AMENDMENT TO PROJECT AGREEMENT

THIS AMENDMENT To Project Agreement No. 45-00856 is hereby made and agreed upon by the United States of America, acting through the Director of the National Park Service and by the State of South Carolina pursuant to the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964).

The State and the United States, in mutual consideration of the promises made herein and in the agreement of which this is an amendment, do promise as follows:

That the above mentioned agreement is amended by adding the following:

Partially convert DeRear Park, formerly known as Radcliffeborough Park, located on Morris Street in downtown Charleston, South Carolina, by removing LWCF protection from 0.954± acres, leaving 0.346± acres under LWCF protection. The remaining LWCF protected portion of DeRear Park will continue to be owned by the City of Charleston and will be renovated as a smaller neighborhood park to serve public outdoor recreation purposes.

The City of Charleston will mitigate this action by securing replacement site(s) within one year of approval of this amendment pursuant to the Land and Water Conservation Act conversion regulations at 36 C.F.R. 59.3.

The attached Programmatic Agreement will be in effect upon the approval of this amendment.

In all other respects the agreement of which this is an amendment, and the plans and specifications relevant thereto, shall remain in full force and effect. In witness thereof the parties hereto have executed this amendment as of the date entered below.

THE UNITED STATES OF AMERICA

By

Regional Director
Southeast Region

National Park Service
United States Department of the Interior

Date 7/20/2016

STATE

South Carolina

By

Phil Gaines

State Liaison Officer

Title

Paperwork Reduction Act Statement: This information collection is authorized by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.). Your response is required to obtain or retain a benefit. We use this information to document changes made to original grant agreement. We estimate that it will take 3 hours to complete this form, including the time necessary to review instructions, gather data and review the form.

You may send comments on the burden estimate or any aspect of this form to the Information Collection Clearance Officer; National Park Service, 1849 C Street, NW, (2601), Washington, DC 20240.

We may not collect or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.
WHEREAS, the National Park Service (NPS) administers the Land and Water Conservation Fund Act (LWCF) State and Local Assistance Program (Public Law 88-578, 78 Stat 897); and

WHEREAS, NPS is responsible for ensuring compliance with Section 106 of the National Historic Preservation Act (NHPA), (54 U.S.C. § 306108); and

WHEREAS, the Governor of South Carolina has delegated to South Carolina Department of Parks, Recreation, and Tourism (SCPRT) the responsibility of administering the Land and Water Conservation program in accordance with Section 6(t)(2) of the LWCF, and thereby serves as the NPS contractor for the purposes of complying with Section 106 of the NHPA per 36 C.F.R. § 800.2(a)(3), and is an invited signatory to this Programmatic Agreement (Agreement); and

WHEREAS, in 1991 and 1993, the NPS awarded grants 45-00856 and 45-00985 to the SCPRT to acquire property and to make outdoor recreation improvements at De Reef Park in the City of Charleston, South Carolina; and

WHEREAS, the SCPRT sub-awarded these grants to the local sponsor, the City of Charleston (CITY) for accomplishing LWCF program objectives, thus the CITY serves as the NPS sub-contractor for purposes of complying with Section 106 of the NHPA per C.F.R. § 800.2(a)(3), and is an invited signatory to this Agreement; and

WHEREAS, Section 6(f)(3) of the LWCF requires outdoor recreation sites that have received funding through LWCF to be managed for public outdoor recreation use in perpetuity; and

WHEREAS, a conversion of the original contractual grant agreements to change parcel(s) subject to LWCF requirements can only occur if NPS agrees the new sites are eligible under program requirements (reasonably equivalent usefulness, equal fair market value, and in accord with the Statewide Comprehensive Outdoor Recreation Plan (SCORP), as further explained in 36 C.F.R. Part 59; and

WHEREAS, the CITY, after notice and public hearings required by State and local law, approved a private development project of DeReef Park, in January 2008; and

WHEREAS, NPS has determined the private development project did not meet NPS' definition of public outdoor recreation, and therefore, requires a conversion in accordance with Section 6(f)(3) and 36 C.F.R Part 59.3; and
WHEREAS, the private development project ultimately required the relocation of the “Sons and Daughters of Joseph No. 9 Mission” chapel or praise house to a new location within the Park; and

WHEREAS, in 2008, the SCPRT, on behalf of the CITY, received approval from NPS for the conversion of DeReef Park including a replacement park; and

WHEREAS, in 2014, due to a lawsuit contesting the approval of the conversion of DeReef Park, the United States District Court granted NPS’ motion for a voluntary remand for the reconsideration of its 2008 approval of the conversion in order to initiate a new evaluation of the National Environmental Policy Act and the NHPA; and

WHEREAS, the SCPRT, on behalf of the CITY, has been advised to submit to NPS a new partial conversion proposal with delayed replacement for review and approval; and

WHEREAS, for the approval of the partial conversion of DeReef Park, the CITY is being required to secure other replacement property that meets the requirements of Section 6(f)(3) and 36 C.F.R Part 59.3(b)(9)(c) within one year of the date of NPS approval of the partial conversion; and

WHEREAS, the selection of replacement property is the responsibility of the SCPRT in conjunction with the CITY, who may propose any site(s), including those already in public outdoor recreation, but which have been used for such purpose only after January 17, 2008 to the present; and

WHEREAS, NPS, in regards to the replacement property, will consider any potential effects to properties eligible for, or listed in, the National Register of Historic Places (NHRP) as of the date of approval of the partial conversion, including any additional development that NPS might require to satisfy equivalent recreation utility associated with this conversion (See Stipulation IV). Should adverse effects result from any additional development on a replacement property required by NPS in order for it to be eligible as replacement, NPS will comply with the requirements of Section 106, if the adverse effects cannot be avoided; and

WHEREAS, the approval of a partial conversion constitutes an undertaking as defined in 36 C.F.R. §800.16(y), and thus is subject to review under Section 106 of the NHPA. (54 U.S.C. § 306108); and

WHEREAS, NPS identified the South Carolina State Historic Preservation Office (SHPO), the Catawba Indian Nation, the Preservation Society of Charleston, Cannonborough-Elliotborough Neighborhood Association (CENA), the Friends of DeReef Park, the Gathering at Morris Square LLC, the CITY, and SCPRT as consulting parties to be involved in the Section 106 process (36 C.F.R. 800.2(c)); and

WHEREAS, the Catawba Indian Nation was invited to participate in Section 106 consultation, but declined; and

WHEREAS, the area of potential effect (APE) for this undertaking includes all portions of DeReef Park subject to Section 6(f)(3) requirements and, at the request of the Advisory Council on Historic Preservation (ACHP), the geographic area immediately surrounding DeReef Park bounded by Morris, Jasper, Cannon and Felix Streets (as generally depicted on Appendix A); and

WHEREAS, NPS held a Section 106 consultation meeting in Charleston, South Carolina on April 27, 2015; and
WHEREAS, NPS identified the expansion of the Charleston Old and Historic District, eligible for listing in the NRHP, as a historic property within the APE; and

WHEREAS, NPS identified the praise house as a contributing resource to the expansion of the eligible Charleston Old and Historic District in the APE; and

WHEREAS, in addition to the SHPO, the SCPRT and the CITY, NPS has consulted with, the Preservation Society of Charleston, CENA, the Friends of DeReef Park, and the Gathering at Morris Square LLC, regarding the effects of the undertaking on historic properties, and has invited them to be concurring parties to this Agreement but without the authority to amend, enforce or terminate this Agreement pursuant to 36 C.F.R. § 800.6(c)(3); and

WHEREAS, NPS has determined that the previous relocation of the praise house is an adverse effect on historic properties; and

WHEREAS, NPS has notified the ACHP of the finding of adverse effect pursuant to 36 C.F.R. § 800.6(a)(1), and the ACHP determined that its participation in the Section 106 consultation is warranted; and

WHEREAS, NPS held a second Section 106 consultation meeting in Charleston, South Carolina on October 26, 2015, to resolve adverse effects; and

WHEREAS, the consulting parties developed this Programmatic Agreement pursuant to Section 106 of the NHPA, and 36 C.F.R. 800.14(b)(3); and

WHEREAS, NPS, SHPO, and ACHP, are signatory parties with authority to execute, amend or terminate this Programmatic Agreement pursuant to 36 C.F.R. § 800.6(c)(1), and SCPRT and CITY are the invited signatory parties pursuant to 36 C.F.R. § 800.6(c)(2) who have the authority to amend and terminate this Programmatic Agreement.

NOW, THEREFORE, NPS, ACHP, SHPO, SCPRT and the CITY agree that the undertaking shall be carried out in accordance with the following Stipulations in order to take into account the effect of the undertaking on historic properties, and that these Stipulations will govern the undertaking and all of its parts until this Agreement expires or is terminated.

STIPULATIONS

NPS, in coordination with the SCPRT and the CITY, shall ensure that the following measures are carried out:

I. PROFESSIONAL QUALIFICATIONS STANDARDS

The CITY will fund and ensure that all work carried out pursuant to this Agreement shall be done by or under the direct supervision of historic preservation professionals who meet the Secretary of the Interior’s Professional Qualifications Standards. The CITY will ensure that consultants retained for services pursuant to the Agreement meet these standards.

II. REHABILITATION OF THE PRAISE HOUSE
The CITY will complete the rehabilitation of the praise house in accordance with the plans dated September 1996, by George D. Dowis, AIA that have been updated to conform to current building code requirements, attached hereto as Appendix B. The rehabilitation shall not require the praise house to be relocated to its original location. The CITY will complete the rehabilitation within one year of the date of NPS approval of the partial conversion, unless otherwise agreed by NPS and the SHPO.

III. RESEARCH, SURVEY, AND INTERPRETATION MEASURES

a. The CITY will conduct background research and an architectural field survey of properties adjacent to DeReef Park and within the APE in order to establish an historic context and evaluate properties eligibility for listing in the NHRP (36 C.F.R. Part 60). Survey documentation will meet or exceed the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation and the SHPO's Survey Manual: Statewide Survey of Historic Properties. The CITY will complete the survey and provide draft documentation in an electronic format to the SHPO and NPS within one year of the execution of this Agreement. The SHPO and NPS will have thirty days to provide review and comment. If the SHPO and NPS does not comment within the 30-day review period, the City will presume the SHPO and NPS concur. If comments are received, the CITY will provide final survey documentation to the SHPO and NPS within three months of the date of receipt of the SHPO's and NPS's comments. The survey report's research and historic context should seek to assist in the development of content (historic themes, persons, events, images, oral history interviews, etc.) for the waysides, as hereafter described.

b. The CITY will coordinate two public meetings for acquiring oral histories of resident and community member experiences related to the Cannonborough-Elliotborough/Radcliffeborough neighborhood, including DeReef Park, within six months of the execution of this Agreement. In addition to general notice to the public, specific notice will be given to residents adjacent to DeReef Park and to local institutions including the Avery Research Center at the College of Charleston, churches, and organizations who may have conducted oral histories or have local knowledge of DeReef Park and surrounding area. The NPS will assist the CITY in organizing and directing the meetings. At the meetings, in addition to presenting oral histories, attendees may share information by providing photographs, letters, or other documents related to the history of the neighborhood. The CITY will issue a report describing the oral histories and other information gathered at the meetings within three months of the second public meeting. The report will be available to the public and will be considered in the development of the content for the wayside(s).

c. An interpretive wayside or waysides will be erected at DeReef Park at an exterior site that is visible from Morris Street and/or DeReef Court. The wayside(s) will recognize persons or events associated with DeReef Park and convey the history of DeReef Park, the Praise House, and the neighborhood. The CITY will provide a draft design of the interpretative wayside(s) that includes proposed text, images and any additional design elements for the exhibit to the SHPO and NPS within twenty months of the date of
execution of this Agreement. The SHPO and the NPS will have thirty days to provide review and comment. If the SHPO and the NPS do not comment within the 30-day review period, the CITY will presume the SHPO and NPS concur. If comments are received, the CITY will provide a final draft of the wayside(s) exhibit within two months of the date of receipt of the SHPO or NPS’s comments, whichever is later. The CITY will install the wayside(s) exhibit no later than thirty months of the date of execution of this Agreement.

d. Information documented per Stipulation IIIa. and b. will be posted to the CITY’s website.

e. NPS will notify concurring parties when documents are shared with SHPO and NPS and will allow concurring parties to review and comment within NPS’s 30-day review and comment period. NPS will consolidate all comments and provide to the CITY.

IV. REPLACEMENT PROPERTY

The identified replacement property will include consultation between the NPS, SHPO, SCPRT and the CITY for compliance with Section 106 of NHPA (54 U.S.C. 306108) and its implementing regulations (36 C.F.R. Part 800).

V. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties occur as a result of the activities covered under the terms of this Agreement, the NPS shall require the SCPRT and the CITY to implement the unanticipated discovery plan appended to this Agreement (Appendix C). In the event that historic properties are identified, and/or unanticipated effects to historic properties are found, NPS will follow the provisions outlined in 36 C.F.R. § 800.13.

VI. MONITORING AND REPORTING

Each year following the execution of this Agreement, and until it expires or is terminated, the CITY shall provide a summary report to SCPRT detailing the progress of each Stipulation in this Agreement, and the proposed timeline for completion of each Stipulation. The report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections in efforts to carry out the terms of this Agreement. The report will be due on the one year anniversary of the effective date of this Agreement. SCPRT shall provide all signatories including concurring parties to this Agreement a copy of the summary report within 30 calendar days of receipt from the CITY.

VII. DISPUTE RESOLUTION

Signatories to this Agreement with rights of enforcement, amendment and termination are the NPS, ACHP, SCPRT, SHPO and the CITY (the “Signatory” or “Signatories”).

Should any Signatory object in writing to SCPRT at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, SCPRT shall initiate consultation within 10 days.
with such party to resolve the objection. The SCPRT will inform NPS of any objections. If SCPRT determines that such objection cannot be resolved, SCPRT will:

a. Contact NPS who will forward all documentation relevant to the dispute, including the SCPRT's proposed resolution, to the ACHP and the SHPO. The ACHP and the SHPO shall provide NPS with its advice on the resolution of the objection within thirty days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NPS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the SHPO, or Signatory parties, and provide that response to Signatories and concurring parties. NPS will then proceed according to its final decision.

b. If the ACHP and the SHPO does not provide advice regarding the dispute within the thirty day time period, NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, NPS shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatory's objection and SCPRT's proposed resolution provide that response to Signatories and concurring parties. NPS will then proceed according to its final decision.

c. Should the CITY determine that it does not have sufficient funds to cover such costs, the CITY shall notify the SCPRT in writing, and the SCPRT will follow the dispute resolution process identified in Section VII to determine how to address the predicted shortfall.

d. NPS' responsibilities to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

VIII. AMENDMENT AND TERMINATION

a. This Agreement may be amended only by a written instrument executed by the Signatories. The Signatory proposing the amendment must consult with the other Signatories to the Agreement for at least 30 days after the amendment is proposed. If all Signatories agree to the terms of the amendment, NPS shall prepare the amendment and circulate it for signature by the Signatories. The amendment will be effective on the date it is signed by all of the Signatories, including the ACHP.

b. If any Signatory to this Agreement determines that the terms of this Agreement will not, or cannot, be carried out, that Signatory shall immediately consult with the other Signatories by written instrument to attempt to develop an amendment. If, within sixty calendar days an agreement to amend this Agreement cannot be reached by the Signatories, any Signatory may request to terminate the Agreement upon written concurrence of all other Signatories.

c. Once the Agreement is terminated, and prior to work continuing on the undertaking, NPS must either (a) execute a new Agreement pursuant to 36 C.F.R. § 800.6; or (b) if ACHP has provided advice per Stipulation VII: Dispute Resolution, request, take into account,
and respond to the comments of the ACHP under 36 C.F.R. § 800.7. NPS shall notify the Signatories regarding the course of action it will pursue.

IX. EFFECTIVE DATE AND DURATION

a. This Agreement becomes effective upon approval by NPS of the partial conversion per Section 6(f)(3) of the LWCF Act. All parties (Signatories and concurring) will be notified in writing by NPS within five (5) business days of the effective date. NPS shall determine when the terms of the Agreement have been fulfilled.

b. If the SCPRT and/or the CITY fails to complete all of the terms in this Agreement within five years from the effective date, NPS will determine whether additional time will be allowed, or whether an amendment of the Agreement will be permitted pursuant to Stipulation VIII of this Agreement.

c. At any time during the term of this Agreement, NPS may consult with the Signatories to reconsider the terms of the Agreement and amend it as per Stipulation VIII. All consulting parties must be notified that NPS is consulting to reconsider the terms of the PA or to amend a Stipulation.

X. EXECUTION

Execution of this Agreement by the NPS, the ACHP, SHPO, SCPRT, and the CITY, and implementation of its terms evidence that NPS has considered the effects of this undertaking on historic properties.

XI. SPECIAL PROVISIONS

a. Nothing in this Agreement shall be interpreted or construed as a commitment or requirement that the NPS obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law or regulation.

b. Except as expressly provided herein, nothing in this Agreement shall be construed to limit or modify the NPS’ discretion under any applicable laws or regulations.

c. The signatures below on this Agreement express the entire agreement among the parties. The parties acknowledge and agree that they have read and understand this entire Agreement including, but not limited to, any Exhibits attached hereto and incorporated herein by reference.

d. It is further mutually agreed that no Member of or Delegate to Congress, shall be admitted to any share or part of this Agreement, or to any benefit to arise thereupon.

e. Nothing herein shall be construed or interpreted to create any rights to concurring parties concerning the amendment, enforcement, construction or termination of this Agreement.
SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
AMONG
THE NATIONAL PARK SERVICE
AND THE
SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM
THE CITY OF CHARLESTON, SOUTH CAROLINA
OTHER CONSULTING PARTIES
REGARDING
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
FOR THE CONVERSION OF A PORTION OF DEREEF PARK

National Park Service

By: [Signature]
Stan Austin, Regional Director

Date: 07/01/10
SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
AMONG
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AND THE
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REGARDING
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FOR THE CONVERSION OF A PORTION OF DEREEF PARK

South Carolina State Historic Preservation Officer

By: [Signature]

Dr. W. Eric Emerson,
South Carolina State Historic Preservation Officer

Date: 5-26-16
SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
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Advisory Council on Historic Preservation

By: John Fowler, Executive Director

Date: 5/27/16
SIGNATORY PAGE

PROGRAMMATIC AGREEMENT AMONG
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South Carolina Department of Parks, Recreation and Tourism (Invited Signatory)

By: Phil Gaines, State Park Service
State Liaison Officer

Date: 5/31/16
SIGNATORY PAGE

PROGRAMMATIC AGREEMENT

AMONG

THE NATIONAL PARK SERVICE

AND THE

SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM

THE CITY OF CHARLESTON, SOUTH CAROLINA

OTHER CONSULTING PARTIES

REGARDING

SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

FOR THE CONVERSION OF A PORTION OF DEREEF PARK

The City of Charleston, South Carolina (Invited Signatory)

By: [Signature]

John J. Tecklenburg, Mayor

Date: May 25, 2016
SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
AMONG
THE NATIONAL PARK SERVICE
AND THE
SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM
THE CITY OF CHARLESTON, SOUTH CAROLINA
OTHER CONSULTING PARTIES
REGARDING
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
FOR THE CONVERSION OF A PORTION OF DEREEF PARK

Friends of DeReef Park (Concurring Party)

By: ____________________________
Heather Templeton, Co-Chairman

Date: ____________________________

Opted Not to Sign
SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
AMONG
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OTHER CONSULTING PARTIES
REGARDING
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
FOR THE CONVERSION OF A PORTION OF DEREEF PARK

Cannonborough-Elliotborough Neighborhood Association (Concurring Party)

By: 

Cator Sparks, President

Date: 

Opted Not to Sign
PROGRAMMATIC AGREEMENT
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OTHER CONSULTING PARTIES
REGARDING
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT
FOR THE CONVERSION OF A PORTION OF DEREFF PARK

Gathering at Morris Square, LLC (Concurring Party)

By: 

Chris Phillips, Jr., Member

Date: 
APPENDIX C
POST REVIEW UNANTICIPATED DISCOVERY PLAN

1. The CITY shall ensure an unanticipated discovery plan is in place for development and construction of the replacement park, the rehabilitation of the Praise House, and other work associated with the DeReef Partial Conversion Project. In the event that unanticipated effects occur on historic properties, or new historic properties are discovered during the implementation of project activities, work in the location of discovery and in the immediate vicinity must stop immediately; the area must be secured; and the following parties must be notified:
   a. SCPRT
   b. NPS
   c. SHPO, and
   d. Cultural resources staff and cultural committees from the Catawba Nation, in the event that a discovery appears to be related to tribal interests or of pre-contact origin.

   The CITY shall ensure that any unanticipated archaeological discovery is evaluated by a professional archaeologist (per RCW 27.53.030[11]). If the unanticipated discovery is determined by NPS, in consultation with SHPO, to be eligible for the National Register of Historic Places, NPS shall consult per provisions of 36 C.F.R. § 800.13.

2. If human remains are discovered during the project activities at the REPLACEMENT SITE, work in the location of the discovery and immediate vicinity must stop instantly, the area must be secured, and notifications provided according to S.C. Code Ann. § 27-43-10, et seq (Cum. Supp. 2014).

   If human remains are determined to be non-forensic, the CITY shall notify SCPRT and NPS. NPS and SCPRT will consult with the signatories to the Agreement per provisions of 36 C.F.R. § 800.13 to determine the appropriate treatment required under the terms of this Agreement, or other actions required per state law.