

LICENSE AGREEMENT

This **LICENSE AGREEMENT** (this “**Agreement**”) is entered into by and between the **South Carolina State Ports Authority**, an instrumentality of the State of South Carolina created by 1942 Act 626 of the South Carolina General Assembly (the “**SCPA**”), and the **Charleston County Park and Recreation Commission**, a political subdivision of the State of South Carolina (“**Licensee**”). The SCPA and Licensee are each a “**Party**”, and collectively, the “**Parties**.”

WITNESSETH:

WHEREAS, the SCPA owns certain real property located in Charleston, South Carolina, upon which it operates the Hugh K. Leatherman Terminal (“**Terminal**”); and

WHEREAS, Licensee desires to obtain a license to use Tidewater Road and other SCPA property at or adjacent to the Terminal (“**Property**”) for the purpose of installing and maintaining a permanent revetment (as further described herein).

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE I. GRANT AND DESCRIPTION OF LICENSED AREA

1.01 **Grant of License.** The SCPA grants to Licensee, and Licensee accepts, a non-exclusive conditional license for the use of the Property. The Parties agree that this is a license and not a lease, and that no estate in real property or other interest in property is created by this Agreement.

1.02 **Acceptance.** Licensee agrees to accept possession of the Property in “as is” condition. Licensee represents and warrants to the SCPA that Licensee has fully inspected the Property and is relying solely upon its own inspections and examinations of the Property in entering into this Agreement. Any additional alterations or improvements to the Property required by Licensee for the conduct of its operations shall be made by Licensee at its sole cost and expense in accordance with the requirements set forth in this Agreement. Licensee shall deliver to the SCPA copies of all licenses, permits and other governmental approvals required for the conduct of its operations at the Port at least ten (10) days prior to commencing any activities at the Port, the Terminal or the Property, and prior to each renewal or modification thereof. THE PORTS AUTHORITY MAKES NO WARRANTY, EXPRESS OR IMPLIED AS TO THE CONDITION OF THE ROAD OR THE TERMINAL OR ANY EQUIPMENT, SURFACE, WATER ACCESS, EROSION PREVENTION MEASURES, NATURAL STABILITY, OR ABILITY TO WITHSTAND CONSTRUCTION TRAFFIC OF THE ROAD, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE II. TERM

2.01 **Term.** The term of this Agreement will begin on the Effective Date and continue in existence so long as Licensee performs the Permitted Use (as defined herein) (the “**Term**”).

ARTICLE III. LICENSE FEE AND OTHER ITEMS

3.01 **License Fees.** This Agreement has a License Fee of One Hundred and 00/100 Dollars (\$100.00) (the “**License Fee**”).

3.02 **MTOS.** Except as specifically covered in this Agreement, the use of the Property and Terminal and all matters, arrangements, services, and charges between the Parties shall be governed by the rules, regulations, rates and terms of the Authority’s then-current Marine Terminal Operator Schedule No. 8, as may be amended from time to time, or its successor (“**MTOS**”) as posted the SCPA website at <https://scspa.com/wp-content/uploads/8-charleston-tariff.pdf>. The MTOS is incorporated by reference and made a part of this Agreement. This Agreement and the MTOS shall be read to be consistent and complimentary. Any conflict among this Agreement and the MTOS shall be resolved by giving priority to this Agreement.

3.03 **Insurance.** Licensee shall, at its own expense, maintain in effect for the benefit of the SCPA and Licensee insurance coverage as set forth in Article VI of this Agreement. The SCPA shall have the right, but not the obligation, to maintain commercial liability and such other insurance as the SCPA may deem reasonably necessary to protect its interests throughout the term of this Agreement. Except in instances of SCPA negligence or willful misconduct, any insurance obtained by the SCPA will not cover the loss of any cargo, food, beverages, equipment, personal property, vehicles, or contents on the Property.

ARTICLE IV. OPERATIONS

4.01 **Permitted Use.**

- a) Under this Agreement, the Property will be used for the sole purpose of transportation and construction as necessary for the installation and maintenance of a permanent revetment along the southern edge of Licensee property which is more fully described in Schedule A attached and incorporated hereto (the vehicular use and revetment collectively, the “**Permitted Use**”).
- b) Licensee may utilize the Property for the Permitted Use so long as SCPA operation of the Terminal or commercial business moving thereto is not hindered by delays, congestion, or any other inconvenience, determined at the SCPA’s sole and absolute discretion.
- c) The Permitted Use is subject to the following conditions:
 - i. At Licensee’s sole expense, Licensee will obtain and maintain all appropriate permits and licenses related to the project;
 - ii. Licensee must ensure all materials used in the revetment have been approved for such purposes by the South Carolina Department of Environmental Services (DES) and the United States Army Corps of Engineers (USACE);

- iii. Upon installation, Licensee will conduct regular maintenance on the revetment in accordance with DES, USACE, and other local or national standards for the duration of the Term.
 - iv. Licensee will ensure all actions arising out of or related to the Permitted Use are completed with the highest standard of care.
 - v. Licensee will pay all expenses related to the Permitted Use.
 - vi. The Permitted Use is exclusively limited to the installation and construction and maintenance of the Revetment as described in SCPA Permit Number 2021-02 and no other feature, which is attached and incorporated into this Agreement as Schedule B (the “**SCPA Permit**”).
- d) Licensee will not use, nor permit the Property or any part of the Terminal to be used, for any disorderly or unlawful purpose.
- e) Licensee will not permit anyone to use tobacco products, e-cigarettes, or vaping devices on the Property, Terminal, or Port under any circumstances, as the Property, Terminal, and Port are tobacco, smoke, and vaping free zones.

4.02 **Permitted Use Schedule.** Licensee must deliver all proposed schedules regarding the Permitted Use in writing to SCPA for approval at least thirty (30) days in advance of the desired date of action. SCPA reserves the right in its sole and absolute discretion to approve as submitted, modify, or reject the proposed schedules, not to be reasonably withheld. SCPA will return the approved schedule with any modifications to the Licensee (“**Permitted Use Schedule**”). If there are multiple Permitted Use Schedules over the Term of this Agreement, the most recent Permitted Use Schedule fully replaces, supersedes, and takes complete priority over all previous versions. Except for emergency situations, Licensee may only conduct the Permitted Use according to the most recent Permitted Use Schedule.

4.03 **Compliance with Laws and Other Restrictions.** Licensee shall fully comply with all rules and regulations of the SCPA, including those in the SCPA’s MTOS, all rules and regulations of the DES, USACE, South Carolina Department of Transportation, National Fire Prevention Association, and all other laws, rules, regulations, ordinances, building, fire and safety codes, orders, decrees, permits, including but not limited to the SCPA Permit, approvals and determinations, whether or not presently contemplated, of all federal, state, county and local governmental bodies (“**Laws and Regulations**”) including, without limitation, all noise laws, all immigration laws, all environmental laws, zoning, and the terms of all easements, covenants, conditions and restrictions affecting: (a) use and operation of the Property, Port, or Terminal; (b) any activities or operations of Licensee at the Property, the Port or Terminal; (c) any erosion prevention materials, equipment, machinery, improvements or other property installed or operated at the Property, the Port or Terminal by or on behalf of Licensee; or (d) any cause or condition created by or at the instance of Licensee, its agents, employees, contractors, licensees, invitees or any other person or entity claiming by or through Licensee. Licensee shall be responsible for the

acts and omissions of Licensee and its employees in accordance with the South Carolina Tort Claims Act.

4.04 **Waste and Nuisance Prohibited.** Licensee shall not commit waste, or suffer or permit waste to be committed, or allow or permit any nuisance at the Property, Terminal, or Port. Licensee shall not permit any action at the Property, Terminal, or Port which would disturb or endanger occupants or users of adjoining facilities, or property, or unreasonably interfere with the use of their respective facilities or property or do anything which would tend to injure the reputation of the SCPA, Terminal, or Port.

4.05 **Sanitary Condition.** Licensee shall at its expense (a) improve and maintain the Property in as clean, orderly and sanitary condition as possible, and free of insects, rodents, vermin and other pests; (b) keep any garbage, trash, rubbish or other refuse related to the Permitted Use in appropriate containers off of the Property and Terminal to be regularly removed; and (c) conduct its operations in all respects in a dignified manner in accordance with standards adopted from time to time by the SCPA.

4.06 **Hazardous Materials.**

- a) As used herein, the term “**Hazardous Materials**” shall mean any substance presenting a risk to human health or the environment as defined pursuant to applicable federal, state, or local environmental laws, ordinances, or regulations, as now or as may be passed or promulgated in the future.
- b) Licensee covenants and agrees throughout the Term of this Agreement: (i) that Licensee shall not transport, generate, manufacture, refine, treat, store, handle, dispose, produce, or process Hazardous Materials at or over the Property; (ii) to ensure that no agent, employee, contractor, licensee or invitee of Licensee, as a result of any intentional or unintentional act or wrongful omission, transports, uses, stores or in any manner locates or releases any Hazardous Materials over or on the Property; (iii) to promptly notify the SCPA in writing following receipt of any notice respecting Hazardous Materials at, on, under, from or possibly affecting the Property, the Terminal or the Port; (iv) to conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required to clean up and remove any Hazardous Materials at, on, under, emanating from or affecting the Property, other areas of the Terminal or the Port as a result of any action or wrongful omission by Licensee or any agent, employee, contractor, licensee or invitee of Licensee, in accordance with applicable Laws and Regulations; and (v) to comply with any reasonable programs instituted by the SCPA for the purpose of testing, containment, remediation, removal or other actions necessary to contain, clean up or remove any Hazardous Materials at, on, under, emanating from or affecting the Property, other areas of the Terminal or the Port, including, without limitation, any soil management plan, asbestos and petroleum containment programs and the like.
- c) The SCPA shall have the right, but not the obligation, to conduct inspections of the Property and to take samples of substances located on the Property, as reasonably required to determine the presence, nature and extent of any Hazardous Materials at, on, under,

emanating from, or affecting the Property and compliance with applicable Laws and Regulations.

ARTICLE V. REPAIRS, MAINTENANCE, ALTERATIONS, INSPECTION, AND SECURITY

5.01 Repairs and Maintenance.

- a) Licensee shall be fully responsible and liable for the repair and maintenance of the Property, whether or not connected to or resulting from the Permitted Use, including but not limited to lighting, fencing, surface areas, signage, and any other improvement.
- b) Licensee shall not cause or permit any waste, damage, or injury to the Property, Port, or Terminal and shall promptly notify the SCPA of the need for unrelated and unexpected repairs or maintenance. Licensee shall pay, on demand, the cost of any repairs or replacements required as a result of any damage caused by the negligence or misconduct of Licensee, or Licensee's employees, agents, contractors, customers, guests, licensees, or invitees.
- c) Debris, trash, and other useless materials resulting from the Permitted Use shall be promptly removed from the Property, and the Property shall be kept reasonably clean and free of useless materials at all times.

5.02 Alterations by Licensee.

- a) Licensee shall not make or allow to be made any alterations, renovations, improvements or other installations in, on or to the Property or any part thereof (including, without limitation, any structural alterations, or any cutting or drilling into any part of the Property or any securing of any fixture, apparatus, or equipment of any kind to any part of the Property) unless and until Licensee shall have caused plans and specifications therefore to have been prepared, at the sole cost and expense of Licensee, by an architect, licensed South Carolina professional engineer, or other duly qualified person, if necessary, and shall have obtained the SCPA's prior written approval thereof, said written approval may be obtained via email.
- b) If such approval is granted, Licensee shall cause the work described in such plans and specifications to be performed, at its expense, promptly, efficiently, competently and in a good and workmanlike manner by duly qualified or licensed persons or entities reasonably acceptable to the SCPA, using first grade materials in compliance with DES and USACE, without interference with or disruption to the operations of SCPA, the Terminal, the Port, or occupants or users of adjoining properties. Licensee shall not obstruct the sidewalks, paths, entrances, or access points to the Property or any adjacent properties during construction. All such work shall comply with all applicable Laws and Regulations.
- c) All improvements and additions made by or for Licensee shall be deemed part of the Property, shall remain at the Property, and shall be surrendered to the SCPA at the

expiration or earlier termination of this Agreement, unless the SCPA shall elect to have Licensee remove all or any portion of such alterations, additions, or improvements, in which event Licensee prior to expiration or earlier termination of this Agreement shall accomplish such removal at its sole cost and repair any damage to the Property caused by such removal.

5.03 **Mechanic's Liens.**

- a) No person shall be entitled to any lien upon the Property, or any portion thereof, directly or indirectly derived through or under Licensee, or through or by virtue of any act or omission of Licensee, or for any improvements or fixtures made thereon or installed therein, or for or on account of any labor or material furnished thereon or thereto, or for or on account of any matter or thing whatsoever; and nothing in this Agreement shall be construed to constitute a consent by the SCPA to the creation of any such lien.
- b) Licensee shall pay promptly all persons furnishing labor or materials with respect to any work performed by Licensee or its contractor regarding the Permitted Use. In the event any mechanic's or other lien shall at any time be filed against the Property, Terminal, or Port by reason of work, labor, services, or materials performed or furnished, or alleged to have been performed or furnished, to Licensee or to anyone using the Property through or under Licensee, Licensee shall, within thirty (30) days following notice thereof, cause the same to be discharged of record or bonded to the satisfaction of the SCPA. If Licensee shall fail to cause such lien to be so discharged or bonded, then, in addition to any other right or remedy of the SCPA, the SCPA may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by the SCPA including reasonable attorney's fees incurred by the SCPA either defending against such lien or in procuring the discharge of such lien, shall be due and payable by Licensee to the SCPA on demand.

5.04 **The SCPA's and Terminal Customers' Right to Use the Property.** The SCPA, its agents, employees, and representatives in addition to customers conducting business through the Terminal or Port may at all times make use of the Property.

5.05 **Security.** The SCPA shall not be liable for the safety or security of any persons or property on the Property or Terminal. Licensee, in its discretion, may provide appropriate surveillance or security and alarm systems to assure the security and safety of the Property and protection of persons or property at the Property. The SCPA shall not be liable for any theft, loss, or damage arising from criminal activities at the Property, Port, or Terminal or the inadequacy or alleged inadequacy of any security service or the failure to furnish or delay in furnishing any such service. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of any portion of the Property, Terminal, to equipment, cargo or materials stored thereon, or other property of the SCPA, shall first be reported to the SCPA Port Police, then to the Terminal Manager or his/her designee.

ARTICLE VI. INSURANCE

6.01 **Insurance to be Purchased and Maintained by Licensee.** At all times during the Term of this Agreement, or from and after any earlier entry on the Property by Licensee, its agents,

contractors or employees, Licensee shall purchase and maintain in full force and effect insurance providing coverage as follows:

- a) Public general liability insurance insuring Licensee, its employees, and managers against any and all claims or demands for personal injury or property damage arising out of Licensee's use and operation of the Property, with minimum limits in accordance with the S.C. Torts Claim Act (S.C. Code § 15-78-10, et. seq.), as follows:
 - 1) Three Hundred Thousand and No/100 Dollars (\$300,000.00) per person arising because of loss from a single occurrence on account of bodily injuries, because of property damage sustained, or by any combination of personal injury or property damage; and
 - 2) A total sum not to exceed Six Hundred Thousand and No/100 Dollars (\$600,000.00) as the result of any one occurrence, accident or disaster.
- b) Licensee shall carry an "all risk" property insurance covering all personal property of Licensee used at the Property, Port, or Terminal.
- c) Worker's compensation insurance as required by South Carolina law.
- d) Automobile liability insurance with minimum limits of no less than \$1,000,000 covering Licensee owned or hired vehicles (not including privately owned vehicles) operated at the Terminal or Port by Licensee, its agents and employees.
- e) Additional coverage as reasonably warranted by Licensee operations at the Property, Terminal, or Port or to reflect evolving industry standards and/or customary trade practices.

6.02 **Private Contractor.** Licensee shall require any private independent contractor or subcontractor performing work on the Property (a "**Private Contractor**") to:

- a) Purchase and maintain in full force and effect commercial general liability insurance insuring such Private Contractor and its employees against any and all claims or demands for personal injury and property damages arising out of such Private Contractor's use and operation of the Property, with a combined single limit for bodily injury and property damage liability of at least \$2,000,000 per occurrence;
- b) Purchase and maintain an umbrella or excess liability insurance policy with an annual aggregate of \$5,000,000;
- c) Purchase and maintain "all risk" property insurance covering all personal property of Private Contractor used at the Property, Port, or Terminal; and
- d) Purchase and maintain, at no expense to the SCPA, the policies of insurance sufficient to cover the work and standard risks associated with the work being performed associated with this Agreement, including adherence to all Laws and Regulations.

6.03 **Policy Requirements.** The insurance coverage required to be maintained by Licensee hereunder shall be primary and non-contributing with any insurance carried by the SCPA. Each insurance policy required to be maintained by Licensee, any Government Service Provider, and any Private Contractor performing work on behalf of Licensee shall: (i) be written by a company having an A.M. Best Company rating of "A" or better and a financial category of "VII" or better; and (ii) require not less than thirty (30) days prior written notice to the SCPA of any material change, impairment, cancellation or non-renewal of coverage.

6.04 **Delivery of Certificates, Policies.** Licensee shall deliver to the SCPA a certificate of insurance and copies of required endorsements evidencing the existence or renewal of such coverage prior to the Effective Date, and, with respect to insurance which its Government Service Providers and Private Contractors are required to carry, prior to commencement of any work at the Property, and prior to the expiration date of each policy. Licensee shall deliver a certified copy of each policy and endorsements to the SCPA upon reasonable request. If any policy provides for payment of a deductible by the insured, Licensee shall be liable for the full deductible amount. The limits of any insurance required by this Agreement shall not limit the liability of Licensee pursuant to this Agreement. If Licensee fails to procure and maintain any insurance required by this Agreement, or provide proof of policies of insurance for Government Service Providers or Private Independent Contracts required by this Agreement, within five (5) days of the SCPA providing written notice pursuant to Section 8.01(a), the SCPA may, but shall not be required to, procure and maintain the same at the expense of Licensee.

ARTICLE VII. ASSIGNMENT PROHIBITED

7.01 **Assignment Prohibited.** Licensee shall neither transfer nor assign this Agreement or any interest herein nor delegate any of its duties hereunder nor grant any license or other right of occupancy or permit the use of the Property or any portion thereof, other than the Permitted Use, without the prior written consent of the SCPA.

7.02 **Right to Remove Unauthorized Parties.** The SCPA shall have the right to remove from or prohibit the entry of any Party to the Property as a result of any assignment or grant by Licensee of any license, right of occupancy or use other than the Permitted Use without the prior written consent of the SCPA.

ARTICLE VIII. DEFAULT

8.01 **Event of Default.** Any one or more of the following events shall constitute a default by Licensee:

- a) The failure of Licensee to maintain insurance, to require its Government Service Providers or Private Contractors and related subcontractors to maintain insurance, or to deposit certificates of insurance and endorsements with the SCPA, as and when required pursuant to the terms of this Agreement, which failure is not cured within five (5) business days after the giving of written notice thereof by the SCPA.

- b) Default by Licensee in the performance or observance of any covenant or obligation of Licensee pursuant to this Agreement (other than a default described elsewhere in this Section 8.01), which default is not cured within five (5) days after the giving of notice thereof by the SCPA, unless such default is of such nature that it cannot be cured within a five (5) day period and Licensee immediately undertakes and diligently pursues such action as is necessary to cure the default and the default is cured within five (5) days.
- c) The transfer of any rights of Licensee hereunder by attachment, execution or similar legal process; and such adjudication or order is not vacated within thirty (30) days after its entry.
- d) Multiple events of stoppage, delay, or inconvenience to the vehicular transit upon the Property for the purpose of conducting business with the SCPA or through the Terminal.
- e) The commencement of a case under any chapter of the Federal Bankruptcy Code by or against Licensee or the filing of a voluntary or involuntary petition proposing the adjudication of Licensee a bankrupt or insolvent unless the petition is filed or case commenced by a Party other than Licensee and is withdrawn or dismissed within sixty (60) days after the date of its filing.

8.02 **Remedies.** Upon the occurrence of a default by Licensee, the SCPA shall have the following rights, without further notice to Licensee in any instance, but in accordance with applicable law in all instances:

- a) Perform, on behalf and at the expense of Licensee, any obligation of Licensee under this Agreement which Licensee has failed to perform, the reasonable cost of which performance by the SCPA shall be payable by Licensee to the SCPA on demand;
- b) Elect to terminate the rights of Licensee and remove Licensee and any other persons and property from or about the Property, Terminal, or Port;
- c) Re-license all or any portion of the Property, alone or together with other facilities, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the term of this Agreement) and on such terms and conditions (which may include fee concessions and alterations of the Property) as the SCPA, in its sole and absolute discretion, may determine, but the SCPA shall not be liable for, nor shall the obligations of Licensee hereunder be diminished by reason of, any failure by the SCPA to re-license the Property or any failure by the SCPA to collect any license fees due upon such re-licensing. The SCPA shall not be obligated to re-license the Property or any portion thereof in preference to any other facilities owned or controlled by the SCPA. Licensee shall have no right in or to any surplus which may be derived by the SCPA from any such re-licensing. Nothing herein shall relieve the SCPA of any obligation it may have under applicable Laws and Regulations to mitigate its damages; and
- d) Pursue any combination of such remedies and any other legal or equitable right or remedy which it may have. The right of the SCPA to terminate the rights of Licensee hereunder

and to remove Licensee and any other persons from the Property shall be effective notwithstanding any dispute respecting the Licensee default.

8.03 **Damages.** If the SCPA elects to terminate the right of Licensee to use the Property, Licensee shall nevertheless remain liable for all damages which may be due or sustained by the SCPA and all reasonable costs, fees and expenses incurred by the SCPA in pursuit of its remedies hereunder or in re-licensing the Property to others.

8.04 **Force Majeure.** If the SCPA or Licensee shall be delayed, hindered or prevented from the performance of any act required hereunder by reason of any governmental restriction, civil commotion, war, insurrection, sabotage, military or usurped power, scarcity of labor or materials, strike, lock-out, fire, flood, named storm, hurricane, or other natural catastrophe, or any other reasons beyond its control (“Force Majeure”), the period for the performance of any such act shall be excused for the period in which performance is prevented by Force Majeure. Notwithstanding anything herein, the provisions of this Section 8.04 shall not apply to any obligation to maintain insurance pursuant to this Agreement. For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either Party to make a profit or avoid financial loss, (b) changes in market prices or conditions, or (c) a Party’s financial inability to perform its obligations under this Agreement.

ARTICLE IX. LIMITATION OF LIABILITY, RISK OF LOSS

9.01 **Limitation of Liability.** The SCPA shall not be liable for any loss, bodily injury, death, theft, or damage to property, the environment, or persons sustained by Licensee or others at or around the Property, Terminal, or Port, including but limited to any part thereof being out of repair, or due to gas, smoke, steam, electricity, breakage of pipes, floods, earthquakes, ice, rain, lightning, wind, hurricanes, water, flooding, snow, frost, other weather elements, insects, animals, rodents, moths, weevils, settling of structures or improvements, potholes, settling of floors or foundations, collapse of buildings or improvements, Force Majeure, or due to the happening of any accident in or about the Property, the Port, or Terminal, or due to any negligence of any other person or entity, in all cases unless due to the negligence or intentional acts of the SCPA. Furthermore, the liability of the SCPA and recovery for any claim for any damages including but not limited to bodily injury, death, theft, or property damage, under any legal theory or cause of action, whether in tort, contract, warranty, or otherwise, shall be limited to, and shall not exceed the liability caps provided in Section 15-78-120 of the South Carolina Code of Laws. This provision shall survive any termination of this Agreement.

9.02 **Risk of Loss.** Except to the extent arising from the negligence or intentional acts of the SCPA, Licensee shall bear all risk of loss, theft, damage or injury to persons or property, equipment, or inventory at the Property or arising out of use or occupancy of the Property, Terminal, or Port by Licensee or Licensee’s employees, agents, customers, clients, guests, licensees, representatives, or invitees, including but not limited to Government Service Providers and Private Contractors, occurring as a result of any risk customarily covered by the insurance Licensee is required to maintain pursuant to this Agreement. All personal property, equipment, and inventory brought onto or near the Property, Terminal, or Port by Licensee or Licensee’s employees, agents, customers, clients, guests, licensees, representatives or invitees, including but

not limited to Government Service Providers and Private Contractors, shall be at the risk of Licensee only, and the SCPA shall not be liable for theft thereof or any loss or damage thereto.

ARTICLE X. NOTICES

10.01 **Sending of Notices.** Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and directed to a Party at its address as set forth below. Either Party may designate a new address by written notice to the other Party. All notices shall be effective and deemed delivered: (i) upon transmission when sent on a business day prior to 5:00 PM via email with written confirmation of successful transmission; (ii) upon deposit with the carrier when sent via an overnight delivery or courier service providing written confirmation of delivery; and (iii) upon deposit with the United States Postal Service when mailed postage prepaid by United States registered or certified mail, return receipt requested.

If to SCPA:

South Carolina State Ports Authority
Attn: Edward “Butch” Weber
200 Ports Authority Drive
Mount Pleasant, SC 29462

If to Licensee:

Charleston County Park and Recreation
Commission
Attn: Director of Planning and Development
861 Riverland Drive
Charleston, SC 29412

With copy to:

South Carolina State Ports Authority
Attn: General Counsel
200 Ports Authority Drive
Mount Pleasant, SC 29462

With copy to:

Charleston County Park and Recreation
Commission
Attn: Executive Director
861 Riverland Drive
Charleston, SC 29412

ARTICLE XI. GENERAL PROVISIONS

11.01 **Effective Date.** This Agreement shall become effective on the latest undersigned date (“**Effective Date**”).

11.02 **No Agency or Partnership.** The Parties shall not in any way or for any purpose be deemed to be or become partners, joint venturers, agents, employees or employers with respect to each other by virtue of this Agreement or for purposes hereof. Neither Party shall be responsible for supervising any activities or conduct of the other Party, its agents or employees.

11.03 **Entire Agreement.** This Agreement (including the Schedules attached hereto, the MTOS, and any documents incorporated herein by reference) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreements or understandings, whether written or oral, which the Parties, their agents or representatives may have had relating to the subject matter hereof. No modification, alteration, or

waiver of any term, condition, or covenant of this Agreement shall be valid unless in writing signed by the both Parties.

11.04 **Successors and Assigns.** This Agreement and the covenants and conditions herein contained shall inure to the benefit of and be binding upon the SCPA, its successors and assigns, and shall be binding upon and inure to the benefit of Licensee, its successors and permitted assigns, licensees, guests, and permittees. The SCPA shall be relieved of any obligations under this Agreement occurring after any sale or other transfer by the SCPA of its interest in the Property, Port, or Terminal.

11.05 **Rights Reserved.** The SCPA reserves the right to enter into additional agreements for the use of the Property which do not reduce Licensee's rights under this Agreement.

11.06 **Waivers.** No covenant, term, or condition hereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition of this Agreement. Acceptance by the SCPA of any performance by Licensee after the time it shall have become due shall not constitute a waiver by the SCPA of the breach or default of any covenant, term, or condition of this Agreement unless otherwise expressly agreed to by the SCPA in writing. No modification of this License shall be effective unless submitted in writing and agreed to in writing by both Parties. No modification of one provision hereof shall be considered a waiver, breach, or cancellation of any other provision hereof.

11.07 **Construction of Ambiguity.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any Party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by the Parties and their counsel and, in the case of any ambiguity or uncertainty, shall be construed according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all Parties hereto, and not against the Party who drafted or had its counsel draft this Agreement or any section herein.

11.08 **Captions.** The Article and Section captions and headings are for convenience of reference only and shall not be used to construe or interpret the terms of this Agreement.

11.09 **Severability.** If any term or provision, or any portion thereof, of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11.10 **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed so as to confer upon any other Party the rights of a third-Party beneficiary.

11.11 **Applicable Law.** This Agreement and the rights and obligations of the Parties hereunder shall exclusively be governed by and construed in accordance with the laws of the State of South Carolina, other than its choice of laws and conflicts of laws provisions, and the Parties hereto specifically agree, exclusive of any other jurisdiction, to submit to and be bound by the jurisdiction of the state courts of the State of South Carolina. Venue for any action brought to enforce this Agreement shall lie in Charleston County, South Carolina.

11.12 **Waiver of Jury Trial.** **Each Party hereby irrevocably waives any and all rights which either may have to request a jury trial in any proceeding at law or in equity arising out of or in any way related to this Agreement or the relationship of the Parties. This waiver extends to any and all rights to demand a trial by jury arising from any source, including but not limited to the Constitution of the United States, the Constitution of any state, common law or any applicable statute or regulation. Each Party hereby acknowledges that it is knowingly and voluntarily waiving the right to demand trial by jury.**

11.13 **Time of the Essence.** Time shall be of the essence in the performance of all covenants and obligations of Licensee.

11.14 **Signature by Licensee Representatives.** Any individual executing this Agreement on behalf of Licensee represents and warrants that he or she has been duly authorized to execute and deliver this Agreement as a representative of the Licensee and has the power and authority to enter into and perform its obligations pursuant to this Agreement.

11.15 **Electronic Signatures.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterpart. The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf" format), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of an original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

[Remainder of Page Intentionally Blank.]

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed by their representatives as of the later undersigned date, as indicated by the below signatures:

**SOUTH CAROLINA STATE PORTS
AUTHORITY**

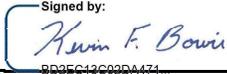
By: _____

Name: Phillip G. Padgett

Title: Interim CEO

Date: _____

**CHARLESTON COUNTY PARK AND
RECREATION COMMISSION**

By:  _____
Signed by:
Kevin F. Bowie
8D9FC13C93DA474

Name: Kevin Bowie

Title: Executive Director

Date: 10/8/2025

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed by their representatives as of the later undersigned date, as indicated by the below signatures:

**SOUTH CAROLINA STATE PORTS
AUTHORITY**

By:  _____

Name: Phillip G. Padgett

Title: Interim CEO

Date: 10-1-25 _____

**CHARLESTON COUNTY PARK AND
RECREATION COMMISSION**

By: _____

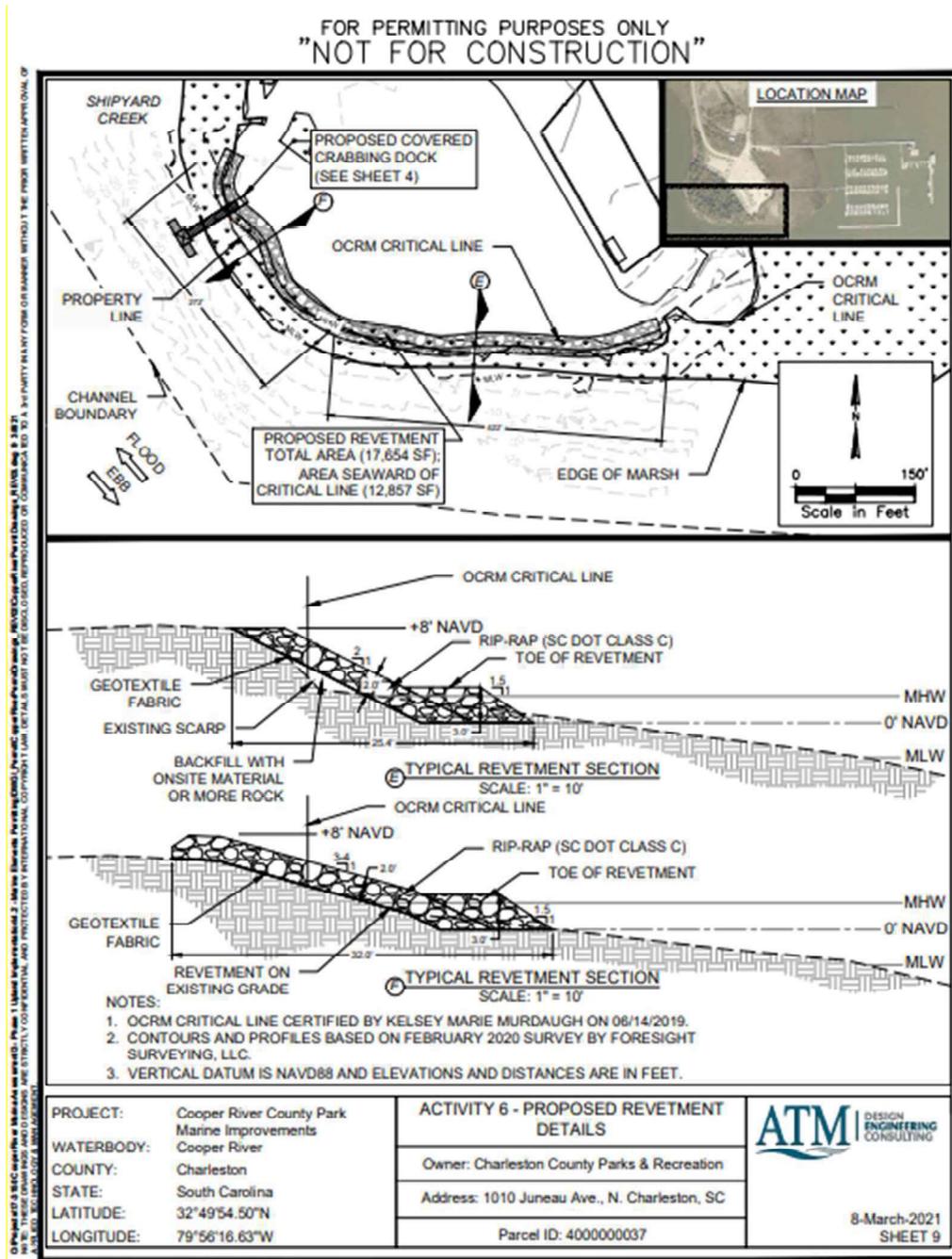
Name: Kevin Bowie

Title: Executive Director

Date: _____

Schedule A

(Image of the Revetment from permit application SAC-2002-12823)



[End of Schedule A]

Schedule B

(South Carolina State Ports Authority Permit Number 2021-02)

South Carolina State Ports Authority

Permit

Permittee: Charleston County Parks and Recreation Commission (CCPRC),

Project Name: Cooper River County Park Marine Improvements (Cooper River Marina)

Permit No: SCPA 2021-02

Location: Cooper River / Shipyard Creek

This permit (Permit) is issued by the South Carolina State Ports Authority (SCPA) pursuant to Section 54-3-620 of the South Carolina Code of Laws, as amended, and is issued to authorize the construction of modifications to the Cooper River Marina, owned and operated by Charleston County Park and Recreation Commission (CCPRC), in accordance with that certain Cooper River Marina application filed with and jointly noticed by the United States Army Corps of Engineers, Charleston Division (USACE), and the S.C. Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC-OCRM) on or about April 1, 2021 (SAC-2002-12823). This Permit authorizes only the construction of a fishing/crabbing dock, a pedestrian access boardwalk from the parking area to the existing grand pier, adding seating/fishing platforms to the existing grand pier, adding a floating dock and gangway on the existing grand pier, expanding the grand pier deck, and constructing a riprap revetment along the southern shoreline of the property. Collectively, the stated scope is hereinafter referred to as "Improvements". The Improvements are more specifically defined within permit application SAC-2002-12823.

All conditions listed in this Permit shall remain in effect for the life of the Improvements.

Conditions of Permit

CCPRC hereby assumes all risks of loss, damage or injury to persons or property, of whatever kind or nature, occasioned in whole or in part, incident to or arising out of this Permit and/or the Improvements. CCPRC hereby releases the SCPA from and against any and all causes of action, suits, claims, losses, liabilities, damages, and demands of whatever kind or nature, including claims for consequential damages, claims for personal injury, wrongful death, breach of contract, property damage, natural resource damage, loss of income and earnings, and civil or criminal fines incident to or arising out of this Permit and/or the Improvements. This release provision of this Agreement shall apply to claims of damage or injury from any source, including environmental or pollution matters.

This Permit is conditioned on the agreement by CCPRC that the Improvements, and operation thereof, shall not interfere with the marine terminals and facilities of the SCPA, or the operation thereof, or with safe navigation of vessels to and from said terminals and facilities. This condition applies to existing and future terminals and facilities.

CCPRC understands and acknowledges that the SCPA owns and operates a marine terminal in the area (i.e., the Hugh K. Leatherman Terminal) and owns the access road to the Cooper River Marina (i.e., Tidewater Road). Nothing in this Permit impairs or otherwise impacts the ability of the SCPA to make any changes or alteration or modifications to the terminal or the access road. It is understood and acknowledged that the SCPA retains the sole discretion to make any changes in construction or operation to the marine terminal or

road access, without any liability to CCPRC, and CCPRC hereby releases the SCPA from any claim arising under or related to any decision, change in operation, or any construction or operation or the marine terminal or access road.

CCPRC acknowledges and agrees that undertaking any Improvements at the Cooper River Marina is “at risk” for CCPRC, and the SCPA bears no responsibility or liability for loss of value for any Improvement in any manner whatsoever. CCPRC shall at all times maintain the Improvements, and the approaches thereto, in safe condition and repair, and in such condition as not to interfere with vessel navigation and commerce in the federal channel of the Cooper River and Shipyard Creek or to pose a hazard to persons or watercraft using the waters of the Cooper River and Shipyard Creek.

The Improvements occur in an active commercial and industrial area of Charleston Harbor. CCPRC shall ensure the structural integrity of the fishing/crabbing dock on Shipyard Creek, and the deck expansion on the Grand Pier on the Cooper River, should account for ship and tugboat propulsion wash from the adjacent turning basins.

CCPRC shall fully comply with any and all general and special conditions contained in any applicable DHEC-OCRM or USACE permits for the construction and operation of the Improvements and appurtenant features thereto, which conditions are hereby incorporated herein by reference.

CCPRC shall fully comply with all applicable laws, rules, regulations, ordinances, building, fire and safety codes, orders, decrees, permits, approvals, and determinations of all federal, state, county, and local governmental bodies, including the rules and regulations of the SCPA.

This Permit is granted subject to the rights of the SCPA and the State of South Carolina (State) in the navigable waters and shall be further subject to all rights held by the SCPA and the State in the waters and submerged lands of the coast.

Upon written notice from the SCPA for failure to comply with the terms, conditions, or standards of this Permit, CCPRC must, within sixty (60) days, without expense to the SCPA, and in such a manner as directed by the SCPA, effect compliance with the terms, conditions, and standards, or remove the Improvements.

CCPRC understands and agrees that, if future operations by the SCPA require the removal, relocation, or other alteration of the Improvements or work herein authorized, or if, in the opinion of the SCPA, the Improvements or work shall cause the unreasonable obstruction to the free navigation of the navigable waters, CCPRC will be required upon due notice from the SCPA, to remove, relocate, or alter the Improvements or obstructions caused thereby, without expense to the SCPA. No claim shall be made against the SCPA on account of any such direction for removal, relocation, or alteration.

CCPRC, upon termination of this Permit, shall, at its sole expense, clean up and remove any and all materials associated with the Improvements within a reasonable amount of time agreed upon by the parties, but no later than one hundred eighty (180) days of the termination date of this Permit, in addition to complying with any and all applicable state and federal requirements.

No language in this Permit is intended to limit or modify in any way the provisions of Title 54, Chapter 3 of the Code of Laws of South Carolina, as amended, pertaining to the jurisdiction and authority of SCPA, as granted by the South Carolina Legislature.

No term or condition of this Permit is severable.

This Permit is transferable or assignable to a third party upon request of CCPRC, subject to the review, consent and approval of such a request by the SCPA. The Permit, and the terms, conditions, obligations, and

requirements imposed hereunder, is expressly understood to be and is appurtenant to the Improvements authorized herein and shall apply equally to any successor in interest or assignee of CCPRC.

Notices pursuant to this Permit shall be provided as follows:

If to the Ports Authority:

South Carolina State Ports Authority
Attn: Environmental Permitting Manager
200 Ports Authority Dr.
Mt. Pleasant, SC 29464

With a copy to:

South Carolina State Ports Authority
Attn: General Counsel
200 Ports Authority Dr.
Mt. Pleasant, SC 29464

If to Cooper River Marina:

Charleston County Park and
Recreation Commission
Attn: Director of Planning and Development
861 Riverland Drive
Charleston, SC 29412

With a copy to:

Charleston County Park and
Recreation Commission
Attn: Executive Director
861 Riverland Drive
Charleston, SC 29412

The effective date of this Permit shall commence upon the signature of both parties and delivery of the signed original to the SCPA. The Permit shall be binding on successors and assigns of Charleston County Park and Recreation Commission and to any successor to the SCPA.

The Permittee, by acceptance of the Permit, agrees to abide by the terms and conditions contained herein and to perform the work in strict accordance with the plans and specifications contained herein and in all required federal and state permits. Any deviation from these conditions, terms, plans, and specifications shall be grounds for revocation, or suspension of this Permit.

[SIGNATURE PAGE FOLLOWS]

Charleston County Parks and Recreation Commission, Cooper River Marina
PERMIT NO.: SCPA 2021-02

SOUTH CAROLINA STATE PORTS AUTHORITY



By: Mark J. Messersmith

Its: Environmental Permitting Manager

Date: 11/21/2022

CHARLESTON COUNTY PARK AND RECREATION COMMISSION



By: _____

Its: Executive Director

Date: 11/21/2022

[End of Schedule B]

[End of Agreement]