

LEASE AGREEMENT

between

The City of Beaufort, South Carolina, a municipal corporation, and
SHM Beaufort LLC, a Delaware limited liability company

THIS LEASE AGREEMENT ("Lease") made and entered into this 25th day of June _____ 2019, by and between the City of Beaufort, South Carolina, municipal corporation ("City") whose post office address is 1911 Boundary Street, Beaufort, South Carolina 29902, and SHM Beaufort LLC, a Delaware limited liability company qualified to transact business in South Carolina, whose address is 14785 Preston Rd #975, Dallas, TX 75254, ("Lessee") (collectively "Parties").

WITNESSETH:

NOW THEREFORE, in consideration of one dollar and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and the promises and covenants contained herein, including the exhibits, the Parties agree as follows:

1. **PREMISES.** The City hereby leases to Lessee and Lessee leases from City the property which shall include the municipally owned docks, including the dock commonly identified as the "Dinghy Dock", the mooring field, the Marina store, boater restrooms and laundry facilities, pump-out boat, and the pump-out station as illustrated in Exhibit A and legally described in Exhibit B ("Premises"; also being referred to herein as the "Marina"), which are attached hereto and made a part by reference. In the event of any discrepancy between a legal description and a graphic depiction of the Premises, the legal description shall control.

The City represents and warrants to Lessee that: (i) The City has full right and lawful authority to enter into and perform the City's obligations under this Lease for the Term of this Lease; (ii) the City has good and marketable fee simple title to the Premises; (iii) the City has not suffered, incurred or entered into any contracts, leases, tenancies, agreements, restrictions, violations, encumbrances or defects in title of any nature whatsoever which materially adversely affect the City's right, title and interest in the Premises or the fulfillment of its obligations under this Lease; (iv) Lessee's rights under this Lease shall not be subject or subordinate to any mortgage, lien, or other security interest except for such subordination as may be accomplished in accordance Lessee's approval; and (v) if Lessee fully discharges the obligations herein set forth to be performed by Lessee, Lessee shall have and enjoy, during the Term of this Lease, the quiet and undisturbed possession of the Leased Premises together with the right to use the Common Facilities, if any, as in this Lease contemplated, free from interference by the City or any party claiming by, the City or any party claiming by, through or under the City.

The City and Lessee acknowledge that located within the Premises is that certain dock identified at Exhibit A-1 which is available to boaters as a courtesy dock where boaters dock their vessel for short periods of time when visiting businesses in downtown Beaufort (the "Day Dock"). Although the Day Dock is located within the Premises, the City shall be solely responsible for managing and supervising

the use and operation of the Day Dock. Operation of the Day Dock is currently subject to requirements and restrictions set forth in those BIG Subrecipient Agreements attached hereto as Exhibit C (the "Grant Standards"). At such time the Day Dock is no longer subject to be operated in accordance with the Grant Standards, Lessee shall automatically be granted the right to manage and supervise the use and operation of the Day Dock and shall thereafter manage and supervise the Day Dock until the expiration or earlier termination of this Lease.

2. USE OF PREMISES; LICENSES; USER FEE SCHEDULE.

A. Lessee shall use and occupy the Premises for the primary purposes of operating a marina for public use and ancillary functions normally associated with the operation of a marina and for no other use or purpose ("Intended Use"); Lessee shall use and occupy the Premises in accordance with the requirements set forth in the Grant Standards.

B. All areas of the Premises, including but not limited to boat slips and moorings, shall not be occupied by third parties unless there is a signed license agreement.

C. Lessee shall use best efforts to maximize income from the Premises. Lessee shall have the exclusive right to any revenue generated from any use of the Premises, including any special events occurring on the Premises or uses of the Premises initiated by the City.

3. AGREEMENTS FOR USE OF MARINA FACILITIES. All agreements for use of Marina facilities shall be in the form of a License or use agreement ("License(s)") and shall comply with the following:

A. Except in regard to Commercial Licenses (as defined herein), Licenses shall be for a period of no longer than twelve consecutive (12) months and shall not contain any provisions that would allow for the automatic renewal, roll-over, or extension of the term of the License. Lessee shall not collect rent for more than the License period.

B. The City shall have no liability to any licensee or user for any user fees or rights extended to any licensee or user of the Premises (the "Licensee") beyond the date of termination of this Lease. Lessee shall inform any person paying in advance of the provisions of this section in writing.

1) All Licenses shall contain a provision:

- (a) disclosing the City as owner of the Premises;
- (b) providing that in the event this Lease is terminated for any reason that the licensee shall attorn to and make payments to the City in accordance with the then current fee schedule, with no credit for pre-paid user fees or monies to Lessee;
- (c) providing that the License does not transfer any real property interest to the Licensee;
- (d) providing that said License is not transferable;

- (e) providing a 150-day termination clause by Lessee; and
- (f) providing that said License is between Lessee and Licensee only and all disputes must be resolved between Lessee and Licensee.

2) Upon request by the City, Lessee shall provide a report to the City on the Commencement Date containing a complete listing of all Licensees on the Premises and any parties on waiting lists, including, but not limited to, identifying whether the party is a permanent resident of the City of Beaufort.

3) On the twentieth (20th) day of each month thereafter (or on the first business day thereafter if the twentieth (20th) day is not a business day), Lessee shall provide the City with a monthly report of all activities, including revenues received.

4) All slips shall be made available to all interested and financially capable parties on a first come, first served basis.

C. Any prepaid rents and deposits shall be prorated as of the expiration or earlier termination of this Lease.

D. Licenses shall not be tied to or conditioned upon the purchase, ownership or occupancy of any condominium or other property.

E. Lessee shall have the right to enter into leases, licenses or use agreements for terms that are longer than twelve (12) months with third party commercial entities whose business operations reasonably require longer term leases, licenses, or use agreements (i.e. tour boat operators; boat rental companies; etc.) (the "Commercial Leases") without consent of the City.

4. EFFECTIVE DATE. The effective date of this Lease shall be when the last one of the Parties has signed this Lease ("Effective Date").

5. TERM; COMMENCEMENT DATE; EXPIRATION DATE. The term of this Lease ("Term") shall be for ten (10) years, commencing on the 1st day of July 2019 ("Commencement Date") and ending at midnight on the 30th day of June 2029 ("Expiration Date") unless earlier terminated in accordance with this Lease.

The Term will be separated into three Phases:

- A. Phase 1 – Three (3) year planning and development phase beginning July 1, 2019 and ending June 30, 2022. For clarity, to the extent that Lessee receives all required approvals to commence any development projects at the Premises during Phase 1, Lessee shall have the right to commence any such development work during Phase 1, without effect on the length of the term of Phase 1 or Phase 2.

Lessee takes over full responsibility of the management, maintenance, and operations of the Marina and will coordinate a transition plan with the current Marina operator that ensures an orderly transfer of management.

- B. Phase 2 – Seven (7) year operational and expansion phase beginning July 1, 2022 and ending June 30, 2029.

All investment for anything that is considered in the water will be fully funded by Lessee and all maintenance of docks shall be the responsibility of Lessee. The City will assist with grant applications and will waive any City permitting fees. The City, at its sole cost and expense, except as set forth in Paragraph 12 herein, will maintain and repair/replace in good operating condition (i) the exterior, roof, structural components, operating systems, heating and air conditioning systems, and utilities of all “Upland Buildings”, which shall include (a) the building in which the Marina Store and Marina office are located (the “Marina Store Building”) and (b) the building in which the member restroom facility, member laundry facility, and public restroom facility are located (the “Facilities Building”); (ii) the underground fuel tanks and systems (the “Fuel Tanks and Systems”); and (iii) any parking facilities, boat ramp, bulkhead, seawall, and any related pedestrian walkways located on such bulkhead and seawall. For clarity, the City will be fully responsible to maintain the Fuel Tanks and Systems in good operating condition and will be responsible for the replacement of same due to wear and tear or growth and replacement needs and shall be solely liable for any environmental conditions arising from the maintenance or replacement of the Fuel Tanks and Systems. Subject to the City’s obligations set forth herein, Lessee shall maintain the interiors of the Marina Store Building and Facilities Building in good operating condition at Lessee’s sole cost and expense.

- C. Phase 3 – Provided Lessee is not in default under this Lease beyond any applicable cure or grace period, and provided Lessee has expended requisite funds in capital expenditures at the Premises, as more specifically set forth herein, Lessee shall have the right to extend the Term of this Lease for three (3) successive periods of ten (10) years each (the “Option Periods”) from the date upon which the Term would otherwise expire upon the same terms and conditions as those herein specified. In order to exercise Lessee’s options to extend the Term, Lessee shall provide the City reasonable evidence of Lessee’s expenditure of funds for capital expenditures at the Premises (“Capital Expenditure Satisfaction”) as follows: (i) prior to exercising Lessee’s first renewal right to extend the term for the first Option Period of ten (10) years, Lessee shall have expended at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) in the aggregate for capital expenditures at the Premises at any time during the first ten (10) years of the Lease term; (ii) prior to exercising Lessee’s second renewal right to extend the term for a second Option Period of ten (10) years, Lessee shall have expended at least ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) in the

aggregate for capital expenditures at the Premises at any time during the first Option Period of ten (10) years; and (iii) prior to exercising Lessee's third renewal right to extend the term for a third Option Period of ten (10) years, Lessee shall have expended at least ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) in the aggregate for capital expenditures at the Premises at any time during the second Option Period of ten (10) years.

If Lessee elects to exercise its option for any Option Period, it shall do so by giving the City written notice of such election and evidence of the Capital Expenditure Satisfaction at least six (6) months before the beginning of the Option Period for which the Term of this Lease is to be extended by the exercise of such option. If Lessee gives such notice and evidence of Capital Expenditure Satisfaction, the Term of this Lease shall be automatically extended for the Option Period covered by the option so exercised without execution of an extension or renewal lease. Failure to extend the Lease for any Option Period shall constitute waiver of any subsequent Option Periods.

It is the intention of the City and Lessee to avoid forfeiture of Lessee's right to extend the term of this Lease under any of the extension options set forth in Paragraph 5(c) through failure to give notice of exercise thereof within the time prescribed. Accordingly, if Lessee shall fail to give notice of exercise of any such option within the time prescribed in Paragraph 5(c), then the time to give such notice shall be deemed extended for an additional period commencing on the last day on which such notice by Lessee may be timely given pursuant to Paragraph 5(c) and ending 30 days after the date the City gives Lessee notice of Lessee's failure to exercise such option within the time prescribed. If Lessee exercises any such option after the date prescribed in Paragraph 5(c), but within the extended time permitted above, the extended term to which such option relates shall commence, or shall be deemed to have commenced, at the time it would have commenced if such notice had been given within the time prescribed in Paragraph 5(c) above. The foregoing provisions of this Paragraph 5 shall be inoperative, and the time period for Lessee's exercise of each of its options to renew hereunder shall expire as of that date which is six (6) months prior to the expiration of the then-current term of this Lease if the City shall give Lessee notice of Lessee's right to renew this Lease not earlier than 12 months, and not later than seven (7) months, prior to the expiration of the then-current term of this Lease.

At such time that Lessee has exercised all of its rights to extend the Lease and has no further Option Periods available, if Lessee is not then in default under this Lease beyond any applicable cure or grace period, upon request of Lessee, the City shall negotiate in good faith with Lessee in regard to potential extensions and renewal of the Term beyond the Option Periods.

6. RENT. Lessee shall pay to the City the following (collectively, "Rent"):

A. **Percentage Rent.** Lessee shall pay to the City as rent a sum equivalent to fifteen percent (15%) of the gross dockage rental revenue per month derived from the operation of the Premises during the Term ("**Percentage Rent**").

B. **Additional Rent.** Any fees or other charges payable hereunder shall be paid to City as additional rent ("**Additional Rent**"). During the entirety of the term of the Lease, Lessee shall pay to the City as Additional Rent (i) Twenty Cents (\$00.20) per each gallon of fuel sales at the Marina; and seven and one-half percent (7.5%) of the Gross Profits of retail sales at the Marina Store (excluding fuel sales). "Gross Profits" shall mean total revenue from retail sales less only the actual acquisition cost to Lessee of retail products and shall not include any reduction in profit calculation resulting from any additional costs or expenses incurred by Lessee, such as operating or labor expenses.

C. **Timely Payment.** All payments of Rent shall be made monthly by Lessee to the City before the twentieth (20th) day of each month in regard to revenue received during the preceding calendar month. Any other payments due from Lessee to the City under the terms of this Lease shall be paid promptly when due to the City. Any payments of Rent made and accepted after the twentieth (20th) day of the month in which it is due shall be considered delinquent and shall include a late fee equal to five percent (5%) of the delinquent amount ("**Late Fee**"). All delinquent amounts shall be subject to interest charges as set forth in this Lease.

D. **Payment of Rent.** All payment of Rent shall be made without notice, demand, set off or counter claim and shall be paid by check in U.S. Funds to the following address:

City of Beaufort
Office of the City Manager
1911 Boundary Street
Beaufort, SC 29902

E. **City Audit.** City shall have the right to audit the books and records of Lessee relating to Rent and other performance requirements of this Lease, and Lessee, on request of City, shall make all such books and records available for examination at the Premises. If City should have an audit made for any year and the Rent shall be found to be understated by more than ten percent (10%) or contains any willful inaccuracies, then, in addition to immediately paying City the full amount of the understated Rent, Lessee shall pay to City the cost of the audit. City shall have the right to terminate this Lease thirty (30) days after notice to Lessee if there should be more than three (3) audits during the Term which reveal understatements of Rent by Lessee of more than ten percent (10%) each.

7. **COMMENCEMENT OF RENT.** Lessee's obligation to pay Rent shall commence on the Commencement Date.

8. **INTEREST ON DELINQUENT AMOUNTS.** Interest at the rate of one- and one-half percent (1.5%) per month of the unpaid balance shall be charged on all delinquent amounts due the City. In no event, however, shall the amount of interest due or payments in the nature of interest payable hereunder

exceed the maximum contract rate of interest allowed by applicable law, as amended from time to time. In the event any such payment of overcharged interest is paid by the undersigned or received by the City, then upon discovery of such overcharge, the City shall immediately notify Lessee of such overcharge and shall apply such overcharge to Rent due hereunder.

9. UTILITIES. Lessee shall pay all costs (including but not limited to installation, meters, deposits, and usage) for utilities, including but not limited to, electricity, telephone, internet service, water, gas, cable/satellite television/communication, sewerage, garbage and trash collection, reclaimed water if any, associated with its use of the Premises.

10. FEES AND TAXES. Lessee shall pay all fees and taxes, if any, levied on the Premises or its use, and its improvements and deliver to the City the appropriate receipts which demonstrate payment thereof. It is understood that this shall include, but not be limited to, real and tangible property tax, sales tax, income tax and storm water fees.

11. CONDITION OF PREMISES. The City has made no representations, statements, or warranties, either expressed or implied, as to the condition of the Premises, or as to its fitness for a particular use. The City and its respective agents and employees shall not be responsible or liable at any time for (a) any defects, latent or otherwise, in the Premises, or (b) for any loss of life, or injury or damage to any person or to any property or business of Lessee or those claiming by, through or under Lessee, caused by, or resulting from, the bursting, breaking, leaking, running, seeping, overflowing or backing up of water, steam, gas, sewage, snow or ice in any part of the Premises or caused by or resulting from, acts of God or the elements, or resulting from any defect or negligence in the occupancy, construction, operation or use of any improvements to the Premises.

12. CITY'S MAINTENANCE AND DUTIES. The City shall not be responsible for any maintenance obligations for the Premises except for the upland portion of the Marina as outlined in this Agreement. The City shall cooperate with Lessee in the performance of its duties under this agreement and to that end, the City Manager and the Director of Downtown Operations will work closely with Lessee management to develop plans and working relationships to enable both parties to carry out its management of the Marina and the growth of the City's Downtown. Notwithstanding the foregoing, the City will maintain in good condition and repair (i) the exterior, roof, structural components, operating systems, heating and air conditioning systems, and utilities of all "Upland Buildings", which shall include, the Marina Store Building and the Facilities Building; (ii) the Fuel Tanks and Systems; and (iii) any parking facilities, boat ramp, bulkhead, seawall, and any related pedestrian walkways located on such bulkhead and seawall, at the City's sole cost and expense. For clarity, the City will be fully responsible to maintain the fuel tanks and lines in good operating condition and will be responsible for the replacement of same due to wear and tear or growth and replacement needs. Notwithstanding the foregoing, the Lessee shall reimburse the City as Additional Rent the out-of-pocket costs incurred by the City to complete a repair to the Upland Buildings, such amount not to exceed ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) per repair event.

13. **LESSEE'S MAINTENANCE AND DUTIES.** Except in regard to the maintenance obligations that are specifically the obligation of the City, Lessee shall maintain the Premises and all improvements thereto at all times, including maintenance of the interior of the Upland Buildings. In the event Lessee fails to make necessary repairs, the City may, after written notice to Lessee, enter the Premises or permit entry by a contractor, to perform the repairs and bill Lessee for the actual costs thereof. Such bill shall be paid to the City as Additional Rent. Lessee shall assure that the Premises are maintained so as to meet all requirements of any city, county, state and federal laws and regulations applicable to the Premises. Lessee may elect, but is not required, to undertake maintenance and repairs to the Premises that are otherwise the City's responsibility as set forth in Paragraph 12, if:

(i) Such repair or maintenance event shall cost less than ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00);

(ii) Immediate or timely repair or maintenance is required to remedy an emergency or safety situation where damage to property or people may occur without undertaking such repair or maintenance; and

(iii) The City fails to timely respond or is unable to timely respond to need for repair or maintenance (such as repairs needed on a weekend).

If Lessee undertakes such repairs or maintenance on behalf of the City, the City shall reimburse Tenant for Tenant's out of pocket expenses in excess of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) incurred in completing such repair or maintenance event. The City shall reimburse Lessee such expenses within thirty (30) days following delivery to the City of reasonable evidence of the out of pocket expenses incurred by Lessee; if the City fails to reimburse Lessee within such thirty (30) day period, Lessee may offset such amounts against the next due Rent or Additional Rent to be paid to the City.

In order to ensure quality customer service is being delivered by Lessee, Lessee shall hold regular meetings, at least annually, with Licensees in order build communication between Licensees and Lessee's staff, build strong Marina community commitments, and develop understanding of Licensee's desires for the Marina.

The City and Lessee recognize that the economic health and vitality of the marina is driven by satisfactory customer service. Upon the City determining that a lack of customer service that has been noted and is considered serious by both parties is continuing, the City shall provide written notice of such failure to provide satisfactory customer service to Lessee. Failure by Lessee to cure such lack of satisfactory customer service within such cure periods as provided in this Lease may result in the delay of granting additional terms and/or assignment request until cured.

This provision is cumulative and concurrent with all other rights and remedies of the City and Lessee.

14. RETURN OF THE PREMISES. At the end of the Term or upon earlier termination of this Lease:

A. Premises. Lessee shall give and deliver the Premises to the City in as good condition as the Commencement Date, reasonable wear and tear and damage from insured casualties excepted.

B. Personal Property. Lessee, at its sole expense, shall remove from the Premises all signs, trade fixtures, furnishings, personal property, equipment and materials ("Property") which Lessee was permitted to install or maintain under the rights granted herein. Any damage to the Premises caused by such removal must be repaired by Lessee at Lessee's expense so that the Premises may be delivered in compliance with this Lease. If any of the Property is not removed within thirty (30) days, the City may, at its option, deem the Property abandoned and take possession of it or City may effect such removal and/or restoration at Lessee's expense, and Lessee shall pay City such expense promptly upon receipt of an invoice therefor.

C. Holding Over. Any holding over after the last day of any extension of the term hereof, or after the last day of the Term hereof if this Lease is not extended, shall be construed to be a monthly tenancy, on the terms herein set forth, terminable by either party on not less than 60 days' notice, with the exception that Percentage Rent shall be increased to 20% of the gross dockage rental revenue per month derived from the operation of the Premises and Additional Rent shall be increased to include \$00.10 per gallon on all fuel sales at the Premises and ten percent (10%) of all retail sales and other business activities at the Marina store. Lessee shall have sixty (60) days after such notice of termination by either party within which to remove Lessee's Property, and any of Lessee's Property not so removed shall be deemed abandoned.

15. PROHIBITED USE. The Premises shall not be used for the manufacture or storage of flammable, explosive or hazardous materials, nor shall any occupation or other use be allowed which, in the sole discretion of the City, is deemed hazardous to persons or to the Premises or which will increase the City's liability or cost of insurance.

16. ENVIRONMENTAL COMPLIANCE. The City warrants and represents to Lessee that to the City's knowledge: no release leak, discharge, spill, storage, disposal or emission of Hazardous Material (hereinafter defined) has occurred in, on or under the Premises, and that the Premises are free of Hazardous Materials as of the date hereof, there has not been any notice of intent to sue, notice of violation, citation, warning or similar notification under any federal, state or local Environmental Law regarding the Premises or arising out of operations on the Premises, and there is no investigation or inquiry by any governmental authority concerning the Premises or the operations thereon.

A. Definitions. For purposes of this Lease, the following words and phrases shall have the following meaning except where the text clearly indicates a contrary intention:

1) **"Environment"** shall mean soil, surface waters, groundwater, land, stream and sediments, surface or subsurface strata, ambient air, interior and/or exterior of any building or improvement and any environmental medium.

2) **"Environmental Condition"** shall mean any condition of the environment with respect to the Premises that results from Lessee's possession, use, occupation, construction and/or improvement to or operation of Lessee's business on the Premises.

3) **"Environmental Law"** shall mean the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("**RCRA**"); the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended (original act known as "**CERCLA**" or "Superfund", the amendments are known as "**SARA**"); the HSWA amendments to RCRA regulating Underground Storage Tanks ("**UST's**"), 42 U.S.C. Sections 6991-6991(1), as amended; the Clean Air Act of 1963 42 U.S.C. Sections 7401, et seq., as amended (Clean Air Act); the Federal Water Pollution Control Act of 1977 and 1987, 33 U.S.C. Sections 1251, et seq., as amended (Clean Water Act); the Toxic Substances Control Act of 1976, 15 U.S.C. Sections 2601, et seq., as amended ("**TSCA**"); the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq., as amended ("**HMTA**"); and any other present or future federal, state, or local law, regulation, rule or ordinance implementing or otherwise dealing with the subject matter of the preceding federal and state statutes.

4) **"Hazardous Material"** shall mean without limitation (i) those substances included within the definitions of "Hazardous Substances", "Hazardous Materials", "Toxic Substance", or "Solid Waste" in any Environmental Law; (ii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (iii) any materials, waste, or substance which is (A) petroleum, petroleum by-products, residuals and petroleum degradation by-products; (B) asbestos; (C) polychlorinated biphenyl's; (D) flammable explosives; or (E) radioactive materials; and (iv) such other substances, materials, and wastes which are or become regulated or controlled under any environmental law.

5) **"Release"** shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. **Prohibited Storage.** Lessee shall not cause or permit any Hazardous Material to be used, stored, or generated on the Premises, except for materials of types and quantities relevant to its business and customarily used or found in its business. Lessee shall use and store materials in conformity with all federal, state and local laws and ordinances of the City, the National Fire Protection Association ("**NFPA**") Code, local fire codes and regulations as they may be amended from time to time.

C. Prohibited Release. Lessee shall not cause or permit the Release of any Hazardous Materials, contaminant, or pollutant in, on, or under the Premises or into any ditch, conduit, stream, storm sewer, or sanitary sewer connected thereto or located thereon. The City shall not cause or permit the Release of any Hazardous Materials, contaminant, or pollutant in, on, or under the Premises or into any ditch, conduit, stream, storm sewer, or sanitary sewer connected thereto or located thereon. Lessee shall have no liability to the City or any other person or governmental authorities for any environmental conditions not caused by Lessee. If any Hazardous Material(s) not caused by Lessee or any other occupant of the Premises, or their employees, agents, representatives, invitees, guests, contractors or subcontractors on or about the Premises, in violation of the foregoing provisions is/are found on the Premises, the City shall promptly remove and/or treat the source, and perform any remedial work that is necessitated by the presence of such Hazardous Material(s) as required by Environmental Law.

D. Notification. If any Hazardous Material is released, discharged or disposed of by Lessee or any other occupant of the Premises, or their employees, agents, representatives, invitees, guests, contractors or subcontractors on or about the Premises in violation of the foregoing provisions, Lessee shall immediately, properly and in compliance with applicable Environmental Laws notify the proper authorities as required by applicable Environmental Laws, cleanup and remove the Hazardous Material from the Premises and any other affected property and clean or replace any affected personal property (whether or not owned by the City), at Lessee's expense (without limiting the City's other remedies therefor). Such cleanup and removal work shall be subject to the City's prior written approval (except in emergencies), and shall include, without limitation, any testing, investigation, preparation and implementation of any remedial action plan required by any court or governmental body having jurisdiction or required by the City. In the event the City elects in its sole and absolute discretion to have any testing, investigation and/or cleanup (including but not limited to preparation and implementation of a remedial action plan) performed by a City contractor (or contractors), Lessee shall assist the contractor(s) with such testing, investigation and/or cleanup as directed by the contractor(s) and the City and promptly pay the contractor(s) the total amount charged by the contractor(s) in connection with the testing, investigation and cleanup. If the City or any governmental body arranges for any tests or studies showing that this paragraph has been violated, Lessee shall pay for the costs of such tests. Nothing contained in this paragraph shall limit or otherwise affect Lessee's indemnity obligations set forth in this Lease.

E. City Notice to Lessee. City shall promptly notify Lessee of every demand, notice, summons, or other process received as to any claim or legal proceeding that involves Lessee or the Premises.

F. Lessee Notice to City. Lessee shall promptly notify City of every demand, notice, summons, or other process received as to any claim or legal proceeding that involves City or the Premises. Lessee shall also notify the City of any violation of environmental law or incident that may or does result in an illegal Release of Hazardous Materials.

G. Access. Lessee shall allow authorized representatives of the City or state and federal environmental personnel, at a reasonable time, access to the Premises for the following purposes:

- 1) Reviewing and copying of any records that must be kept under any environmental permit.
- 2) Viewing the facility, equipment, practices, or operations regulated or required under such permit.
- 3) Sampling or monitoring any substances or parameters at any location subject to any environmental permit or federal, state or municipal Environmental Law or regulation.

H. Environmental Indemnities. Lessee ("*Indemnifying Party*") shall indemnify, defend and hold harmless the City ("*Indemnified Party*") from any and all claims of third parties, and damages, costs and losses owing to third parties or suffered by Indemnified Party, including court costs, reasonable attorneys' fees and consultants' fees, arising during or after the Term and reasonably incurred or suffered by the Indemnified Party as a result of any default or breach of any representation, warranty or covenant made Lessee under this Paragraph 16. It is a condition of this indemnification and hold harmless obligation that the Indemnifying Party must receive notice of any such claim against the Indemnified Party promptly after Indemnified Party first has knowledge thereof, but no failure by the Indemnified Party to promptly notify the Indemnifying Party of any such claim shall adversely affect the Indemnified Party's right to indemnification except (and only to the extent) that the Indemnifying Party can prove prejudice as a result of the failure to receive prompt notice. This indemnification and hold harmless obligation includes any and all costs reasonably incurred by the Indemnified Party after notice to Indemnifying Party for any cleanup, removal or restoration mandated by any public official acting lawfully under applicable Laws if Indemnifying Party fails to timely perform such work.

17. LEASEHOLD MORTGAGE.

Lessee, at all times, and from time to time, shall have the right to convey or encumber by mortgage, security deed, deed of trust, or other instrument, this Lease and its right to use and occupy said Premises, together with its rights and interests in and to all existing buildings and improvements, and any building and improvements which may be placed on the Premises. If any such mortgagee, or grantee, shall notify the City in writing by certified or registered mail that any such mortgage has been so given and executed by Lessee, and shall at the same time furnish the City with the address to which it desires copies of notices to be mailed, the City hereby agrees that it will thereafter mail to such mortgagee at the address so given a duplicate copy of any and all notices in writing which the City may from time to time give to or serve upon Lessee under and pursuant to the terms and provisions of this Lease. Such mortgagee may, at its option at any time, but in no event less than thirty (30) days, before the rights of Lessee, shall have been forfeited to the City provided for herein, pay any of the rents due, or pay any taxes and assessments, or make any repairs and improvements, making or cause to be made any

deposits, or do any other act or thing required of Lessee by the terms of this Lease, to prevent the forfeiture of this Lease; and all payments so made, and all things so done and performed by such mortgagee shall be as effective to prevent the forfeiture of the right of Lessee hereunder as the same would have been if done and performed by Lessee. Lessee and its mortgagee shall provide written notice to the City of any default by Lessee under the terms of any loan agreement between Lessee and its mortgagee. Any such mortgage or other instrument so given by Lessee may, if Lessee so desires, be so conditioned as to provide that as between any such mortgagee and Lessee, said mortgagee on making good and performing any such default or defaults on the part of Lessee shall be thereby subrogated to any or all of the rights of Lessee under the terms and provisions of this Lease. A leasehold mortgagee shall not become personally liable for any of Lessee's obligations under this Lease unless and until such mortgagee becomes the owner of the leasehold estate by foreclosure, assignment in lieu of foreclosure, or otherwise, and thereafter such mortgagee may remain liable for such obligations only so long as the leasehold mortgagee remains the owner of the leasehold estate. If the leasehold mortgagee should become the owner of the leasehold estate, such mortgagee may assign, sell or transfer Lessee's leasehold interest in the Lease to an assignee (the "*Mortgagee Assignee*") with the written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed, so long the following requirements are satisfied at the time of such assignment (i) the Mortgagee Assignee is a reputable marina operator with experience in operating marina facilities of comparable or greater size than the Marina; and (ii) the Mortgagee Assignee possesses a net worth of at least \$2,500,000.00 at the time of the proposed transfer. Any such Mortgagee Assignee shall be entitled to the benefit of all of the provisions of the Lease and shall be responsible for all of the obligations of Lessee under the Lease. The City, for themselves, their heirs, executors, administrators, transfers and assigns, agrees to execute any and all other additional documents which may be desirable or required to further effect the above stated provision as may be requested by a leasehold mortgagee or Mortgagee Assignee.

18. IMPROVEMENTS TO THE PREMISES.

A. City Consent. Lessee shall not make or permit to be made any alterations, additions, improvements or changes in the Premises without in each case first obtaining the written consent of the City. By execution of this Lease, the City has consented to all improvements presently located in, on or under the Premises.

B. Ownership of Improvements. All improvements, additions or changes made by Lessee at any time, including but not limited to the pilings, floating docks, additional docks, expansion docks or replacement docks shall become the property of the City upon expiration, or earlier termination of this Lease. No additional additions, changes or improvements shall be made to the Premises without the prior written approval of the City.

C. Compliance. All permitted leasehold improvements shall fully comply with all applicable portions of the NFPA Life Safety Code, South Carolina Building Code and any other applicable Laws or regulations. All work shall be completed in compliance with all codes, ordinances,

rules and regulations of applicable governmental authorities, in a good and workmanlike manner by licensed contractors with appropriate building permits

D. Contractor Liability Insurance. Lessee shall require that all contractors performing work on the Premises maintain public liability insurance of at least One Million and No/100 Dollars (\$1,000,000.00). All entries onto/into the Premises after the Commencement Date and all work done by or on behalf of Lessee shall be at Lessee's sole risk.

E. Parking spaces. This will include the Marina, parking, the park, and other downtown needs. Parking is a concern of both the City and Lessee and both have agreed to work together to provide to our Marina customers the best experience we can under the conditions that we have. Lessee and the City will continue to use the parking pass system that is currently in place. However, the City will continue working on plans to provide remote parking and is investigating the expansion of its overall parking requirements. As the Marina successfully achieves the requirements of the Lease and grows it will be the City's responsibility to provide the necessary parking to meet the needs of the Marina. For clarity, the needs of the Marina include at least one parking space and corresponding parking pass for every boat slip customer at the Marina.

F. Special Events. Lessee acknowledges the City hosts a few festivals and special events: primarily the Shrimp Festival in September/October, The Taste of Beaufort in May, The Gullah Festival the end of May, Dragon boat race in June, and the Water Festival which last 10 days in July. Frequently these events draw boaters and fill Marina slips and take on fuel. These festivals and special events will have some impact on Marina operations, both good and bad, but with good planning and advanced notice from the City to Lessee, Lessee will cooperate with the City in planning activities to support the Marina and minimize any disruptions.

G. Pride of Place Donation. During Phase I of the Term, Lessee will willingly contribute Fifty Thousand and No/100 Dollars (\$50,000.00), by single gift or multiple gifts, to the city's philanthropic foundation referred to as "Pride of Place". Such donation(s) shall be contingent upon the City and Lessee mutually agreeing upon an area or areas of need in regard to the Premises or operation of the Marina that shall be addressed by the City by application of the proceeds donated by Lessee.

H. Marina Layout. Prior to the commencement of Phase 2, Lessee shall provide to the City a Marina layout showing all slips, moorings and tie-offs with a number assigned to each slip, mooring or tie-off ("Marina Layout"). Should the Marina Layout be altered or re-numbered, Lessee shall provide a revised Marina Layout to the City within ten (10) days.

19. DEFAULT; CURATIVE PERIOD; AND TERMINATION.

A. Termination by City. This Lease may be terminated by City in the event of any one or more of the following events:

1) The material default by Lessee in the performance of any of the terms, covenants, or conditions of this Lease, and the failure of Lessee to remedy, or undertake to remedy, to City's satisfaction, such default within a period of thirty (30) days after receipt of written notice from City of such default, except the requirements for insurance as provided in this Lease, that must be remedied within seven (7) calendar days; and except payment of Rent, or Additional Rent, which must be remedied within seven (7) calendar days; and except Intended Use requirements set forth in this Lease, which must be remedied within fifteen (15) days. However, in the case of any such default that is susceptible of cure (other than by the payment of money) but that cannot with diligence be cured within such thirty (30) day period, if Lessee shall promptly have commenced, during such thirty (30) day period, to cure the same and shall thereafter prosecute the curing thereof with diligence, the period within which such failure may be cured shall be extended for such further period as shall be reasonably necessary for the curing thereof with diligence;

2) The filing of a voluntary petition for relief under Federal bankruptcy law by Lessee, making of a general or other assignment for the benefit of creditors by Lessee, the adjudication of Lessee as bankrupt, or the appointment of a receiver for the property or affairs of Lessee and such receivership is not vacated within thirty (30) days after the appointment of such receiver.

3) The filing of an involuntary petition for relief under any bankruptcy or insolvency law that is not dismissed within sixty (60) days of filing

B. Cumulative. These provisions are cumulative and concurrent with all other rights and remedies of the Parties at law or in equity.

C. No Waiver. Forbearance from exercise of termination rights shall not be deemed a waiver of any default.

20. RIGHT OF ENTRY & ACCESS.

A. Ingress and Egress to Premises. The City shall provide ingress and egress to and from the Premises uninterrupted at the level presently provided. The present level of ingress and egress recognizes the fact that there are at times temporary suspensions of ingress and egress for construction projects or special events, including but not limited to City authorized events. The number and duration of such interruptions shall be determined by the City in its sole and absolute discretion.

B. City Access. The City and persons duly authorized by the City shall have temporary, non-exclusive access over the Premises for the following purposes, provided that, with respect to items 3) and 4) below, such access shall not unreasonably interfere with the rights of Lessee or Licensees to their reasonable use of the Premises for:

- 1) Inspection of the Premises as it may deem expedient to the proper enforcement of any of the covenants or conditions of this Lease.
- 2) Any Life Safety Issues as defined in this Lease.
- 3) Carrying out development projects and other City sponsored or approved construction, so long as the City coordinates such projects and construction with Lessee.
- 4) Any and all activities related to City authorized, sponsored or co-sponsored events, so long as the City coordinates such activities and events with Lessee.

21. INDEMNIFICATION.

A. Lessee Indemnification. Lessee shall defend at its expense, pay on behalf of, hold harmless and indemnify the City, its officers, employees, agents, invitees, elected and appointed officials and volunteers (collectively, "Indemnified Parties") from and against any and all claims, demands, liens, liabilities, penalties, fines, fees, judgments, losses and damages (whether or not a lawsuit is filed) including, but not limited to, costs, expenses and attorneys' fees at trial and on appeal (collectively, "Claims") for damage to property or bodily or personal injuries, including death at any time resulting therefrom, sustained by any person or persons, which damage or injuries are alleged or claimed to have arisen out of or in connection with, in whole or in part, directly or indirectly:

- 1) The ownership, occupancy, or use of the Premises by the City or Lessee.
- 2) The performance of Lessee of this Lease (including future changes and amendments thereto) by Lessee, its employees, agents, representatives, contractors, subcontractors or volunteers, including but not limited to Lessee's duty to maintain set forth in Paragraph 13 of this Lease.
- 3) The failure of Lessee, its employees, agents, representatives, contractors, subcontractors or volunteers to comply and conform with any applicable law, statute, ordinance or regulation now or hereinafter in force, including, but not limited to violations of the Americans with Disabilities Act of 1990 ("ADA") and any current or future amendments thereto; or
- 4) Any negligent, reckless or intentional act or omission of Lessee, its employees, agents, representatives, contractors, subcontractors or volunteers, whether or not such negligence is claimed to be either solely that of Lessee, its employees, agents, representatives, contractors, subcontractors or volunteers or to be in conjunction with the claimed negligence of others, including that of any of the Indemnified Parties.

B. No Insurance Limitation. The provisions of this paragraph are independent of, and shall not be limited by, any insurance obligations in this Lease, and shall survive the expiration or earlier

termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination. The purchase of insurance coverage required by this Lease, or otherwise, shall not relieve Lessee of any duties set forth in this paragraph.

C. Risk of Loss. Lessee shall store its property in and shall occupy the Premises at its own risk.

D. Merchandise/Equipment. The City shall not be responsible or liable at any time for any damage to Lessee's merchandise, equipment, fixture or other personal property of Lessee or to Lessee's business regardless of the cause, unless such damage is due to City's negligence or wrongful act.

E. Third Persons. The City shall not be responsible or liable to Lessee for any damage to either person or property that may be occasioned by or through the acts or omissions of third parties.

F. Defects. Except in regard to the maintenance obligations of the City set forth in Paragraph 12, the City shall not be responsible or liable for any defect in the Premises or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any damage to any person or to any property of Lessee or other person caused by or resulting from burst, broken or leaking pipes or by or from, steam or the running, backing up, seepage, or overflow of water or sewage in any part of the Premises or for any damage caused by or resulting from acts of God or the elements, the failure of any public utility in supplying utilities to the Premises or for any damage caused by or resulting from any defect or negligence in the occupancy, construction, operation or use of any of the Premises, machinery, apparatus or equipment by any other person or by or from the acts of negligence of any occupant of the Premises.

G. Notice of Claim. Lessee shall give prompt notice to City in case of fire or accidents or other casualties on or about the Premises. Lessee shall, during any emergency such as hurricane, flood, fire or any type of disaster, coordinate with the City for the security of the property. Lessee shall use its best efforts during an emergency to safeguard the Property of the City and its customers.

22. INSURANCE.

A. City's Obligation. The City, as of the Commencement Date, shall, from that time until the expiration or earlier termination of this Lease, maintain at City's cost, the insurance it has in force on all Marina property. Lessee may elect to add additional insurance at its own cost as well as having its own Liability insurance. For clarity, the City shall cause the following insurance policies to be maintained at the City's sole cost and expense:

1) Property Insurance. Property insurance covering the Premises, its equipment, docks, mooring fields and all improvements (no matter when constructed or installed) in the Premises pursuant to a Causes of Loss - Special Form (formerly known as "all risk") property insurance, including fire and extended coverage, vandalism, malicious mischief in an amount not less than the full replacement cost thereof.

2) Commercial General Liability. A Commercial General Liability Insurance Policy protecting the City against an claims or demands that may arise or be claimed on account of Lessee's use of the Premises in an amount of at least \$1,000,000 for injuries to persons in one accident and \$2,000,000 general aggregate, \$1,000,000 for injuries to any one person, \$1,000,000 for damages to property. CGL limits may, from time to time, pursuant to the reasonable discretion of Lessee to reflect the then current, generally acceptable policy limits.

3) Environmental Insurance. A policy of insurance covering environmental based claims for the benefit of the City and naming Lessee as an additional insured, pursuant to which, during the Term of the Lease, the following coverage limits and other terms and conditions shall apply:

(a) \$1 Million Each Incident/\$3Million Aggregate of primary coverage.

(b) The insurance shall consist of coverages, terms and conditions reasonably acceptable to the City and Lessee and shall include coverage for toxic tort claims which may be asserted by persons or entitles for personal injury, death and/or property damage (including any diminution in value of such property (real or personal)) resulting from (i) known environmental conditions as of the policy date; (ii) any unknown conditions as of the policy date; and (iii) conditions arising after the policy date by reason of acts or omissions of the City or Lessee, contractors, subcontractors or other agents on or about the Premises or any part thereof, including, without limitation, for each occurrence costs of investigation, clean-up and remediation of such environmental conditions.

4) Personal Property. City shall be responsible for maintaining, at its own expense, whatever insurance coverage it may desire on the contents of the Premises.

5) Liquor Liability. If alcoholic beverages are sold on the premises City shall provide Liquor Liability Insurance coverage of not less than \$1,000,000.

All policies maintained by the City shall name Lessee as additional insured, be in occurrence form, and shall not exclude any activity that would normally be associated with use of the Premises. All policies shall provide that they shall not be subject to cancellation or material change, which affect Lessee, except upon at least thirty (30) days prior written notice to Lessee at the address set forth in this Lease.

B. Lessee Obligation. Lessee, as of the Commencement Date, shall, from that time until the expiration or earlier termination of this Lease, maintain at Lessee's cost, the following insurance coverage:

1) Commercial General Liability. A Commercial General Liability Insurance Policy protecting Lessee against an claims or demands that may arise or be claimed on account of Lessee's use of the Premises in an amount of at least \$1,000,000 for injuries to persons in one

accident and \$2,000,000 general aggregate, \$1,000,000 for injuries to any one person, \$1,000,000 for damages to property. CCL limits may, from time to time, be adjusted at the discretion of Lessee to reflect the then current, generally acceptable policy limits.

2) Worker's Compensation. Workers' Compensation Insurance in compliance with the laws of the State of South Carolina. Employers Liability coverage with minimum limits of \$100,000 each accident, \$100,000 each employee and \$500,000 policy limit for disease.

3) Personal Property. Lessee shall be responsible for maintaining, at its own expense, whatever insurance coverage it may desire on the contents of the Premises that are owned by Lessee.

4) Liquor Liability. If alcoholic beverages are sold on the premises Lessee shall maintain Liquor Liability Insurance coverage of not less than \$1,000,000.

C. Lessee as Additional Insured. All of the insurance required under this Lease, shall be affected under enforceable policies issued by insurers licensed to do business in the State of South Carolina.

23. LIENS.

A. No Liens. Except as provided herein, Lessee shall never, under any circumstances, have the power to subject the Premises to any mechanic or materialman lien or other type of lien.

B. Performance Bond. All contracts for improvements to the Premises shall provide for a payment and performance bond in such form as reasonably approved the City and Lessee. Notice is hereby given that no contractor, subcontractor or any other person who may furnish any material, service or labor for any building, improvement, alteration, repairs or any part thereof, or for the destruction or removal of any building or structure, shall at any time be or become entitled to any lien on or against the Premises.

24. ASSIGNMENT. Except as set forth in this Paragraph 17, this Lease, or any part thereof or any interest therein, may not be sold, assigned, transferred, subleased, conveyed, pledged, mortgaged, or otherwise disposed of without the prior written consent of the City, which consent shall be at the City's sole discretion. Notwithstanding the foregoing, the City shall not withhold its consent to a requested assignment of the Lease by Lessee to a third party ("*Assignee*") that meets the following requirements: (i) the Assignee is a reputable marina operator with experience in operating marina facilities of comparable or greater size than the Marina; and (ii) the Assignee possesses an net worth of at least \$1,000,000.00 at the time of the proposed transfer.

25. NON-APPROPRIATION. The obligation of the City to fund any expenditures required by this Lease shall be limited to an obligation in any given year to budget, appropriate and pay from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient

monies for the funding of any expenditures that are due during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-advallorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Lease.

26. CERTIFICATE OF GOOD STANDING. Lessee shall maintain its registered status and shall annually provide City with evidence that the LLC is still active and has complied with all the legal requirements to remain duly and legally organized to operate within the State of South Carolina.

27. SUCCESSORS AND ASSIGNS. This Lease shall bind City and Lessee and their respective successors and assigns.

28. RELATIONSHIP OF THE PARTIES. The relationship between the Parties is that of Landlord and Tenant.

29. APPLICABLE LAW, VENUE AND JURISDICTION. This Lease shall be governed by and interpreted in accordance with the laws of the State of South Carolina. Venue for any action brought in state court shall be in Beaufort County, South Carolina. Venue for any action brought in federal court shall be in the correct jurisdiction in which Beaufort County, South Carolina is located. Each party waives any defense of improper or inconvenient venue as to either court or consents to personal jurisdiction in either court.

30. NOTICES. Any notice, demand, request or other instrument which may be or is required to be given or delivered under this Lease shall be deemed to be delivered (i) whether or not actually received, five (5) days after deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (ii) when received (or when receipt is refused) if delivered personally or sent by a nationally recognized overnight courier, all charges prepaid, at the addresses of City and Lessee as set forth in this Paragraph 30. Such address may be changed by written notice to the other party in accordance with this Paragraph 30. The parties acknowledge that copies of any notice sent by facsimile or e-mail are for convenience only and shall not be deemed to be proper notice required hereunder.

- A. If to Lessee, addressed to: SHM Beaufort LLC
1006 Bay St
Beaufort, SC 29902
- With a copy to Jason Hogg
C/O Safe Harbor Marinas
14785 Preston Rd #975
Dallas, TX 75254
- B. If to City, addressed to: City of Beaufort
Office of City Manager

1911 Boundary Street
Beaufort, South Carolina 29902

With a copy to:

31. SEVERABILITY. If a provision of this Lease shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Lease shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the Parties.
32. NON-DISCRIMINATION. Lessee for itself and its successors and assigns, as a part of the consideration for this Lease shall not illegally discriminate against any person, in employment or in the provision of services under this Lease or in the construction of any improvements on, over or under Premises.
33. HEADINGS. The section headings are inserted herein for convenience and reference only, and in no way define, limit or otherwise describe the scope or intent of any provisions.
34. ENTIRE AGREEMENT. This Lease, including exhibits hereto, if any, constitutes the entire agreement between the City and Lessee. No change will be valid, unless made by supplemental written agreement executed and approved by the Parties.
35. RECORDABILITY. The parties hereby agree that a short form of this Lease shall be recorded in the applicable real estate records of Beaufort County, South Carolina.
36. APPROVAL. This Lease is subject to approval by the City Council as the City policies and procedures require.
37. NO CONSTRUCTION AGAINST PREPARER OF LEASE. This Lease has been prepared by the City and Lessee and its professional advisors. The City, Lessee and Lessee's professional advisors believe that this Lease expresses their agreement and that it should not be interpreted in favor of either the City or Lessee or against the City or Lessee merely because of either party's efforts in preparing it.
38. DUE AUTHORITY. Each party to this Lease that is not an individual represents and warrants to the other party that all appropriate authority exists so as to duly authorize the person executing this Lease to so execute the same and fully bind the party on whose behalf he or she is executing.

39. AMERICANS WITH DISABILITIES ACT OF 1990. Lessee assumes all responsibility, including but not limited to, financial, construction and physical modification costs, provision of auxiliary aids, services and legal costs, for ensuring compliance with all aspects of the ADA and any amendments thereto, including Title II, Structural and Title III, Programmatic Accessibility Standards as well as any future additions.

40. WAIVER. The waiver of any, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not constitute a waiver of any such subsequent breach, violation or default in or with respect to the same or any other covenant or condition.

41. NO THIRD-PARTY BENEFICIARIES. This Lease sets forth the agreement between the parties and all rights and benefits established herein are established solely for the benefit of the Parties party and are not intended to establish any rights or benefits in any other person or entity.

42. COMPLIANCE WITH FEDERAL, STATE, COUNTY, AND LOCAL LAWS. The Parties shall comply with all federal, state, county, and local laws, regulations, ordinances, and health and safety rules and regulations (collectively "Law") at all times. In the event of a conflict between this Lease and any Law, the Law shall prevail.

43. QUIET ENJOYMENT. City covenants that Lessee, on paying all sums due under this Lease and performing all the covenants and agreements herein contained, shall peaceably and quietly have, hold, and enjoy the Premises.

44. CITY CONSENT AND ACTION.

A. For the purposes of this Lease any required written permission, consent, approval or agreement ("Approval") by the City means the administrative approval of the Mayor or his designee unless otherwise set forth herein and such approval shall be separate from and in addition to any and all regulatory approvals necessary from the City for permits and/or other licenses required by law or this Lease.

B. For the purposes of this Lease any right of the City to take any action permitted, allowed or required by this Lease, may be exercised by the Mayor or his designee, unless otherwise set forth herein.

45. CONDEMNATION.

A. Condemnation. If during the Term the whole of the Premises are condemned or taken in any manner for public use, or if a portion of the Premises are condemned or taken in any manner or degree to an extent that the Premises are not suitable, as determined by Lessee in its reasonable discretion for the Intended Use, then, in either event Lessee or City may elect to terminate this Lease as of the date of the vesting of title in the condemning authority. As used in this Paragraph 45, a condemnation or taking includes a deed given or transfer made in lieu thereof.

B. Award. City shall be entitled to that portion of the condemnation award attributable to City's interest in the Premises. Lessee shall be entitled to that portion of the condemnation award attributable to the loss of Lessee's leasehold in the Premises, Lessee's improvements and fixtures on the Premises, its business losses and its relocation costs.

46. DESTRUCTION OF PREMISES OR INSURANCE CLAIMS.

A. Termination-Lessee Option. If the Premises are totally destroyed by fire or other casualty (including environmental damage) or if the Premises are partially destroyed to an extent that the Premises are not suitable, as determined by Lessee's reasonable discretion, then Lessee shall have the option of terminating this Lease upon written notice to City, within sixty (60) days after such casualty loss, in which event Rent and all other obligations herein shall cease as of the date of such casualty, and neither City nor Lessee shall have any further obligations or rights hereunder except for any obligations existing at the time of termination.

B. Restoration and Remediation. If Lessee elects not to terminate this Lease, then Lessee, subject to the terms of this Lease, shall continue to pay rent and commence restoring the Premises as soon as reasonably possible and thereafter proceed with diligence to complete such restoration as soon thereafter as is practicable, but in no event later than one (1) year after the casualty event. The proceeds of all insurance on the Premises which is maintained by the City shall be made available by the City to Tenant for restoration, remediation, and payment of damage claims by third parties. If Lessee elects not to terminate the Lease, to the extent the insurance proceeds available for restoration or remediation of the Premises is insufficient to cover all costs of restoration or remediation, the City shall provide the additional funding required for restoration of the Premises to the condition at the time of the casualty event.

C. Termination-City Option. If Lessee does not elect to terminate this Lease and Lessee has not completed restoration or remediation within one (1) year of the date restoration or remediation funds sufficient for the complete restoration or remediation of the Premises are made available to Lessee, City may terminate this Lease.

47. WAIVER OF SUBROGATION. City and Lessee hereby waive any rights each may have against the other on account of any loss or damage incurred by City or Lessee, as the case may be, to their respective property, the Premises, or its contents arising from any risk generally covered by fire and extended coverage insurance policies. The Parties each, on behalf of their respective insurance companies insuring the property of either the City or Lessee against any such loss or damage, waive any right of subrogation that such companies may have against the City or Lessee, as the case may be. Each party covenants with each other that, to the extent such insurance endorsement is available, they shall each obtain for the benefit of the other, a waiver of any right of subrogation from their respective insurance companies, if such endorsement is requested.

48. LIFE SAFETY ISSUES. For purposes of this Lease, a "Life Safety Issue" shall mean a situation which imposes an immediate threat of bodily harm or death to any users or occupants of the Premises. If either party reasonably believes that the other party's failure to comply with any of its obligations under this Lease involves a Life Safety Issue, as defined below, that party shall have an immediate right, but not the duty, to connect the Life Safety Issue and the reasonable costs and expenses incurred by that party in correcting the Life Safety Issue shall be due and payable to that party by the other party within thirty (30) days after the submission of a statement to the other party for the payment of the same and such amount shall, if not paid when due, bear interest at the highest rate allowed by law from the date of the statement until the date paid.

49. CITY AS MUNICIPAL CORPORATION. Nothing contained in this Lease shall be interpreted to require the City to take any action or refrain from taking any action in its capacity as a municipal corporation, including but not limited to the exercise of its police and taxing powers.


< < < SIGNATURE PAGE FOLLOWS THIS PAGE > > >

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed by their duly authorized representatives on the day and date first above written.

LESSEE:

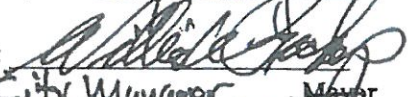
SHM BEAUFORT LLC,
a Delaware limited liability company

By: SAFE HARBOR MARINAS, LLC, a Delaware
limited liability company, its Member

By: 
Name: Baxter R. Underwood
Title: CEO

THE CITY:

CITY OF BEAUFORT, SOUTH CAROLINA, by and
through the City Manager of the City of Beaufort

By: 
City Manager, Mayor
William A. Poligo

ATTEST: Ivette Burgess, City Clerk

By: 
Ivette Burgess
City Clerk/Deputy

EXHIBIT A
PREMISES ILLUSTRATED

Water Premises



Upland Premises



EXHIBIT A-1
DEPICTION OF DAY DOCK



EXHIBIT B
(PREMISES LEGALLY DESCRIBED)

EXHIBIT C
(BIG SUBRECIPIENT AGREEMENTS)



**SOUTH CAROLINA
DEPARTMENT OF NATURAL RESOURCES**

SUBRECIPIENT AGREEMENT

Subrecipient Agreement Number: SCDNR-FY-2013-001

This Agreement is between the State of South Carolina, Department of Natural Resources, (Grantee) and the City of Beaufort, South Carolina (Sub-grantee).

This Agreement entered into on this 05 December 2013 by and between the South Carolina Department of Natural Resources, hereinafter referred to as SCDNR and the City of Beaufort, South Carolina hereinafter referred to as SUBGRANTEE mutually agree and covenant to the following:

I. SCOPE OF SERVICES

The scope of this Agreement includes improvements to the existing facility at the Downtown Marina, Beaufort, South Carolina for transient, nontrailerable recreational vessels 26 feet in length or greater.

Specifically, the SUBGRANTEE will:

- A. Purchase and install 16 mooring buoys for transient boats in an approved mooring field.
- B. Purchase and install two step-up 3-phase electrical transformers to serve existing transient docks.
- C. Purchase and install two electrical disconnect systems to replace existing transient dock systems.
- D. Design, engineer, and facilitate permitting of moorings.

For detailed scope of services, see Addendum A: City of Beaufort, South Carolina proposal dated 26 August 2011, and Revised Scope of Work dated 09 September 2013.

II. TIME OF PERFORMANCE

It is understood that the work to be performed hereunder shall commence on 05 December 2013 and shall be completed by 30 June 2014. This project is funded by U.S. Department of Interior/U.S. Fish & Wildlife Service grant number SC-Y-F13AP00402,

CFDA# 15.616, Boating Infrastructure Grant Program, project titled, "Improvements to Downtown Marina, Beaufort, SC." SCDNR account number P24018173113.

This Agreement may be extended only if all the below listed conditions are met:

- A. Written extension request is submitted to SCDNR by SUBGRANTEE 60 days prior to the grant end date of 30 June 2014.
- B. Approval to extend is received from the funding source.
- C. Written amendment is issued by SCDNR.

III. COMPENSATION

- A. It is agreed that the SCDNR will reimburse the SUBGRANTEE for all allowable expenditures not to exceed \$100,000 as itemized in the SUBGRANTEE's budget as submitted and attached hereto and incorporated by reference herein (Addendum A: City of Beaufort, South Carolina proposal dated 26 August 2011 and Revised Scope of Work dated 09 September 2013). It is agreed that \$100,000 will constitute full and complete compensation and any deviation from above said sum will be absorbed by the SUBGRANTEE.
- B. For SUBGRANTEE Agreements in excess of \$100,000 it is understood that any cumulative changes above 10% in any budget category must have prior written approval by SCDNR. Changes above 10% in budget categories made without prior SCDNR approval will not be acknowledged by SCDNR and may be disallowed.
- C. Match in the amount of \$33,408 must be provided to receive full payment of the federal amount. The total grant award with match is \$133,408. Match must be from a non-federal source as defined in the SUBGRANTEE's budget (Addendum A: City of Beaufort, South Carolina proposal dated 26 August 2011 and Revised Scope of Work dated 09 September 2013). It is understood that any match requirements, including but not limited to 3rd party, must be documented in the same format as direct charges to the Agreement. Requests for reimbursement must include match costs. Requests for reimbursement under this Agreement must include a breakdown of costs by budget category and be supported by actual expenditure documentation.

IV. METHOD OF PAYMENT

It is agreed that the SUBGRANTEE will submit requests for payment on a quarterly basis or other agreed upon schedule with a breakdown of expenditures for each budget category including any match requirements. The request for payment will include copies of all invoices or adequate documentation for all requested reimbursement of expenditures. Only direct charges will be allowed under the terms and conditions of this Agreement.

Requests for payment must be submitted to: South Carolina Department of Natural Resources, Attn: Grants Administration, P.O. Box 12559, Charleston, SC 29422-2559.

All requests for payment must reference the grant number (SC-Y-F13AP00402) and grant title (Improvements to Downtown Marina, Beaufort, SC). Requests for payment must include match costs which are to be documented in the same format as direct charges to the Agreement. Final invoice must be submitted within 30 days after the end of the Agreement (30 June 2014).

Final payment will not be released until: 1) all services have been performed in accordance with this AGREEMENT, 2) the SUBRECIPIENT's final project report has been received by SCDNR, and 3) the Boating Infrastructure Coordinator has reviewed and approved the completed project.

V. TERMS AND CONDITIONS

- A. SUBGRANTEE must adhere to the Cost Principles as specified in 48 CFR 31.2. For information regarding all procurement actions the SUBGRANTEE shall follow procedures as identified in the Federal Acquisition Regulations (FAR) 31.2, including the requirements for full and open competition. SUBGRANTEE must agree to make positive efforts to use small and minority owned businesses and individuals.
- B. Any change to this Agreement is considered an amendment to the Agreement that must be mutually agreed to and executed in the same manner as the Agreement.
- C. The SUBGRANTEE shall not convert any facility developed under this Agreement to uses other than those purposes for which assistance was originally approved, without the written approval of the SCDNR. See Addendum A: City of Beaufort, South Carolina proposal dated 26 August 2011 and Revised Scope of Work dated 09 September 2013 for approved purposes.
 - 1. If conversion occurs without proper approval from the SCDNR and the funding agency, the Agreement will be terminated and any monies that have been provided through SCDNR under the Agreement must be refunded to SCDNR within 30 days after the termination of the Agreement.
 - 2. Conveyance of property interests for purposes inconsistent with the intent of the Agreement, or non-eligible uses (public or private) of the facility developed under this Agreement are considered acts of conversion. For a detailed list of non-eligible uses reference the U.S. Fish & Wildlife Agency's FY 2013 BIG Tier 1 & 2 Request For Applications.
- D. The SUBGRANTEE agrees that all expenditures of funds for services, supplies, equipment, travel and construction shall be made in accordance with applicable state, local, or federal codes, laws or ordinances of the State of South Carolina. Such expenditures shall be subject to audit and all supporting documentation must be made available to SCDNR. If the total amount awarded to the SUBGRANTEE is in excess of \$25,000 the SUBGRANTEE must provide the SCDNR with a copy

of their annual audit for the period that covers the SUBGRANTEE award. Any expenditure of funds which are found on the basis of audit examination not in compliance with said codes, laws or ordinances shall be refunded by check made payable to SCDNR.

- E. Records with respect to all matters covered by this agreement shall be retained by the SUBGRANTEE for 3 years after the end of the agreement period, and shall be available for audit and inspection at any time such audit is deemed necessary by DNR or the funding agency. If audit has begun but is not completed at the end of the 3-year period, or if audit findings have not been resolved at the end of the 3-year period, the records shall be retained until resolution of the audit findings.

All SUBGRANTEE's, except for-profit entities, that expend \$500,000 or more in Federal awards from all sources during their fiscal year shall have a single or program-specific audit conducted for that fiscal year in accordance with the provisions of Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, dated June 24, 1997.

Non-Federal entities that expend less than \$500,000 a year in total Federal awards, from all sources, are exempt from the Federal audit requirements of OMB Circular A-133 for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity (SCDNR), and General Accounting Office (GAO).

A SUBGRANTEE is prohibited from charging the cost of an audit to Federal Awards if the SUBGRANTEE expended less than \$500,000 from all sources of federal funding in the SUBGRANTEE's fiscal year. If the SUBGRANTEE expends less than \$500,000 in federal funding from all sources in the SUBGRANTEE's fiscal year, but obtains an audit paid for by non-federal funding, then SCDNR requests a copy of that audit to be sent to:

Subgrantee's is required to send SCDNR a copy of their completed audit no later than nine months after the end of their fiscal year to:

South Carolina Department of Natural Resources
Attn: Grants Administration
P. O. Box 167
Columbia, SC 29202

A SUBGRANTEE who is not required to obtain a single or program specific audit may be required to obtain limited scope audits if the quarterly compliance reports, site visits and other information obtained by the department raise reasonable concern regarding compliance with agreement conditions. Such engagements may not be paid for by SCDNR pass-through funds.

- F. Subject to the provisions contained below, this agreement may be terminated by

either party providing written notice of that intent is given 30 days in advance.

1. All services listed within this agreement are to be completed. In the event that all services are not fully rendered as provided for in the agreement, SUBGRANTEE shall be reimbursed for un-cancelable obligations properly incurred prior to the notice of termination.
 2. Funds for this agreement are payable from Federal appropriations. In the event sufficient appropriations are not made to pay the charges under this agreement, SUBGRANTEE shall be reimbursed for un-cancelable obligations incurred prior to the date of notice of termination.
 3. SCDNR may terminate this agreement for cause, default or negligence on the part of the SUBGRANTEE at any time without thirty days advance written notice.
- G. The SUBGRANTEE certifies that he/she is not an employee of a South Carolina State Agency.
- H. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to any activities carried out under this agreement on the grounds of race, age, health status, handicap, color, sex, religion or national origin.
- I. The SUBGRANTEE agrees that neither the SUBGRANTEE, its employees, nor agents are covered by any professional or tort liability insurance maintained by SCDNR.
- J. The parties agree that during the term of this agreement, each party shall maintain its respective federal and state licenses, certifications, and accreditations required for the provision of services therein.
- K. The SUBGRANTEE certifies to SCDNR that it will provide a drug-free workplace program by:
1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
 2. Establishing a drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The SUB Grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and

- (d) The penalties that may be imposed upon employees for drug violations.
3. Making it a requirement that each employee to be engaged in the performance of the agreement be given a copy of the statement required by item 1.
 4. Notifying the employee in the statement required by item 1. That as a condition of employment on the agreement, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction.
 5. Notifying the SCDNR within 10 days after receiving notice under item 4. (b) From an employee or otherwise receiving actual notice of the conviction;
 6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee convicted, as required by Section 44-107-50 (SC Code of Laws); and
 7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of items 1., 2., 3., 4., 5., and 6.
- L. The SUBGRANTEE is required to follow the Davis-Bacon Act, as amended (40 USC 276a to a-7). All construction contracts awarded by SCNDR and the SUBGRANTEE of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon acceptance of the wage determination. The SUBGRANTEE shall report all suspected or reported violations to SCDNR.
- M. The SUBGRANTEE shall comply with the Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 276c for all contracts in excess of \$2,000 for construction or repair awarded by the SUBGRANTEE. The SUBGRANTEE shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874), as supplemented by the Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors of Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the

construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The SUBGRANTEE shall report all suspected violations to SCDNR.

- N. The SUBGRANTEE shall comply with the Contract Work Hours and Safety Standard Act (40 USC 327-333). All contracts awarded by the SUBGRANTEE in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-333), as supplemented by the Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute wages of the every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market.
- O. The SUBGRANTEE shall maintain adequate records on all covered employees, including hours worked per week and the regular rate of pay for each employee during the grant period. Records must be kept on file for at least three (3) years and be available for audit by SCDNR or appropriate officials of the Federal agency.
- P. By accepting this award, the SUBGRANTEE certifies that it:
1. Has neither used nor will use any appropriated funds for payments to lobbyists.
 2. Will disclose the name, address, payment details and purpose of any agreement with lobbyists whom SUBGRANTEE or its sub tier contractor(s) or subgrantee(s) will pay with profits or non-appropriated funds.
 3. Will file quarterly updates about the use of lobbyists if material changes occur in their use.
- Q. Neither party shall be liable for any claims, demands, expenses, liabilities and losses (including reasonable attorney's fees) which may arise out of any acts or failures to act by the other party, its employee or agents, in connection with the performance of services pursuant to this contract.
- R. This Agreement will be interpreted and enforced according to the general contract laws of the States of South Carolina.

- S. SUBGRANTEE agrees to abide by Debarment and Suspension (Executive Order 12549 and 12689). No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with EO's 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E. O. 12549. Contractors with awards that exceed the small purchase threshold (\$100,000) shall provide the required certification regarding its exclusion status and that of its principal employees.
- T. This award is subject to Executive Order 12549 "Debarment and Suspension" and Department of Commerce implementing regulations published as 15 CFR Part 26, Subparts A through E, "Government wide Debarment and Suspension (non-procurement). The SUBGRANTEE certifies that they have not been debarred or suspended under OMB Circular A-133 Compliance Supplement or otherwise from doing business with any governmental entity.
- U. In accordance with the Bayh-Dole Act of December 12, 1980 universities, small business, or non-profit institutions may elect to pursue ownership of an invention in preference to the government. However, the organization must report each disclosed invention to the funding agency. In additions the organization must file for patent protection, elect to retain title in writing within statutorily prescribed timeframes. Grant the Federal government a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practice on its behalf throughout the world.
- V. This Agreement incorporates guidelines and restrictions imposed by OMB circular A-87 Cost Principles for State, Local, and Indian Tribal Governments and OMB (relocated to 2 CFR part 225) circular A-102 Grants and Cooperative Agreements with State and Local Governments which will be followed by State or local governments (relocated to 2 CFR Part 215).
- W. The SUBGRANTEE is prohibited from expending Federal funds for the purpose of providing transportation, travel, and any other expenses for any Federal employee.
- X. The SUBGRANTEE is hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.
- Y. No obligations shall be created by the SUBGRANTEE for any purpose pertaining to the activities for which the funds were awarded that would require performance beyond the expiration date stipulated in the award document. Funds may be

expended beyond the expiration date for obligations created prior to the expiration date.

- Z. Verbal or written assurances of additional funding shall not constitute authority to obligate funds for activities beyond the expiration date. Funds shall not be obligated unless or until an award document is received by the SUBGRANTEE from SCDNR authorizing such obligation.
- AA. All signs, reports, documents and other tangible products produced under this Agreement must cite Federal Aid in Sportfish Restoration (SFR) as the source of project funds by use of SFR logos and crediting language.

Signs shall be placed at the transient dock identifying it as such and giving credit to the Federal Aid in Sportfish Restoration program (SFR) as a source of funding for this project. The SFR logo shall be used to identify this program.

- BB. The SUBGRANTEE must ensure that facilities developed under this Agreement are maintained and operated for their intended purpose throughout its useful life, as determined and documented in Addendum A: City of Beaufort, South Carolina proposal dated 26 August 2011 and Revised Scope of Work dated 09 September 2013.
- CC. User fees may be charged in connection with the facilities developed under this Agreement if the fees are consistent with the prevailing range of public fees in the local area for the activities involved. Income generated from these fees during the grant period may only be used to offset the expense of operation, maintenance, monitoring and/or repair of the facilities developed under this Agreement.
- DD. SUBGRANTEE must notify any personnel associated with this project of the potential presence of manatees and the need to avoid collisions with manatees. Any collision with manatees should be reported to the SCDNR and the US Fish & Wildlife Service Charleston Ecological Services Office.
- EE. The funding source shall have sole ownership and copyright for any tangible product (report, survey, film, etc.) developed under this Agreement.

VI. PROGRESS REPORTS

SUBGRANTEE's, who expend any funds obtained from, or passed through SCDNR, must provide SEMI-ANNUAL progress reports outlining the status of the project, compliance with the scope of services, and documentation of expenditures including match (including 3rd party) of \$33,408. The SUBGRANTEE is subject to site visits from SCDNR in an effort to monitor compliance.

Progress reports should be mailed to:

South Carolina Department of Natural Resources
Grants Administration, P. O. Box 12559
Charleston, SC 29422-2559

All progress reports, compliance reports and accompanying requests for payment relating to this Agreement must be submitted by 30 July 2014.

The Subrecipient is responsible for submitting annual reports detailing transient boater usage at the facility for the expected life of the infrastructure, as determined by the Useful Life Determination on file.

The parties to this Contract hereby agree to any and all provisions as stipulated above.

AS TO SCDNR:

AS TO THE SUBGRANTEE:

BY: [Signature]

BY: [Signature]

TITLE: Director

TITLE: CITY MANAGER

DATE: 12-16-13

DATE: 12-17-13

WITNESS: Rose Marie Scheibler

WITNESS: [Signature]

MAILING ADDRESS:

City Of Beaufort, SC
Attn: Libby Anderson
1911 Boundary Street
Beaufort, SC 29902
Vendor #: 7000029992

Note: SUBGRANTEE who is signing this form must have authority to obligate the business to this Agreement.



**SOUTH CAROLINA
DEPARTMENT OF NATURAL RESOURCES**

BIG SUBRECIPIENT AGREEMENT

Subrecipient Agreement Number: SCDNR-FY-2016-009 Amendment 1

This Agreement is between the State of South Carolina, Department of Natural Resources, (Grantee) and, The City of Beaufort, South Carolina (Sub-grantee).

This Agreement entered into on this November 01, 2014 by and between the South Carolina Department of Natural Resources, hereinafter referred to as SCDNR, and The City of Beaufort, South Carolina hereinafter referred to as SUBGRANTEE mutually agree and covenant to the following:

I. SCOPE OF SERVICES

The scope of this Agreement includes improvements to the existing transient boater facility at the Beaufort Downtown Marina, Beaufort, South Carolina for transient, recreational vessels 26 feet in length or greater.

Specifically, the SUBGRANTEE will make the following upgrades to the transient dockage:

- A. Purchase and install new deck boards, pile guides, steel stiffeners, rubbing boards, rub rails, flotation cells, cleats, and associated hardware.
- B. Purchase and install new fire suppression piping.
- C. Purchase and install new utility lines.
- D. Purchase and install power pedestals.

For reference, see Addendum A: Boating Infrastructure Grant Program Grant Application, City of Beaufort, SC, dated September 2013, and Addendum B, Bid Alternate Request, City of Beaufort, SC, dated August 20, 2014.

II. TIME OF PERFORMANCE

It is understood that the work to be performed hereunder has commenced on 01 November 2014, and shall be completed as specified by 09 September 2017. This project is funded by U.S. Department of Interior/U.S. Fish & Wildlife Service grant number SC-Y-F15AP00033, CFDA# 15.622, Boating Infrastructure Grant Program, project titled, "Transient Dock Upgrades – Downtown Marina, Beaufort".

It is further understood and agreed that the SUBGRANTEE will perform all of the specified services identified as the SUBGRANTEE's tasks in the attached proposal by 09 September 2017.

This Agreement may be extended only if all the below listed conditions are met:

- A. Written extension request is submitted to SCDNR by SUBGRANTEE 60 days prior to the grant end date. This includes agencies with "Expanded Authorities" capability.
- B. Approval to extend is received from the funding source.
- C. Written amendment is issued by SCDNR.

III. COMPENSATION

- A. It is agreed that the SCDNR will reimburse the SUBGRANTEE for all allowable expenditures not to exceed \$186,184.00 as itemized in the SUBGRANTEE's budget as submitted and attached hereto and incorporated by reference herein. It is agreed that \$186,184.00 constitute full and complete compensation and any deviation from above said sum will be absorbed by the SUBGRANTEE.
- B. For SUBGRANTEE Agreements in excess of \$100,000 it is understood that any cumulative changes above 10% in any budget category must have prior written approval by SCDNR. Changes above 10% in budget categories made without prior SCDNR approval will not be acknowledged by SCDNR and may be disallowed.
- C. It is understood that the match requirements of \$104,730.00 must be documented in the same format as direct charges to the Agreement. Requests for reimbursement must include match costs if required. Requests for reimbursement under this Agreement must include a breakdown of costs by budget category and be supported by actual expenditure documentation.

IV. METHOD OF PAYMENT

It is agreed that the SUBGRANTEE will submit invoices at least on a quarterly basis with a breakdown of expenditures for each budget category including any match requirements. Invoices should be submitted to: South Carolina Department of Natural Resources, Attn: Grants Administration, P.O. Box 12559, Charleston, S.C. 29422-2559. Any financial questions should be directed to Eileen Heyward, SCDNR Grant Coordinator. A final financial report, using preferably the form SF425 or similar format, plus a final invoice

must be prepared and submitted to SCDNR no later than (45 days before the end of the grant) 09 September 2017 subject to audit by the SCDNR, the state of South Carolina and/or the Federal Government. Final payment will not be released until all services have been performed in accordance with this AGREEMENT and the final project report is submitted.

V. TERMS AND CONDITIONS

- A. The SUBGRANTEE shall not convert any facility developed under this Agreement to uses other than those purposes for which assistance was originally approved, without the written approval of the SCDNR. See Addendum A: Boating Infrastructure Grant Program Grant Application, City of Beaufort, SC, dated September 2013, and Addendum B, Bid Alternate Request, City of Beaufort, SC, dated August 20, 2014.
1. If conversion occurs without proper approval from the SCDNR and the funding agency, the Agreement will be terminated and any monies that have been provided through SCDNR under the Agreement must be refunded to SCDNR within 30 days after the termination of the Agreement.
 2. Conveyance of property interests for purposes inconsistent with the intent of the Agreement, or non-eligible uses (public or private) of the facility developed under this Agreement are considered acts of conversion. For a detailed list of non-eligible uses reference the U.S. Fish & Wildlife Agency's most recent BIG Tier 1 & 2 Request For Applications.
 3. SUBGRANTEE may be required by SCDNR to sign a Notice of Grant Agreement which will be recorded in the Register of Deeds for the property as notice of the restricted use of the property.
- B. The SUBGRANTEE agrees that all expenditures of funds for services, supplies, equipment, travel and construction shall be made in accordance with applicable state, local, or federal codes, laws or ordinances of the State of South Carolina. Such expenditures shall be subject to audit and all supporting documentation must be made available to SCDNR. If the total amount awarded to the SUBGRANTEE is in excess of \$25,000 the SUBGRANTEE must provide the SCDNR with a copy of their annual audit for the period that covers the SUBGRANTEE award. Any expenditure of funds which are found on the basis of audit examination not in compliance with said codes, laws or ordinances shall be refunded by check made payable to SCDNR.
- C. Records with respect to all matters covered by this agreement shall be retained by the SUBGRANTEE for 3 years after the end of the agreement period, and shall be available for audit and inspection at any time such audit is deemed necessary by DNR or the funding agency. If audit has begun but is not completed at the end of the 3-year period, or if audit findings have not been resolved at the end of the 3-year period, the records shall be retained until resolution of the audit findings.

All SUBGRANTEES, except for-profit entities, that expend \$750,000 or more in Federal awards from all sources during their fiscal year shall have a single or program-specific audit conducted for that fiscal year in accordance with the provisions of Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, dated June 24, 1997.

Non-Federal entities that expend less than \$750,000 a year in total Federal awards, from all sources, are exempt from the Federal audit requirements of OMB Circular A-133 for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity (SCDNR), and General Accounting Office (GAO).

A SUBGRANTEE is prohibited from charging the cost of an audit to Federal Awards if the SUBGRANTEE expended less than \$750,000 from all sources of federal funding in the SUBGRANTEE's fiscal year. If the SUBGRANTEE expends less than \$750,000 in federal funding from all sources in the SUBGRANTEE's fiscal year, but obtains an audit paid for by non-federal funding, then SCDNR requests a copy of that audit to be sent to:

SUBGRANTEES are required to send SCDNR a copy of their completed audit no later than nine months after the end of their fiscal year. SUBGRANTEE'S fiscal year ends 30 June 2017.

South Carolina Department of Natural Resources
Attn: Grants Administration
P. O. Box 167
Columbia, SC 29202

A SUBGRANTEE who is not required to obtain a single or program specific audit may be required to obtain limited scope audits if the quarterly compliance reports, site visits and other information obtained by the department raise reasonable concern regarding compliance with agreement conditions. Such engagements may not be paid for by SCDNR pass-through funds.

- D. Subject to the provisions contained below, this agreement may be terminated by either party providing written notice of that intent is given 30 days in advance.
1. All services listed within this agreement are to be completed. In the event that all services are not fully rendered as provided for in the agreement, SUBGRANTEE shall be reimbursed for un-cancelable obligations properly incurred prior to the notice of termination.
 2. Funds for this agreement are payable from Federal appropriations. In the event sufficient appropriations are not made to pay the charges under this agreement,

SUBGRANTEE shall be reimbursed for un-cancelable obligations incurred prior to the date of notice of termination.

3. SCDNR may terminate this agreement for cause, default or negligence on the part of the SUBGRANTEE at any time without thirty days advance written notice.
- E. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to any activities carried out under this agreement on the grounds of race, age, health status, handicap, color, sex, religion or national origin under the Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR Part 60-1.4(b), in accordance with Executive Order 11246 "Equal Employment Opportunity" (30 CFR 12319,12935, 3 CFRPart.1967-1965 Comp.,p.339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity" and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The language of 41 CFR 60-1.4 is hereby incorporated by reference and each contractor or subcontractor shall include the language required under 41 CFR Part 60 in each of its contracts related to this project.
 - F. The SUBGRANTEE agrees that neither the SUBGRANTEE, its employees, nor agents are covered by any professional or tort liability insurance maintained by SCDNR.
 - G. The parties agree that during the term of this agreement, each party shall maintain its respective federal and state licenses, certifications, and accreditations required for the provision of services therein.
 - H. The SUBGRANTEE certifies to SCDNR that it will provide a drug-free workplace program by:
 - 1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
 2. Establishing a drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The SUBGRANTEE'S policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug violations.

3. Making it a requirement that each employee to be engaged in the performance of the agreement be given a copy of the statement required by item 1.
 4. Notifying the employee in the statement required by item 1. That as a condition of employment on the agreement, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction.
 5. Notifying the SCDNR within 10 days after receiving notice under item 4. (b) From an employee or otherwise receiving actual notice of the conviction;
 6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee convicted, as required by Section 44-107-50 (SC Code of Laws); and
 7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of items 1., 2., 3., 4., 5., and 6.
- I. By accepting this award, the SUBGRANTEE certifies that it:
1. Agrees to abide by Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)-Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award cover by 31 U.S.C 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
 - J. Neither party shall be liable for any claims, demands, expenses, liabilities and losses (including reasonable attorney's fees) which may arise out of any acts or failures to act by the other party, its employee or agents, in connection with the performance of services pursuant to this contract.
 - K. This Agreement will be interpreted and enforced according to the general contract laws of the State of South Carolina.. The Agreement will be enforced without regard to conflict of laws, rules, or any other rules directing referral to particular law or forums. This Agreement does not waive Eleventh Amendment immunity of any participating State.
 - L. This award is subject to Executive Orders 12549 and 12689 "Debarment and Suspension" and Department of Commerce implementing regulations published as

15 CFR Part 26, Subparts A through E, "Government wide Debarment and Suspension" (non-procurement). The SUBGRANTEE certifies that they have not been debarred or suspended under OMB Circular A-133 Compliance Supplement or otherwise from doing business with any governmental entity. A contract award cannot be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM) in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689.

- M. The SUBGRANTEE is required to follow the Davis-Bacon Act, as amended (40 U.S.C. 3141-3148 and 3146-3148). All construction contracts awarded by SCNDR and the SUBGRANTEE of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act and as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon acceptance of the wage determination. The SUBGRANTEE shall report all suspected or reported violations to SCDNR.
- N. The SUBGRANTEE shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C 3145) for all contracts in excess of \$2,000 for construction or repair awarded by the SUBGRANTEE. The SUBGRANTEE shall include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by the Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The SUBGRANTEE shall report all suspected violations to SCDNR.
- O. The SUBGRANTEE shall comply with the Contract Work Hours and Safety Standard Act (40 U.S.C 3701-3708). All contracts awarded by the SUBGRANTEE in excess of \$100,000 that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 USC 327-333), as supplemented by the Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the-Act, each contractor shall be required to compute wages of every mechanic and laborer on the basis of a standard workweek of 40 hours.

Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market.

P. In accordance with the Bayh-Dole Act of December 12, 1980, universities, small business, or non-profit institutions may elect to pursue ownership of an invention in preference to the government. However, the organization must report each disclosed invention to the funding agency. In addition, the organization must file for patent protection, elect to retain title in writing within statutorily prescribed timeframes, grant the Federal government a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practice on its behalf throughout the world.

Q. In accordance with the 41 United State Code (U.S.C) 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection: This requirement applies to all awards issued after January 1, 2013 and shall be in effect until January 1, 2017.

(a) This award and related subawards and contracts over the simplified acquisition threshold and all employees working on this award and related subawards and contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).

(b) Recipients, and their subrecipients and contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

(c) The recipient shall insert this clause, including this paragraph (c), in all subawards and contracts over the simplified acquisition threshold related to this award.

R. The SUBGRANTEE is required to follow the Clean Air Act (42 U.S.C 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act as amended

(33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- S. The SUBGRANTEE is required to follow the Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- T. This Agreement incorporates guidelines and restrictions imposed by OMB circular A-21 Cost Principles for Educational Institutions (relocated to 2 CFR part 220) and OMB circular A-122 Non-Profit Organizations (relocated to 2 CFR Part 230) and OMB circular A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (relocated to 2 CFR, part 215) which will be followed by any colleges or universities. Please refer to appropriate CFR for any codifications to A-102 or A-110.
- U. This Agreement incorporates guidelines and restrictions imposed by OMB circular A-87 Cost Principles for State, Local, and Indian Tribal Governments and OMB (relocated to 2 CFR part 225) circular A-102 Grants and Cooperative Agreements with State and Local Governments which will be followed by State or local governments (relocated to 2 CFR Part 215).
- V. All signs, reports, documents and other tangible products produced under this Agreement must cite Federal Aid in Sportfish Restoration (SFR) as the source of project funds by use of SFR logos and crediting language.
- W. Signs shall be placed at the transient dock identifying it as such and giving credit to the Federal Aid in Sportfish Restoration program (SFR) as a source of funding for this project. The SFR logo shall be used to identify this program.
- X. The SUBGRANTEE must ensure that facilities developed under this Agreement are maintained and operated for their intended purpose throughout its useful life, as determined and documented in Addendum A: Application for Funding, Power Pedestal Replacement, Charleston City Marina, Charleston, SC, dated 25 September 2013, and associated revised scope of work.
- Y. User fees may be charged in connection with the facilities developed under this Agreement if the fees are consistent with the prevailing range of public fees in the local area for the activities involved. Income generated from these fees during the grant period may only be used to offset the expense of operation, maintenance, monitoring and/or repair of the facilities developed under this Agreement.
- Z. SUBGRANTEE must notify any personnel associated with this project of the potential presence of manatees and the need to avoid collisions with manatees. Any collision with manatees should be reported to the SCDNR and the US Fish & Wildlife Service Charleston Ecological Services Office.
- AA. The funding source shall have sole ownership and copyright for any tangible product (report, survey, film, etc.) developed under this Agreement. **Contact SCDNR for copies of any OMB circulars listed above if required.**
- BB. SUBGRANTEE must agree to make positive efforts to use small and minority owned businesses and individuals.

- CC. This Agreement incorporates guidelines and restrictions imposed by 2CFR 200. SUBGRANTEE shall adhere to all rules and regulations as set forth in these regulations. Contact SCDNR for copies of any OMB circulars listed above if required.

VI. GENERAL PROCURMENT

- A. In accordance with § 200.317 When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with § 200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section § 200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow § 200.318 General procurement standards through § 200.326 Contract provisions. If the SUBGRANTEE is a state agency, it is to title all equipment purchased under this Agreement and title will remain with the SUBGRANTEE. The SUBGRANTEE will use, manage, and dispose of equipment acquired in accordance with South Carolina state laws and Procurement procedures. Contact SCDNR for copies of any OMB circulars listed above if required.
- (a) Pursuant to the Iran Divestment Act of 2014, S.C. Code Ann. §§ 11-57-10, *et seq.*, the Executive Director of the State Budget and Control Board has published a list of persons determined to engage in investment activities in Iran. The list identifies entities that are ineligible to contract with the State of South Carolina or any political subdivision of the State, including state agencies, public universities, colleges and schools, and local governments. The Iran Divestment Act of 2014 list is online http://procurement.sc.gov/PS/20150105_SC_IDA_List-Final.pdf.
 - (b) The SUBGRANTEE is prohibited from expending Federal funds for the purpose of providing transportation, travel, and any other expenses for any Federal employee.
 - (c) The SUBGRANTEE is subject to the provisions of the Fly America Act and must comply with the Act as prescribed when scheduling transportation for travel paid for with Federal funds.
 - (d) The SUBGRANTEE is hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.
 - (e) No obligations shall be created by the SUBGRANTEE for any purpose pertaining to the activities for which the funds were awarded that would require performance beyond the expiration date stipulated in the award

document. Funds may be expended beyond the expiration date for obligations created prior to the expiration date.

- (f) Verbal or written assurances of additional funding shall not constitute authority to obligate funds for activities beyond the expiration date. Funds shall not be obligated unless or until an award document is received by the SUBGRANTEE from SCDNR authorizing such obligation.

VII. INDIRECT RATE COST

The SUBGRANTEE is hereby notified that they are to use the negotiated Indirect Rate of the State Agency in which they are the SUBGRANTEE of per OMB Circular § 200.331: Requirements for pass-through entities, paragraph (a)(4). (4) An approved federally recognized indirect cost rate negotiated between the sub-recipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the sub-recipient (in compliance with this Part), or a de minimis indirect cost rate as defined in § 200.414 Indirect (F&A) costs, paragraph (b) of this Part.

VIII. PROGRESS REPORTS

SUBGRANTEE's, who expend any funds obtained from, or passed through SCDNR, must provide SEMI-ANNUAL progress reports outlining the status of the project, compliance with the scope of services, and documentation of expenditures including match (including 3rd party). The SUBGRANTEE is subject to site visits from SCDNR in an effort to monitor compliance.

Progress reports should be mailed to:

South Carolina Department of Natural Resources
Attn: Scott Meister
P. O. Box 12559
Charleston, SC 29422-2559

All progress reports, compliance reports and accompanying requests for payment relating to this Agreement must be submitted by 09 September 2017.

The Subrecipient is responsible for submitting annual reports detailing transient boater usage at the facility for the expected life of the infrastructure, as determined by the Useful Life Determination on file.

The parties to this Contract hereby agree to any and all provisions as stipulated above.

AS TO SCBDR:

BY:


Alvin A. Taylor

TITLE:

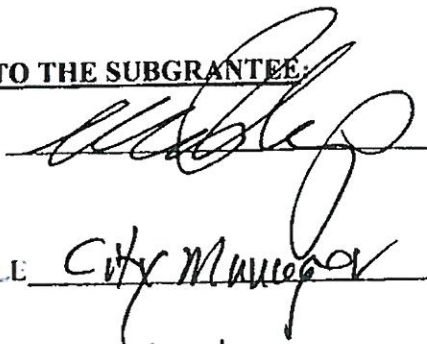
Director - SC DNR

DATE:

2-1-2017

AS TO THE SUBGRANTEE:

BY:



TITLE:

City Manager

DATE:

2/2/2017

WITNESS:



WITNESS:



Note: SUBGRANTEE who is signing this form must have authority to obligate the agency or business to this Agreement.



**SOUTH CAROLINA
DEPARTMENT OF NATURAL RESOURCES**

BIG SUBRECIPIENT AGREEMENT

Subrecipient Agreement Number: SCDNR-FY-2017-025

This Agreement entered into on this February 1, 2017 by and between the South Carolina Department of Natural Resources, hereinafter referred to as SCDNR, and the City of Beaufort, SC (Vendor #: 7000029992) hereinafter referred to as SUBGRANTEE, mutually agree and covenant to the following:

I. SCOPE OF SERVICES

The scope of this Agreement includes the installation of a transient boater day dock facility along the seawall at the Henry C. Chambers Waterfront Park in Beaufort, SC, including:

- A. Installing 200 ft by 10 ft floating dock.
- B. Installing galvanized steel pipe piles.
- C. Installing two (2) ADA compliant gangways.
- D. Modification of seawall and guardrail to accommodate gangways.

For reference, see Addendum A: Boating Infrastructure Grant Application Tier 2 FY2015, City of Beaufort, SC, dated September 2014.

II. TIME OF PERFORMANCE

It is understood that the work to be performed hereunder has commenced on 01 February 2017 and shall be completed as specified in the proposal by 17 December 2017. This project is funded by U.S. Department of Interior/U.S. Fish & Wildlife Service grant number SC-Y-F15AP00241, CFDA# 15.622, Boating Infrastructure Grant Program, project titled "City of Beaufort, South Carolina – Transient Day Dock Development" SCDNR account number P24018173817.

It is further understood and agreed that the SUBGRANTEE will perform all of the specified services identified as the SUBGRANTEE's tasks in the attached proposal by 17 December 2017.

This Agreement may be extended only if all the below listed conditions are met:

1

- A. Written extension request is submitted to SCDNR by SUBGRANTEE 60 days prior to the grant end date. This includes agencies with "Expanded Authorities" capability
- B. Approval to extend is received from the funding source.
- C. Written amendment is issued by SCDNR.

III. COMPENSATION

- A. It is agreed that the SCDNR will reimburse the SUBGRANTEE for all allowable expenditures not to exceed \$160,000.00 as itemized in the SUBGRANTEE's budget as submitted and attached hereto and incorporated by reference herein. It is agreed that \$160,000.00 constitute full and complete compensation and any deviation from above said sum will be absorbed by the SUBGRANTEE.
- B. For SUBGRANTEE Agreements in excess of \$100,000 it is understood that any cumulative changes above 10% in any budget category must have prior written approval by SCDNR. Changes above 10% in budget categories made without prior SCDNR approval will not be acknowledged by SCDNR and may be disallowed.
- C. It is understood that the match requirements of \$90,000.00 must be documented in the same format as direct charges to the Agreement. Requests for reimbursement must include match costs if required. Requests for reimbursement under this Agreement must include a breakdown of costs by budget category and be supported by actual expenditure documentation.

IV. METHOD OF PAYMENT

It is agreed that the SUBGRANTEE will submit invoices at least on a quarterly basis with a breakdown of expenditures for each budget category including any match requirements. Invoices should be submitted to: South Carolina Department of Natural Resources, Attn: Grants Administration, P.O. Box 12559, Charleston, S.C. 29422-2559. Any financial questions should be directed to Eileen Heyward, SCDNR Grant Coordinator (HeywardE@dnr.sc.gov). A final financial report, using preferably the form SF425 or similar format, plus a final invoice must be prepared and submitted to SCDNR no later than 17 December 2017 subject to audit by the SCDNR, the state of South Carolina and/or the Federal Government. Final payment will not be released until all services have been performed in accordance with this AGREEMENT and the final project report is submitted.

V. TERMS AND CONDITIONS

- A. The SUBGRANTEE shall not convert any facility developed under this Agreement to uses other than those purposes for which assistance was originally approved, without the written approval of the SCDNR. See Addendum A: Boating Infrastructure Grant Application Tier 2 FY2015, City of Beaufort, SC, dated September 2014.
 - 1. If conversion occurs without proper approval from the SCDNR and the funding agency, the Agreement will be terminated and any monies that have been provided

through SCDNR under the Agreement must be refunded to SCDNR within 30 days after the termination of the Agreement.

2. Conveyance of property interests for purposes inconsistent with the intent of the Agreement, or non-eligible uses (public or private) of the facility developed under this Agreement are considered acts of conversion. For a detailed list of non-eligible uses reference the U.S. Fish & Wildlife Agency's most recent BIG Tier 1 & 2 Request For Applications.

3. SUBGRANTEE may be required by SCDNR to sign a Notice of Grant Agreement which will be recorded in the Register of Deeds for the property as notice of the restricted use of the property.

- B. The SUBGRANTEE agrees that all expenditures of funds for services, supplies, equipment, and construction shall be made in accordance with applicable state, local, or federal codes, laws or ordinances of the State of South Carolina. Such expenditures shall be subject to audit and all supporting documentation must be made available to SCDNR. If the total amount awarded to the SUBGRANTEE is in excess of \$25,000 the SUBGRANTEE must provide the SCDNR with a copy of their annual audit for the period that covers the SUBGRANTEE award. Any expenditure of funds which are found on the basis of audit examination to not be in compliance with said codes, laws or ordinances shall be refunded by check made payable to SCDNR.
- C. Records with respect to all matters covered by this Agreement shall be retained by the SUBGRANTEE for 3 years after the end of the Agreement period, and shall be available for audit and inspection at any time such audit is deemed necessary by SCDNR or the funding agency. If audit has begun but is not completed at the end of the 3-year period, or if audit findings have not been resolved at the end of the 3-year period, the records shall be retained until resolution of the audit findings.

All SUBGRANTEES, except for-profit entities, that expend \$750,000 or more in Federal awards from all sources during their fiscal year shall have a single or program-specific audit conducted for that fiscal year in accordance with the provisions of Office of Management and Budget (OMB) under circular 2 CFR 200.

Non-Federal entities that expend less than \$750,000 a year in total Federal awards, from all sources, are exempt from the Federal audit requirements of 2 CFR 200 for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity (SCDNR), and U.S. Government Accountability.

A SUBGRANTEE is prohibited from charging the cost of an audit to Federal Awards if the SUBGRANTEE expended less than \$750,000 from all sources of federal funding in the SUBGRANTEE's fiscal year. If the SUBGRANTEE expends less than \$750,000 in federal funding from all sources in the SUBGRANTEE's fiscal

year, but obtains an audit paid for by non-federal funding, then SCDNR requests a copy of that audit.

SUBGRANTEES are required to send SCDNR a copy of their completed audit no later than nine months after the end of their fiscal year. SUBGRANTEE'S fiscal year ends 30 June 2018.

South Carolina Department of Natural Resources

Attn: Grants Administration

P. O. Box 167

Columbia, SC 29202

A SUBGRANTEE who is not required to obtain a single or program specific audit may be required to obtain limited scope audits if the quarterly compliance reports, site visits and other information obtained by the SCDNR raise reasonable concern regarding compliance with agreement conditions. Such audits may not be paid for by SCDNR pass-through funds.

- D. Subject to the provisions contained below, this agreement may be terminated by either party providing written notice of that intent is given 30 days in advance.
1. All services listed within this Agreement are to be completed. In the event that all services are not fully rendered as provided for in the Agreement, SUBGRANTEE shall be reimbursed for un-cancelable obligations properly incurred prior to the notice of termination.
 2. Funds for this agreement are payable from Federal appropriations. In the event sufficient appropriations are not made to pay the charges under this Agreement, SUBGRANTEE shall be reimbursed for un-cancelable obligations incurred prior to the date of notice of termination.
 3. SCDNR may terminate this Agreement for cause, default or negligence on the part of the SUBGRANTEE at any time without thirty days advance written notice.
- E. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to any activities carried out under this agreement on the grounds of race, age, health status, handicap, color, sex, religion or national origin under the Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR Part 60-1.4(b), in accordance with Executive Order 11246 "Equal Employment Opportunity" (30 FR 12319), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity" and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity.

Department of Labor." The language of 41 CFR 60-1.4 is hereby incorporated by reference and each contractor or subcontractor shall include the language required under 41 CFR Part 60 in each of its contracts related to this Agreement.

- F. The SUBGRANTEE agrees that neither the SUBGRANTEE, its employees, nor agents are covered by any professional or tort liability insurance maintained by SCDNR.
- G. The parties agree that during the term of this agreement, each party shall obtain and maintain its respective federal, state, and local government licenses, certifications, and accreditations required for the provision of services therein.
- II. The SUBGRANTEE certifies to SCDNR that it will provide a drug-free workplace program by:
 - 1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
 - 2. Establishing a drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The SUBGRANTEE'S policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug violations.
 - 3. Making it a requirement that each employee to be engaged in the performance of the agreement be given a copy of the statement required by item 1.
 - 4. Notifying the employee in the statement required by item 1. That as a condition of employment on the Agreement, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction.
 - 5. Notifying the SCDNR within 10 days after receiving notice under item 4(b) From an employee or otherwise receiving actual notice of the conviction;
 - 6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee convicted, as required by Section 44-107-50 (SC Code of Laws); and
 - 7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of items 1., 2., 3., 4., 5., and 6.

- I. By accepting this award, the SUBGRANTEE certifies that it:
 - I. Agrees to abide by Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)- Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award cover by 31 U.S.C 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
 - J. Neither party shall be liable for any claims, demands, expenses, liabilities and losses (including reasonable attorney's fees) which may arise out of any acts or failures to act by the other party, its employee or agents, in connection with the performance of services pursuant to this Agreement.
 - K. This Agreement will be interpreted and enforced according to the general contract laws of the State of South Carolina.. The Agreement will be enforced without regard to conflict of laws, rules, or any other rules directing referral to particular law or forums. This Agreement does not waive Eleventh Amendment immunity of any participating State.
 - L. This award is subject to Executive Orders 12549 and 12689 "Debarment and Suspension" and Department of Commerce implementing regulations published as 15 CFR Part 26, Subparts A through E, "Government wide Debarment and Suspension" (non-procurement). The SUBGRANTEE certifies that they have not been debarred or suspended or otherwise prohibited from doing business with any governmental entity. A contract award cannot be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM) in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689.
 - M. The SUBGRANTEE is required to follow the Davis-Bacon Act, as amended (40 U.S.C. 3141-3148 and 3146-3148). All construction contracts awarded by SCDNR and the SUBGRANTEE of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act and as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon acceptance of the wage

determination. The SUBGRANTEE shall report all suspected or reported violations to SCDNR.

- N. The SUBGRANTEE shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C 3145) for all contracts in excess of \$2,000 for construction or repair awarded by the SUBGRANTEE. The SUBGRANTEE shall include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by the Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The SUBGRANTEE shall report all suspected violations to SCDNR.
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- Q. In accordance with the 41 United State Code (U.S.C) 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection: This requirement applies to all awards issued after January 1, 2013 and shall be in effect until January 1, 2017.

- (a) This award and related subawards and contracts over the simplified acquisition threshold and all employees working on this award and related subawards and contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).
 - (b) Recipients, and their subrecipients and contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
 - (c) The recipient shall insert this clause, including this paragraph (c), in all subawards and contracts over the simplified acquisition threshold related to this award.

- R. The SUBGRANTEE is required to follow the Clean Air Act (42 U.S.C 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the SUBGRANTEE and any subcontractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- S. The SUBGRANTEE is required to follow the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

- T. This Agreement incorporates guidelines and restrictions imposed by 2CFR 200. SUBGRANTEE shall adhere to all rules and regulations as set forth in these regulations. Contact SCDNR for copies of any OMB circulars listed above if required.

- U. All signs, reports, documents and other tangible products produced under this Agreement must cite Federal Aid in Sportfish Restoration (SFR) as the source of project funds by use of SFR logos and crediting language.

- V. Signs shall be placed at the transient dock identifying it as such and giving credit to the Federal Aid in Sportfish Restoration program (SFR) as a source of funding for this project. The SFR logo shall be used to identify this program.

- W. The SUBGRANTEE must ensure that facilities developed under this Agreement are maintained and operated for their intended purpose throughout its useful life, as determined and documented in Addendum A: Boating Infrastructure Grant Application Tier 2 FY2015, City of Beaufort, SC, dated September 2014.

- X. User fees may be charged in connection with the facilities developed under this Agreement if the fees are consistent with the prevailing range of public fees in the

local area for the activities involved. Income generated from these fees during the grant period may only be used to offset the expense of operation, maintenance, monitoring and/or repair of the facilities developed under this Agreement.

- Y. SUBGRANTEE must notify any personnel associated with this project of the potential presence of manatees and the need to avoid collisions with manatees. Any collision with manatees should be reported to the SCDNR and the US Fish & Wildlife Service Charleston Ecological Services Office.
- Z. The funding source shall have sole ownership and copyright for any tangible product (report, survey, film, etc.) developed under this Agreement. **Contact SCDNR for copies of any OMB circulars listed above if required.**
- AA. SUBGRANTEE must agree to make positive efforts to use small and minority owned businesses and individuals.

VI. GENERAL PROCUREMENT

- A. In accordance with **2 CFR Part 200.317**, a state must follow the same policies and procedures it uses for procurements from its non-federal funds when procuring property and services under a federal award. The state will comply with 2 CFR Part 200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section 200.326. All other non-federal entities, including subrecipients of a state, will follow § 200.318 through § 200.326. If the SUBGRANTEE is a state agency, it is to title all equipment purchased under this Agreement and title will remain with the SUBGRANTEE. The SUBGRANTEE will use, manage, and dispose of equipment acquired in accordance with South Carolina state laws and Procurement procedures. **Contact SCDNR for copies of any OMB circulars listed above if required.**
- B. SUBGRANTEE certifies that it is not on the Iran Divestment Act List (available: <https://procurement.sc.gov/iran-divestment>). SUBGRANTEE must notify SCDNR immediately if SUBGRANTEE is ever named on the list. SUBGRANTEE shall require any subcontractor associated with this Agreement to certify and comply with the same. (S.C. Code Ann. § 11-57-10, et seq.) The Iran Divestment Act of 2014 list is online http://procurement.sc.gov/PS/20150105_SC_IDA_List-Final.pdf.
- C. The SUBGRANTEE is prohibited from expending Federal funds for the purpose of providing transportation, travel, and any other expenses for any Federal employee.
- D. The SUBGRANTEE is subject to the provisions of the Fly America Act and must comply with the Act as prescribed when scheduling transportation for travel paid for with Federal funds.
- E. The SUBGRANTEE is hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.

- F. No obligations shall be created by the SUBGRANTEE for any purpose pertaining to the activities for which the funds were awarded that would require performance beyond the expiration date stipulated in the award document. Funds may be expended beyond the expiration date for obligations created prior to the expiration date.
- G. Verbal or written assurances of additional funding shall not constitute authority to obligate funds for activities beyond the expiration date. Funds shall not be obligated unless or until an award document is received by the SUBGRANTEE from SCDNR authorizing such obligation.

VII. INDIRECT RATE COST

The SUBGRANTEE is hereby notified that they are to use the negotiated Indirect Rate of the State Agency in which they are the SUBGRANTEE of per OMB Circular § 200.331: Requirements for pass-through entities, paragraph (a)(4). (4) An approved federally recognized indirect cost rate negotiated between the sub-recipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the sub-recipient (in compliance with this Part), or a de minimis indirect cost rate as defined in § 200.414 Indirect (F&A) costs, paragraph (b) of this Part.

VIII. PROGRESS REPORTS

The SUBGRANTEE must provide SEMI-ANNUAL progress reports outlining the status of the project, compliance with the scope of services, and documentation of expenditures including match (including 3rd party). The SUBGRANTEE is subject to site visits from SCDNR in an effort to monitor compliance.

Progress reports should be mailed to:

South Carolina Department of Natural Resources
Attn: Scott Meister
P. O. Box 12559
Charleston, SC 29422-2559

All progress reports, compliance reports and accompanying requests for payment relating to this Agreement must be submitted by 17 December 2017.

The Subrecipient is responsible for submitting annual reports detailing transient boater usage at the facility for the expected life of the infrastructure, as determined by the Useful Life Determination on file.

The parties to this Agreement hereby agree to any and all provisions as stipulated above.

AS TO SC DNR:

BY: 

Alvin A. Taylor

TITLE: _____

Director - SC DNR

DATE: 8.11-2017

AS TO THE SUBGRANTEE:

BY: 

TITLE: City Manager

DATE: 8/11/17

WITNESS: 

WITNESS: 

Subgrantee Mailing Address

City of Beaufort, SC
Attn.: Kathy Todd
1911 Boundary Street
Beaufort, SC 29902
Phone: 843-525-7009
Vendor #: 7000029992

Note: SUBGRANTEE who is signing this form must have authority to obligate the agency or business to this Agreement.

