

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
AND THE
CITY OF CHARLESTON
REGARDING THE ASSESSMENT OF AESTHETIC RESOURCES
FOR THE CHARLESTON PENINSULA COASTAL STORM RISK MANAGEMENT STUDY,
CHARLESTON, SOUTH CAROLINA

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the U.S. Army Corps of Engineers, Charleston District (hereinafter referred to as the “Corps”), and the City of Charleston (hereinafter referred to as the “City”).

ARTICLE I – BACKGROUND

On October 10, 2018, the Corps and the City, as Non-Federal Sponsor, entered into an Agreement for the Charleston Peninsula, South Carolina Study. Among other things, that Agreement generally sets forth the obligations of the parties in the conduct of the Charleston Peninsula Coastal Storm Risk Management Study. The Study is subject to the National Environmental Policy Act (NEPA) which requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions, and provides an overall procedural framework for public involvement and environmental compliance. Among the effects to be assessed under NEPA are those relating to aesthetic or visual resources.

The purpose of the Study is to determine the feasibility of a project to manage the risk of damages to the Charleston Peninsula caused by coastal storm surge flooding. The proposed Project includes, without limitation, structural measures such as storm surge barriers, tide gates, and raising existing walls or barriers, and non-structural measures such as raising buildings, and flood proofing, as well as natural and nature-based features. These measures are expected to result in effects on aesthetic resources within the scope of NEPA. The parties recognize that current Corps policy is to protect aesthetic resources along with other natural and cultural resources, subject to a standard of reasonableness in defining the appropriate level of expenditures for aesthetic quality.

A feasibility level assessment following the methods identified in the Visual Resources Assessment Procedure (VRAP), WES Instructional Report EL-88-1, was completed in September of 2020. The VRAP method consists of two components, a Management Classification System

(MCS), and a Visual Impact Assessment (VIA). Six sites were used to determine the management classification, and another six sites were used as examples to complete the impact assessment for the Project. The results of the VIA Basic Procedure were aggregated to the visual resources of water, landform, vegetation, land use, and user activity to represent the Project as a whole. Note that the VRAP method has options for how it is conducted, and is flexible within those options. For example, the VIA can reference a 'General', 'Basic', or 'Detailed' procedure, dependent upon professional judgement of what is appropriate for a given Project, and/or a given site, and with consideration to budget and schedule limitations.

The Corps and the City anticipate that the assessment of effects on aesthetic resources will extend beyond the feasibility phase of the Project and into any Preconstruction, Engineering and Design (PED) phase. Recognizing that moving into the PED phase is subject to Federal approval and appropriations as well as non-federal cooperation and funding, and further recognizing that the assessment of aesthetic resources is subject to parameters of Federal, State or local law, regulation and policy, both parties desire to plan for and work successfully together to ensure continuity and appropriate priority in the assessment of aesthetic resources in the potential PED phase of the proposed Project. Accordingly, the Corps has invited the City to consult on and sign this MOU.

ARTICLE II – PURPOSE

The purpose of this MOU is to:

- Define “aesthetic resources” and describe the general scope of the “assessment of aesthetic resources”;
- Provide a general framework within existing law, regulation and policy for the assessment of aesthetic resources;
- Ensure a common understanding between the parties for their continued cooperative partnership in the assessment of aesthetic resources;
- Identify the general process, roles, responsibilities, limitations, and goals which the Corps and the City recognize for the assessment of aesthetic resources;
- Enable, to the maximum extent practicable, the Corps’ and the City’s landscape architects, urban designers, architects, or other team members to work in partnership, achieve mutual goals, and leverage resources;
- Facilitate, as appropriate, the engagement of diverse stakeholders and communities to help address the challenges, opportunities, and possibilities associated with the assessment of aesthetic resources for the proposed Project;
- Provide transparency to other parties regarding the intended approach for the assessment of aesthetic resources; and,
- Ensure that the levels of Project costs for aesthetics during the PED phase remain consistent with those projected during the feasibility phase.

ARTICLE III – AUTHORITY

The Corps is entering this MOU based upon: the study authority provided in Section 110 of the Rivers and Harbors Act of 1962 (P.L. 87- 874) and the subsequent 22 April 1988 Senate Committee Resolution, as set forth in Section 1.1 of the final FR/EIS; its authority as lead agency for the assessment of environmental effects under NEPA; authority to address Scenic and Aesthetic Considerations under Section 232 of WRDA 1996 (P.L. 104-303); Paragraph C-5 of ER 1105-2-100 which provides authority to consider aesthetic resources in civil works planning studies; and, consistent with the process outlines in the referenced Visual Resources Assessment Procedure (VRAP), WES Instructional Report EL-88-1.

The City is entering this MOU under the authority of, among other things, SC Code Section 3-7-10 – State and political subdivisions authorized to enter into agreements with United States Government, which authorizes municipalities such as the City to provide, satisfy, or otherwise fulfill items of local cooperation for a civil works project.

ARTICLE IV – LIMITATIONS

This MOU and its provisions are subject and subordinate to, among other things, the following:

- governing provisions of any water resources project agreement for the Study or proposed Project including, without limitation, FCSA, Design Agreement (DA), or Project Partnership Agreement (PPA);
- the Programmatic Agreement Among the United States Army Corps of Engineers, the South Carolina State Historic Preservation Office, the National Park Service, the Advisory Council on Historic Preservation, and the City of Charleston Regarding the Charleston Peninsula Coastal Flood Risk Management Project, Charleston, South Carolina;
- authorization(s), authority, and local cooperation requirements;
- availability of appropriations (including allocation and allotment) or funding; and,
- applicable Federal and local law, regulation and policy.

ARTICLE V – SCOPE

This MOU is intended to address the assessment of aesthetic resources for the Charleston Peninsula Coastal Flood Risk Management Study and proposed Project within the identified Region of Influence for those resources.

A. Definitions as provided in ER 1105-2-100, C-5.

1. “*Aesthetic resources*” are those natural and man-made features of the environment that can be perceived by one or more of the senses, predominantly sight, sound and smell. Aesthetic resources include the unified combination of water resources, landforms, vegetation, and man-made structures or design at or perceived from a site. The visual sense tends to be so predominant in an observer’s reaction and evaluation that aesthetic resources are often referred to as visual resources.

2. “*Assessment of aesthetic resources*” encompasses, without limitation, the identification of aesthetic resources and conditions, the assessment of the nature and extent of effects on aesthetic resources, design considerations such as compatibility, and the determination of appropriate mitigation.

3. “*Mitigation*” with regard to effects on aesthetic resources refers to avoidance, minimization, rectifying, reducing or eliminating, or compensating for adverse impacts.

B. *Region of Influence (ROI)*. The ROI or geographic scope for aesthetic resources includes all portions of the peninsula study area where temporary or permanent visual or other aesthetic changes could occur from one or more of the proposed Project measures, and also extends into the viewshed of the Charleston Harbor, the lower Cooper River, and the lower Ashley River.

ARTICLE VI – UNDERSTANDING OF THE PARTIES

A. *Process*. The methods of the Visual Resources Assessment Procedure (VRAP) as described in the WES Instructional Report EL-88-1 will be used to support the identification of aesthetic mitigation, as well as to evaluate whether that aesthetic mitigation is sufficient, not sufficient, or achieving an added benefit. This includes verifying the management classification and completing the visual impact assessment. To the extent practicable, locations along the reach of the Project may be addressed on a site-by-site basis for aesthetic mitigation with any version of the VRAP deemed appropriate. However, in order to determine the overall Project impact relative to what was determined during feasibility, the same six sites assessed during feasibility will be reassessed from the same vantage using the VRAP’s Basic VIA Procedure. These six sites include the following: the Low Battery Wall near the terminus of Murray Blvd., the High Battery Wall near the terminus of E. Battery St., Lockwood Drive near the terminus of Wentworth St., the Exchange St. entry to Waterfront Park, the Wagener Terrace public viewpoint near the intersection of 5th Ave. and Saint Margaret St., and Melton Peter Demetre Park from the same view point. Examples of the kinds of places in addition to the original six that could be assessed/mitigated on a site-by-site basis include: A) visual corridors within the peninsula itself where there may be views down to and back up from the waterfront; B) places with high-functioning multi-purpose land uses and an abundance of diverse user activity; C) places where environmental justice is a concern; and D) other as determined appropriate at the time.

B. *Resources*. In addition to using the WES Instructional Report EL-88-1, the Corps and the City of Charleston Planning Department may develop a list of reference documents pertaining to design and aesthetic guidelines and standards relevant to this Project. These resources may be consulted by both parties in the development of the Project.

ARTICLE VII – RESPONSIBILITIES

A. *Partnership*. To carry out each party’s responsibilities under this MOU, the Corps and the City will each provide at least one professional qualified in landscape architecture, architecture, or urban design and planning. Qualifications are described in the next paragraph. The Corps’ and the City’s representative(s) will collaborate on the VRAP assessment, and the City and/or the

Corps may provide mitigation ideas. Relying on the VRAP and utilizing information developed collaboratively, the Corps will determine which mitigation ideas are justifiable. And the Corps' PDT, including other disciplines, will incorporate those which are practicable. This may be an iterative process.

B. *Professional Qualifications.* To carry out each party's responsibilities under this MOU, the Corps and the City will each provide at least one professional qualified in landscape architecture, architecture, or urban design and planning. The minimal professional qualification in each of these fields is a professional degree in the field such as a Master of Landscape Architecture, a Master of Architecture, or a Master of Urban Planning, plus at least two years of full-time experience in landscape architecture, architecture or urban design and planning; or a State license to practice in landscape architecture or architecture. This approach to professional qualifications in the aesthetic resources context aligns with the *Secretary of the Interior's Professional Qualifications Standards* (Federal Register, Vol. 62, No. 119, pp. 33708-33723) which applies in the archaeology and historic preservation context.

C. *Other Disciplines.* To the extent that aesthetic mitigation may change the optimized plan, each party commits to making professionals in other disciplines such as engineering, environmental, economics, cultural resources, and real estate available and engaged as needed. The City and the Corps will endeavor to ensure that persons of the same or closely similar technical profession are available to achieve mutual understanding across organizational lines.

D. *Determination of Mitigation.* The parties recognize that it is ultimately the responsibility of the Corps to determine the appropriate aesthetic mitigation for effects on aesthetic resources consistent with Federal law, regulation and policy. In the event that the parties execute a DA for PED, the design of aesthetic features or mitigation measures will be cost-shared pursuant to that agreement. In the event that the Project is constructed, aesthetic mitigation will be cost-shared consistent with the Project as authorized. The Corps commits to providing the City and its identified aesthetic resources representatives with the opportunity to actively participate in the VRAP methods and process, as well as on the Project Delivery Team (PDT). The parties further recognize that Federal funding for aesthetic resources mitigation is subject to reasonable limits and may not provide for the cost-sharing of some mitigation measures desired by the City. If the City and Corps are unable to agree on an aesthetic mitigation plan or measure, then the City may elect to pursue any aesthetic mitigation measure through betterments that are funded 100% through the City. The City understands that betterments will need to meet the goals and objectives of any Chief's Report resulting from the Charleston Peninsula Coastal Flood Risk Management Study, and cannot compromise the engineering integrity or environmental compliance of a proposed Project.

E. *Review Process.* In the event that the parties execute a DA for PED, there will be a review process and schedule identified in the DA. The roles and responsibilities of the Corps and the

City in reviews will also be determined at that time. Mitigation measures deemed appropriate may require the Corps to evaluate the need for additional NEPA analysis.

F. *Public Engagement.* Public engagement led by the Corps will occur in compliance with NEPA and to the extent practicable as suggested in the VRAP method. Additional public engagement may be pursued by the City as needed to meet its own requirements; however, such additional public engagement will be at the sole expense of the City and subject to the Project schedule.

G. *Funding.* The Corps and the City are responsible to fund their own efforts, subject to any cost-sharing which may occur under an executed water resources project agreement.

ARTICLE VIII – GENERAL PROVISIONS

A. *Effective Date.* The effective date of this MOU is upon signature by both parties.

B. *Term.* This MOU will continue in effect from execution through completion of PED.

C. *Severability.* The provisions of this MOU represent the entire understanding of the parties, and no part is severable.

D. *Modification.* Modification to this MOU may only be made by the written agreement of both parties executed by signatories comparable to those executing the original agreement.

E. *Termination.* Either party can terminate this MOU with thirty (30) days advance written notice executed by a signatory comparable to the level of those executing the original agreement. If the City terminates, the Corps will continue commensurate with NEPA and Corps' policy.

ARTICLE IX – POINTS OF CONTACT

Wes Wilson, Project Manager, Army Corps of Engineers
Wesley.b.wilson@usace.army.mil
(843) 329-8054

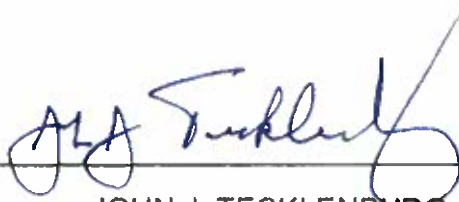
Dale Morris, Chief Resilience Officer, City of Charleston
morrisd@charleston-sc.gov
(843) 720-2482

ARTICLE X – APPROVAL



FEB 22 2022

ANDREW C. JOHANNES
Lieutenant Colonel, EN
Commander, U.S. Army Engineer District, Charleston



JOHN J. TECKLENBURG
Mayor, City of Charleston