AGENDA

1. Invocation
   Councilmember Seekings

2. Approval of Minutes
   August 9, 2022

3. Lime - Charleston Bike Share Program Presentation
   Trisha Botty, Bradford Johnson

4. E-Carriage Presentation
   Kyle Kelly

5. Valet Parking – 6-month contract extension
   Robert Somerville

6. Discussion of Ord. Sec. 19-206, reduction of the speed limit in residential neighborhoods
   Mallary Scheer

7. Pedicab decals
   Councilmember Seekings

8. Ashley River Pedestrian Bridge Intergovernmental Agreement
   Julia Copeland

9. Discussion

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 three business days prior to the meeting.
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF CHARLESTON
AND THE SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION
FOR THE US 17 ASHLEY RIVER CROSSING

THIS AGREEMENT ("Agreement") is made this __ day of ____________,
2022, by and between the City of Charleston (hereinafter referred to as "City") and the
South Carolina Department of Transportation (hereinafter referred to as "SCDOT")
(collectively "the Parties").

WITNESSETH THAT:

WHEREAS, SCDOT owns an easement and/or a fee simple interest for highway
purposes for US Highway 17 (hereinafter "US 17") in Charleston, South Carolina, in the
Area of Encroachment more particularly described herein; and

WHEREAS, SCDOT owns and operates two bridges near the Area of
Encroachment across the Ashley River, the Ashley River Bridge and the T. Allen Legare
Bridge, which operate on one power source; and

WHEREAS, City has requested that SCDOT allow City to design, build, and
maintain, at City’s sole cost and expense, a City-owned and operated movable-span
Pedestrian Bridge (hereinafter "the Bridge") over and above the Ashley River in the Area
of Encroachment in a manner that will not interfere with either the primary use of US 17
for highway purposes or of the Ashley River as a navigable waterway; and

WHEREAS, City has entered into a contract for the Design and Construction of the
Bridge; and

WHEREAS, SCDOT is agreeable to providing its assistance to City under the terms
and conditions set forth herein; and

WHEREAS, SCDOT is willing to permit the Bridge to be constructed, owned,
operated, and maintained by City provided it is at no cost to SCDOT and in accordance
with the terms and conditions set forth in this Agreement; and

WHEREAS, pursuant to South Carolina Code of Laws Section 57-5-600, 1976 (as
amended), SCDOT has authority to grant written permits to encroach upon highway right-
of-way under such rules as SCDOT may establish; and

WHEREAS, the Parties acknowledge that the Bridge shall be subject to permitting
by the United States Coast Guard (hereinafter "USCG"), among others; and
WHEREAS, despite the fact that some of the Bridge structure may be constructed outside of SCDOT’s right-of-way, the Parties specifically intend that all portions of the Bridge will be subject to the terms of this Agreement with regard to ownership, design, construction, inspection, maintenance, operation, repair, replacement, reconstruction, and removal; and

WHEREAS, City is a body politic with all the rights and privileges of such including the power to contract as necessary and incidental powers to carry out the City’s functions covered under this Agreement; and

WHEREAS, SCDOT is an agency of the State of South Carolina with the authority to enter into contracts necessary for the proper discharge of its functions and duties;

NOW THEREFORE, in consideration of the several promises to be faithfully performed by the Parties hereto as set forth herein, City and SCDOT do hereby agree as follows:

I. **SCOPE OF PROJECT:**

The Project consists of designing and constructing a movable-span pedestrian / bicycle bridge to run parallel to the south of the existing Legare Bridge over the Ashley River. This Agreement is also for the ownership, inspection, maintenance, operation, repair, replacement, reconstruction, and removal of the Bridge. The encroachment permitted by SCDOT pursuant to this Agreement shall be for a publicly-owned and operated pedestrian / bicycle bridge, including all associated structures and approaches.

The Area of Encroachment means the US 17 right-of-way, located at approximate station ___ to ___. The actual location of the Bridge superstructure and piers, abutments, other structures, and pedestrian / bicycle accommodations leading to the Bridge will be determined by the specific design of the Bridge as prepared and constructed by City subject to SCDOT’s approval as provided herein. The Release for Construction (RFC) and as-built plans, including as-built utility plans, shall be provided to SCDOT and such final plans will be incorporated into this Agreement by written amendment signed by the Parties hereto.

The scope of the Project shall be determined by City during the planning phase. City shall carry out the specific activities necessary to implement and construct the Project, which includes planning, design, permitting, right-of-way acquisition, utility and railroad coordination, construction, and other associated coordination and administrative activities, unless noted otherwise herein. If City requests that SCDOT administer any phase of work for the Project, a supplemental agreement will be drafted to outline the responsibilities of City
IGA DRAFT

and SCDOT. Any Project phases administered by SCDOT will be subject to scheduling and prioritization within SCDOT’s current workload.

If the Parties determine that encroachment permits are needed for any part of the Project, City shall submit an encroachment permit application package reflecting the as-built conditions to SCDOT.

SCDOT agrees to review the Project in a timely manner, and City agrees to reimburse SCDOT for direct costs associated with these reviews and coordination.

Where local roadways tie into the state roadway, changes within SCDOT’s right-of-way will fall under the terms of this Agreement unless changes are approved by SCDOT through an encroachment permit.

Additional Project details and location information are included in Exhibit A, attached hereto and incorporated herein.

II. OBLIGATIONS OF SCDOT:

a. SCDOT may perform any part of the work required of it under this Agreement with its own forces or may contract out any of the work or services to outside private or governmental consultants or contractors if SCDOT determines that such contracting out would be more efficient or cost effective or would result in more expeditious completion of the Project, upon prior notice to and consent of City. If outside forces are used, SCDOT shall provide City with the actual invoices for the work, and City will reimburse SCDOT according to the terms of this Agreement.

b. SCDOT shall coordinate with City and provide Project reviews for issuance of any necessary encroachment permit(s).

c. Except as provided elsewhere in this Agreement, or as specified otherwise in a separate agreement, SCDOT agrees to accept responsibility for normal maintenance of standard transportation materials, structures, and workmanship within SCDOT rights-of-way according to common local practices for the Project.

d. To the extent permitted by existing South Carolina law and within the public policy limits of the South Carolina Tort Claims Act (SC Code § 15-78-10 et seq.), SCDOT hereby assumes complete responsibility for any loss resulting from bodily injuries (including death) or damages to property, arising out of any negligent act or negligent failure to act on SCDOT’s part, or the part of any employee of SCDOT in the performance of the work undertaken under this Agreement.
III. **OBLIGATIONS OF CITY:**

a. City shall provide, or cause to be provided, all services for the execution of activities for the planning, development, and delivery of the Project, unless noted otherwise herein.

b. City shall be responsible for obtaining and continuously maintaining the USCG permit for the Bridge in accordance with Title 33 of the Code of Federal Regulations.

c. City warrants that it will perform the work necessary under this Agreement in accordance with the standards of care and diligence normally practiced in the transportation industry for work of similar nature. The City shall be responsible for the work and cost of maintenance activities that may be required to maintain or preserve any such warranties.

d. City shall take all steps necessary to transfer to SCDOT any applicable manufacturer or other third-party warranties of any materials or other services used in the construction of the Project that will remain within SCDOT right-of-way.

e. The cost of the Project shall be borne solely by City.

f. City will not unreasonably withhold consent upon request by SCDOT to use outside forces as described in II.a.

IV. **COMMUNICATIONS:**

A. City and SCDOT agree that regular and thorough communication about this work is essential to the completion of the Project. City and SCDOT further agree that each Party will strive to communicate at both the management level and staff level.

1. The City Engineer and/or the designated City Representative shall meet with appropriate SCDOT staff on an as-needed basis.

2. Additional coordination meetings will be planned and mutually agreed upon as necessary to coordinate the work.

B. SCDOT will provide such technical support and advice as requested by City to assist in the planning and execution of the Project, subject to the provisions of this Agreement.

V. **LIMITED RIGHTS OF USE AND OCCUPANCY**

A. City shall have the limited right to use and occupy the air and surface space within the Area of Encroachment as defined above and as shown in Exhibit A
and further detailed in the RFC and as-built plans for the Bridge for the purposes of: construction, inspection, maintenance, control, operation, repair, replacement, reconstruction, and removal of the Bridge, subject to the terms of this Agreement, the associated SCDOT encroachment permit, and any permits issued by the USCG or other permitting authorities as appropriate.

B. Except as granted to City in this Agreement, SCDOT specifically reserves all other rights to and control over the airspace and surface space of the Area of Encroachment currently enjoyed by SCDOT.

C. City's use shall be subordinate at all times to SCDOT's primary use of US 17 for highway purposes, and City shall use and maintain the Bridge at all times in a manner that will not interfere with SCDOT's use of US 17 for highway purposes.

D. City shall be liable for any penalties, fines, or assessments incurred by SCDOT for the two existing SCDOT bridges if it is determined that the City, its contractors, or the Bridge itself are the reason for the penalties, fines, or assessments. City shall reimburse SCDOT for any penalties, fines, or assessments paid under this section, and shall reimburse SCDOT for reasonable attorneys' fees that may be incurred in defending SCDOT.

E. SCDOT makes no guarantee that any required permits from the USCG or other permitting authorities will be granted.

VI. OWNERSHIP

A. SCDOT warrants that it has property rights for highway purposes at the Area of Encroachment.

B. City warrants that it owns or will obtain any necessary property interests adjacent to and outside of the Area of Encroachment sufficient for City to construct, own, operate, and maintain the Bridge. Furthermore, City agrees that it will maintain ownership of the Bridge throughout the term of this Agreement, and for so long as the Bridge remains within the Area of Encroachment, unless otherwise specifically agreed to in writing by SCDOT.

VII. COSTS AND EXPENSES

A. City shall be solely responsible for all costs and expenses associated with the construction of the Bridge, including, but not limited to: project management, planning, design, environmental assessments or determinations, permitting costs and fees, acquisition of necessary easements or property interests, construction, construction engineering, inspections, and utility placement/movement/removal. In addition, any work required to satisfy or implement environmental requirements in relation to the design or construction of the Bridge will be accomplished at
the sole cost of the City for as long as the Bridge is located within the Area of Encroachment.

B. City shall be solely responsible for all costs and expenses associated with the ownership, operation, maintenance, inspection, control, repair, reconstruction, replacement, and removal of the Bridge and its support structures to ensure ongoing compliance with this Agreement for as long as the Bridge is located within the Area of Encroachment.

C. City shall be responsible for damages to SCDOT structures and facilities directly or proximately caused by the Bridge or its associated appurtenances, utilities, and structures.

D. In the event City should decide unilaterally to remove the Bridge, City shall be solely responsible for all costs and expenses associated with the removal of the Bridge at or before termination of this Agreement, including all costs and expenses associated with restoring the Area of Encroachment to its condition as of the date of execution of this Agreement.

E. City shall reimburse SCDOT for its reasonable labor and expenses any time it is necessary for SCDOT to provide a designated representative during City activities which may impact the free flow of traffic or the safety of the traveling public or alter the normal operations of the existing structures and function of the Bridge, including, but not limited to: routine maintenance, inspections, and repairs.

F. City will also reimburse SCDOT for its reasonable labor and expenses for SCDOT personnel and equipment in the event it is necessary to impede traffic lanes or detour existing traffic in response to emergency events. For purposes of this Agreement, “emergency event” shall be defined as any situation that immediately affects the operation of the Bridge and would negatively impact vehicular, pedestrian, or boat traffic. If it is necessary for SCDOT to intercede in any activities, City shall reimburse SCDOT for its reasonable labor and expenses for SCDOT personnel and equipment and any other expense that may be incurred as part of this action. City understands that highway traffic may not be restricted or impeded except as specifically authorized in advance by SCDOT.

G. SCDOT shall submit a written, itemized invoice to City within 60 days from the date that: (1) SCDOT incurs a cost or expense for which it seeks reimbursement from City, or (2) SCDOT provides a service for which it is entitled to be reimbursed under the terms of this Agreement. Unless the Parties have previously agreed in writing upon a specified rate, unit price, or fixed sum for any material, equipment, or service for which SCDOT will seek reimbursement, SCDOT shall document its actual cost or expense and the method or basis for calculating the amount of such cost or expense on or before the date SCDOT submits its invoice or request for payment for
the cost or expense. Except in the event of emergency services or equipment, SCDOT shall provide a rough estimate to City for any material, equipment, service, or other reimbursable cost or expense to be incurred by SCDOT in excess of $5,000.00. SCDOT covenants that it shall substantially comply with the terms of this Section in good faith as a condition of its right to be reimbursed by City for costs, expenses, and services in accordance with this Agreement. City shall remit payment to SCDOT within 30 days of receipt of SCDOT’s invoice or request for payment.

VIII. **ASSET MANAGEMENT**

City acknowledges that SCDOT currently has an asset management contractor responsible for the operation and maintenance of the adjacent Legare Bridge.

The Parties recognize that having the same contractor perform these services for the Bridge will result in benefits to both Parties. To realize these benefits:

SCDOT will make all reasonable efforts to add the Bridge to its existing asset management contract(s). City shall make the initial and annual payments for the asset management services in advance. SCDOT shall be entitled to draw reimbursement for accounting costs to provide time and material records to City.

If SCDOT is not able to add the Bridge to its existing asset management contract(s), a new agreement or an amendment to this Agreement will be required.

City shall designate a point of contact, with 24/7 availability, and shall have a process in place that will allow for maintenance and repair decisions to be made quickly in emergency situations such as a bridge hit. This point of contact shall have all necessary authority to initiate repairs as may be needed. City shall, as needed, have a contracting mechanism in place or an emergency procurement process defined to make these repairs. If the City delegates emergency repair responsibilities to SCDOT, then it is understood that the authority to make decisions regarding the repair will accompany the repair responsibility as well.

City shall be liable for any fines, penalties, and costs incurred by SCDOT as a result of the Bridge impeding vessel traffic.

IX. **INSPECTION**

City acknowledges that SCDOT currently has an existing consultant contract responsible for inspection services in accordance with the National Bridge Inspection Standard (NBIS) inspection requirements of its existing bridge structures at this location.

The Parties recognize that having the same contractor perform these services for the Bridge will result in benefits to both Parties. To realize these benefits:
SCDOT will make all reasonable efforts to add the Bridge to its existing inspection contract(s). The City shall make payment to SCDOT in full when the services are performed.

If SCDOT is not able to add the Bridge to its existing maintenance contract(s), a new agreement or an amendment to this Agreement will be required.

X. DESIGN REQUIREMENTS

A. City shall design the Bridge in accordance with SCDOT’s design standards and specifications. SCDOT shall have the right to review and approve the design plans for items that tie into or have the potential to directly impact SCDOT infrastructure, but this review shall not absolve City of its responsibility to design and build the Bridge in accordance with the design requirements or shift any responsibility for such design to SCDOT. All final design plans issued for construction shall be signed and sealed by a professional engineer licensed in the State of South Carolina.

B. Bridge design shall adhere to all SCDOT Bridge Design Criteria and AASHTO LRFD Movable Bridge Design Criteria. This includes, but is not limited to: geotechnical, structural, and seismic design requirements. The design shall assure the future safety of the highway facility and for marine traffic.

C. Control Systems shall be designed to be synchronized with and to work in conjunction with SCDOT’s existing bridge structures. SCDOT shall have direct oversight and decision authority over this design aspect and any scope of work that involves construction activities on the existing SCDOT owned movable bridges.

D. Bridge Operations. It is anticipated that the Bridge can be operated from the existing US 17 NB bridge tender house by a single bridge tender. This operation is contingent upon the implementation of appropriate safety systems, measures, and protocols. Should at any point it be determined that the Bridge is unsafe to be operated by a single bridge tender, a second bridge tender will be required.

E. Power Systems. City shall be permitted to draw primary power from SCDOT’s existing bridge structures. If City elects to draw power from the existing structures, the power system must be designed and upgraded with enough capacity to run the Ashley River Bridge, Legare Bridge, and the Bridge structures simultaneously in an emergency system without overloading. City shall be responsible for the cost of any upgrades necessary to meet this requirement and to ensure that the operation of the SCDOT structures is not adversely affected. City shall be required to have
their own power backup. The operational sequence of the bridges should be such that it prevents a power demand overload that may result from simultaneous operation of the bridges. If submarine cables are used, City shall be responsible for any subaqueous utility locates in the event of future 811 calls.

F. Fenders, Signage, and Lighting. Fender systems will be required to be tied together. Each USCG permittee shall be responsible for any fines, assessments, or penalties associated with hazards created by vessel strikes and/or deterioration of their respective systems. City shall be responsible for erecting and maintaining a monument or marker to denote the physical limits of fender responsibility for each Party. Pursuant to the terms of the asset management contract, and if SCDOT is able to add the Bridge to its existing asset management contract(s), SCDOT's asset management contractor shall be responsible for installing and maintaining any required signage or lighting on the Bridge and associated structures, and shall be responsible for any fines, assessments, or penalties related to the signage and lighting.

G. The design, occupancy, and use of any structure over the waterway shall not interfere with the use, safety, appearance, or the enjoyment of the waterway, nor produce fumes, vapors, odors, drippings, droppings, or discharges of any kind.

H. The use of airspace shall not result in either highway or non-highway users being unduly exposed to hazardous conditions because of Bridge location, design, maintenance, and operation features.

I. Appropriate safety precautions and features must be incorporated in the design to minimize the possibility of injury to users of either the highway facility, the Bridge, or the waterway due to highway or non-highway incidents.

J. The Bridge shall be fire resistant in accordance with standards acceptable to SCDOT and FHWA. The placement of aesthetic items, structures, or facilities which utilize combustible materials that may be fire hazards are prohibited on the Bridge. Bridge access must be provided for emergency response, as may be needed. If emergency response includes access for vehicular traffic, the load rating of the Bridge must include all possible vehicles and be able to safely carry them.

K. Adequate security measures shall be in place to ensure the safety of the facility from both natural disasters and human actions, whether accidental or intentional. Examples of such measures include: the use of bollards to restrict vehicular traffic, pier protection devices, and sufficient caging to avoid the accidental or intentional dropping of materials from the Bridge and its support structures deck onto the area below.
L. City understands and agrees to cooperate with the coordination required by and between multiple divisions of SCDOT to obtain the necessary and required approvals to proceed with construction of the Bridge and its support structures, and also to perform future maintenance and inspections upon the Bridge and its support structures as more specifically set forth in this Agreement. Such divisions include, but are not limited to: SCDOT’s planning, design, bridge, environmental, traffic, operations, and maintenance divisions / districts. City’s primary point of contact with SCDOT shall facilitate City’s coordination with such divisions as required.

M. Construction of the Bridge shall not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by SCDOT. Construction of the Bridge shall not have any operational impact to the existing two US 17 bridges unless specifically approved in advance by SCDOT. City will be liable for any unapproved impact to the existing US 17 bridges.

N. City shall be solely responsible for any hazardous waste contamination that may result from the construction, maintenance, operation, and use of the Bridge, without liability to SCDOT.

O. To the extent required by law, City shall design, construct, and operate the Bridge in compliance with the Americans with Disabilities Act and the December 2014 edition of the SCDOT ADA Transition Plan.

P. Bridge shall be designed with redundant, positive structural stops that will prevent the Bridge from striking SCDOT’s existing bridge structures.

Q. Bridge shall be designed to facilitate all necessary equipment and access for the required inspections.

R. SCDOT’s Office of Materials and Research shall approve the pavement design on roads within or intended for the state system and shall respond to City within 30 business days from the time City submits the pavement design for review. Approval of pavement designs on state maintained roadways require the SCDOT Pavement Design Engineer’s signature on the typical sections of the final construction plans. Any changes to this pavement design must be reviewed and approved by the SCDOT Pavement Design Engineer.

S. City will submit a cover letter with plan submittals verifying that a Quality Control (QC) review has been performed by either City or a third party consultant.

T. SCDOT will provide reviews of the design plans and other contract documents and provide written comments to City within 30 business days.
of the time City submits the plans for review. Plans or other design documentation will be sent to SCDOT at the following stages of the Project:

- Concept (optional)
- Preliminary
- Right-of-way
- Final design

U. City shall submit the design in a form that is acceptable to SCDOT’s reviewer. Design reviews will be accomplished by SCDOT and review comments will be returned to City within 30 business days from the time City submits the review documents to SCDOT. A complete list of comments will be submitted from SCDOT’s Project Manager. City will notify SCDOT at least two weeks in advance of the submission of documents to be reviewed. Project shall not be advanced to right-of-way or construction until written authorization is provided by SCDOT.

V. Design plans and documents submitted to SCDOT for reviews shall be provided in electronic (.pdf) format unless otherwise requested by SCDOT’s reviewer. City shall utilize file transfer protocol (FTP), or other agreed upon platform, to transfer the documents to be reviewed.

W. During the development of design of the Project, consideration should be given to costs associated with long term maintenance of items incorporated into the Project. SCDOT reserves the right to request alternative solutions that would present lower long-term maintenance costs, lower inspection costs, and solutions that would provide higher operational reliability and redundancy for items that City seeks SCDOT to maintain.

X. SCDOT agrees to provide written notice of “Authority to Proceed” or review comments if further clarification or correction is needed regarding the Construction Plans within 30 business days of the time City submits the final plans for review. SCDOT’s “written authority to proceed” shall signify that i) Construction Plans are approved and that ii) the City may begin application for any needed encroachment permits. SCDOT’s issuance of the Encroachment Permit shall serve as right-of-entry and written “Notice to Proceed” with construction.

XI. **RIGHT-OF-WAY ACQUISITION**

City shall acquire all rights-of-way necessary for highway purposes in its own name. Acquisition of rights-of-way to be turned over to SCDOT shall be acquired in accordance with the United States Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, P.L. 91-646, 42 U.S.C. §§4601 et seq., regulations thereunder including 49 C.F.R. Part 24, the South Carolina Eminent Domain Procedures
Act, and SCDOT’s Office of Right of Way Acquisition Manual. Title instruments acquired on the Project to be conveyed to SCDOT shall be documented on standard SCDOT right-of-way forms. Right-of-way limits shall be set according to standard SCDOT practices, utilizing the SCDOT Roadway Design Manual and the SCDOT Plan Preparation Guide. These limits shall encompass all pertinent highway facilities and structures necessary for the construction and maintenance of the roadway.

With respect to the acquisitions:

City Shall:

a. Acquire right-of-way in fee simple title absolute by recordable warranty deeds or easement interest as directed by SCDOT. All titles shall be recorded in the land records of Charleston County.

b. Perform title searches for each property to be acquired and provide SCDOT with Certificates of Title signed by an attorney licensed to practice law in South Carolina. Preliminary title abstracts must be provided prior to property being appraised.

c. In accordance with and when required by SCDOT’s Appraisal Manual, provide an acceptable appraisal for each property by an appraiser from SCDOT’s approved appraisers list. All contracts for appraisals shall obligate the appraiser to provide court testimony in the event of condemnation. City shall obtain appraisal reviews complying with technical review guidelines of the Appraisal Manual and make a recommendation of just compensation. The reviewed appraisal must be approved by SCDOT’s right-of-way representative prior to the offer to purchase being made to the landowner.

d. In the event of condemnation, the necessary documents as required by the Eminent Domain Procedures Act, S.C. Code Ann. §§ 28-2-10 et seq., will be prepared and City will utilize its Eminent Domain authority to acquire title. City shall be responsible for securing legal representation familiar with Eminent Domain in South Carolina. Condemnation shall be by way of trial after rejection of the amount tendered as provided in S.C. Code § 28-2-240.

e. Retain all records dealing with property acquisition, and all other costs associated with this Project, for three years after the “Final Acceptance Date” of the Project by SCDOT. The “Final Acceptance Date” shall be the date which the “Report Recommending Roads for State Maintenance” (Form 100.03) is approved by SCDOT. City or its authorized representative will make such records available for audit and review upon request.
f. City is responsible for establishing and maintaining Quality Control and Quality Assurance procedures for the entire right-of-way acquisition process.

g. Provide relocation assistance in accordance with SCDOT’s Relocation Manual. All relocation housing payment offers shall be approved by SCDOT prior to being offered to displacees. City shall issue 90 and 30 - day notices of displacement in accordance with State and federal guidelines.

h. City shall be responsible for the disposition of all identified improvements being acquired on a Project prior to the obligation date of the construction.

i. Establish specific milestone dates for the different phases of the right-of-way acquisition, and provide reports every two months indicating the status of each individual parcel while right-of-way activities are underway on the Project.

j. Provide a Right-of-Way Certification in a form acceptable to SCDOT ensuring that all property necessary for construction of the Project has been secured and that all displacees have been relocated prior to advertising for construction bids.

k. At the completion of the Project, City shall prepare a ROW exhibit and master deed reflecting the rights-of-way to be conveyed to SCDOT as a part of the Project. These documents must be prepared and submitted prior to or at Project close-out.

SCDOT Shall:

a. Review and approve Right-of-Way plans and authorize the City to proceed with Right-of-Way acquisition.

b. Provide approval of the Right-of-Way Certification and authorization to proceed to construction.

XII. CONSTRUCTION REQUIREMENTS

A. All work shall conform to SCDOT’s standards of construction and shall be performed in a workman-like manner. It is expressly understood that the encroachment shall be constructed in accordance with the approved plans. City agrees to comply with and be bound by SCDOT’s “Policy for Accommodating Utilities on Highway Right of Way,” then current at the time of construction, maintenance, or repair and “2007 Standard Specifications for Highway Construction,” as supplemented, including all Supplemental Technical Specifications, then current at the time of
construction, maintenance, or repair. City shall make adequate provisions for maintaining the proper drainage of US 17 as it may be affected by the construction of the Bridge and associated structures and walkways. All work shall be subject to the satisfaction of SCDOT.

B. City shall provide a complete set of City’s plans and specifications for construction for SCDOT’s review. These plans and specifications shall set forth all aspects of the Project, including the coordination and timing of phasing, and shall also provide such additional and further documentation as requested by SCDOT so that it may complete its review. City’s plans must be prepared and signed by a professional engineer licensed in the State of South Carolina. SCDOT will promptly review the City’s construction plans, and agrees that its approval will not be unreasonably withheld, delayed, or denied so long as the plans conform to all applicable SCDOT requirements as well as applicable federal, state, and local laws, ordinances, rules, and regulations. If a fundamental disagreement occurs with regard to City’s plans and specifications for construction, City agrees to make such reasonable modifications as can be made to the plans such that the project may proceed with SCDOT’s approval.

C. Prior to the commencement of any work on SCDOT right-of-way, City, through its chosen contractor, shall provide a Performance Bond or Letter of Credit to SCDOT to secure the performance of its obligations to construct the Bridge pursuant to this Agreement. The Performance Bond or Letter of Credit shall be in the full amount of the estimate for the construction of the Bridge. The Performance Bond or Letter of Credit shall be presented to SCDOT’s District Six Office prior to the issuance of the Notice to Proceed.

D. SCDOT shall document the conclusion of its pre-construction review and approval process by providing City a written notice to proceed. No occupation, construction, or alteration of the Area of Encroachment may occur until SCDOT has issued the Notice to Proceed.

E. All construction equipment shall not come within 15 feet of SCDOT’s existing bridge structures without prior SCDOT approval.

F. No barges, boats, or other vessels shall be permitted to tie off to SCDOT’s piling.

G. No positive attachment, other than that required for the permanent Bridge structure and approved by SCDOT, shall be permitted on SCDOT’s existing bridge structures.

H. Commencement of Construction; Obligations.

   I. Upon receipt of SCDOT’s Notice to Proceed, City shall be entitled to commence construction of the Bridge in a manner consistent with City’s
properly submitted and accepted construction plans, and consistent with all SCDOT-issued permits and approvals.

2. City shall provide for proper project management, inspection, oversight, and control of all elements of construction. City shall also provide Quality Acceptance testing, inspection, and other services sufficient to provide certification to SCDOT that the construction and materials used for construction are in conformance with the plans and specifications set forth in the contract documents. The inspectors and engineers performing Quality Acceptance testing and inspection shall be SCDOT certified in the area of testing and inspections being performed. All acceptance sampling and testing shall be performed in accordance with the Quality Control (QC) sampling and testing schedule and frequency specified in SCDOT’s Construction Manual. The engineer of record may not also provide Construction Engineering and Inspections services on State-maintained facilities.

3. City shall ensure that the Bridge is constructed in strict compliance with the accepted construction plans and specifications, or as amended by any change orders approved in advance by SCDOT.

4. City shall complete all necessary material testing in accordance with SCDOT requirements.

5. City shall obtain SCDOT concurrence to accept material that does not conform to contract requirements. Such concurrence shall be documented by the use of SCDOT Form 100.09, and must be approved by SCDOT’s District Engineering Administrator and SCDOT’s Director of Construction. The request for concurrence must be initiated by City no later than 45 days after incorporation of the non-conforming material.

6. SCDOT reserves the right to conduct construction oversight, to include sampling and testing of materials, within SCDOT’s right-of-way at the discretion of the Deputy Secretary for Engineering. All direct costs incurred by SCDOT associated with construction oversight shall be reimbursed by City in accordance with the terms of this Agreement.

7. The project may be subject to periodic reviews / inspections by SCDOT’s Quality Management Team and Environmental Compliance Team at SCDOT’s discretion and with 24 hours’ notice to City.

8. To facilitate the coordination of construction activities and to ensure that the work is constructed in accordance with the applicable provisions, City and SCDOT agree as follows:
a. As needed, project field reviews will be made by both City’s and SCDOT’s construction representatives to discuss project status, mutual concerns, and construction issues.

b. Contract documents will be furnished to SCDOT upon request.

c. Copies of test results shall be provided to SCDOT upon request so test data and results can be evaluated. Periodic reviews of test reports and summaries may be made by SCDOT.

d. Copies of Daily Work Reports, diaries, meeting minutes, and all documents associated with the construction management of the project shall be provided to SCDOT upon request.

e. Project traffic control reviews for safety and specification compliance will be made and documented on SCDOT Form 600.02 by City or their agent. Daytime reviews shall be conducted at least once per week, and a nighttime inspection will be performed at least once per month.

f. Erosion control reviews will be made on a schedule as required by the NPDES General Construction Permit. Erosion control reviews will be made in accordance with the latest edition of SCDOT’s Supplemental Specification on Seeding and Erosion Control Measures. Observations will be documented on SCDOT’s Erosion Control Form 800.02. City will apply for and acquire all necessary permits, to include the NPDES General Construction Permit in the name of City. City will comply with all NPDES requirements and will be responsible for all fines associated with the resolution of any enforcement actions that may arise as a result of non-compliance.

1. SCDOT Review / Limitations.

   1. During construction, SCDOT will rely on the professional performance and ability of City, its agents and representatives, and its selected contractors.

   2. Examination by SCDOT, or any acceptance or use of the work product, will not be considered to be a full and comprehensive examination and will not be considered an approval of the work which would relieve City from its liability or expense for the work to be accomplished by City pursuant to this Agreement.

   3. Acceptance or approval of any of the work by SCDOT will not constitute a waiver of any rights of SCDOT to recover damages from City that are caused by any error, omission, or negligence of City, its agents, consulting engineers, or contractors in the performance of the
design, construction, maintenance, inspection, or repair of the Bridge. Further, if due to error, omission, or negligence of City, its agents, consulting engineers, or contractors, the plans, specifications, and estimates are found to be in error, or there are omissions therein revealed during the construction, maintenance, inspection, or repair of the Bridge and revision or reworking of the plans is necessary, City shall make all such revisions without expense to SCDOT.

4. To the extent permitted by existing South Carolina law and within the public policy limits of the South Carolina Tort Claims Act (SC Code § 15-78-10 et seq.), City will be responsible for all damages incurred by SCDOT or third parties caused by error, omission, or negligent acts of City, City’s employees, agents, consultants, or contractors in the design, construction, maintenance, inspection, repair, or use of the Bridge.

XIII. ACCEPTANCE

1. Upon completion of the project, City shall submit the Project Closure Checklist (attached hereto as Attachment A) including the following Project documentation to SCDOT:

a. Copies of required environmental documents/permits

b. Design documents
   i. As described elsewhere in this Agreement;
   ii. Final Project plans suitable for delivery and recording pursuant to S.C. Code §57-5-570 and in accordance with the current version of SCDOT’s As-Built construction Plans Supplemental Specification;
   iii. Electronic files of the Final Project plans as described in SCDOT’s “Road Design Reference Material for Consultant Prepared Plans”;
   iv. Final Stormwater Reports.

c. Right-of-way documents
   i. Appraisals;
   ii. Title search information;
   iii. Deeds sufficient to convey to SCDOT any additional highway right-of-way acquired by City. Titles shall be by special warranty and sufficient to convey the entire interest obtained by City from the Landowner;
   iv. Correspondence with property owners;
   v. Master exhibit prepared by the engineer of record outlining the rights-of-way to be conveyed to SCDOT;
vi. Diaries or agents' worksheets related to the acquisition of right-of-way;

vii. All Utility Agreements and No Cost Letters with supporting documentation;

viii. Summary sheet showing all payments made by City against each Utility Agreement;

ix. If applicable, all supporting information for cost increases to Utility Agreements.

d. Construction documents

i. As-built drawings - In addition to those documents set forth elsewhere in this Agreement, City shall provide, within 90 days after Final Completion, two marked-up sets of final construction drawings reflecting the as-built condition of the project based on information provided by the construction contractor and verified by City. “As-built” plans must be drawn to scale, and be based on the project survey stationing. These plans will include as-built information for utilities. These plans will be sufficient to establish the precise location of all utilities and appurtenances as well as provide key information for future determination of the extent of prior rights. “As-built” utility plans must include at a minimum the following:

- Survey centerline and existing roadway centerline if different, with labeled stationing.
- Existing and new right-of-way lines, and City easement lines
- Final location of utility lines and appurtenances

ii. Test reports

iii. Daily construction diaries

e. Other documents

i. All applicable warranty documents;

ii. Specific operations and maintenance manuals (as reviewed and approved by SCDOT);

iii. As it relates to non-bridge items that may be in SCDOT right-of-way and transferred to SCDOT, assignments to SCDOT of all contractors’ payment and performance bonds in connection with the project and a copy of the Consents of Surety for final payment;

iv. As it relates to non-bridge items that may be in SCDOT right-of-way and transferred to SCDOT, assignments, releases, affidavits, or other proof of payment to indicate full payment of all claims by contractors, their subcontractors, or suppliers;
3. City shall be responsible for the maintenance of any special or unique features, enhancements, or nonstandard materials that are incorporated into the project, such as, but not limited to: noise walls, hardscape treatments, landscaping, lighting (aesthetic non-standard), mast arms, and street furniture.

XIV. **TRAFFIC CONTROL RESPONSIBILITIES**

City shall own, control, construct, operate, maintain, repair, inspect, reconstruct, and remove the Bridge in a manner that does not impact the safety of traffic on US 17 or on the Ashley River and will cause no unreasonable interference with the use of the highway or the river by the travelling public or by SCDOT. City shall not close, restrict, or impede the free flow of traffic on US 17 except in a manner consistent with SCDOT's Standard Drawings, The Rule on Work Zone Safety and Mobility, Policy and Guidelines, Hourly Restrictions for Lane Closures found at SCDOT’s website, and the Manual on Uniform Traffic Control Devices (MUTCD), then current at the time of closure, restriction, or impediment of the free flow of traffic. In no event shall closure, restriction, or impediment of the free flow of traffic occur unless specifically approved in advance by SCDOT, except in the case of an emergency. All traffic control shall comply with SCDOT Standards for Traffic Control.

XV. **PROTECTION OF UTILITIES**

This Agreement is subject to all existing utilities and rights of such utility providers. City shall be responsible for identifying the location of existing utilities, including SCDOT utilities, that may be affected by the construction of the Bridge, establish whether SCDOT or the utility has prior rights, obtain all necessary utility agreements, and pay for the cost of any required relocations in accordance with SCDOT’s “Utility Accommodations Manual.”

XVI. **ALTERATIONS**

Once constructed, City shall not make any alterations, modifications, or changes to the Bridge without the advance written permission of SCDOT.

XVII. **MAINTENANCE AND INSPECTION REQUIREMENTS**

A. Any activity by City that could potentially affect the operations of the Ashley River Bridge and Legare Bridge must be approved in advance by SCDOT.

B. Except as provided elsewhere in this Agreement, City shall be solely responsible for the ownership, operation, maintenance, control, repair, inspection, load ratings, reconstruction, and removal of the Bridge, all of which shall occur at no expense to SCDOT. City shall comply with SCDOT’s bridge maintenance and inspection specifications for National
Bridge Inspection Standard ("NBIS") structures. Although the Bridge is designed for pedestrian and bicycle use, it shall be inspected and load rated as if it were an NBIS structure. Accordingly, operation of the Bridge must be in accordance with all SCDOT standards and policies that govern the operation of SCDOT movable bridges.

C. City shall conduct an inspection of the Bridge in compliance with the NBIS then current at the time of each inspection. This shall include: structural, fracture critical, complex, routine, underwater, mechanical, electrical, special, and any other inspections required by federal requirements for NBIS structures. Such inspections must occur prior to opening the Bridge to the public and subsequently every 24 months, or more frequently if required by law, and more frequently where structural damage or deterioration becomes evident or in the event of emergency circumstances that could potentially impact the integrity of the structure, or if deemed necessary by SCDOT. These inspections and reports shall be performed in accordance with the then current version of the SCDOT Bridge Inspection Guidance Document for NBIS structures. City agrees that SCDOT has no duty to inspect, report, or remedy observed conditions (even if SCDOT has notice of said conditions) on the Bridge. City shall promptly and adequately address any critical finding and other safety concerns that are identified during inspections, or otherwise.

D. A load rating must be performed during the design phase of the Bridge construction project and subsequent load rating analyses performed as conditions warrant in accordance with the then current version of the SCDOT Load Rating Guidance Document. A copy of each load rating report must be submitted to SCDOT upon completion of the load rating analysis. Load restrictions shall be placed on the Bridge as dictated by the load rating report by City and at the expense of City. Any load traversing the Bridge shall not exceed the allowable limits as specified in the load rating report.

E. A scour assessment shall be completed as part of the design phase of the Bridge and accepted by SCDOT. A scour re-evaluation will need to be performed based on inspection findings as needed. A scour study shall be performed, which shall include scour inspections prior to, during, and after construction of the Bridge. City shall be responsible for remediation if the scour study shows progressively worse issues due to the Bridge.

F. City shall obtain written approval from SCDOT prior to engaging in maintenance, repair, or inspection activities on the Bridge from SCDOT right-of-way. City shall be responsible for providing public notice and appropriate signage in the event that the Bridge is temporarily closed due to maintenance, repair, or inspections.
G. SCDOT shall have the right, but not the duty, to access the Bridge at all reasonable times, with prior notice to City, to view all portions of the Bridge for compliance with this Agreement and to notify City of any issues identified.

H. In the event SCDOT discovers disrepair or deterioration to the Bridge which has not been addressed by City, SCDOT shall notify City of such condition, and require correction of same within a reasonable time period specified by SCDOT, but not less than thirty (30) days. Significant disrepair or deterioration which could impact or interfere with public safety shall be addressed by City immediately. SCDOT shall have the right, but not the obligation, to perform necessary repairs or maintenance upon the Bridge after reasonable notice to City and a failure of City to correct the issue within the timeframe specified by SCDOT. City shall reimburse SCDOT for all reasonable labor and direct expenses incurred by SCDOT to complete any such repairs or maintenance.

i. SCDOT reserves the right to close the Bridge if City refuses to take action to remedy a capacity or safety issue. “Closure” in this case shall mean the Bridge shall be opened and secured in the open position so as to not be an impediment to maritime traffic or the operation of the existing US 17 bridges.

I. City shall be solely responsible for the prompt repair and cost of any damage to the Bridge caused by vehicle crashes, vessel strikes, vandalism, or other acts or omissions by third-parties. City shall be solely responsible for collecting reimbursement for any and all damages from the entity/entities that caused such damage. In an emergency event, SCDOT may take such actions as may be required to protect the travelling public. SCDOT shall notify City of any emergency activities as soon as possible upon making the decision to conduct any emergency activities on the Bridge.

J. Except in emergency situations, all repair and rehabilitation work shall be subject to the prior approval of SCDOT. All repair and rehabilitation work shall be in accordance with SCDOT’s then current standard design and construction requirements and specifications. The work must be designed and approved by a professional engineer licensed in the State of South Carolina. Records of all repair and rehabilitation work shall be retained by City and shall be subject to inspection by SCDOT.

XVIII. LIGHTING

A. City and/or its agents shall only install lighting or illumination devices approved in advance by SCDOT. Such lighting shall not shine or direct any light upon the highway right-of-way in any direction in a manner that could cause distraction or impairment to travelers on the highway.
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B. SCDOT shall have the right to remove any unapproved, non-conforming, or improperly installed lighting or illumination devices placed on the Bridge or within the Area of Encroachment. Alternatively, SCDOT may direct City in writing to remove same. If City fails to comply with SCDOT’s request within 24 hours, SCDOT shall proceed with removal, which shall be done at City’s expense.

C. This section shall not apply to lighting requirements imposed by the USCG for hazard avoidance and navigation.

XIX. OUTDOOR ADVERTISING

City shall not erect, display, or allow or cause to be erected or displayed any outdoor advertising, including, but not limited to: signs, banners, bridge art, or devices of any kind on the Bridge or Area of Encroachment or within the US 17 right-of-way. To the extent that some portions of the Bridge are outside of SCDOT right-of-way, City must comply with state, federal, and local laws, rules, and regulations pertaining to outdoor advertising.

XX. CONDITION OF THE AREA OF ENCROACHMENT

City acknowledges that it has examined and is familiar with the condition of the Area of Encroachment, and that no representations as to the condition or repair of the Area of Encroachment have been made to City by SCDOT. SCDOT makes no warranties or representations as to the condition of the Area of Encroachment or the US 17 right-of-way or its fitness for City’s intended use. SCDOT shall not be liable to City for any claims or damage occasioned by reason of the condition of the Area of Encroachment during the term of this Agreement.

XXI. ENVIRONMENTAL

A. City will carry out its work or services in compliance with all applicable Federal, State, and local environmental laws and regulations, and shall monitor and oversee the Project for such compliance. This responsibility shall include:

1. The preparation of necessary permit applications required by any state and/or federal governmental agency to complete the Project. City will be responsible for all resource and regulatory agency coordination required to secure and obtain permits.

2. Compliance with those stipulations and conditions under which City and/or SCDOT receives approval of applicable environmental documents and permits.

3. Preparation and submittal of the Notice of Intent (NOI).

4. Compliance with all secured permits. City will be the sole permittee and City will be solely responsible for environmental compliance, any permit conditions, and environmental commitments. If SCDOT determines it necessary to inspect
the Project for compliance, through use of existing staff or the Compliance on-call, then City is responsible for reimbursement of inspection costs to SCDOT. City will be the sole party responsible for resolution of any enforcement actions as a result of non-compliance with permit conditions and requirements to the extent that City or its agents were responsible for such breach or action causing the enforcement action.

5. Complying with applicable laws and regulations relating to potential or actual hazardous materials that may be encountered in the course of implementing each Project.

6. Carrying out all social, economic, and environmental studies required by law.

7. Completing all necessary modifications to approved permits as required by law.

B. City recognizes that SCDOT and/or FHWA or other agencies may have final review and approval for the environmental documentation required under the implementing regulations of the National Environmental Policy Act of 1969, 23 C.F.R. §771, et seq. City will be responsible for the preparation of any necessary permit applications required by any governmental agency to complete the Project and will work with SCDOT in coordinating and negotiating with the agency to secure the permits. City and their consultant must coordinate with the SCDOT Environmental Permitting Division when submitting a USACE 404 Permit application. Additionally, all coordination with USACE and SCDHEC is to occur through SCDOT’s Environmental Permitting Division. All work performed must be in accordance with SCDOT’s Environmental Consultant Scope, latest edition, and any amendments thereto, if applicable. City will comply with any regulatory agency requirements, and be responsible for resolution of any enforcement actions that may arise as a result of non-compliance with regulatory agency requirements.

C. City must provide an assessment of potential jurisdictional impacts for the Project to SCDOT’s Environmental Mitigation Manager. City and/or their Consultant shall coordinate, throughout Project development, with SCDOT’s Environmental Office to develop a strategy that meets City’s needs and assists in streamlining permit acquisition. City is responsible for developing a conceptual mitigation plan (or plans) if the Project requires compensation for unavoidable impacts. This plan (or plans) is to be submitted to SCDOT’s Environmental Mitigation Manager for review prior to any submittal of a 404 permit to USACE.

D. All permit conditions set by the State and/or Federal regulatory agencies must be reviewed and approved by SCDOT for all roads in the state system.

E. City shall conduct public involvement meetings for the Project in accordance with NEPA regulations, if required. In addition, non-mandatory public meetings may be held to discuss Project issues if desired by City. City shall notify representatives from SCDOT in advance of all meetings and shall notify other representatives from state, federal, and resource agencies as required.
F. Project shall not be advanced to right-of-way acquisition or construction phases until final approval of environmental documentation is obtained.

G. City shall be solely responsible for the clean-up of any environmental contamination caused by its use of the Area of Encroachment, except that City shall not be responsible for environmental contamination, or the clean-up of such contamination, that existed prior to City’s occupancy and use of the Area of Encroachment.

XXII. PROTECTION OF SCDOT PROPERTY AND FACILITIES

During construction and for so long as the Bridge is located within the Area of Encroachment, City shall have the obligation to protect SCDOT property and facilities that may be impacted by City’s activities or use of the Bridge or Area of Encroachment, and City shall be responsible for the expense, coordination, and undertaking of measures necessary to repair and restore any damaged property to its prior condition as approved by SCDOT, including the purchase of new materials where restoration using existing materials is not feasible or consistent with applicable requirements.

City shall be responsible for any claims, penalties, or fines charged to SCDOT in the event the Bridge damages any SCDOT facility and impedes river traffic.

XXIII. RESPONSIBILITY FOR CLAIMS

A. Within the limitations of the South Carolina Tort Claims Act, City shall be responsible for any loss resulting from bodily injuries (including death) or damages to property arising out of any negligent act or negligent failure to act on City’s part, or the part of any employee of City in performance of the work undertaken pursuant to this Agreement.

B. Notwithstanding any provision of this Agreement to the contrary, SCDOT shall, within the limitations of the South Carolina Tort Claims Act, be responsible for any loss resulting from bodily injuries (including death) or damages to property arising out of any negligent act or negligent failure to act on SCDOT’s part, or the part of any employee of SCDOT in performance of the work undertaken pursuant to this Agreement.

XXIV. INSURANCE

A. City shall require all contractors constructing, maintaining, repairing, replacing, reconstructing, or removing the Bridge to comply with the insurance requirements in SCDOT’s Standard Specifications, then standard at the time of work.

B. City shall require all consultants performing work on or related to the Bridge to indemnify and hold harmless City and SCDOT from claims and
liability due to negligent acts of consultants in connection with the Bridge. Consultants shall meet, at a minimum, insurance requirements listed in Exhibit “B,” attached hereto and incorporated herein.

C. SCDOT shall be named as an additional insured on applicable policies, and shall be given the same rights and insurance coverage as normally granted to additional insureds. In the event that any insurer issues a reservation of rights for SCDOT as an additional insured, SCDOT shall be entitled to employ independent counsel, of its choice, at consultant’s expense.

XXV. TERMINATION

A. SCDOT shall have the right to terminate this Agreement in the event that the Area of Encroachment is necessary for SCDOT’s use of US 17 for its primary use as a highway, for future widening purposes, or for replacement of the existing US 17 bridges.

B. In the event SCDOT constructs a new bridge at this location that would necessitate the removal of the Bridge, such removal will be at SCDOT’s expense. Additionally, SCDOT will design any new structure to include pedestrian and bicycle accommodations.

C. SCDOT shall have the right to terminate this Agreement if City fails to construct the Bridge, or once constructed, ceases to use the Bridge for the purposes contemplated herein.

D. SCDOT shall have the right to terminate this Agreement if City fails to fulfill the material terms thereof, and such breach is not corrected or City has not commenced to correct within 30 days after written notice of non-compliance has been given to City by SCDOT. If City cannot reasonably complete the correction or cure of such breach within the 30-day cure period, City shall be entitled to such additional time as necessary (not to exceed six months unless SCDOT agrees to a longer period in writing) to complete the correction or cure of the breach, provided that City commences correction within the initial 30 day cure period and thereafter pursues completion of the correction with reasonable diligence.

XXVI. AGREEMENT SUBJECT TO OTHER RIGHTS

A. This Agreement is being made subject to any and all existing public utility rights of use, reservations, easements, rights-of-way, control-of-access, zoning ordinances, and restrictions or protective covenants that may appear of record or by an onsite examination of the Area of Encroachment.
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B. It is distinctly understood that this Agreement does not in any way grant or release any rights lawfully possessed by the property owners abutting US 17 or who may own the underlying fee simple interest if SCDOT has only an easement interest. It is City’s responsibility to secure any such rights, as may be necessary to construct the Bridge.

XXVII. GENERAL TERMS

A. This Agreement shall take effect upon its execution and shall terminate upon the earlier of: written notification for cause from one Party to the other, or satisfaction of all terms and conditions of this Agreement.

B. The Parties hereto agree to conform to all applicable SCDOT policies, all State, Federal, and local laws, rules, regulations, and ordinances governing agreements or contracts relative to the acquisition, design, construction, maintenance, and repair of roads and bridges, and other services covered under this Agreement.

C. The Parties, or their authorized agents, shall agree to hold consultations with each other as may be necessary with regard to the execution of supplements, modifications, or amendments to this Agreement during the course of the Project for the purpose of resolving any unforeseen issues that may arise or items that may have been unintentionally omitted from this Agreement. Such supplements, modifications, or amendments shall be subject to the approval and proper execution of the Parties hereto. No supplement, modification, or amendment to this Agreement shall be effective or binding on any Party hereto unless such supplement, modification, or amendment has been agreed to in writing by the Parties hereto.

D. Any and all reviews and approvals required of the Parties herein shall not be unreasonably denied, delayed, or withheld.

E. No waiver of any event of default by a Party hereunder shall be implied from any delay or omission by the other Party to take action on account of such event of default, and no express waiver shall affect any event of default other than the event of default specified in the waiver and it shall be operative only for the time and to the extent therein stated. Waivers of any covenants, terms, or conditions contained herein must be in writing and shall not be construed as a waiver of any subsequent or other breach of the same covenant, term, or condition. The consent or approval by a Party of any act by the other requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of a Party hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy.
F. In the event a dispute or claim in connection with this Agreement shall arise between the Parties, the Parties shall meet in good faith and attempt to resolve any issues prior to taking legal or equitable action. Any lawsuit arising out of or relating to this Agreement shall be filed for non-jury proceedings in Charleston County.

G. All notices and other correspondence will be officially delivered as follows:

As to SCDOT:
SCDOT District Six
Attn.: District Engineering Administrator
6355 Fain Street
North Charleston, South Carolina 29406

And

South Carolina Department of Transportation
Deputy Secretary for Engineering
Post Office Box 191
Columbia, South Carolina 29202

As to City:
City of Charleston
Legal Department
50 Broad Street
Charleston, South Carolina 29401

H. The Parties each bind themselves, their respective successors, executors, administrators, and assigns to the other Party with respect to the administrative requirements, and also agree that no Party shall assign, sublet, or transfer its respective interest in this Agreement without the written consent of the other.

I. This Agreement is made and entered into for the sole protection and benefit of SCDOT, City, and their respective successors and assigns. No other persons, firms, entities, or parties shall have any rights or standing to assert any rights under this Agreement in any manner.

J. Invalidation of any one or more of the provisions of this Agreement by a court of competent jurisdiction shall in no way affect any of the other provisions herein, all of which shall remain in full force and effect.

K. This Agreement may be executed and delivered in counterparts, and if so executed, shall become effective when a counterpart has been executed and delivered by all Parties hereto. All counterparts taken together shall constitute one and the same Agreement and shall be fully enforceable as
such. Delivery of counterparts via facsimile transmission or via email with scanned attachment shall be effective as if originals thereof were delivered.

L. By executing this Agreement, the undersigned each affirm and certify that he or she has the authority to bind his or her principal thereto and that all necessary acts have been taken to duly authorize this Agreement under applicable law.

M. This Agreement with attached Exhibits and Certifications constitutes the entire Agreement between the Parties. This Agreement is to be interpreted under the laws of the State of South Carolina. All obligations of the Parties, each to the other, relating to the subject matter of this Agreement, contained in any other document or Agreement or based on any other communication prior to the execution of this Agreement have been satisfied or are superseded by this Agreement. This Agreement constitutes the entire Agreement between the Parties relating to the subject matter hereof.

N. The Parties make no representations, covenants, warranties, or guarantees, express or implied, other than those expressly set forth herein. The Parties’ rights, liabilities, responsibilities, and remedies with respect to the services provided for in this Agreement shall be exclusively those expressly set forth in this Agreement.
EXHIBIT A
Additional Project Details
EXHIBIT B
INSURANCE REQUIREMENTS

Consultant shall, until this Agreement has been fully performed or until it has been terminated by SCDOT or City, take out and maintain as a normal business expense the following insurance policies:

1. Commercial General Liability (CGL) which shall include (Public Liability and Property Damage (PLPD) Insurance) and Completed Operations coverage,
2. Professional Errors and Omissions (E&O) Insurance,
3. Automobile Liability (Auto),
4. Worker's Compensation and Employer's Liability Insurance (Statutory Limits Required), and
5. Pollution Liability Insurance (for those consultants performing environmental services, drilling services, excavation services, or if the project involves the risk of environmental contamination) with coverage in the amount not less than customarily carried by any party in the performance of similar work and in such form and with such insurance carriers as are available to it and acceptable to SCDOT.

Consultant will secure and maintain such insurance as will protect it from:

1. Claims under worker's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees, and for claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom;
2. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;
3. Claims involving contractual liability insurance applicable to Consultant's obligations under the indemnity provisions of this contract;
4. Claims involving professional liability, to include errors, omissions, or negligent acts in the performance, by Consultant or by any entity for which Consultant is legally responsible, of professional services included in the work.
5. Claims involving information security risks, including without limitation: failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;
6. Claims involving privacy risks, including: failure to properly handle, manage, store, dispose of, destroy, or otherwise control non-public personally identifiable information in any format; loss of, unauthorized access to, or disclosure of confidential information; and any form of
invasion, infringement, or interference with rights of privacy, including breach of security/privacy laws or regulations;

Consultant shall purchase and maintain insurance from a company or companies that maintain an A.M. Best rating of not less than A-VII with coverage forms acceptable to SCDOT.

Certificates of Insurance acceptable to SCDOT will be provided to SCDOT prior to execution of this Agreement. These certificates shall:

1. list SCDOT and City as an additional insured under the CGL, PLPD, and Auto policies;
2. contain that the policies have a Per Project Endorsement;
3. reference the Project to which the certificate applies;
4. contain a provision that coverage afforded will not be canceled or reduced until at least 30 days prior written notice has been given to SCDOT and that the policies cannot be canceled for non-payment of premiums until at least 10 days prior written notice has been provided to SCDOT; and
5. show approved deductible amounts.

Consultant shall maintain continual additional insured status for SCDOT and City for the time period required to satisfy the statute of limitations for South Carolina. Send Notice of Cancellations to SCDOT’s Professional Services Contracting Office and City. Make certain that the policies are endorsed to reflect this requirement. Verification of additional insured status shall be furnished to SCDOT and City by including a copy of the endorsements with the Certificate of Insurance. CGL, PLPD, Pollution Liability, and Auto insurance shall apply as primary and noncontributory insurance with respect to any other insurance or self-insurance programs, including any deductibles afforded to or maintained by SCDOT and City. Consultant’s deductibles shall not exceed $250,000 without written consent of SCDOT and City, and certificates must show the deductible amounts. Consultant shall provide evidence of financial ability to cover the amount of this deductible at the time of execution of this Agreement and for every year thereafter until the insurance obligations set forth herein ends.

Consultant’s CGL, PLPD, Pollution Liability, and Auto insurance policies shall contain no provision providing that the limits available to an additional insured are less than the limits available to Consultant. SCDOT and City shall be given all the same rights and insurance coverage as normally granted to additional insureds. In the event that any Insurer issues a reservation of rights for SCDOT and City as an additional insured, SCDOT shall be entitled to employ independent counsel, of its choice, at Consultant’s expense.

There shall be no endorsements or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or work performed by Consultant.

Consultant shall waive its rights against SCDOT and City, other additional insured parties, and their respective agents, officers, directors, and employees for recovery of damages, or
any other claims, to the extent these damages are covered by the CGL, PLPD, Auto, and workers’ compensation policies maintained pursuant to this section of the Agreement.

After Final Invoice of the work, Consultant shall maintain E&O, CGL, Pollution Liability, and PLPD insurance coverage to include liability coverage for damage to insured’s completed work equivalent to that provided under ISO CG 00 01 for three years.

By execution of this Agreement, Consultant accepts the responsibility to provide the liability insurance policies and endorsements as specified herein. Failure of SCDOT or City to identify a deficiency in the Certificate of Insurance submitted by Consultant as evidence of the specified insurance or to request other evidence of full compliance with the liability insurance specified shall not be construed as a waiver by SCDOT or City of Consultant’s obligation to provide and maintain the required insurance for the duration of the contract.
Attachment A: Project Closure Checklist
Submitted by City of Charleston
(Enter Project Name)
(Enter Date of Submittal)

The following documentation has been provided to SCDOT, in a format acceptable to SCDOT:

County’s Initial

1) Copies of required environmental documents/permits
   a. Report showing NEPA/Permit Commitments complied with
   b. US Army Corps of Engineers Close-out report
   c. Notice of Termination for NPDES Permit

2) Design documents
   a) As described elsewhere in this Agreement
   b) Final Project plans suitable for delivery and recording pursuant to S.C. Code §57-5-570 (1991), and in accordance with SCDOT’s As-Built Construction Plans Supplemental Specification, latest version
   c) Electronic files of the Final Project plans as described in the SCDOT’s “Road Design Reference Material for Consultant Prepared Plans”

3) Right of way documents
   a) Appraisals
   b) Title search information
   c) Deeds sufficient to convey to the SCDCT the additional highway right of way acquired by the County. Titles shall be by special warranty and sufficient to convey the entire interest obtained by the County from the Landowner.
   d) Correspondence with property owners
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c) Diaries or agents worksheets related to the acquisition of right of way

d) All Utility Agreements and No Cost Letters with supporting documentation.

g) Summary sheet showing all payments made by the County against each Utility Agreement.

h) If applicable, all supporting information for cost increases to Utility Agreements.

4) Construction documents

a) As-built drawings – As detailed in the IGA

b) Test reports

c) Daily construction diaries

5) Other documents

a) Assignments to the SCDOT of all contractors’ payment and performance bonds in connection with the Project and a copy of the Surety’s Consent for final payment.

b) Releases, affidavits or other proof of payment to indicate full payment of all claims by contractors, their subcontractors or suppliers.

c) DBE closeout obtained from SCDOT Office of Business Development, if federally funded and the Project had a DBE goal.

This is to certify that results of the tests on job control samples indicate that the materials incorporated into the construction work and the construction operation controlled by sampling and testing are in reasonably close conformity with the approved plans and specifications, and such results compare favorably with the results of record sampling and testing. SCDOT concurrence was obtained in all instances in which materials did not conform to contract requirements.

DATED: ___________ City of Charleston

By: ____________________________

Its: _____________________________

DATED: ___________ South Carolina Department of Transportation

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