties unless this Agreement is expressly referenced as being amended, modified or repealed in the subsequent written agreement or the pertinent provisions of the subsequent written agreement would be completely inconsistent with pertinent provisions of this Agreement, in which case the pertinent provisions of the subsequent written agreement shall control, but the remainder of this Agreement shall remain in full force and effect.

d. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

e. No Third Party Rights. Notwithstanding any other provision of this Agreement, this Agreement shall not be construed to create any rights enforceable by the general public or others who are not parties to this Agreement. This Agreement does not confer any new right, title, or interest in private property, property owned by the City, City rights-of-way, or the property of CWS to the City or to CWS.
f. **Forum Selection.** Any action or proceeding to enforce or interpret this Agreement and any action or proceeding arising from or relating to this Agreement or its breach shall be brought exclusively in the federal or state courts located in Charleston County, South Carolina, and the parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

g. **Recitals.** The Recitals are an integral part of this Agreement.

[Remainder of Page Blank]
IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the date first set forth above.

WITNESSES: 

CITY OF CHARLESTON, SOUTH CAROLINA

By: John J. Tecklenburg, Mayor

Print Name: __________________________

Print Name: __________________________

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this _____ day of _________, 2022 by John J. Tecklenburg, Mayor of the City of Charleston, South Carolina, a municipal corporation and body politic, on behalf of the municipal corporation and body politic.

Print Name: __________________________
Notary Public, State of South Carolina
My commission expires: _____________

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

By: F. Kin Hill, Jr., Chief Executive Officer

Print Name: __________________________

Print Name: __________________________

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this _____ day of _________, 2022 by F. Kin Hill, Jr., Chief Executive Officer of the Commissioners of Public Works of the City of Charleston, South Carolina, d/b/a Charleston Water System, a public utility, on behalf of the public utility.

Print Name: __________________________
Notary Public, State of South Carolina
My commission expires: _____________
**COMMITTEE ON REAL ESTATE**
**GENERAL FORM**

**TO:** Committee on Real Estate  
**DATE:** March 14, 2022

**FROM:** Julia Copeland  
**DEPT:** Legal

**ADDRESS:** N/A

**TMS:** N/A

**PROPERTY OWNER:** Charleston Water System

**ACTION REQUEST:**
"Ordinance to authorize Mayor to execute on behalf of the City an amended and restated lease between the City of Charleston and Charleston Water System regarding the use of the recreational greenway."

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

**COORDINATION:** The request has been coordinated with:

*All supporting documentation must be included*

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<tr>
<th>Department Head</th>
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<td>Chief Financial Officer</td>
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<td>Director Real Estate Management</td>
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**FUNDING:** Was funding needed? Yes [x] No [ ]

If yes, was funding previously approved?* Yes [x] No [ ]

*If approved, provide the following: Dept/Div. ___________ Acct: ___________

Balance in Account ___________ Amount needed for this item ___________

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

AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY AN AMENDED AND RESTATED LEASE BETWEEN THE CITY OF CHARLESTON AND CHARLESTON WATER SYSTEM REGARDING THE USE OF THE RECREATIONAL GREENWAY.

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

Section 1. That the Mayor is hereby authorized to execute on behalf of the City an amended and restated lease between the City of Charleston and Charleston Water System attached hereto as Exhibit 1.

Section 2. That this Ordinance shall become effective upon ratification.

Ratified in City Council this ___ day of _____ in the year of Our Lord, 2022, in the 246th Year of the Independence of the United States of America.

By: ________________________________
    John J. Tecklenburg, Mayor

ATTEST: By: ________________________________
          Jennifer Cook
          Clerk of Council
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AMENDED AND RESTATED LEASE (Croghan Greenway)

THIS AMENDED AND RESTATED LEASE (this “Lease”) is entered into this ___ day of _______, 2021, between the Commissioners of Public Works of the City of Charleston d/b/a Charleston Water System, as lessor (“CWS”), and the City of Charleston, South Carolina, as lessee (the “City”). CWS and the City may be individually referred to herein as a “Party” or jointly as the “Parties.”

WHEREAS, CWS acquired the land described on Exhibit A attached hereto (the “Property”), from Seaboard System Railroad, Inc., on July 9th, 1985, for the purposes of establishing a corridor for CWS utilities (the “Utility Corridor”); and

WHEREAS, the City and CWS entered into that certain Lease dated July 31, 1991, as amended by that certain Lease Amendment dated October 23, 2007, wherein CWS leased to the City the Property, for the purposes of establishing a passive recreational greenway thereon, with specific use stipulations, and a current term expiring October 23, 2035; and

WHEREAS, the City has requested from time to time additional uses for such Property; and

WHEREAS, CWS has agreed to certain specific uses and has agreed to extend the lease term, subject to the terms and conditions set forth in this Lease.

NOW THEREFORE, in consideration of the sum of $1.00 and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and CWS hereby agree as follows:

1. **Property; Title.** CWS does hereby lease unto the City, and the City hereby leases from CWS, the Property, subject to the terms and conditions set forth herein. CWS represents that it owns the Property in fee simple, subject to encumbrances of record.

2. **Term.** The term of this Lease shall commence on the date of the execution of this Lease and shall terminate on December 31, 2040.

3. **Rent.** The City shall pay CWS the sum of $1.00 per year throughout the term of this Lease. The City shall also be solely responsible for the maintenance and upkeep of the Property, including all physical improvements thereto, as may be made by or at the request of the City, pursuant to the terms of this Lease (collectively, the “City Improvements”).

4. **Permitted Uses.** The City may utilize and occupy the Property for the sole purpose of maintaining a passive, recreational greenway thereon, provided such use does not conflict with the Utility Corridor. The following uses and City Improvements are permitted on the Property in the locations shown on the drawing attached hereto as Exhibit B (the “Plans”), subject to the restrictions on use set forth herein (collectively, the “Permitted Uses”):
a. The existing landscaping and replacement thereof, as may be necessary from time to time for upkeep and maintenance, subject to the restrictions set forth in 5.j;

b. The existing pedestrian and bicycle path, inclusive of bridges, as shown on the Plans, and any improvement or replacement thereof, as may be necessary from time to time for upkeep and maintenance, subject to the restrictions set forth in 5.d;

c. The existing seating, and any replacement thereof, as may be necessary from time to time for upkeep and maintenance, as shown on the Plans, subject to the restrictions set forth in 5.e;

d. The existing exercise equipment area, as shown on the Plans, subject to the restrictions set forth in 5.f;

e. A community garden may be located in the area shown on the Plans, subject to the restrictions set forth in 5.h;

f. Drinking fountains, as shown on the Plans, subject to the restrictions set forth in 5.i; and

g. Bollards and/or gates at street crossings, as shown on the Plans, and any replacement thereof, as may be necessary from time to time for upkeep and maintenance, subject to the restrictions set forth in 5.j;

h. Limited guard rails at street crossings and along certain areas of the paved pathways to the extent necessary to prevent unauthorized vehicular access and to provide public safety where a physical hazard exists along the pathway route and subject to the restrictions set forth in 5.j;

i. Limited signage, as may be necessary for public safety informational purposes only, subject to the restrictions set forth in 5.i;

j. Trash receptacles, subject to the restrictions set forth in 5.k; and

k. Bicycle racks, subject to the restrictions set forth in 5.f.

No other use of the Property shall be permitted.

5. **Restrictions on Use.** All Permitted Uses installed by the City or at its direction are subject to the following restrictions:

a. No City Improvements shall involve equipment, fixtures or devices of any sort for which the anchorage or foundation penetrate the ground surface more than 6-inches, except for sign posts, guard rail posts, bollards or gate posts at street crossings, and the two existing water fountains, as approved by CWS. All City Improvements must be movable or easily removed. No permanent structures are permitted on the Property, except for the following:
i. bridges for the pedestrian and bicycle path;
ii. Wayfinding signage; and
iii. any structures necessary for the operation of a community garden, including but
not limited to storage facility measuring no larger 8’x10’, fencing, water
sources and shade structure, upon CWS approval, which will not be
unreasonably withheld.

b. No fencing is permitted in any area of the Property.

c. No City Improvements shall impede storm water drainage on the Property.

d. Pedestrian and bicycle paths may only be constructed of asphalt pavement or
compacted pervious sand or gravel type materials. Plans and materials of bridges for
the pedestrian and bicycle path must be reviewed and approved by CWS.

e. Seating improvements shall be small enough to be easily movable manually or with a
backhoe. Seating design shall be such that the foundation and anchorage, if required,
shall be the minimum area needed for adequate support and not more than 6-inches
deep.

f. Bicycle racks shall be small enough to be easily movable manually or with a backhoe.
Bicycle rack design shall be such that the foundation and anchorage, if required, shall
be the minimum area needed for adequate support and not more than 6-inches deep.

g. The existing exercise equipment area must be maintained in a good and safe manner,
but in the event of a loss, the exercise equipment may not be replaced or the area
restored. In such case, all equipment shall be removed and the area restored with grass
at the sole cost and expense of the City. No other exercise equipment is permitted on
the Property. No “playground” equipment designed specifically for children is
permitted on the Property.

h. Any community garden feature shall be installed above the natural ground, each within
a treated timber perimeter of up to 100 square feet, and 10-inches deep filled with soil
suitable for gardening. City may erect structures for this permitted use as described in
5(a)(iii). Each such feature shall be easily disassembled or movable manually or with a
backhoe. Such use must comply at all times with all applicable laws, rules, and
regulations, including, without limitation, all environmental, health and safety laws,
rules and regulations.

i. Any drinking fountain shall be served by a CWS water service purchased by the City
at the published CWS fees at the time a request for such improvement on the Property
is made. Drinking fountain installations shall be compliant with SCDHEC
requirements. Such use must comply at all times with all other applicable laws, rules,
and regulations, and all CWS policies. Drinking fountains shall be anchored on a
concrete slab of the minimum area needed for adequate support and not more than 6-
inches deep.
j. Bollards and/or gates shall be installed such that authorized vehicular access is permitted. Bollards shall be installed in a buried sleeve to facilitate manual removal. Gates shall be lockable and locking mechanism shall accommodate multiple locks for each entity authorized for access. Only treated wood or aluminum shall be used for any permitted guardrails. Buried utility locates shall be performed prior to installation of any bollards, guard rails, gates, signs or other anchored improvements requiring excavation of more than 6-inches.

k. Trash receptacles shall be clean, rodent and pest-resistant, and where anchored, subject to the requirements herein. Trash receptacle design shall be such that the foundation and anchorage, if required, shall be the minimum area needed for adequate support and not more than 6-inches deep.

l. Landscaping shall be limited to grassing and ornamental shrubbery and trees, such as crepe myrtles or wax myrtles, that do not have an invasive root system that may become problematic as they mature. No shade tree species, hedges or vegetative screens are permitted, and no landscaping berms or fill material that would change the existing contours of the land are permitted.

m. No City Improvement shall adversely affect the Utility Corridor or CWS’s use of or rights or access to the Utility Corridor.

n. Any Permitted Use installed in the future, and the proposed location thereof, shall be subject to the review and approval by CWS of plans and specifications prepared by the City for such intended Permitted Use.

o. No City Improvement shall be installed or placed on or within the 20’ Power Line Right of Way, as defined in that certain Transmission Line Encroachment Agreement dated June 30, 2020, between CWS and Dominion Energy South Carolina, Inc. (“DESC”), as approved by the City, without the prior written consent of CWS and DESC.

6. Property Condition. With the exception of the encroachment of existing utilities, the City accepts the Property in its “AS IS,” “WHERE IS” condition. In the event that additional encroachments are discovered during the term of this Lease, the Parties agree to work with each other in having the same removed to the extent reasonably feasible.

7. Improvements and Alterations.

a. Any and all physical improvements and alterations to the Property and City Improvements made by or at the direction of the City shall be completed in a good and workmanlike manner, free and clear of all liens, encumbrances, defects and deficiencies, and shall comply at all times with all CWS requirements and applicable laws, codes, rules and regulations, including the Americans With Disabilities Act, and shall be constructed in accordance with recognized and accepted engineering principles.
b. Any physical improvement or alteration to the Property or City Improvements shall not interfere with any personal property or facilities of CWS that may lie on, under, or over the Property.

c. The City shall obtain all certificates, permits, licenses, and other applicable authorizations of governmental bodies or authorities which are necessary to permit the construction and installation of any physical improvements and alterations to the Property and City Improvements and shall keep the same in full force and effect at the City’s sole cost and expense at all applicable times.

d. CWS shall be under no duty to supervise, investigate, or verify the City’s compliance with this Section.

e. At the expiration or earlier termination of this Lease, the City shall promptly remove all City Improvements. Any City Improvements remaining on the Property after the expiration of this Lease may be removed by CWS by any means necessary, and CWS shall not be responsible for the cost of such removal or for any payment to the City for its disposal.

8. **Maintenance.** The City, at its sole cost and expense, shall keep and maintain the Property and all improvements thereon in a safe manner and in good order and condition, free of all debris and trash. Any and all repairs to the Property or City-installed improvements thereon shall be timely made by the City, in a good and workmanlike manner and in compliance with Section 7 above. Such maintenance obligations shall include mowing, seeding, planting and removing trees on the Property and shall include the upkeep and repair of the City Improvements, subject to the terms of this Lease.

9. **Insurance.** The City, at its sole cost and expense, shall carry and keep in force and effect during the term of this Lease not less than Two Million Dollars ($2,000,000.00) of commercial general liability insurance for the Property, naming CWS as an additional insured against all liability for any property damage or bodily injury to any person based on or arising out of or in connection with use and occupancy of the Property by the City or any of its agents, employees, licensees, guests or invitees. The commercial general liability insurance maintained by the City shall also cover any property damage to the personal property and facilities of CWS.

10. **Eminent Domain.** If the whole or any part of the Property is condemned for any public use or purpose by any legally constituted authority, then in either of such events this Lease shall cease from the time when possession of the whole or part is taken by such public authority. Such termination shall be without prejudice to the rights of either the City or CWS to recover compensation from the condemning authority for any loss or damage caused by such condemnation. Neither the City nor CWS shall have any rights in or to any award made to the other by the condemning authority.

11. **Liability.**

a. The City shall be liable to CWS for any damage to the Property or any other real or personal property or facilities of CWS arising out of or incurred in connection with the
City’s use and occupancy of the Property or caused by the negligence or willful or intentional misconduct of its agents, employees, licensees, guests or invitees.

b. The City shall be liable for any claim, loss, cost, and expense arising out of any death or personal injury to persons or damage to the Property (i) occurring in, on, or about the Property, (ii) caused by the negligence or willful misconduct of the City or any of its agents, employees, licensees, guests, or invitees, or (iii) resulting from the failure of the City to perform or observe any of the covenants, terms and conditions of this Lease to be performed or observed by the City.

c. CWS shall not be liable to the City or any of its agents, employees, licensees, guests or invitees for any damage or injury to persons or property on the Property, unless such damage or injury is caused by or arises from the errors, omissions, or negligence of CWS, or any of its agents, employees, or contractors.

12. Access: Closure. CWS retains all rights to access all or any part of the Property, without notice to, or permit of, the City, during the term of this Lease for the purpose of maintaining, repairing, using or constructing any of its facilities or new facilities that may lie on, under or over the Property. In such cases, CWS retains all rights to close off public access to all or any part of the Property, including the City Improvements, without notice to, or permission of, the City, except in cases where the duration of the closure is expected to be greater than 30 days, in which case CWS shall provide the City with 30 days’ notice of the planned closure, except in the case of an emergency as determined by CWS.

13. Restoration. In the event CWS accesses the Property for the purposes stated in Section 12, and disturbance of the Property or removal of City Improvements is required to perform work or gain access to the Property for any such purposes, then CWS agrees that it shall, or it shall require its contractor to, restore the Property to a good condition by doing the following, to the extent applicable under the circumstances:

a. Reseed grass areas and reseed landscaped areas with grass (no other landscaping or plantings shall be performed);

b. Properly reset or reinstall permitted moveable City Improvements, including, but not limited to sign posts and bollards related to access control, trash receptacles and benches, that were moved during the work; and

c. Repave any paved areas damaged during any construction by CWS with asphalt pavement or compacted pervious sand or gravel type materials, as appropriate.

14. Default. Either Party shall be in breach of this Lease for failure to comply with any covenant, term, or condition of this Lease. Upon any such breach or default under this Lease, either Party may terminate this Lease immediately by giving the other written notice of such default.

15. Governing Law. This Lease shall be governed by the laws of the State of South Carolina.
16. **Authority.** Each Party represents to the other Party that it has the full right, power and authority to enter into this Lease for the term herein granted.

17. **Severability.** If a court of competent jurisdiction determines any provision(s) of this Lease to be illegal, invalid or unenforceable, then this Lease shall be construed so that the remaining provisions shall not be affected but shall remain in full force and effect, and any such illegal, invalid or unenforceable provision(s) shall be deemed, without further action on the part of any person, to be modified, amended and/or limited to the extent necessary to render the same valid and enforceable in such jurisdiction.

18. **Entire Agreement.** This Lease constitutes the entire agreement between the City and CWS as to the subject matter hereof, superseding all prior oral or written agreements, understandings, or negotiations concerning the Property and the permitted use stated herein. This Lease shall inure to the benefit of and shall be binding in accordance with its terms upon the Parties and their respective successors and assigns.

19. **Amendment.** This Lease may only be altered or amended in writing and signed by duly authorized representatives of the Parties.

20. **Assignment.** The City may not sublet or assign this Lease, or any interest in this Lease, to any other party without first obtaining express written consent from CWS. Nothing in this Lease, express or implied, is intended to or shall confer upon any person, other than the Parties hereto, any rights, benefits or remedies of any nature whatsoever under or by reason of this Lease.

21. **Surrender.** The City shall, on the last day of the lease term hereof or upon any earlier termination permitted under this Lease, peaceably surrender the Property into the possession of CWS without delay and in good order, condition, and repair.

22. **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

[Remainder of page intentionally blank]
IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Lease under seal as of the date first set forth above.

WITNESSES:

____________________________

____________________________

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

CITY OF CHARLESTON, SOUTH CAROLINA

By: _________________________ (SEAL)

Its: _________________________

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this _____ day of ____________, 2021 by __________________________, __________________________ of the City of Charleston, South Carolina, a municipal corporation and body politic, on behalf of the municipal corporation and body politic.

Print Name: _______________________
Notary Public, State of South Carolina
My commission expires: _____________

COMMISSIONERS OF PUBLIC WORKS
OF THE CITY OF CHARLESTON

By: _________________________ (SEAL)

Its: _________________________

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this _____ day of ____________, 2020 by __________________________, __________________________ of the Commissioners of Public Works of the City of Charleston, South Carolina, d/b/a Charleston Water System, a public utility, on behalf of the public utility.

Print Name: _______________________
Notary Public, State of South Carolina
My commission expires: _____________
EXHIBIT A
(Attach Legal Description)

That portion of the abandoned Croghan Branch right of way between Johns Island and Croghan, varying in width, situated, lying and being in Charleston County, South Carolina, more particularly described as follows:

Commence at a point in the center line of S 10-20, said point located 739.90 feet north of the center line of Bayou Road, as measured along the center line of S 10-20; thence N 71°31'49" E along the center line of Grantor’s abandoned right of way extended, to a point in Grantor’s main track 200-foot wide right of way line, said point located on a curve and Grantor’s southerly right of way line; thence along said curve having a radius of 5,829.58 feet, a central angle of 03°07’14”’, a chord of 317.45 feet, and a chord bearing of S 62°27’35”” W to an arc distance of 317.49 feet to the point of beginning, said point located on a curve to the left and Grantor’s southerly right of way line; thence along said curve having a radius of 5,829.58 feet, a central angle of 05°30’58””, a chord distance of 561.02 feet, and a chord bearing of N 61°15’43”” E through an arc distance of 561.24 feet to a point of tangency; thence N 71°31’49”” E a distance of 659.60 feet to an iron pin set; thence N 04°24’12”” E a distance of 28.65 feet to an iron pin found; thence N 71°34’51”” E a distance of 1539.47 feet to an iron pin set, said point being the beginning of a curve to the right; thence along said curve having a radius of 11,535.46 feet, a central angle of 29°45’01””, a chord distance of 5,922.60 feet, and a chord bearing of N 86°24’16”” E through an arc distance of 5,989.67 feet to a point of tangency; thence S 78°43’13”” E a distance of 2,757.89 feet to an iron pin found; thence S 00°49’47”” W a distance of 25.42 feet to an iron pin set; thence S 78°43’13”” E a distance of 4,966.83 feet to an iron pin set; thence S 78°45’32”” E a distance of 4,195.27 feet to an iron pin set in the westery edge of pavement of Parkdale Drive (50-foot right of way); thence S 78°43’37”” E a distance of 488.24 feet to an iron pin set; thence N 50°39’46”” W a distance of 106.28 feet to an iron pin set; thence S 78°43’37”” E a distance of 2,146.22 feet to an iron pin set; thence S 78°42’40”” E a distance of 371.01 feet to an iron pin set; thence S 22°10’09”” E a distance of 59.93 feet to an iron pin set; thence S 78°42’40”” E a distance of 4,147.74 feet to an iron pin set in the east right of way line of Wappoo Road (a 50-foot wide right of way); thence S 06°20’27”” E along said east right of way line a distance of 20.99 feet to an iron pin set; thence S 78°42’40”” E a distance of 8,936.40 feet to an iron pin set; thence N 16°26’20”” E a distance of 70.28 feet to an iron pin set; thence S 78°42’40”” E a distance of 1,042.16 feet to an iron pin set in the east right of way line of Coburg Road (a 60-foot wide right of way); thence S 05°40’10”” E along said east right of way line a distance of 31.36 feet to an iron pin set; thence S 78°42’40”” E a distance of 125.72 feet to an iron pin set in the west right of way line of Timmerman Drive (a 60-foot wide right of way); thence N 05°40’10”” W along said west right of way line a distance of 31.36 feet to an iron pin set; thence S 78°42’40”” E a distance of 1,893.33 feet to an iron pin set; thence S 78°41’13”” E a distance of 259.08 feet to an iron pin set; thence S 50°35’43”” W a distance of 90.44 feet to an iron pin set; thence S 78°41’13”” E a distance of 2,396.40 feet to an iron pin set in the westerly edge of pavement of Wesley Drive (right of way varies); thence S 78°43’07”” E a distance of 764.19 feet to the beginning of a curve to the left, said point situated on the east edge of pavement of Fenwick Drive (a 50-foot wide right of way); thence along said curve having a radius of 2,834.80 feet, a central angle of 17°12’11”, a chord distance of 847.95 feet, and a chord bearing of S 87°19’12”” E through an arc distance of 851.15 feet to an iron pin set in the west right of way line of Albemarle Point Road (a 50-foot wide right of way); thence along said west right of way line S 29°24’37”” E a distance of 42.26 feet to the beginning of a curve to the left; thence along said curve and right of way, having a radius of 669.75
feet, a central angle of 08°45′33″, a chord distance of 102.29 feet, and a chord bearing of S 33°38′21″E through an arc distance of 102.39 feet to an iron pin set, said point located on a curve to the right; thence along said curve having a radius of 2,964.79 feet, a central angle of 08°50′08″, a chord distance of 456.74 feet, and a chord bearing of S 87°15′05″W through an arc distance of 457.19 feet to an iron pin found and a point of tangency; thence N 33°18′12″W a distance of 85.94 feet to an iron pin set, said point located on a curve to the right; thence along said curve, having a radius of 2,894.79 feet, a central angle of 08°38′15″, a chord distance of 435.99 feet, and a chord bearing of N 83°02′14″W through an arc distance of 436.40 feet to an iron pin set and a point of tangency; thence N 78°43′06″W a distance of 764.21 feet to an iron pin set; thence N 78°41′13″W a distance of 2,445.50 feet town iron pin set; thence S 50°35′43″W a distance of 90.44 feet to an iron pin set; thence N 78°41′13″W a distance of 95.44 feet to an iron pin set; thence N 78°42′40″W a distance of 3,075.75 feet to an iron pin set; thence N 14°28′40″E a distance of 70.11 feet to an iron pin set; thence N 78°42′40″W a distance of 8,912.95 feet to an iron pin set in the east right of way line of Wappoo Road (a 50-foot wide right of way); thence S 06°20′27″E along said east right of way line a distance of 20.99 feet to an iron pin set; thence N 78°42′40″W a distance of 4,113.44 feet to an iron pin found; thence S 22°10′09″E a distance of 59.93 feet to an iron pin set; thence N 78°42′40″W a distance of 503.15 feet to an iron pin set; thence N 78°43′37″W a distance of 1,828.67 feet to an iron pin set; thence N 47°58′37″W a distance of 97.80 feet to an iron pin set; thence N 78°43′37″W a distance of 627.91 feet to an iron pin set; thence N 78°45′33″W a distance of 4,195.27 feet to an iron pin set; thence N 78°43′13″W a distance of 4,978.42 feet to an iron pin set; thence S 00°49′47″W a distance of 25.42 feet to an iron pin set; thence N 78°43′13″W a distance of 2,785.55 feet to the beginning of a curve to the left; thence along said curve having a radius of 11,385.46 feet, a central angle of 29°45′01″, a chord distance of 5,845.59 feet, and a chord bearing of S 86°24′16″W through an arc distance of 5,911.77 feet to a point of tangency; thence S 71°30′27″W a distance of 1,597.61 feet to an iron pin found; thence N 00°24′21″E a distance of 27.05 feet to an iron pin set; thence S 71°31′49″W a distance of 1,173.38 feet to the point of beginning; containing 113.93 acres, more or less.

**EXHIBIT B**

*(Attach Drawing Depicting Location of Current and Future/Pending Improvements)*
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE A DEED AND ANY OTHER NECESSARY DOCUMENTS, APPROVED AS TO FORM BY THE OFFICE OF CORPORATION COUNSEL, QUIT-CLAIMING TO CHILDREN'S MUSEUM OF CHARLESTON THE CITY OF CHARLESTON'S RIGHT, TITLE AND INTEREST, IF ANY, TO THAT CERTAIN PORTION OF PROPERTY BEARING TAX MAP NUMBER: 460-16-02-010, AND SUBJECT TO CERTAIN EXCEPTIONS AND OTHER MATTERS TO BE APPROVED BY THE OFFICE OF CORPORATION COUNSEL.

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

Section 1. The Mayor is hereby authorized to execute on behalf of the City a deed and any other necessary documents quit-claiming to the Children's Museum of Charleston the City's right, title and interest, if any, to that certain portion of property bearing Tax Map Number 460-16-02-010.

Section 2. The form of the quit claim deed and other necessary documents referenced in Section 1 of this Ordinance shall be subject to the approval of the City's Office of Corporation Counsel. Upon the approval of the City's Office of Corporation Counsel of the form of such documents and any exceptions or other matters, the Mayor is authorized to execute such documents without further action of City Council.

Section 3. This Ordinance shall become effective upon ratification.

Ratified in City Council this ___ day of ________, in the Year of Our Lord, 2022, in the ___ Year of the Independence of the United States of America.

By:

John J. Tecklenburg
Mayor

Attest:

Jennifer Cook
Clerk of Council