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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2022-CP-26-06116

Flatiron Constructors, Inc.,

Appellant,

v.

TranSystems Corporation, Respondent.

RECORD ON APPEAL - VOLUME III

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April 4, 2023

Via E-Filing Only
The Honorable Renee Elvis
Horry County Clerk of Court
1301 Second Avenue
Conway, SC 29528

Re: ***Flatiron Constructors, Inc. v. TranSystems Corporation***
Court of Common Pleas, Horry County
C.A. No.: 2022-CP-26-06116

Dear Ms. Elvis,

Please find attached to this letter **Exhibit A, Part 8** to Defendant's Brief in Support of Defendant's Motion for Summary Judgment. Due to size constraints, we were unable to file this Exhibit with the Brief. Please have the docket note that this exhibit is part of the Defendant's Brief in Support of its Motion for Summary Judgment.

Please advise if you have any questions.

Sincerely,

s/ Michael B. T. Wilkes

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mwilkes@wajlawfirm.com

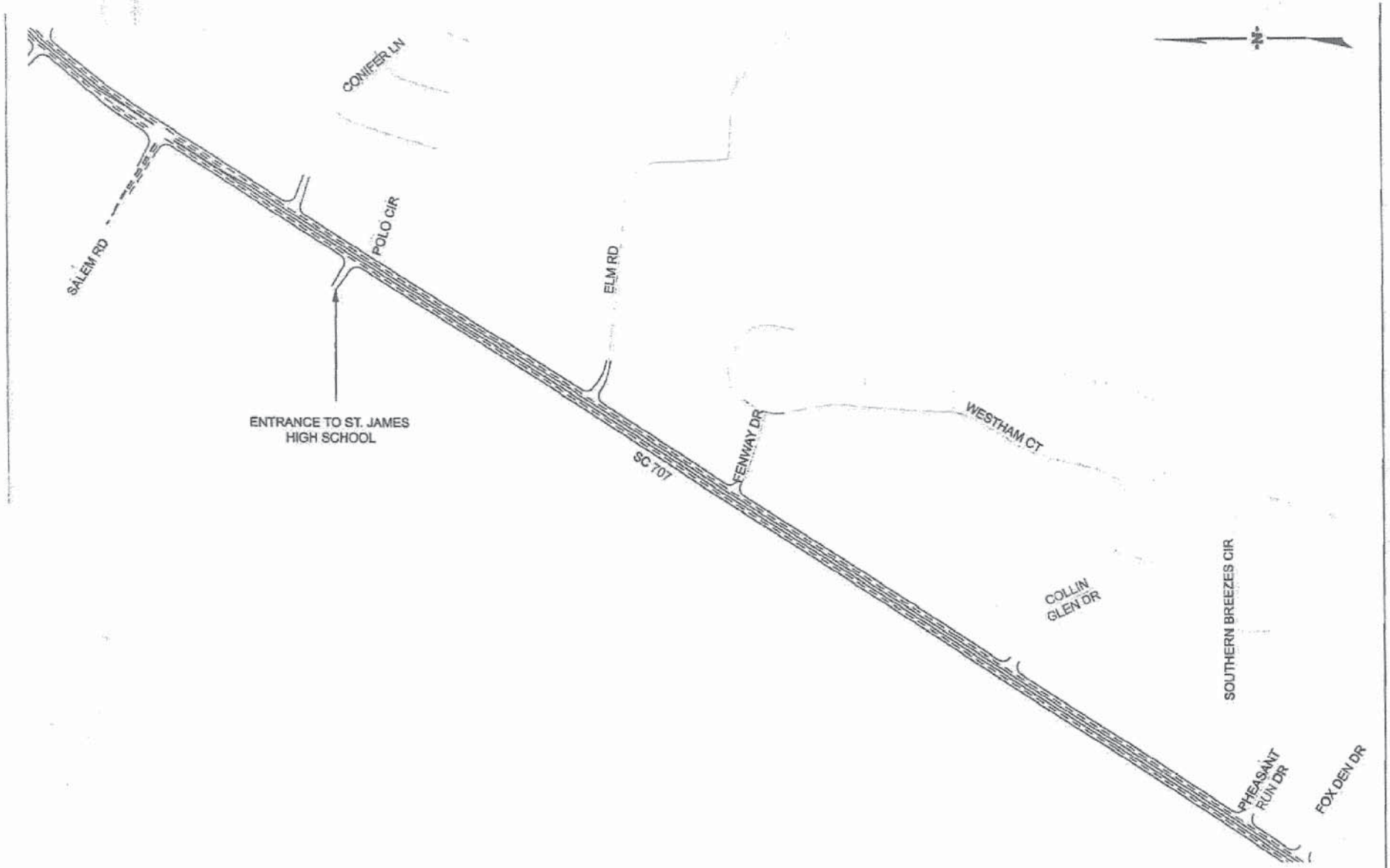
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cc (via E-Filing Only):
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Bryan Patrick Bailey, Esq.
Mason A. Goldsmith, Jr., Esq.
C. Daniel Atkinson, Esq.

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EXHIBIT A
(Part 8 of 11)

TSC's Brief in Support of Motion for Summary Judgment

Flatiron v. TranSystems
C.A. No. 2022-CP-26-06116



APPLICATION BY THE

SCDOT

South Carolina Department of Transportation

LEGEND

JURISDICTIONAL WETLAND

ROADS

MODIFIED PLANS

PERMITTED PLANS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE

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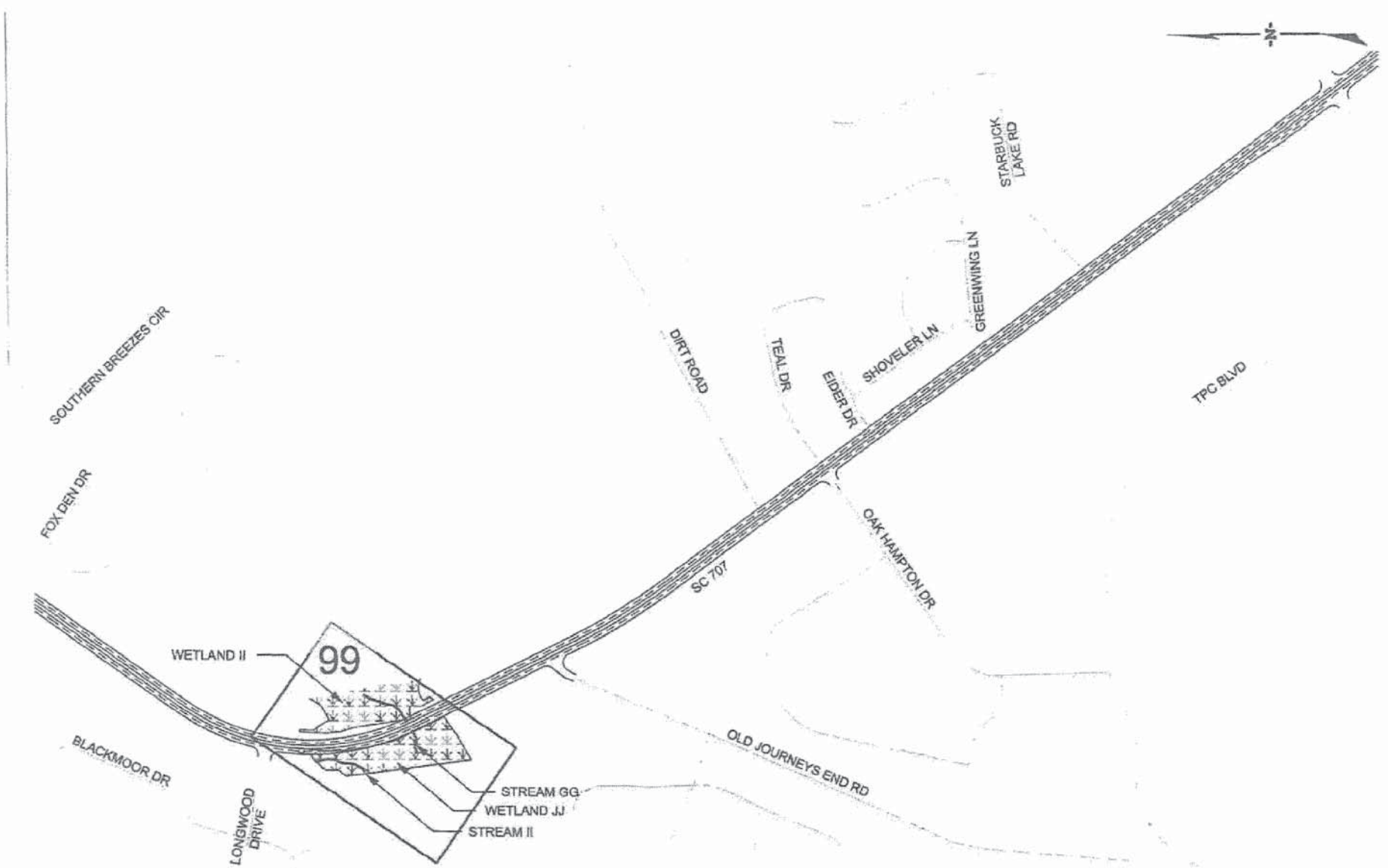
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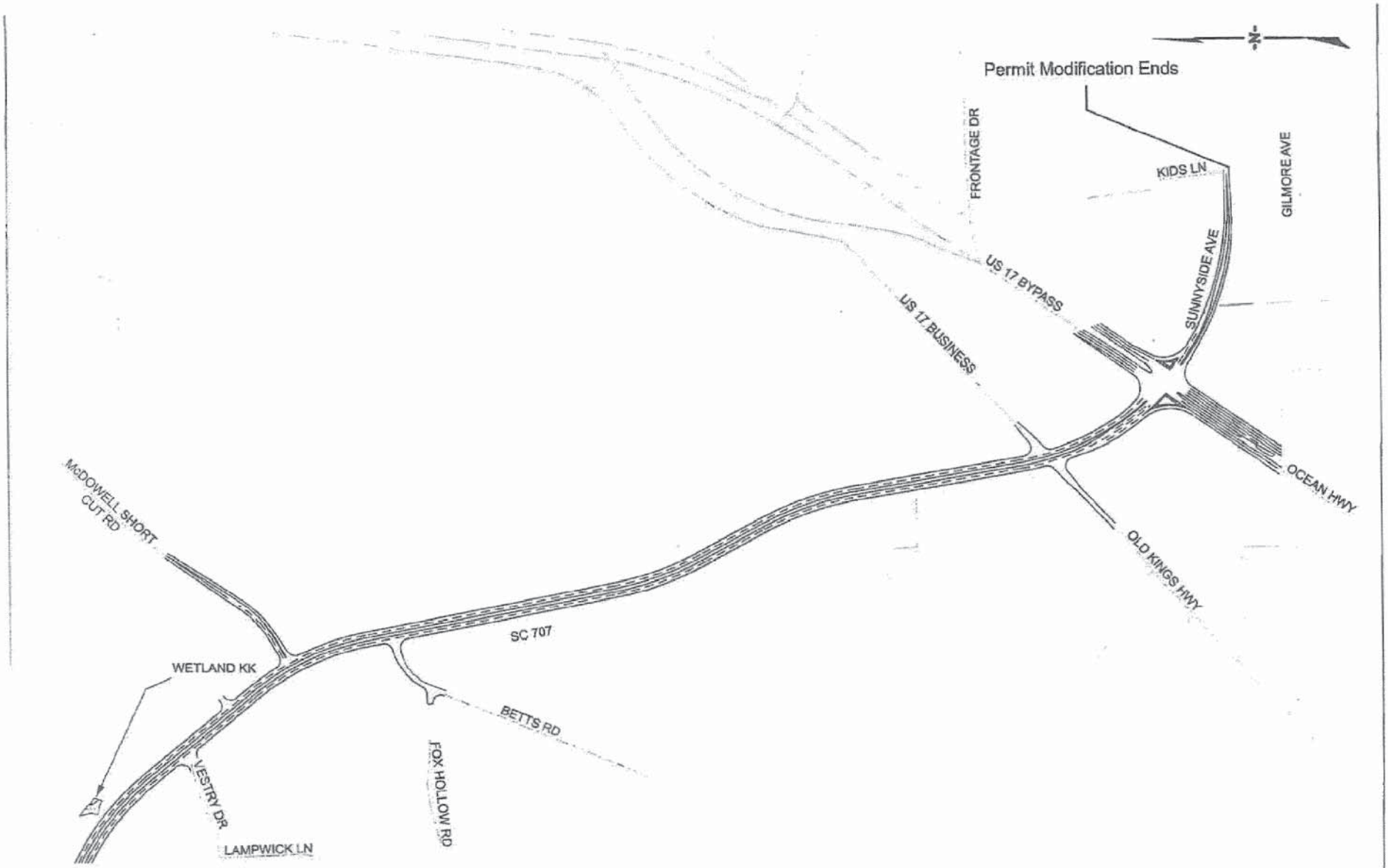
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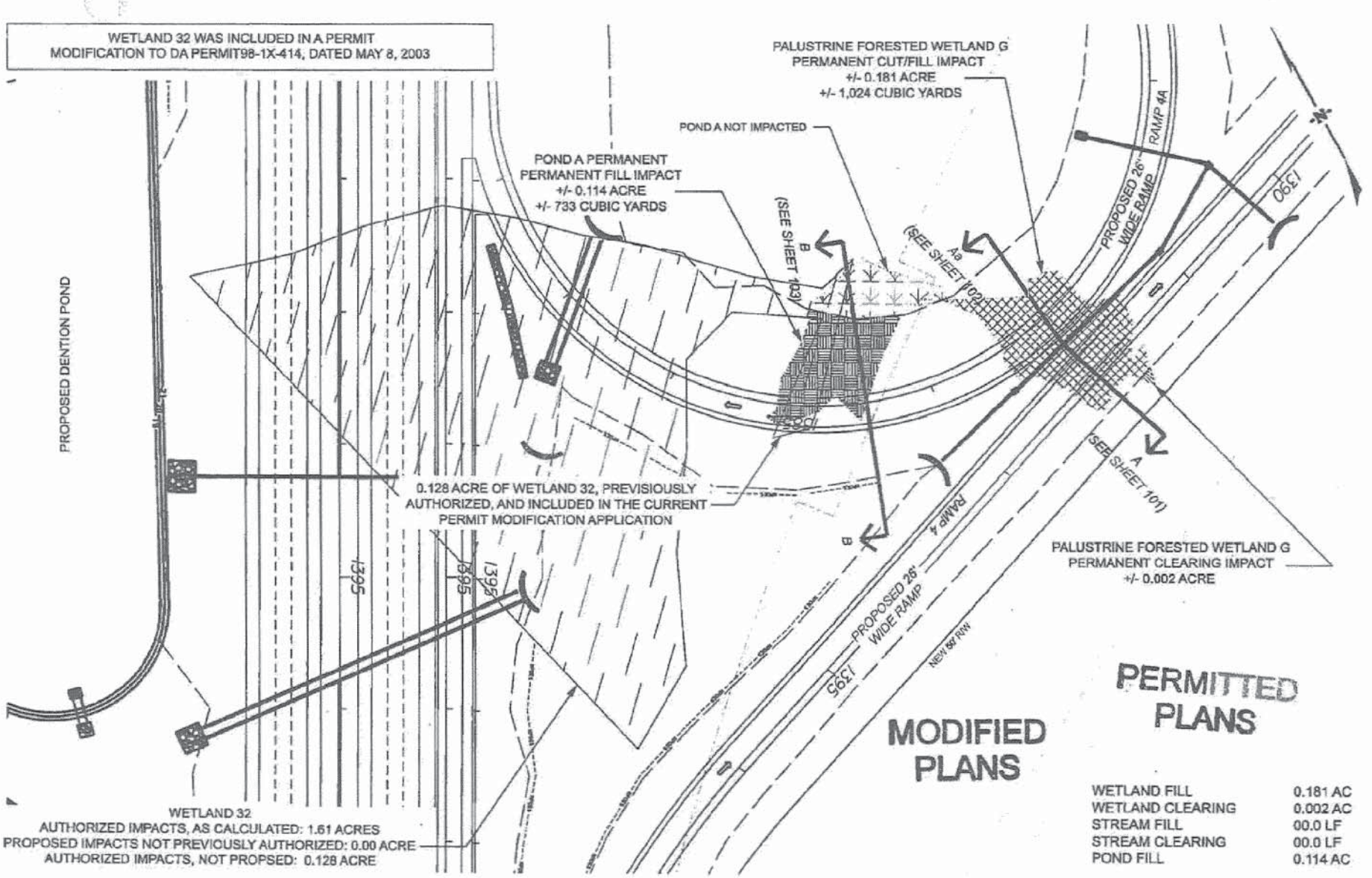
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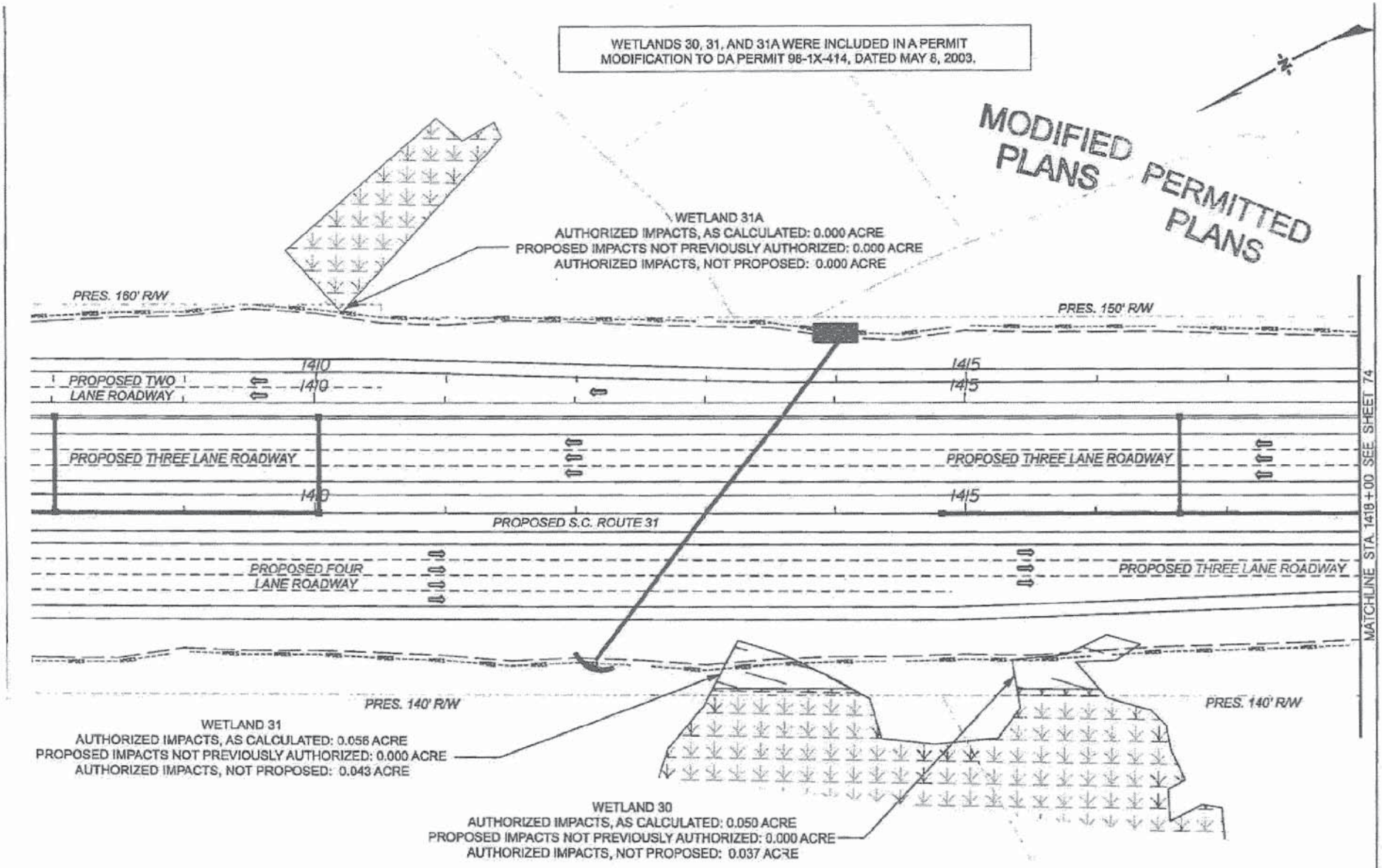
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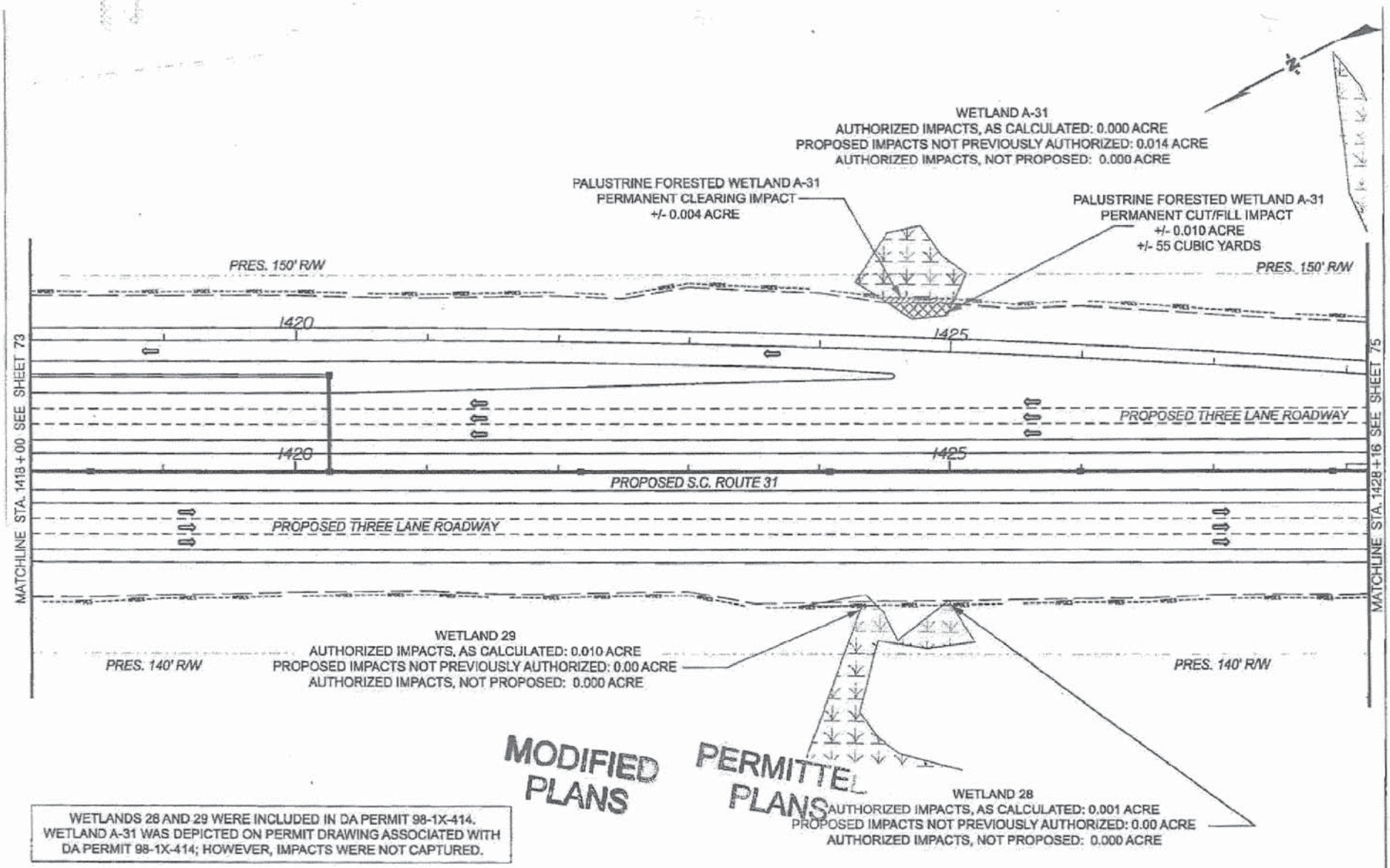
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LEGEND

- JURISDICTIONAL WETLAND
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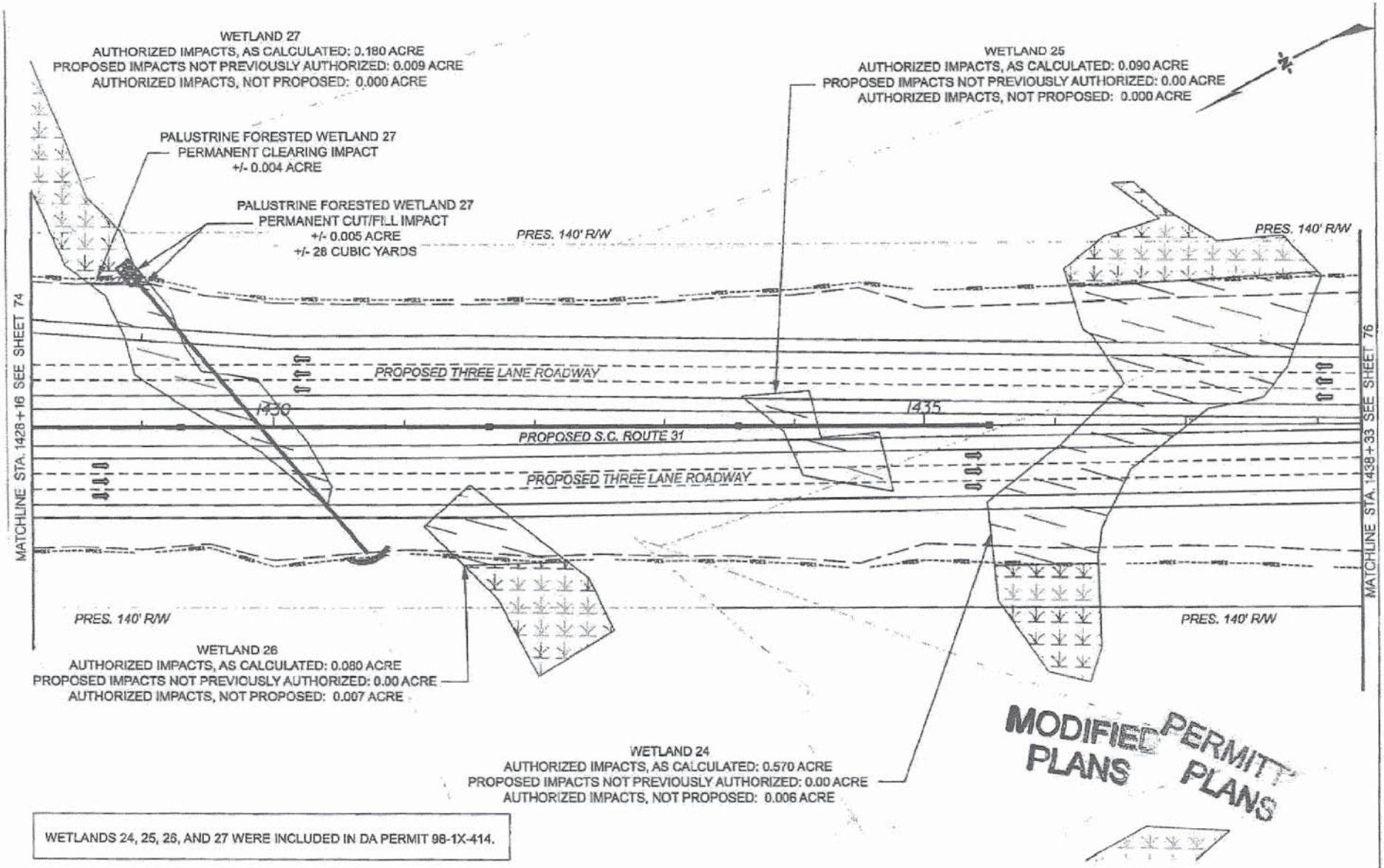
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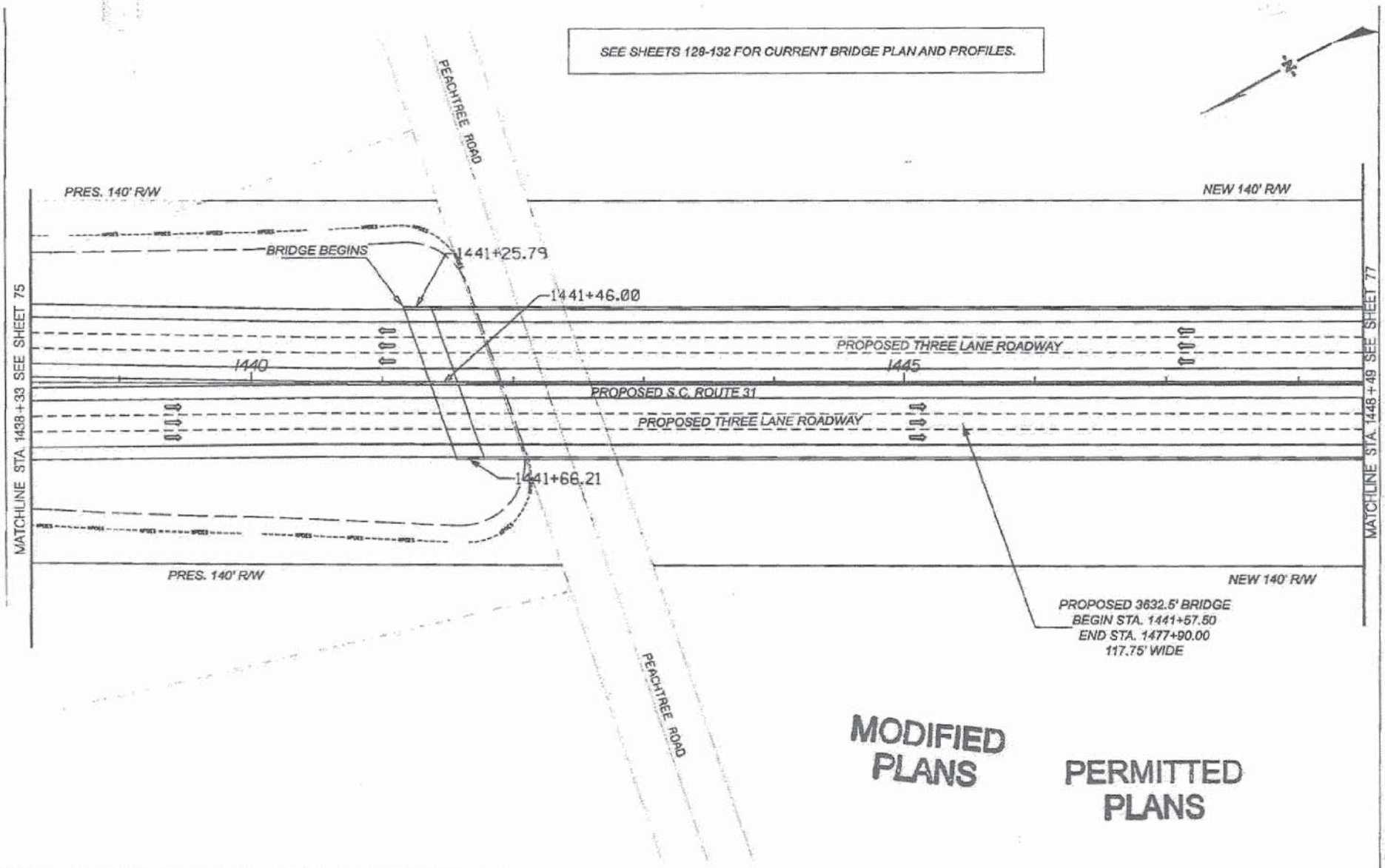
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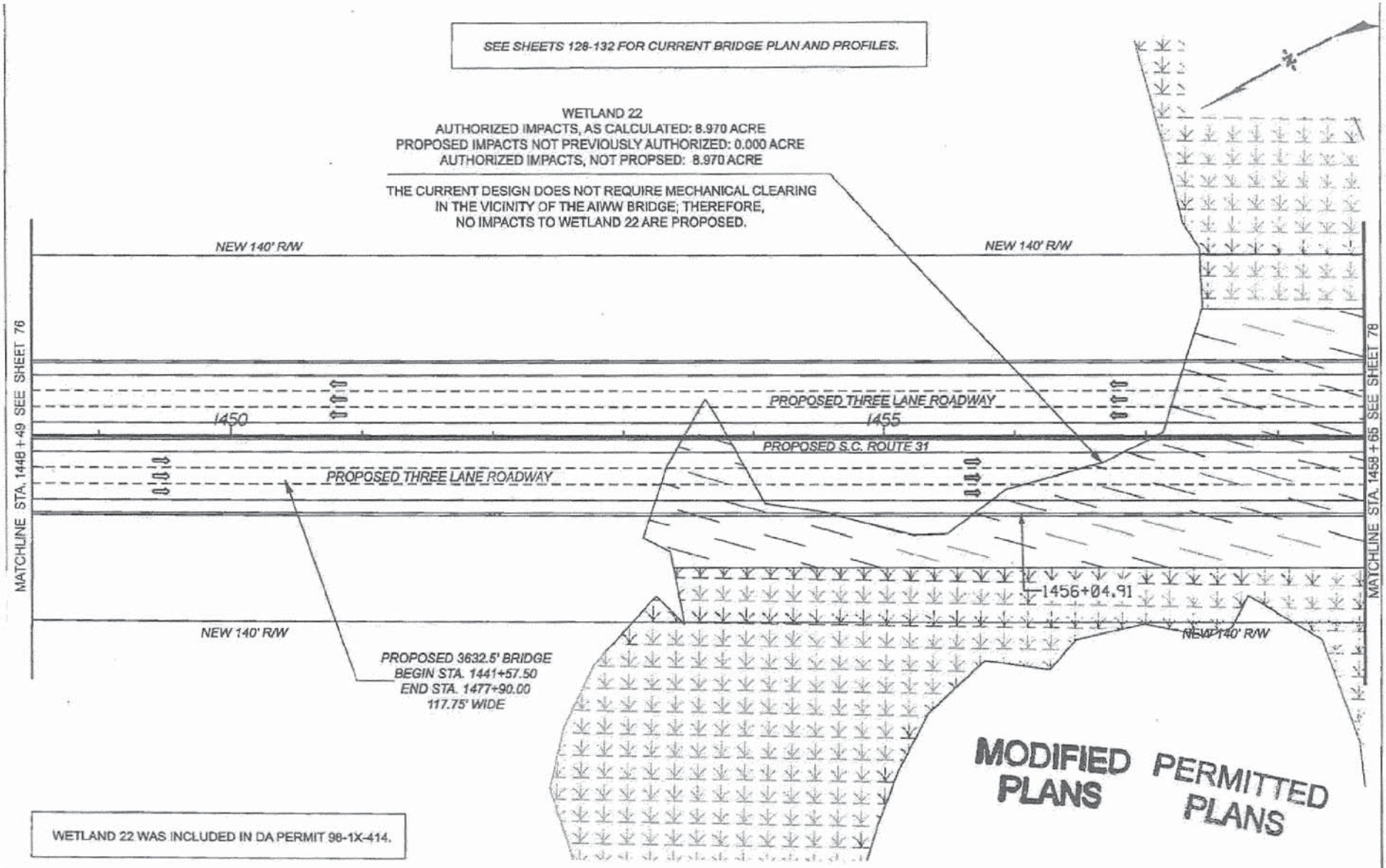
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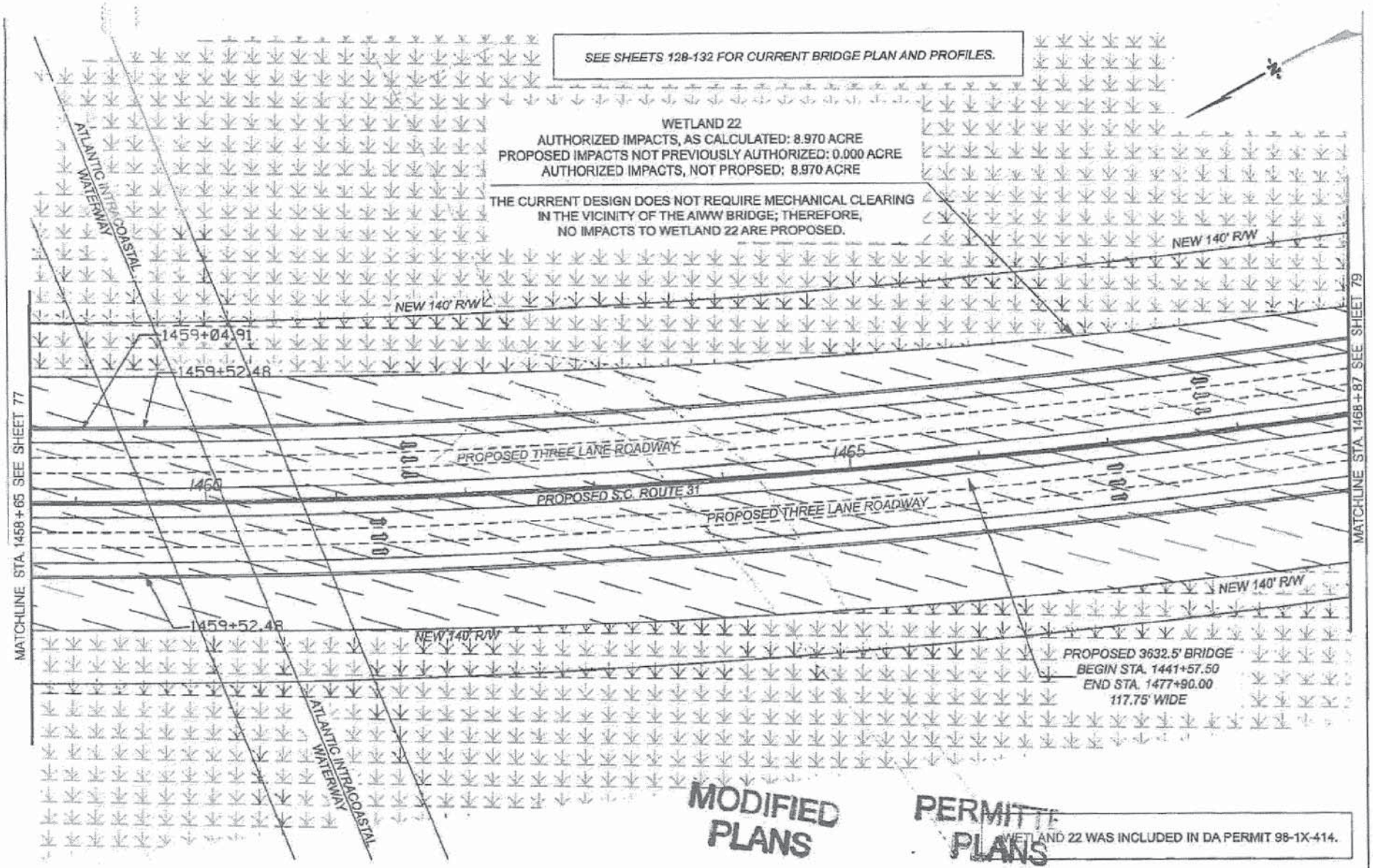
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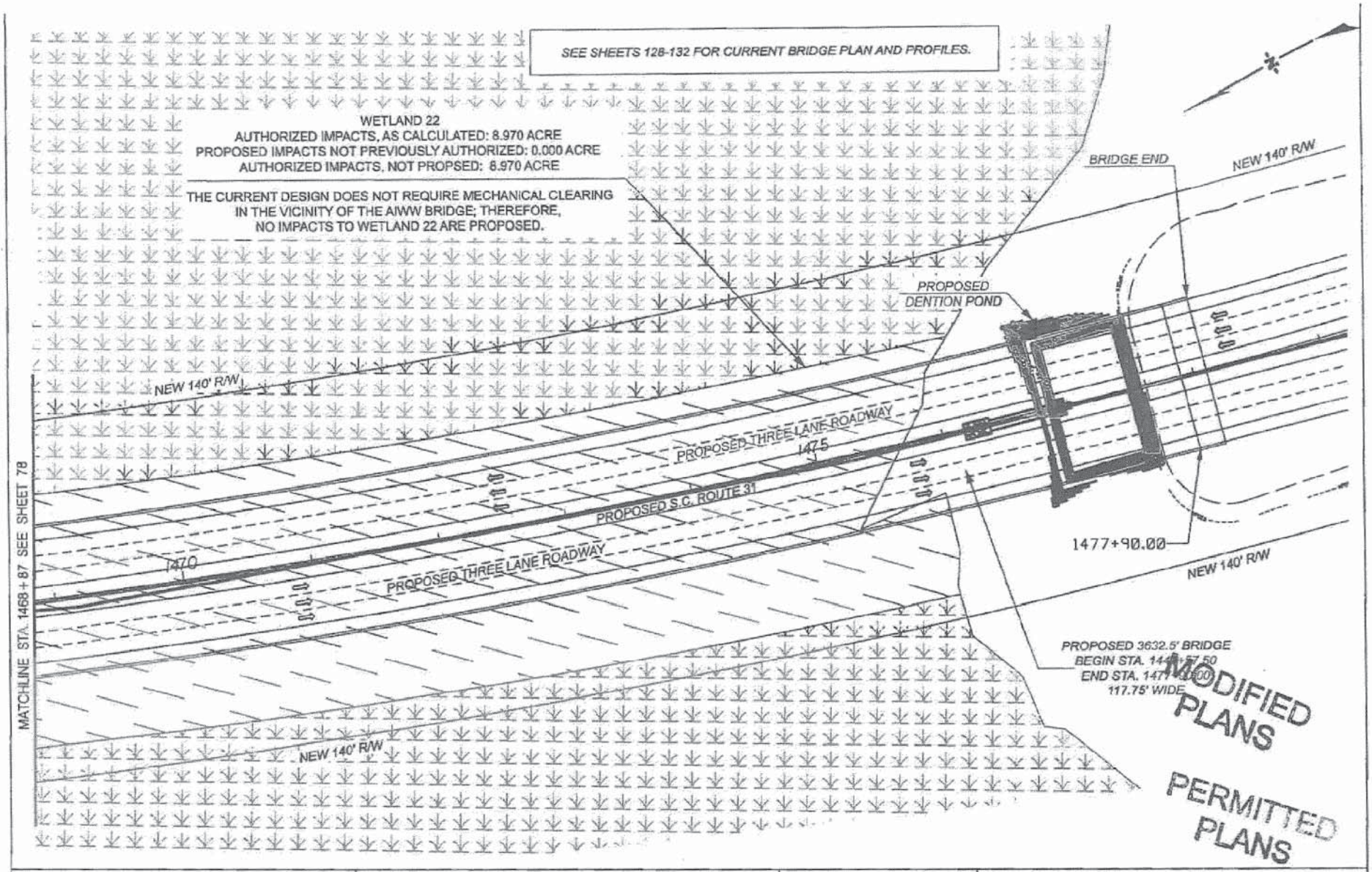
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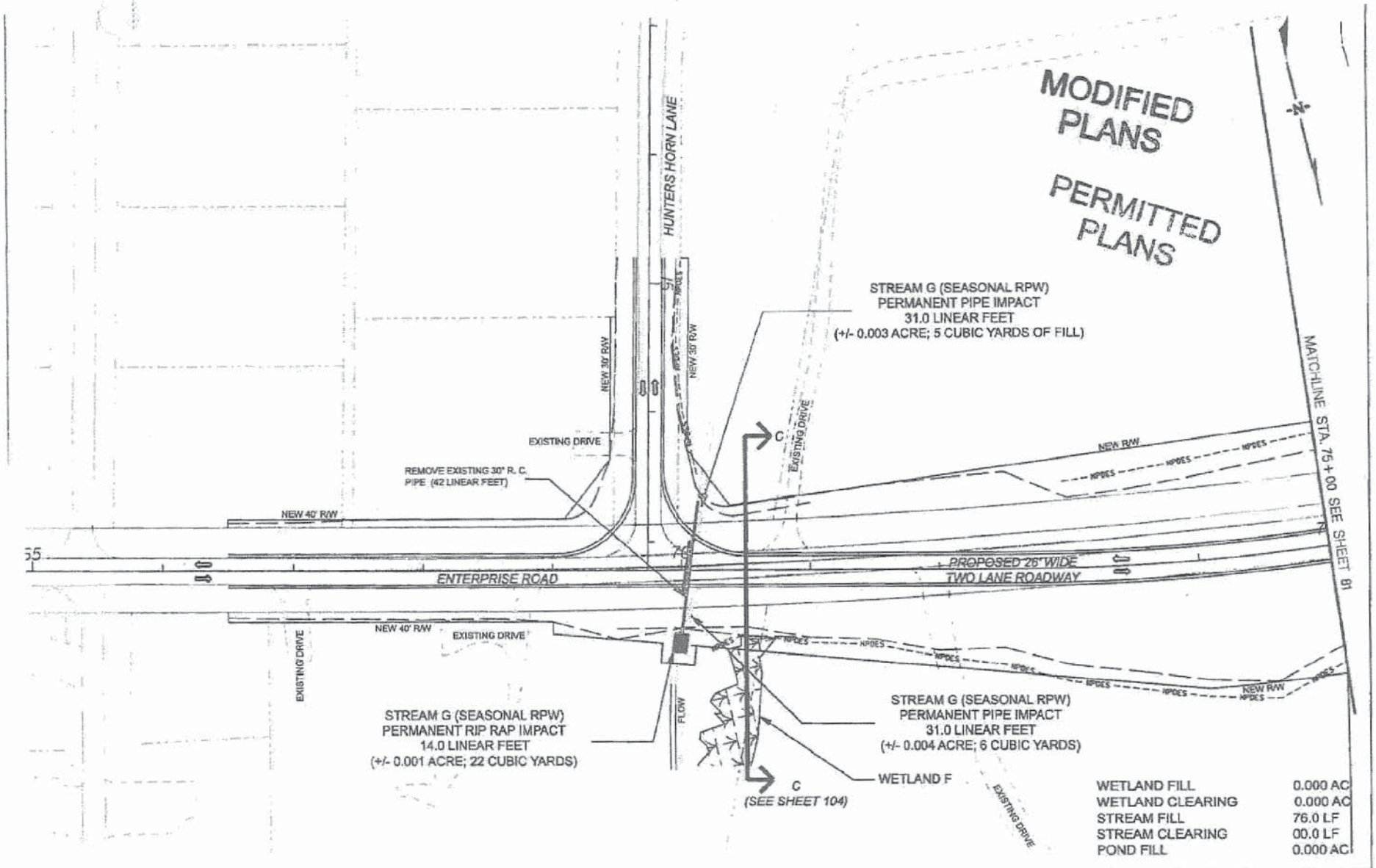
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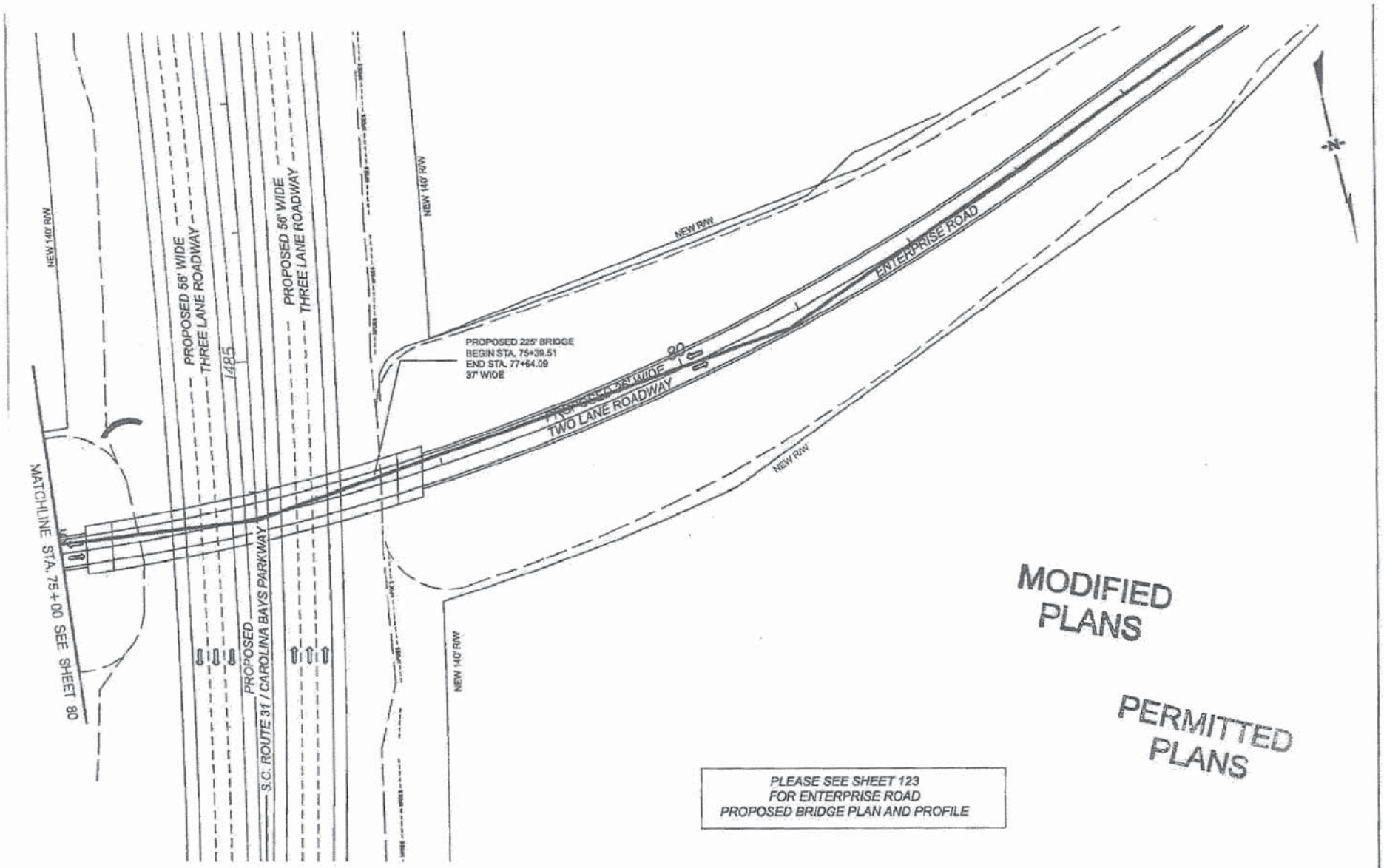
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APPLICATION BY THE SCDOT
South Carolina Department of Transportation

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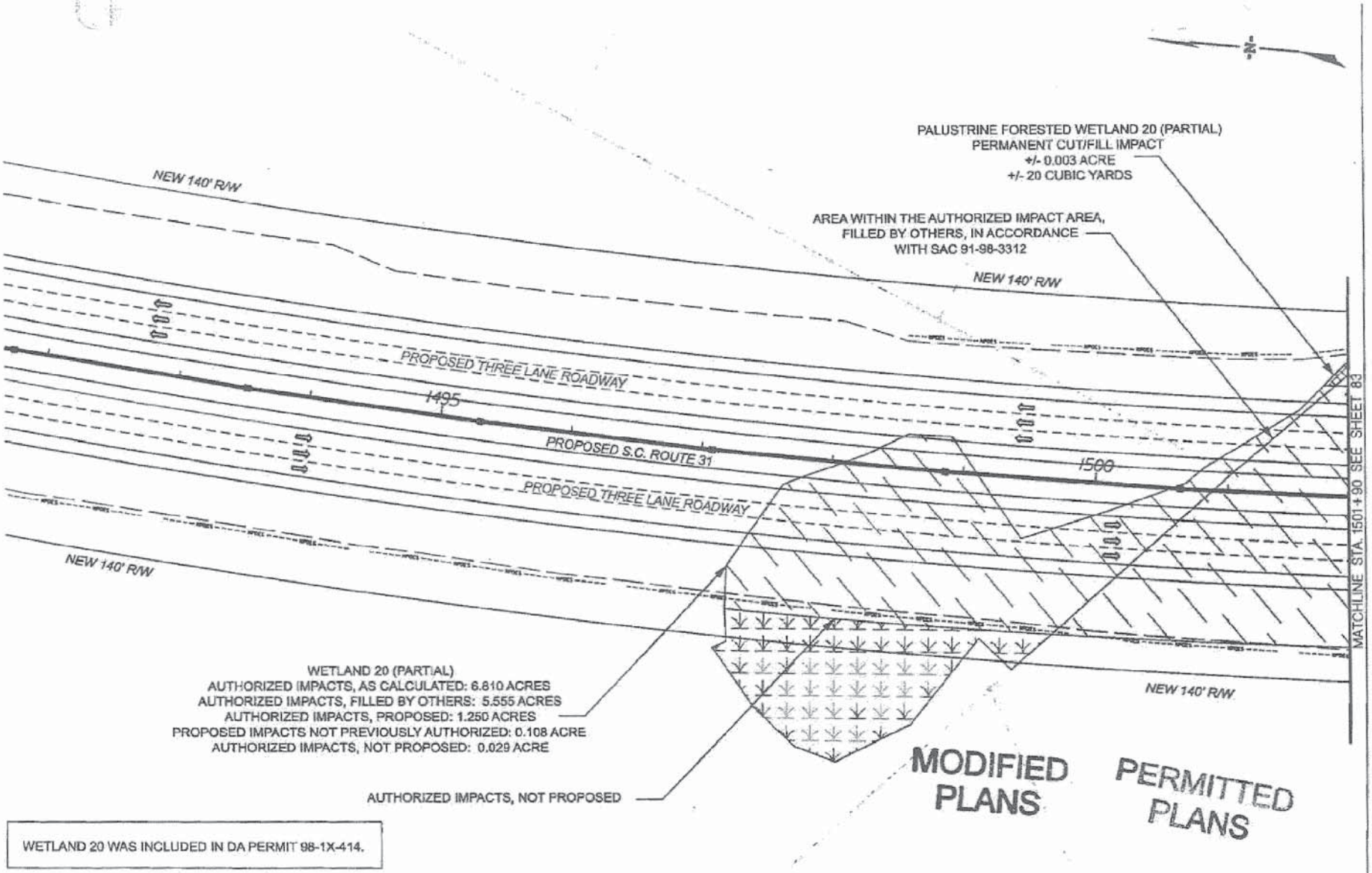
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APPLICATION BY THE SCDOT
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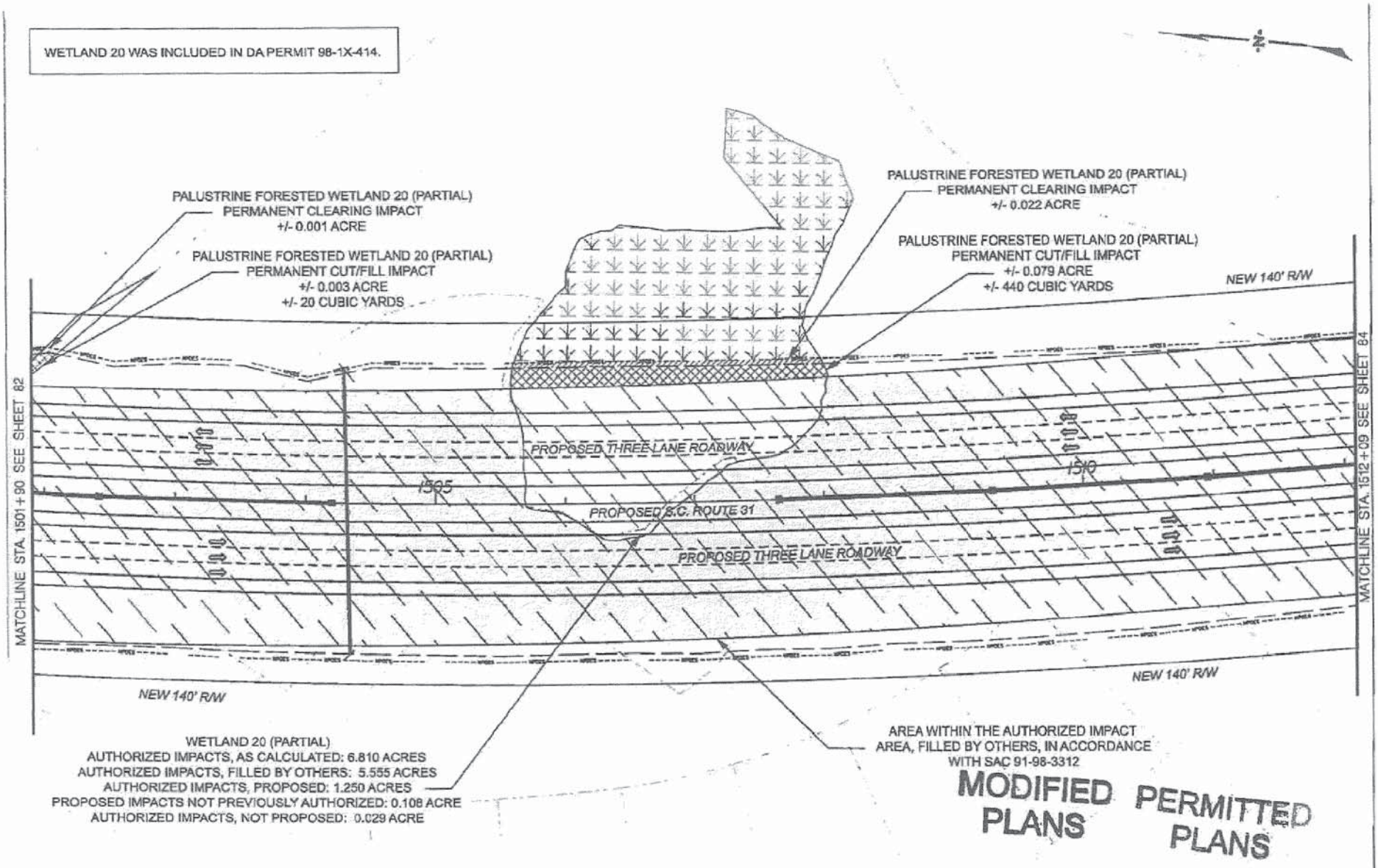
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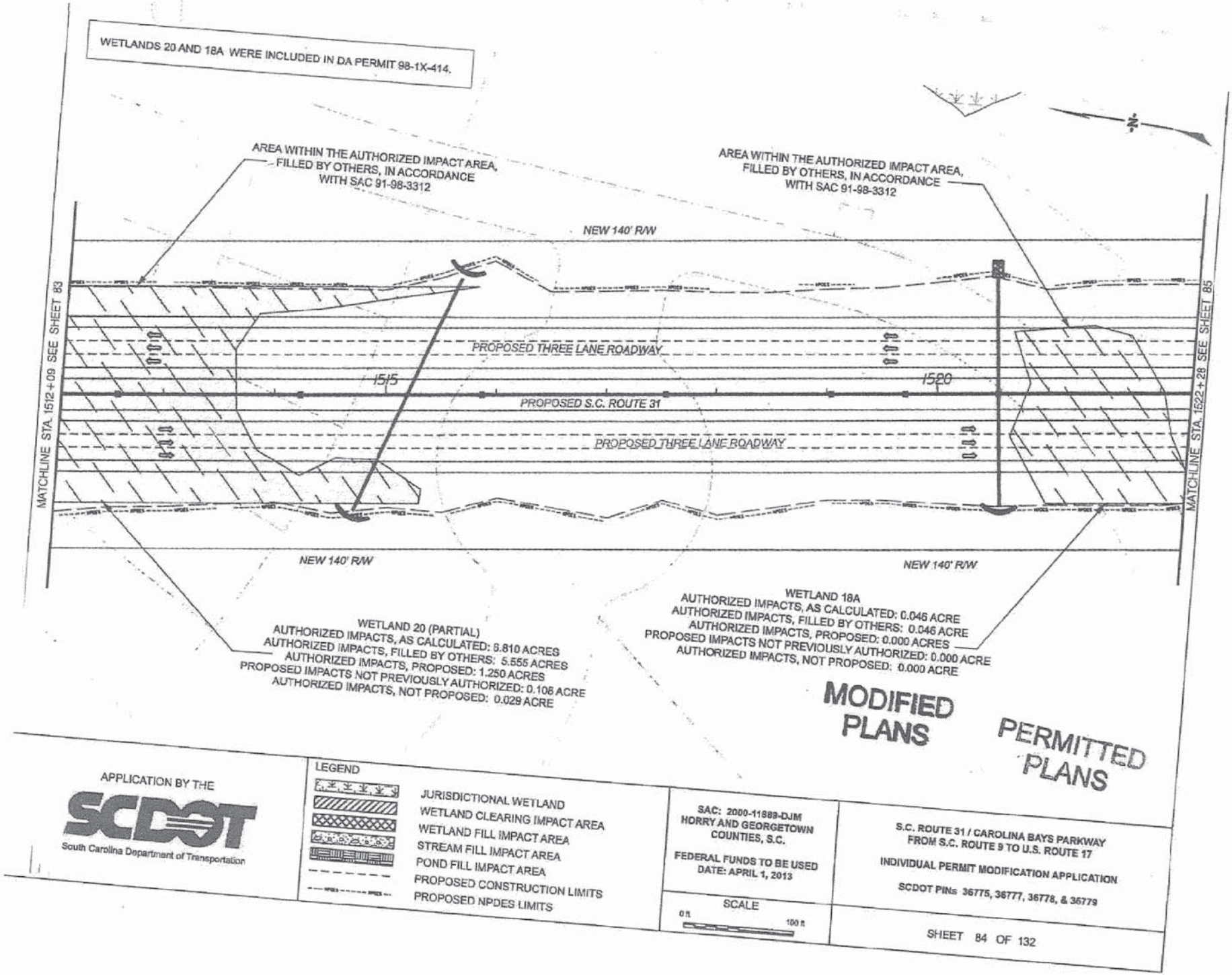
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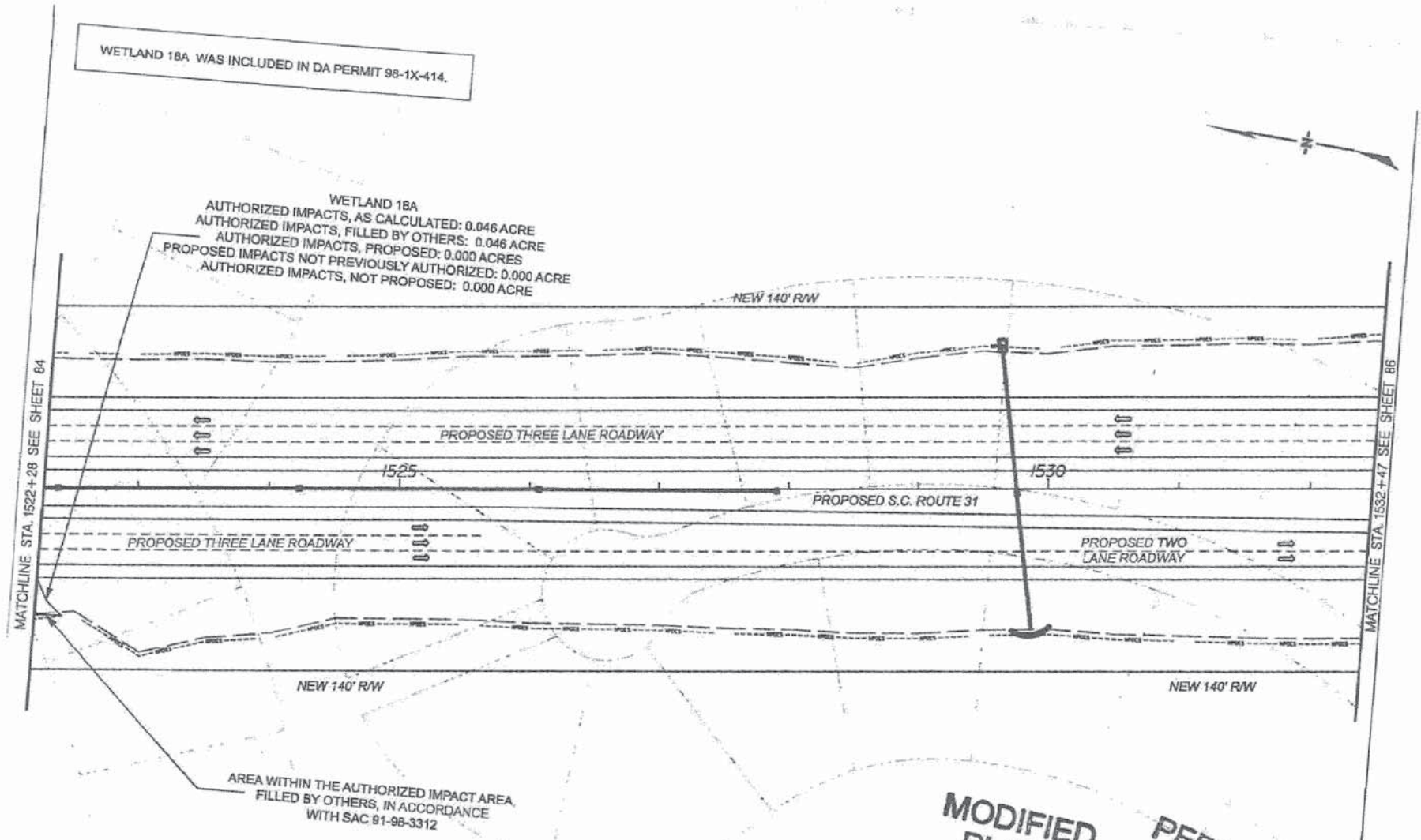
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WETLAND 18A WAS INCLUDED IN DA PERMIT 98-1X-414.



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FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

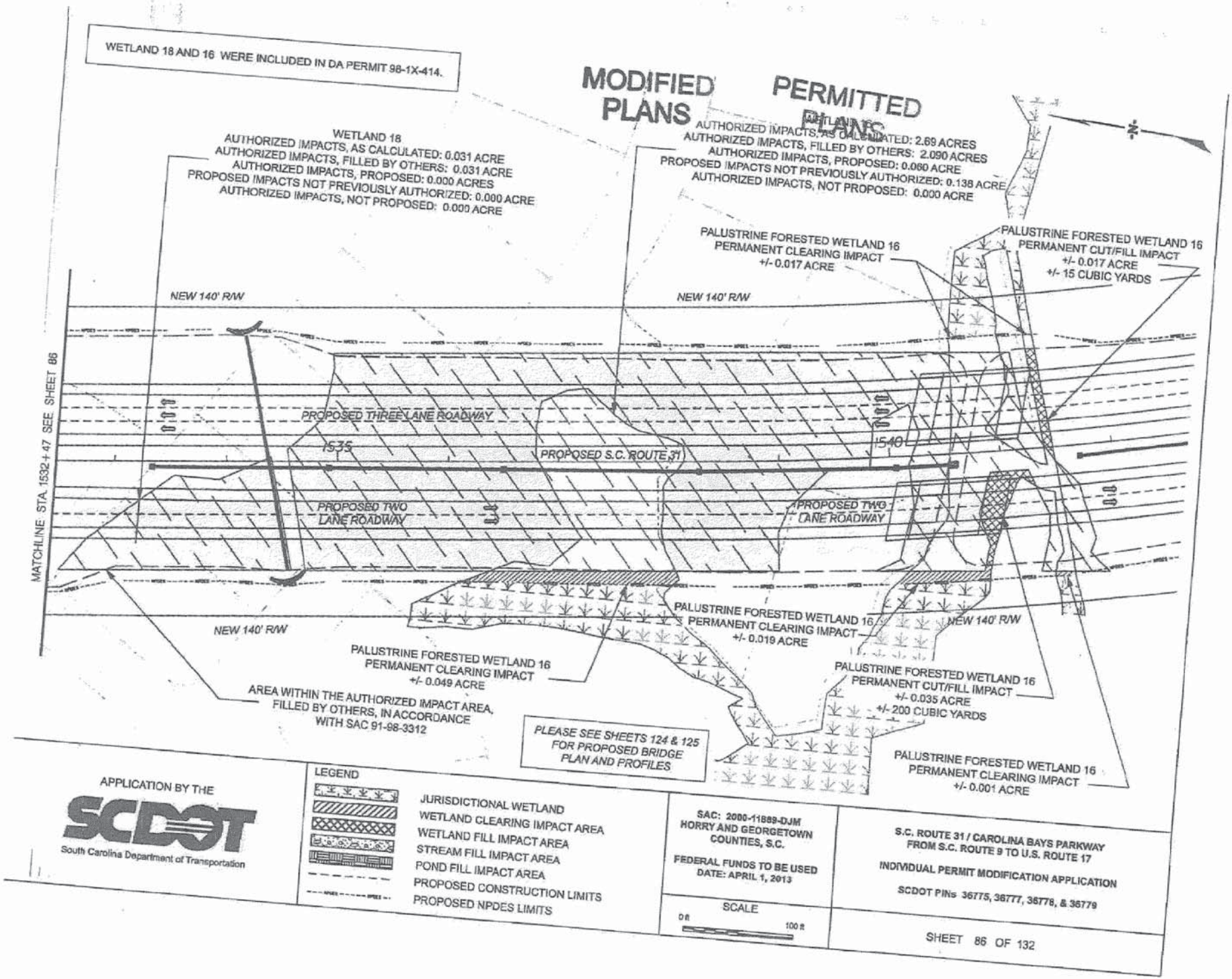
SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17
INDIVIDUAL PERMIT MODIFICATION APPLICATION
SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 85 OF 132

629

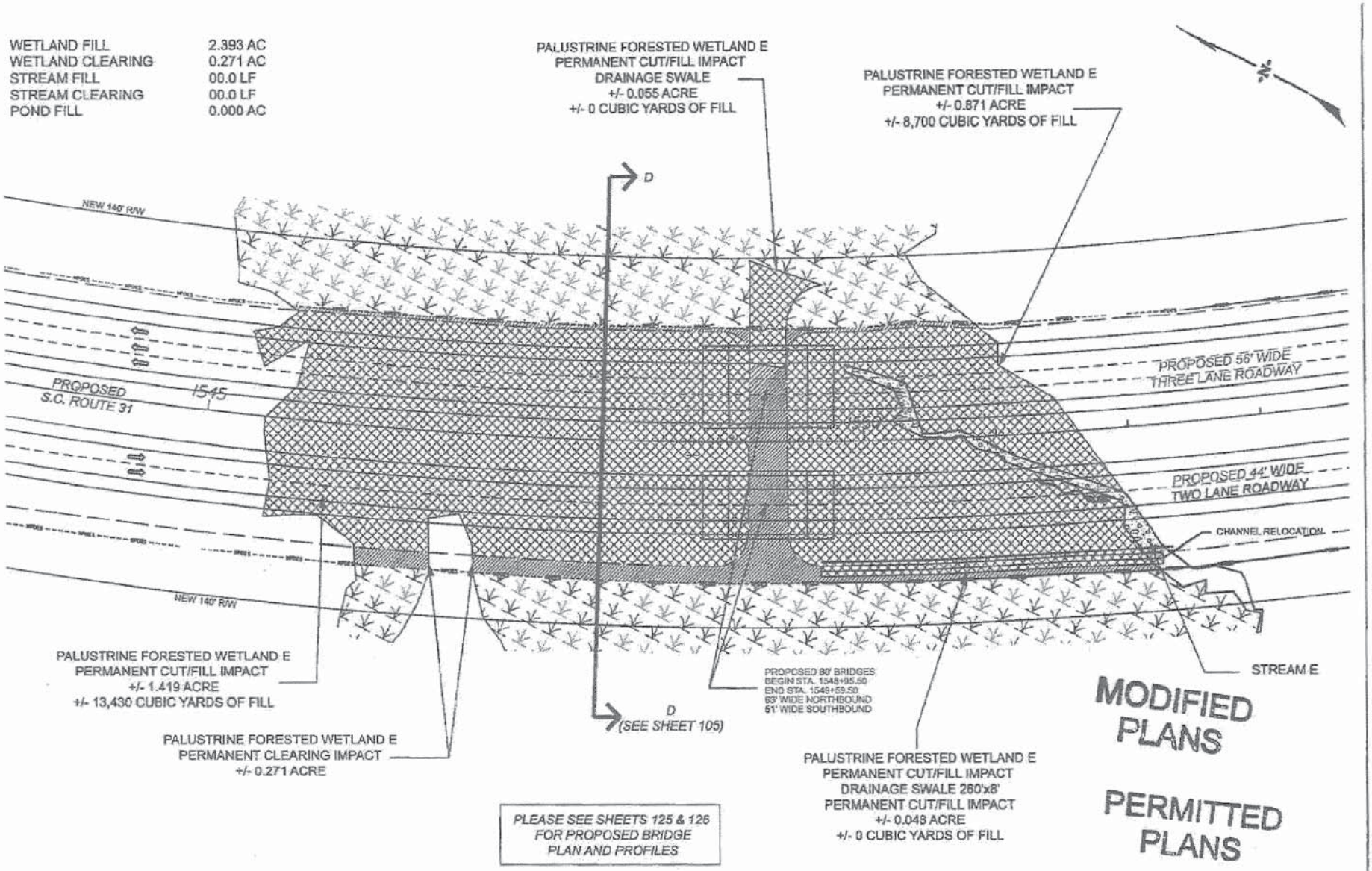
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630

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WETLAND FILL	2.393 AC
WETLAND CLEARING	0.271 AC
STREAM FILL	00.0 LF
STREAM CLEARING	00.0 LF
POND FILL	0.000 AC



PLEASE SEE SHEETS 125 & 126 FOR PROPOSED BRIDGE PLAN AND PROFILES

APPLICATION BY THE

SCDOT

South Carolina Department of Transportation

LEGEND

- JURISDICTIONAL WETLAND
- WETLAND CLEARING IMPACT AREA
- WETLAND FILL IMPACT AREA
- STREAM FILL IMPACT AREA
- POND FILL IMPACT AREA
- PROPOSED CONSTRUCTION LIMITS
- PROPOSED NPDES LIMITS

SAC: 2009-11869-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

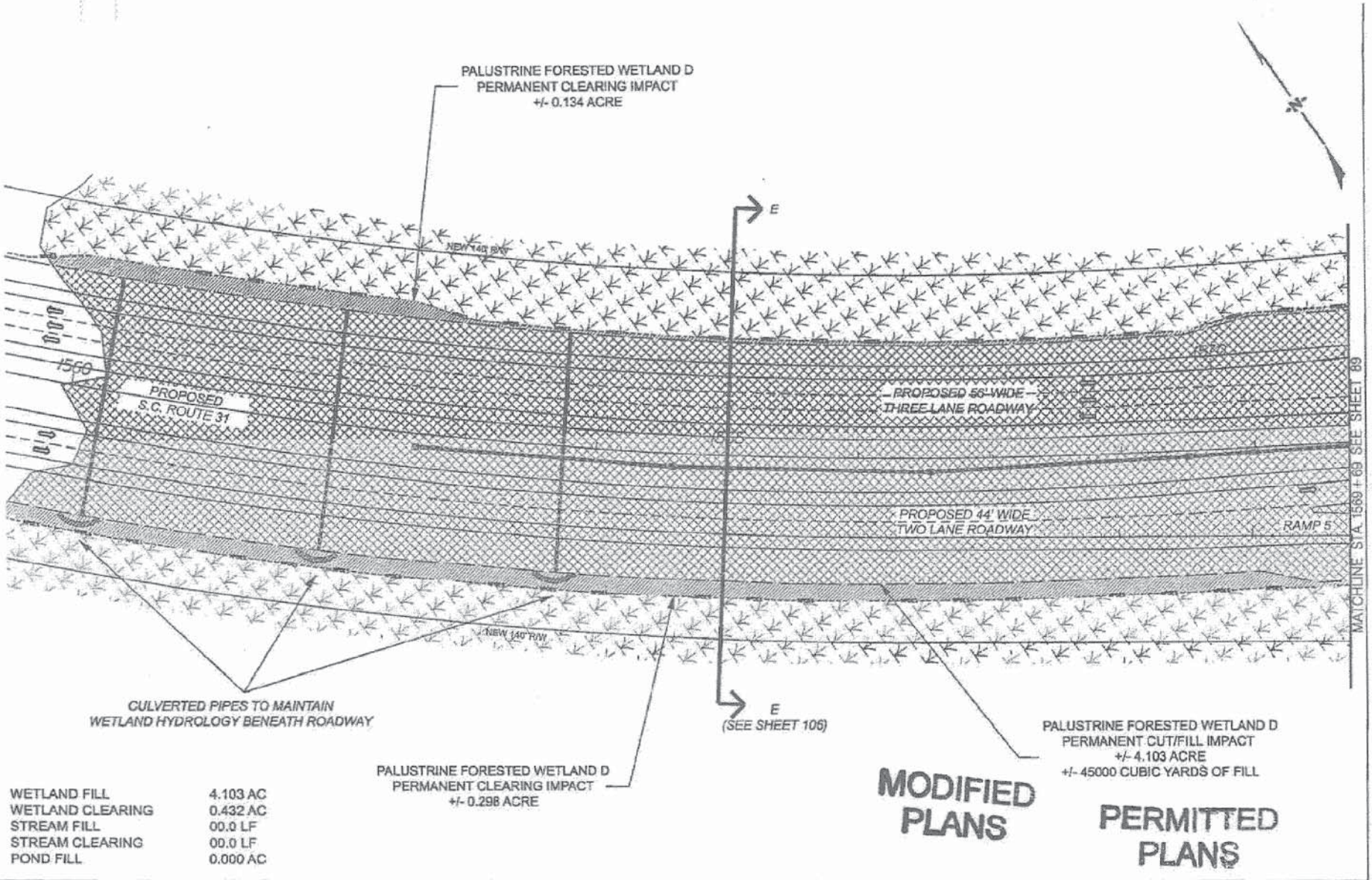
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 87 OF 132

631

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WETLAND FILL	4.103 AC
WETLAND CLEARING	0.432 AC
STREAM FILL	00.0 LF
STREAM CLEARING	00.0 LF
POND FILL	0.000 AC

APPLICATION BY THE

SCDOT

South Carolina Department of Transportation

LEGEND

- JURISDICTIONAL WETLAND
- WETLAND CLEARING IMPACT AREA
- WETLAND FILL IMPACT AREA
- STREAM FILL IMPACT AREA
- POND FILL IMPACT AREA
- PROPOSED CONSTRUCTION LIMITS
- PROPOSED NPDES LIMITS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

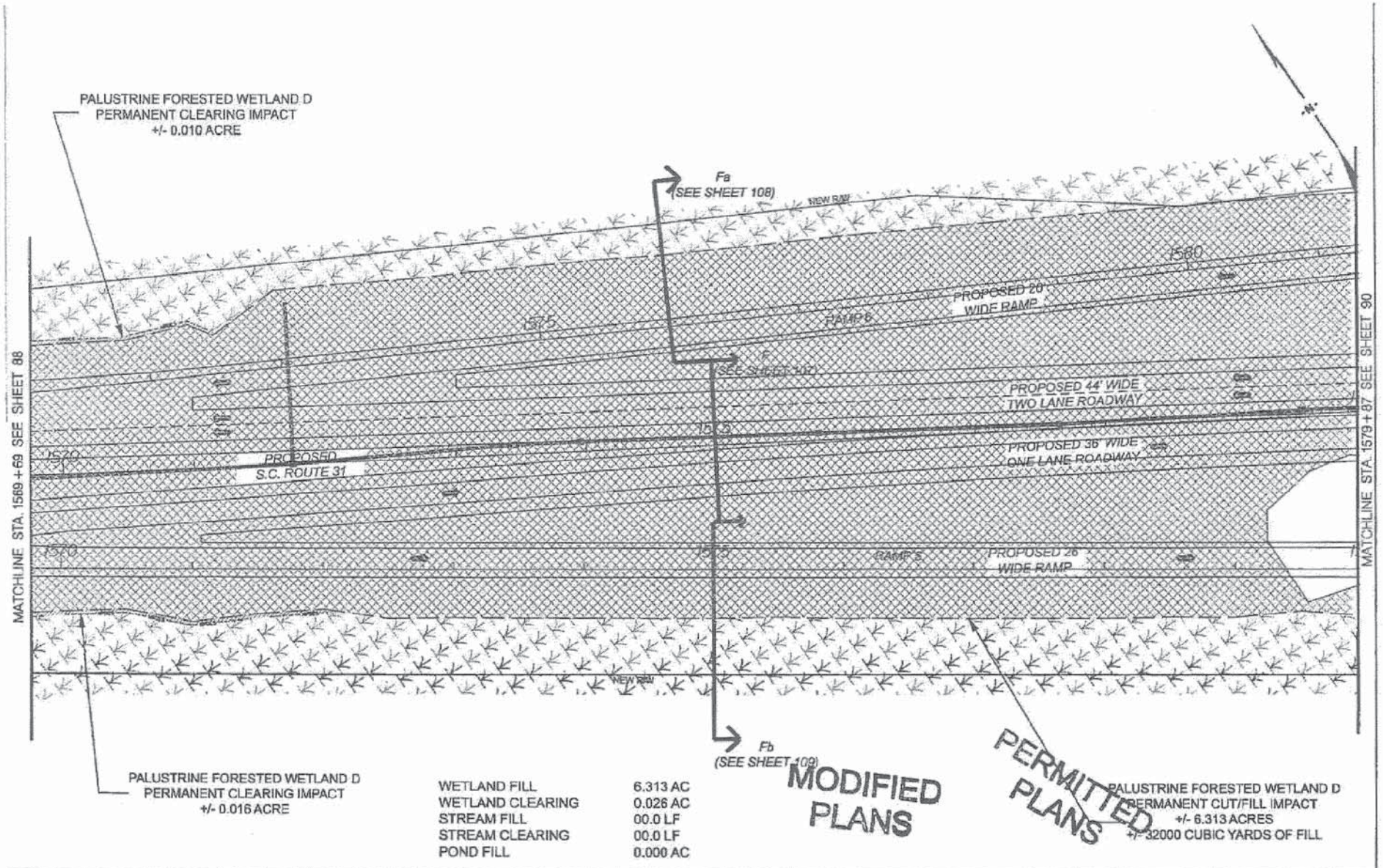
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 88 OF 132

632

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APPLICATION BY THE

SCDOT

South Carolina Department of Transportation

LEGEND

- JURISDICTIONAL WETLAND
- WETLAND CLEARING IMPACT AREA
- WETLAND FILL IMPACT AREA
- STREAM FILL IMPACT AREA
- POND FILL IMPACT AREA
- PROPOSED CONSTRUCTION LIMITS
- PROPOSED NPDES LIMITS

SAC: 2000-11689-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

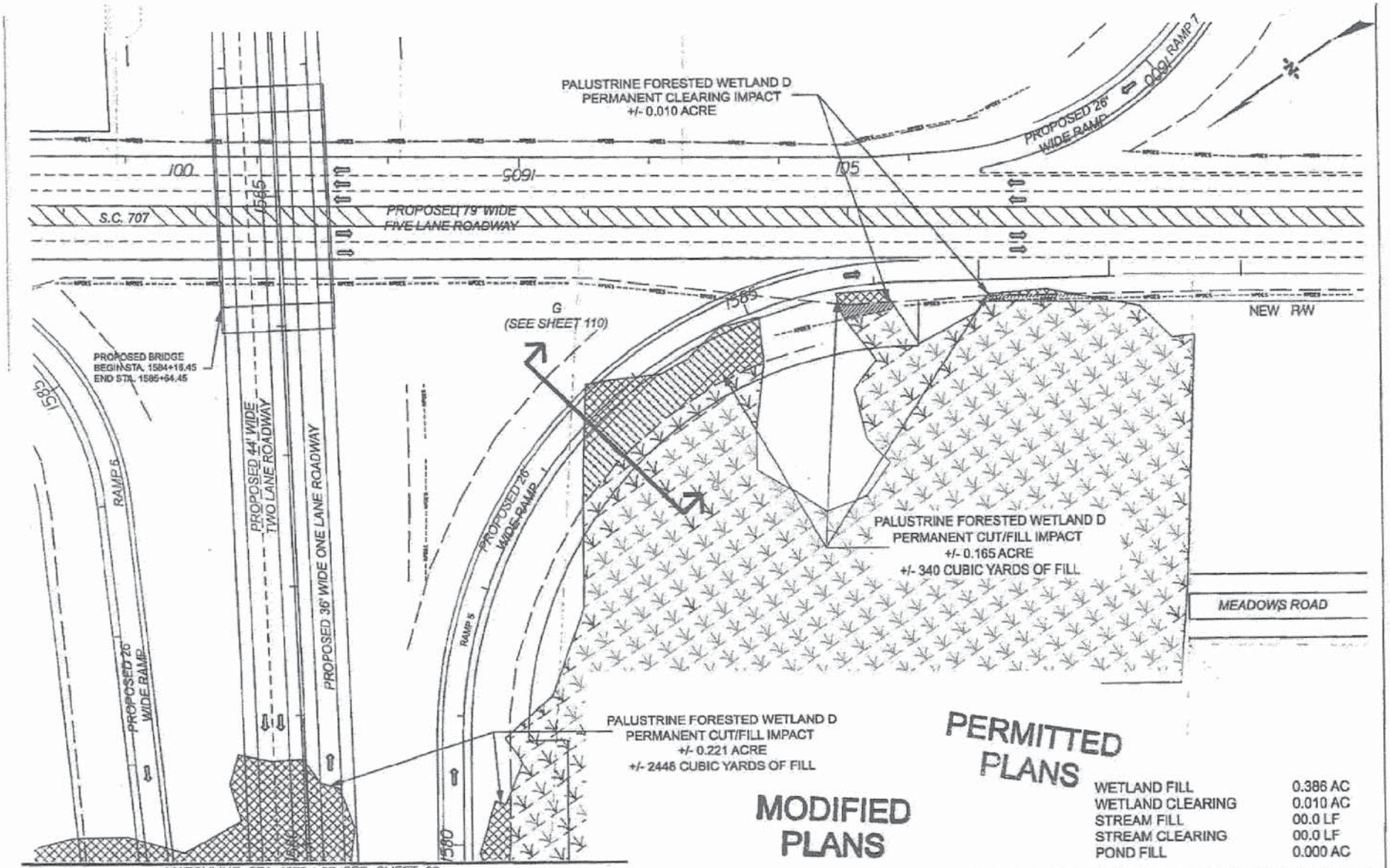
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 89 OF 132

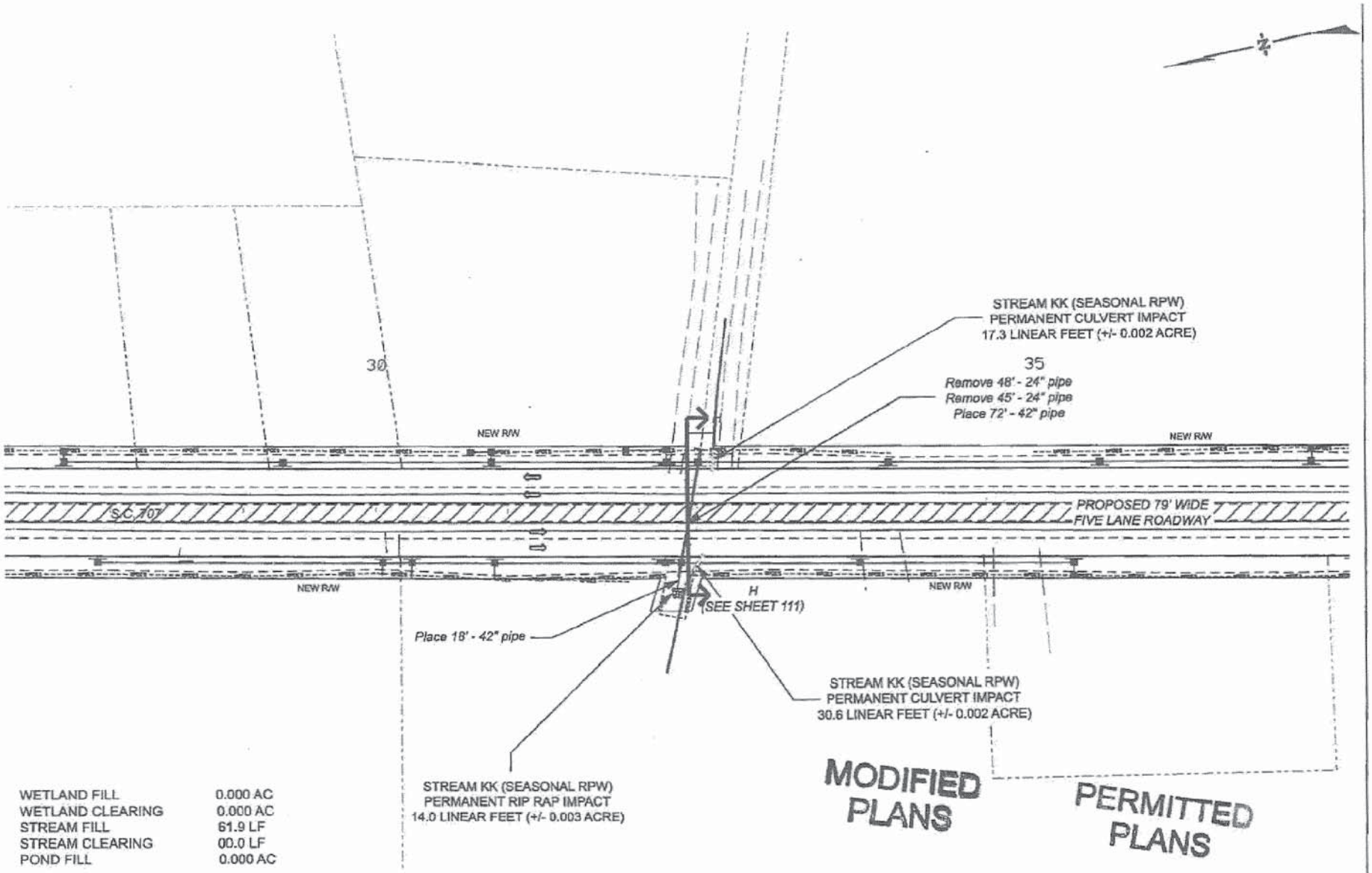
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634

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WETLAND FILL	0.000 AC
WETLAND CLEARING	0.000 AC
STREAM FILL	61.9 LF
STREAM CLEARING	00.0 LF
POND FILL	0.000 AC

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

LEGEND
- JURISDICTIONAL WETLAND
- WETLAND CLEARING IMPACT AREA
- WETLAND FILL IMPACT AREA
- STREAM FILL IMPACT AREA
- POND FILL IMPACT AREA
- PROPOSED CONSTRUCTION LIMITS
- PROPOSED NPDES LIMITS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 91 OF 132

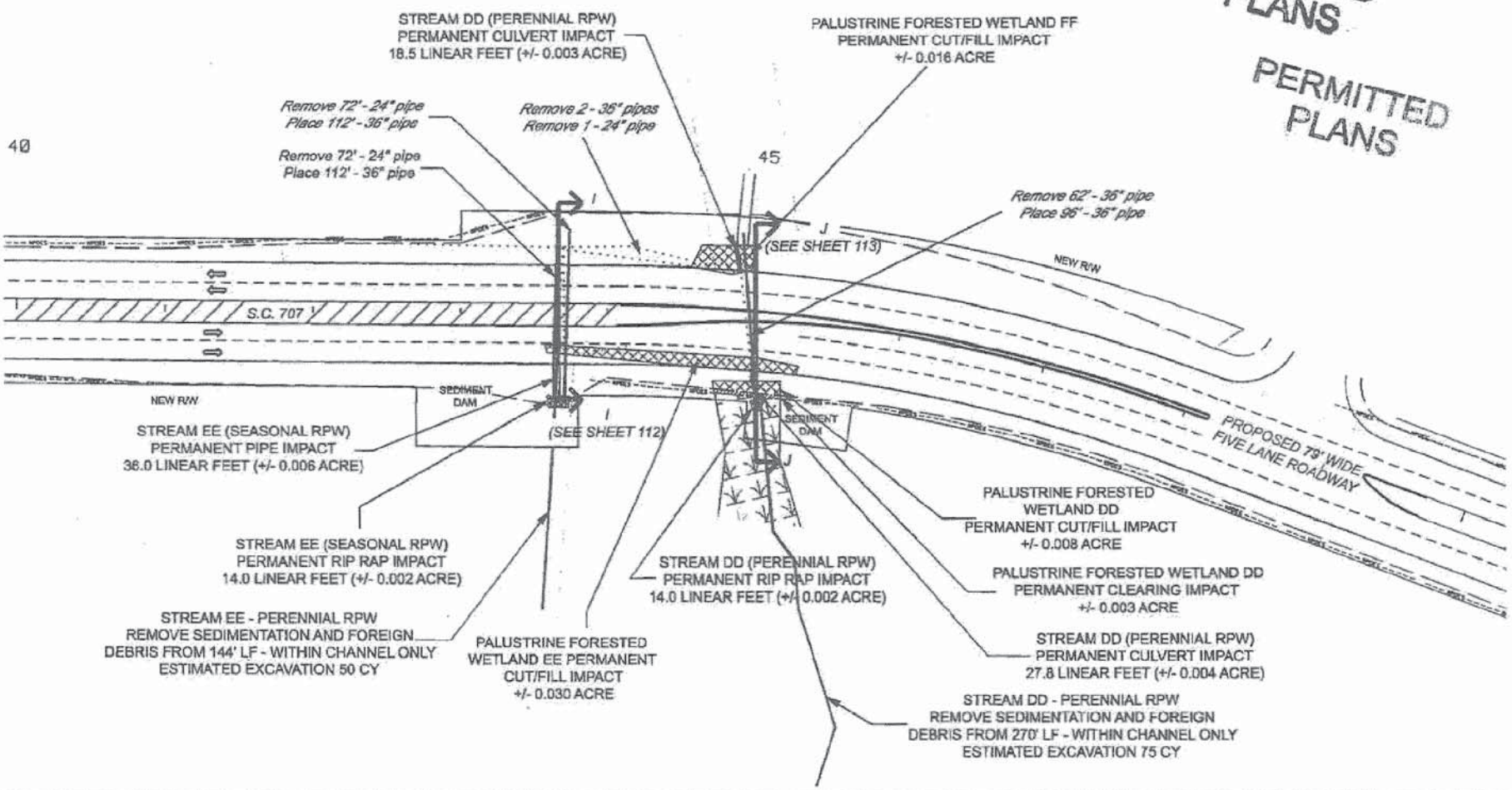
635

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WETLAND FILL	0.054 AC
WETLAND CLEARING	0.003 AC
STREAM FILL	110.3 LF
STREAM CLEARING	00.0 LF
POND FILL	0.000 AC

MODIFIED PLANS

PERMITTED PLANS



APPLICATION BY THE

SCDOT

South Carolina Department of Transportation

LEGEND

- JURISDICTIONAL WETLAND
- WETLAND CLEARING IMPACT AREA
- WETLAND FILL IMPACT AREA
- STREAM FILL IMPACT AREA
- POND FILL IMPACT AREA
- PROPOSED CONSTRUCTION LIMITS
- PROPOSED NPDES LIMITS

SAC: 2009-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

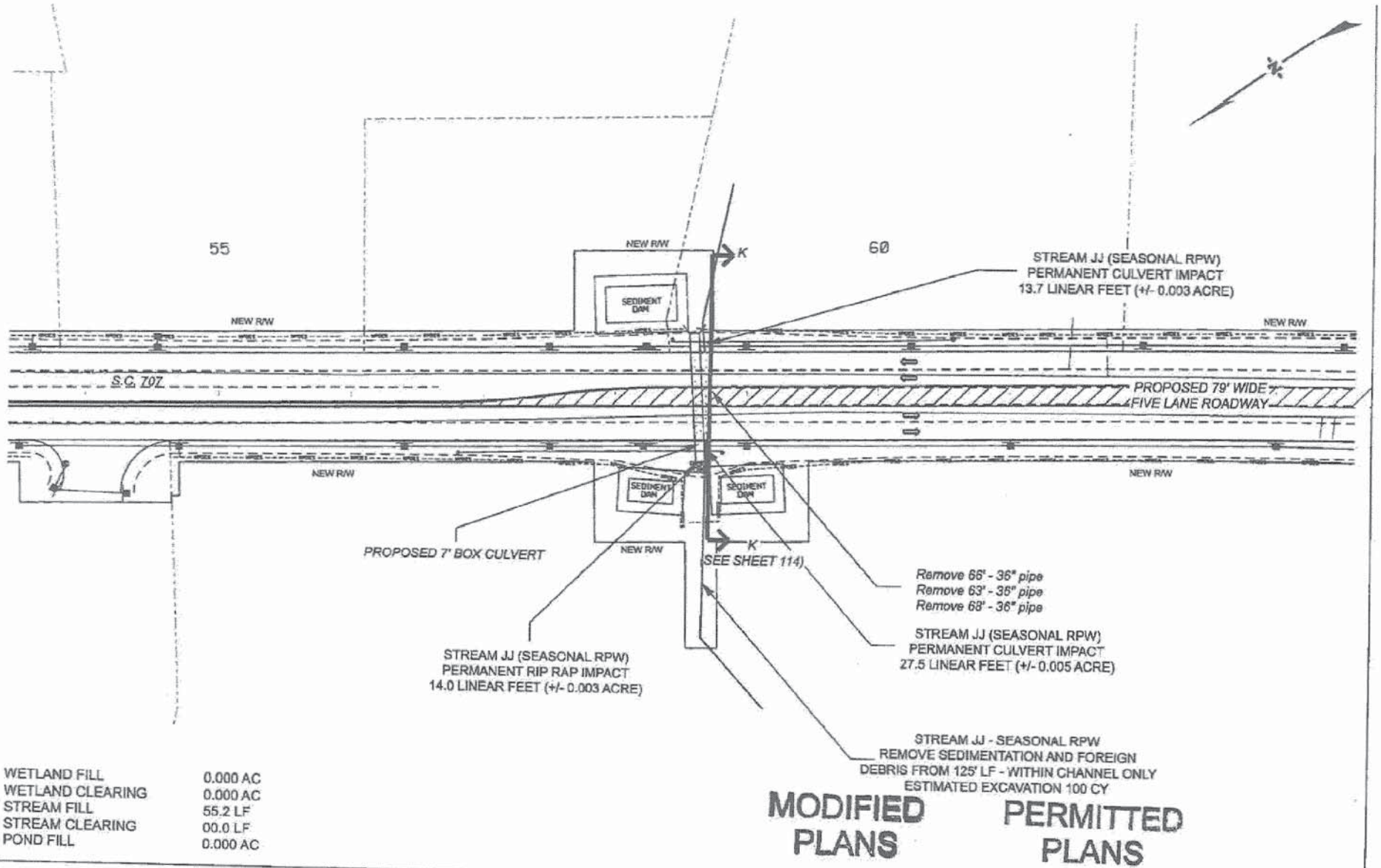
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 92 OF 132

636

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WETLAND FILL	0.000 AC
WETLAND CLEARING	0.000 AC
STREAM FILL	55.2 LF
STREAM CLEARING	00.0 LF
POND FILL	0.000 AC

MODIFIED PLANS **PERMITTED PLANS**

APPLICATION BY THE
SCDOT
South Carolina Department of Transportation

LEGEND
- JURISDICTIONAL WETLAND
- WETLAND CLEARING IMPACT AREA
- WETLAND FILL IMPACT AREA
- STREAM FILL IMPACT AREA
- POND FILL IMPACT AREA
- PROPOSED CONSTRUCTION LIMITS
- PROPOSED NPDES LIMITS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

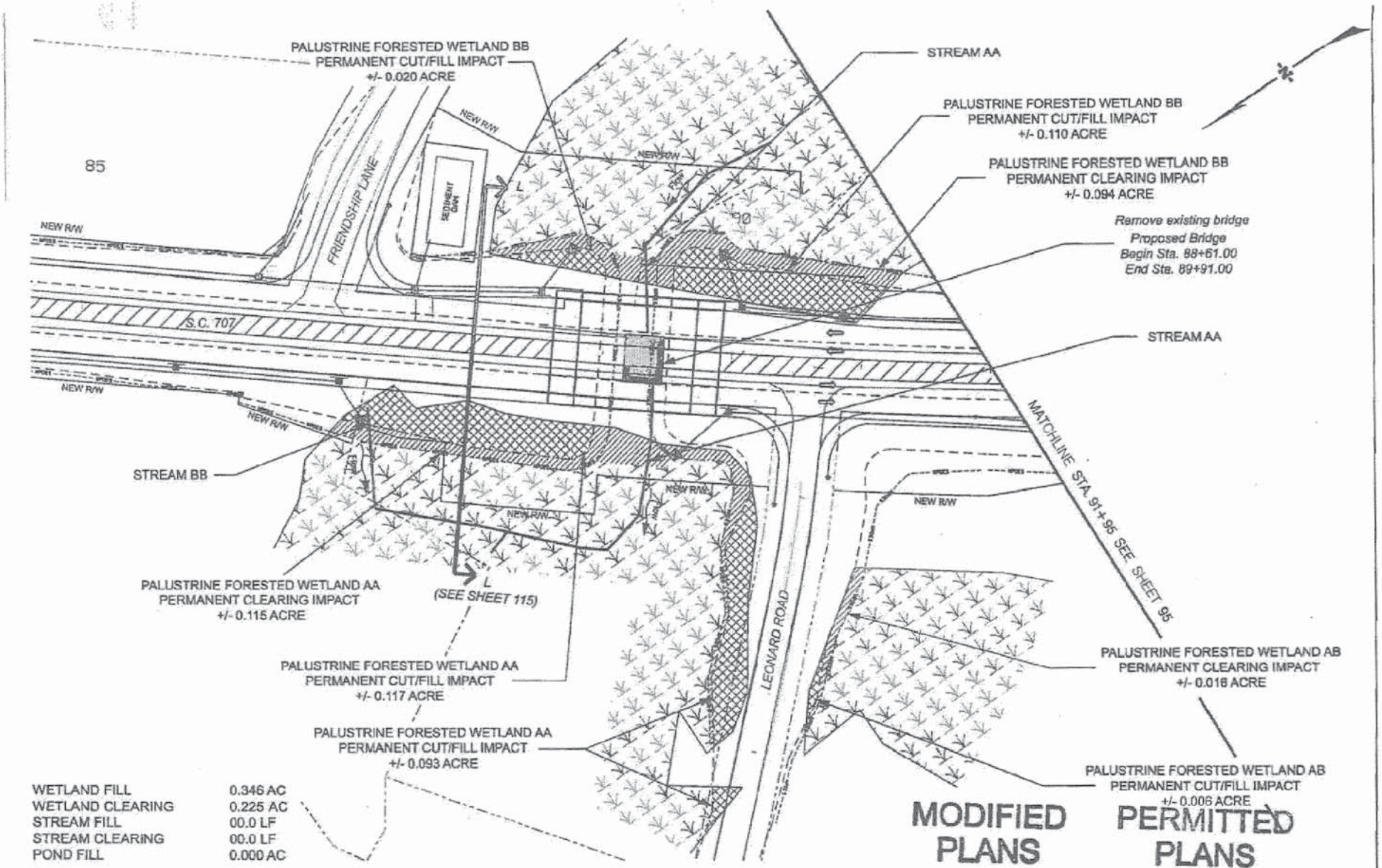
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 93 OF 132

637

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APPLICATION BY THE SCDOT
South Carolina Department of Transportation

LEGEND
- JURISDICTIONAL WETLAND
- WETLAND CLEARING IMPACT AREA
- WETLAND FILL IMPACT AREA
- STREAM FILL IMPACT AREA
- POND FILL IMPACT AREA
- PROPOSED CONSTRUCTION LIMITS
- PROPOSED NPDES LIMITS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE 0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

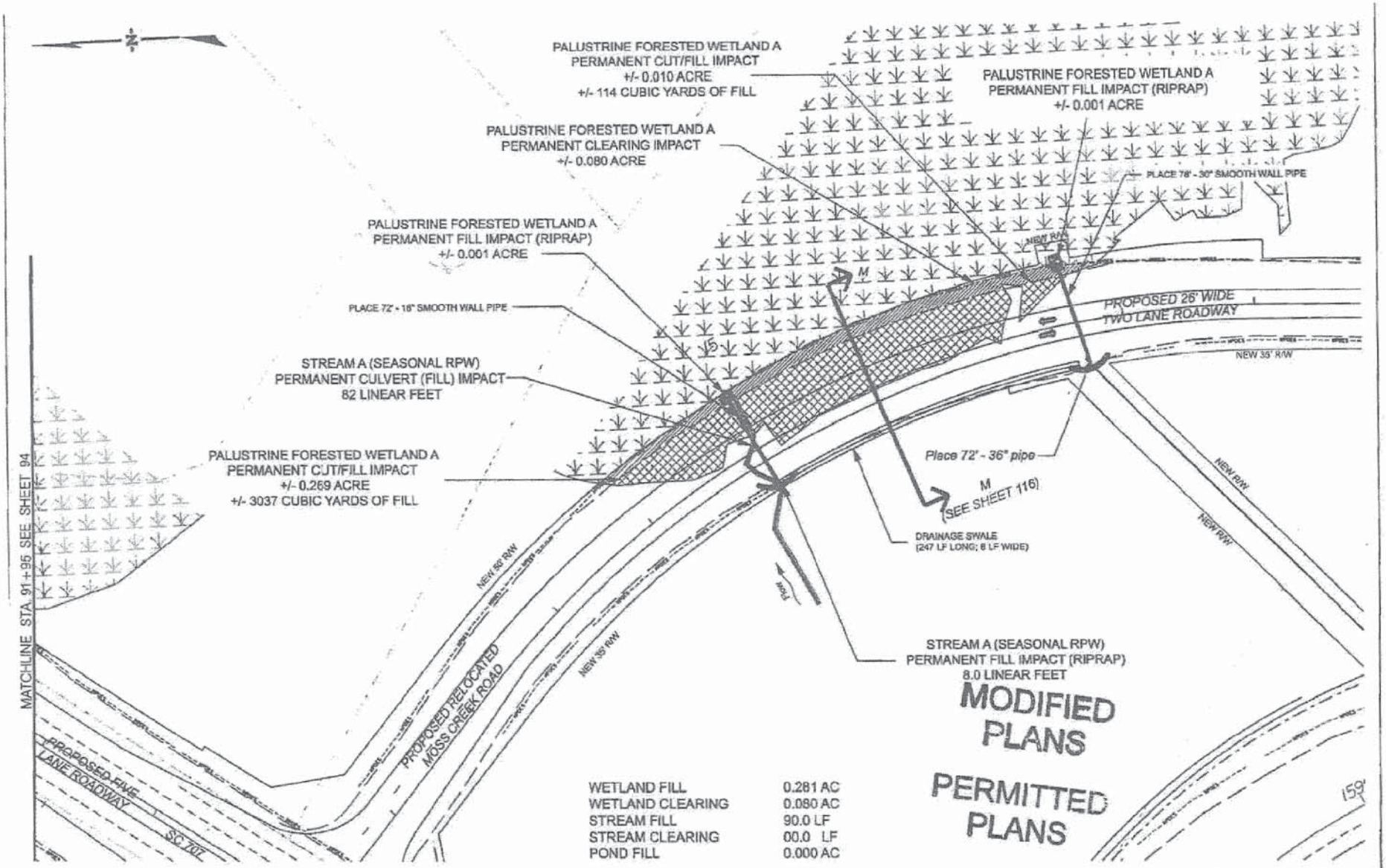
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 94 OF 132

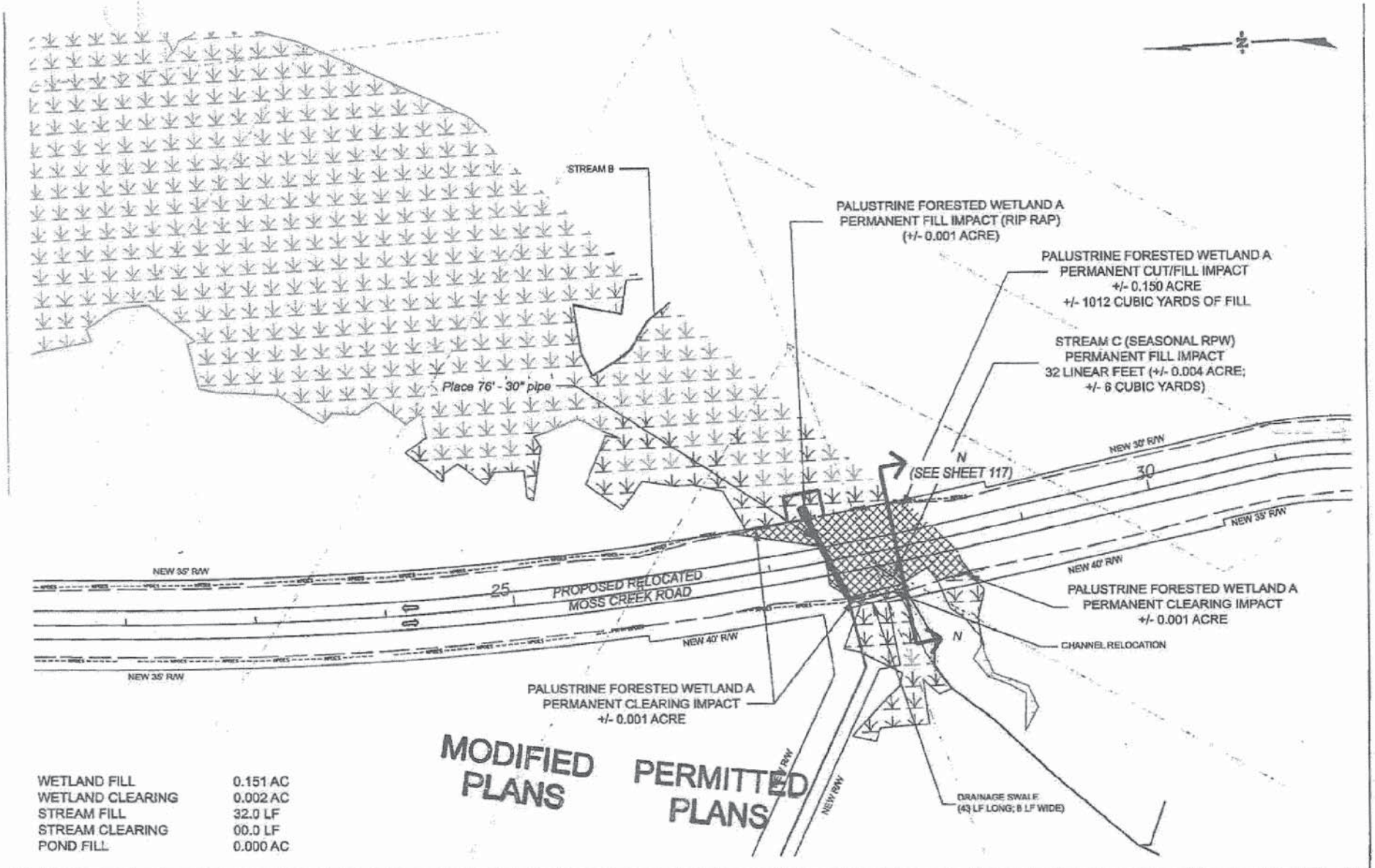
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WETLAND FILL	0.151 AC
WETLAND CLEARING	0.002 AC
STREAM FILL	32.0 LF
STREAM CLEARING	00.0 LF
POND FILL	0.000 AC

APPLICATION BY THE

SCDOT

South Carolina Department of Transportation

LEGEND

- JURISDICTIONAL WETLAND
- WETLAND CLEARING IMPACT AREA
- WETLAND FILL IMPACT AREA
- STREAM FILL IMPACT AREA
- POND FILL IMPACT AREA
- PROPOSED CONSTRUCTION LIMITS
- PROPOSED NPDES LIMITS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

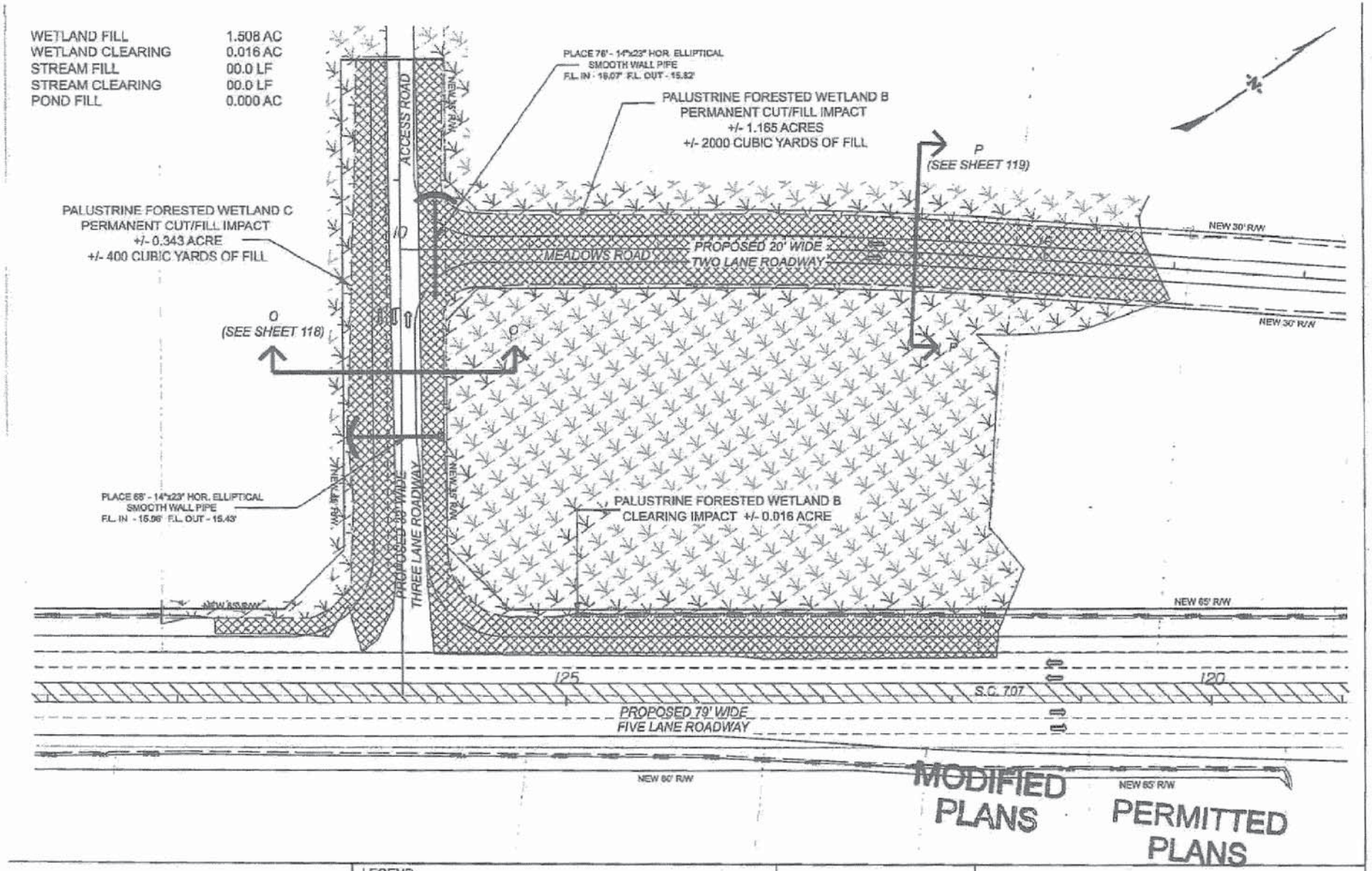
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 96 OF 132

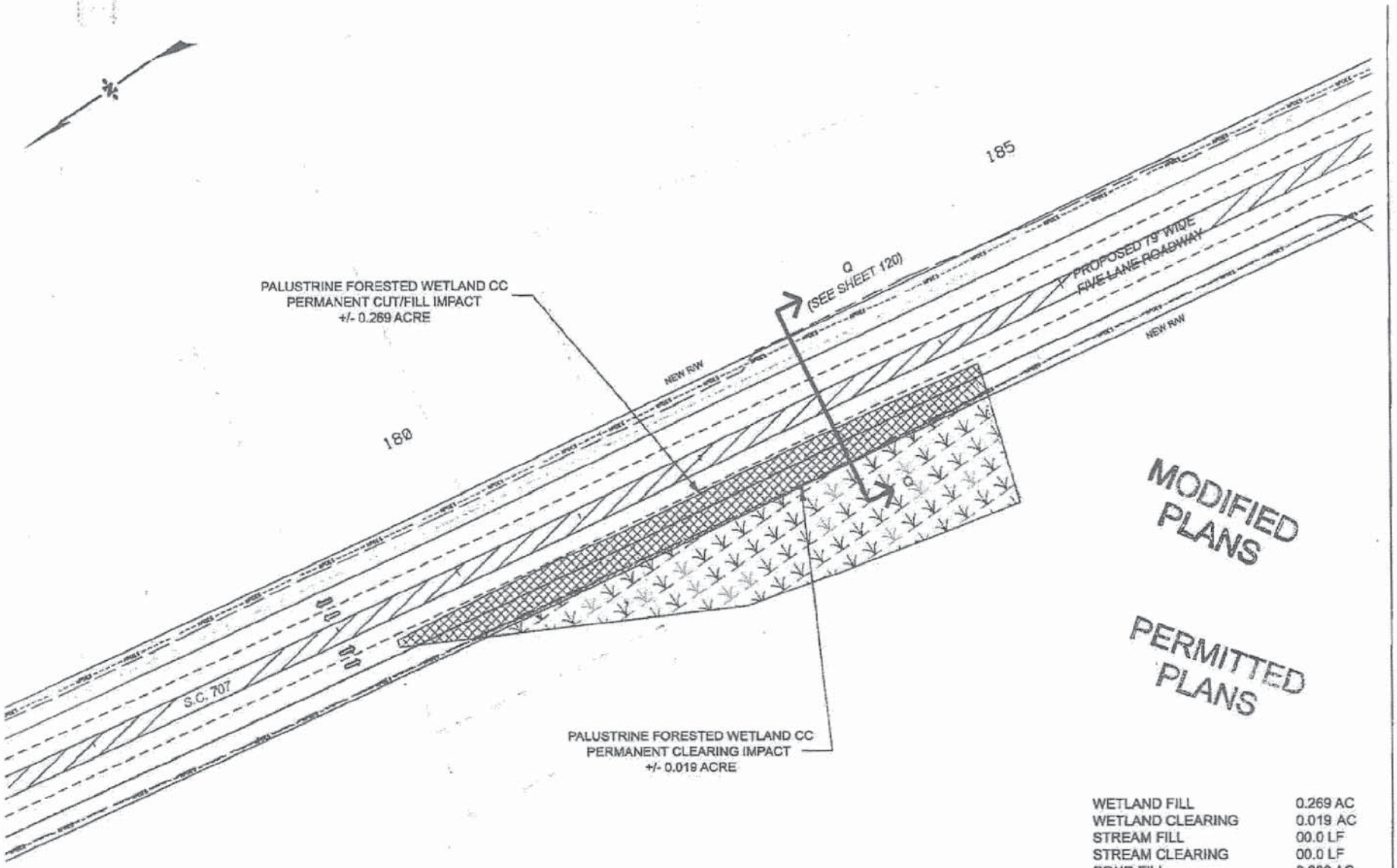
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641

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WETLAND FILL	0.269 AC
WETLAND CLEARING	0.019 AC
STREAM FILL	00.0 LF
STREAM CLEARING	00.0 LF
POND FILL	0.000 AC

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

LEGEND
- JURISDICTIONAL WETLAND
- WETLAND CLEARING IMPACT AREA
- WETLAND FILL IMPACT AREA
- STREAM FILL IMPACT AREA
- POND FILL IMPACT AREA
- PROPOSED CONSTRUCTION LIMITS
- PROPOSED NPDES LIMITS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

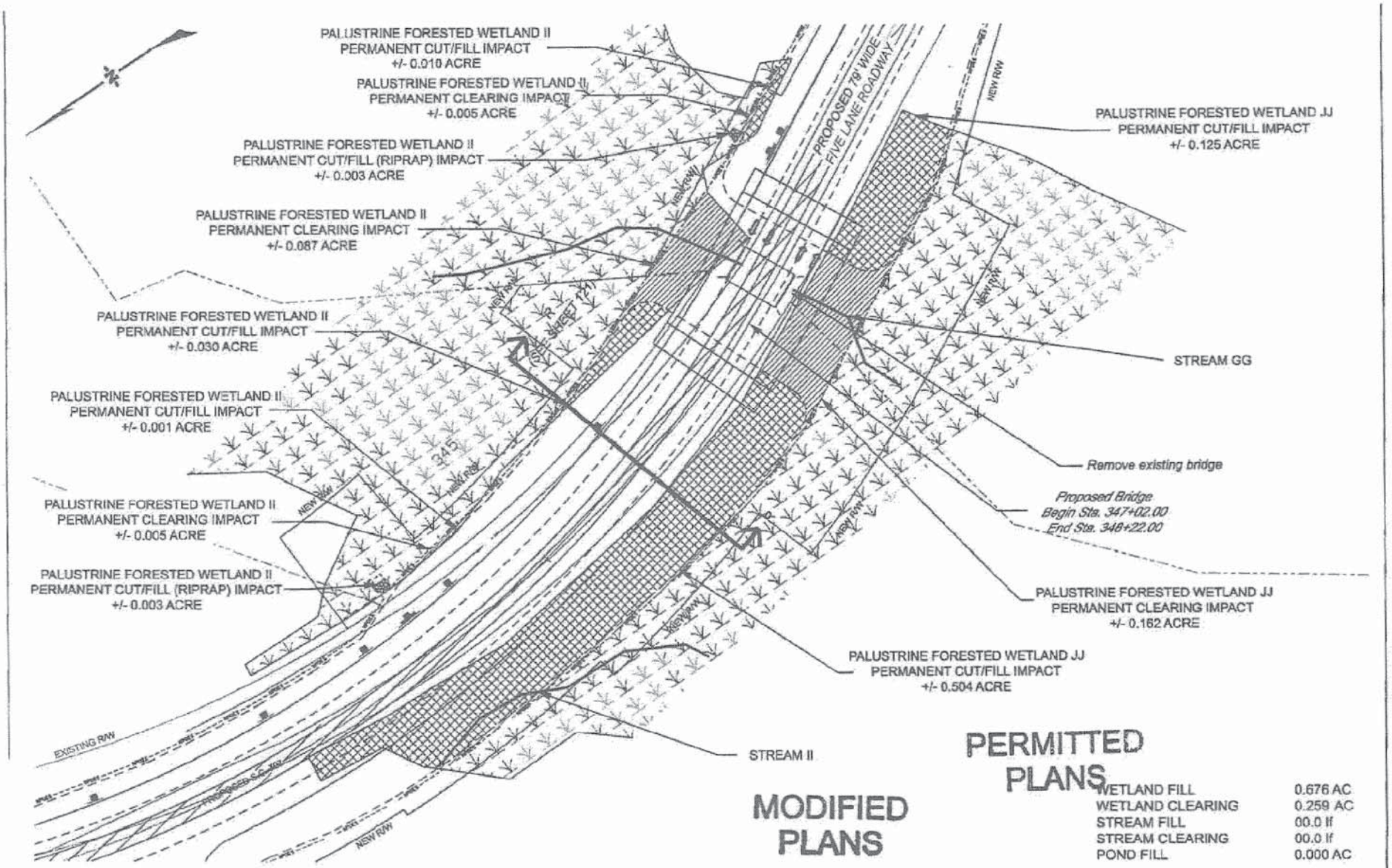
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 98 OF 132

642

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APPLICATION BY THE

SCDOT

South Carolina Department of Transportation

LEGEND

- JURISDICTIONAL WETLAND
- WETLAND CLEARING IMPACT AREA
- WETLAND FILL IMPACT AREA
- STREAM FILL IMPACT AREA
- POND FILL IMPACT AREA
- PROPOSED CONSTRUCTION LIMITS
- PROPOSED NPDES LIMITS

SAC: 2000-11689-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

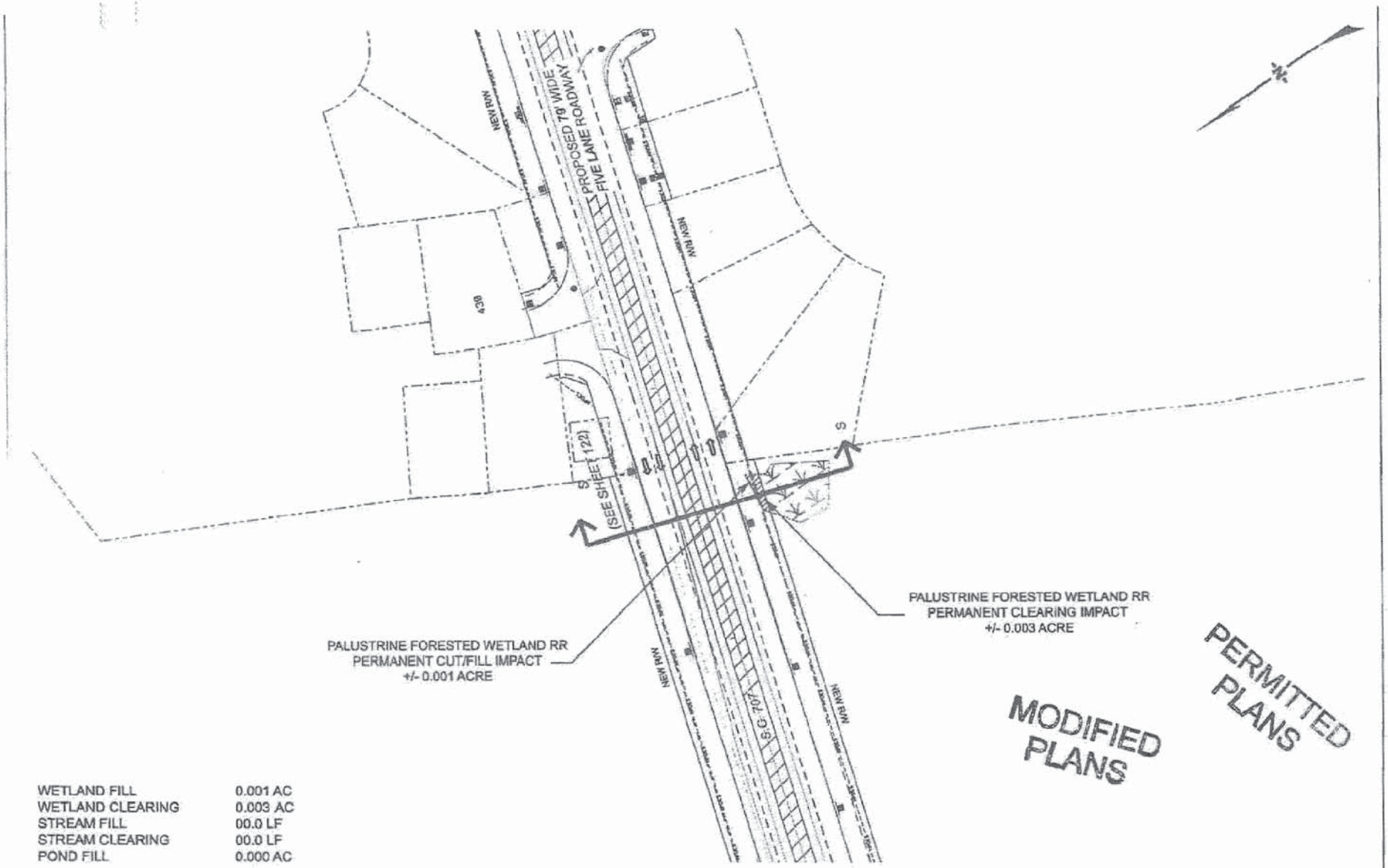
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 99 OF 132

643

ELECTRONICALLY FILED - 2023 Apr 04 8:47 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116



WETLAND FILL	0.001 AC
WETLAND CLEARING	0.003 AC
STREAM FILL	00.0 LF
STREAM CLEARING	00.0 LF
POND FILL	0.000 AC

APPLICATION BY THE
SCDOT
South Carolina Department of Transportation

LEGEND
- JURISDICTIONAL WETLAND
- WETLAND CLEARING IMPACT AREA
- WETLAND FILL IMPACT AREA
- STREAM FILL IMPACT AREA
- POND FILL IMPACT AREA
- PROPOSED CONSTRUCTION LIMITS
- PROPOSED NPDES LIMITS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

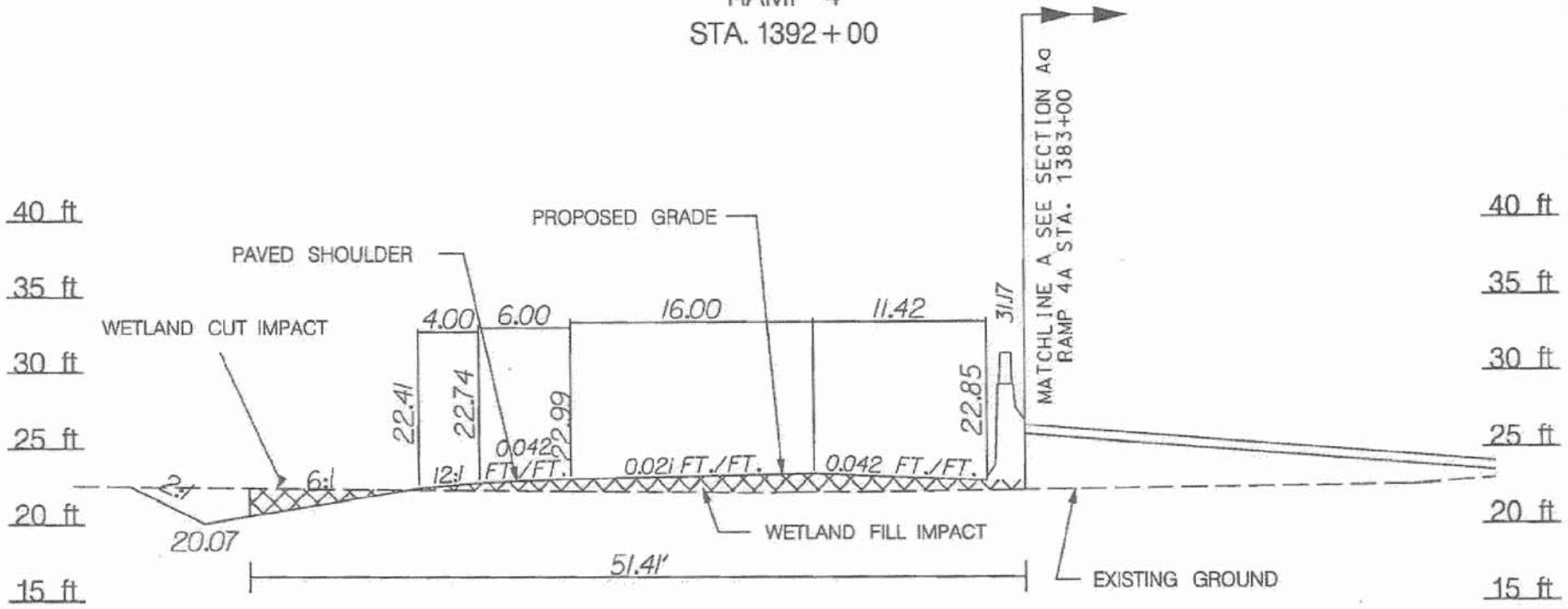
SCDOT PINs 38775, 36777, 36778, & 36779

SHEET 100 OF 132

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SECTION A
RAMP 4
STA. 1392+00



MODIFIED PLANS

PERMITTED PLANS

See Sheet 72 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11869-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

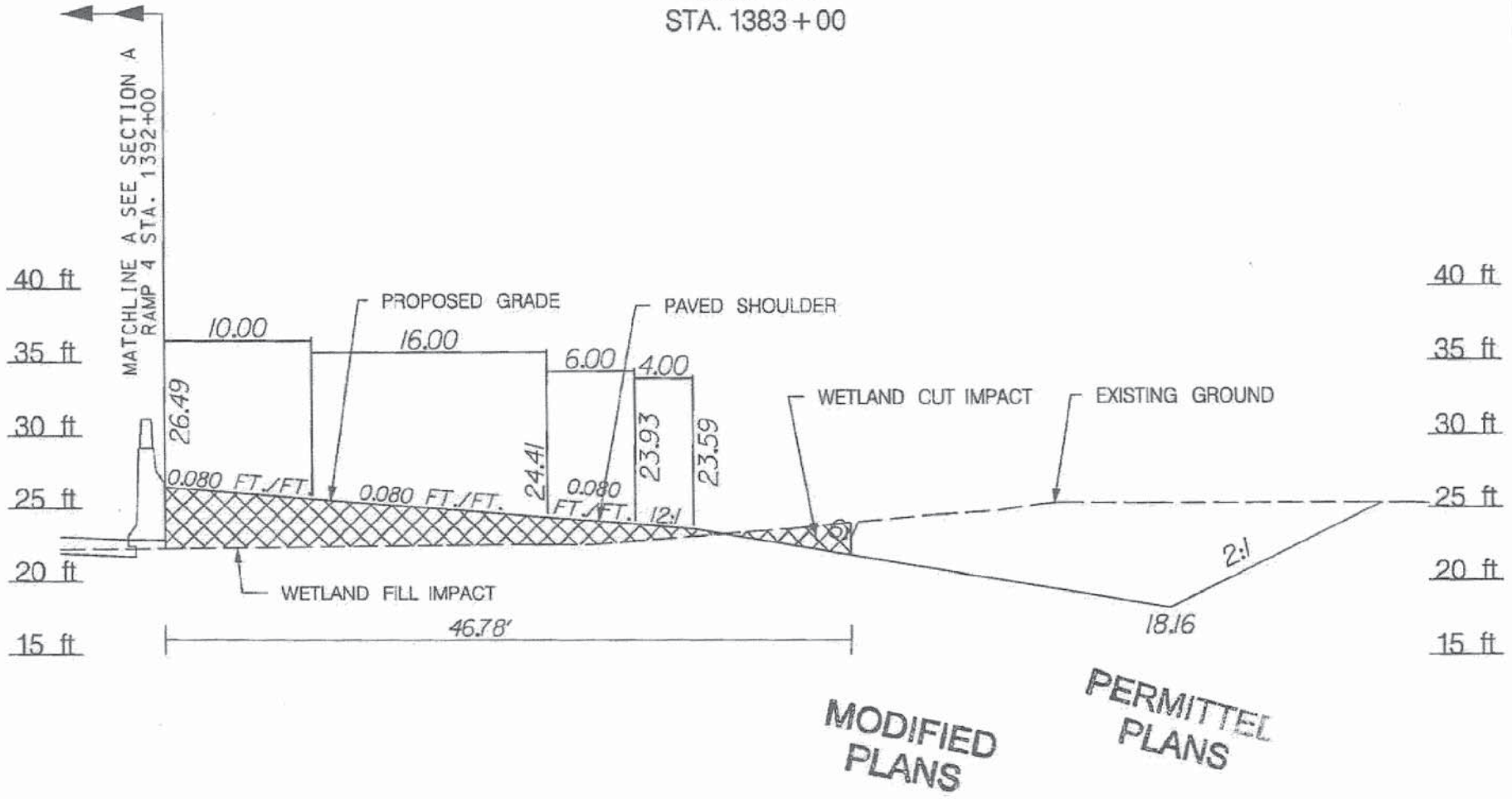
SCALE
0 ft 10 ft

SHEET 101 OF 132

645

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SECTION Aa
RAMP 4A
STA. 1383+00



See Sheet 72 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11689-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

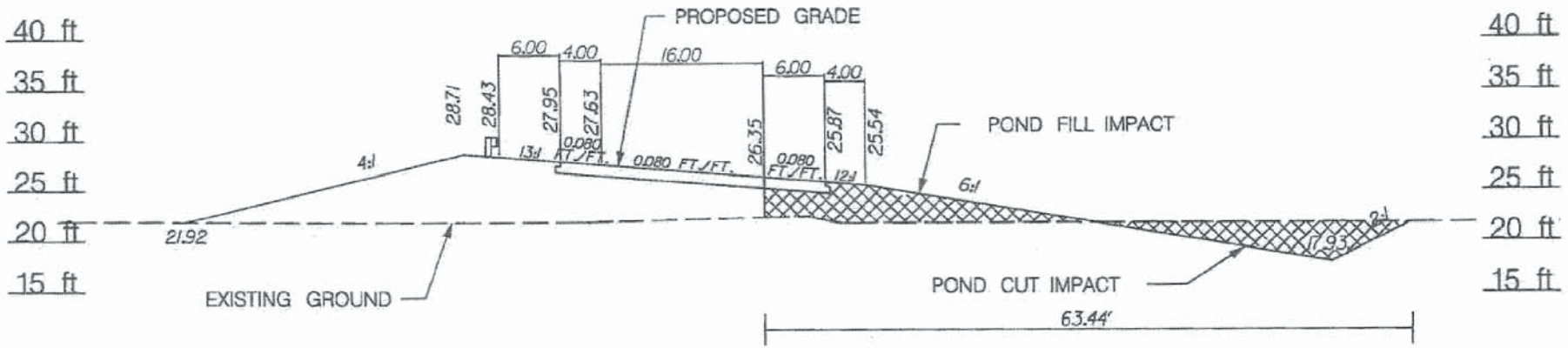
SCALE
0 ft 10 ft

SHEET 102 OF 132

646

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SECTION B
RAMP 4A
STA. 1384+50



MODIFIED PLANS

PERMITTED PLANS

See Sheet 72 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2008-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

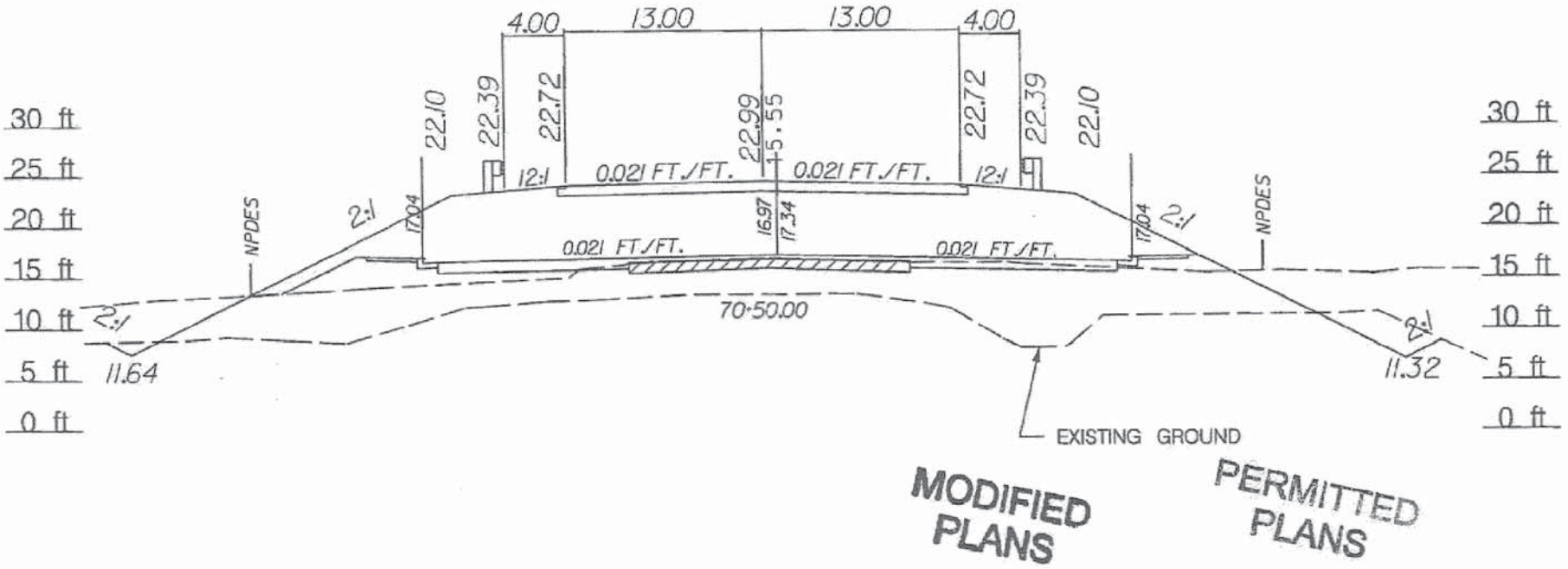
SCALE
0 ft 15 ft

SHEET 103 OF 132

647

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SECTION C
ENTERPRISE ROAD
STA. 70+50



See Sheet 80 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11689-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

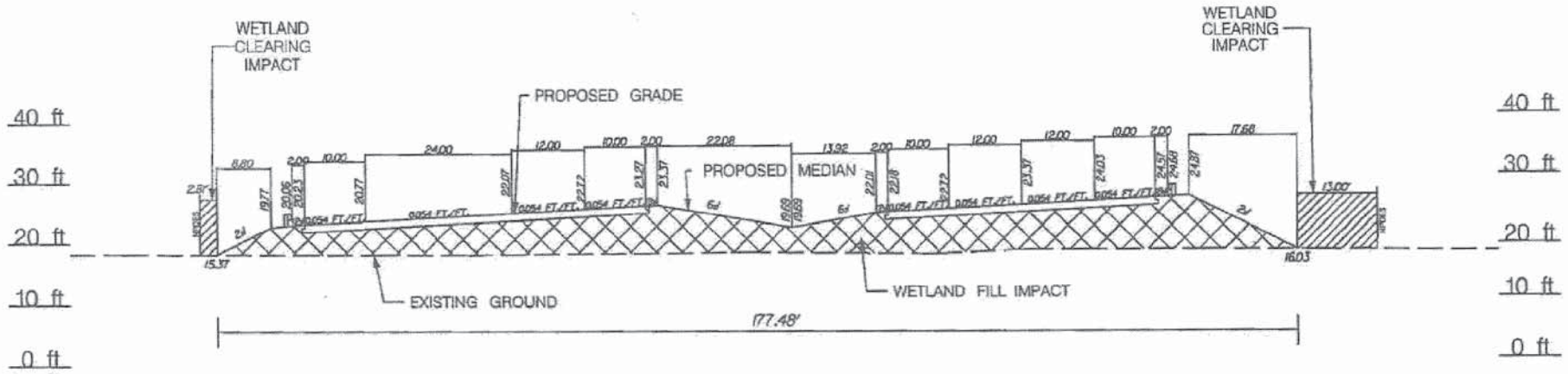
SCDOT PINs 38775, 38777, 38778, & 38779

SCALE
0 ft 15 ft

SHEET 104 OF 132

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SECTION D
CAROLINA BAYS PARKWAY (SC 31)
STA. 1548 + 00



MODIFIED PLANS

PERMITTED PLANS

See Sheet 87 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 25 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

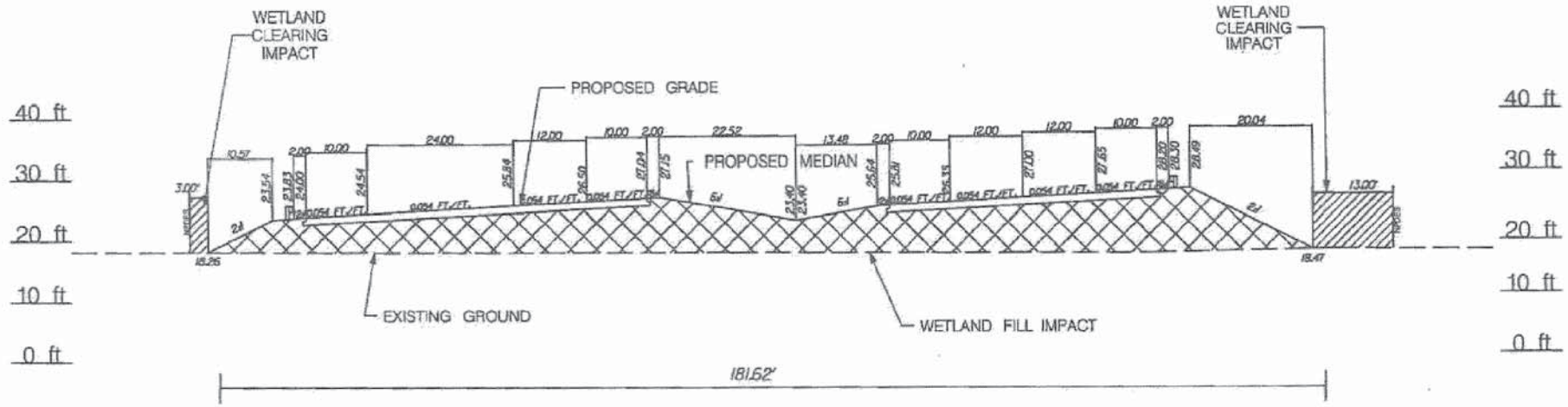
SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 105 OF 132

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SECTION E
CAROLINA BAYS PARKWAY (SC 31)
STA. 1565+00



MODIFIED PLANS

PERMITTED PLANS

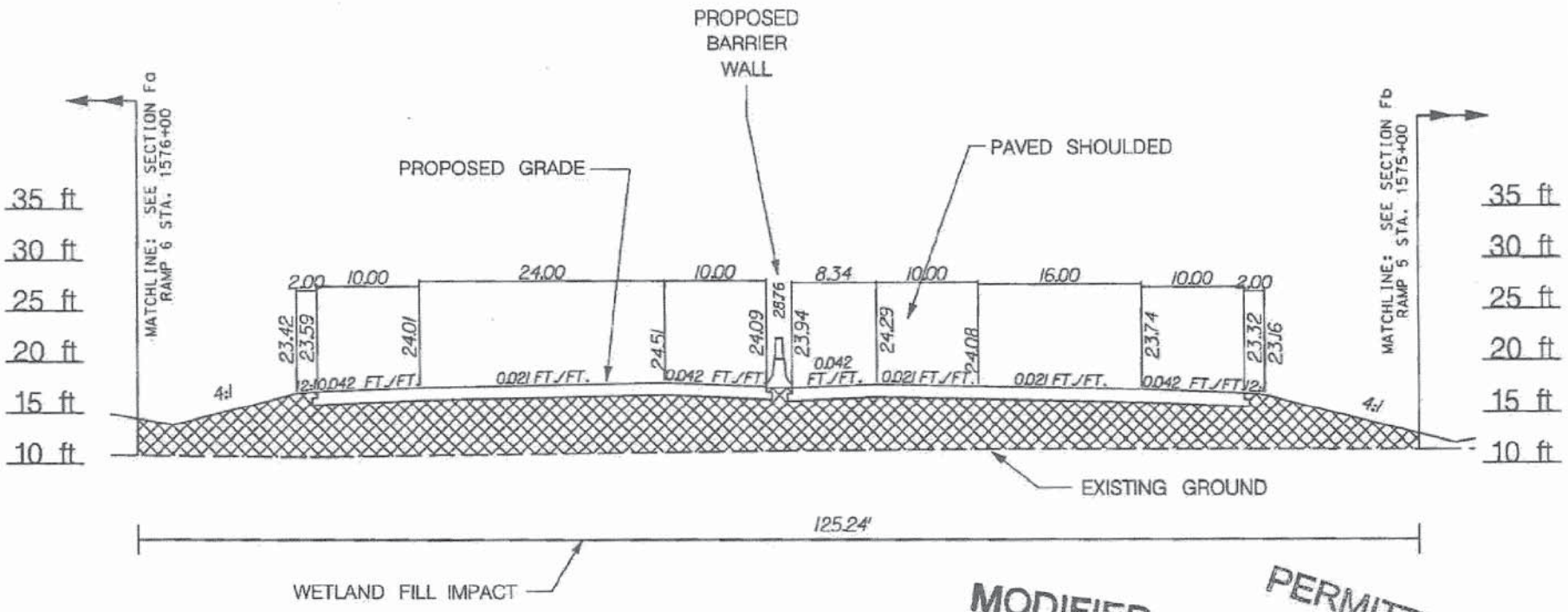
See Sheet 88 for Plan View

APPLICATION BY THE SCDOT South Carolina Department of Transportation		SAC: 2000-11889-DJM HORRY AND GEORGETOWN COUNTIES, S.C. FEDERAL FUNDS TO BE USED DATE: APRIL 1, 2013	S.C. ROUTE 31 / CAROLINA BAYS PARKWAY FROM S.C. ROUTE 9 TO U.S. ROUTE 17 INDIVIDUAL PERMIT MODIFICATION APPLICATION SCDOT PINs 36775, 36777, 36778, & 36779
		SCALE 0 ft 25 ft	SHEET 106 OF 132

650

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SECTION F
CAROLINA BAYS PARKWAY (SC 31)
STA. 1575+00



MODIFIED PLANS

PERMITTED PLANS

See Sheet 89 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11889-OJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SCALE
0 ft. 15 ft.

SHEET 107 OF 132

651

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MICHAEL B.T. WILKES, P.A.▪ ◊
C. DANIEL ATKINSON ▪ ▸
J. ALEXANDER JOYNER •
W. SPENCER BARROW ▸
REED W. MULBRY•
BRIAN M. PETERS, JR.*

• CHARLESTON OFFICE
▪ ALSO MEMBER GA BAR
▸ ALSO MEMBER NC BAR
◊ CERTIFIED MEDIATOR
* ALSO MEMBER OF FL BAR

WILKES ATKINSON & JOYNER, LLC
ATTORNEYS AT LAW

Reply to: SPARTANBURG OFFICE
127 DUNBAR STREET, SUITE 200
SPARTANBURG, SC 29306
PHONE: 864.591.1113
TOLL FREE: 866.920.1113
FAX: 864.591.1767

CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

April 4, 2023

Via E-Filing Only
The Honorable Renee Elvis
Horry County Clerk of Court
1301 Second Avenue
Conway, SC 29528

Re: ***Flatiron Constructors, Inc. v. TranSystems Corporation***
Court of Common Pleas, Horry County
C.A. No.: 2022-CP-26-06116

Dear Ms. Elvis,

Please find attached to this letter **Exhibit A, Part 9** to Defendant's Brief in Support of Defendant's Motion for Summary Judgment. Due to size constraints, we were unable to file this Exhibit with the Brief. Please have the docket note that this exhibit is part of the Defendant's Brief in Support of its Motion for Summary Judgment.

Please advise if you have any questions.

Sincerely,

s/ Michael B. T. Wilkes

Michael B. T. Wilkes, S.C. Bar No. 9607
mwilkes@wajlawfirm.com

MBTW: jjs
cc (via E-Filing Only):
Carter B. Reid, Esq.
Bryan Patrick Bailey, Esq.
Mason A. Goldsmith, Jr., Esq.
C. Daniel Atkinson, Esq.

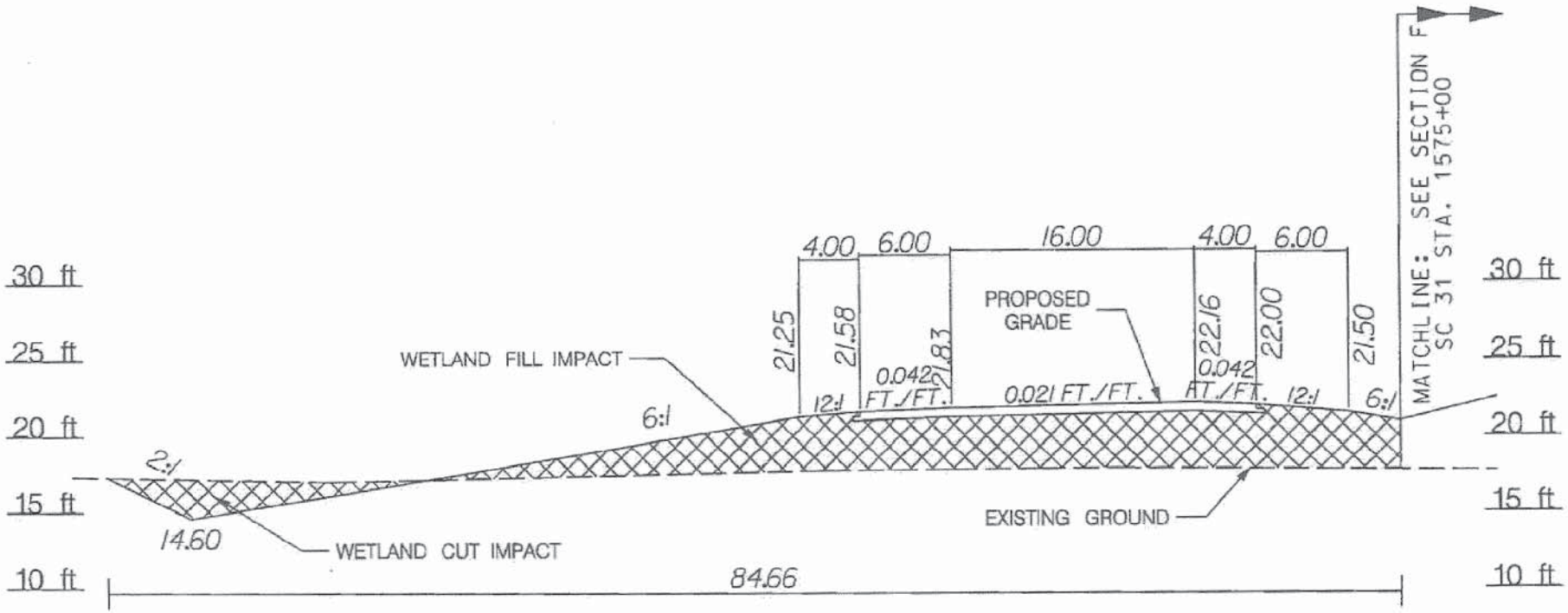
ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

EXHIBIT A
(Part 9 of 11)

TSC's Brief in Support of Motion for Summary Judgment

Flatiron v. TranSystems
C.A. No. 2022-CP-26-06116

SECTION Fa
RAMP 6
STA. 1576+00



MODIFIED PLANS

PERMITTED PLANS

See Sheet 89 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

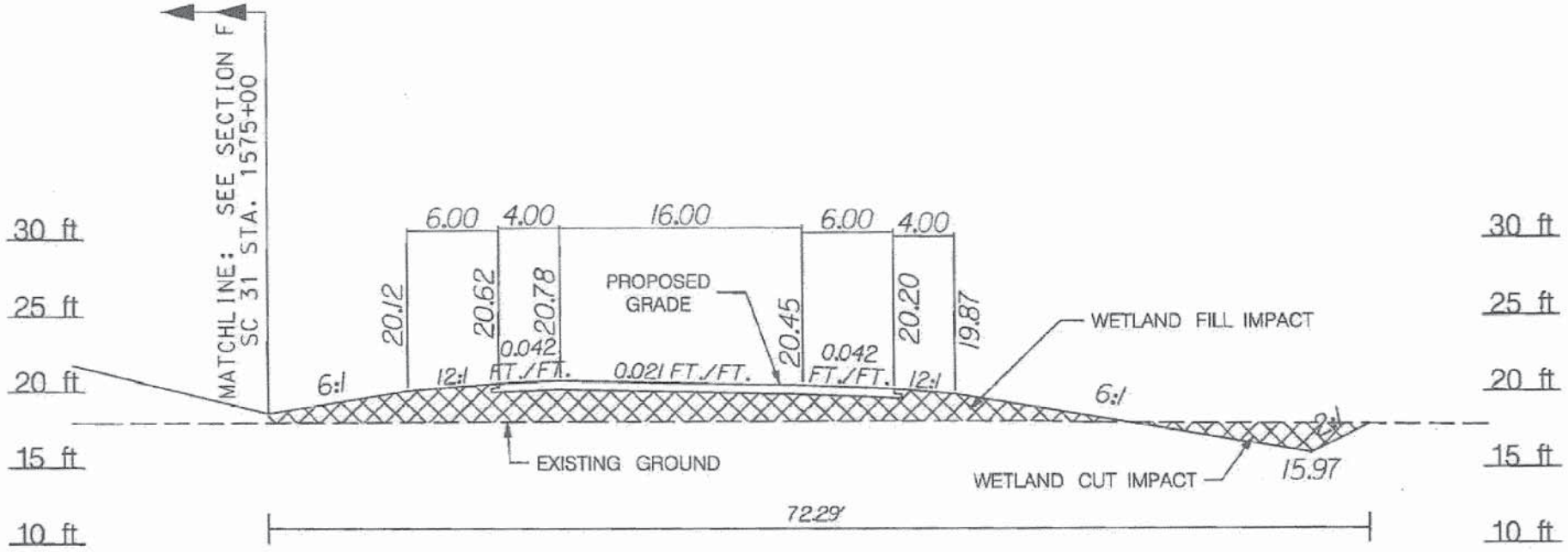
SCALE 0 ft 10 ft

SHEET 108 OF 132

654

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

SECTION Fb
RAMP 5
STA. 1575+00



MODIFIED PLANS

PERMITTED PLANS

See Sheet 89 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

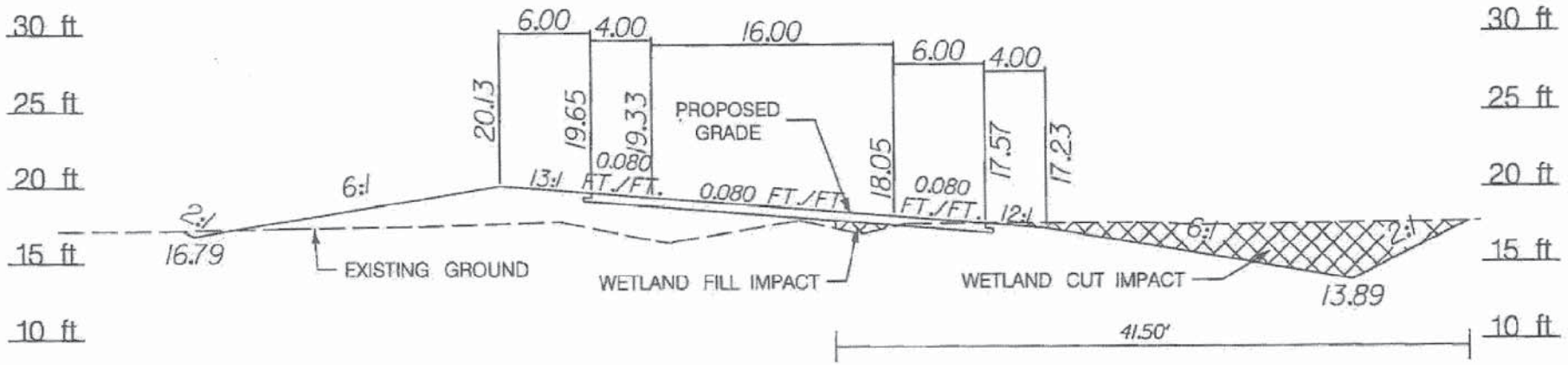
SCALE
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SHEET 109 OF 132

655

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

SECTION G
RAMP 5
STA. 1583+50



MODIFIED PLANS

PERMITTED PLANS

See Sheet 90 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11869-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 10 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

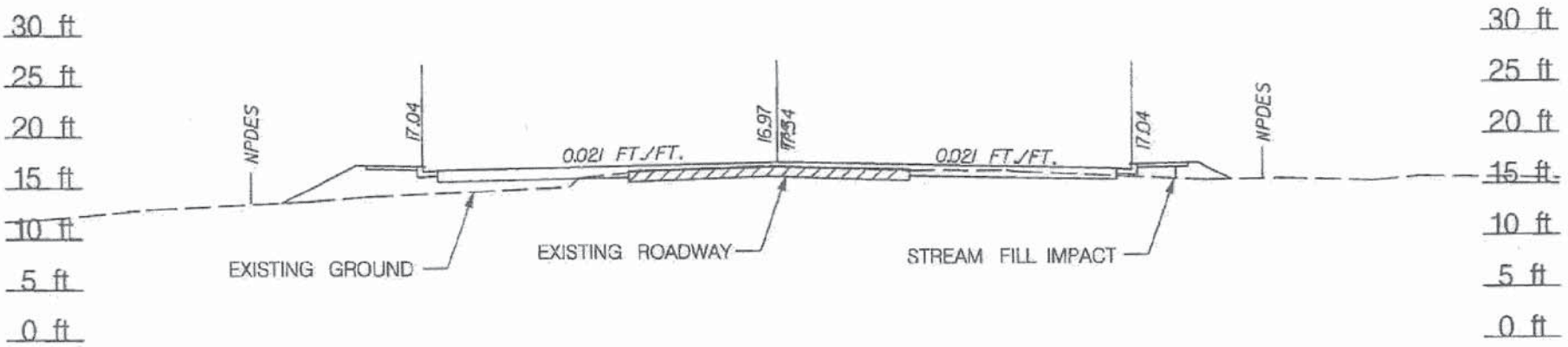
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 110 OF 132

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SECTION H
SC 707
STA. 32+37



MODIFIED PLANS

PERMITTED PLANS

See Sheet 91 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

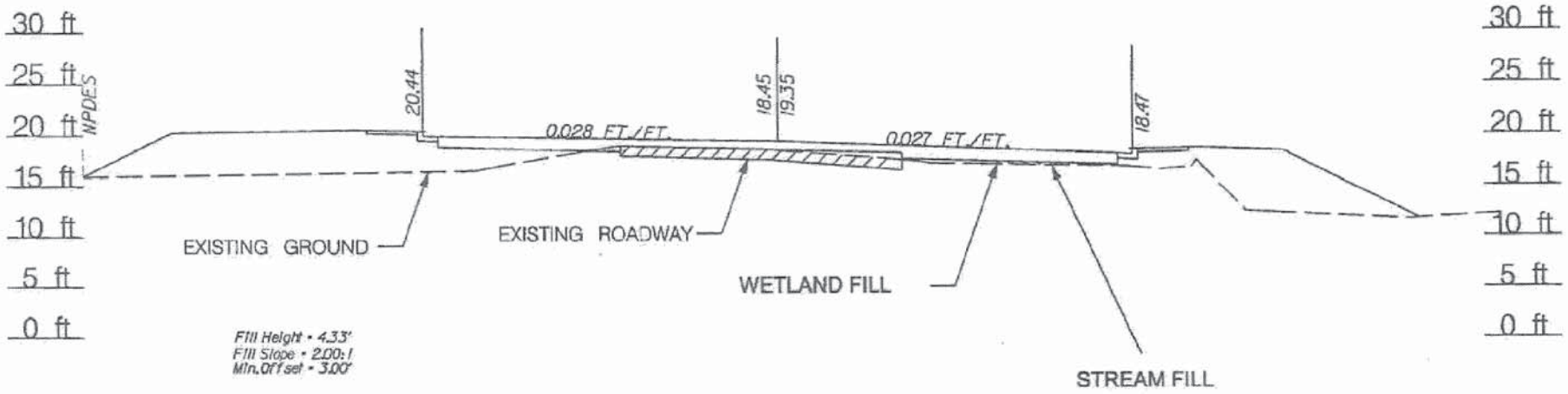
SCALE
0 ft 15 ft

SHEET 111 OF 132

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

FIC000014224

SECTION I
SC 707
STA. 43+66



MODIFIED PLANS

PERMITTED PLANS

See Sheet 92 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 15 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

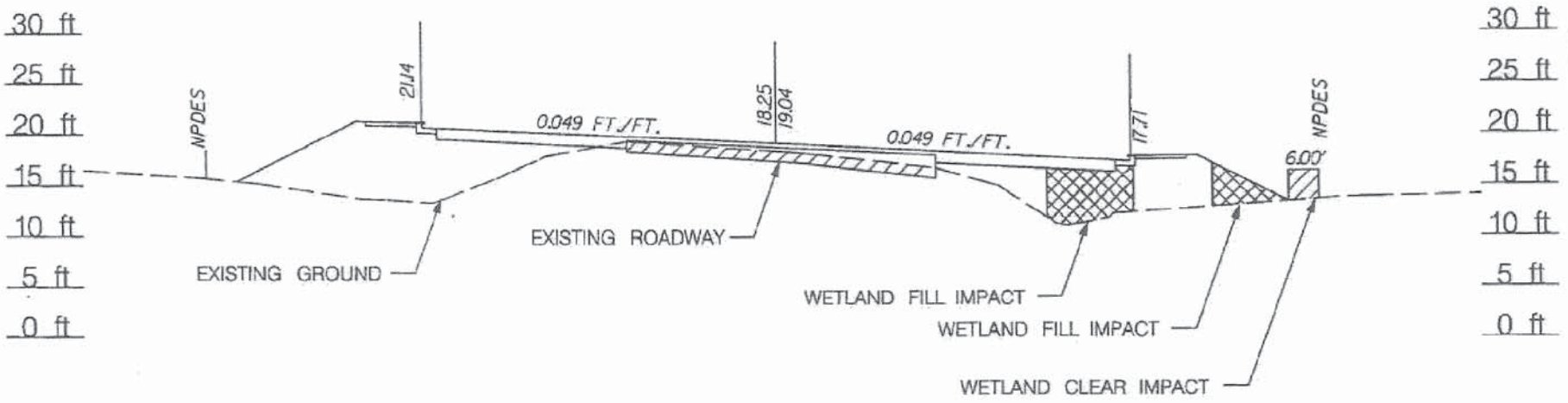
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 112 OF 132

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SECTION J
SC 707
STA. 45+00



See Sheet 92 for Plan View

APPLICATION BY THE
SCDOT
South Carolina Department of Transportation

SAC: 2000-11869-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

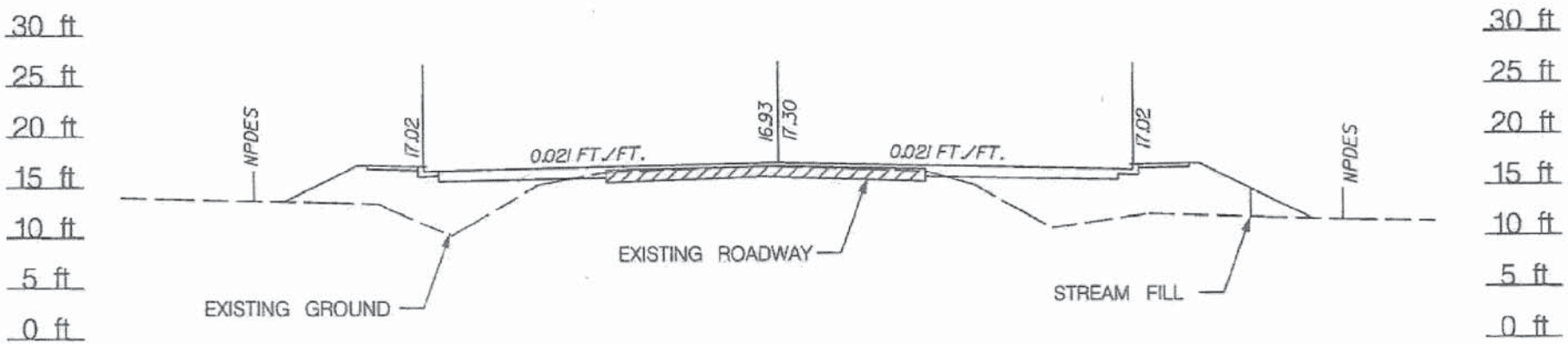
SCALE
0 ft 15 ft

SHEET 113 OF 132

659

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

SECTION K
SC 707
STA. 58+75



MODIFIED PLANS

PERMITTED PLANS

See Sheet 93 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

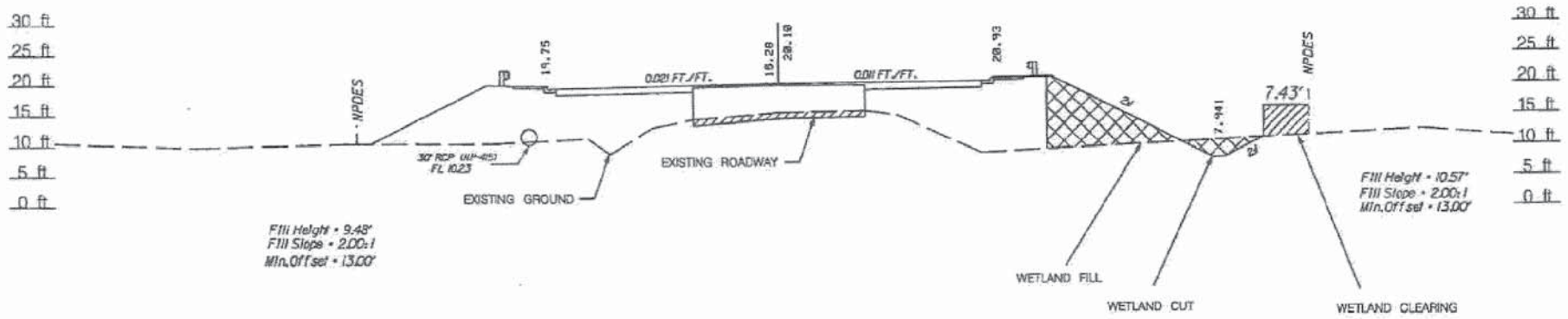
SCALE
0 ft 15 ft

SHEET 114 OF 132

660

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

SECTION L
SC 707
STA. 88+00



MODIFIED PLANS

PERMITTED PLANS

See Sheet 94 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

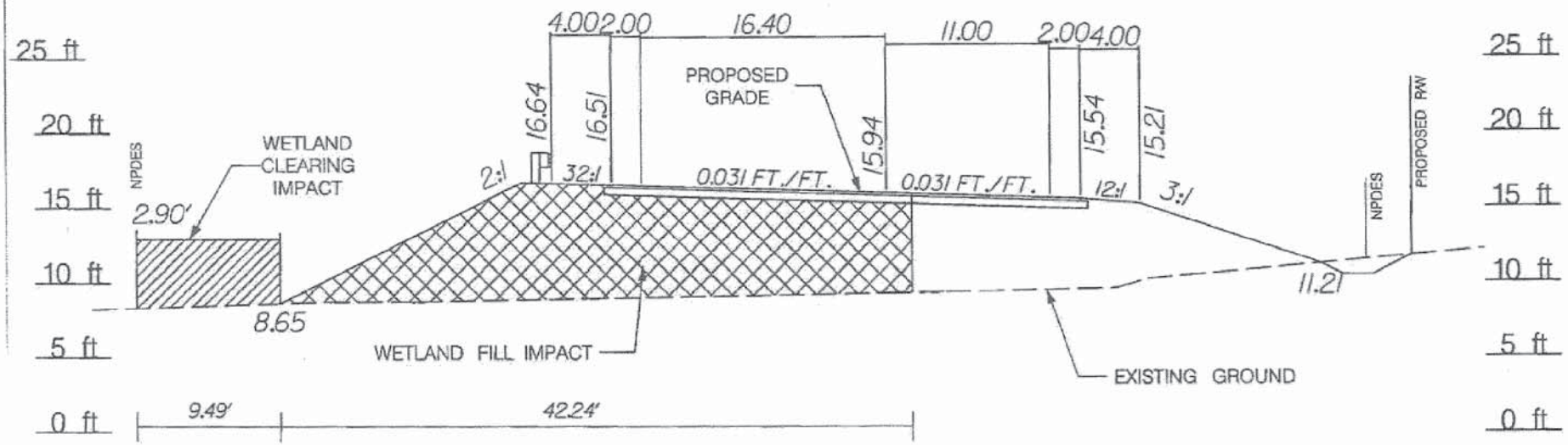
SCALE
0 ft 25 ft

SHEET 115 OF 132

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FIC000014228

SECTION M
RELOCATED MOSS CREEK ROAD
STA. 16+00



See Sheet 95 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

MODIFIED PLANS

PERMITTED PLANS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 10 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

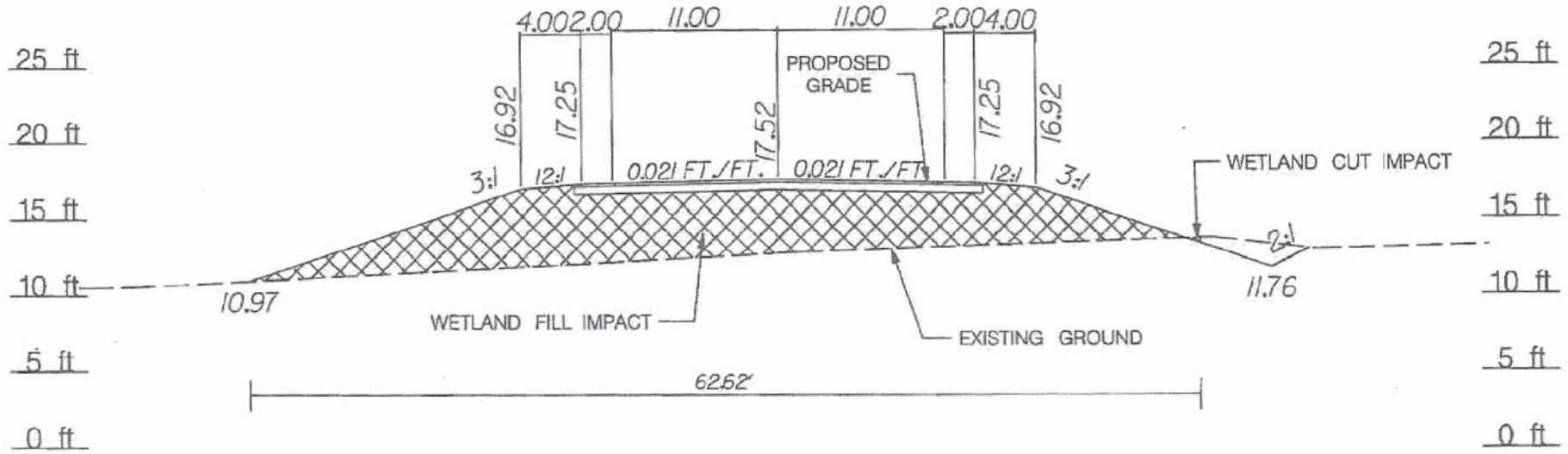
SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 116 OF 132

662

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

SECTION N
RELOCATED MOSS CREEK ROAD
STA. 28+00



See Sheet 96 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

MODIFIED PERMITTED PLANS PLANS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

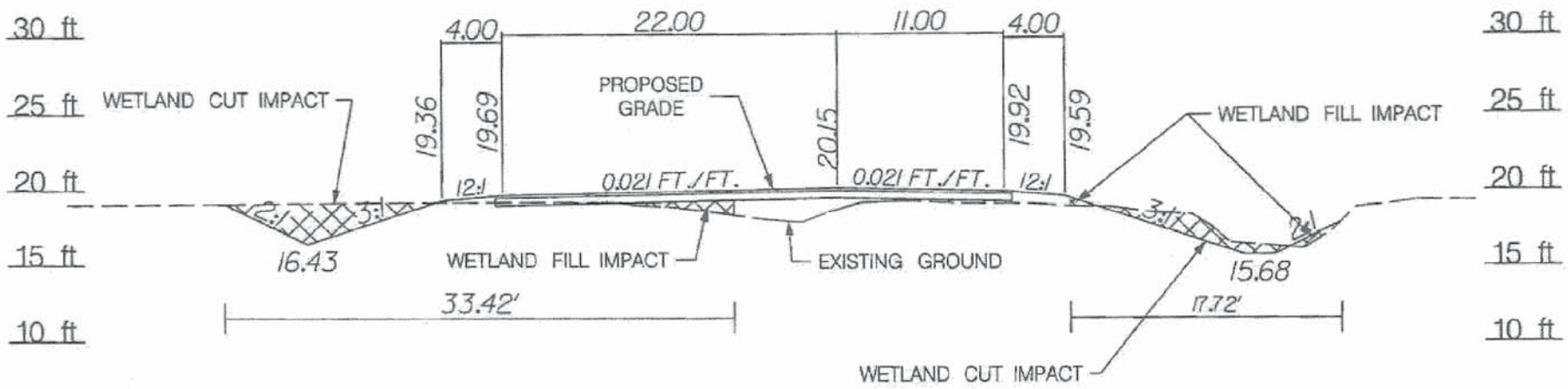
SCDOT PINs 36775, 36777, 36778, & 36779

SCALE
0 ft 10 ft

SHEET 117 OF 132

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SECTION O
ACCESS ROAD
STA. 12+50



See Sheet 97 for Plan View

APPLICATION BY THE SCDOT South Carolina Department of Transportation

MODIFIED PLANS PERMITTED PLANS

SAC: 2000-11888-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

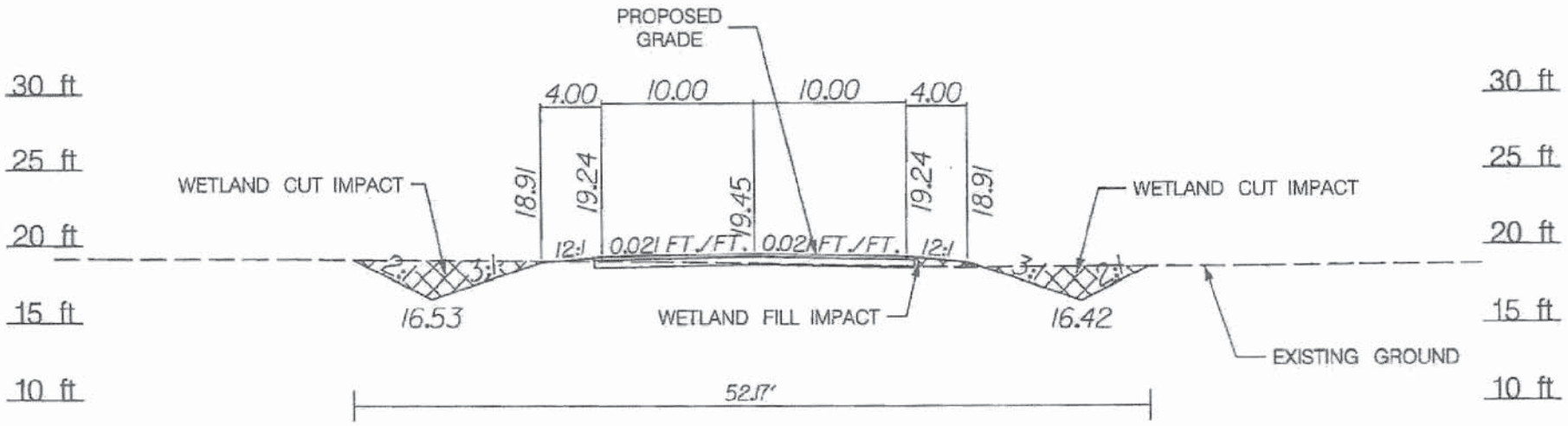
SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 118 OF 132

664

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

SECTION P
MEADOWS ROAD
STA. 14+00



See Sheet 97 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

MODIFIED PLANS PERMITTED PLANS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

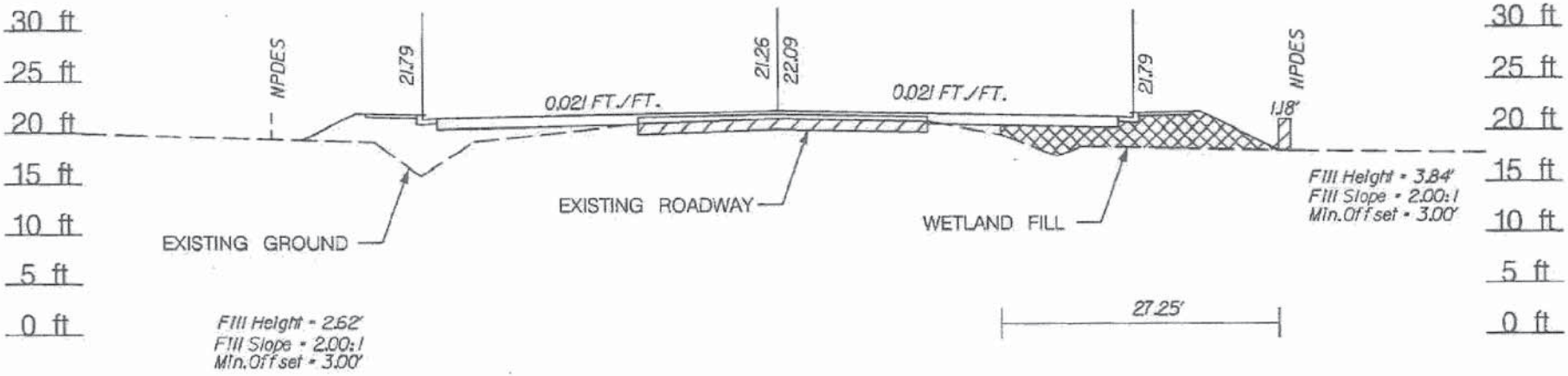
SCDOT PINs 36775, 36777, 36778, & 36779

SCALE
0 ft 10 ft

SHEET 119 OF 132

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

SECTION Q
SC 707
STA. 183+00



See Sheet 98 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

MODIFIED PLANS PERMITTED PLANS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 15 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

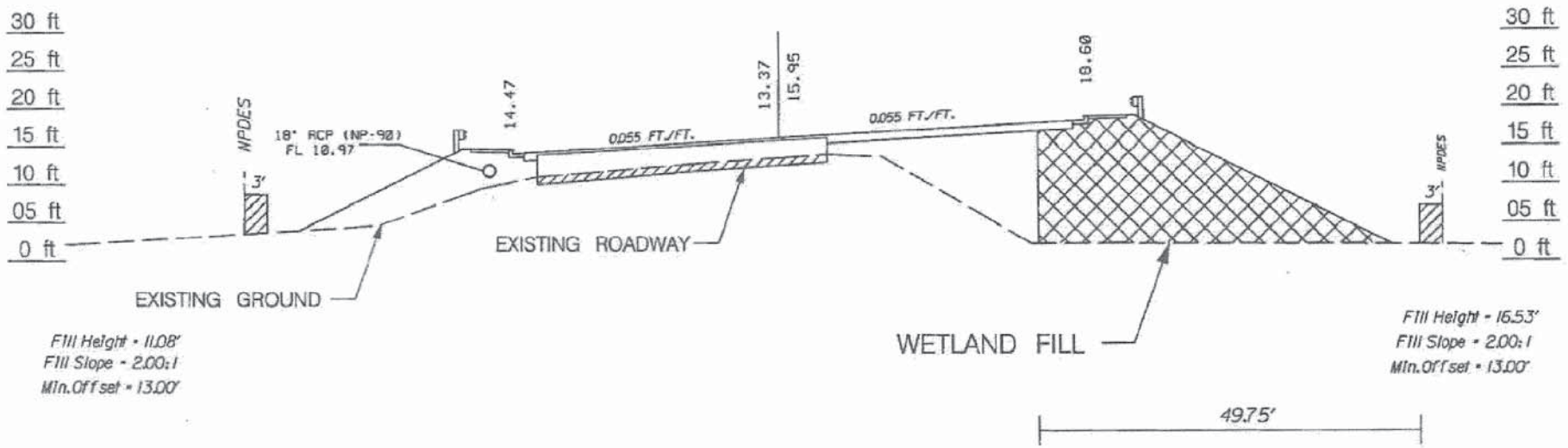
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 120 OF 132

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

SECTION R
SC 707
STA. 346+00



See Sheet 99 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

MODIFIED PERMITTED PLANS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

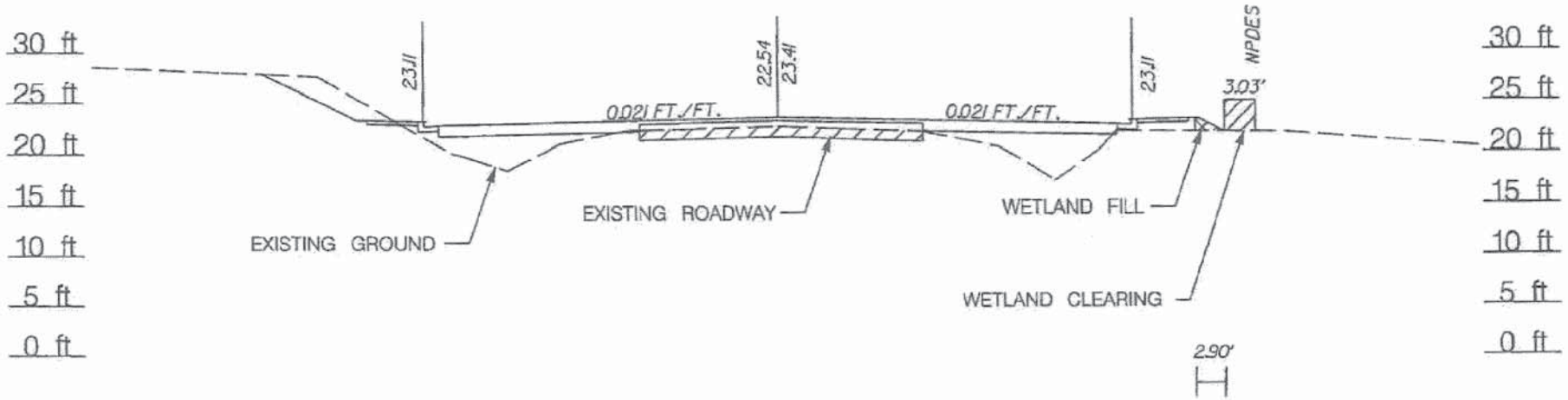
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0 ft 20 ft

SHEET 121 OF 132

667

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

SECTION S
SC 707
STA. 428+00



See Sheet 100 for Plan View

APPLICATION BY THE
SCDOT
South Carolina Department of Transportation

MODIFIED PLANS PERMITTED PLANS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 15 ft

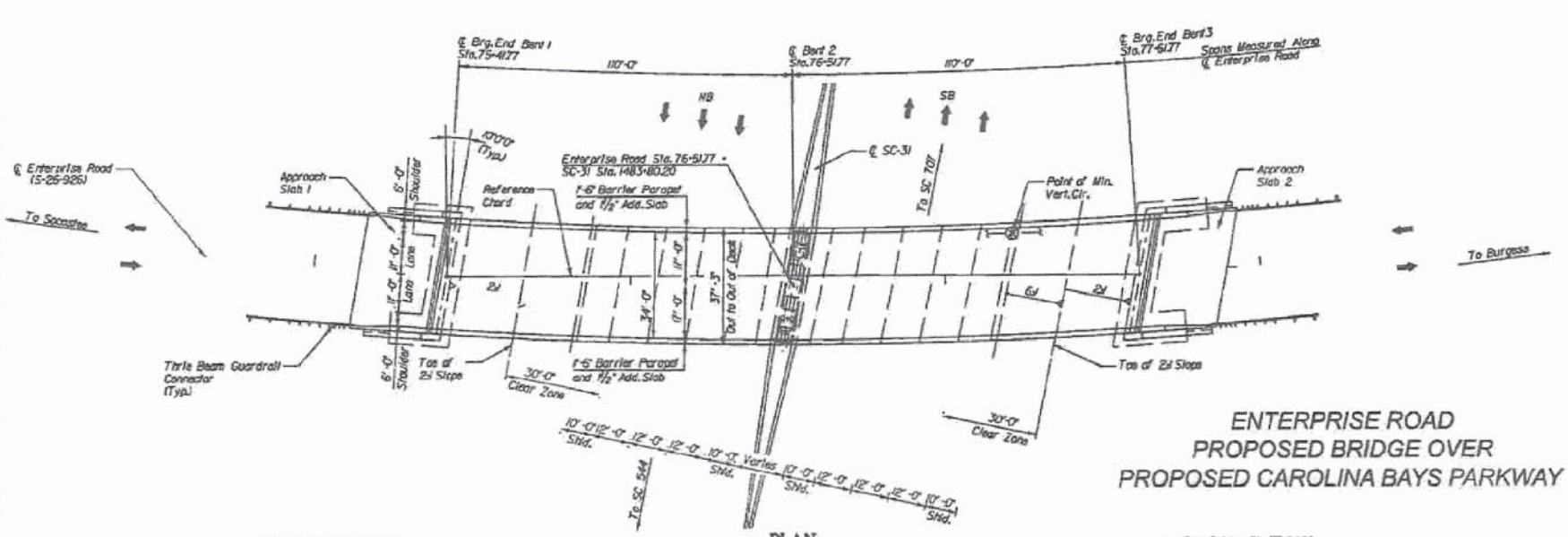
S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

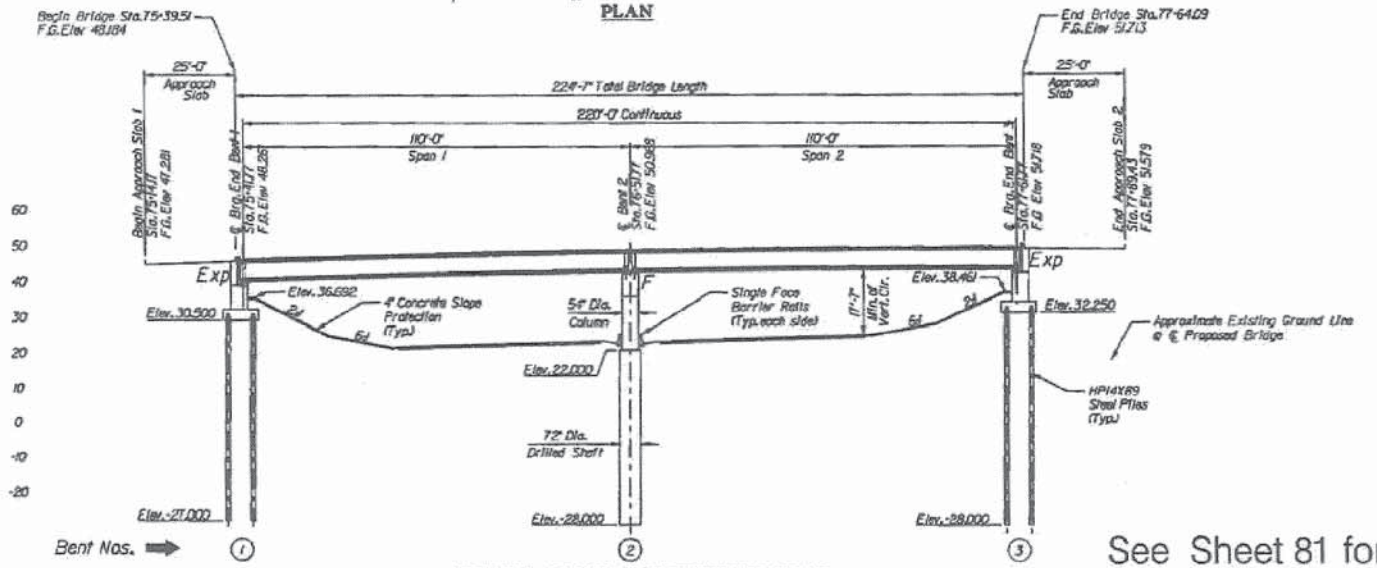
SHEET 122 OF 132

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116



PLAN

ENTERPRISE ROAD
PROPOSED BRIDGE OVER
PROPOSED CAROLINA BAYS PARKWAY



SECTION ALONG ℄ ENTERPRISE ROAD

See Sheet 81 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

MODIFIED PLANS

PERMITTED PLANS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

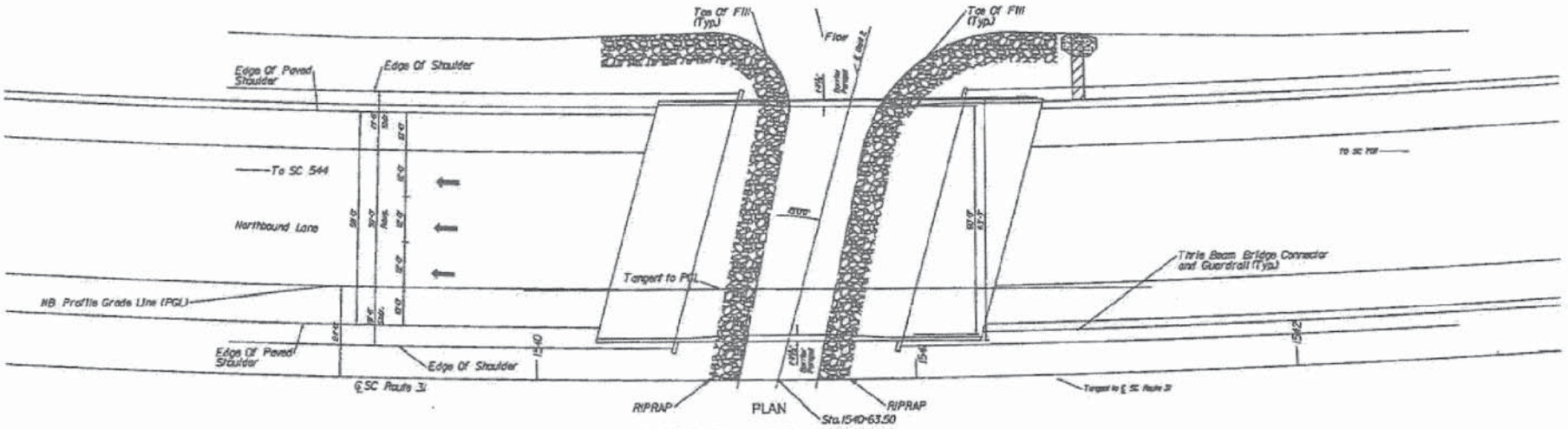
SCDOT PINs 36775, 36777, 36778, & 36779

SCALE
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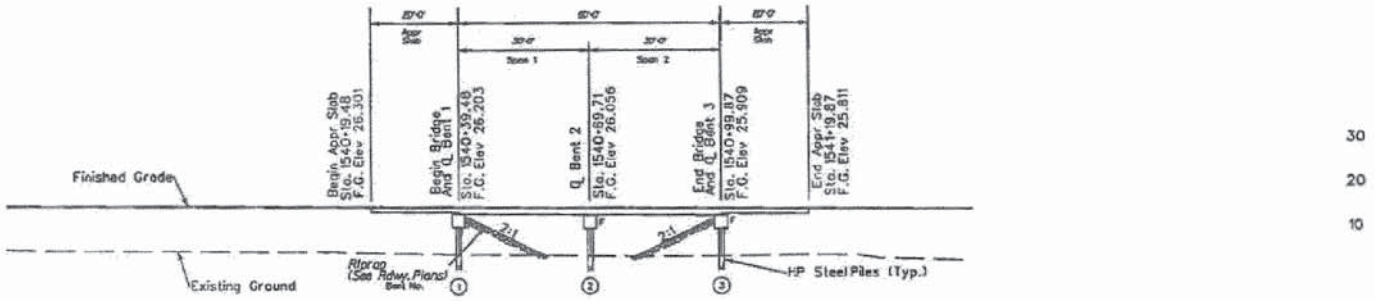
SHEET 123 OF 132

699

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116



TOTAL OF 115 CUBIC YARDS OF RIPRAP



SECTION ALONG NB PROFILE GRADE LINE (PGL)
NORTHBOUND BRIDGE CROSS OVER
WETLAND 16

-40 -60 -80 1540+00 -20 -40 -60 -80 1541+00 -20 -40 -60

See Sheet 86 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

MODIFIED PLANS

PERMITTED PLANS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

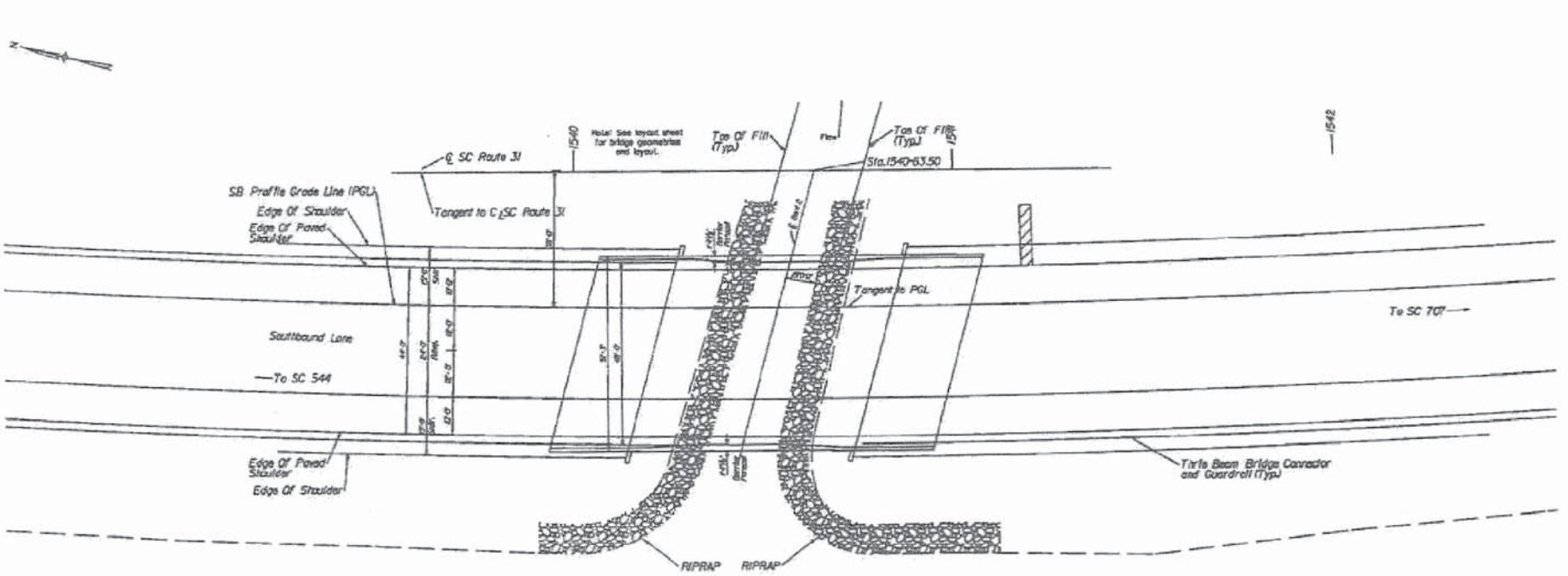
SCDOT PINs 36775, 36777, 36778, & 36779

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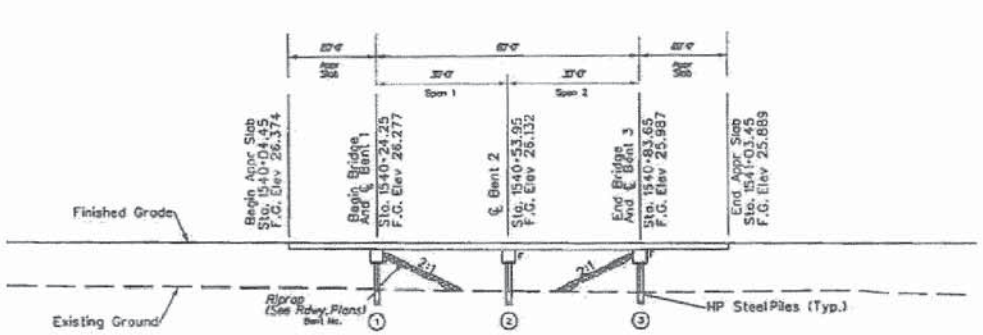
SHEET 124 OF 132

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ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116



TOTAL OF 115 CUBIC YARDS OF RIPRAP



SECTION ALONG SB PROFILE GRADE LINE (PGL)
SOUTHBOUND BRIDGE CROSS OVER
WETLAND 16

-40 -60 -80 1540+00 -20 -40 -60 -80 1541+00 -20 -40 -60

See Sheet 86 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

MODIFIED PLANS

PERMITTED PLANS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

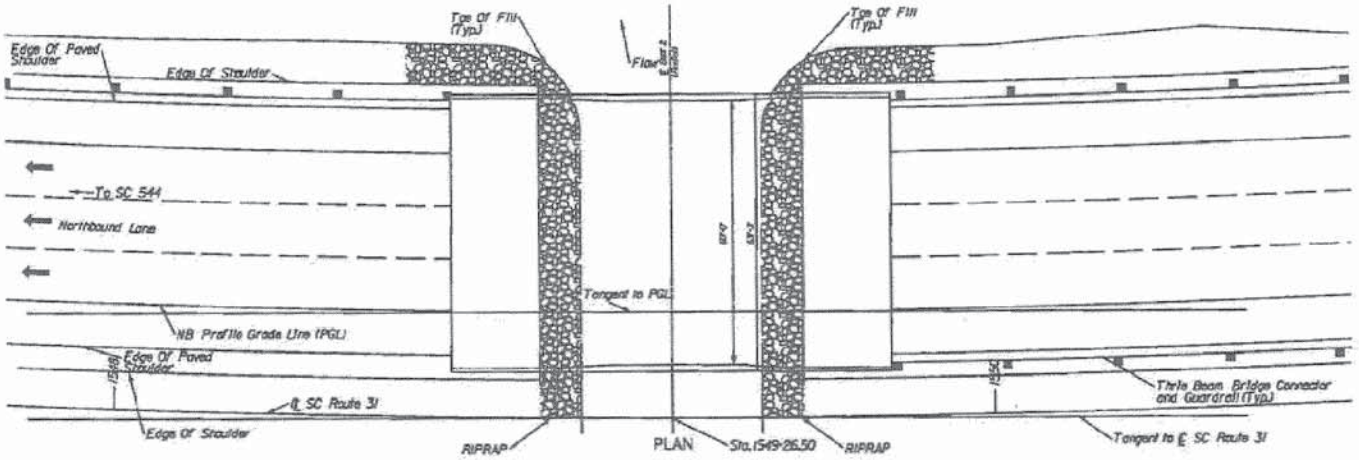
SCDOT PINs 36775, 36777, 36778, & 36779

SCALE
0 ft. 40 ft.

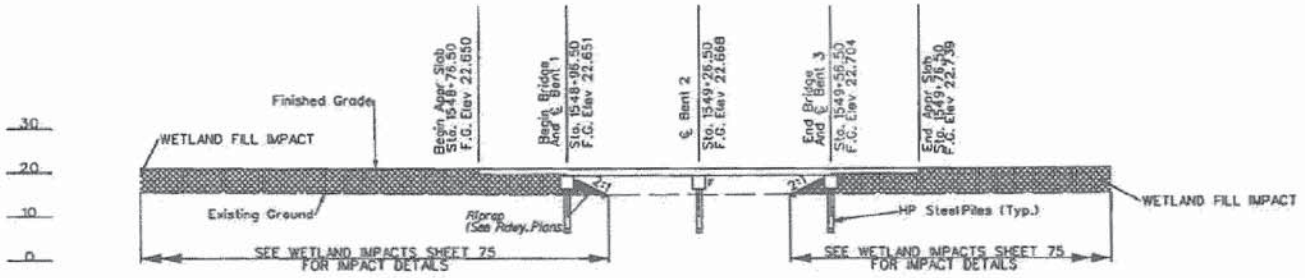
SHEET 125 OF 132

671

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116



TOTAL OF 115 CUBIC YARDS OF RIP RAP



SECTION ALONG NB PROFILE GRADE LINE (PGL)
NORTHBOUND BRIDGE CROSS OVER
WETLAND E

See Sheet 87 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

MODIFIED PLANS

PERMITTED PLANS

SAC: 2009-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft. 40 ft.

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

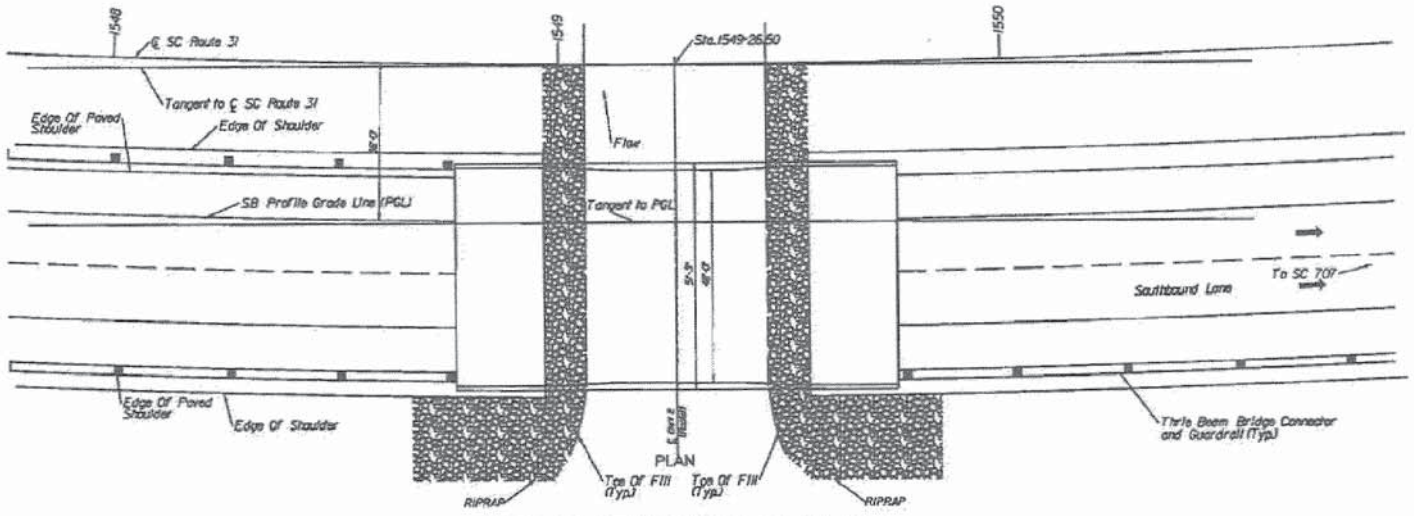
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

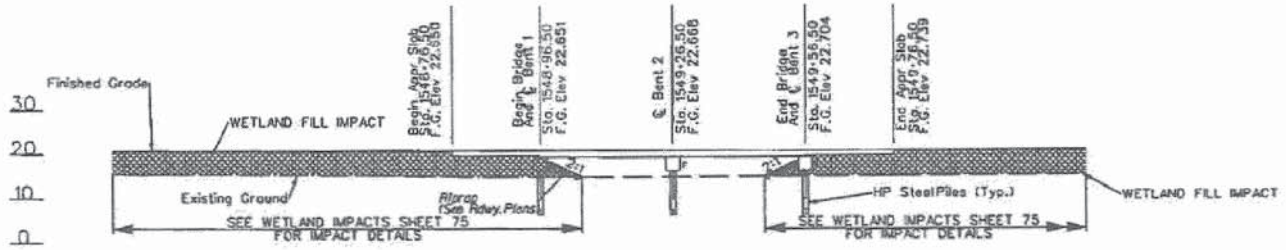
SHEET 126 OF 132

672

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116



TOTAL OF 115 CUBIC YARDS OF RIP RAP



SECTION ALONG SB PROFILE GRADE LINE (PGL)
SOUTHBOUND BRIDGE CROSS OVER
WETLAND E

See Sheet 87 for Plan View

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

MODIFIED PLANS

PERMITTED PLANS

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

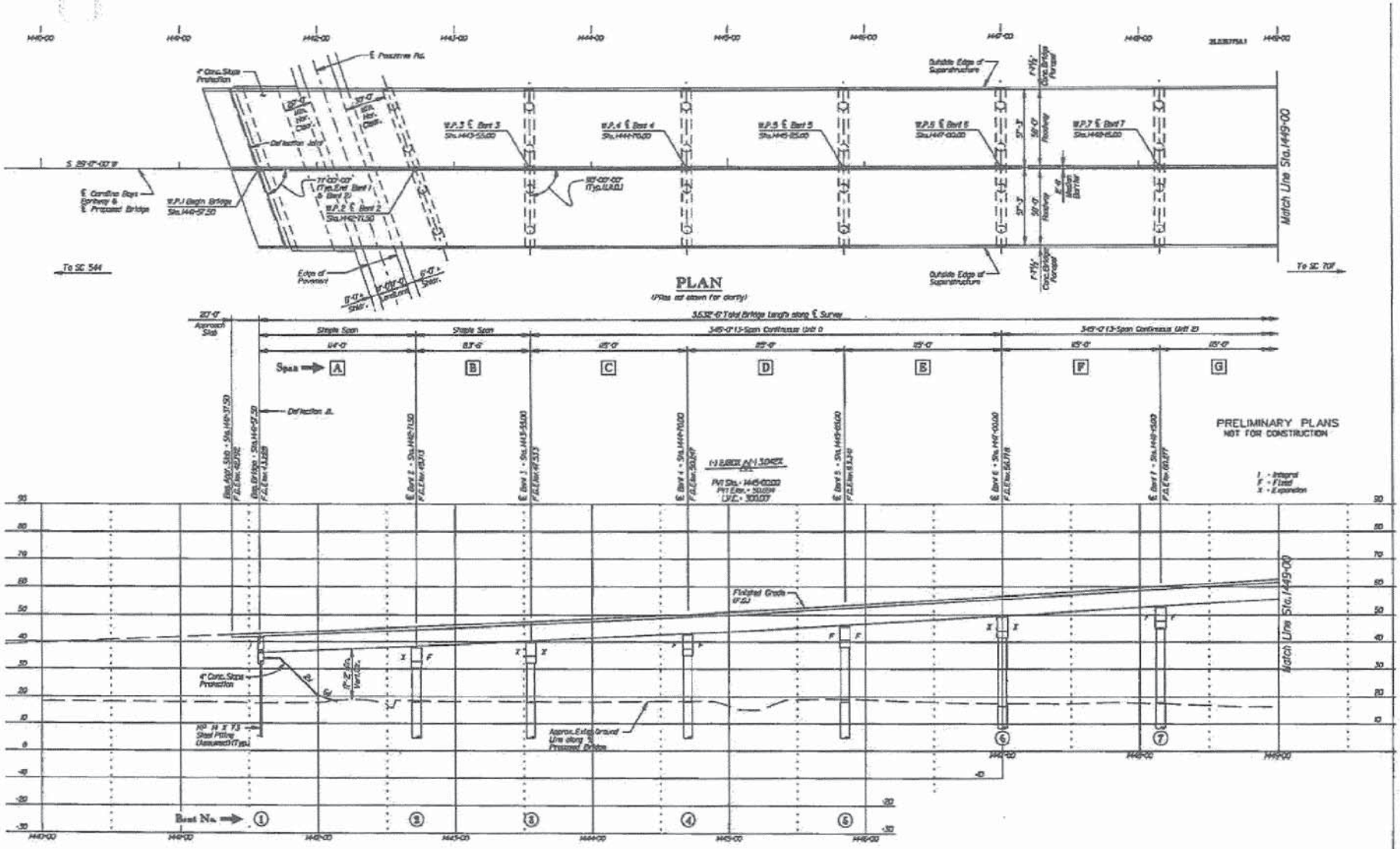
SCDOT PINs 36775, 36777, 36778, & 36779

SCALE
0 ft 40 ft

SHEET 127 OF 132

673

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116



MODIFIED PLANS

PERMITTED PLANS

APPLICATION BY THE

SCDOT

South Carolina Department of Transportation

PROPOSED BRIDGE OVER THE ATLANTIC INTRACOASTAL WATERWAY AT MILE MARKER 372.3

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

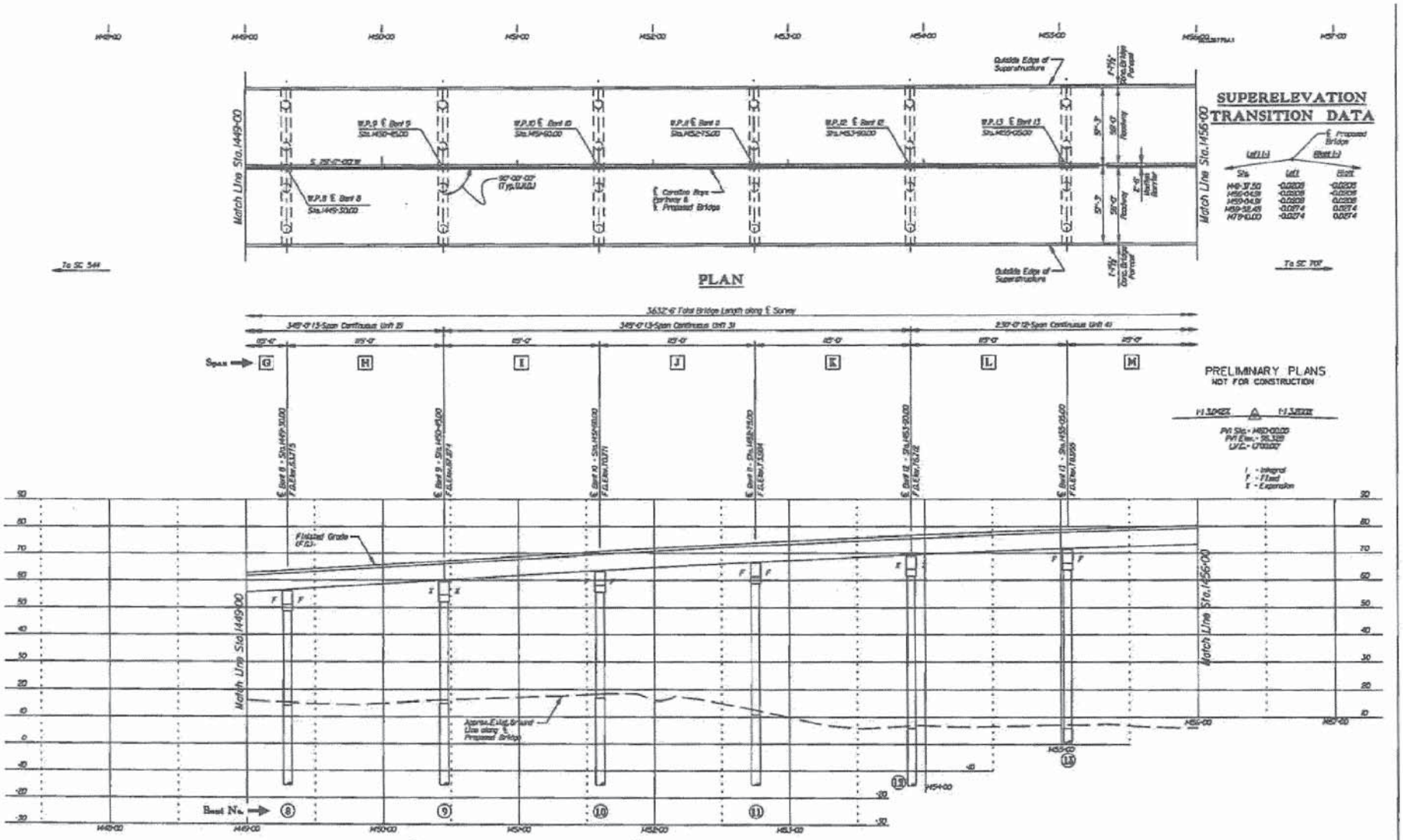
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 128 OF 132

674

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MODIFIED PLANS

PERMITTED PLANS

APPLICATION BY THE SCDOT
South Carolina Department of Transportation

PROPOSED BRIDGE OVER THE ATLANTIC INTRACOASTAL WATERWAY AT MILE MARKER 372.3

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

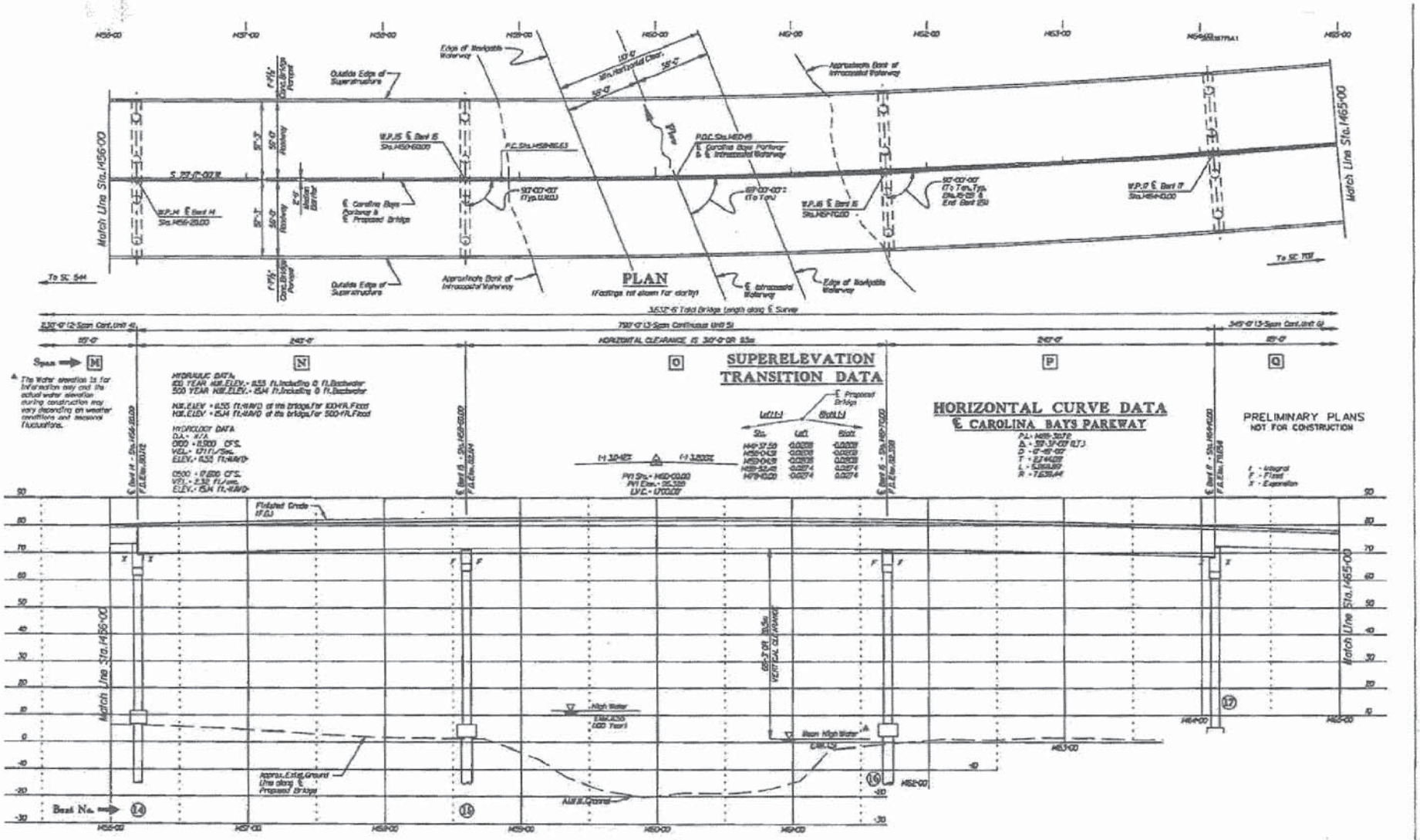
SCDOT PINs 36775, 36777, 36778, & 36779

SCALE
0 ft 100 ft

SHEET 129 OF 132

675

ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116



MODIFIED PLANS

PERMITTED PLANS

APPLICATION BY THE

SCDOT

South Carolina Department of Transportation

PROPOSED BRIDGE OVER THE ATLANTIC INTRACOASTAL WATERWAY AT MILE MARKER 372.3

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

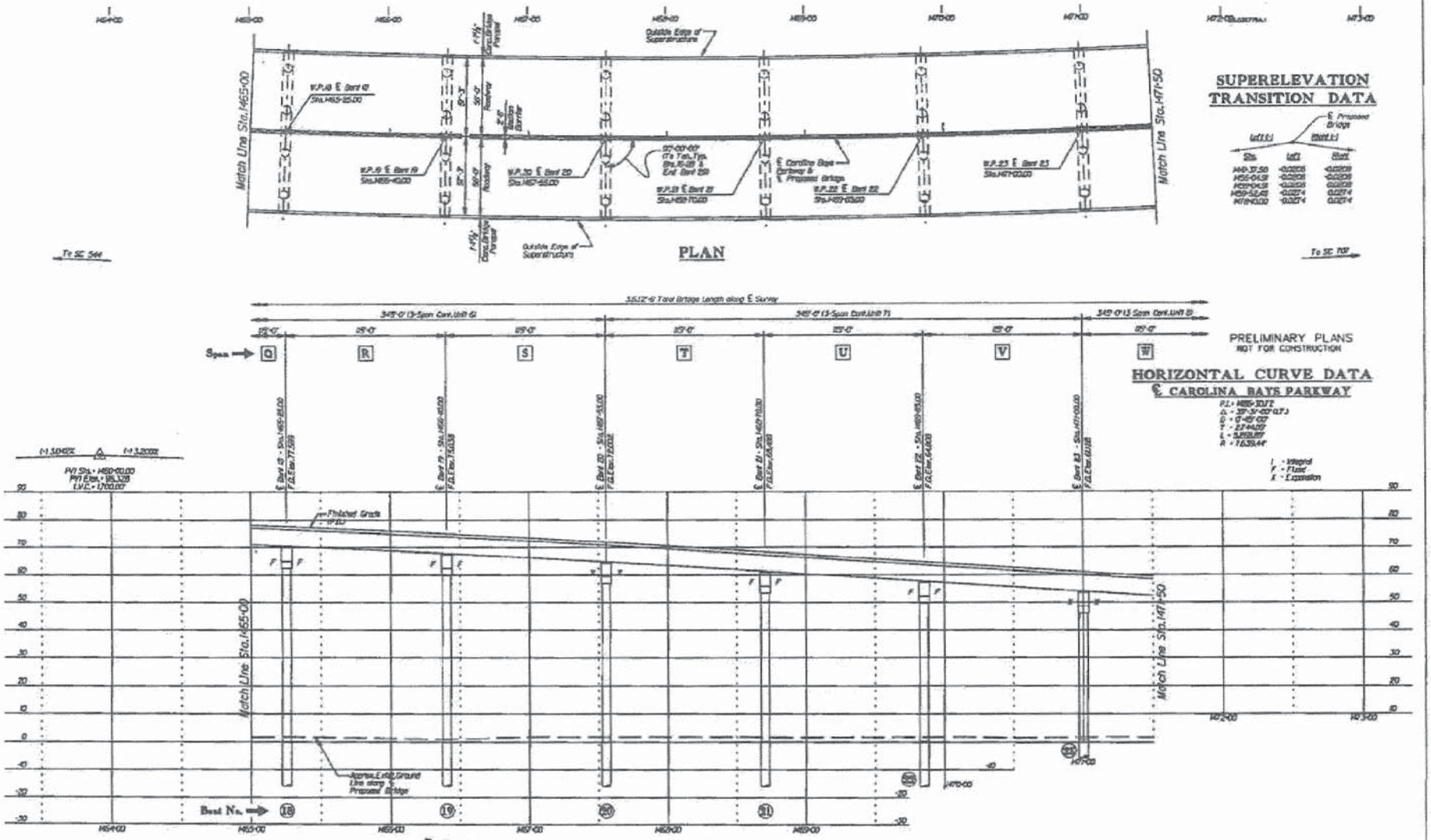
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 130 OF 132

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ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116



MODIFIED PLANS

PERMITTED PLANS

APPLICATION BY THE

SCDOT

South Carolina Department of Transportation

PROPOSED BRIDGE OVER THE ATLANTIC INTRACOASTAL WATERWAY AT MILE MARKER 372.3

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

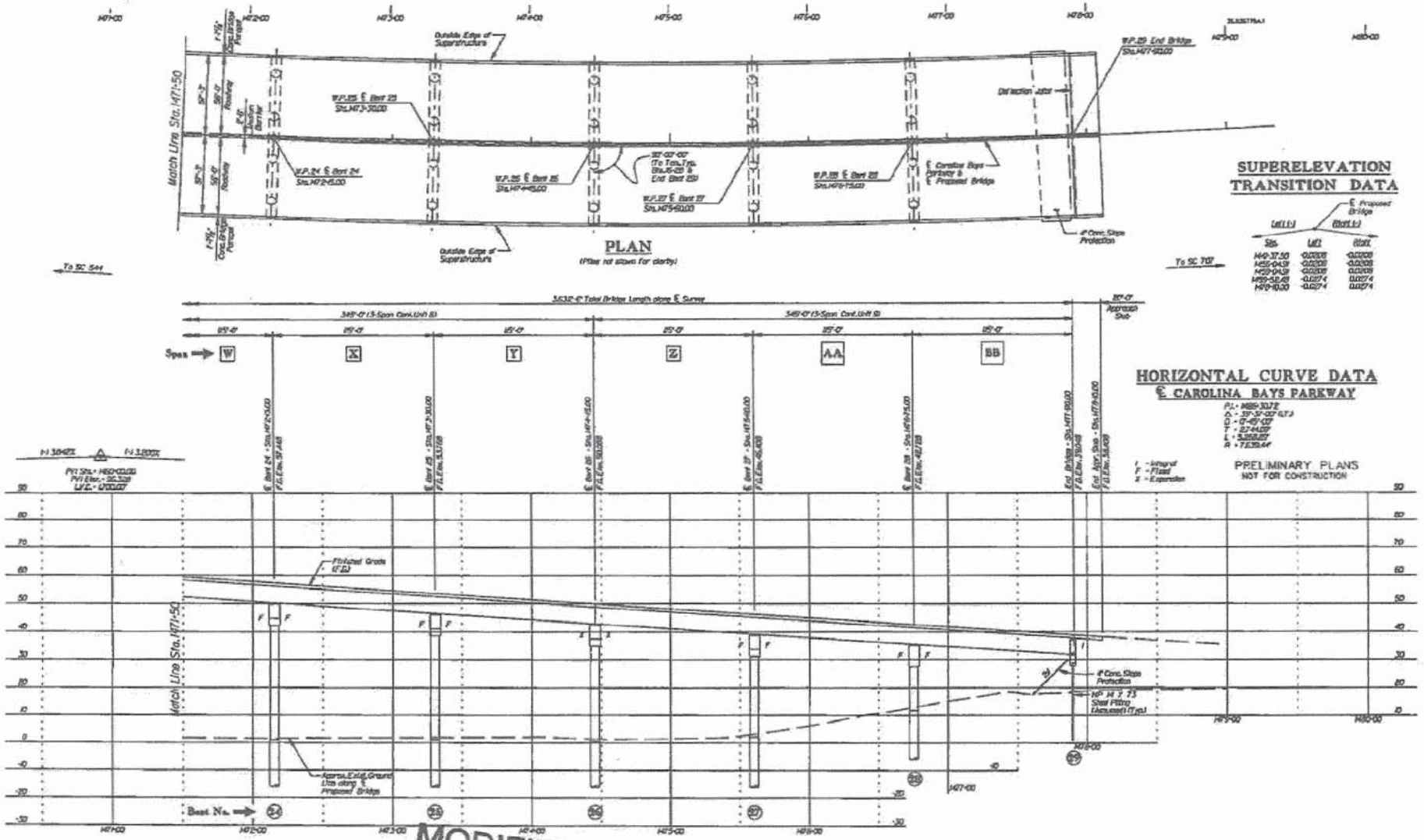
INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 131 OF 132

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ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116



APPLICATION BY THE

SCDOT

South Carolina Department of Transportation

PROPOSED BRIDGE OVER THE ATLANTIC INTRACOASTAL WATERWAY AT MILE MARKER 372.3

SAC: 2000-11889-DJM
HORRY AND GEORGETOWN COUNTIES, S.C.

FEDERAL FUNDS TO BE USED
DATE: APRIL 1, 2013

SCALE
0 ft 100 ft

S.C. ROUTE 31 / CAROLINA BAYS PARKWAY
FROM S.C. ROUTE 9 TO U.S. ROUTE 17

INDIVIDUAL PERMIT MODIFICATION APPLICATION

SCDOT PINs 36775, 36777, 36778, & 36779

SHEET 132 OF 132

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ELECTRONICALLY FILED - 2023 Apr 04 8:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

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Vendor 1 of 6: FLATIRON CONSTRUCTORS, INC. (1FL001)
Call Order 020 (Proposal: 26.036775A)

Bid Information

County: Horry

Address: 10188 East I-25 Frontage Road
Firestone , Colorado , 80504

Signature Check: Bruce_Trott_1FL001

Time Bid Received: October 08, 2013 01:56 PM

Amendment Count: 1

Bid Checksum: B50E8516

Bid Total: $97,868,086.99

Items Total: $97,868,086.99

Time Total: $0.00

Bidding Errors:
None.

FIC000014246

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Vendor 1 of 6: FLATIRON CONSTRUCTORS, INC. (1FL001)
Call Order 020 (Proposal: 26.036775A)

Bid Bond Information

Projects:		**Bond Maximum:**	
Counties:		**State of Incorporation:**	
Bond ID:	SSC13478050	**Agency Execution Date:**	9/27/13
Paid by Check:	No	**Surety Name:**	
Bond Percent:		**Bond Agency Name:**	

FIC000014247

TIME PORTION

Site #	Type	Cost / Day	# Days	Total
00 Time	CD		1220	
Time Total:		0.00	Overall Bid Total:	97,868,086.99

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Miscelleneous Data Info - Contractor Responses:

FEDERAL PROJECT?
Filling in Section (1)? Not Answered
Filling in Section (2)? Not Answered

****

BID BOND Information:
DATE BOND EXECUTED: 9/27/13

METHOD 1:
SURETY 2000/SUREPATH BOND AUTHORIZATION #: SSC13478050

METHOD 2:
BY PRE-SUBMISSION OF BID BOND:

DATE HARDCOPY BID BOND SUBMITTED: Not Answered

****

BY ANSWERING YES TO THIS BOX: YES I CERTIFY THAT
I HAVE READ, UNDERSTOOD, ACCEPT AND ACKNOWLEDGE ALL OF THE ABOVE STATEMENTS IN
THIS PROPOSAL FORM.

****

South Carolina
Department of Transportation

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November 7, 2013

Flatiron Constructors Inc
10188 E I-25 Frontage Road
Firestone CO 80504

NOTIFICATION OF AWARD

Contract No.:	15495
Proj. No.:	HORR
PCN:	036775RD01, 036775BR01, 036775BR02, 036775BR03, 036775BR04, & 036775BR05
County:	Horry
S.C. File Nos.:	26.036775A, 26.036775A.1, 26.036775A.2, 26.036775A.3, 26.036775A.4, & 26.036775A.5

Dear Contractor:

This letter serves as the official notification of award for the above referenced project based upon the bid submitted by your company in the amount of **$97,868,086.99** in the **October 8, 2013** Highway Letting.

Contracts and bond forms will be forwarded under separate cover. Subcontractor Request forms can be found on the SCDOT Extranet website under the Miscellaneous Construction tab. If required, please submit Subreq1, Subreq2 and Subreq3 to the appropriate Road or Bridge Construction Engineer.

Please contact the District Construction Engineer of **District #5** at **PHONE #843-661-4710** in order to schedule the preconstruction conference as set forth in Section 108.2 of the 2007 Standard Specifications for Highway Construction.

Yours very truly,

Todd Steagall, P.E.
Director of Construction

RTS/JOE/jac
File: CCA/JOE JOE

Post Office Box 191
Columbia, South Carolina 29202-0191

Phone: (803) 737-2314
TTY: (803) 737-3870

AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER

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Form No. 671
Rev. 08/04/00

CONTRACT
STATE OF SOUTH CAROLINA

County of Horry

This Contract made this _____ day of DEC 06 2013, 20_____, by and between Horry County, by its County Administrator, hereinafter called the party of the First Part, and _____
Flatiron Constructors, Inc., Firestone, CO
Contractor, hereinafter called the Party of the Second Part.

WHEREAS, The proposal for the _____

(SEE COVER SHEET)

in the above named county has been accepted by the Party of the First Part.

WITNESSETH, That in consideration of the payments the sums named in said Proposal, the Party of the Second Part agrees, at his own proper cost and expense, to do all the work of said improvements according to the requirements of the Standard Specifications, Proposal, Contract, and Bond of the South Carolina Department of Transportation dated **Edition of 2007** and the Special Provisions. Proposals and Plans for the project referred to herein, all of which are made a part hereof; and subject to all the terms and conditions of all these documents, to furnish all labor, tools machinery, and materials necessary therefor, except as provided for in these documents.

The work to be done under this Contract is a follows: _____

(SEE COVER SHEET)

in accordance with the approved Plans and Specifications for S.C. File No. 26.036775A, 26.036775A.1, 26.036775A.2, 26.036775A.3, 26.036775A.4 & 26.036775A.5 – Horry County

The work to be done under this Contract is to be begun on or before the _____ day of Spec. Prov. # 25, 20_____, and is to be pushed with proper dispatch, to the satisfaction of the Director of Construction, toward completion and is to be fully completed within _____
See Special Provisions

FIC000014251

Work financed wholly or in part with Federal funds shall be subject to inspection at all times and to approval by the United States Secretary of Transportation, or his agents, and shall be done in accordance with the rules and regulations of the said Secretary of Transportation made pursuant to the Federal Highway Act approved July 11, 1916, and Acts amendatory thereof and supplementary thereto.

The Contractor hereby further agrees to receive the prices set forth in the foregoing Schedule of Prices as full compensation for furnishing all the materials and labor which may be required in the prosecution and completion of the whole of the work to be done under this Contract, and in all respects to complete said Contract to the satisfaction of the said Director of Construction.

IN WITNESS WHEREOF, the parties hereto have set their hands, the party of the First Part on the date first above named and the Party of the Second Part this_____ day of DEC 06 2013, 20_____.

Witness:

HORRY COUNTY
(Party of the First Part)

By _____
Horry County

Recommended _____
Director of Construction for SCDOT

MWB

Recommended _____
Contracts Administrator SCDOT

Witness:

Flatiron Constructors, Inc.
Contractor
(Party of the Second Part)

By _____
VP

FLATIRON CONSTRUCTORS, INC. CORPORATE SEAL DELAWARE

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FIC000014252

Executed in Four (4) Counterparts

Liberty Bond No. 015042011, Travelers Bond No. 105953411, F&D/Zurich Bond No. 9140471
Federal Bond No. 82320070, CNA Bond No. 929573536, XL Bond No. SUR7402450

South Carolina Department of Transportation Rev. 08-15-2012 Form No. 672A **PERFORMANCE AND INDEMNITY BOND**	Date Bond Executed: DEC 0 6 2013
Principal: Flatiron Constructors, Inc., Firestone, Colorado	Bond Number: See Attachment A
Surety: See Attachment A	
Penal Sum of Bond $97,868,086.99	Date of Contract: DEC 0 6 2013
Project S. C. File No(s).: 26.036775A, 26.036775A.1, 26.036775A.2, 26.036775A.3, 26.0367754.4 etc. - Proj. No. HORR - Horry County	Contract Number: 15495

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL AND SURETY above named are held and firmly bound unto the South Carolina Department of Transportation, hereinafter called the Department, in the penal sum of the amount stated above which shall be equal to the full amount (100%) of the contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Department, numbered and dated as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Department, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In Presence of: Witness (2 required) 1. _____ 2. _____	FOR INDIVIDUAL OR PARTNERSHIP PRINCIPAL _____ (seal) _____ (seal)
Attest _____ Corporate Secretary In Presence of: Witness (2 required) 1. _____ 2. _____	FOR CORPORATE PRINCIPAL Flatiron Constructors, Inc. Corporation Name Firestone, Colorado Business Address By: Bernie Heder Title: VP Affix Corporate Seal
In Presence of: Witness (2 required) 1. _____ Maria L. Spadaccini 2. _____ Sherryanne DePirro	SURETY/INSURER See Attachment A Surety/ Insurers Name See Attachment A Business Address By: See Attachment A Title: See Attachment A Affix Corporate Seal

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EXCERPT FROM
SOUTH CAROLINA CODE OF LAWS

SECTION 57-5-1660. Amount of contractor's bonds. -

(a) The South Carolina Department of Transportation shall require that the contractor on every public highway construction contract, exceeding ten thousand dollars, furnish the South Carolina Department of Transportation, county, or road district the following bond, which shall become binding upon the award of the contract to such contractor:

(1) A performance and indemnity bond with a surety or sureties satisfactory to the authority awarding the contract, and the full amount of the contract, and in no case less than ten thousand dollars, for the protection of the South Carolina Department of Transportation, county or road district.

(2) A payment bond with a surety or sureties satisfactory to the awarding authority, and in the amount of not less than one hundred percent of the contract, for the protection of all persons supplying labor and materials in the prosecution of work provided for in the contract for the use of each such person.

(b) Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which such a bond has been furnished under this section and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him; provided, however, that any person having direct contractual relationship with a sub-contractor but no contractual relationship expressed or implied with the contractor furnishing the bond shall have a right of action upon the bond upon giving written notice to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material was furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material was furnished or supplied or for whom labor was done or performed. No suit under this section shall be commenced after the expiration of one year after the date of the final settlement of the contract.

(c) Nothing in this section shall be construed to limit the authority of any contracting authority to require a performance bond or other security in addition to those specified in this section.

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ATTACHMENT A

Executed in 4 Counterparts

Liberty Bond No. 015042011
Travelers Bond No. 105953411
F&D/Zurich Bond No. 9140471
Federal Bond No. 82320070
C N A Bond No. 929573536
XL Bond No. SUR7402450

Liberty Mutual Insurance Company, a Massachusetts Corporation;
Travelers Casualty and Surety Company of America; a Connecticut Corporation
Fidelity and Deposit Company of Maryland, a Maryland Corporation
Zurich American Insurance Company, a New York Corporation;
Federal Insurance Company, an Indiana Corporation;
The Continental Insurance Company, a Pennsylvania Corporation;
XL Specialty Insurance Company, a Delaware Corporation

Liberty Mutual Insurance Company – A.M. Best Rating A XV
175 Berkeley Street, Boston, MA 02116 - Fax (212)-221-5608
Contact: David D. Roberts, Branch Manager – (212) 719-7750 – davidd.roberts@libertymutual.com

Travelers Casualty and Surety Company of America – A.M. Best Rating A+ XIV
Construction Services, One Tower Square, Hartford, CT 06183
Contact: Brian Bialaski – VP, (860) 277-1914, Fax –(860)-277-3931 – bbialaski@travelers.com

Fidelity and Deposit Company of Maryland/Zurich American Insurance Company – A.M. Best Rating A+ XV
1400 American Lane, Schaumburg, IL 60196 – Fax (410)-261-7957
Contact: Thomas McClellan, Sr. Underwriting Officer – (410)-559-8730 – tom.mcclellan@zurichna.com

Federal Insurance Company – A.M. Best Rating A++ XV
15 Mountain View Road, Warren, NJ 07061 – Fax (908)-526-2060 – mlubin@chubb.com
Contact: Matthew Lubin, Director, National Engineering and Construction Group – (908) 903-3461

The Continental Insurance Company – A.M. Best Rating A XV
333 S. Wabash Avenue, 41st Floor, Chicago, IL 60604 – Fax (212)-440-7351
Contact: Jon Fullerton, Branch Manager (212)-440-7356 – jon.fullerton@cnasurety.com

XL Specialty Insurance Company – A.M. Best A XV
Seaview House, 70 Seaview Avenue, Stamford, CT 06902 – Fax (410)-385-8010
Contact: William Mills, Senior VP, - (410)-385-8411 – bill.mills@xlgroup.com

By: _____
Mary R. McKee, Attorney-In-Fact

FIC000014255

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF

COUNTY OF

On this _____ day of _____, 2013, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that she/he resides in _____ that she/he is the _____ of the _____ the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

_____

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that **she**/he resides in Saddle Brook, NJ that **she**/he is the Attorney In Fact of Liberty Mutual Insurance Company the corporation described in and which executed the above instrument that **she**/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that **she**/he signed her/his name thereto by like order.

(SEAL)



Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

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Liberty Mutual SURETY

LIBERTY MUTUAL INSURANCE COMPANY

FINANCIAL STATEMENT — DECEMBER 31, 2012

Assets

Cash and Bank Deposits	$ 903,711,694
*Bonds — U.S Government	1,166,929,471
*Other Bonds	11,415,194,219
*Stocks	8,104,853,899
Real Estate	255,967,320
Agents' Balances or Uncollected Premiums	3,482,069,753
Accrued Interest and Rents	144,016,763
Other Admitted Assets	14,732,623,458
Total Admitted Assets	**$40,205,366,577**

Liabilities

Unearned Premiums	$4,205,141,671
Reserve for Claims and Claims Expense	17,056,420,207
Funds Held Under Reinsurance Treaties	1,315,062,091
Reserve for Dividends to Policyholders	2,455,411
Additional Statutory Reserve	49,768,998
Reserve for Commissions, Taxes and Other Liabilities	3,066,051,537
Total	**$25,694,899,915**
Special Surplus Funds	$604,621,497
Capital Stock	10,000,000
Paid in Surplus	7,899,471,886
Unassigned Surplus	5,996,373,279
Surplus to Policyholders	**14,510,466,662**
Total Liabilities and Surplus	**$40,205,366,577**

LIBERTY MUTUAL INSURANCE COMPANY INCORPORATED 1912 MASSACHUSETTS

* Bonds are stated at amortized or investment value; Stocks at Association Market Values.
The foregoing financial information is taken from Liberty Mutual Insurance Company's financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2012, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 25th day of March, 2013.

T A Mikolajewski

Assistant Secretary

S-1262LMIC/a 4/12

FIC000014258

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.
This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6185471

American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Alice McLaughlin; Maria L. Spadaccini; Mary R. McKee; Sandra K. Wolf; Sherryanne M. DePirro

all of the city of Woodcliff Lake, state of NJ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 1st day of July, 2013.

American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: _____
Gregory W. Davenport, Assistant Secretary

STATE OF WASHINGTON ss
COUNTY OF KING

On this 1st day of July, 2013, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.

By: KD Riley
KD Riley, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 22nd day of November, 2013.

By: _____
David M. Carey, Assistant Secretary

LMS_12873_092012

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or dual value guarantees.

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To confirm this filing, please call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that **she**/he resides in Saddle Brook, NJ that **she**/he is the Attorney In Fact of Travelers Casualty and Surety Company of America the corporation described in and which executed the above instrument that **she**/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that **she**/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

FIC000014260

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TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

HARTFORD, CONNECTICUT 06183

FINANCIAL STATEMENT AS OF DECEMBER 31, 2012

CAPITAL STOCK $ 6,480,000

ASSETS		LIABILITIES & SURPLUS	
CASH AND INVESTED CASH	$ 15,936,791	UNEARNED PREMIUMS	$ 783,409,692
BONDS	3,713,171,015	LOSSES	901,058,710
INVESTMENT INCOME DUE AND ACCRUED	50,798,732	REINSURANCE PAYABLE ON PAID LOSSES & LOSS ADJ. EXPENSES	1,446,021
OTHER INVESTED ASSETS	280,730,697	LOSS ADJUSTMENT EXPENSES	534,370,660
PREMIUM BALANCES	184,942,508	COMMISSIONS	29,281,779
NET DEFERRED TAX ASSET	63,274,376	TAXES, LICENSES AND FEES	66,762,894
REINSURANCE RECOVERABLE	12,410,524	OTHER EXPENSES	35,588,967
SECURITIES LENDING REINVESTED COLLATERAL ASSETS	7,769,155	FUNDS HELD UNDER REINSURANCE TREATIES	94,449,544
RECEIVABLES FROM PARENT, SUBSIDIARIES AND AFFILIATES	11,060,470	CURRENT FEDERAL AND FOREIGN INCOME TAXES	60,675,573
UNDISTRIBUTED PAYMENTS	(1,439,585)	REMITTANCES AND ITEMS NOT ALLOCATED	19,270,931
OTHER ASSETS	884,093	AMOUNTS WITHHELD / RETAINED BY COMPANY FOR OTHERS	79,084,806
		RETROACTIVE REINSURANCE RESERVE ASSUMED	3,163,164
		POLICYHOLDER DIVIDENDS	6,730,121
		PROVISION FOR REINSURANCE	5,314,325
		ADVANCE PREMIUM	726,898
		PAYABLE FOR SECURITIES LENDING	7,769,155
		CEDED REINSURANCE NET PREMIUMS PAYABLE	(70,803,744)
		ESCHEAT LIABILITY	525,399
		OTHER ACCRUED EXPENSES AND LIABILITIES	282,062
		TOTAL LIABILITIES	$ 2,559,106,957
		CAPITAL STOCK	$ 6,480,000
		PAID IN SURPLUS	433,803,760
		OTHER SURPLUS	1,340,168,061
		TOTAL SURPLUS TO POLICYHOLDERS	$ 1,780,451,821
TOTAL ASSETS	$ 4,339,558,778	TOTAL LIABILITIES & SURPLUS	$ 4,339,558,778

STATE OF CONNECTICUT)

COUNTY OF HARTFORD) SS.

CITY OF HARTFORD)

MICHAEL J. DOODY, BEING DULY SWORN, SAYS THAT HE IS SECOND VICE PRESIDENT, OF TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, AND THAT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THE FOREGOING IS A TRUE AND CORRECT STATEMENT OF THE FINANCIAL CONDITION OF SAID COMPANY AS OF THE 31ST DAY OF DECEMBER, 2012.

SECOND VICE PRESIDENT

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS
20TH DAY OF MARCH, 2013

SUSAN M. WEISSLEDER
Notary Public
My Commission Expires November 30, 2017

SUSAN M. WEISSLEDER NOTARY PUBLIC CONNECTICUT

FIC000014261

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

TRAVELERS

POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 227173 **Certificate No.** 005646628

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Alice McLaughlin, Mary R. McKee, Sherryanne M. DePirro, Maria L. Spadaccini, and Nicholas F. Walsh

of the City of Woodcliff Lake, State of New Jersey, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 19th day of September, 2013.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

State of Connecticut
City of Hartford ss.

By: _____
Robert L. Raney, Senior Vice President

On this the 19th day of September, 2013, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.

Marie C. Tetreault
Marie C. Tetreault, Notary Public

58440-8-12 Printed in U.S.A.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

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This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

WARNING THIS POWER ATTORNEY WITHOUT RED BORDER

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 22nd day of November, 2013.

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

FIC000014263

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that **she**/he resides in Saddle Brook, NJ that **she**/he is the Attorney In Fact of Fidelity and Deposit Company of Maryland the corporation described in and which executed the above instrument that **she**/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that **she**/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

FIDELITY AND DEPOSIT COMPANY

OF MARYLAND
600 Red Brook Blvd., Suite 600, Owings Mills, MD 21117

Statement of Financial Condition
As Of December 31, 2012

ASSETS

Bonds		$ 157,177,826
Stocks		23,000,311
Cash and Short Term Investments		119,155
Reinsurance Recoverable		17,923,564
Other Accounts Receivable		35,473,256
TOTAL ADMITTED ASSETS		$ 233,694,113

LIABILITIES, SURPLUS AND OTHER FUNDS

Reserve for Taxes and Expenses		$ 74,782
Ceded Reinsurance Premiums Payable		48,323,524
Securities Lending Collateral Liability		1,716,240
TOTAL LIABILITIES		$ 50,114,546
Capital Stock, Paid Up	$ 5,000,000	
Surplus	178,579,567	
Surplus as regards Policyholders		183,579,567
TOTAL		$ 233,694,113

Securities carried at $59,468,002 in the above statement are deposited as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of December 31, 2012 market quotations for all bonds and stocks owned, the Company's total admitted assets would be $243,518,971 and surplus as regards policyholders $193,404,425.

I, DENNIS F. KERRIGAN, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2012.

Corporate Secretary

State of Illinois
City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 15th day of March, 2013.

Notary Public

OFFICIAL SEAL
DARRYL JOINER
Notary Public - State of Illinois
My Commission Expires May 3, 2014

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MICHAEL B.T. WILKES, P.A.▪ ◊
C. DANIEL ATKINSON ▪ ▸
J. ALEXANDER JOYNER •
W. SPENCER BARROW ▸
REED W. MULBRY•
BRIAN M. PETERS, JR.*

• CHARLESTON OFFICE
▪ ALSO MEMBER GA BAR
▸ ALSO MEMBER NC BAR
◊ CERTIFIED MEDIATOR
* ALSO MEMBER OF FL BAR

WILKES ATKINSON & JOYNER, LLC
ATTORNEYS AT LAW

Reply to: SPARTANBURG OFFICE
127 DUNBAR STREET, SUITE 200
SPARTANBURG, SC 29306
PHONE: 864.591.1113
TOLL FREE: 866.920.1113
FAX: 864.591.1767

CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

April 4, 2023

Via E-Filing Only
The Honorable Renee Elvis
Horry County Clerk of Court
1301 Second Avenue
Conway, SC 29528

Re: ***Flatiron Constructors, Inc. v. TranSystems Corporation***
Court of Common Pleas, Horry County
C.A. No.: 2022-CP-26-06116

Dear Ms. Elvis,

Please find attached to this letter **Exhibit A, Part 10** to Defendant's Brief in Support of Defendant's Motion for Summary Judgment. Due to size constraints, we were unable to file this Exhibit with the Brief. Please have the docket note that this exhibit is part of the Defendant's Brief in Support of its Motion for Summary Judgment.

Please advise if you have any questions.

Sincerely,

s/ Michael B. T. Wilkes

Michael B. T. Wilkes, S.C. Bar No. 9607
mwilkes@wajlawfirm.com

MBTW: jjs
cc (via E-Filing Only):
Carter B. Reid, Esq.
Bryan Patrick Bailey, Esq.
Mason A. Goldsmith, Jr., Esq.
C. Daniel Atkinson, Esq.

EXHIBIT A
(Part 10 of 11)

TSC's Brief in Support of Motion for Summary Judgment

Flatiron v. TranSystems
C.A. No. 2022-CP-26-06116

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that **she**/he resides in Saddle Brook, NJ that **she**/he is the Attorney In Fact of Zurich American Insurance Company the corporation described in and which executed the above instrument that **she**/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that **she**/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

FIC000014266

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ZURICH AMERICAN INSURANCE COMPANY
COMPARATIVE BALANCE SHEET
ONE LIBERTY PLAZA, 165 BROADWAY, 32nd FLOOR, NEW YORK, NY 10006
As of December 31, 2012 and December 31, 2011

	12/31/2012	12/31/2011
Assets		
Bonds	$ 18,907,466,866	$ 18,985,096,131
Preferred Stock	-	259,036
Common Stock	2,123,025,432	2,068,881,919
Other Invested Assets	2,035,077,824	2,065,634,039
Short-term Investments	126,053,209	107,298,374
Receivable for securities	134,410,839	18,523,294
Cash and cash equivalents	728,298,115	(128,716,627)
Securities lending reinvested collateral assets	225,335,750	120,821,061
Employee Trust for Deferred Compensation Plan	130,493,778	124,809,033
Total Cash and Invested Assets	$ 24,410,161,814	$ 23,362,606,260
Premiums Receivable	$ 3,649,247,239	$ 3,611,868,304
Funds Held with Reinsurers	3,681,443	28,073,922
Reinsurance Recoverable	215,451,507	233,357,918
Accrued Investment Income	121,729,727	149,372,442
Federal Income Tax Recoverable	930,267,731	788,664,462
Due from Affiliates	187,274,289	95,583,016
Other Assets	493,265,075	459,639,011
Total Assets	$ 30,011,078,824	$ 28,729,165,335
Liabilities and Policyholders' Surplus		
Liabilities:		
Loss and LAE Reserves	$ 14,244,436,264	$ 14,401,632,170
Unearned Premium Reserve	4,159,670,241	4,066,273,586
Funds Held with Reinsurers	212,412,675	218,214,563
Loss In Course of Payment	408,170,112	353,274,509
Commission Reserve	64,038,359	63,749,920
Federal Income Tax Payable	16,190,044	47,352,138
Remittances and Items Unallocated	196,410,982	69,677,903
Payable to parent, subs and affiliates	57,540,814	92,111,683
Provision for Reinsurance	66,649,220	60,498,188
Ceded Reinsurance Premiums Payable	551,510,878	278,235,370
Securities Lending Collateral Liability	225,335,750	120,821,061
Other Liabilities	2,166,453,164	1,938,544,837
Total Liabilities	$ 22,368,818,502	$ 21,710,385,928
Policyholders' Surplus:		
Common Capital Stock	$ 5,000,000	$ 5,000,000
Paid-In and Contributed Surplus	4,394,131,321	4,394,131,320
Surplus Notes	430,000,000	883,000,000
Special Surplus Funds	43,259,000	396,438,437
Cumulative Unrealized Gain	331,857,594	209,454,958
Unassigned Surplus	2,438,012,408	1,130,754,692
Total Policyholders' Surplus	$ 7,642,260,323	$ 7,018,779,407
Total Liabilities and Policyholders' Surplus	$ 30,011,078,824	$ 28,729,165,335

I, Dennis F. Kerrigan, Corporate Secretary of ZURICH AMERICAN INSURANCE COMPANY do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company, on the 31st day of December, 2012, according to the best of my information, knowledge and belief.

Corporate Secretary

State of Illinois
County of Cook } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 15th day of March, 2013.

OFFICIAL SEAL
DARRYL JOINER
Notary Public - State of Illinois
My Commission Expires May 3, 2014

Notary public

FIC000014267

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ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **JAMES M. CARROLL, Vice President,** in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Sandra K. WOLF, Alice MCLAUGHLIN, Mary R. MCKEE, Maria L. SPADACCINI and Sherryanne M. DEPIRRO, all of Woodcliff Lake, New Jersey, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 21st day of June, A.D. 2012.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: _____
Assistant Secretary
Eric D. Barnes

_____
Vice President
James M. Carroll

State of Maryland
City of Baltimore

On this 21st day of June, A.D. 2012, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **JAMES M. CARROLL, Vice President, and ERIC D. BARNES, Assistant Secretary,** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
Maria D. Adamski, Notary Public
My Commission Expires: July 8, 2015

POA-F 093-0064D

FIC000014268

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify of revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 27th day of November, 2013.

Geoffrey Delisio

Geoffrey Delisio, Vice President

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that **she**/he resides in Saddle Brook, NJ that **she**/he is the Attorney In Fact of Federal Insurance Company the corporation described in and which executed the above instrument that **she**/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that **she**/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

FIC000014270

FEDERAL INSURANCE COMPANY

STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

Statutory Basis

DECEMBER 31, 2012

(in thousands of dollars)

ASSETS		*LIABILITIES AND SURPLUS TO POLICYHOLDERS*	
Cash and Short Term Investments	$ 402,323	Outstanding Losses and Loss Expenses	$ 12,627,388
United States Government, State and Municipal Bonds	9,901,519	Unearned Premiums	3,416,163
Other Bonds	4,595,536	Ceded Reinsurance Premiums Payable	364,197
Stocks	811,166	Provision for Reinsurance	62,250
Other Invested Assets	1,681,828	Other Liabilities	935,654
TOTAL INVESTMENTS	17,392,372	TOTAL LIABILITIES	17,405,652
Investments in Affiliates:			
Chubb Investment Holdings, Inc.	3,352,969	Capital Stock	20,980
Pacific Indemnity Company	2,496,198	Paid-In Surplus	3,106,809
Chubb Insurance Investment Holdings Ltd.	1,228,075	Unassigned Funds	10,713,227
Executive Risk Indemnity Inc.	1,100,637		
CC Canada Holdings Ltd.	758,892		
Chubb Insurance Company of Australia Limited	517,597	SURPLUS TO POLICYHOLDERS	13,841,016
Great Northern Insurance Company	438,592		
Chubb European Investment Holdings SLP	265,490		
Vigilant Insurance Company	246,766		
Other Affiliates	429,458		
Premiums Receivable	1,494,693		
Other Assets	1,524,929		
TOTAL ADMITTED ASSETS	$ 31,246,668	TOTAL LIABILITIES AND SURPLUS TO POLICYHOLDERS	$ 31,246,668

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners. Investments with a carrying value of $430,688,714 are deposited with government authorities as required by law.

State, County & City of New York, — ss:

Yvonne Baker, Assistant Secretary of the Federal Insurance Company being duly sworn, deposes and says that the foregoing Statement of Assets, Liabilities and Surplus to Policyholders of said Federal Insurance Company on December 31, 2012 is true and correct and is a true abstract of the Annual Statement of said Company as filed with the Secretary of the Treasury of the United States for the 12 months ending December 31, 2012.

Subscribed and sworn to before me
this March 31, 2013.

Dorothy Baker
Notary Public

DOROTHY M. BAKER
Notary Public, State of New York
No. 31-4904994
Qualified in New York County
Commission Expires Sept. 14, 2013

Yvonne Baker
Assistant Secretary

Form 15-10-0313A (Rev. 3/13)

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Chubb Surety

POWER OF ATTORNEY

Federal Insurance Company
Vigilant Insurance Company
Pacific Indemnity Company

Attn: Surety Department
15 Mountain View Road
Warren, NJ 07059

Know All by These Presents, That **FEDERAL INSURANCE COMPANY,** an Indiana corporation, **VIGILANT INSURANCE COMPANY,** a New York corporation, and **PACIFIC INDEMNITY COMPANY,** a Wisconsin corporation, do each hereby constitute and appoint **Sherryanne M. DePirro, Mary R. McKee, Alice McLaughlin, Maria L. Spadaccini and Sandra K. Wolf of Woodcliff Lake, New Jersey**

each as their true and lawful Attorney- in- Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY,** and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this **25th** day of **January, 2013.**

Dawn M. Chloros, Assistant Secretary

David B. Norris, Jr., Vice President

STATE OF NEW JERSEY
ss.
County of Somerset

On this **25th** day of **January 25, 2013** before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By- Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By- Laws and in deponent's presence.

Notarial Seal

KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 14, 2014

Notary Public

CERTIFICATION

Extract from the By- Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys- in- Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

(i) the foregoing extract of the By- Laws of the Companies is true and correct,
(ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
(iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this 22nd day of November 2013.

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903- 3493 Fax (908) 903- 3656
e-mail: surety@chubb.com

Form 15-10- 0225B- U (Ed. 5- 03) CONSENT

FIC000014272

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that **she**/he resides in Saddle Brook, NJ that **she**/he is the Attorney In Fact of The Continental Insurance Company the corporation described in and which executed the above instrument that **she**/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that **she**/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

FIC000014273

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THE CONTINENTAL INSURANCE COMPANY
Radnor, Pennsylvania
Statement of Net Admitted Assets and Liabilities
December 31, 2012

ASSETS

Bonds		$ 1,918,305,261
Stocks		152,148,209
Cash and short-term investments		382,477,651
Uncollected premiums and agents' balances		52,728,223
Amounts recoverable from reinsurers		23,547,316
Funds held by or deposited with reinsured companies		2,365,261
Net deferred tax asset		81,173,005
Investment income due and accrued		23,894,634
Other assets		71,841,445
Total Assets		$ 2,708,481,005

LIABILITIES AND SURPLUS

Losses		$ 763,621,953
Loss adjustment expense		34,421,591
Contingent and other commissions payable		15,556,713
Other expense		7,514,186
Taxes, licenses and fees		44,994,884
Other liabilities		519,410,554
Total Liabilities		1,385,519,881
Surplus Account:		
Capital paid up	53,566,360	
Gross paid in and contributed surplus	1,423,436,994	
Special Surplus	5,058,970	
Unassigned funds	(159,101,200)	
Surplus as regards policyholders		$ 1,322,961,124
Total Liabilities and Capital		$ 2,708,481,005

I, OJ B. Magana, Assistant Vice President of The Continental Insurance Company hereby certify that the above is an accurate representation of the financial statement of the Company dated December 31, 2012, as filed with the various Insurance Departments and is a true and correct statement of the condition of The Continental Insurance Company as of that date.

The Continental Insurance Company

By _____
Assistant Vice President

Subscribed and sworn to me this 25th day of March, 2013.

My commission expires:

Kathleen M Schroeder
Notary Public

"OFFICIAL SEAL"
KATHLEEN M. SCHROEDER
Notary Public, State of Illinois
My Commission Expires 08/16/15

FIC000014274

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That The Continental Insurance Company, a Pennsylvania insurance company, is a duly organized and existing insurance company having its principal office in the City of Chicago, and State of Illinois, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Alice Mc Laughlin, Mary R Mc Kee, Maria L Spadaccini, Sherryanne M De Pirro, Nicholas F Walsh, Individually

of Woodcliff Lake, NJ, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Board of Directors of the insurance company.

In Witness Whereof, The Continental Insurance Company has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 28th day of October, 2013.

THE CONTINENTAL INSURANCE COMPANY

The Continental Insurance Company

Paul T. Bruflat — Vice President

State of South Dakota, County of Minnehaha, ss:

On this 28th day of October, 2013, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that he knows the seal of said insurance company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said insurance company and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.

J. MOHR
NOTARY PUBLIC SOUTH DAKOTA
SEAL SEAL

My Commission Expires June 23, 2015

J. Mohr — Notary Public

CERTIFICATE

I, D. Bult, Assistant Secretary of The Continental Insurance Company, a Pennsylvania insurance company, do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance company printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance company this 22nd day of November, 2013.

THE CONTINENTAL INSURANCE COMPANY

The Continental Insurance Company

D. Bult — Assistant Secretary

Form F6850-4/2012

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Authorizing Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF THE CONTINENTAL INSURANCE COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the Board of Directors of the Company at a meeting held on May 10, 1995.

> "RESOLVED: That any Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execution power of attorneys on behalf of The Continental Insurance Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

> "Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and
>
> Whereas, from time to time, the signature of the Authorized Officers in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that **she**/he resides in Saddle Brook, NJ that **she**/he is the Attorney In Fact of XL Specialty Insurance Company the corporation described in and which executed the above instrument that **she**/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that **she**/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

FIC000014277

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XL SPECIALTY INSURANCE COMPANY
STATUTORY STATEMENT OF ADMITTED ASSETS, LIABILITIES, CAPITAL AND SURPLUS
December 31, 2012
(U.S. Dollars)

Assets:		**Liabilities:**	
Bonds	223,420,324	Loss & loss adjustment expenses	204,536,880
Stocks	68,982,279	Reinsurance payable on paid loss and loss adjustment expenses	1,627,985
Cash and short-term investments	62,647,461	Unearned premiums	37,359,450
Receivable for securities		Ceded reinsurance premium payable	
Total Invested Assets	**355,050,064**	Funds held by company under reinsurance treaties	
		Payable for Securities	
		Other Liabilities	28,511,133
		Total Liabilities	**272,035,448**
Agents Balances	29,008,573	Capital and Surplus:	
Funds held by or deposited with reinsured companies	39,015,242	Aggregate write-ins for special surplus funds	
		Common capital Stock	5,812,500
Reinsurance recoverable on loss and loss adjustment expense payments		Gross paid in and contributed surplus	127,387,019
Accrued interest and dividends	1,331,044	Unassigned surplus	35,468,090
Other admitted assets	16,298,134	**Total Capital and Surplus**	**168,667,609**
Total Admitted Assets	**440,703,057**	**Total Liabilities, Capital and Surplus**	**440,703,057**

I, Andrew Robert Will, Vice President and Controller of XL Specialty Insurance Company (the "Corporation") do hereby certify that to the best of my knowledge and belief, the foregoing is a full and true Statutory Statement of Admitted Assets, Liabilities, Capital and Surplus of the Corporation, as of December 31, 2012, prepared in conformity with the accounting practices prescribed or permitted by the Insurance Department of the State of Delaware. The foregoing statement should not be taken as a complete statement of financial condition of the Corporation. Such a statement is available upon request at the Corporation's principal office located at Seaview House, 70 Seaview Avenue, Stamford, CT 06902-06040.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Corporation at Stamford, Connecticut.

Vice President and Controller

FIC000014278

State of Connecticut

County of Fairfield

The foregoing financial information was acknowledged before me this 11th of March, 2013 by Andrew Robert Will of XL Specialty Insurance Company on behalf of the corporation.



Barbara-Ann Lutz

Notary Public

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XL Group
Insurance
Reinsurance

Power of Attorney
XL Specialty Insurance Company
Greenwich Insurance Company
XL Reinsurance America Inc.

THIS IS NOT A BOND NUMBER
UNLIMITED POWER OF ATTORNEY
XL1506889

KNOW ALL MEN BY THESE PRESENTS: That XL Specialty Insurance Company, Greenwich Insurance Company, Delaware insurance companies with offices located at 505 Eagleview Blvd., Exton, PA 19341, and XL Reinsurance America Inc., a New York insurance company with offices located at 70 Seaview Avenue, Stamford, CT 06902, , do hereby nominate, constitute, and appoint:

Nicholas F. Walsh, Sherryanne M. DePirro, Maria L. Spadaccini, Alice McLaughlin, Mary R. McKee

each its true and lawful Attorney(s)-in-fact to make, execute, attest, seal and deliver for and on its behalf, as surety, and as its act and deed, where required, any and all bonds and undertakings in the nature thereof, , for the penal sum of no one of which is in any event to exceed UNLIMITED.

Such bonds and undertakings, when duly executed by the aforesaid Attorney (s) - in - Fact shall be binding upon each said Company as fully and to the same extent as if such bonds and undertakings were signed by the President and Secretary of the Company and sealed with its corporate seal.

The Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Board of Directors of each of the Companies on the 22nd day of July 2013.

RESOLVED, that Gary Kaplan, David Hewett, William Mills, Gregory Boal and Kevin Mirsch are hereby appointed by the Board as authorized to make, execute, seal and deliver for and on behalf of the Company, any and all bonds, undertakings, contracts or obligations in surety or co-surety with others and that the Secretary or any Assistant Secretary of the Company be and that each of them hereby is authorized to attest the execution of any such bonds, undertakings, contracts or obligations in surety or co-surety and attach thereto the corporate seal of the Company.

RESOLVED, FURTHER, that Gary Kaplan, David Hewett, William Mills, Gregory Boal and Kevin Mirsch each is hereby authorized to execute powers of attorney qualifying the attorney named in the given power of attorney to execute, on behalf of the Company, bonds and undertakings in surety or co-surety with others, and that the Secretary or any Assistant Secretary of the Company be, and that each of them is hereby authorized to attest the execution of any such power of attorney, and to attach thereto the corporate seal of the Company.

RESOLVED, FURTHER, that the signature of such officers named in the preceding resolutions and the corporate seal of the Company may be affixed to such powers of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be thereafter valid and binding upon the Company with respect to any bond, undertaking, contract or obligation in surety or co-surety with others to which it is attached.

IN WITNESS WHEREOF, the XL SPECIALTY INSURANCE COMPANY and GREENWICH INSURANCE COMPANY has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officers this July 22nd, 2013.

XL SPECIALTY INSURANCE COMPANY
GREENWICH INSURANCE COMPANY

By: David S. Hewett
SENIOR VICE PRESIDENT

Attest: Toni Ann Perkins
SECRETARY

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

On this 22nd day of July, 2013, before me personally came David S. Hewett to me known, who, being duly sworn, did depose and say: that he is Senior Vice President of XL SPECIALTY INSURANCE COMPANY and GREENWICH INSURANCE COMPANY, described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to the aforesaid instrument is such corporate seals and were affixed thereto by order and authority of the Boards of Directors of said Companies; and that he executed the said instrument by like order.

KIM D. SLIVA
NOTARY PUBLIC
My Commission Expires June 30, 2018
STATE OF CONNECTICUT

Kim D. Sliva
NOTARY PUBLIC

SB-0034 – 3/11

FIC000014280

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STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

I, Toni Ann Perkins, Secretary of the XL SPECIALTY INSURANCE COMPANY and GREENWICH INSURANCE COMPANY a corporation of the State of Delaware, do hereby certify that the above and forgoing is a full, true and correct copy of Power of Attorney issued by said Company, and that I have compared same with the original and that it is a correct transcript there from and of the whole of the original and that the said Power of Attorney is still in full force.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation, at the City of Hartford, this 22nd day of November 2013.

XL SPECIALTY INSURANCE COMPANY CORPORATE SEAL DELAWARE

GREENWICH INSURANCE COMPANY CORPORATE SEAL DELAWARE

Toni Ann Perkins
SECRETARY

IN WITNESS WHEREOF, XL REINSURANCE AMERICA INC. has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officers this 22nd day of July, 2013.

XL REINSURANCE AMERICA INC. CORPORATE SEAL NEW YORK

XL REINSURANCE AMERICA INC.

by: J. P. Welch
SENIOR VICE PRESIDENT

Attest: Toni Ann Perkins
SECRETARY

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

On this 22nd day of July, 2013, before me personally came John P. Welch to me known, who, being duly sworn, did depose and say: that he is President & CEO of XL REINSURANCE AMERICA INC., described in which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the aforesaid instrument is such corporate seal and was affixed thereto by order and authority of the Board of Directors of said Corporation, and that he executed the said instrument by like order.

KIM D. SLIVA NOTARY PUBLIC My Commission Expires June 30, 2016 STATE OF CONNECTICUT

Kim D. Sliva
NOTARY PUBLIC

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

I, Toni Ann Perkins, Assistant Secretary of the XL REINSURANCE AMERICA INC. a corporation of the State of New York, do hereby certify that the person who executed this Power of Attorney, with the rights, respectively of XL REINSURANCE AMERICA INC., the above and forgoing is a full, true and correct copy of a Power of Attorney issued by said Corporation, and that I have compared same with the original

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation, at the City of Hartford, this ___ day of _____ _____.

XL REINSURANCE AMERICA INC. CORPORATE SEAL NEW YORK

Toni Ann Perkins
SECRETARY

This Power of Attorney may not be used to execute any bond with an inception date after July 22, 2018
SB0041

THIS DOCUMENT IS PRINTED ON A BLUE BACKGROUND

SB-0034 – 3/11

FIC000014281

ELECTRONICALLY FILED - 2023 Apr 04 8:50 AM - HORRY - COMMON PLEAS - CASE#2022CP2606116

NOTICE TO POLICYHOLDERS

PRIVACY POLICY

The XL America, Inc. insurance group (the "Companies"), believes personal information that we collect about our customers, potential customers, and proposed insureds (referred to collectively in this Privacy Policy as "customers") must be treated with the highest degree of confidentiality. For this reason and in compliance with the Title V of the Gramm-Leach-Bliley Act ("GLBA"), we have developed a Privacy Policy that applies to all of our companies. For purposes of our Privacy Policy, the term "personal information" includes all information we obtain about a customer and maintain in a personally identifiable way. In order to assure the confidentiality of the personal information we collect and in order to comply with applicable laws, all individuals with access to personal information about our customers are required to follow this policy.

Our Privacy Promise

Your privacy and the confidentiality of your business records are important to us. Information and the analysis of information is essential to the business of insurance and critical to our ability to provide to you excellent, cost-effective service and products. We understand that gaining and keeping your trust depends upon the security and integrity of our records concerning you. Accordingly, we promise that:

1. We will follow strict standards of security and confidentiality to protect any information you share with us or information that we receive about you;
2. We will verify and exchange information regarding your credit and financial status only for the purposes of underwriting, policy administration, or risk management and only with reputable references and clearinghouse services;
3. We will not collect and use information about you and your business other than the minimum amount of information necessary to advise you about and deliver to you excellent service and products and to administer our business;
4. We will train our employees to handle information about you or your business in a secure and confidential manner and only permit employees authorized to use such information to have access to such information;
5. We will not disclose information about you or your business to any organization outside the XL Insurance group of Companies or to third party service providers unless we disclose to you our intent to do so or we are required to do so by law;
6. We will not disclose medical information about you, your employees, or any claimants under any policy of insurance, unless you provide us with written authorization to do so, or unless the disclosure is for any specific business exception provided in the law;
7. We will attempt, with your help, to keep our records regarding you and your business complete and accurate, and will advise you how and where to access your account information (unless prohibited by law), and will advise you how to correct errors or make changes to that information; and
8. We will audit and assess our operations, personnel and third party service providers to assure that your privacy is respected.

Collection and Sources of Information

We collect from a customer or potential customer only the personal information that is necessary for (a) determining eligibility for the product or service sought by the customer, (b) administering the product or service obtained, and (c) advising the customer about our products and services. The information we collect generally comes from the following sources:

- Submission – During the submission process, you provide us with information about you and your business, such as your name, address, phone number, e-mail address, and other types of personal identification information;
- Quotes – We collect information to enable us to determine your eligibility for the particular insurance product and to determine the cost of such insurance to you. The information we collect will vary with the type of insurance you seek;
- Transactions – We will maintain records of all transactions with us, our affiliates, and our third party service providers, including your insurance coverage selections, premiums, billing and payment information, claims history, and other information related to your account;

NOTICE TO POLICYHOLDERS

- Claims – If you obtain insurance from us, we will maintain records related to any claims that may be made under your policies. The investigation of a claim necessarily involves collection of a broad range of information about many issues, some of which does not directly involve you. We will share with you any facts that we collect about your claim unless we are prohibited by law from doing so. The process of claim investigation, evaluation, and settlement also involves, however, the collection of advice, opinions, and comments from many people, including attorneys and experts, to aid the claim specialist in determining how best to handle your claim. In order to protect the legal and transactional confidentiality and privileges associated with such opinions, comments and advice, we will not disclose this information to you; and
- Credit and Financial Reports – We may receive information about you and your business regarding your credit. We use this information to verify information you provide during the submission and quote processes and to help underwrite and provide to you the most accurate and cost-effective insurance quote we can provide.

Retention and Correction of Personal Information

We retain personal information only as long as required by our business practices and applicable law. If we become aware that an item of personal information may be materially inaccurate, we will make reasonable effort to re-verify its accuracy and correct any error as appropriate.

Storage of Personal Information

We have in place safeguards to protect data and paper files containing personal information.

Sharing/Disclosing of Personal Information

We maintain procedures to assure that we do not share personal information with an unaffiliated third party for marketing purposes unless such sharing is permitted by law. Personal information may be disclosed to an unaffiliated third party for necessary servicing of the product or service or for other normal business transactions as permitted by law.

We do not disclose personal information to an unaffiliated third party for servicing purposes or joint marketing purposes unless a contract containing a confidentiality/non-disclosure provision has been signed by us and the third party. Unless a consumer consents, we do not disclose 'consumer credit report' type information obtained from an application or a credit report regarding a customer who applies for a financial product to any unaffiliated third party for the purpose of serving as a factor in establishing a consumer's eligibility for credit, insurance or employment. "Consumer credit report type information" means such things as net worth, credit worthiness, lifestyle information (piloting, skydiving, etc.) solvency, etc. We also do not disclose to any unaffiliated third party a policy or account number for use in marketing. We may share with our affiliated companies information that relates to our experience and transactions with the customer.

Policy for Personal Information Relating to Nonpublic Personal Health Information

We do not disclose nonpublic personal health information about a customer unless an authorization is obtained from the customer whose nonpublic personal information is sought to be disclosed. However, an authorization shall not be prohibited, restricted or required for the disclosure of certain insurance functions, including, but not limited to, claims administration, claims adjustment and management, detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity, underwriting, policy placement or issuance, loss control and/or auditing.

Access to Your Information

Our employees, employees of our affiliated companies, and third party service providers will have access to information we collect about you and your business as is necessary to effect transactions with you. We may also disclose information about you to the following categories of person or entities:

- Your independent insurance agent or broker;

NOTICE TO POLICYHOLDERS

- An independent claim adjuster or investigator, or an attorney or expert involved in the claim;
- Persons or organizations that conduct scientific studies, including actuaries and accountants;
- An insurance support organization;
- Another insurer if to prevent fraud or to properly underwrite a risk;
- A state insurance department or other governmental agency, if required by federal, state or local laws; or
- Any persons entitled to receive information as ordered by a summons, court order, search warrant, or subpoena.

Violation of the Privacy Policy

Any person violating the Privacy Policy will be subject to discipline, up to and including termination.

For more information or to address questions regarding this privacy statement, please contact your broker.

NOTICE TO POLICYHOLDERS

FRAUD NOTICE

Arkansas	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Colorado	It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claiming with regard to a settlement or award payable for insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.
District of Columbia	WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.
Florida	Any person who knowingly and with intent to injure, defraud, or deceive any insurance company files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.
Hawaii	For your protection, Hawaii law requires you to be informed that presenting a fraudulent claim for payment of a loss or benefit is a crime punishable by fines or imprisonment, or both.
Kentucky	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.
Louisiana	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Maine	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or denial of insurance benefits.
Maryland	Any person who knowingly and willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly and willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

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NOTICE TO POLICYHOLDERS

New Jersey	Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.
New Mexico	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.
New York	**All Commercial Insurance Forms, Except As Provided for Automobile Insurance:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation. **Automobile Insurance Forms:** Any person who knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation. **Fire Insurance:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime. The proposed insured affirms that the foregoing information is true and agrees that these applications shall constitute a part of any policy issued whether attached or not and that any willful concealment or misrepresentation of a material fact or circumstances shall be grounds to rescind the insurance policy.
Ohio	Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.
Oklahoma	**WARNING:** Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.
Pennsylvania	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. **Automobile Insurance Forms:** Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and the payment of a fine of up to $15,000.

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NOTICE TO POLICYHOLDERS

Puerto Rico	Any person who knowingly and with the intention to defraud includes false information in an application for insurance or file, assist or abet in the filing of a fraudulent claim to obtain payment of a loss or other benefit, or files more than one claim for the same loss or damage, commits a felony and if found guilty shall be punished for each violation with a fine of no less than five thousands dollars ($5,000), not to exceed ten thousands dollars ($10,000); or imprisoned for a fixed term of three (3) years, or both. If aggraveling circumstances exist, the fixed jail term may be increased to a maximum of five (5) years; and if mitigating circumstances are present, the jail term may be reduced to a minimum of two (2) years.
Rhode Island	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefitor knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Tennessee	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits. **Workers Compensation:** It is a crime to knowingly provide false, incomplete or misleading information to any party to a workers compensation transaction for the purpose of committing fraud. Penalties include imprisonment, fines and denial of insurance benefits.
Utah	**Workers Compensation:** Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement in state prison.
Virginia	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
Washington	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
West Virginia	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
All Other States	Any person who knowingly and willfully presents false information in an application for insurance may be guilty of insurance fraud and subject to fines and confinement in prison.

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NOTICE TO POLICYHOLDERS

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Policyholder Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC and possibly the U.S. Department of State. **Please read this Policyholder Notice carefully.**

OFAC administers and enforces sanctions policy based on Presidential declarations of "national emergency". OFAC has identified and listed numerous

- Foreign agents
- Front organizations
- Terrorists
- Terrorist organizations
- Narcotics traffickers

as *Specially Designated Nationals and Blocked Persons.* This list can be found on the U.S. Department of the Treasury's web site - http://www.treas.gov/ofac.

The Secretary of the Treasury also has identified a number of entities in the insurance, petroleum, and petrochemicals industries determined to be owned or controlled by the Iranian government. Business transactions with any of these entities are expressly prohibited. These entities have been added to OFAC's list of *Financial Institutions Determined To Be Owned or Controlled by the Government of Iran.* This list can be found on the U.S. Department of the Treasury's web site - http://www.treas.gov/offices/enforcement/ofac/

In accordance with OFAC regulations, or any applicable regulation promulgated by the U.S. Department of State, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance will be immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, neither payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

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Executed in Four (4) Counterparts

Liberty Bond No. 015042011, Travelers Bond No. 105953411, F&D/Zurich Bond No. 9140471
Federal Bond No. 82320070, CNA Bond No. 929573536, XL Bond No. SUR7402450

South Carolina Department of Transportation Rev. 08-15-2012 Form No. 673 **PAYMENT BOND**	Date Bond Executed: DEC 0 6 2013
Principal: Flatiron Constructors, Inc., Firestone, Colorado	Bond Number: See Attachment A
Surety: See Attachment A	
Penal Sum of Bond: $97,868,086.99	Date of Contract: DEC 0 6 2013
Project S. C. File No(s).: 26.036775A, 26.036775A.1, 26.036775A.2, 26.036775A.3, 26.0367754.4 etc. - Proj. No. HORR - Horry County	Contract Number: 15495

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL AND SURETY above named are held and firmly bound unto the South Carolina Department of Transportation, hereinafter called the Department, in the penal sum of the amount stated above which shall be equal to the full amount (100%) of the contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Department, numbered and dated as shown above and hereto attached:

NOW, THEREFORE, if the principal shall promptly make payment to all persons supplying labor and material, such being construed to include, but not limit to, that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment directly applicable to the contract, in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice by which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In Presence of: Witness (2 required)	FOR INDIVIDUAL OR PARTNERSHIP PRINCIPAL
1. _____	_____ (seal)
2. _____	_____ (seal)

Attest _____ Corporate Secretary In Presence of: Witness (2 required)	FOR CORPORATE PRINCIPAL Flatiron Constructors, Inc. Corporation Name Firestone, Colorado Business Address By: _____ Title: VP Affix Corporate Seal
1. Denise Kassel	
2. Pam Mayhugh	

In Presence of: Witness (2 required)	SURETY/INSURER See Attachment A Surety/ Insurers Name See Attachment A Business Address By: See Attachment A Title: See Attachment A Affix Corporate Seal
1. _____ Maria L. Spadaccini	
2. _____ Sherryanne DePirro	

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EXCERPT FROM
SOUTH CAROLINA CODE OF LAWS

SECTION 57-5-1660. Amount of contractor's bonds. -

(a) The South Carolina Department of Transportation shall require that the contractor on every public highway construction contract, exceeding ten thousand dollars, furnish the South Carolina Department of Transportation, county, or road district the following bond, which shall become binding upon the award of the contract to such contractor:

(1) A performance and indemnity bond with a surety or sureties satisfactory to the authority awarding the contract, and the full amount of the contract, and in no case less than ten thousand dollars, for the protection of the South Carolina Department of Transportation, county or road district.

(2) A payment bond with a surety or sureties satisfactory to the awarding authority, and in the amount of not less than one hundred percent of the contract, for the protection of all persons supplying labor and materials in the prosecution of work provided for in the contract for the use of each such person.

(b) Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which such a bond has been furnished under this section and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him; provided, however, that any person having direct contractual relationship with a sub-contractor but no contractual relationship expressed or implied with the contractor furnishing the bond shall have a right of action upon the bond upon giving written notice to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material was furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material was furnished or supplied or for whom labor was done or performed. No suit under this section shall be commenced after the expiration of one year after the date of the final settlement of the contract.

(c) Nothing in this section shall be construed to limit the authority of any contracting authority to require a performance bond or other security in addition to those specified in this section.

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ATTACHMENT A

Executed in 4 Counterparts

Liberty Bond No. 015042011
Travelers Bond No. 105953411
F&D/Zurich Bond No. 9140471
Federal Bond No. 82320070
C N A Bond No. 929573536
XL Bond No. SUR7402450

Liberty Mutual Insurance Company, a Massachusetts Corporation;
Travelers Casualty and Surety Company of America; a Connecticut Corporation
Fidelity and Deposit Company of Maryland, a Maryland Corporation
Zurich American Insurance Company, a New York Corporation;
Federal Insurance Company, an Indiana Corporation;
The Continental Insurance Company, a Pennsylvania Corporation;
XL Specialty Insurance Company, a Delaware Corporation

Liberty Mutual Insurance Company – A.M. Best Rating A XV
175 Berkeley Street, Boston, MA 02116 - Fax (212)-221-5608
Contact: David D. Roberts, Branch Manager – (212) 719-7750 – davidd.roberts@libertymutual.com

Travelers Casualty and Surety Company of America – A.M. Best Rating A+ XIV
Construction Services, One Tower Square, Hartford, CT 06183
Contact: Brian Bialaski – VP, (860) 277-1914, Fax –(860)-277-3931 – bbialaski@travelers.com

Fidelity and Deposit Company of Maryland/Zurich American Insurance Company – A.M. Best Rating A+ XV
1400 American Lane, Schaumburg, IL 60196 – Fax (410)-261-7957
Contact: Thomas McClellan, Sr. Underwriting Officer – (410)-559-8730 – tom.mcclellan@zurichna.com

Federal Insurance Company – A.M. Best Rating A++ XV
15 Mountain View Road, Warren, NJ 07061 – Fax (908)-526-2060 – mlubin@chubb.com
Contact: Matthew Lubin, Director, National Engineering and Construction Group – (908) 903-3461

The Continental Insurance Company – A.M. Best Rating A XV
333 S. Wabash Avenue, 41st Floor, Chicago, IL 60604 – Fax (212)-440-7351
Contact: Jon Fullerton, Branch Manager (212)-440-7356 – jon.fullerton@cnasurety.com

XL Specialty Insurance Company – A.M. Best A XV
Seaview House, 70 Seaview Avenue, Stamford, CT 06902 – Fax (410)-385-8010
Contact: William Mills, Senior VP, - (410)-385-8411 – bill.mills@xlgroup.com

By: _____
Mary R. McKee, Attorney-In-Fact

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF

COUNTY OF

On this _____ day of _____, 2013, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that she/he resides in _____ that she/he is the _____ of the _____ the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

_____

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that she/he resides in Saddle Brook, NJ that she/he is the Attorney In Fact of Liberty Mutual Insurance Company the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

FIC000014288

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Liberty Mutual SURETY

LIBERTY MUTUAL INSURANCE COMPANY

FINANCIAL STATEMENT — DECEMBER 31, 2012

Assets

Cash and Bank Deposits	$ 903,711,694
*Bonds — U.S Government	1,166,929,471
*Other Bonds	11,415,194,219
*Stocks	8,104,853,899
Real Estate	255,967,320
Agents' Balances or Uncollected Premiums	3,482,069,753
Accrued Interest and Rents	144,016,763
Other Admitted Assets	14,732,623,458
Total Admitted Assets	**$40,205,366,577**

Liabilities

Unearned Premiums		$4,205,141,671
Reserve for Claims and Claims Expense		17,056,420,207
Funds Held Under Reinsurance Treaties		1,315,062,091
Reserve for Dividends to Policyholders		2,455,411
Additional Statutory Reserve		49,768,998
Reserve for Commissions, Taxes and Other Liabilities		3,066,051,537
Total		**$25,694,899,915**
Special Surplus Funds	$604,621,497	
Capital Stock	10,000,000	
Paid in Surplus	7,899,471,886	
Unassigned Surplus	5,996,373,279	
Surplus to Policyholders		**14,510,466,662**
Total Liabilities and Surplus		**$40,205,366,577**

LIBERTY MUTUAL INSURANCE COMPANY INCORPORATED 1912 MASSACHUSETTS

* Bonds are stated at amortized or investment value; Stocks at Association Market Values.
The foregoing financial information is taken from Liberty Mutual Insurance Company's financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2012, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 25th day of March, 2013.

T A Mikolajewski

Assistant Secretary

S-1262LMIC/a 4/12

FIC000014289

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.
This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6185472

American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Alice McLaughlin; Maria L. Spadaccini; Mary R. McKee; Sandra K. Wolf; Sherryanne M. DePirro

all of the city of Woodcliff Lake, state of NJ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 1st day of July, 2013.

American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: _____
Gregory W. Davenport, Assistant Secretary

STATE OF WASHINGTON ss
COUNTY OF KING

On this 1st day of July, 2013, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.

By: KD Riley
KD Riley , Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 22nd day of November, 20 13.

By: _____
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or dual value guarantees.

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that she/he resides in Saddle Brook, NJ that she/he is the Attorney In Fact of Travelers Casualty and Surety Company of America the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

FIC000014291

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TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

HARTFORD, CONNECTICUT 06183

FINANCIAL STATEMENT AS OF DECEMBER 31, 2012

CAPITAL STOCK $ 6,480,000

ASSETS		LIABILITIES & SURPLUS	
CASH AND INVESTED CASH	$ 15,936,791	UNEARNED PREMIUMS	$ 783,409,692
BONDS	3,713,171,015	LOSSES	901,058,710
INVESTMENT INCOME DUE AND ACCRUED	50,798,732	REINSURANCE PAYABLE ON PAID LOSSES & LOSS ADJ. EXPENSES	1,446,021
OTHER INVESTED ASSETS	280,730,697	LOSS ADJUSTMENT EXPENSES	534,370,660
PREMIUM BALANCES	184,942,508	COMMISSIONS	29,261,779
NET DEFERRED TAX ASSET	63,274,378	TAXES, LICENSES AND FEES	66,762,894
REINSURANCE RECOVERABLE	12,410,524	OTHER EXPENSES	35,688,967
SECURITIES LENDING REINVESTED COLLATERAL ASSETS	7,769,155	FUNDS HELD UNDER REINSURANCE TREATIES	94,449,544
RECEIVABLES FROM PARENT, SUBSIDIARIES AND AFFILIATES	11,080,470	CURRENT FEDERAL AND FOREIGN INCOME TAXES	60,676,573
UNDISTRIBUTED PAYMENTS	(1,439,585)	REMITTANCES AND ITEMS NOT ALLOCATED	19,270,931
OTHER ASSETS	884,093	AMOUNTS WITHHELD / RETAINED BY COMPANY FOR OTHERS	79,084,806
		RETROACTIVE REINSURANCE RESERVE ASSUMED	3,163,164
		POLICYHOLDER DIVIDENDS	6,730,121
		PROVISION FOR REINSURANCE	5,314,325
		ADVANCE PREMIUM	726,898
		PAYABLE FOR SECURITIES LENDING	7,769,155
		CEDED REINSURANCE NET PREMIUMS PAYABLE	(70,803,744)
		ESCHEAT LIABILITY	525,399
		OTHER ACCRUED EXPENSES AND LIABILITIES	282,062
		TOTAL LIABILITIES	$ 2,559,106,957
		CAPITAL STOCK	$ 6,480,000
		PAID IN SURPLUS	433,803,760
		OTHER SURPLUS	1,340,168,061
		TOTAL SURPLUS TO POLICYHOLDERS	$ 1,780,451,821
TOTAL ASSETS	$ 4,339,558,778	TOTAL LIABILITIES & SURPLUS	$ 4,339,558,778

STATE OF CONNECTICUT)

COUNTY OF HARTFORD) SS.

CITY OF HARTFORD)

MICHAEL J. DOODY, BEING DULY SWORN, SAYS THAT HE IS SECOND VICE PRESIDENT, OF TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, AND THAT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THE FOREGOING IS A TRUE AND CORRECT STATEMENT OF THE FINANCIAL CONDITION OF SAID COMPANY AS OF THE 31ST DAY OF DECEMBER, 2012.

Michael J Doody
SECOND VICE PRESIDENT

NOTARY PUBLIC

SUSAN M. WEISSLEDER
Notary Public
My Commission Expires November 30, 2017

SUBSCRIBED AND SWORN TO BEFORE ME THIS
20TH DAY OF MARCH, 2013

SUSAN M. WEISSLEDER NOTARY PUBLIC CONNECTICUT

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

TRAVELERS

POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 227173

Certificate No. 005646627

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Alice McLaughlin, Mary R. McKee, Sherryanne M. DePirro, Maria L. Spadaccini, and Nicholas F. Walsh

of the City of Woodcliff Lake, State of New Jersey, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 19th day of September, 2013.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

State of Connecticut
City of Hartford ss.

By: _____
Robert L. Raney, Senior Vice President

On this the 19th day of September, 2013, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.

MARIE C. TETREAULT NOTARY PUBLIC CONNECTICUT

Marie C. Tetreault
Marie C. Tetreault, Notary Public

58440-8-12 Printed in U.S.A.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

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This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 22nd day of November, 20 13.

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

FIC000014294

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013 before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that she/he resides in Saddle Brook, NJ that she/he is the Attorney In Fact of Fidelity and Deposit Company of Maryland the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 16, 2014

FIC000014295

FIDELITY AND DEPOSIT COMPANY

OF MARYLAND
600 Red Brook Blvd., Suite 600, Owings Mills, MD 21117

Statement of Financial Condition
As Of December 31, 2012

ASSETS

Bonds		$ 157,177,826
Stocks		23,000,311
Cash and Short Term Investments		119,155
Reinsurance Recoverable		17,923,564
Other Accounts Receivable		35,473,256
TOTAL ADMITTED ASSETS		$ 233,694,113

LIABILITIES, SURPLUS AND OTHER FUNDS

Reserve for Taxes and Expenses		$ 74,782
Ceded Reinsurance Premiums Payable		48,323,524
Securities Lending Collateral Liability		1,716,240
TOTAL LIABILITIES		$ 50,114,546
Capital Stock, Paid Up	$ 5,000,000	
Surplus	178,579,567	
Surplus as regards Policyholders		183,579,567
TOTAL		$ 233,694,113

Securities carried at $59,468,002 in the above statement are deposited as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of December 31, 2012 market quotations for all bonds and stocks owned, the Company's total admitted assets would be $243,518,971 and surplus as regards policyholders $193,404,425.

I, DENNIS F. KERRIGAN, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2012.

Corporate Secretary

State of Illinois
City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 15th day of March, 2013.

Notary Public

OFFICIAL SEAL
DARRYL JOINER
Notary Public - State of Illinois
My Commission Expires May 3, 2014

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that she/he resides in Saddle Brook, NJ that she/he is the Attorney In Fact of Zurich American Insurance Company the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 16, 2014

FIC000014297

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ZURICH AMERICAN INSURANCE COMPANY
COMPARATIVE BALANCE SHEET
ONE LIBERTY PLAZA, 165 BROADWAY, 32nd FLOOR, NEW YORK, NY 10006
As of December 31, 2012 and December 31, 2011

	12/31/2012	12/31/2011
Assets		
Bonds	$ 18,907,466,866	$ 18,985,096,131
Preferred Stock	-	259,036
Common Stock	2,123,025,432	2,068,881,919
Other Invested Assets	2,035,077,824	2,065,634,039
Short-term Investments	126,053,209	107,298,374
Receivable for securities	134,410,839	18,523,294
Cash and cash equivalents	728,298,115	(128,716,627)
Securities lending reinvested collateral assets	225,335,750	120,821,061
Employee Trust for Deferred Compensation Plan	130,493,778	124,809,033
Total Cash and Invested Assets	$ 24,410,161,814	$ 23,362,606,260
Premiums Receivable	$ 3,649,247,239	$ 3,611,868,304
Funds Held with Reinsurers	3,681,443	28,073,922
Reinsurance Recoverable	215,451,507	233,357,918
Accrued Investment Income	121,729,727	149,372,442
Federal Income Tax Recoverable	930,267,731	788,664,462
Due from Affiliates	187,274,289	95,583,016
Other Assets	493,265,075	459,639,011
Total Assets	$ 30,011,078,824	$ 28,729,165,335
Liabilities and Policyholders' Surplus		
Liabilities:		
Loss and LAE Reserves	$ 14,244,436,264	$ 14,401,632,170
Unearned Premium Reserve	4,159,670,241	4,066,273,586
Funds Held with Reinsurers	212,412,675	218,214,563
Loss In Course of Payment	408,170,112	353,274,509
Commission Reserve	64,038,359	63,749,920
Federal Income Tax Payable	16,190,044	47,352,138
Remittances and Items Unallocated	196,410,982	69,677,903
Payable to parent, subs and affiliates	57,540,814	92,111,683
Provision for Reinsurance	66,649,220	60,498,188
Ceded Reinsurance Premiums Payable	551,510,878	278,235,370
Securities Lending Collateral Liability	225,335,750	120,821,061
Other Liabilities	2,166,453,164	1,938,544,837
Total Liabilities	$ 22,368,818,502	$ 21,710,385,928
Policyholders' Surplus:		
Common Capital Stock	$ 5,000,000	$ 5,000,000
Paid-In and Contributed Surplus	4,394,131,321	4,394,131,320
Surplus Notes	430,000,000	883,000,000
Special Surplus Funds	43,259,000	396,438,437
Cumulative Unrealized Gain	331,857,594	209,454,958
Unassigned Surplus	2,438,012,408	1,130,754,692
Total Policyholders' Surplus	$ 7,642,260,323	$ 7,018,779,407
Total Liabilities and Policyholders' Surplus	$ 30,011,078,824	$ 28,729,165,335

I, Dennis F. Kerrigan, Corporate Secretary of ZURICH AMERICAN INSURANCE COMPANY do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company, on the 31st day of December, 2012, according to the best of my information, knowledge and belief.

Corporate Secretary

State of Illinois
County of Cook } **SS:**

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 15th day of March, 2013.

OFFICIAL SEAL
DARRYL JOINER
Notary Public - State of Illinois
My Commission Expires May 3, 2014

Notary public

FIC000014298

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ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **JAMES M. CARROLL, Vice President,** in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Sandra K. WOLF, Alice MCLAUGHLIN, Mary R. MCKEE, Maria L. SPADACCINI and Sherryanne M. DEPIRRO, all of Woodcliff Lake, New Jersey, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 21st day of June, A.D. 2012.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: _____
Assistant Secretary
Eric D. Barnes

_____
Vice President
James M. Carroll

State of Maryland
City of Baltimore

On this 21st day of June, A.D. 2012, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **JAMES M. CARROLL, Vice President, and ERIC D. BARNES, Assistant Secretary,** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
Maria D. Adamski, Notary Public
My Commission Expires: July 8, 2015

POA-F 093-0064D

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EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify of revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 2nd day of November, 2023.

Geoffrey Delisio

Geoffrey Delisio, Vice President

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013 before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that she/he resides in Saddle Brook, NJ that she/he is the Attorney In Fact of Federal Insurance Company the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

FIC000014301

FEDERAL INSURANCE COMPANY

STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

Statutory Basis

DECEMBER 31, 2012

(in thousands of dollars)

ASSETS		*LIABILITIES AND SURPLUS TO POLICYHOLDERS*	
Cash and Short Term Investments	$ 402,323	Outstanding Losses and Loss Expenses	$ 12,627,388
United States Government, State and Municipal Bonds	9,901,519	Unearned Premiums	3,416,163
Other Bonds	4,595,536	Ceded Reinsurance Premiums Payable	364,197
Stocks	811,166	Provision for Reinsurance	62,250
Other Invested Assets	1,681,828	Other Liabilities	935,654
TOTAL INVESTMENTS	17,392,372	TOTAL LIABILITIES	17,405,652
Investments in Affiliates:			
Chubb Investment Holdings, Inc.	3,352,969	Capital Stock	20,980
Pacific Indemnity Company	2,496,198	Paid-In Surplus	3,106,809
Chubb Insurance Investment Holdings Ltd.	1,228,075	Unassigned Funds	10,713,227
Executive Risk Indemnity Inc.	1,100,637		
CC Canada Holdings Ltd.	758,892		
Chubb Insurance Company of Australia Limited	517,597	SURPLUS TO POLICYHOLDERS	13,841,016
Great Northern Insurance Company	438,592		
Chubb European Investment Holdings SLP	265,490		
Vigilant Insurance Company	246,766		
Other Affiliates	429,458		
Premiums Receivable	1,494,693		
Other Assets	1,524,929		
TOTAL ADMITTED ASSETS	$ 31,246,668	TOTAL LIABILITIES AND SURPLUS TO POLICYHOLDERS	$ 31,246,668

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners. Investments with a carrying value of $430,688,714 are deposited with government authorities as required by law.

State, County & City of New York, — ss:

Yvonne Baker, Assistant Secretary of the Federal Insurance Company being duly sworn, deposes and says that the foregoing Statement of Assets, Liabilities and Surplus to Policyholders of said Federal Insurance Company on December 31, 2012 is true and correct and is a true abstract of the Annual Statement of said Company as filed with the Secretary of the Treasury of the United States for the 12 months ending December 31, 2012.

Subscribed and sworn to before me this March 31, 2013.

Dorothy Baker
Notary Public

DOROTHY M. BAKER
Notary Public, State of New York
No. 31-4904994
Qualified in New York County
Commission Expires Sept. 14, 2013

Yvonne Baker
Assistant Secretary

Form 15-10-0313A (Rev. 3/13)

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Chubb Surety

POWER OF ATTORNEY

Federal Insurance Company
Vigilant Insurance Company
Pacific Indemnity Company

Attn: Surety Department
15 Mountain View Road
Warren, NJ 07059

Know All by These Presents, That **FEDERAL INSURANCE COMPANY,** an Indiana corporation, **VIGILANT INSURANCE COMPANY,** a New York corporation, and **PACIFIC INDEMNITY COMPANY,** a Wisconsin corporation, do each hereby constitute and appoint **Sherryanne M. DePirro, Mary R. McKee, Alice McLaughlin, Maria L. Spadaccini and Sandra K. Wolf of Woodcliff Lake, New Jersey**

each as their true and lawful Attorney- in- Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY,** and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this **25th** day of **January, 2013.**

Dawn M. Chloros, Assistant Secretary

David B. Norris, Jr., Vice President

STATE OF NEW JERSEY
ss.
County of Somerset

On this **25th** day of **January 25, 2013** before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By- Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By- Laws and in deponent's presence.

Notarial Seal

KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 14, 2014

Notary Public

CERTIFICATION

Extract from the By- Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys- in- Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

(i) the foregoing extract of the By- Laws of the Companies is true and correct,
(ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
(iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this 22nd day of November 2013.

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903- 3493 Fax (908) 903- 3656
e-mail: surety@chubb.com

Form 15-10- 0225B- U (Ed. 5- 03) CONSENT

FIC000014303

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that she/he resides in Saddle Brook, NJ that she/he is the Attorney In Fact of The Continental Insurance Company the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

FIC000014304

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THE CONTINENTAL INSURANCE COMPANY
Radnor, Pennsylvania
Statement of Net Admitted Assets and Liabilities
December 31, 2012

ASSETS

Bonds		$ 1,918,305,261
Stocks		152,148,209
Cash and short-term investments		382,477,651
Uncollected premiums and agents' balances		52,728,223
Amounts recoverable from reinsurers		23,547,316
Funds held by or deposited with reinsured companies		2,365,261
Net deferred tax asset		81,173,005
Investment income due and accrued		23,894,634
Other assets		71,841,445
Total Assets		$ 2,708,481,005

LIABILITIES AND SURPLUS

Losses		$ 763,621,953
Loss adjustment expense		34,421,591
Contingent and other commissions payable		15,556,713
Other expense		7,514,186
Taxes, licenses and fees		44,994,884
Other liabilities		519,410,554
Total Liabilities		1,385,519,881
Surplus Account:		
Capital paid up	53,566,360	
Gross paid in and contributed surplus	1,423,436,994	
Special Surplus	5,058,970	
Unassigned funds	(159,101,200)	
Surplus as regards policyholders		$ 1,322,961,124
Total Liabilities and Capital		$ 2,708,481,005

I, OJ B. Magana, Assistant Vice President of The Continental Insurance Company hereby certify that the above is an accurate representation of the financial statement of the Company dated December 31, 2012, as filed with the various Insurance Departments and is a true and correct statement of the condition of The Continental Insurance Company as of that date.

The Continental Insurance Company

By _____
Assistant Vice President

Subscribed and sworn to me this 25th day of March, 2013.

My commission expires:

Kathleen M Schroeder
Notary Public

"OFFICIAL SEAL"
KATHLEEN M. SCHROEDER
Notary Public, State of Illinois
My Commission Expires 08/16/15

FIC000014305

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WILKES ATKINSON & JOYNER, LLC
ATTORNEYS AT LAW

MICHAEL B.T. WILKES, P.A.▪ ◊
C. DANIEL ATKINSON ▪ ▸
J. ALEXANDER JOYNER •
W. SPENCER BARROW ▸
REED W. MULBRY•
BRIAN M. PETERS, JR.*

• CHARLESTON OFFICE
▪ ALSO MEMBER GA BAR
▸ ALSO MEMBER NC BAR
◊ CERTIFIED MEDIATOR
* ALSO MEMBER OF FL BAR

Reply to: SPARTANBURG OFFICE
127 DUNBAR STREET, SUITE 200
SPARTANBURG, SC 29306
PHONE: 864.591.1113
TOLL FREE: 866.920.1113
FAX: 864.591.1767

CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
PHONE: 843.737.6229

WWW.WAJLAWFIRM.COM

April 4, 2023

Via E-Filing Only
The Honorable Renee Elvis
Horry County Clerk of Court
1301 Second Avenue
Conway, SC 29528

Re: ***Flatiron Constructors, Inc. v. TranSystems Corporation***
Court of Common Pleas, Horry County
C.A. No.: 2022-CP-26-06116

Dear Ms. Elvis,

Please find attached to this letter **Exhibit A, Part 11** to Defendant's Brief in Support of Defendant's Motion for Summary Judgment. Due to size constraints, we were unable to file this Exhibit with the Brief. Please have the docket note that this exhibit is part of the Defendant's Brief in Support of its Motion for Summary Judgment.

Please advise if you have any questions.

Sincerely,

s/ Michael B. T. Wilkes

Michael B. T. Wilkes, S.C. Bar No. 9607
mwilkes@wajlawfirm.com

MBTW: jjs
cc (via E-Filing Only):
Carter B. Reid, Esq.
Bryan Patrick Bailey, Esq.
Mason A. Goldsmith, Jr., Esq.
C. Daniel Atkinson, Esq.

EXHIBIT A
(Part 11 of 11)

TSC's Brief in Support of Motion for Summary Judgment

Flatiron v. TranSystems
C.A. No. 2022-CP-26-06116

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POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That The Continental Insurance Company, a Pennsylvania insurance company, is a duly organized and existing insurance company having its principal office in the City of Chicago, and State of Illinois, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Alice Mc Laughlin, Mary R Mc Kee, Maria L Spadaccini, Sherryanne M De Pirro, Nicholas F Walsh, Individually

of Woodcliff Lake, NJ, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Board of Directors of the insurance company.

In Witness Whereof, The Continental Insurance Company has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 28th day of October, 2013.

The Continental Insurance Company

Paul T. Bruflat — Vice President

State of South Dakota, County of Minnehaha, ss:

On this 28th day of October, 2013, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that he knows the seal of said insurance company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said insurance company and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.

J. MOHR
NOTARY PUBLIC
SOUTH DAKOTA

My Commission Expires June 23, 2015

J. Mohr — Notary Public

CERTIFICATE

I, D. Bult, Assistant Secretary of The Continental Insurance Company, a Pennsylvania insurance company, do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance company printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance company this 28th day of November, 2013.

The Continental Insurance Company

D. Bult — Assistant Secretary

Form F6850-4/2012

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FIC000014306

Authorizing Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF THE CONTINENTAL INSURANCE COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the Board of Directors of the Company at a meeting held on May 10, 1995.

> "RESOLVED: That any Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execution power of attorneys on behalf of The Continental Insurance Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

> "Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and
>
> Whereas, from time to time, the signature of the Authorized Officers in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."

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CORPORATE ACKNOWLEDGMENT

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 22nd day of November, 2013, before me personally came Mary R. McKee to me known, who, being by me duly sworn, did depose and say that she/he resides in Saddle Brook, NJ that she/he is the Attorney In Fact of XL Specialty Insurance Company the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

Esther Caban
Notary Public of New Jersey
My Commission Expires
February 18, 2014

FIC000014308

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XL SPECIALTY INSURANCE COMPANY
STATUTORY STATEMENT OF ADMITTED ASSETS, LIABILITIES, CAPITAL AND SURPLUS
December 31, 2012
(U.S. Dollars)

Assets:		**Liabilities:**	
Bonds	223,420,324	Loss & loss adjustment expenses	204,536,880
Stocks	68,982,279	Reinsurance payable on paid loss and loss adjustment expenses	1,627,985
Cash and short-term investments	62,647,461	Unearned premiums	37,359,450
Receivable for securities		Ceded reinsurance premium payable	
Total Invested Assets	**355,050,064**	Funds held by company under reinsurance treaties	
		Payable for Securities	
		Other Liabilities	28,511,133
		Total Liabilities	**272,035,448**
Agents Balances	29,008,573	Capital and Surplus:	
Funds held by or deposited with reinsured companies	39,015,242	Aggregate write-ins for special surplus funds	
		Common capital Stock	5,812,500
Reinsurance recoverable on loss and loss adjustment expense payments		Gross paid in and contributed surplus	127,387,019
Accrued interest and dividends	1,331,044	Unassigned surplus	35,468,090
Other admitted assets	16,298,134	**Total Capital and Surplus**	**168,667,609**
Total Admitted Assets	**440,703,057**	**Total Liabilities, Capital and Surplus**	**440,703,057**

I, Andrew Robert Will, Vice President and Controller of XL Specialty Insurance Company (the "Corporation") do hereby certify that to the best of my knowledge and belief, the foregoing is a full and true Statutory Statement of Admitted Assets, Liabilities, Capital and Surplus of the Corporation, as of December 31, 2012, prepared in conformity with the accounting practices prescribed or permitted by the Insurance Department of the State of Delaware. The foregoing statement should not be taken as a complete statement of financial condition of the Corporation. Such a statement is available upon request at the Corporation's principal office located at Seaview House, 70 Seaview Avenue, Stamford, CT 06902-06040.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Corporation at Stamford, Connecticut.

Vice President and Controller

FIC000014309

State of Connecticut

County of Fairfield

The foregoing financial information was acknowledged before me this 11th of March, 2013 by Andrew Robert Will of XL Specialty Insurance Company on behalf of the corporation.



Barbara-Ann Lutz

Notary Public

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XL Group
Insurance
Reinsurance

Power of Attorney
XL Specialty Insurance Company
Greenwich Insurance Company
XL Reinsurance America Inc.

THIS IS NOT A BOND NUMBER
UNLIMITED POWER OF ATTORNEY
XL1506888

KNOW ALL MEN BY THESE PRESENTS: That XL Specialty Insurance Company, Greenwich Insurance Company, Delaware insurance companies with offices located at 505 Eagleview Blvd., Exton, PA 19341, and XL Reinsurance America Inc., a New York insurance company with offices located at 70 Seaview Avenue, Stamford, CT 06902, , do hereby nominate, constitute, and appoint:

Nicholas F. Walsh, Sherryanne M. DePirro, Maria L. Spadaccini, Alice McLaughlin, Mary R. McKee

each its true and lawful Attorney(s)-In-fact to make, execute, attest, seal and deliver for and on its behalf, as surety, and as its act and deed, where required, any and all bonds and undertakings in the nature thereof, , for the penal sum of no one of which is in any event to exceed UNLIMITED.

Such bonds and undertakings, when duly executed by the aforesaid Attorney (s) - in - Fact shall be binding upon each said Company as fully and to the same extent as if such bonds and undertakings were signed by the President and Secretary of the Company and sealed with its corporate seal.

The Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Board of Directors of each of the Companies on the 22nd day of July 2013.

RESOLVED, that Gary Kaplan, David Hewett, William Mills, Gregory Boal and Kevin Mirsch are hereby appointed by the Board as authorized to make, execute, seal and deliver for and on behalf of the Company, any and all bonds, undertakings, contracts or obligations in surety or co-surety with others and that the Secretary or any Assistant Secretary of the Company be and that each of them hereby is authorized to attest the execution of any such bonds, undertakings, contracts or obligations in surety or co-surety and attach thereto the corporate seal of the Company.

RESOLVED, FURTHER, that Gary Kaplan, David Hewett, William Mills, Gregory Boal and Kevin Mirsch each is hereby authorized to execute powers of attorney qualifying the attorney named in the given power of attorney to execute, on behalf of the Company, bonds and undertakings in surety or co-surety with others, and that the Secretary or any Assistant Secretary of the Company be, and that each of them is hereby authorized to attest the execution of any such power of attorney, and to attach thereto the corporate seal of the Company.

RESOLVED, FURTHER, that the signature of such officers named in the preceding resolutions and the corporate seal of the Company may be affixed to such powers of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be thereafter valid and binding upon the Company with respect to any bond, undertaking, contract or obligation in surety or co-surety with others to which it is attached.

IN WITNESS WHEREOF, the XL SPECIALTY INSURANCE COMPANY and GREENWICH INSURANCE COMPANY has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officers this July 22nd, 2013.

XL SPECIALTY INSURANCE COMPANY
GREENWICH INSURANCE COMPANY

By: David S. Hewett
SENIOR VICE PRESIDENT

Attest: Dori Ann Perkins
SECRETARY

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

On this 22nd day of July, 2013, before me personally came David S. Hewett to me known, who, being duly sworn, did depose and say: that he is Senior Vice President of XL SPECIALTY INSURANCE COMPANY and GREENWICH INSURANCE COMPANY, described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to the aforesaid instrument is such corporate seals and were affixed thereto by order and authority of the Boards of Directors of said Companies; and that he executed the said instrument by like order.

KIM D. SLIVA NOTARY PUBLIC My Commission Expires June 30, 2018 STATE OF CONNECTICUT

Kim D. Sliva
NOTARY PUBLIC

SB-0034 – 3/11

FIC000014311

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

I, Toni Ann Perkins, Secretary of the XL SPECIALTY INSURANCE COMPANY and GREENWICH INSURANCE COMPANY a corporation of the State of Delaware, do hereby certify that the above and forgoing is a full, true and correct copy of Power of Attorney issued by said Company, and that I have compared same with the original and that it is a correct transcript there from and of the whole of the original and that the said Power of Attorney is still in full force

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation, at the City of Hartford, this 22nd day of November 2013.

XL SPECIALTY INSURANCE COMPANY CORPORATE SEAL DELAWARE

GREENWICH INSURANCE COMPANY CORPORATE SEAL DELAWARE

Toni Ann Perkins

SECRETARY

IN WITNESS WHEREOF, XL REINSURANCE AMERICA INC. has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officers this 22nd day of July, 2013.

XL REINSURANCE AMERICA INC. CORPORATE SEAL NEW YORK

XL REINSURANCE AMERICA INC.

by: J. P. Welch

SENIOR VICE PRESIDENT

Attest: Toni Ann Perkins

SECRETARY

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

On this 22nd day of July, 2013, before me personally came John P. Welch to me known, who, being duly sworn, did depose and say: that he is President & CEO of XL REINSURANCE AMERICA INC., described in which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the aforesaid instrument is such corporate seal and was affixed thereto by order and authority of the Board of Directors of said Corporation, and that he executed the said instrument by like order.

KIM D. SLIVA NOTARY PUBLIC My Commission Expires June 30, 2016 STATE OF CONNECTICUT

Kim D. Sliva

NOTARY PUBLIC

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

I, Toni Ann Perkins, Assistant Secretary of the XL REINSURANCE AMERICA INC. a corporation of the State of New York, do hereby certify that the person who executed this Power of Attorney, with the rights, respectively of XL REINSURANCE AMERICA INC., the above and forgoing is a full, true and correct copy of a Power of Attorney issued by said Corporation, and that I have compared same with the original

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation, at the City of Hartford, this ___ day of _____.

XL REINSURANCE AMERICA INC. CORPORATE SEAL NEW YORK

Toni Ann Perkins

SECRETARY

This Power of Attorney may not be used to execute any bond with an inception date after July 22, 2018
SB0041

THIS DOCUMENT IS PRINTED ON A BLUE BACKGROUND

SB-0034 3/11

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PRIVACY POLICY

The XL America, Inc. insurance group (the "Companies"), believes personal information that we collect about our customers, potential customers, and proposed insureds (referred to collectively in this Privacy Policy as "customers") must be treated with the highest degree of confidentiality. For this reason and in compliance with the Title V of the Gramm-Leach-Bliley Act ("GLBA"), we have developed a Privacy Policy that applies to all of our companies. For purposes of our Privacy Policy, the term "personal information" includes all information we obtain about a customer and maintain in a personally identifiable way. In order to assure the confidentiality of the personal information we collect and in order to comply with applicable laws, all individuals with access to personal information about our customers are required to follow this policy.

Our Privacy Promise

Your privacy and the confidentiality of your business records are important to us. Information and the analysis of information is essential to the business of insurance and critical to our ability to provide to you excellent, cost-effective service and products. We understand that gaining and keeping your trust depends upon the security and integrity of our records concerning you. Accordingly, we promise that:

1. We will follow strict standards of security and confidentiality to protect any information you share with us or information that we receive about you;
2. We will verify and exchange information regarding your credit and financial status only for the purposes of underwriting, policy administration, or risk management and only with reputable references and clearinghouse services;
3. We will not collect and use information about you and your business other than the minimum amount of information necessary to advise you about and deliver to you excellent service and products and to administer our business;
4. We will train our employees to handle information about you or your business in a secure and confidential manner and only permit employees authorized to use such information to have access to such information;
5. We will not disclose information about you or your business to any organization outside the XL Insurance group of Companies or to third party service providers unless we disclose to you our intent to do so or we are required to do so by law;
6. We will not disclose medical information about you, your employees, or any claimants under any policy of insurance, unless you provide us with written authorization to do so, or unless the disclosure is for any specific business exception provided in the law;
7. We will attempt, with your help, to keep our records regarding you and your business complete and accurate, and will advise you how and where to access your account information (unless prohibited by law), and will advise you how to correct errors or make changes to that information; and
8. We will audit and assess our operations, personnel and third party service providers to assure that your privacy is respected.

Collection and Sources of Information

We collect from a customer or potential customer only the personal information that is necessary for (a) determining eligibility for the product or service sought by the customer, (b) administering the product or service obtained, and (c) advising the customer about our products and services. The information we collect generally comes from the following sources:

- Submission – During the submission process, you provide us with information about you and your business, such as your name, address, phone number, e-mail address, and other types of personal identification information;
- Quotes – We collect information to enable us to determine your eligibility for the particular insurance product and to determine the cost of such insurance to you. The information we collect will vary with the type of insurance you seek;
- Transactions – We will maintain records of all transactions with us, our affiliates, and our third party service providers, including your insurance coverage selections, premiums, billing and payment information, claims history, and other information related to your account;

- Claims – If you obtain insurance from us, we will maintain records related to any claims that may be made under your policies. The investigation of a claim necessarily involves collection of a broad range of information about many issues, some of which does not directly involve you. We will share with you any facts that we collect about your claim unless we are prohibited by law from doing so. The process of claim investigation, evaluation, and settlement also involves, however, the collection of advice, opinions, and comments from many people, including attorneys and experts, to aid the claim specialist in determining how best to handle your claim. In order to protect the legal and transactional confidentiality and privileges associated with such opinions, comments and advice, we will not disclose this information to you; and
- Credit and Financial Reports – We may receive information about you and your business regarding your credit. We use this information to verify information you provide during the submission and quote processes and to help underwrite and provide to you the most accurate and cost-effective insurance quote we can provide.

Retention and Correction of Personal Information

We retain personal information only as long as required by our business practices and applicable law. If we become aware that an item of personal information may be materially inaccurate, we will make reasonable effort to re-verify its accuracy and correct any error as appropriate.

Storage of Personal Information

We have in place safeguards to protect data and paper files containing personal information.

Sharing/Disclosing of Personal Information

We maintain procedures to assure that we do not share personal information with an unaffiliated third party for marketing purposes unless such sharing is permitted by law. Personal information may be disclosed to an unaffiliated third party for necessary servicing of the product or service or for other normal business transactions as permitted by law.

We do not disclose personal information to an unaffiliated third party for servicing purposes or joint marketing purposes unless a contract containing a confidentiality/non-disclosure provision has been signed by us and the third party. Unless a consumer consents, we do not disclose "consumer credit report" type information obtained from an application or a credit report regarding a customer who applies for a financial product to any unaffiliated third party for the purpose of serving as a factor in establishing a consumer's eligibility for credit, insurance or employment. "Consumer credit report type information" means such things as net worth, credit worthiness, lifestyle information (piloting, skydiving, etc.) solvency, etc. We also do not disclose to any unaffiliated third party a policy or account number for use in marketing. We may share with our affiliated companies information that relates to our experience and transactions with the customer.

Policy for Personal Information Relating to Nonpublic Personal Health Information

We do not disclose nonpublic personal health information about a customer unless an authorization is obtained from the customer whose nonpublic personal information is sought to be disclosed. However, an authorization shall not be prohibited, restricted or required for the disclosure of certain insurance functions, including, but not limited to, claims administration, claims adjustment and management, detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity, underwriting, policy placement or issuance, loss control and/or auditing.

Access to Your Information

Our employees, employees of our affiliated companies, and third party service providers will have access to information we collect about you and your business as is necessary to effect transactions with you. We may also disclose information about you to the following categories of person or entities:

- Your independent insurance agent or broker;

- An independent claim adjuster or investigator, or an attorney or expert involved in the claim;
- Persons or organizations that conduct scientific studies, including actuaries and accountants;
- An insurance support organization;
- Another insurer if to prevent fraud or to properly underwrite a risk;
- A state insurance department or other governmental agency, if required by federal, state or local laws; or
- Any persons entitled to receive information as ordered by a summons, court order, search warrant, or subpoena.

Violation of the Privacy Policy

Any person violating the Privacy Policy will be subject to discipline, up to and including termination.

For more information or to address questions regarding this privacy statement, please contact your broker.

FRAUD NOTICE

Arkansas	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Colorado	It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable for insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.
District of Columbia	WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.
Florida	Any person who knowingly and with intent to injure, defraud, or deceive any insurance company files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.
Hawaii	For your protection, Hawaii law requires you to be informed that presenting a fraudulent claim for payment of a loss or benefit is a crime punishable by fines or imprisonment, or both.
Kentucky	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.
Louisiana	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Maine	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or denial of insurance benefits.
Maryland	Any person who knowingly and willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly and willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

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NOTICE TO POLICYHOLDERS

New Jersey	Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.
New Mexico	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.
New York	**All Commercial Insurance Forms, Except As Provided for Automobile Insurance:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation. **Automobile Insurance Forms:** Any person who knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation. **Fire Insurance:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime. The proposed insured affirms that the foregoing information is true and agrees that these applications shall constitute a part of any policy issued whether attached or not and that any willful concealment or misrepresentation of a material fact or circumstances shall be grounds to rescind the insurance policy.
Ohio	Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.
Oklahoma	**WARNING:** Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.
Pennsylvania	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. **Automobile Insurance Forms:** Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and the payment of a fine of up to $15,000.

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NOTICE TO POLICYHOLDERS

Puerto Rico	Any person who knowingly and with the intention to defraud includes false information in an application for insurance or file, assist or abet in the filing of a fraudulent claim to obtain payment of a loss or other benefit, or files more than one claim for the same loss or damage, commits a felony and if found guilty shall be punished for each violation with a fine of no less than five thousands dollars ($5,000), not to exceed ten thousands dollars ($10,000); or imprisoned for a fixed term of three (3) years, or both. If aggravating circumstances exist, the fixed jail term may be increased to a maximum of five (5) years; and if mitigating circumstances are present, the jail term may be reduced to a minimum of two (2) years.
Rhode Island	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefitor knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Tennessee	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits. **Workers Compensation:** It is a crime to knowingly provide false, incomplete or misleading information to any party to a workers compensation transaction for the purpose of committing fraud. Penalties include imprisonment, fines and denial of insurance benefits.
Utah	**Workers Compensation:** Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement in state prison.
Virginia	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
Washington	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
West Virginia	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
All Other States	Any person who knowingly and willfully presents false information in an application for insurance may be guilty of insurance fraud and subject to fines and confinement in prison.

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NOTICE TO POLICYHOLDERS

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Policyholder Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC and possibly the U.S. Department of State. **Please read this Policyholder Notice carefully.**

OFAC administers and enforces sanctions policy based on Presidential declarations of "national emergency". OFAC has identified and listed numerous

- Foreign agents
- Front organizations
- Terrorists
- Terrorist organizations
- Narcotics traffickers

as *Specially Designated Nationals and Blocked Persons.* This list can be found on the U.S. Department of the Treasury's web site - http://www.treas.gov/ofac.

The Secretary of the Treasury also has identified a number of entities in the insurance, petroleum, and petrochemicals industries determined to be owned or controlled by the Iranian government. Business transactions with any of these entities are expressly prohibited. These entities have been added to OFAC's list of *Financial Institutions Determined To Be Owned or Controlled by the Government of Iran.* This list can be found on the U.S. Department of the Treasury's web site - http://www.treas.gov/offices/enforcement/lists/

In accordance with OFAC regulations, or any applicable regulation promulgated by the U.S. Department of State, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance will be immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, neither payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

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Client#: 337 FLATINTERMTN

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/03/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Turner Surety & Ins. Brokerage 300 Tice Boulevard 2nd Floor N Suite 205 Woodcliff Lake, NJ 07677	CONTACT NAME: Marsha Vernon PHONE (A/C, No, Ext): 201 644-2500 FAX (A/C, No): 201-644-2532 E-MAIL ADDRESS: mvernon@tsibinc.com
INSURED Flatiron Constructors, Inc. 10188 East I-25, Frontage Road Firestone, CO 80504	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Zurich American Insurance Co — 16535 INSURER B : National Union Insurance Co — 19445 INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	Y	Y	GLO593970705	06/01/2013	06/01/2014	EACH OCCURRENCE	$2,000,000
	[X] COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$300,000
	[ ] CLAIMS-MADE [X] OCCUR						MED EXP (Any one person)	$10,000
	[X] CG 20 10 & CG 20 37						PERSONAL & ADV INJURY	$2,000,000
	[X] XCU Coverage						GENERAL AGGREGATE	$4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$4,000,000
	[ ] POLICY [X] PRO-JECT [ ] LOC							$
A	AUTOMOBILE LIABILITY	Y	Y	BAP593970805	06/01/2013	06/01/2014	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	[X] ANY AUTO						BODILY INJURY (Per person)	$
	[X] ALL OWNED AUTOS [ ] SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	[X] HIRED AUTOS [X] NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
B	[ ] UMBRELLA LIAB [X] OCCUR	Y	Y	BE20562121	06/01/2013	06/01/2014	EACH OCCURRENCE	$5,000,000
	[ ] EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$5,000,000
	[ ] DED [X] RETENTION $10,000							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N		Y	WC654246204	06/01/2013	06/01/2014	[X] WC STATU-TORY LIMITS [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [N]	N/A					E.L. EACH ACCIDENT	$1,000,000
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Project Description: Carolina Bays Parkway (SC 31)
Project Location: Horry County, South Carolina
Project Number: HORR
South Carolina File Number: 26.036775A, 26.036775A.1, 26.036775A.2, 26.036775A.3, 26.036775A.4, & 26.036775A.5
(See Attached Descriptions)

CERTIFICATE HOLDER

South Carolina Department of Transportation
Director of Construction
955 Park Street - Room 330
Columbia, SC 29201

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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DESCRIPTIONS (Continued from Page 1)

The following are Additional Insureds as respects to Commercial General Liability but only if required by written contract and/or written agreement and coverage applies only as respects work to be performed by the Named Insured for the Additional Insured.

The following are Additional Insureds on the Automobile Liability Policy but only to the extent they meet the definition of an Insured in the Policy, which provides in pertinent part that an insured includes anyone
liable for the conduct of another insured but only to the extent of that liability.

Additional Insured: South Carolina Department of Transportation, including its appointed officials, affiliates, officers, directors, employees, representatives and authorized volunteers and/or the Owners as their interest may appear.

All coverages, terms, conditions and exclusions of the policies apply.

The General Liability coverage applies on a Primary and Non-Contributory basis per the policy terms and conditions but only if required by written contract and/or written agreement.

This Certificate of Insurance represents coverage currently in effect and may or may not be in compliance with any written contract and/or any written agreement.

Completed Operations is included in the General Liability Coverage.

Workers Compensation/Employers Liability Policy includes coverage for U. S. Longshoremans' and Harbor Workers Compensation Act. Coverage applies only if required for project and agreed to by either written contract and/or written agreement.

No Exclusion for Explosion, Collapse and Underground Hazard (XCU Coverage).

Policies currently in effect will be renewed on the applicable Expiration Dates as required with the current terms and conditions unless cancelled.

The General Liability, Automobile Liability and Workers Compensation policies includes Waivers of Subrogation in favor of the Additional Insureds but only if required by written contract and/or written agreement.

* The following cancellation conditions always apply: - Ten (10) Days for Non-Payment of Premium - If policy shown, Ten (10) Days for Workers' Compensation for fraud; material misrepresentation; Non-Payment of Premium; other reasons approved by the Commissioner of Insurance - all other Notices of Cancellations Thirty
(30) Days apply

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POLICY NUMBER: GLO593970705

COMMERCIAL GENERAL LIABILITY
CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
South Carolina Department of Transportation, including its appointed officials, affiliates, officers, directors, employees, representatives and authorized volunteers and Owners as their interest may appear	Project Description: Carolina Bays Parkways (SC31) Project Location: Horry County, South Carolina Project Number: HORR South Carolina File Number: 26.036775A, 26.036775A.1, 26.036775A.2, 26.036775A.3, 26.036775A.4, & 26.036775A.5
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
South Carolina Department of Transportation, including its appointed officials, affiliates, officers, directors, employees, representatives and authorized volunteers and Owners as their interest may appear.	Project Description: Carolina Bays Parkways (SC31) Project Location: Horry County, South Carolina Project Number: HORR South Carolina File Number: 26.036775A, 26.036775A.1, 26.036775A.2, 26.036775A.3, 26.036775A.4, & 26.036775A.5
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

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POLICY NUMBER: BAP593970805

COMMERCIAL AUTO
CA 20 48 02 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Effective Date: 06/01/2013 Expiration Date: 06/01/2014

Named Insured: Flatiron Constructors, Inc.

SCHEDULE

Name of Person(s) or Organization(s):

South Carolina Department of Transportation, including its appointed officials, affiliates, officers, directors, employees, representatives and authorized volunteers and Owners as their interest may appear.

Project Description: Carolina Bays Parkways (SC31)
Project Location: Horry County, South Carolina
Project Number: HORR
South Carolina File Number: 26.036775A, 26.036775A.1, 26.036775A.2, 26.036775A.3, 26.036775A.4, & 26.036775A.5

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

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ZURICH

Other Insurance Amendment – Primary And Non-Contributory

Policy No.	Exp. Date of Pol.	Eff. Date of End.	Agency No.	Addl. Prem.	Return Prem.
GLO593970705	06/01/2014	06/01/2013		N/A	N/A

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: Flatiron Constructors, Inc.
Address (including ZIP Code): 10188 East I-25, Frontage Road, Firestone, CO 80504

This endorsement modifies insurance provided under the:
Commercial General Liability Coverage Part

SECTION IV. COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance, is amended per the following:

1. The following paragraph is added under **a. Primary Insurance:**

   This insurance is primary insurance as respects our coverage to an additional insured person or organization, where the written contract or written agreement requires that this insurance be primary and non-contributory. In that event, we will not seek contribution from any other insurance policy available to the additional insured on which the additional insured person or organization is a Named Insured.

2. The following paragraph is added under **b. Excess Insurance:**

   This insurance is excess over:

   Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured by attachment of an endorsement to another policy providing coverage for the same "occurrence", claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

Any provisions in this Coverage Part not changed by the terms and conditions of this endorsement continue to apply as written.

Waiver Of Subrogation (Blanket) Endorsement

ZURICH

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l. Prem	Return Prem.
GLO593970705	06/01/2013	06/01/2014	06/01/2013		$ N/A	$ N/A

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us Condition:**

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery. This waiver of rights shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.

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WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY NO.	EFF DATE OF POL.	EXP. DATE OF POL.	EFF. DATE OF END.	AGENCY NO.	ADD'L. PREM.	RETURN PREM.
BAP593970805	06/01/2013	06/01/2014	06/01/2013		N/A	N/A

Named Insured Flatiron Constructors, Inc.

Address (Including ZIP Code) 101 East I-25, Frontage Road, Firestone, CO 80504

This endorsement modifies insurance provided by the following:
Business Auto Coverage Part
Truckers Coverage Part
Garage Coverage Part

SCHEDULE

Name of Person or Organization:

South Carolina Department of Transportation, including its appointed officials, affiliates, officers, directors, employees, representatives and authorized volunteers and Owners as their interest may appear

We waive any right of recovery we may have against the designated person or organization shown in the schedule because of payments we make for injury or damage caused by an "accident" or "loss" resulting from the ownership, maintenance, or use of a covered "auto" for which a Waiver of Subrogation is required in conjunction with work performed by you for the designated person or organization. The waiver applies only to the designated person or organization shown in the schedule.

U-CA-320-A (CW) (4/92)

FIC000014322

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

South Carolina Department of Transportation, including its appointed officials, affiliates, officers, directors, employees, representatives and authorized volunteers and Owners as their interest may appear

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorement Effective: 06/01/2013 Effective Policy No. WC654246204

Insured Flatiron Constructors, Inc.

Insurance Company Zurich American Insurance Company

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EXHIBIT B
to TSC's Brief in Support of Motion for Summary Judgment

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SECTION 105

CONTROL OF WORK

105.1 Authority of the RCE

1 Unless otherwise specified elsewhere in these specifications, the RCE will decide all questions that may arise regarding the quality and acceptability of materials furnished, the work performed, the rate of progress of the work; the interpretation of the Plans and Specifications; acceptable fulfillment of the Contract by the Contractor; disputes and mutual rights between Contractors; and compensation for the work. The RCE will determine the amount and quantity of the several kinds of work performed and materials furnished, which are to be paid for under the Contract.

2 The RCE has the authority to suspend the work, wholly or in part, or to withhold further payments to the Contractor for failure to correct unsafe conditions for its workers or the general public; for failure to carry out provisions of the Contract; for failure to carry out orders of the RCE; for periods as the RCE deems necessary due to unsuitable weather; for conditions considered unsuitable for the prosecution of the work; or for any other conditions or reason the RCE deems to be in the public interest. No additional compensation is paid to the Contractor because of such suspensions of work.

3 The RCE is not authorized to increase the obligation of the Department under the Contract except as herein provided.

105.2 The Design Plans, Shop Plans, and Working Drawings

1 The Design Plans (the Plans) are furnished by the Department and consist of drawings that show details necessary to provide a comprehensive idea of the construction work contemplated. Road Plans will normally show the roadway alignment, profile, grades, and typical cross-sections. In general, Structure Plans will show the general details and dimensions of the structure work contemplated. In cases where dimensions are not shown, the Structure Plans show general features and details necessary to provide a comprehensive idea of the structure. The drawings for bridges will show sufficient information to enable the Contractor to determine the work contemplated, but the RCE reserves the right to have the Plans supplemented with Construction Plans, Erection Plans, or Working Drawings by the Contractor.

2 The information contained upon the Plans regarding the results obtained from test piles or borings is a record of the conditions revealed by fieldwork and shows conditions that were encountered at the place where the test piles were driven or the borings made, as nearly as those conditions could be interpreted by the inspector observing the operations. The Contractor is not bound to accept or rely on this data. Interpret them in the light of experience, and make such additional borings and investigations, including test piles, as desired in order to determine or obtain satisfaction concerning the conditions affecting lengths of piles or entering into the construction of foundations.

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3 The Plans show the foundation depths and dimensions on which the estimated quantities are based. However, these depths and foundation dimensions are subject to such variation as may be necessary to secure a foundation satisfactory to the RCE. The Department expressly reserves the right to increase or diminish the dimensions and depths of substructures as the RCE may determine. When it is necessary to increase or decrease the height of a substructure or part thereof, the change is generally made in that portion between the bottom of pier or bent cap and the top of footing.

4 Submit all essential or required Working Drawings, Shop Plans, and Erection Plans to the Department for review and acceptance, and do not perform any work on the items involved until said plans have been accepted. Any work done or materials ordered before the acceptance of such Working Drawings, Shop Plans, and Erection Plans is at the Contractor's risk.

5 Furnish Working Drawings and Shop Plans for items or work required in **Subsection 725.1.1** and **725.1.2**.

6 In the case of steel superstructures, furnish Shop Plans and Working Drawings as required in **Subsection 709.1.3**. Include in the Shop Plans details, dimensions, material specification, and other information necessary for the complete fabrication of the metalwork and any items attached to the metalwork. In the Working Drawings or Erection Plans, include details of falsework, temporary bracing, and the erection process for the metalwork.

7 In the case of concrete structures, furnish Working Drawings and Shop Plans for concrete structures that include details that are necessary for the successful prosecution of the work and are not in the Plans furnished by the Department. Include bending details and schedules for reinforcing steel, falsework, bracing, cribs, cofferdams, and deck formwork as required by the project.

8 In the case of prestressed concrete, furnish Working Drawings and Shop Plans as required in **Subsection 704.4.2**. Include formwork details and dimensions, strand sizes, strand patterns, location of hold-down points, method for applying the required tension in the strands, method of detensioning the strands, and method of lifting and handling the prestressed members.

9 Furnish such copies of Shop Plans and Working Drawings in accordance with the requirements of **Section 725.** It is expressly understood that the acceptance of the Contractor's Shop Plans and Working Drawings is general and such acceptance does not relieve the Contractor of any responsibility.

10 The contract price of an item includes the cost of furnishing Shop Plans and Working Drawings as required.

105.3 Conformity with Plans and Specifications

1 Perform the work and furnish materials in reasonably close conformity with the lines, grades, cross-sections, dimensions, and material requirements, including tolerances shown on the Plans or indicated in the Specifications. Any deviation from the Plans or the Specifications that may be required by the exi-

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gencies of construction will be determined by the RCE and authorized in writing.

2 In the event the RCE finds the materials or the finished product in which the materials are used are not within reasonably close conformity with the Plans and the Specifications, but that reasonably acceptable work has been produced, the RCE will make a determination if the work can be accepted and remain in place. In this event, the RCE will document the basis of acceptance by Change Order, which will provide for an appropriate adjustment in the contract price for such work or materials in conformance with the determination of the quality of the work or materials

3 In the event the RCE finds the materials or the finished product in which the materials are used or the work performed are not in reasonably close conformity with the Plans and the Specifications and as such have resulted in an inferior or unsatisfactory product, remove and replace or otherwise correct the work or materials without additional compensation.

105.4 Coordination of Plans, Specifications, and Special Provisions

1 The Special Provisions, the Plans, the SCDOT Standard Drawings, the Supplemental Technical Specifications, the Supplemental Specifications, these Standard Specifications, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In the event of any discrepancy, the order of precedence is as follows:

- Special Provisions
- Plans
    - Calculated dimensions unless obviously incorrect
    - Scaled dimensions
- SCDOT Standard Drawings
    - Calculated dimensions unless obviously incorrect
    - Scaled dimensions
- Supplemental Technical Specifications
- Supplemental Specifications
- Standard Specifications.

Take no advantage of any error or omission in the Plans or of any discrepancy between the Plans and the Specifications. The RCE will make such corrections and interpretations as deemed necessary for the fulfillment of the intent of the Plans and the Specifications as interpreted by the RCE.

105.5 Cooperation by Contractors

1 The Contractor will be supplied with a minimum of two copies of the Plans and the assembled Contract, including Special Provisions. Keep one set available on the work site at all times. Notify the RCE in writing as early as possible as to the time and place at which work is expected to begin, but, in

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all cases, at least 7 days before beginning work, in order to provide sufficient time for the staking out of the work.

2 Give the work the constant attention necessary to facilitate the progress thereof, and cooperate with the RCE, the RCE's authorized representatives and inspectors, and other Contractors in every way possible. Make certain that a competent superintendent, acting as the Contractor's agent, is on the work site at all times. Ensure that the superintendent is capable of reading and thoroughly understanding the Plans and the Specifications, is thoroughly experienced in the type of work being performed, will receive instructions from the RCE or the RCE's authorized representative, and has full authority to execute such orders or directions without delay. Furnish such superintendence irrespective of the amount of work sublet.

105.6 Cooperation with Utilities

1 The Department will endeavor to notify all utility companies, all pipe line owners, or other parties affected by the work, and endeavor to have all necessary adjustments of the public or private utility fixtures, pipe lines, and other appurtenances within or adjacent to the limits of construction, made as soon as practicable. The Contractor acknowledges that the SCDOT is unable to definitely identify or locate all utilities that may be present and that the SCDOT is unable to control the timing or method of relocation. Accordingly, the Contractor accepts all risks associated with any utilities that may affect the work. If utility issues delay the critical path of the project, the Contractor may be entitled to a time extension, but under no circumstances shall THE Contractor be entitled to additional compensation.

2 Water lines, gas lines, wire lines, sewer lines, water and gas meter boxes, water and gas valve boxes, manholes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction requiring relocation or adjustment will be moved or adjusted by the utility owners under separate Agreement except as otherwise indicated in the Special Provisions, on the Plans, or as otherwise specified in **Subsection 202.2**.

3 The Plans will endeavor to show all known utilities located within the limits of the project according to information obtained. The accuracy of the Plans in this respect is not guaranteed by the Department. In the bid, consider all of the permanent and temporary utility appurtenances in their present or relocated position. No additional compensation is allowed for any delays, inconveniences, or damage of any kind sustained by the Contractor due to any interference from utility appurtenances, delays in relocation of utilities, or the operation of moving them.

4 Unless otherwise provided, the cost of temporary rearrangement of utilities made only in order to facilitate the construction of the work is borne by the Contractor.

105.7 Cooperation between Contractors

1 Where work is being performed for the Department by a Contractor and is continuous to or within the limits covered by another contract, the respective

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EXHIBIT C
to TSC's Brief in Support of Motion for Summary Judgment

Flatiron v. TranSystems
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CLAIMS PROCEDURE

1. Scope of Procedure

The following claims procedure covers all claims for additional time or compensation arising under this contract. The claims procedure is non-binding and is a condition precedent to litigation or any other form of dispute resolution. All communications testimony and all documents prepared for this procedure by either party from the time of filing the claims request to the conclusion of the procedure shall be deemed to be settlement negotiations and not admissible in litigation or any other dispute resolution procedure. The parties shall execute a written agreement to this effect prior to the submission of testimony or other evidence before the Dispute Review Board.

2. Continuation of Work

At all times during the pendency of a claim under this procedure, the contractor shall continue work pursuant to the contract and as directed by the engineer as provided by the contract. If the contractor fails to continue work, it may be declared delinquent in its work as provided by §108.08 of the South Carolina Standard Specifications for Highway Construction ("Standard Specifications").

3. Submission of Claim

The notice of claim and claim shall be submitted in accordance with §105.16 of the Standard Specifications. The notice of claim does not trigger this claims procedure. The claims procedure is initiated when the contractor submits a written fully detailed claim to the resident construction engineer ("RCE"). The claim shall contain, at a minimum, the information required by §105.16F of the Standard Specifications. The RCE shall immediately forward a copy of the claim to the District Engineering Administrator ("DEA") for resolution. If the DEA is unable to resolve the claim within thirty (30) days of receipt, the DEA shall forward it immediately to the Director of Construction ("DC"), together with documents supporting the Department's position. The DEA shall also submit the supporting documents to the contractor at this time. The DC shall investigate the claim and attempt to resolve it by mutual agreement with the contractor. If it cannot be resolved, then the DC shall make a decision and forward it to the contractor, no later than thirty (30) days after receipt by the DC. The contractor shall notify the DC within five (5) days of receipt of the DC's decision whether the contractor accepts or rejects the decision.

For all claims under Fifty Thousand Dollars ($50,000.00) the DC's decision shall be final and shall conclude the claims procedure. For the purpose of determining if a time only claim may be submitted to the Board, the value of a time only claim shall be deemed to be the number of days requested multiplied by the contract daily rate for liquidated damages. The contractor does not have a right to submit claims under $50,000.00 to the Dispute Review Board. If the contractor does not accept the DC's decision on its claim of less than $50,000.00, then its remedy is litigation or other mutually agreeable dispute resolution procedures.

For all claims in excess of $50,000.00, if the contractor rejects the DC's decision or fails to respond to the decision, the DC shall forward the claim to the Dispute Review Board.

4. Dispute Review Board

On designated contracts an *Ad Hoc* Dispute Review Board will be established to hear claims on that contract. On other contracts, claims will be heard by a Standing Dispute Review Board. All Board Members shall be neutral and unbiased. No party shall have any *ex parte* communication with any Board Member.

a. *Ad Hoc* Dispute Review Board

On designated contracts a Dispute Review Board shall be established within sixty (60) days after the Preconstruction Conference. The *Ad Hoc* Dispute Review board shall consist of one member selected by the Department, one member selected by the contractor, and a third member selected by the first two members. The third member shall be the chairperson of the *Ad Hoc* Dispute Review Board. The selection of qualified *Ad Hoc* Dispute Review Board members shall be made in accordance with the Dispute Review Board rules and procedures. (See Section 6).

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b. Standing Dispute Review Board

A Standing Dispute Review Board shall be established upon implementation of this claims procedure. The Standing Dispute Review Board shall consist of one member selected by the Department, one member selected by the Director of Heavy and Highway Division of the Associated General Contractors (Carolina's Branch), and a third member selected by the first two members. The third member shall be the chairperson of the Standing Dispute Review Board. The selection of qualified Standing Dispute Review Board members shall be made in accordance with the Dispute Review Board rules and procedures. (See Section 6). Each member shall serve a three (3) year term and the terms shall be staggered. The terms for the initial Board members shall be as follows:

Department Member - 1 year
AGC member - 2 years
Third member - (Chairperson) 3 years

The term for the initial members begins January 1997. Each member is limited to two (2) terms. The initial abbreviated terms of the Department and AGC members do not count as a term.

5. Hearing Procedure

When the DC forwards the claim to the Dispute Review Board, the DC shall provide three (3) copies of the claim and three (3) copies of all documents submitted by the contractor and the DEA. The DC shall notify both parties that the claim has been submitted to the Board.

Within fifteen (15) days of notice of submission of the claim to the Board, the contractor may submit to the DC four (4) copies of any additional documentation supporting its claim. The DC shall immediately forward three (3) copies to the Board and one (1) copy to the DEA.

Within fifteen (15) days of receipt of the contractor's supplemental documentation, the DEA may submit to the DC four (4) copies of its additional documentation. The DC shall immediately submit three (3) copies to the Dispute Review Board and one (1) copy to the contractor. Upon submission of supplemental documentation, the party shall notify the Board whether it requests a hearing.

The Dispute Review Board shall review all documents and notify the parties of what additional documents, if any, it requires. The Dispute Review Board shall schedule a hearing at either party's request or may schedule a hearing at its own discretion. However, if a hearing is requested, it must be held no later than sixty (60) days after the DC submits the claim to the Dispute Review Board. The location of the hearings shall be determined by the Board. While extensions of these deadlines are discouraged, the Dispute Review Board shall have authority to extend any of the above deadlines for just cause.

The Dispute Review Board shall have full authority to establish guidelines and procedures for the investigation of a claim. The entire process is intended to be flexible and the Board is encouraged to adapt the process to individual circumstances presented by particular disputes.

In the interest of timely resolution of all claims, the Board shall conduct all hearings and issue its final decision within ninety (90) days of receipt of the claim.

The Dispute Review Board Chairperson shall direct all meetings and hearings. Presentation of evidence shall be in accordance with the Dispute Review Board's rules and shall not be bound by judicial rules of evidence. Documents and testimony shall be presented in the order, manner and degree of detail that the Dispute Review Board deems most efficient and probative. Each party shall be allowed to make a brief initial presentation and to rebut any factual assertion by another party; however, the Dispute Review Board shall determine when enough evidence has been presented and it may limit the presentation of any documentation or testimony that it deems not relevant or redundant. At the Board's option, testimony may be required to be given under oath and the oath shall be administered by the Chairperson.

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Legal counsel for either party may be present at meetings or hearings as observers only. If a party intends to have its counsel present at a hearing, it must provide at least ten (10) days notice prior to the meeting or hearing. Legal counsel may not speak on behalf of a party, unless requested by the Board. Counsel may not examine or cross-examine witnesses, object to questions or statements during meetings or make legal motions or arguments during meetings or hearings. The Board, by majority vote, may suspend legal counsel's privilege to attend meetings or hearings.

The Dispute Review Board shall issue to the contractor and the State Highway Engineer a written recommendation with an explanation of the results as soon as reasonably possible following the conclusion of the hearing. However, in no event shall the Board take more than ninety (90) days from receipt of claim to conduct hearings and issue a recommendation. The Board is encouraged to reach a unanimous decision; however, it may provide a majority recommendation. The minority Board Member may provide a written explanation of his position. The Board shall provide further explanation of its decision if requested by either party within ten (10) days of the receipt of the decision. Issuance of the Board's recommendation concludes the claims procedure.

The parties may settle at any time during the procedure. If the dispute is resolved prior to issuance of a recommendation, the DC shall immediately notify the Board.

6. Dispute Review Board Rules and Procedures

a. Qualifications of Dispute Review Board Members

(1) All Dispute Review Board Members shall have substantial experience in highway or bridge design and construction. This experience may be technical, administrative or legal. The goal is to have a Board with the technical and administrative skills and experience that will promote confidence in its decisions.

(2) No Dispute Review Board Member shall be employed currently or within the last three (3) years with the Department, any contractor (currently or in the past pre-qualified with the Department), or any design consultant that has worked for the Department within the last three (3) years.

(3) No Dispute Review Board Member shall have any financial or ownership interest in any party to the contract nor any design consultant or major subcontractor.

b. Selection of Dispute Review Board Members

(1) *Ad Hoc* Dispute Review Board

Within twenty (20) days after the Preconstruction Conference, the contractor and Department shall each submit a list of three (3) proposed Dispute Review Board Members to each other.

The contractor shall send its list to the DC. The Department shall send its list to the contractor's designated representative. Within ten (10) days after receipt of the list, the contractor shall select one member from the Department's list and the Department shall select one member from the contractor's list and notify the other party of their selection. The DC shall notify the two selected members that they must select a third member within twenty (20) days. The DC shall also provide a copy of the claims procedure to the two (2) selected members. Within twenty (20) days of the selection of the first two members, the first two members shall select the third member and the third member shall be the chairperson of the Dispute Review Board. The third member does not have to come from the lists provided by the parties.

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EXHIBIT D
to TSC's Brief in Support of Motion for Summary Judgment

Flatiron v. TranSystems
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INTERGOVERNMENTAL AGREEMENT
FOR HORRY COUNTY CAROLINA BAYS PARKWAY EXTENSION/SC 707 PROJECT
IN HORRY COUNTY, SOUTH CAROLINA

This Intergovernmental Agreement is made and entered into as of June 20, 2007, by and among **HORRY COUNTY, SOUTH CAROLINA** (the "County"), the **SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION** (the "SCDOT"), and the **SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK**, a body corporate and politic and an instrumentality of the State of South Carolina (the "Bank"), concerning the funding and construction of the Horry County Carolina Bays Parkway Extension/SC Highway 707 Project (the "Project") in Horry County, South Carolina, which is described in more detail hereinbelow and in the Horry County Application, as supplemented, submitted to the Bank (the "Application").

WITNESSETH

WHEREAS, the Bank was created for the purpose, among others, of selecting and assisting in financing major projects by providing financial assistance to government units for constructing and improving highway facilities necessary for public purposes, including economic development, as is more fully set forth in the South Carolina Transportation Infrastructure Bank Act (South Carolina Code Ann. Sections 11-43-110, et seq., as amended);

WHEREAS, by an application submitted to the Bank dated on or about December 5, 2005, as supplemented by other submissions, the County requested financial assistance for two component highway improvement projects in Horry County consisting of extending the Carolina Bays Parkway and widening SC Highway 707;

WHEREAS, as part of its submissions, the County committed a local contribution in the amount of $93.6 million for the widening of SC Highway 707 from the revenues from the County's one percent sales and use tax recently adopted by the County pursuant to the Capital Project Sales Tax Act;

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WHEREAS, at a meeting on June 30, 2006, the Bank's Evaluation Committee (the "Committee") recommended and the Board of Directors of the Bank (the "Board") found the Application met the criteria in Section 11-43-180(B) and was an eligible and qualified Project under the South Carolina Transportation Infrastructure Bank Act, and at the same meeting, the Committee recommended and the Board approved financial assistance for the Project, which has a total estimated cost of $246 million, in the form of an initial grant of $40 million for engineering and environmental work and acquisition of rights of way and a subsequent grant, or grants, not to exceed $110 million for the Project from the next new funds available to the Bank after fully funding financial assistance for all existing obligations on all previously approved projects with all financial assistance from the Bank conditioned on the aforementioned local match contribution identified by County in the Application being made and the execution of an intergovernmental agreement between the parties in a form acceptable to the Board;

WHEREAS, on August 1, 2006, the Capital Improvements Joint Bond Review Committee ("JBRC") of the South Carolina General Assembly approved the Project and financial assistance from the Bank for the Project in the form of a grant in the initial amount of $40 million;

WHEREAS, the Component Project consisting of the extension of the Carolina Bays Parkway has received a commitment of Federal funds in the form of a Congressional earmark in the amount of $2.4 million;

WHEREAS, due to changes in circumstances since the County submitted it Application to the Bank, it is expected that all of the Bank's financial assistance may be expended on the Component Project consisting of the extension of the Carolina Bays Parkway with the County being responsible for all of the costs of the Component Project consisting of widening SC Highway 707; and

WHEREAS, the County, SCDOT, and the Bank now desire to set forth the respective responsibilities of the parties for the Project, including the funding and construction of the Project;

NOW, THEREFORE, in consideration of the mutual benefits, promises and obligations set forth herein, the sufficiency of which are hereby acknowledged and accepted by each party hereto, the County, SCDOT, and the Bank hereby agree as follows:

ARTICLE I

1. Definitions

For purpose of this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

"Account" means the account of the Bank maintained by the South Carolina State Treasurer into which is deposited monies to fund Disbursements for Eligible Costs of the Project.

"Act" means the South Carolina Transportation Infrastructure Bank Act, which is codified as South Carolina Code Ann. Sections 11-43-110, et seq., as amended.

"Application" means the Application for Financial Assistance dated on or about December 5, 2005, submitted by the County to the Bank, as supplemented by other materials submitted by the County up to the date of this Agreement.

"Budget" means the budget established by the Bank for the Project and for each Component Project.

"Component Project" means the two individual projects listed hereinbelow under the definition of "Project."

"Contract" means any contracts entered into by the County or SCDOT with any other person or firm for engineering, design, construction, materials or similar purposes for the Project.

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"Disbursements" means the transfer or payment of monies to the County or SCDOT for Eligible Costs of the Project or the payment of invoices approved by Bank and/or its designee for Eligible Costs of the Project incurred pursuant to a Contract.

"Eligible Costs" has the same meaning as set forth in Section 11-43-130 (5) of the Act as applied to qualified projects to be financed from the state highway account of the Bank.

"Event of Default" means the uncured breach by the County or SCDOT of a provision or obligation in this Agreement.

"Project" means the set of highway improvement projects in Horry County as identified and described in the Application, as supplemented, and in this Agreement which consist of the following two Component Projects (excluding bicycle and pedestrian paths, unless mandated by federal or state law or regulation) in the order of priority as established by the County:

1. Construction of a fully controlled access six lane highway extending the Carolina Bays Parkway from SC Highway 544 to SC Highway 707, including bridges over the Intracoastal Waterway and SC Highway 707 Interchange; and

2. Widening of SC Highway 707 to five lanes from U.S. 17 in Murrells Inlet to Enterprise Road in Socastee, South Carolina.

"Sales Tax" means the one percent sales and use tax established in Horry County by Horry County Council Ordinance Number 86-06 pursuant to the Capital Project Sales Tax Act (South Carolina Code Ann. Sections 4-10-300, et seq., as amended).

"SCDOT" means the South Carolina Department of Transportation.

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ARTICLE II

2. Term of Agreement

This Agreement shall be effective as of June 20, 2007, and shall terminate, except for specific provisions which are expressly stated to survive the termination of this Agreement, on the date when the last of the following events occurs: (i) the last payment on the local contribution owed by the County as set forth in Section 3.2. is made; (ii) the Bank makes the final Disbursement on the Project; or (iii) the Project is declared completed and accepted by the County, SCDOT, and the Bank.

ARTICLE III

3. Funding Commitments of Parties

3.1 Bank

The Bank shall establish a Budget for the Project within the Account of the Bank and will, from time to time as it deems necessary at its discretion, deposit into the Account, or credit the Budget for, monies from one or more sources to fund Disbursements. The Bank will make Disbursements from the Account, pursuant to Section 6.1 of this Agreement, to pay for Eligible Costs of the Project incurred directly by the County or incurred by the County on Contracts. The Bank may deposit into the Account, or credit the Budget, in such increments as it determines in its discretion, financial assistance in the form of grant(s) not to exceed $40 million from its existing sources of revenues and any monetary contributions to the Project from the County or any other source that is not expended in some other manner on the Project. This grant may be used only for Eligible Costs for engineering and environmental work and for right-of-way acquisitions for the Project.

From the next funds or proceeds of revenue bonds available to the Bank for the Project after fully funding the financial assistance for all existing obligations of the Bank on projects previously approved by the Board and the JBRC, as determined by the Bank in its discretion, and subject further to the approval of such financial assistance by the JBRC as required by the Act, the Bank may deposit into the Account, or credit the Budget, in such increments as it determines in its discretion, financial assistance in the form of grant(s) not to exceed an additional $110 million for the remainder of the Project. This grant may be used for any Eligible Costs of the Project.

In no event at any time shall the Bank be required to increase its financial assistance, grants, credits, disbursements, or contributions to the Project beyond $150 million or to disburse, advance, transfer or pay from its own monies in excess of $150 million for the Project. However, subject to the provisions of Section 5.5 of this Agreement, the County is not precluded from submitting requests for additional financial assistance to the Bank for consideration if needed to complete the Project. Any savings in the total cost of the Project shall be credited against and reduce the amount of the Bank's grants to the Project. Furthermore, any state (other than the Bank's), County (other than the Sales Tax), municipal, regional government or private funds of any kind or any Federal funds (other than the Congressional earmark of $2.4 million) of any kind provided or available for the Project in any form shall offset and reduce the amount of the Bank's grants for the Project on a dollar for dollar basis unless those funds are needed, as determined by the Bank, to complete the Project in a manner consistent with its original scope or with an expanded or upgraded scope.

3.2 County

The County promises to, and shall, expend $93.6 million for the Component Project designated as SC Highway 707 as its local match contribution to the Project. The County will provide the Bank a quarterly report on the status of the expenditures

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comprising the local match contribution in a form acceptable to the Bank. The expenditure of the local match contribution of $93.6 million on SC Highway 707 must be completed by the end of the seven (7) year period set forth in Section I. 5 of Horry County Council Ordinance Number 86-06.

ARTICLE IV

4. Additional Obligations of the County and SCDOT

4.1 Additional Documents and Actions

At the request of the Bank, the County and SCDOT shall execute any other documents that the Bank determines are reasonably necessary to evidence or establish the County's or SCDOT's obligations to the Bank set forth in this Agreement. The County and SCDOT acknowledge that the Bank intends to raise funds for its commitment to the Project and other qualified projects through the issuance of revenue bonds or other indebtedness as permitted under the Act. Accordingly, the County and SCDOT shall take such actions and enter into such other documents, including amendments to this Agreement or other agreements that are consistent with the substance hereof, as may be reasonably necessary to comply with South Carolina laws and regulations associated with such bonds or indebtedness and to satisfy requirements for documentation and information reasonably imposed by the Bank, prospective purchasers of such bonds, holders of such bonds, bond insurers, rating agencies, lenders or regulatory agencies and their attorneys, advisors, and representatives; provided, however, that no such action or document shall create any additional material obligation or increase any material obligation of the County or SCDOT.

4.2 Additional Warranties and Covenants of the County

The County warrants and covenants that:

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A. The County has full power and authority to execute, deliver and perform and to enter into and carry out the transactions contemplated by the provisions in this Agreement, and the execution and performance of these provisions and transactions by the County does not and will not violate any applicable law and does not, and will not, conflict with or result in a default under any agreement or instrument to which the County is a party or by which it is bound, a violation of which would cause a material adverse effect to the Bank. This Agreement has, by proper action, been duly authorized, executed and delivered by the County.

B. This Agreement is valid, binding and enforceable as to the County in accordance with its terms.

C. No further authorizations, consents or approvals of governmental bodies or agencies are required in connection with the execution and delivery by the County of this Agreement and the performance of its obligations hereunder.

D. No litigation at law or in equity, nor any proceeding before any governmental agency or other tribunal involving the County is pending or, to the knowledge of the County threatened, in which any judgment or order may be or has been rendered, or is sought, that may have a material and adverse effect upon the operations or assets of the County or would materially or adversely affect the validity of this Agreement, or the performance by the County of its obligations hereunder or the transactions contemplated hereby, including the obligation to make the local match contribution pursuant to Section 3.2 of this Agreement. The County will immediately notify the Bank in writing if any such litigation or proceeding is commenced or threatened at any time during the term of this Agreement.

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E. If requested by the Bank, the foregoing warranties and covenants shall be confirmed by a written opinion issued to the Bank by legal counsel for the County in a form and with conclusions satisfactory to the Bank.

4.3 Reimbursement of Bank

If the Bank determines at any time that any Disbursements made by it on the Project were for costs or expenses that were not Eligible Costs, were based on misstatements of fact by the County, SCDOT or the agents of either of them, or were for work, services, or materials which do not meet the design and construction specifications and standards of SCDOT and which have not been corrected to meet those specifications and standards, the Bank, at its option, may require the County or SCDOT, whichever is responsible as determined by the Bank, to reimburse the Bank or the Account for all or some portion of such costs and expenses. In the event that the County or SCDOT does not pay the full amount of the reimbursement to the Bank within ninety (90) days of the date of the notification to the County or SCDOT that such reimbursement is due the Bank or on such other terms as the Bank shall establish, the County's or SCDOT's obligation to reimburse the Bank shall be subject to the provisions of Section 11-43-210 of the Act and Article VIII of this Agreement. This Section 4.3 shall survive the termination of this Agreement.

4.4 Project Reporting

The County shall report to the Bank in writing at least quarterly on the status of each Component Project, including, but not limited to, the status of design, right-of-way acquisition, environmental and related approvals, construction, scheduled and projected draw requests, project changes, project scope changes, and any other matters identified by the Bank.

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4.5 Assistance with Municipal Cooperation and Agreements

The County shall be solely responsible for obtaining from each municipality in which any portion of a Component Project is to be constructed a properly and duly executed Municipal State Highway Project Agreement, as required by South Carolina Code Ann. Section 57-5-820, in the form attached hereto as Exhibit A and delivering the original executed Municipal State Highway Project Agreement to SCDOT. The parties to this Agreement acknowledge that the failure of a municipality to cooperate in executing such an agreement may delay a Component Project, increase the costs of a Component Project, result in a modification of or reduction in the scope of a Component Project, or otherwise impact a Component Project.

ARTICLE V

5. Project Administration

5.1 Project Administration

The SCDOT will administer the Project for the County. The County Administrator shall appoint a designee to serve as the day-to-day contact for the County for all Component Projects. The SCDOT shall oversee all planning, design, engineering, right-of-way acquisition, contract administration, inspection, awarding of contracts, the review and approval of payment of contracts, construction for the Project and each Component Project, and any related or necessary activities or functions of the Project. Preconstruction and construction services shall be obtained from third-party consultants or contractors by or on behalf of the County through the procurement process authorized by law applicable to that contract. All Contracts with third-parties shall be entered into in the name of the County as owner. However, should the SCDOT determine that it would be more efficient or cost effective or would result in more expeditious completion of the Project, the SCDOT may perform any service to the Project with its own forces. The County, subject to the terms of

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Article VI herein, authorizes SCDOT to submit draw requests directly to the Bank and authorizes the Bank to pay invoices directly to SCDOT or, if the Bank agrees therewith, directly to consultants or contractors.

The SCDOT shall be entitled to draw, and be paid hereunder, its normal and customary rates for its services that are Eligible Costs of the Project subject to review and approval by the Bank or its designee as to the reasonableness of such rates and costs and the qualification of such costs as Eligible Costs. All work, services, construction and materials used on the Project shall conform to the standards and specifications applied by SCDOT. Each Component Project shall be opened for public use upon completion subject to the terms of acceptance therefor set forth in Section 5.7 of this Agreement.

Notwithstanding the provisions of this Agreement, the role of SCDOT and services provided by SCDOT on the portion of the Component Project designated as SC Highway 707 not funded by the Bank under this Agreement shall be governed by the Intergovernmental Agreement between SCDOT and County for the Continuation of the County RIDE II Program dated _____, 2007.

5.2 Contracting Methods

The SCDOT may solicit the contractor or consultant services needed to complete each Component Project by the procurement method it deems will result in the selection of the best qualified firm, lowest contract price, or the best value for that Component Project, so long as SCDOT is authorized by law to employ such method. Contract forms shall be design-bid-build, design-build, or any other form permissible by law that SCDOT determines will result in the most cost-effective, efficient and expeditious delivery of that Component Project.

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5.3 Scope of Project

The SCDOT and the County shall agree in writing on the general scope of each Component Project prior to soliciting contract proposals. The County shall keep the Bank informed of the scope of each Component Project and all changes or refinements to such scope through the quarterly status reports required by Section 4.4 of this Agreement.

5.4 Change Orders

The SCDOT may authorize change orders it deems necessary to complete the Component Projects within the scope for that Component Project approved by the County. The SCDOT shall obtain the prior approval of the County for any change orders which may materially increase estimated costs for a Component Project or materially alter the scope of a Component Project. The SCDOT shall promptly report each change order requiring the approval of the County to the County, and the County shall promptly inform the Bank of each such change order.

5.5 Project Delivery

SCDOT shall perform the work on the Component Projects in accordance with the priorities established through consultation with the County. The SCDOT does not guarantee completion of each Component Project within the scope approved by the County and within the Budget for that Component Project. The SCDOT shall obtain the authorization of the County prior to awarding any construction contracts or project delivery contracts where the award would cause the total estimated budget for a Component Project to be exceeded. If the available funds are not sufficient to complete each Component Project within the approved scope for that Component Project, the County shall be responsible for obtaining or providing additional funding for the Project, reducing the scope of either Component Project or both Component Projects to conform to available funding, or some combination thereof.

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The parties recognize that the funding by the Bank for the Project is finite and limited to the commitments set forth in Article III herein. Therefore, prior to awarding a Contract on a Component Project, the County and SCDOT will ascertain whether the estimated contract price plus any claims or potential claims under prior Component Projects would exceed the remaining available funds. In such event, the County and SCDOT will not pursue that Contract until additional funds are secured or the scope of the Component Project is reduced with the approval of the County. However, the foregoing shall not be construed to obligate any party to this Agreement to provide such funds.

5.6 Utility Relocations

5.6.1 Utility relocations will be paid based on *prior rights*. Where a utility establishes a prior right of occupancy in its existing location, the County will be responsible for the cost of that relocation, including all real and actual costs associated (engineering, easements, construction, inspections, and similar costs). Prior rights may be established by the following means:

5.6.1.1 The utility holds a fee, and easement, or other real property interest, the taking of which is compensable in eminent domain.

5.6.1.2 The utility occupies a SCDOT right-of-way and under an existing agreement with SCDOT is not required to relocate at its own expense.

5.6.2 Where the utility cannot establish a prior right of occupancy, the utility will be required to relocate at its own expense. However, in some

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cases, the County may elect to use Project funds for all or part of such utility costs.

5.6.3 If Federal funds are used for utility relocations, the County shall comply with applicable Federal regulations (23 C.F.R. 645 A and B).

5.7 Acceptance

Upon completion of the Extension Project, the State Highway Engineer will recommend to the SCDOT Commission the acceptance of the Extension Project into the State Highway System, as defined by South Carolina Code Ann. Section 57-5-10, as amended, for all purposes including maintenance. Work performed by the SCDOT on roads owned by the County or any municipality incidental to work on a Component Project shall not be construed as requiring SCDOT to accept such roads into the State Highway System.

5.8 Right-of-Way Acquisition

All rights-of-way for the Project shall be acquired in the name of the SCDOT or the County as determined by the mutual agreement of those two parties, and the laws and procedures of the State of South Carolina for acquiring rights-of-way shall apply and be followed. In acquiring such rights-of-way for the Project, the SCDOT shall act as the agent for the County and SCDOT shall have the sole authority to determine the interest to be acquired, whether fee simple or easement. Upon completion and acceptance into the State Highway System of each Component Project, the County will deed all of its interests in the rights-of-way for that Component Project, if any, to the SCDOT free of all encumbrances. If any right-of-way for the Project which was acquired with funds provided by the Bank is not used for the Project and is sold conveyed, transferred or otherwise disposed of, the proceeds of thereof, less the costs of the sale, shall be paid to the Bank. Any unused right-of-way acquired for the Project shall not be sold, conveyed, transferred or otherwise disposed of without the

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written approval of the Bank. This Section 5.8 shall survive the termination of this Agreement.

ARTICLE VI

6. Conditions Precedent to Bank's Disbursements:

6.1 Draw Requests

The Bank's obligation to make Disbursements arises only upon receipt of a draw request from SCDOT and the Bank's approval thereof, which draw request shall be in a form approved by the Bank, and is further conditioned upon all of the following being met or verified by the SCDOT or the County:

6.1.1 No lien or other interest shall have attached to a Contract, nor any rights-of-way, real property or improvements related thereto.

6.1.2 Construction of the completed portions of the Project described in the relevant Contract shall have been carried out substantially in accordance with the applicable plans, standards and specifications.

6.1.3 No event of default exists under this Agreement or any Contract.

6.1.4 No event or condition shall have occurred or arisen which prevents the Bank from obtaining funds sufficient to complete its financial assistance to the Project or from receiving the other contributions necessary to make the remaining Disbursements due under this Agreement or to complete the Project.

6.1.5 The County shall have fulfilled all of the warranties, covenants and obligations set forth in this Agreement.

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6.1.6 The SCDOT shall have approved the draw request and certified that the entire payment applied for in the draw request is for Eligible Costs of the Project.

6.1.7 No action shall have been taken by the County or any other person, firm or entity to prevent the collection of the Sales Tax, payment of the revenues from the Sales Tax to the County, or the timely expenditure of the revenues from the Sales Tax for the local match contribution pursuant to Section 3.2 of this Agreement.

6.1.8 The draw request shall be reviewed and approved by the Program Manager assigned by SCDOT to the Project.

ARTICLE VII

7. Indemnification of Bank

To the maximum extent permitted by law, the County shall defend, indemnify and hold the Bank harmless from and against any and all liabilities, claims, actions, damages, judgments and attorneys' fees and related expenses and costs in any way arising out of or relating to the design, location, construction, modification, or operation of the Project, or any portion or component thereof, or the selection, use or payment of persons or firms for design, construction, modification, or operation of the Project, or any portion or component thereof. In the event the County does not pay the full amount of any such indemnification to the Bank within ninety (90) days of the date of the notification to the County that such indemnification is due the Bank or such other time period established by the Bank, the County's obligation to pay the Bank for such indemnification shall be subject to the provisions of Section 11-43-210 of the Act. This Section 7 shall survive the termination of this Agreement. The SCDOT shall be responsible for all claims arising from its own wrongful acts arising from any services it performs on behalf of the County, and in the event of such a claim or claims, the SCDOT shall be subject to the provisions of this Section 7 thereby requiring it to indemnify and hold harmless the Bank to the maximum extent permitted by law.

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ARTICLE VIII

8. Bank's Rights and Remedies

8.1 Events of Default and Remedies as to the SCDOT

In the event SCDOT shall violate or fail to comply with any provision or obligation under this Agreement (including other agreements and obligations incorporated herein), and if such failure continues for a period of thirty (30) days after receipt of a written notice of such default from the Bank, such failure shall constitute an Event of Default hereunder. Among other rights and remedies available to the Bank following an uncured Event of Default, the Bank shall have the right to cease making any further Disbursements under this Agreement with respect to the Project until such Event of Default has been cured. The Bank shall also have and may pursue any other remedies available under this Agreement or South Carolina law, except as such remedies may be expressly limited by the specific provisions of this Agreement.

8.2 Non-Local Match Contribution Events of Default as to the County

In the event the County shall violate or fail to comply with any provision or obligation under this Agreement (including other agreements and obligations incorporated herein) other than an obligation concerning payment of the local match contribution required by Section 3.2 of this Agreement, and if such failure continues for a period of thirty (30) days after receipt of a written notice of such default from the Bank, such failure shall constitute a Non-Local Match Contribution Event of Default hereunder.

8.3 Local Match Contribution Events of Default as to the County

In the event the County shall fail to complete the local match contribution as required under Section 3.2 of this Agreement, then such failure shall be deemed a Local Match Contribution Event of Default.

8.4 Remedies for the Bank as to the County

Whenever any Event of Default occurs, any one or more of the following remedies may be pursued by and shall be available to the Bank against the County in addition to those provided in other sections of this Agreement:

A. As to any Non-Local Match Event of Default, any obligation the County failed to perform shall be deemed a ministerial act and subject to the remedies of mandamus and mandatory injunction requiring the County to perform the obligation, and the Bank shall be deemed to have no adequate remedy at law for such Event of Default.

B. In the event of a Local Match Contribution Event of Default, the Bank shall have reasonable access to inspect, examine, copy and audit the books, records, accounts, and financial data of the County, or any records of the State Treasurer or South Carolina Department of Revenue pertaining to the County, and the Bank may reduce its grant or grants for the Project in the same proportion as the County failed to fund the local match contribution required by Section 3.2 of this Agreement.

C. The County shall pay the Bank the reasonable attorneys' fees and expenses incurred by the Bank in pursuing any remedy for any Event of Default.

D. In the event the County fails to make any payment to the Bank in full by the due date, as required by this Agreement, it acknowledges the authority

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of the State Treasurer under Section 11-43-210 of the Act to withhold funds allotted or appropriated by the State to the County and to apply those funds to make or complete any such payment. The County agrees that the current provisions of Section 11-43-210 are hereby incorporated into this Agreement verbatim as an independent and separate contractual obligation of the County and shall be enforceable against the County and survive even if Section 11-43-210 is repealed or its application is reduced or amended by action of the General Assembly, or it is otherwise abrogated or its application is reduced or modified by a court or court decision. The Bank will notify the County prior to requesting that the State Treasurer withhold such funds.

8.5 Remedies Cumulative; Nonwaiver

All rights and remedies of the Bank provided for in this Agreement or in any other related document as to any party are cumulative, shall survive the termination of this Agreement, and shall be in addition to any and all other related rights and remedies provided for or available to the Bank at law, including those contained in the Act, or in equity. The exercise of any right or remedy by the Bank shall not in any way constitute a cure or waiver of an Event of Default, nor invalidate any act done pursuant to any notice of the occurrence of an Event of Default.

ARTICLE IX

9. General Conditions

9.1 Waivers

No waiver of any Event of Default by the County or SCDOT hereunder shall be implied from any delay or omission by the Bank to take action on account of such Event of Default, and no express waiver shall affect any event of default other than the Event of Default specified in the waiver and it shall be operative

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only for the time and to the extent therein stated. Waivers of any covenants, terms or conditions contained herein must be in writing and shall not be construed as a waiver of any subsequent or other breach of the same covenant, term or condition. The consent or approval by the Bank to or of any act by the County or SCDOT requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of the Bank hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy by the Bank.

9.2 Benefit and Rights of Third Parties

This Agreement is made and entered into for the sole protection and benefit of the Bank, the SCDOT and the County, and their successors and assigns. No other persons, firms, entities, or parties shall have any rights, or standing to assert any rights, under this Agreement in any manner, including, but not limited to, any right to any Disbursements at any time, any right to require the Bank to apply any portion of the amounts committed herein that have not been disbursed by the Bank to the payment of any such claim, or any right to require the Bank to exercise any right or power under this Agreement or arising from any Event of Default of any kind by the County or SCDOT. Nor shall the Bank owe any duty or have any obligation whatsoever to any claimant for labor or services performed or materials or supplies furnished in connection with the Project. No other persons, firms, entities, or parties shall, under any circumstances, be deemed to be a beneficiary of any conditions or obligations set forth in this Agreement, any or all of which may be freely waived in whole or in part by the Bank at any time, if in its sole discretion, it deems it desirable to do so.

9.3 No Liability of Bank

The Bank makes no representations and assumes no obligations or duties as to any person, firm, entity, or party, including the parties to this Agreement,

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concerning the quality of the design, construction, modification, or operation of the Project, or any portion or component thereof, or the absence therefrom of defects of any kind. The Bank shall not be liable in any manner to any person, firm, entity, or party, including the parties to this Agreement, for the design, location, construction, modification, or operation of the Project, or the failure to design, locate, modify, operate, or construct the Project or any portion or component thereof, generally or in any particular manner. The Bank shall not be liable in any manner on any Contract to which it is not a named party, the execution of which has not been properly and duly authorized by the Board, or which has not been so executed by the Bank.

9.4 Assignment

The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, neither the County, nor SCDOT shall not assign or delegate this Agreement, any of its respective rights, interest, duties or obligations under this Agreement, or any Disbursements without the prior written consent of the Bank; and any such attempted assignment or delegation (whether voluntary or by operation by law) without said consent shall be void. In the event that a Non-Local Match Contribution Event of Default or Local Match Contribution Event of Default occurs which is not cured by the County to the satisfaction of the Bank, the Bank may require the County to assign all Contracts, licenses, permits, approvals and authorizations for the Project or a Component Project, together with all plans, drawings, and specifications, to the SCDOT or some other entity which has the option of accepting or not accepting the assignment.

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9.5 Captions

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent or meaning of any provision hereof.

9.6 Notices

All notices required to be given hereunder, except as otherwise provided in this Agreement, shall be deemed effective when received by the other party, through certified mail, registered mail, personal delivery, or courier delivery. All such notices shall be addressed to the parties as follows:

Horry County

South Carolina Transportation Infrastructure Bank
Chairman
South Carolina Transportation Infrastructure Bank
955 Park Street, Room 102
Columbia, SC 29201

South Carolina Department of Transportation:
Tony L. Chapman, State Highway Engineer
P.O. Box 191
Columbia, SC 29202-0191
or
955 Park Street, Room 314
Columbia, SC 29201.

9.7 Amendments

Any amendment to this Agreement shall only be made through a written instrument duly authorized and signed by each party hereto.

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9.8 Savings Clause

Invalidation of any one or more of the provisions of this Agreement by any court of competent jurisdiction shall in no way affect any of the other provisions hereof, all of which shall remain, and is intended by the parties to remain, in full force and effect.

9.9 Execution in Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Agreement it shall not be necessary to produce or account for more than one such fully executed counterpart.

9.10 Authority to Execute

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

[SEPARATE SIGNATURE PAGES FOR EACH PARTY TO FOLLOW]

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SIGNATURE PAGE FOR HORRY COUNTY

IN WITNESS WHEREOF, Horry County has caused this Agreement to be executed on its behalf and its seal to be affixed hereto.

Horry County, South Carolina

By: _____

Printed Name: Danny Knight

Title: Administrator

Attest:

By: Patricia S. Hartley

Printed Name: Patricia S. Hartley

Title: Clerk to Council

(SEAL)

[Approved by action of Horry County Council at its meeting held on June 19, 2007]

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SIGNATURE PAGE FOR BANK

IN WITNESS WHEREOF, the South Carolina Transportation Infrastructure Bank has caused this Agreement to be executed on its behalf and its seal to be affixed hereto.

South Carolina Transportation Infrastructure Bank

By: _____
Donald D. Leonard,
Chairman

Attest: _____
James M. Holly
General Counsel

(SEAL)

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SIGNATURE PAGE FOR SCDOT

IN WITNESS WHEREOF, South Carolina Department of Transportation has caused this Agreement to be executed on its behalf and its seal to be affixed hereto.

South Carolina Department of Transportation

By: H B Limehouse

H. B. Limehouse, Jr., ~~Executive Director~~ Chief Administrative Officer

Recommended by: Beacham O. Brooker, Jr.

Printed Name: Beacham O. Brooker, Jr.

Title: Assistant Chief Counsel

(SEAL)

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Exhibit A

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MUNICIPAL STATE HIGHWAY PROJECT AGREEMENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF)

RESOLUTION

Road/Route
File
Item
Project
PIN

WHEREAS, the South Carolina Department of Transportation ("SCDOT") proposes to construct, reconstruct, alter, or improve the certain segments of the highway(s) in the State Highway System referenced above which are located within the corporate limits of _____ (hereinafter, "the City"); and

WHEREAS, the City wishes to authorize the construction and improvements of the aforesaid highway(s) in accordance with plans prepared by the SCDOT ("the Project Plans");

NOW THEREFORE, BE IT RESOLVED that, pursuant to S.C. Code §57-5-820 (1976, as amended), the City does hereby consent to the construction or improvements of the aforesaid highway(s) within its corporate limits in accordance with the Project Plans, and further, the City, having reviewed the plans for said construction, does hereby approve said plans as provided for in Code §57-5-830.

BE IT FURTHER RESOLVED, that the foregoing consent and approval represents the sole approval necessary from the City for SCDOT to complete the project under the Project Plans and constitutes a waiver of any and all other requirements with regard to construction within the City's limits. The foregoing waiver and consent shall extend to the benefit of utility companies engaged in relocating utility lines on account of the project. Further, the City shall exempt all existing and new right-of-way and all other properties purchased in connection with right-of-way for the highway(s) from any general or special assessment against real property for municipal services.

BE IT FURTHER RESOLVED, that the City will assist SCDOT in causing all water, sewer and gas pipes, manholes, or fire hydrants, and all power or telephone lines or poles located within the existing right-of-way to be relocated under the plans at the utility company's expense. To the extent that City-owned utilities are to be relocated in accordance with the project plans, those utility pipes, lines, or hydrants may be replaced upon the new highway right-of-way at such locations as may be approved by SCDOT's project manager. The City agrees to indemnify and hold harmless SCDOT to the fullest extent allowed by law against any and all claims or actions brought against it arising out of the placing, maintenance, or removal of any utilities by the City or its contractors. Future utility installations by the City within the limits of the new right-of-way after project completion shall be pursuant to a standard utility encroachment permit obtained in the normal course and issued pursuant to SCDOT's "A Policy for Accommodating Utilities on Highway Rights-of-Way", August 2005, as revised.

BE IT FURTHER RESOLVED, that the City hereby signifies its intention to faithfully observe the provisions of Chapter 5, Title 56, Code of Laws of South Carolina,

1976, and all amendments thereto relating to the regulation of traffic on the street, or streets, to be constructed, reconstructed, altered or improved as hereinabove identified and further agrees to refrain from placing or maintaining any traffic control devices upon any section of said street, or streets, without having first obtained written approval of the South Carolina Department of Transportation as required in S.C. Code §56-5-930 (1976, as amended), nor enacting any traffic regulation ordinances inconsistent therewith.

IN WITNESS WHEREOF, This Resolution is adopted and made a part of the Municipal records this _____ day of _____, 20 , and the original of this Resolution will be filed with the South Carolina Department of Transportation at Columbia.

Dated:

_____, South Carolina

Municipality

ATTEST:

By: _____
Mayor

_____
Clerk

_____

_____

_____

_____

_____

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

RESOLUTION NO.: R-110 - 07

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN HORRY COUNTY, THE STATE INFRASTRUCTURE BANK (SIB) AND THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION (SCDOT) AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT.

WHEREAS, the SIB has committed the distribution of $40 Million Dollars immediately and an additional $110 Million Dollars in the future for use in the condemnation, design and construction of the extension of South Carolina Highway 31 (Carolina Bays Parkway) southward from Highway 544 to Highway 707; and

WHEREAS, the SCDOT will assume the primary responsibility for various aspects of the roadway project; and

WHEREAS, the three (3) parties have agreed to the material terms and conditions relating to the overall scope of the project, all as set forth in the attached IGA; and

WHEREAS, this Council has reviewed the document and finds it to be thorough, complete and accurate; and, according, Council accepts and approves the Agreement as written.

NOW, THEREFORE, the County Administrator is authorized to execute the IGA in behalf of Horry County and, thereafter, to take all appropriate action to comply with the terms thereof.

AND IT IS SO RESOLVED

Dated this 14th day of June, 2007

HORRY COUNTY COUNCIL

Liz Gilland, Chairman

Harold G. Worley, District 1

Brent J. Schulz, District 2

Marion D. Foxworth, III, District 3

Michael L. Ryan, District 4

I certify this document to be a true and correct copy.

Patricia S. Hartley

Patricia S. Hartley, Clerk to Council

Howard D. Barnard, III, District 5

James R. Frazier, District 7

W. Paul Prince, District 9

Al Allen, District 11

Robert P. Grabowski, District 6

Carl H. Schwartzkopf, District 8

Kevin J. Hardee, District 10

ATTEST:

Patricia S. Hartley, Clerk to Council

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DRUG-FREE WORKPLACE CERTIFICATION

for

SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK AGREEMENT

on

_____

In accordance with Section 44-107-30, South Carolina Code of Laws (1976), as amended, and as a condition precedent to the effectiveness of the Agreement, the undersigned, who is an authorized representative of the _____, certifies on behalf of the _____ that the _____ will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensations, possession, or use of a controlled substance is prohibited in the _____ 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 a workplace;
   b. the person'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 above;

4. Notifying the employee in the statement required by Item 1 above that, as a condition of employment of this 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 five days after the conviction;

5. Notifying the South Carolina Transportation Infrastructure Bank within ten (10) days after receiving notice under Item 4.b. above 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 in Section 44-107-50; 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 above.

Date: JUNE 20, 2007

Horry County

By: [signature]

Printed Name: DANNY KNIGHT

Title: ADMINISTRATOR

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MICHAEL B.T. WILKES, P.A.▪ ◊
C. DANIEL ATKINSON ▪ ▸
J. ALEXANDER JOYNER •
W. SPENCER BARROW ▸
REED W. MULBRY•
BRIAN M. PETERS, JR.*

• CHARLESTON OFFICE
▪ ALSO MEMBER GA BAR
▸ ALSO MEMBER NC BAR
◊ CERTIFIED MEDIATOR
* ALSO MEMBER OF FL BAR

WILKES ATKINSON & JOYNER, LLC
ATTORNEYS AT LAW

Reply to: SPARTANBURG OFFICE
127 DUNBAR STREET, SUITE 200
SPARTANBURG, SC 29306
PHONE: 864.591.1113
TOLL FREE: 866.920.1113
FAX: 864.591.1767

CHARLESTON OFFICE
320 BROAD STREET, SUITE 220
CHARLESTON, SC 29401
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WWW.WAJLAWFIRM.COM

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April 4, 2023

Via E-Filing Only
The Honorable Renee Elvis
Horry County Clerk of Court
1301 Second Avenue
Conway, SC 29528

Re: ***Flatiron Constructors, Inc. v. TranSystems Corporation***
Court of Common Pleas, Horry County
C.A. No.: 2022-CP-26-06116

Dear Ms. Elvis,

Please find attached to this letter **Exhibit E** to Defendant's Brief in Support of Defendant's Motion for Summary Judgment. Due to size constraints, we were unable to file this Exhibit with the Brief. Please have the docket note that this exhibit is part of the Defendant's Brief in Support of its Motion for Summary Judgment.

Please advise if you have any questions.

Sincerely,

s/ Michael B. T. Wilkes

Michael B. T. Wilkes, S.C. Bar No. 9607
mwilkes@wajlawfirm.com

MBTW: jjs
cc (via E-Filing Only):
Carter B. Reid, Esq.
Bryan Patrick Bailey, Esq.
Mason A. Goldsmith, Jr., Esq.
C. Daniel Atkinson, Esq.

EXHIBIT E
to TSC's Brief in Support of Motion for Summary Judgment

Flatiron v. TranSystems
C.A. No. 2022-CP-26-06116

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955 Park Street
P. O. Box 191
Columbia, SC 29202-0191
Telephone: (803) 737-1308
Fax: (803) 737-2389

Fax

To: Mr. Jim Fisher	**From:** R. Touchberry
Fax: 843-529-9616	**Pages:** 27 (including cover)
Phone:	**Date:** 12/16/11
Re:	**CC:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** **Please Reply**

● **Comments:**

Have a good Christmas!

– Russ

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IGA Consultant
Basic Agreement
TRACK # 06-07(6)

AGREEMENT AND CONTRACT BETWEEN
HORRY COUNTY
AND
TRANSYSTEMS CORPORATION

****

SECTION I. GENERAL RECITALS

THIS AGREEMENT and Contract, made and entered into this 15th day of December, 2011, by and between Horry County, South Carolina, hereinafter referred to as "County", and TranSystems Corporation, a *corporation organized and existing under and by virtue of the laws of the State of Missouri and qualified to do business in the State of South Carolina, with its principal offices in Kansas City, Missouri located at Suite 400, 2400 Pershing Road, Kansas City, MO 64108, hereinafter referred to as "Consultant".

*Joint venture, individual, government agency, corporation, partnership or other. If joint venture, a copy of the Joint Venture Agreement is required as an attachment.

WITNESSETH:

WHEREAS, County desires to employ Consultant to furnish personnel and render professional engineering services for use and benefit of the County in the development of the project as hereinafter more particularly described; and

WHEREAS, the Consultant has represented to the County that the Consultant is experienced and qualified to provide the services contemplated by this Agreement and the County has relied upon such representation; and

NOW, THEREFORE, in consideration of these premises and of the mutual covenants herein set forth, it is agreed by and between the parties hereto as follows:

SECTION II. SCOPE OF SERVICES REQUIRED OF CONSULTANT

A. PROJECT DESCRIPTION. Construction, Engineering and Inspection Services for Extension of SC 31 from SC 544 to SC 707. Project File numbers 26.036775A, 26036775A.1, 26.036775A.2, 26.036775A.3, 26.036775A.4, and 26.036775A.5.

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B. GENERAL STATEMENT OF CONSULTANT'S ASSIGNMENT. For the heretofore described project, Consultant will provide engineering services as described in ATTACHMENT "A", SCOPE OF SERVICES AND SCHEDULE, attached hereto and specifically made a part of this Agreement. Work and liaison will be performed by the Consultant through its North Charleston office in South Carolina located at Suite 220, 4390 Belle Oaks Drive, North Charleston, SC 29405.

C. CERTIFICATION FOR PROJECT PLANS AND SPECIFICATIONS. The County and Consultant may agree to have project plans and specifications provided for by "certification". A "Certification Agreement" is attached hereto and specifically made a part hereof. The "certification" will be executed if agreed by the parties as applicable.

SECTION III. SERVICES OF COUNTY

The County agrees to provide to Consultant, and at no cost to Consultant, the services and data set forth in ATTACHMENT "B", SERVICES OF THE COUNTY, attached hereto and specifically made a part of this Agreement. Liaison for the County will be through the Horry County Engineer or his authorized designee.

SECTION IV. SCHEDULE (TIME OF PERFORMANCE)

The effective date of this Agreement will be the date of execution as shown in Section I. The Consultant shall begin work upon receipt of the County's written notice to proceed.

Consultant will prosecute all phases of the work in an expedient manner, exclusive of required review time by the County, the South Carolina Department of Transportation (hereinafter "Department"), and if applicable the Federal Highway Administration as set forth in ATTACHMENT "A", SCOPE OF SERVICES AND SCHEDULE.

SECTION V. FEE AND COSTS

For the services covered under this Agreement, the Consultant shall be compensated by the County as follows:

A. In the event the extent of the Consultant's studies and work effort during all phases of work set forth can be determined with exactness at the time of negotiation, it is mutually agreed by and between the Consultant and the County that compensation to the Consultant will be on an Lump Sum Basis. Lump sum may also include approved unit cost or per parcel if considered appropriate and approved by the County.

B. In the event the extent of the Consultant's studies and work effort during all phases of work set forth cannot be determined with exactness at the time of negotiation, it is mutually agreed by and between the Consultant and the County that compensation to the

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Consultant will be the basis of the Consultant's actual cost of performing all phases of the work, plus a fixed amount to cover net fee only.

C. For the cost of outside services and associate services as may be necessary and as formally approved by the County, the Consultant shall be reimbursed by the County only for the actual cost to Consultant for such services.

D. For Consultant's services in which payment is on a cost plus fixed fee basis as described above, the actual costs of the Consultant eligible for reimbursement are those directly attributable to the accomplishment of the specific work of the Consultant. These may include:

1. Actual basic salaries of productive personnel for work time directly connected with the project.

2. Payroll Additives eligible for reimbursement.

3. The general operating overhead costs of Consultant as determined by audit of Consultant's operations.

4. The Consultant and their subconsultants shall comply with the Department's Procurement Policy Memorandum (dated February 2, 2011) Implementing FHWA Order 4470.1A, dated October 27, 2010. This memorandum and FHWA Order reference a requirement for an approved Federal Acquisition Regulation (FAR) compliant indirect cost rate to be on file with the Department.

5. Out-of-pocket direct project expenses at actual cost to Consultant. Any non-salary cost identified specifically with the project is a direct charge to the project and is eligible for compensation. Such out-of-pocket costs shall include, but not necessarily be limited to, travel and subsistence for Consultant's personnel on the project, project materials and supplies, telephone and communications, printing and reproductions, and computer services. Automobile mileage will be reimbursed at the actual cost per mile incurred provided such cost per mile does not exceed the rate established by the Internal Revenue Service for the period. Only mileage associated with the business use of vehicles will be reimbursed. Any mileage related to personal use by employees (including transportation to and from work) is unallowable. However, if contractually agreed to in advance, mileage associated with travel to a temporary work location may be reimbursed. Generally, a work location is considered to be temporary if the assignment to the new location is expected to last 1 year or less. Billings for any actual out-of-pocket expenses directly identifiable with the project shall be supported by actual account records, expense accounts, receipts and other miscellaneous supporting materials and shall be made available by Consultant for review and audit by the Department or authorized Department representative.

E. The County shall not reimburse the Consultant for any expenses relating to business development activities, attendance at any special event, function, or ceremony where attendance is for social purposes. This does not include special events, functions or a ceremony in which a written Consultant request and approval has been given to the Consultant to attend for

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the purpose of speaking and/or presenting purposes, or assisting Department staff with preparation and delivery of the function. Consultants are required to certify compliance with this paragraph on all invoices.

F. The amount of compensation set forth in ATTACHMENT "C", ENGINEERING FEE, attached hereto and specifically made a part of this Agreement, shall be the maximum payable by the County without prior written authorization from the County to increase the amount. Any such increase will also be subject to the approval of the Department and/or Federal Highway Administration if federal funds are involved. This Basic Agreement has been subjected to a pre-award audit as considered appropriate by Department auditors.

1. Compensation to consultant under the terms of this Agreement shall not exceed the lump sum maximum amount of N/A.

"or"

2. Compensation to Consultant under the terms of this Agreement shall not exceed $9,633,782.63 for salaries, payroll additives, overhead, direct cost and outside services plus a fixed fee of $372,689.60 (in the event that significant changes in the scope of work occur, the fixed fee may be adjusted to an amount that is fair and reasonable to both the Consultant and County) resulting in a maximum limit of $10,006,472.23.

G. COST RECORDS. The Consultant, and its authorized subcontractors, shall maintain cost records in such manner as to comply with the policies set forth in Federal-Aid Policy Guide, Chapter 1, Subchapter B, Part 172, Administration of Engineering and Design Related Service Contracts (23 CFR 172) and also in 48 CFR 31 of the Federal Acquisition Regulations, OMB Circular A-102, and other directives as appropriate.

H. PURCHASE AND RENTAL/LEASE. The County considers that the Consultant should have the necessary equipment and other items to perform consultant work described in the scope of services. In those cases where it becomes necessary to purchase, lease, or rent equipment or other items with project funds, prior written County approval is required. All equipment and other items approved by the County for purchase with project funds shall become the property of the County at the completion of the project.

I. RELOCATION COSTS. Consultant has represented to County that the Consultant has the necessary personnel to perform the Consultant's scope of services, and the County has relied upon such representation. In those County approved cases where it becomes necessary to relocate an employee, Consultant agrees that reimbursable relocation costs are limited to the costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of no less than 12 months) of an existing employee. Reimbursement eligibility must have prior written approval by the County.

J. OVERTIME, EXTRA-PAY SHIFTS, MULTI-SHIFTS. Where the cost to the County may be affected, this contract should be performed so far as practicable, without the use of overtime, extra-pay shifts, or multi-shifts, and, in particular, without the use of overtime as a regular employment practice. Any required overtime, extra-pay shifts and multi-shifts will be

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limited to the minimum needed for accomplishment of the specific work and will require prior written approval by the County.

SECTION VI. MODE OF PAYMENT

A. The Consultant understands and acknowledges that the County is operating under an Intergovernmental Agreement (IGA) between the County and Department. The Consultant shall submit monthly invoices to the Department's assigned Project Manager who in turn will review and recommend payment to and by County.

B. Monthly Invoices. For services performed in this Agreement, Consultant shall be paid monthly based on an approved invoice. Monthly or partial payments, at the discretion of the County, may have appropriate retainage withheld until completion and acceptance of the work.

C. Acceptable Invoices. The County considers an acceptable invoice to include:

1. A breakdown of man-hours by classification and rate
2. A line item for overhead
3. A line item for profit
4. A breakdown for other direct costs
5. A breakdown for subconsultant services
6. Signature of certification by an authorized representative of the firm
7. The Department's Project Manager may request additional certifications relating to work performed.

NOTE: For approved unit cost agreements numbers 1, 2 and 3 may be combined and identified by services, volume and rate. Numbers 4 and 5 shall be by breakdown costs.

D. Certification of prompt payment to subconsultants. Consultant shall certify on each invoice for payment that the charges thereon are true and correct. The submittal of such invoice shall constitute the Consultant's certification that all subconsultants have incurred the charges shown on the invoice, will be paid within seven (7) days upon receipt of payment from the Department, and have been paid for all charges shown on previous invoices.

E. Prompt release of retainage. The Consultant may withhold as retainage up to five (5%) percent of a subconsultant's payment until satisfactory completion of all work items of a subcontract. "Satisfactory completion of all work items of the subcontract" shall mean when the County pays the Consultant for the last work item of the subcontract. The Consultant must release to the subconsultant any retainage withheld within seven (7) calendar days of the date the Consultant receives payment from the County for the last work item of the subcontract.

F. Sanctions for failure to comply. Failure to comply with any of the above prompt payment provisions shall result in one or more of the following sanctions: (1) no further payments being made to the Consultant until compliance is achieved; (2) the Consultant being declared in default of the Contract; (3) the County terminating the Contract in accordance with Section VII, Paragraph (K) of this Agreement.

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SECTION VII. GENERAL PROVISIONS

The County and the Consultant mutually agree as follows:

A. OWNERSHIP OF DOCUMENTS. Basic notes, sketches, charts and other data prepared, furnished or obtained under this Agreement will become the property of the County without restriction or limitation on their use. No material produced in whole or in part under this Agreement will be subject to copyright in the United States or in any other country. The County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Agreement. The County shall retain ownership of all plans, drawings, specifications and related documents.

B. INFORMATION TECHNOLOGY. All program management systems, software, or information technology products developed or utilized by Consultant for the project shall be able to interface with information technology systems utilized by County and Department. All systems, software or information technology developed for this project shall become the sole property of County and Department upon Contract completion, including any source code. No program management systems, software or information technology products produced in whole or in part under this Agreement will be subject to copyright by Consultant. County and Department shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all program management systems, software, or information technology products prepared by Consultant, or its subconsultants, under this Agreement.

C. FINDINGS CONFIDENTIAL. Any reports, information, data, etc. furnished to or prepared or assembled by the Consultant under this Agreement which the County requests to be kept as confidential will not be made available to any individual or organization by the Consultant without prior written approval of the County.

D. REQUIREMENTS FOR CHECKING AND REVIEWING OF PLANS.

It is the Consultant's responsibility to produce plans that conform with all specifications, guidelines and requirements stated in this Agreement unless a specific deviation has been requested in writing and approved by the County, Department and if applicable the Federal Highway Administration. All plans, whether preliminary or final, submitted to the County and/or Department, shall have been checked in their entirety for completeness, correctness, accuracy and consistency with other details in all respects, and shall have been thoroughly reviewed by the Consultant to be in compliance with these requirements prior to submission to the County and/or Department.

The spaces provided in the title box labeled "By", "CHK'D" and "REVIEWED BY" shall be signed with the initials of the persons who performed those specific functions on that portion of the project at the time of submittal to the County and/or Department. In the event that a print of a partially completed sheet is to be submitted, the initials may be added directly to the print rather than being entered on the original drawing.

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Once plans have been submitted to the County and/or Department, no changes shall be made unless the County and/or Department has been notified of the specific change. However, additions to complete the plans may be made provided the requirements for checking and reviewing are applied. All prints submitted to the County and/or Department shall have the date of submittal stamped on the title sheet.

The County and/or Department will perform a general review of the plans only. The County and/or Department's review does not relieve the Consultant of any responsibility for the completeness, correctness, consistency and accuracy of all information, dimensions, quantities, details, designs and compliance with all specifications, guidelines and requirements of this Agreement. Should any discrepancies, errors or omissions be found at any time, after submittal of the plans, corrections to plans will be made at the Consultant's expense. The Consultant shall not include the cost of corrections of faulty or deficient work on his invoice to the County and/or Department.

Failure to meet any of the above requirements may result in the withholding of payment until plans are deemed acceptable in the opinion of the County and/or Department, or may be deemed just cause for consideration of termination of this Agreement.

E. PROGRESS. The Consultant shall at all times work closely with the designated representatives of the County and Department and shall keep them fully advised as to the status of the work. The Consultant or his authorized representative will be present at all conferences, field inspections and other meetings as may be requested by the County and/or Department. Conferences or consultations may be called at any time by either party to this Agreement. The plans and work of the Consultant will be available to County, and/or Department and if applicable to appropriate representatives of the Federal Highway Administration for review at all times.

F. CONTROL. All work by Consultant is to be done in a manner satisfactory to County and Department and in accordance with the established customs, practices, and procedures of County, Department, State of South Carolina, Federal Highway Administration, including compliance with applicable sections of the Department/Federal Highway Administration STEWARDSHIP AND OVERSIGHT PLAN, dated November 2007 (included herein by reference) and any revisions thereto, and in conformity with the standards adopted by the American Associations of State Highway and Transportation Officials and approved by the Secretary of Transportation as provided in Title 23, U. S. Code, Section 109-B, as amended. The decision of Department is to control in all questions regarding location, type of design, dimension of design and similar questions. Consultant shall signify its approval on all plans, specifications and estimates prepared and delivered under the terms of this Contract.

G. INSPECTION OF WORK. The County and Department shall have access to and the right to inspect all project work and materials during regular business hours of the Consultant. The Consultant and its subcontractors shall keep and preserve all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and make such materials available at its respective offices at reasonable times during the Contract period and for three years from date of final payment under the Contract for inspection by the County,

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Department, if applicable any authorized representative of the County, Department and the Federal Highway Administration, and copies thereof shall be furnished if requested.

H. CHANGES IN CONTRACT. The County and/or Department may desire Consultant to render services for changes in connection with this project in addition to that provided for by the express provisions of this Agreement. Such additional services for changes will require a contract modification, setting forth the nature and scope of such additional services and the compensation therefor, as determined by mutual agreement between County and Consultant. Work under such contract modification shall not proceed until formally approved by the County.

I. DELAYS AND EXTENSIONS. The Consultant agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by Consultant for any delays or hindrance, from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the County may decide. Time extensions may be granted only for excusable delays such as delays beyond the control and without the fault or negligence of the Consultant.

J. FAILURE TO MAINTAIN SATISFACTORY PROGRESS

The Consultant will proceed with the work in a timely fashion, providing sufficient manpower and resources to meet the commitment to schedules, milestones, and completion dates set forth in the Contract. The County and Department may monitor the progress of the work to determine that the work is progressing sufficiently to meet the commitments agreed to in the Contract.

The Department's Program Manager in consultation with County may make a preliminary finding of delinquency if at anytime the Consultant has not met the schedules, milestones, or completion dates established in the Contract, and it appears unlikely that the work will be completed by the specified date. Upon review of the preliminary finding of delinquency, the Department's Program Development Engineer may issue a Preliminary Notice of Delinquency. The Consultant will have 15 days to present information to the Department as to why the Consultant should not be found delinquent. This information should contain a specific plan of action to meet the Contract schedules, milestones, and completion dates and/or show circumstances beyond the Consultant's control that have directly affected the Consultant's ability to meet the commitments in the Contract. Upon review of the information submitted, the Program Development Engineer will make a determination to place or not place the Consultant in a delinquent status. If a determination of delinquent status is made, the Program Development Engineer will issue a Final Notice of Delinquency. A Consultant receiving a Final Notice of Delinquency may appeal within 15 days to the Department's Director of Preconstruction for a review with County of the delinquent status.

A Consultant receiving a Final Notice of Delinquency shall be disqualified from receiving additional work, whether in the form of a new contract or a modification of an existing contract. The Consultant shall continue in a delinquent status until the project is in compliance with the

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schedule, or until the work required by the Contract is completed. This disqualification will become effective at the end of the 15-day appeal period if the Consultant fails to appeal or on the date of decision if the appeal is denied. A Consultant disqualified under this provision shall be barred from receiving work as an individual, firm, partnership or corporation operating under the same name or a different name.

K. TERMINATION OF CONTRACT.

(a) This Contract may be terminated by the County at any time for the convenience of County by written notice to Consultant specifying the termination date of the Contract. In the event of such termination of the Contract by the County, the Consultant will be compensated on a quantum meruit basis for its work satisfactorily performed through the termination date.

(b) Consultant also has the right to terminate this Contract if the County unreasonably fails to timely provide the service required of County under scope of services or unreasonably fails to make timely payment for consultant services rendered. In the event of such termination which is not the fault of Consultant, County shall pay to Consultant the compensation properly due including reasonable overhead and profit on work performed for services properly performed (prior to the effective date of the termination) and for reasonable reimbursable expenses properly incurred as a result of the termination.

(c) In the event Consultant through any cause fails to perform any of the terms, covenants, or provisions of this Contract on its part to be performed, or if it for any cause fails to make progress in work hereunder in a reasonable manner, or if the conduct of Consultant impairs or prejudices the interest of County, or if Consultant violates any of the terms, covenants, or provisions of this Contract, County shall have the right to terminate this Contract by giving seven (7) days notice in writing of the termination and date of such termination to Consultant. The County shall have the sole discretion to permit the Consultant to remedy the cause of the contemplated termination without waiving the County right to terminate the Contract. All drawings, specifications, and other documents relating to the design or supervision of consultant work shall be surrendered forthwith by Consultant to County. County may take over work to be done under this Agreement and prosecute the work to completion by Contract or otherwise, and Consultant shall be liable to County for all reasonable cost in excess of what the County would have paid the Consultant had there been no termination.

L. DISPUTES. In any dispute concerning a question or fact in connection with the work of this Agreement, or compensation therefor, the decision of the County in the matter shall be final and conclusive for both parties.

M. RESPONSIBILITY FOR CLAIMS AND LIABILITY. The Consultant shall assume certain risks in connection with the performance of this Agreement and shall be liable for and shall indemnify and hold harmless the County, Department and other agencies of government from claims and liability due to negligent acts of the Consultant, its subcontractors, agents or employees in connection with the prosecution and completion of the work covered by this Agreement.

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Consultant shall, until this Agreement has been fully performed or until it has been terminated by County, take out and maintain as a normal business expense Liability and Professional Errors and Omissions Insurance with coverage in the amount not less than customarily carried by any party in the performance of similar work and Public Liability and Property Damage Insurance with coverage in the amount not less than customarily carried by any party in the performance of similar work and in such form and with such insurance carriers as are available to it and acceptable to County. Consultant will secure and maintain such insurance, including vehicular insurance, as will protect it from claims under worker's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees, and for claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.

N. GENERAL COMPLIANCE WITH LAWS. The Consultant and its subcontractors shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations affecting the conduct of the work.

O. SUBLETTING, ASSIGNMENT OR TRANSFER. The Consultant shall not assign, sublet, or transfer any of the work, except as specifically provided for under the terms of this Contract, without prior written consent of the County. Such consent does not release or relieve the Consultant, as principal, from any of its obligations and liabilities under this Agreement.

Subconsultant agreements are attached in ATTACHMENT "C" ENGINEERING FEE. All Contract provisions shall be furnished to all subconsultants and shall apply to all subconsultant agreements.

P. ETHICS ACT. By execution of this Agreement Consultant certifies Consultant is in compliance with South Carolina's Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended. The following statutes require special attention: (a) Offering, giving, soliciting, or receiving anything of value to influence action of public employee – Section 8-13-790, (b) Recovery of kickbacks – Section 8-13-790, (c) Offering, soliciting, or receiving money for advice or assistance of public official – Section 8-13-720, (d) Use or disclosure of confidential information – Section 8-13-725, (e) Persons hired to assist in the preparation of specifications or evaluation of bids – Section 8-13-1150, (f) Solicitation of state employees – Sections 8-13-755, 8-13-760 and 8-13-725.

Q. DRUG FREE WORK PLACE CERTIFICATION. By execution of this Agreement Consultant certifies Consultant will comply with all applicable provisions of The Drug-Free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

R. COVENANT AGAINST CONTINGENT FEES. The Consultant warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that he has not paid or agreed to

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pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the County shall have the right to annul this Contract without liability or, at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

S. TITLE VI. CIVIL RIGHTS ACT OF 1964. During the performance of this Agreement, Consultant, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations:

Consultant shall comply with the regulations relative to non-discrimination in Federally-assisted programs of the United States Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

2. Non-discrimination:

Consultant, with regard to work performed by it after award and prior to completion of the Contract work, shall not discriminate on the grounds of race, religion, color, sex, age, handicap, national origin, or political affiliation in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment:

In all solicitations, either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or lease of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, religion, color, sex, age, handicap, national origin, or political affiliation.

4. Information and Reports:

Consultant shall provide all information and reports required by the Regulations, or directions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County and/or Department to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to County and/or Department, and shall set forth what efforts it has made to obtain the information.

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5. Sanctions for Non-compliance:

In the event of Consultant's non-compliance with the non-discrimination provisions of this Contract, County shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to Consultant under the Contract until Consultant complies, and/or

(b) Cancellation, termination or suspension of the Contract, in whole or in part.

6. Incorporation of Provisions:

Consultant shall include the provisions of Paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directions issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as County, may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request County to enter into such litigation to protect the interest of the County and, in addition, Consultant may request the United States to enter into such litigation to protect the interest of the United States.

T. MINORITY BUSINESS ENTERPRISE.

(a) Policy. It is the policy of the County to ensure nondiscrimination in the award and administration of federally-assisted contracts and to use Disadvantaged Business Enterprises (DBEs) in all types of contracting and procurement activities according to State and Federal laws. To that end the Department has established a DBE program in accordance with regulations of the United States Department of Transportation found in 49 CFR Part 26. This Contract is subject to the provisions of the Department's DBE program and 49 CFR part 26.

(b) Consultant/Subconsultant assurances. Neither the consultant, nor its subconsultants, shall discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of federally-assisted contracts. Failure by the Consultant, or any of its subconsultants, to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the County deems appropriate. Consultant shall advise its subconsultant of these provisions by including this clause in each of its subcontracts.

(c) Quoter information. At the conclusion of this Contract, the Consultant shall submit to County the names and addresses of all subconsultants who quoted subcontracts for this Contract.

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(d) Reports on Subconsultant payments. At the conclusion of this Contract, the Consultant shall report to County all payments made to subconsultants on this Contract. The report shall include the following information as to each subconsultant: the name and address of the subconsultant and the total payments made to the subconsultant.

U. EQUAL EMPLOYMENT OPPORTUNITY. In connection with the execution of this Contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Consultant shall comply with Executive Order 11246, as amended by the Executive Order 11375, and as supplemented by Department of Labor Relations (41 CFR, Part 60) (OMB Circular A-102; Attachment O; Part 14C) and shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, or national origin. Such actions will include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

V. PARTICIPATION BY FOREIGN CONSULTANTS AND SUBCONSULTANTS

The County and Department will not consider for award any proposal submitted by any consultant, and will not consent to subletting any portions of the Contract to any subconsultant, of a foreign country during any period in which such foreign country is listed by the United States Trade Representative as discriminating against U. S. firms in conducting procurements for public works projects.

For the purpose of this Special Provision, any consultant or subconsultant who is a citizen or national of a foreign country or is controlled directly or indirectly by citizens or nationals of a foreign country, shall be considered to be a consultant or subconsultant of such foreign country.

W. COMPLIANCE CONCERNING ILLEGAL ALIENS. By execution of this Agreement the Consultant as the prime consultant does hereby agree:

a) to certify its compliance with the requirements of Chapter 14 of Title 8 of the S.C. Code of Laws regarding Unauthorized Aliens and Public Employment;
b) to provide Department and County with any documents required to establish such compliance upon request; and
c) to register and participate and require agreements from sub-consultants to register and participate in the federal work authorization program to verify the employment authorization of all new employees, or to employ only workers who supply the documents required pursuant to S.C. Code 8-14-20(B)(2).

X. SUCCESSORS AND ASSIGNS. County and Consultant each binds itself, its successors, and assigns to the other party with respect to these requirements, and also agrees that neither party shall assign, sublet, or transfer its respective interest in the Agreement without the written consent of the other.

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Y. ENTIRE AGREEMENT. This Agreement with referenced exhibits, and/or attached certifications, and attachments constitutes the entire Agreement between the parties and, except for contract modifications prepared in accordance with provisions thereof, there are no collateral contracts or agreements between the parties relating to this work. The execution of this Agreement by the parties hereto represents the execution of each individual certification hereof. This Agreement and Contract is to be interpreted under the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties herein have executed this Agreement as of the day and year first written above.

Signed, sealed and executed for the Consultant:

TRANSYSTEMS CORPORATION

WITNESS: Regena M. Wells

By:

Title: Sr. Vice President

Federal ID No: 43-0839725

Signed, sealed and executed for the County:

HORRY COUNTY

WITNESS: Sandra Karigan

By:

Title: Asst. County Administrator/ County Engineer – I&R Division

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ENGINEER CERTIFICATION FOR PROJECT PLANS AND SPECIFICATIONS

Consultant's Name: TranSystems

Route Number: SC 31

File Number: 26.036775A; A.1 thru A.5

Project Number: N/A

Project Description: Extension of SC 31 from SC 544 to SC 707

In order to advance projects in an expeditious and efficient manner, County hereby assigns to the above-named consulting firm, hereinafter referred to as the Undersigned, and the Undersigned accepts full responsibility for all project plan and specification reviews including the approval of all information, dimensions, quantities, details and designs involved in the preparation and production of the project plans and specifications for the above-named project. In accepting this responsibility, the undersigned makes the following certification:

THE UNDERSIGNED CERTIFIES to be a South Carolina registered engineering firm with absolute authority to accept the responsibility for the project plans and specification involved in the project; and,

THE UNDERSIGNED CERTIFIES to produce project plans and specifications that will conform with all guidelines and requirements stated in this agreement unless a specific deviation has been requested in writing and approved by the County and DEPARTMENT, and, if applicable, the Federal Highway Administration (FHWA); and,

THE UNDERSIGNED CERTIFIES that all project plans and specifications will be checked in their entirety for completeness, correctness, accuracy and consistency with other details in all respects, and will be thoroughly reviewed by the undersigned consulting firm to be in compliance with the requirements in effect at the time of submission to the County; and,

THE UNDERSIGNED CERTIFIES that each project plan sheet submitted on this project will be signed and sealed by a South Carolina Registered Engineer; and,

THE UNDERSIGNED CERTIFIES that all of the work performed under this Contract will be performed in accordance with the special provisions and specifications, and will be performed so as to meet or exceed reasonable standard of care of the profession; and

THE UNDERSIGNED CERTIFIES that by signing and sealing the plans, the undersigned assumes full, complete and conclusive liability for all discrepancies, errors or omissions found at any time in the plans or specifications. Further, that all corrections to the plans or specifications will be made at the consultant's expense and the consultant will not include the cost of corrections of faulty or deficient work on its invoice to the County, and

THE UNDERSIGNED FURTHER CERTIFIES that it agrees that failure to meet any of the above requirements may be deemed just cause, at the discretion of the County, for withholding payment on the Contract and/or termination of the Contract, without damages due to the Undersigned by County.

This Engineering Certification for Project Plans and Specification is attached to and becomes part of the agreement and project, with all terms and conditions of the agreement and project applicable hereto.

Seal

10/24/2011
Date

Firm: TRANSYSTEMS CORPORATION

By:

Title: SR. VICE PRESIDENT

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CERTIFICATION OF CONSULTANT

I hereby certify that I am the a duly authorized representative of the Consultant and that neither I nor the above consultant I here represent has:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this Agreement;

(b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement, or

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Contract except as here expressly stated (if any).

(d) been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department, state department or agency thereof. The Consultant further certifies full compliance with 23 CFR 633 Subpart A of the Federal Code.

I acknowledge that this certificate is to be furnished to the County, Department, the Federal Highway Administration, and the U. S. Department of Transportation, and is subject to applicable State and Federal laws, both criminal and civil.

CERTIFICATION OF COUNTY

I hereby certify that I am the Horry County Engineer of the State of South Carolina and that the above Consultant or its representative has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

(a) employ or retain, or agree to employ or retain, any firm or person, or

(b) pay, or agree to pay, to any firm, person, or organization, any fee, contributions, donations, or consideration of any kind, except as here expressly stated (if any).

I acknowledge that this certificate is to be furnished to the Federal Highway Administration, and U. S. Department of Transportation, and is subject to applicable State and Federal laws, both criminal and civil.

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Certification for Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed $100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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ATTACHMENT "A"

SCOPE OF SERVICES

AND SCHEDULE

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SCOPE OF SERVICES

Consultant Engineering and Inspection Services

Carolina Bays Extension

Description

The **Carolina Bays Extension** project will be on new location from SC-544 to SC-707 in Horry County. The project includes nearly 5.0 miles of roadway with approximately 3 miles being PCC pavement, a 3,633 foot bridge over the Intracoastal Waterway, a 225 foot bridge over Enterprise Road, and a 148 foot bridge over SC-707.

Scope of Services

The SCDOT and Horry County desire to hire a Consultant to perform Construction Engineering and Inspection (CEI) Services for the above described project to include, but not limited to, construction management, construction engineering, assurance and acceptance inspection, sampling, testing, and construction survey verifications to determine compliance with the contract requirements. The Consultant will provide services that conform to current state policy and practice of construction engineering including certification of personnel. For the Project, the performance of the services will: ensure that quality materials are being incorporated into the project, ensure that quality workmanship is utilized on the project, ensure that the work of the contractor is progressing in accordance with the proposed schedule, and ensure compliance with applicable state laws regarding environmental issues. Other tasks may be added as deemed necessary by the SCDOT or Horry County.

Project Management

Consultant shall provide a Project Engineer over the project. This person will be responsible for the day-to-day operation and administration of the project. This project will be the Project Engineer's sole responsibility. SCDOT's Resident Engineer or his designee will provide daily supervision on the project and will make final decisions when necessary. The Project Engineer will report directly to SCDOT's Resident Engineer or his designee. The Project Engineer will be responsible for ensuring an appropriate level of inspection for all phases and aspects of the project. The Project Engineer will direct a staff of Project Inspectors that will carry out the majority of the inspection, sampling, and testing responsibilities on the project. All references to the Project Engineer, staff of inspectors, or to any individual inspector in the scope of services section shall be as Consultant.

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Contract Management & Administration

The Consultant shall provide office engineering, scheduling and administration staff to adequately manage the project to include, but not limited to the tasks as listed below.

1. Document management
    a. Software
    b. Personnel
    c. Interface with Design-Build contractor as necessary
    d. Hard copies and electronic data
    e. Construction submittals & tracking
2. EEO compliance
3. DBE plan and program monitoring
4. Training program
5. Safety program
6. Contractor pay requests and estimate generation
    a. Verification and approvals
7. Partnering and disputes management
8. Construction contract change order generation
9. Project documentation
    a. SiteManager DWR
    b. Photo and video gallery
10. Project schedule
    a. CPM analysis
    b. Schedule approval recommendation
    c. Progress Reports
    d. Updates
11. Contractor submittals
    a. Submittal review Coordination and Tracking
    b. Claims review
    c. Certification of Contractor's inspection personnel
    d. As-Built Plans
12. Resource agency coordination
    a. Environmental mitigation/permit monitoring
    b. Water quality monitoring
    c. Permit requirement tracking
    d. Permit modification tracking
13. Right-of-way coordination
    a. Acquisition schedule/Special provision adherence
    b. Relocation, demolition and clearing activities
    c. Hazardous material handling activities
14. Utility coordination
    a. Utility company facilitation
    b. Specification conformance reviews
15. Project Closeout
    a. Final Inspection
    b. Completion of Punchlist
    c. Materials Certification preparation and submittal
    d. DBE Compliance Review
    e. Final Quantities and Estimate

f. Review Contractor As-built plans

Inspection and Testing Services

Consultant shall provide a sufficient number of Project Inspectors to perform the majority of the on-site inspection and testing duties in accordance with the project Quality Control/Quality Assurance (QC/QA) program. Consultant shall be responsible for verifying and documenting that the quantities of testing (QC and QA) are being met and maintain master project QC and QA records. The Consultant shall review the Contractor's Quality Control (QC) Plan and recommend for approval in accordance with contract documents. Consultant shall interface and coordinate with the Contractor's QC personnel on a daily basis. The Project Inspectors shall report directly to the Project Engineer who shall direct the daily work of the inspectors. These inspectors will be responsible for highly technical and specialized inspection and testing procedures for roadway and bridge construction in the areas of concrete, foundations, soils and earthwork, asphalt roadway, erosion control, traffic control, and others. These positions will be expected to be SCDOT certified in the areas mentioned, or possess the ability to become certified through the SCDOT certification program. The following tasks have been developed to address the aforementioned goals and objectives.

1. Perform Inspection and Quality Acceptance Testing for all Concrete Structures

The Consultant shall provide all necessary personnel and equipment to perform all necessary Quality Acceptance inspection, sampling, and on-site testing of concrete structures on the Project. This task includes performing necessary air and slump tests, inspecting the construction of the formwork, placement and tying of reinforcing steel, checking grades as set by the contractor, making and storing concrete cylinders, logging all samples into the project sample log, tracking test results, taking check samples as needed, addressing failing samples by arranging and assisting in alternate testing of materials through the SCDOT Office of Materials and Research, and all other inspection duties as described in the SCDOT Construction Manual, 2004 edition, and the Standard Specifications, 2007 edition. The Consultant shall provide sufficient staff to monitor all these activities independently and to sample and test materials in accordance with the sampling frequencies established by the special provisions, specifications, supplemental specifications, and the SCDOT Construction Manual. All Consultant staff assigned to this task must possess a current SCDOT certification in Concrete Inspection.

2. Perform Inspection and Quality Acceptance Testing for all Structural Foundations

The Consultant shall provide all necessary personnel and equipment to perform all necessary Quality Acceptance inspection, sampling, and on-site testing of structural foundations on the Project. This may include driven pile foundations, spread footing foundations, and drilled shaft foundations. This task includes performing necessary inspection of the driven piles, including gathering all necessary information for the completion of the pile recap sheet and spot checks of pile alignment and cut off grades. This task also includes the necessary inspection of drilled shafts, including inspection of the excavated shaft, tying and placement of the rebar cage, sampling and inspection of the slurry, on-site testing and sampling of the concrete, completion of all forms associated with drilled shafts, including the concrete curves, etc., facilitating the CSL testing,

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logging all samples into the project sample log, tracking test results, taking check samples as needed, addressing failing samples by arranging and assisting in alternate testing of materials through the SCDOT Office of Materials and Research, and all other inspection duties as described in the SCDOT Construction Manual, 2004 edition, and the Standard Specifications, 2007 edition. The Consultant shall provide sufficient staff to monitor all these activities independently and to sample and test materials in accordance with the sampling frequencies established by the special provisions, specifications, supplemental specifications, and the SCDOT Construction Manual. All Consultant staff assigned to this task must possess a current SCDOT certification in Foundations. Additionally, it is desired that inspectors assigned to this task possess at least 10 years of progressively responsible inspection experience on project(s) similar to the aforementioned.

3. Perform Inspection and Quality Acceptance/Assurance Testing for all Earthwork and Base Activities

The Consultant shall provide all necessary personnel and equipment to perform all necessary Quality Acceptance inspection, sampling, and on-site testing of earthwork and base construction on the Project. This includes, but is not limited to embankment construction, excavations, mucking, borrow excavation, installation of geosynthetics and geogrids, cement and/or lime stabilization, ground modifications, graded aggregate base course construction, placement of drainage systems, and any other related activities. This task includes performing necessary inspection and sampling of borrow excavation and subgrade at frequencies established in the specifications, monitoring, inspection, and testing of all compaction activities on the project, establishing limits of mucking or undercutting, inspection and sampling of geosynthetic material placement, and completion of all forms associated with earthwork and base construction, logging all samples into the project sample log, tracking test results, taking check samples as needed, addressing failing samples by arranging and assisting in alternate testing of materials through the SCDOT Office of Materials and Research, and all other inspection duties as described in the SCDOT Construction Manual, 2004 edition, and the Standard Specifications, 2007 edition. The Consultant shall monitor Contractor's compliance with the Contractor's approved QC plan for earthwork and shall provide sufficient staff to monitor all these activities independently and conduct Quality Acceptance sampling and testing of materials in accordance with the sampling frequencies established by the special provisions, specifications, supplemental specifications, and the SCDOT Construction Manual. All Consultant staff assigned to this task must possess a current SCDOT certification in Earthwork, or have a temporary waiver in place prior to start of work.

4. Perform Inspection and Quality Assurance/Quality Acceptance Testing of all Hot Mix Asphalt Activities

The Consultant shall provide all necessary personnel and equipment to perform all necessary QA inspection, sampling, and on-site testing of Hot Mix Asphalt construction on the Project. This may include placing Asphalt Base, Binder, Surface, and Friction Courses, and any other related activities. This task includes performing necessary QA inspection, testing, and sampling of Hot Mix Asphalt delivered to and placed on the Project. This includes performing rate calculations, checking mix and mat temperatures, monitoring the workmanship of the paving crew, directing any corrective action deemed

necessary, taking roadway samples when needed, monitoring the compaction activities of the contractor, monitoring and performing compaction tests of asphalt, reviewing the traffic control operations associated with this activity, logging all samples into the project sample log, tracking test results, taking check samples as needed, addressing failing samples by arranging and assisting in alternate testing of materials through the SCDOT Office of Materials and Research, and all other inspection duties as described in the SCDOT Construction Manual, 2004 edition, and the Standard Specifications, 2007 edition. The Consultant shall monitor Contractor's compliance with the Contractor's approved QC plan for asphalt and shall provide sufficient staff to monitor all these activities independently and conduct QA sampling and testing of materials in accordance with the sampling frequencies established by the special provisions, specifications, supplemental specifications, and the SCDOT Construction Manual. All Consultant staff assigned to this task must possess a current SCDOT certification as HMA Roadway Technician, or have a temporary waiver in place prior to start of work.

5. Perform Quality Acceptance Inspection and Testing for all other construction activities associated with the Project and not specifically mentioned above.

The Consultant shall provide all necessary personnel and equipment to perform all necessary Quality Acceptance inspection, sampling, and on-site testing of incidental construction activities and items including, but not limited to installation of structural steel or pre-stressed girders, traffic signal installation, pavement markings, guardrail installation, seeding and erosion control measures, traffic control items, Mechanically Stabilized Earth Retaining Wall systems, welds, and clearing and grubbing. This also includes logging all samples into the project sample log, tracking test results, taking check samples as needed, addressing failing samples by arranging and assisting in alternate testing of materials through the SCDOT Office of Materials and Research, and all other inspection duties as described in the SCDOT Construction Manual, 2004 edition, and the Standard Specifications, 2007 edition. The Consultant shall provide sufficient staff to monitor all these activities independently and to sample and test materials in accordance with the sampling frequencies established by the special provisions, specifications, supplemental specifications, and the SCDOT Construction Manual.

6. Maintain field notes and compile Site Manager Daily Work Reports (DWR)

The Consultant shall maintain sufficient field notes and generate daily work reports within SiteManager for all activities assigned to the Consultant on a daily basis. These DWRs and field notes should be of sufficient detail to provide SCDOT the ability to reconstruct any or all activities of the project at a future date, if desired. Field notes should be prepared in conformance with the current editions of the SCDOT Construction Manual, Standard Drawings, and specifications.

7. Perform other associated duties typically assigned to Project Inspectors

The Consultant shall provide sufficient staff and equipment to complete general project duties not described elsewhere. These tasks may include delivering samples to the Office of Materials and Research, delivering or picking up revised plan sheets, project documents etc, from SCDOT HQ or District Office, performing routine but limited QA verification surveying, establish construction limits, proposed grades, etc. for property owners, utilities, etc., and compilation of data and records necessary to produce final

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plans, satisfy the SCDOT Business Plan, facilitate requests from outside parties, or to support decisions made in the field. The Consultant may be asked to meet with contractor's representatives, SCDOT personnel, local interested parties, etc. to provide information or assistance.

8. Furnish all necessary equipment to facilitate Tasks 1-7

The Consultant shall furnish all necessary equipment, including cell phones, laptop computers, vehicles, and specialized testing equipment to fulfill their testing, sampling, and inspection responsibilities. This equipment will include, but not limited to, nuclear density gauge and related supplies (proctor mold, moisture tester, etc.), concrete air meter(s), slump cones, infrared thermometer, paint thickness gauge, surveying equipment, and any other testing and sampling equipment as required by SCDOT.

Verification Survey

The Consultant shall provide survey crews and survey equipment to independently confirm layouts and geometry at key locations throughout the project construction. The survey crew will initially ensure that the project control points are correct and will monitor all primary control points periodically throughout the project duration to verify that they have not been disturbed. Verification surveys should be performed at the minimum frequency as listed in the 2004 SCDOT Construction Manual.

Substructure elements to be checked shall include but are not limited to:

1. Drilled shaft plan locations and cut off elevations.
2. Pile group layout benchmarks.
3. Footing plan locations and elevations.
4. Pier plan locations, elevations, and verticality.
5. Pile cap/Pier cap elevations.
6. Bearing seat elevations.
7. Embedded items.

Superstructure elements to be checked shall include but are not limited to:

1. Girder placement plan and elevation
2. Deck elevations and profiles
3. Approach slab plan and elevation
4. Parapet wall plan and elevation

Furnish a Project Office for SCDOT and Consultant

As part of this project, SCDOT will require the Consultant to furnish a fully functional office for use by SCDOT and Consultant. The location of the project office shall be approved by the SCDOT. All installation fees and monthly bills shall be the responsibility of the Consultant. The Consultant and SCDOT shall agree upon minimum dimensions of the project office prior to signing rental agreement. At a minimum, the project office shall have one ½ bath, one private office for Project Engineer, private office for SCDOT Resident Engineer, and workspace for support staff, including a plan table. The project office shall be furnished to support the daily functions of the field staff

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as well as maintain and store all documentation related to the project including but not limited to desks, chairs, file cabinets, computers, fax machine, copier, printers, digital and video cameras, etc. The project office shall be equipped with high-speed internet (T1, cable or DSL) service and phone service The Consultant is responsible for cancellation of the rental agreement upon completion of the Project.

Public Relations and Informational Meetings

The Consultant shall assist SCDOT in any project public relations and informational meetings. The tasks may include:

1. SCDOT Leadership Updates
    a. Executive briefing packets.
    b. Provide monthly one-page updates to local elected officials as well as State legislators, SCDOT leadership, the Governor's office, and bridge mailing list.
    c. Monthly update presentations to SCDOT Leadership.
    d. Host necessary site visits for leadership and elected officials.
2. Community Meetings
    a. General public
    b. Local Businesses

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ATTACHMENT "B"

SERVICES OF THE COUNTY

The County agrees to provide to the CONSULTANT, and at no cost to the CONSULTANT, the following upon request:

1. Access to and use of all reports, data and information in possession of the County which may prove pertinent to the work set forth herein.
2. Existing Policies and Procedures of the County and Department with reference to geometrics, standards, specifications and methods pertaining to all phases of the CONSULTANT's work.

EXHIBIT F
to TSC's Brief in Support of Motion for Summary Judgment

Flatiron v. TranSystems
C.A. No. 2022-CP-26-06116

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C.A. NO. 2022-CP-26-06116
	)	
	)	
Flatiron Constructors, Inc.,	)	
	)	**AFFIDAVIT OF**
Plaintiff,	)	**PETER STRUB, P.E.**
	)	
v.	)	
	)	
TranSystems Corporation	)	
	)	
Defendant.	)	

Personally appeared before me, Peter Strub, who being duly sworn, states and testifies as follows:

1. I am over 18 years of age, and I am a citizen and resident of Greenville County, South Carolina.

2. I currently serve as Senior Vice President and Principal for TranSystems Corporation, where I supervise TranSystems' Eastern Regional operations. My office is based in Greenville, South Carolina.

3. I am a professional engineer, licensed to practice in South Carolina, as well as other states.

4. In my capacity as Senior Vice President of TranSystems Corporation, I executed TranSystems' Agreement and Contract with Horry County on or around December 15, 2011.

5. A true and accurate copy of that contract is attached hereto as Exhibit 1, and it is incorporated herein by reference.

6. TranSystems work on the Carolina Bays Project was governed by the TranSystems' Agreement and Contract which was modified to provide services over an extended period beyond the original contract period.

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7. Although the TranSystems Contract included a document entitled "Engineer Certification for Project Plans and Specifications," signed by me, TranSystems never prepared, signed, or sealed any design plans for the Project. Accordingly, the Engineering Certification for Plans and Specifications was never performed by TranSystems for the Carolina Bays Project.

8. TranSystems' work for the Carolina Bays Project was limited to Construction Engineering, Inspection, and Testing services, which were subject to final review and approval by the Resident Construction Engineer for the South Carolina Department of Transportation.

9. TranSystems never entered into any contract with Flatiron Corporation, and TranSystems never considered Flatiron Corporation to be its client for any portion of the Carolina Bays Project. Neither TranSystems Corporation nor I ever considered or intended Flatiron to be a third-party beneficiary of TranSystems' contract with Horry County.

FURTHER AFFIANT SAYETH NAUGHT.

Peter Strub, P.E.

Sworn to and subscribed before me
this 3rd day of April, 2023

Notary Public for the State of South Carolina

My Commission Expires: 6/18/2028

KELLY J. MASONER
My Commission Expires
NOTARY PUBLIC
06-18-2028
STATE OF SOUTH CAROLINA

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EXHIBIT G
to TSC's Brief in Support of Motion for Summary Judgment

Flatiron v. TranSystems
C.A. No. 2022-CP-26-06116

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF HORRY	)	**C.A. NO. 2018-CP-26-02633**
Flatiron Constructors, Inc.	)	**FLATIRON'S RESPONSES TO TRANSYSTEMS' FIRST SET OF INTERROGATORIES**
Plaintiff,	)	
v.	)	
TranSystems Corporation	)	
Defendant.	)	

Plaintiff Flatiron Constructors, Inc. ("Flatiron"), by and through the undersigned counsel, and pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, hereby serves its Responses to Defendant TranSystems Corporation ("TranSystems") First Set of Interrogatories as follows:

PRELIMINARY STATEMENT

1. Flatiron's Responses and Objections to TranSystems' First Set of Interrogatories ("Flatiron's Responses") are based upon Flatiron's current knowledge, information, and belief. Flatiron objects to TranSystems' Interrogatories, including the definitions and instructions, to the extent that they seek to limit Flatiron's future adoption and use of trial theories, facts, and evidence. Flatiron may develop facts and obtain evidence not yet known to it as discovery proceeds. Flatiron's Responses are at all times subject to such additional and differing information that discovery, legal research or further investigation may disclose, and, while based on the present state of Flatiron's knowledge, the Responses are subject to the refreshing of recollection, the identification or location of additional facts or theories, which may result from Flatiron's further discovery or investigation. Flatiron reserves the right to make use of, or to introduce at any hearing

and at trial, information and/or documents responsive to TranSystems' Interrogatories including, but not limited to, any information or documents obtained in discovery.

2. Flatiron does not waive the attorney-client, work-product, or any other privilege or immunity from disclosure, which may attach to information or documents responsive to TranSystems' Interrogatories, or any privilege of trial preparation material. Inadvertent production of any document which is privileged; was prepared in anticipation of litigation, arbitration, mediation, or for trial; constitutes attorney work product; or, is otherwise immune from discovery, shall not constitute a waiver of any privilege or of any other grounds for objecting to discovery with respect to such document or any other document, or the subject matter thereof, or the information contained therein, or of Flatiron's right to object to the use of any such document or the information contained therein during any subsequent proceeding.

3. Flatiron neither concedes the relevance nor materiality of TranSystems' Interrogatories or the subject matters to which TranSystems' Interrogatories refer. Flatiron reserves: (a) all objections as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of any of the documents and information requested by TranSystems; (b) the right to object to other discovery involving or relating to the subject matters of TranSystems' individual interrogatories; and, (c) the right at any time to revise, correct, add to or clarify any of its responses herein.

4. Flatiron is a company, and as such cannot possibly have personal knowledge; therefore, all Responses herein have been obtained through Flatiron's agents, employees, and attorneys. Moreover, the word usage and sentence structure in these Responses is that of the attorney who prepared these Responses and does not purport to be the exact language of the executing party.

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GENERAL OBJECTIONS

Flatiron asserts the following General Objections:

1. The following General Objections apply to each of the Interrogatories regardless of whether the General Objections are expressly referred to in the specific objection to a particular Request. The particular objections, and discussion thereof, which follow each Interrogatory, are intended to amplify the General Objections and neither limit the applicability of any of the General Objections, nor waive any objections which may, in addition to those set forth, be applicable to each Request.

2. Flatiron objects generally to each Interrogatory on the grounds that they are vague, overbroad, unduly burdensome and oppressive, and that the assembly and disclosure of the information requested will cause Flatiron to suffer undue burden and expense. Without waiving this objection, Flatiron will make a good faith effort to reasonably interpret TranSystems' Interrogatories and will produce only those relevant, non-privileged, unprotected documents belonging to Flatiron, which are currently in their possession, custody, and control. Flatiron reserves the right to supplement the production of documents and/or to discover and introduce at any hearing or trial the documents of other parties, which may be responsive to these Interrogatories.

3. Flatiron objects to TranSystems' Interrogatories, including the instructions and definitions, to the extent the individual requests call upon Flatiron to produce documents on any date or at any time other than such date and time as are mutually agreed upon by the parties.

4. Flatiron objects to TranSystems' Interrogatories, including the instructions and definitions, to the extent the individual requests are intended, or can be construed, to expand

Flatiron's discovery obligations beyond its obligations under the South Carolina Rules of Civil Procedure and any Order entered by the Court in this case, and/or agreement between the parties.

5. Flatiron objects to TranSystems' Interrogatories, including the instructions and definitions, to the extent the individual requests call for information or documentation, which is subject to the attorney-client privilege, protected by the work product doctrine, or otherwise immune from discovery.

6. Flatiron objects to TranSystems' Interrogatories, including the instructions and definitions, to the extent the individual requests call for the production of any information or documentation that is not relevant to the subject matter of this action, that is not reasonably calculated to lead to the discovery of admissible evidence or that is otherwise beyond the scope of discovery as defined by the South Carolina Rules of Civil Procedure. Such information shall not be produced in response to TranSystems' Interrogatories and any production thereof shall not be deemed a waiver of any objections with respect to such information.

7. Flatiron objects to TranSystems' Interrogatories, including the instructions and definitions, to the extent the individual requests are intended, or can be construed, to impose upon Flatiron a continuing obligation to supplement and/or amend the responses contained herein, or the document production pursuant hereto, beyond the requirements of the South Carolina Rules of Civil Procedure and/or any Order entered in this case and/or agreement between the parties.

8. Flatiron objects to TranSystems' Interrogatories, including the instructions and definitions, to the extent the individual requests call for the production of any documents, which are not presently in the possession, custody, or control of Flatiron, or call upon Flatiron to create or recreate any documents, which are not presently in existence.

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9. Flatiron specifically reserves the right to object, as appropriate, to the admission of these Responses, or to any of the documents referenced herein, as evidence at any hearing or trial, or for any other purpose.

10. Flatiron objects to TranSystems' Interrogatories, including the instructions and definitions, to the extent the individual requests are intended or can be construed to call upon Flatiron to relinquish custody and control of its documents; to reproduce any documents at its own expense; to rearrange, reorganize, and/or produce its business records so as to group them by the categories enumerated in TranSystems' Interrogatories; or, to produce its records in any other form, order, or organization other than the form, order, and organization in which they are maintained in the ordinary course of business.

11. Flatiron objects to TranSystems' Interrogatories, including the instructions and definitions, to the extent the individual requests call for the production of documents or information reflecting confidential, proprietary or commercially sensitive information. Flatiron will produce such information only to the extent it is relevant and in compliance with the protective order applicable to this matter entered on June 29, 2021.

12. Flatiron objects to TranSystems' Interrogatories, including the instructions and definitions, to the extent that any individual request employs undefined, ambiguous, open-ended, or otherwise vague or confusing phraseology.

13. Flatiron objects to the Interrogatories, including all discrete subparts, beyond the number permitted by the South Carolina Rules of Civil Procedure and/or any Order entered in this case and/or agreement between the parties.

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14. Flatiron objects to TranSystems' Interrogatories, including the instructions and definitions, to the extent that any individual request is not limited to the time period and subject matter relevant to this litigation.

15. Flatiron objects to TranSystems' Interrogatories to the extent that any individual request seeks information that may be obtained from another source in a manner that is more efficient, less burdensome, or less expensive than obtaining it from Flatiron.

16. Flatiron hereby reserves these objections and all others made as part of this Response to TranSystems' Interrogatories, notwithstanding the production of documents, information, and/or other things in response to same and such responses are made without waiver of the Preliminary Statement and these General Objections.

17. Nothing in Flatiron's Objections and/or Responses to the Interrogatories shall be construed as an admission to the truth, accuracy or propriety of any assertions of fact or law contained in these Interrogatories, including the definitions and instructions, unless expressly admitted by Flatiron in this or a subsequent pleading.

18. Flatiron reserves all objections or other questions as to the competency, relevance, materiality, privilege or admissibility as evidence in any subsequent proceeding and/or trial of this or any other action for any purpose whatsoever of its responses herein and documents identified or provided in response to TranSystems' Interrogatories.

RESPONSES AND OBJECTIONS TO TRANSYSTEMS' FIRST SET OF INTERROGATORIES

1. Identify all persons who have any knowledge concerning this lawsuit, the facts or circumstances surrounding the matters referred to in the Complaint, or the damages claimed to have been sustained by Flatiron. Summarize the knowledge of each such person and indicate

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whether a written or recorded statement has been taken from each person and, if so, indicate who has possession of the written or recorded statement.

ANSWER:

Please refer to the chart of Flatiron personnel attached as **Exhibit A** for a list of persons who have knowledge concerning this lawsuit and/or the facts and circumstances surrounding the matters in the Complaint. The chart indicates the Project role of the person where possible. No written or recorded statements have been taken from any of these Flatiron personnel at this time.

2. Identify each person whom Flatiron expects to call as an expert witness at trial, state the subject matter on which each expert is expected to testify and state the substance of the facts and opinions to which each expert is expected to testify and a summary of the grounds for each such opinion.

ANSWER:

Flatiron has not yet decided which experts it intends to call as expert witnesses at trial. Flatiron will identify any intended expert witness and the subject matter upon which the expert is expected to testify in advance of trial and in accordance with the applicable rules.

3. Set forth a list of photographs, plats, sketches or other prepared documents in the possession of Flatiron that relate to Flatiron's claims or TSC's potential defenses to those claims.

ANSWER:

Flatiron objects to this request as unduly burdensome and to the extent that it seeks privileged work product prepared in advance of the present litigation.

Notwithstanding the forgoing, any discoverable, non-privileged information regarding photographs, plats, sketches or other prepared documents in the possession of Flatiron that relate to Flatiron's claims or TSC's potential defenses (if any exist) can be gleaned from the Project documents being provided in response to Defendant TranSystems' First Request for Production. Finally, Flatiron is unaware that TSC has legitimate or potential defenses to Flatiron's claims and does not believe that it is in possession of any documents related thereto.

4. Set forth an itemized statement of all damages alleged by Flatiron in this matter, and identify with specificity (by category and amount) the types of damages claimed.

ANSWER:

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Please see **Exhibit B** attached detailing the category and amount of damages claimed. Flatiron reserves the right to modify and/or supplement both the amount and type of damages claimed during the course of this litigation.

5. If Flatiron has entered into any formal or informal agreement to settle all or any portion of any claim(s) related to alleged defective design, construction, supervision or unpaid work completed for the Project, please provide the following information:

(a) The names of all persons or parties involved in the agreement;
(b) If the agreement was with a person or entity not involved in this litigation, describe all claims Flatiron asserted against that person or entity;
(c) Identify any consideration Flatiron has been promised as part of the agreement (whether monetary or non-monetary);
(d) Identify the date on which the agreement was made; and
(e) State whether the agreement has been reduced to writing.

ANSWER:

Flatiron objects to this Interrogatory as overly broad, vague, unduly burdensome, oppressive, ambiguous, and seeking information that is irrelevant or not likely to lead to the discovery of admissible evidence.

Notwithstanding the forgoing, Flatiron entered into the following settlement responsive to TranSystems' Interrogatory:

- On September 22, 2020, Flatiron entered into a settlement agreement with the SCDOT/Horry County regarding part of the damages related to the Span N Deck Cracking issue. According to the Settlement Agreement, the total to be paid to Flatiron was $4,090,655.84. This was accomplished through a lump sum pay item for $2,930,655.84 and the reimbursement of 232 days of Liquidated Damages ($1,160,000.00). The Agreement was reduced to writing via Change Order and is being provided as part of the Project file documents submitted in response to TranSystems' First Request for Production.

6. If any claims have been made by Flatiron with any insurer regarding damage sustained arising from or connected to the Project, please:

(a) State when the claim was made;
(b) Identify the insurer the claim was made to;
(c) State where the damage occurred;
(d) Describe the nature of the damage and the alleged cause of the damage; and
(e) Describe the status of the claim.

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ANSWER:

Flatiron objects to this Interrogatory because it is not likely to lead to the discovery of admissible evidence, per Rule 26. On its face, the Interrogatory seeks insurance information that is inadmissible in this case under the collateral source rule, as any insurance payment information could prejudice the finder of fact with respect to the damages owed by TranSystems as the tortfeasor. Furthermore, the production of any such insurance claims is not likely to lead to the discovery of any admissible evidence. Finally, to the extent TranSystems is seeking discoverable information concerning, e.g., project conditions at a given time, such information is available in the Project records which are being produced in this action.

7. For all occurrences for which Flatiron contends that Flatiron communicated with TSC regarding the Project, related to the claims presented in the Complaint, for each communication:

(a) Identify the persons involved in the communication or with knowledge regarding the communication;
(b) State the date of the communication;
(c) Describe the substance of the communication; and
(d) Identify by bates number all documents evidencing the communication.

ANSWER:

Flatiron objects to TranSystems' Interrogatory No. 7 to the extent it is unduly burdensome. Flatiron also objects under Rule 26(a) because the information sought regarding email communications is unreasonably duplicative and is obtainable from TranSystems' own records as well as the documents that Flatiron is producing in this matter, making it more convenient, less burdensome, and/or less expensive for TranSystems to locate the requested information itself. There are at least tens of thousands of e-mail communications between Flatiron and TranSystems, in addition to other communications, related to the Carolina Bays Project and the claims presented in the Complaint.

Notwithstanding the foregoing, Flatiron notes that most emails between the parties involved direct communications between Flatiron personnel, such as Project Managers Lou Hutcherson or Forrest Fischer, and TranSystems' personnel such as Marty Long and Doug Kennedy. Further, the answer to this interrogatory may be derived or ascertained from the business records to be produced by Flatiron pursuant to Rule 33(c) of the South Carolina Rules of Civil Procedure.

8. If Flatiron contends TSC has made any admissions or statements against interest, please:

(a) State when the statement was made, who made the statement, to whom it was made and whether it was oral or in writing;

(b) identify all persons with knowledge concerning the substance of the statement; and
(c) Describe the nature of the statement.

ANSWER:

Flatiron objects to this interrogatory for being unduly burdensome. There are at least tens of thousands of e-mail communications, in addition to other communications, between Flatiron and TranSystems. Further, to the extent that TranSystems made any admissions against interest via email or other written communications, TranSystems is already in possession of its communications. As such, Flatiron objects to this request under Rule 26(a) because the information sought regarding admissions against interest is obtainable from TranSystems' own records, making it more convenient, less burdensome, and/or less expensive if TranSystems were to compile its own list of such admissions. Any other information pertaining to a statement against interest made by TranSystems, if one was made, can be gleaned from the communications produced in response to TranSystems' First Request for Production. Further, the answer to this interrogatory may be derived or ascertained from the business records to be produced by Flatiron pursuant to Rule 33(c) of the South Carolina Rules of Civil Procedure. Finally, Flatiron objects to this interrogatory because seeking Flatiron's present knowledge of TranSystems' statements against interest is an impermissible demand for Flatiron's work product.

9. As to Flatiron's allegation in Paragraph 25 of the Complaint that "Transystems has substantially impeded Flatiron's progress of the Project by instituting unreasonable inspection protocols not contemplated by the Specifications, directing changes to means and methods, and directing changes to plans and specifications," identify with particularity the following:

(a) Each inspection protocol Flatiron contends TSC instituted that was unreasonable;
(b) Each change to means and methods Flatiron contends was directed by TSC, including the date thereof; and
(c) Each change to plans and specifications Flatiron contends was directed by TSC, including the date thereof.

ANSWER:

As a preliminary matter, TranSystems' First Set of Interrogatories contained a typo resulting in two questions being labeled as Interrogatory Number 8. These Responses have been corrected to correspond with Flatiron's reasonable interpretation of the intended number of each interrogatory. Thus, the answer to this interrogatory, which was the second Int. 8, is labeled as Int. 9, and subsequent Interrogatory Responses are numbered accordingly.

Flatiron objects to this interrogatory for being unduly burdensome. A full recounting of each and every instance of interferences, errors and omissions on TranSystems' part would require a

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detailed recounting of vast numbers of communications, actions and inactions by TranSystems. TranSystems is in possession of this information already. Moreover, TranSystems can glean this information from a review of the relevant documents just as easily as Flatiron can. Further, the answer to this interrogatory may be derived or ascertained from the business records to be produced by Flatiron pursuant to Rule 33(c) of the South Carolina Rules of Civil Procedure. Flatiron is still in the process of reviewing hundreds of thousands of documents and communications related to TranSystems' conduct on the Project. Flatiron, therefore, reserves the right to amend these Interrogatory Responses as additional information becomes available.

Notwithstanding the foregoing, Flatiron provides the following response: TranSystems' impeded Flatiron's progress on the Project through a pervasive program of unreasonable inspections, demands concerning Flatiron's means and methods, and changes to the plans and specifications. To assist TranSystems in better understanding TranSystems' transgressions, Flatiron provides the following non-exhaustive list of representative examples of how TranSystems instituted unreasonable inspection protocols not contemplated by the Specifications, directed changes to means and methods, and directed changes to plans and specifications:

- **Unreasonable Review of Submittals and Imposition of Extra Contractual Demands (E.g., Lenton Type-S Coupler Submittal)**: Throughout the Project, TranSystems' personnel and representatives, including, but not limited to Mr. Marty Long, unreasonably rejected Flatiron submittals, asserting that Flatiron had failed to comply with various requirements. Mr. Long often based these unjustified rejections on information requests and requirements exceeding the scope of the specifications. Furthermore, in some cases, the information underlying the rejection had already been discussed between the parties. For example, on January 28, 2015, Flatiron sent TranSystems its first revised submittal of the Hoop Rebar Coupler plans for Bents 14 – 17. On February 16, 2015, Mr. Long rejected the revised submittal again, claiming it was deficient. Flatiron Project Manager Lou Hutcherson responded to Mr. Long's rejection, noting that his continued demands and requirements for the Lenton Type-S Couplers were not justified. Mr. Hutcherson reminded Mr. Long that the parties had already discussed and decided in May 2014 that the information Mr. Long requested was not required. Further, Mr. Hutcherson reiterated that Specifications 703.2.4.2-.4 only required four (4) items, and that any other information pertaining to the couplers only had to be "ensured" by the Mechanical Coupler Quality Control Manager (i.e., no additional information needed to be submitted or provided to TranSystems). Mr. Long's requirements were beyond the scope of the specifications and were unreasonable inspection protocols.

- **Overzealous Inspection and Failure to Cooperate Toward Advancing the Project (E.g., the Overzealous Overhang Point & Patch Inspection and Sign Off)**: TranSystems was often overzealous in its inspection of Flatiron's work which impeded Flatiron's progress on the Project. Further, TranSystems repeatedly refused to cooperate with Flatiron in moving the Project forward when issues and/or disagreements about action items arose. For example, on February 13, 2019, Mr. Long notified Flatiron Field Engineer Robbie Higgins that TranSystems had performed destructive testing to inspect parts of the overhangs, specifically the cast-in-place voids for the coil rods that supported the overhang jacks, taking issue with nearly half the coil rods without mentioning key information such

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as how much void space was found in each hole. There was no support for this type of destructive testing, and neither the Specifications nor the Construction Manual mandated "spot checks" be performed on pre-formed patched holes. Further, when Flatiron Project Manager Forrest Fischer inquired about several items related to Mr. Long's requirement that Flatiron re-open and re-patch all holes in the concrete girders, Mr. Long abruptly refused to respond at all, stating in a February 19, 2019 email, "I do not feel I need to respond to any of those questions." Ultimately, TranSystems' unjustified actions forced Flatiron to incur the expense and effort of providing a third-party opinion to confirm the satisfactory nature of the work performed on the bridge and to avoid the detrimental consequences (such as increased risks to structural components of the bridge) of Mr. Long's direction for Flatiron to completely redo all holes in the girders.

- **Overzealous Inspection & Attempted Restrictions on Means & Methods Due to Lack of Expertise (E.g., Crane Operator-in-Training Inspection):** TranSystems failed to utilize an inspector with the adequate experience and knowledge for bridge construction work. Therefore, problems often arose on the Project due to the inability of TranSystems' personnel and representatives, including, but not limited to Mr. Marty Long and Mr. Doug Kennedy, to understand basic terminology referenced in the Specifications. For example, on June 30, 2015, as required by Special Provision (20) Section 107: Crane Safety and OSHA 1926.1427(f), Flatiron sent Mr. Long the information regarding Mr. Bryan Modlin, the crane operator-in-training working directly under the supervision of a NCCO Certified Crane Operator. After multiple back and forth emails where Flatiron continued to provide additional information to TranSystems when requested, Mr. Long sent pictures of the crane operator-in-training, accusing Flatiron of having him operate in a prohibited area on the bridge (allegedly above "a cofferdam type situation"). This unsupported accusation required Mr. Hutcherson to respond to the email explaining that the Bent 16 work platform was not a cofferdam and was OSHA compliant. Mr. Hutcherson further explained that the typical construction and engineering definition, as well as the SCDOT 2007 Standard Specifications for Highway Construction, noted drilled "shafts" are not passages, but foundations, also making Mr. Modlin's work compliant. Mr. Long's efforts to further restrict the work scope of Flatiron's crane operator-in-training were unreasonable inspection protocols that imposed upon and restricted the means and methods of Flatiron's work on the Project.

- **Repeated Over Inspection of Rebar that Hindered Progress (E.g., ICWW Bent 15 Column Pour and Cap 15 Pour)**: TranSystems frequently unreasonably tested and inspected the rebar on the Project and prevented Flatiron from progressing the work as scheduled. With respect to testing, while rebar samples are typically taken when the steel arrives at a job site (and before it is put in place), TranSystems refused to accept samples at delivery. Instead, TranSystems obtained rebar samples by cutting a section from an otherwise completed and tied-in cage and removing it for off-site testing. This essentially destroyed a finished item of work, resulting in direct re-work costs, and left Flatiron waiting for nearly a week at a time before receiving the results and permission to proceed. In addition to these testing delays and costs, TranSystems' rebar inspection was excessive and untimely. TranSystems often would inspect rebar placement just prior to Flatiron's scheduled pours, resulting in delays to concrete placement based on TranSystems'

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objection to rebar spacing. As just one example of over-inspection, on Monday June 6, 2016, Mr. Marty Long informed Flatiron Project Manager Forrest Fischer that the Bent 15 Foundation plans had not been accepted by the SCDOT because TranSystems had not been granted access to inspect the underside of the Bent 15 foundation. Mr. Fischer responded to this email noting that Flatiron rejected the premise that access underneath the foundation was a condition of acceptance under the specifications. Mr. Fischer further explained that Flatiron was compliant with Standard Specification Section 105.10 governing inspection of work. Later, on September 16, 2016, Flatiron had a planned pour date set for September 16, 2016, at Cap 15; however, partially due to TranSystems' overzealous inspection of the rebar (and partially due to the Plans showing incorrect dimensions), the actual pour date occurred on November 28, 2016. This behavior was so pervasive that Flatiron was forced to call for a partnering meeting between the SCDOT, Flatiron, and TranSystems in 2017. This partnering meeting resulted in TranSystems receiving instructions to cooperate with Flatiron's rebar installation process.

- **Imposition of Overzealous Approval Procedures Regarding Industry Standard Means & Methods (E.g., Anchor Bolts Issue # 1)**: The plan details for both anchor bolt and masonry plate alignment do not allow for industry standard tolerances and for this reason the industry has accepted practices to make mechanical adjustments to realign bolts to an acceptable position and ensure proper installation of the POT Bearings. This is typically done utilizing hammers, "hickey" bars, jacks or other similar means to adjust the errant bolts until the proper alignment is achieved without overstressing the bolts. While placing the Bent 15 Pot Bearings on April 3, 2017, four (4) days after the bearings were rejected, crews noticed that 7 of the 12 Pot Bearings were not fitting properly over the Anchor Bolts. The crew installing the Pot Bearings then installed nuts over the bolt threads and used a sledgehammer to realign the anchor bolts. This mechanical method and the use of pipe hickey bars for realignment is common practice within the industry if bolts shift slightly during the concrete placement activities for Cap construction. This operation was observed by TranSystems/SCDOT inspectors and Flatiron crews were directed to stop with this method of realignment until a procedure was formally presented and deemed acceptable by the BCE and District.

- **Contribution to the Delayed Approval of Plan Changes Caused by SCDOT's Mix Design Failures (E.g., Span N Deck Repairs)**: On June 4, 2018, Flatiron performed the first pour at Span N – the first of the three main spans above or adjacent to the ICWW. Flatiron completed this pour without any known concerns or issues; however, the next day (June 5, 2018) Flatiron noticed several longitudinal cracks and notified TranSystems and SCDOT accordingly. Flatiron's Span N pour was rejected two days later (June 7, 2018) and Flatiron was informed that it could not perform the remaining deck pours (Span M and Span O) until the cause of the Span N cracking was evaluated. Shortly thereafter, Flatiron retained a materials science testing consultant (the CTL Group) to determine the cause of the cracking. In summary, the CTL Group determined that Span N cracking resulted from slump loss test requirements imposed upon Flatiron that required the Span N concrete to remain plastic for an extended period of time. Flatiron and its expert consultants researched and provided TranSystems and SCDOT numerous options on how to repair the deck. However, finally on April 19, 2019, Flatiron received direction to take the most extreme

option which included full demolition of Span N and reinstallation of a new deck. This, of course, required further submittal review and approvals, which were not completed until May 24, 2019. Flatiron and its subcontractor then mobilized and began demolition for repairs one week later on June 3, 2019 – one full year after the cracking was observed. This resolution period and the subsequent repairs required at Span N significantly impacted the Project's critical path; these repairs and the Span N "re-pour" were not completed until August 21, 2019, or 443 calendar days (15 months) after the initial pour was completed and cracking was observed. On September 3, 2020, the Project's Dispute Resolution Board ("DRB") found Flatiron was entitled to recover nearly two-thirds of total delay as excusable and compensable time due to SCDOT's and TranSystems' "excessive delay" in its protracted review and decision-making process on the bridge concrete deck.

- **Other Response Examples Incorporated**: Flatiron incorporates its Responses to Interrogatories 10, 11, 12, 13, and 14 into this Response to the extent there are overlapping examples of TranSystems' misconduct that applies to this Interrogatory.

10. Identify and describe with particularity all facts and documents on which Flatiron bases the allegation in Paragraph 29 of its Complaint that TSC "failed to properly perform contract administration duties."

ANSWER:

As a preliminary matter, TranSystems' First Set of Interrogatories contained a typo resulting in two questions being labeled as Interrogatory Number 8. These Responses have been corrected to correspond with Flatiron's reasonable interpretation of the intended number of each interrogatory. Thus, the answer to this interrogatory, which was originally Int. 9, is labeled as Int. 10, and this applies for the remainder of the Interrogatory Responses.

Flatiron objects to this interrogatory for being unduly burdensome. A full recounting of each and every instance of TranSystems' failure to properly perform contract administration duties would require a detailed recounting of vast numbers of communications, actions and inactions by TranSystems over the course of the entire Project. TranSystems is in possession of this information already. Moreover, TranSystems can glean this information from a review of the relevant documents just as easily as Flatiron can. Further, the answer to this interrogatory may be derived or ascertained from the business records to be produced by Flatiron pursuant to Rule 33(c) of the South Carolina Rules of Civil Procedure. Flatiron is still in the process of reviewing hundreds of thousands of documents and communications related to TranSystems' conduct on the Project. Flatiron, therefore, reserves the right to amend these Interrogatory Responses as additional information becomes available.

Notwithstanding the foregoing, Flatiron provides the following response: TranSystems impeded Flatiron's progress on the Project through repeated failures to perform its contract administration duties. To assist TranSystems in better understanding TranSystems' transgressions, Flatiron provides the following non-exhaustive list of representative examples:

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- **Failure to Review Submittals in a Timely Manner**: Throughout the Project, TranSystems failed to review and approve Flatiron's submittals in the contractually required 21-day time period. This failure included unreasonable rejections of compliant submittals, as well as excessive review periods ultimately resulting in untimely acceptance.

- **Failure to Supply Qualified Individuals to Perform Project Duties on Behalf of the SCDOT**: TranSystems failed to provide staff with the requisite expertise and knowledge of Projects involving the construction of bridges. TranSystems' failure to properly staff the Project with inspectors and representatives with the appropriate qualifications, experience, and credentials resulted in inappropriate rejections of Flatiron submittals and imposition of unjustified and improper inspection standards due to a lack of understanding of Project requirements. Flatiron often had to revise submittals simply for the purpose of simplifying (and oversimplifying) plans that would have been understood by qualified personnel with experience on similar types of projects.

- **Failure to Maintain a Submittal Log**: Based upon discovery conducted to date and FOIA efforts, it appears that TranSystems never maintained a submittal log documenting the time between when Flatiron sent TranSystems submittals, the time TranSystems forwarded those submittals to the SCDOT, and the time the submittals were returned to Flatiron. This failure in contract administration violates TranSystems' contractual obligations as well as its professional responsibility to Flatiron. Without a well-maintained submittal log, TranSystems could not possibly perform its contract administration duties properly.

- **Failure to Complete Inspections and Specify the Basis of Rejections**: TranSystems repeatedly engaged in an inspection process that demonstrated its refusal to act in good faith and to facilitate progress on the Project. For example, TranSystems' Mr. Doug Kennedy often conducted on-site inspections of the work on the Project. When Mr. Kennedy would arrive for an inspection, he would often insist that he conduct the inspection alone, such that no one else could see the items he would take issue with. Further, Mr. Kennedy often failed to complete the inspection and generate a complete punch-list of items for Flatiron to correct. Instead, Mr. Kennedy would overzealously inspect every minute aspect of the work, and as soon as Mr. Kennedy found one item that he believed to be contrary to the specifications or designs, he would terminate the inspection and instruct Flatiron to redo its work entirely. Not only does this evince TranSystems' overzealous inspection of Flatiron's work, but it also shows TranSystems' failure to properly perform its inspection duties on the Project, as Mr. Kennedy's piecemeal inspections resulted in unnecessary Project disruption and delay.

- **Failure to Abide by the Special Provisions' Partnering Requirements (E.g., Overzealous Inspection of Rebar at Footings)**: The mutual respect and support between the Contractor and SCDOT (and TranSystems) is a significant factor in a Project's success. The Contract dedicates an entire section of the Special Provisions (Section 108, paragraph 24) to this "Partnering" relationship. Specifically, this provision lists several mutual duties that Flatiron and SCDOT must both follow:

(1) Each will function within the laws and statutes applicable to their duties and responsibilities;
(2) Each will avoid hindering the other's performance;
(3) Each will proceed to fulfill its obligations diligently; and
(4) Each will cooperate in the common endeavor of the Contract.

Evidenced by countless daily examples, TranSystems and its personnel and representatives, such as Mr. Kennedy, breached the Contract by failing to adhere to items above throughout the Project. As it relates specifically to the ICWW footings performed in this period, Mr. Kennedy's failure to abide by the Partnering provisions in the Contract resulted in extended performance of the footing FRP activities at Bents 14, 15, 16, and 17. For example, TranSystems was responsible for the following conduct: (1) Mandating numerous and continuous rebar inspections above and beyond the specifications and industry standards; and (2) refusing to perform rebar inspections on footings unless Flatiron provided extracontractual access.

- **Other Response Examples Incorporated**: Flatiron incorporates its Responses to Interrogatories 9, 11, 12, 13, and 14 into this Response to the extent there are overlapping examples of TranSystems' misconduct that applies to this Interrogatory.

11. Identify and describe with particularity all "industry standard means and methods" Flatiron contends in Paragraph 29 of its Complaint that TSC "unreasonably refus[ed] to allow or approve[.]"

ANSWER:

As a preliminary matter, TranSystems' First Set of Interrogatories contained a typo resulting in two questions being labeled as Interrogatory Number 8. These Responses have been corrected to correspond with Flatiron's reasonable interpretation of the intended number of each interrogatory. Thus, the answer to this interrogatory, which was originally Int. 10, is labeled as Int. 11, and this applies for the remainder of the Interrogatory Responses.

Flatiron objects to this interrogatory for being unduly burdensome. A full recounting of each and every instance of TranSystems' refusal to allow industry standard means and methods would require a detailed recounting of vast numbers of communications, actions and inactions by TranSystems over the course of the entire Project. TranSystems is in possession of this information already. Moreover, TranSystems can glean this information from a review of the relevant documents just as easily as Flatiron can. Further, the answer to this interrogatory may be derived or ascertained from the business records to be produced by Flatiron pursuant to Rule 33(c) of the South Carolina Rules of Civil Procedure. Flatiron is still in the process of reviewing hundreds of thousands of documents and communications related to TranSystems' conduct on the Project. Flatiron, therefore, reserves the right to amend these Interrogatory Responses as additional information becomes available.

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Notwithstanding the foregoing, Flatiron provides the following non-exhaustive list of representative examples of how TranSystems unreasonably refused to allow or approve certain industry standard means and methods:

- **Column Pour Procedure Change**: On October 27, 2016, Flatiron received written directive from TranSystems to alter its planned means and methods for pouring the second stage of Bent 17 columns #1 and #2, increasing those elements cost and schedule. Specifically, Mr. Long mandated that the concrete for Bent 17 columns be placed in one at a time as opposed to simultaneously as had otherwise been the practice throughout the Project's duration.

- **Extra-Contractual Maturity Meter Requirements**: To facilitate providing TranSystems with live information regarding various pours on the Project, Flatiron went above and beyond the contractual requirements by installing a maturity meter for monitoring concrete pours that was connected to Wi-Fi and allowed for remote collection of pour data. This remote collection capability was not required under any of the Project specifications. Nonetheless, when Flatiron encountered Wi-Fi issues that impeded the meter's functionality, TranSystems instructed Flatiron to stop any further mass concrete placements unless and until Flatiron revised the Mass Concrete Placement Plan to ensure continued Wi-Fi connectivity. TranSystems issued this directive notwithstanding the fact that the data logged by the meter was not lost, it simply could not be accessed remotely in the same manner as previous pours, which again, was above and beyond any contractual requirements. This unnecessary imposition and restriction on Flatiron's ability to dictate its own means and methods for relaying Project information to TranSystems and the SCDOT unduly delayed Flatiron's performance of work on the Project.

- **Crane Operator-in-Training Inspection:** TranSystems failed to utilize an inspector with the adequate experience and knowledge for bridge construction work. Therefore, problems often arose on the Project due to Mr. Marty Long's inability to understand basic terminology referenced in the Specifications. For example, on June 30, 2015, as required by Special Provision (20) Section 107: Crane Safety and OSHA 1926.1427(f), Flatiron sent Mr. Long the information regarding Mr. Bryan Modlin, the crane operator-in-training working directly under the supervision of a NCCO Certified Crane Operator. After multiple back and forth emails where Flatiron continued to provide additional information to TranSystems when requested, Mr. Long sent pictures of the crane operator-in-training, accusing Flatiron of having him operate in a prohibited area on the bridge (allegedly above "a cofferdam type situation"). This unsupported accusation required Mr. Hutcherson to respond to the email explaining that the Bent 16 work platform was not a cofferdam and was OSHA compliant. Mr. Hutcherson further explained that the typical construction and engineering definition, as well as the SCDOT 2007 Standard Specifications for Highway Construction, noted drilled "shafts" are not passages, but foundations, also making Mr. Modlin's work compliant. Mr. Long's efforts to further restrict the work scope of Flatiron's crane operator-in-training were unreasonable inspection protocols that imposed upon and restricted the means and methods of Flatiron's work on the Project.

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- **Other Response Examples Incorporated**: Flatiron incorporates its Responses to Interrogatories 9, 10, 12, 13, and 14 into this Response to the extent there are overlapping examples of TranSystems' misconduct that applies to this Interrogatory.

12. Identify and describe with particularity all submittals Flatiron contends in Paragraph 29 of its Complaint that TSC "fail[ed] to review ... in a timely manner[.]"

ANSWER:

As a preliminary matter, TranSystems' First Set of Interrogatories contained a typo resulting in two questions being labeled as Interrogatory Number 8. These Responses have been corrected to correspond with Flatiron's reasonable interpretation of the intended number of each interrogatory. Thus, the answer to this interrogatory, which was originally Int. 11, is labeled as Int. 12, and this applies for the remainder of the Interrogatory Responses.

Flatiron objects to this interrogatory for being unduly burdensome. A full recounting of each and every instance of TranSystems' failure to review submittals in a timely manner would require a detailed recounting of vast numbers of communications, actions and inactions by TranSystems over the course of the entire Project. TranSystems is in possession of this information already. Moreover, TranSystems can glean this information from a review of the relevant documents just as easily as Flatiron can. Further, the answer to this interrogatory may be derived or ascertained from the business records to be produced by Flatiron pursuant to Rule 33(c) of the South Carolina Rules of Civil Procedure. Flatiron is still in the process of reviewing hundreds of thousands of documents and communications related to TranSystems' conduct on the Project, including those that demonstrate the timeliness of reviewing Flatiron submittals. Moreover, TranSystems' apparent failure to maintain a submittal log or to otherwise track Project submittals complicates Flatiron's ability to offer a complete response. Flatiron, therefore, reserves the right to amend these Interrogatory Responses as additional information becomes available.

Nonetheless, and notwithstanding the forgoing, Flatiron's records show repeated untimely reviews of submittals, including a review for the First Revision to the Prefabricated Earthquake Drain submittal, which lasted 105 days. To further assist TranSystems in understanding the delay caused by the submittal review process, Flatiron provides the following non-exhaustive list of representative examples of how TranSystems failed to review submittals in a timely manner:

- **Mass Concrete Plan Approval Delays**: Flatiron initially submitted the mass concrete plan on April 11, 2014 and received TranSystems/SCDOT approval for the first set of mass concrete pours on September 22, 2014. Throughout the rest of 2014 and into the first half of 2015, Flatiron revised and resubmitted this plan at least seven times based on varying comments from the SCDOT and different concrete mix types. At the request of SCDOT, the seventh revision was resubmitted as "Rev 5 Alternate 1 Rev 1" and SCDOT's conditional approval for the remaining caps was received on April 7, 2015. Again, however, Flatiron revised the mass concrete plan for a new concrete mix design on July 7, 2015 and received conditional approval from SCDOT on July 17, 2015 (eighth resubmittal). Similar to the submittal sequence described above for seven revisions from April 2014 to April

2015, TranSystems/SCDOT prohibited Flatiron from pouring the footings at Bents 14-17 until a ninth revised mass concrete plan was resubmitted and re-approved. Flatiron completed forming for the first of two pours at Bent 14's footing on September 16, 2015 but did not perform this footing pour until six weeks later on October 28, 2015 due to TranSystems' delayed approval of the ninth resubmittal.

- **Drilled Shaft Installation Plan Submittal Reviews**: Per specification section 712.4.2, the "Drilled Foundation Installation Plan" will be reviewed and returned within 21 days of submission, and the subsequent review of any required revisions will be completed within 7 days after re-submission. On February 10, 2014, Flatiron submitted the Drill Shaft Installation Plan. On April 3, 2015, TranSystems' improperly rejected the plan, thirty-one (31) days later than the mandated response date. On April 8, 2014, Flatiron resubmitted the plan. Again, TranSystems was late in reviewing the plan, improperly rejecting it on April 24, 2014, nine (9) days later than the mandated response date. Flatiron then resubmitted the plan on the very same day, and it was finally approved on May 5, 2015, four (4) days later than the mandated response date.

- **Cap Falsework Submittal Delay**: On July 11, 2014, Flatiron sent its Cap Falsework Submittal to TranSystems; however, TranSystems did not forward this submittal to the SCDOT until thirteen (13) days later on July 24, 2014. Nearly a month later, on August 22, 2014, TranSystems returns the submittal requesting additional calculations and inclusion of side forms and end caps, and Flatiron resubmitted the same day. On August 26, 2014, TranSystems gives approval with nine (9) comments. Finally, on December 2, 2014, TranSystems issued a Mass Concrete Stop Work order, which lasted through December 31, 2014.

- **Girder Erection Plan Acceptance Delay**: Flatiron initially transmitted its steel girder erection plan submittal on May 16, 2016 (319 calendar days or 10.5 months) before it began erection activities at Span N. Reviews and resubmittals continued over the next several months, until Flatiron received conditional approval on January 12, 2017. This conditional approval allowed girder erection to partially begin at Span N on March 30, 2017. However, after conditional approval, six more resubmittals were required for the two remaining locations (Spans O and P); the last submittal (8th revision) was finally approved on October 26, 2017.

- **Excessive Delay Regarding the Span N Deck Concrete Issues**: On September 3, 2020, the Project's Dispute Resolution Board ("DRB") found Flatiron was entitled to recover nearly two-thirds of total delay as excusable and compensable time due to both SCDOT's and TranSystems' "excessive delay" in its protracted review and decision-making process on the bridge concrete deck.

- **Delays to Footing Falsework Submittal (Bents 14-17)**: As stated in specification section 702.2.2.12 (Falsework), Flatiron bears the responsibility for falsework adequacy. As such, this section specifically indicates that SCDOT (and by extension TranSystems) will not review the falsework submittals "in-depth." The review process actually implemented and managed by TranSystems far exceeded the requirements of the specifications, and severely

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impacted the start of footing construction at Bent 14. Flatiron initially submitted the footing falsework submittal for Bents 14-17 on October 22, 2014 (nine months prior to the actual start of the ICWW footings). TranSystems replied asking for means and methods information from Flatiron, specifically requesting how Flatiron plans to hold water back away from the footings. This review was beyond the scope of the falsework submittal review per the specification and should have been approved as noted. Flatiron accommodated the request through a resubmittal on October 28, 2014, but TranSystems expressed other concerns related to tidal waters and would not forward the submittal to SCDOT until TranSystems' questions were answered. This is still beyond the scope of the falsework submittal review per the specifications and should have been approved as noted. Flatiron issued a second revision on November 14, 2014, to which TranSystems responded four days later with approximately seven minor questions related to Flatiron's means and methods. These comments still exceeded the submittal review scope described in the specifications. On December 16, 2014, Flatiron submitted a third revision attempting to address TranSystems' excessive concerns. TranSystems did not forward the submittal to SCDOT until December 22, 2014 (six days later); and SCDOT did not approve the plan until 55 days after Flatiron's submission to TranSystems.

- **Delays to Footing Formwork Submittals (Bents 14-17):** As stated in specification section 702.2.2.13 (Forms), Flatiron bears the responsibility for formwork adequacy. As such, this section specifically indicates that SCDOT (and by extension, TranSystems) will not review the formwork submittals "in-depth." The review process actually implemented and managed by TranSystems far exceeded the requirements of the specifications and severely impacted the start of footing construction at Bent 14. For example, as part of its mitigation efforts, Flatiron decided in March 2015 that it would benefit from procuring a different set of side forms specifically for the footings. Once drawings were developed, Flatiron made an initial footing formwork submittal on July 7, 2015. Among other minor comments, TranSystems responded with confusion on July 9, 2015, thinking that the "falsework" submittal was already approved. Flatiron had to clarify that this was for the side forms, which was not included in falsework. Flatiron issued a resubmission addressing TranSystems' comments on August 7, 2015. As of August 11, 2015, TranSystems still had not forwarded the submittal to SCDOT. Then, on August 18, 2015, SCDOT returned the submittal stating that SCDOT does not check the design or drawings in depth and the adequacy of the design and drawings are Flatiron's responsibility.

- **Delays to RFI 64 Regarding the Use of Dobie Blocks at Bents 14-17's Footings**: On August 17, 2015, Flatiron submitted a straight-forward RFI requesting the use of Dobie blocks at Bent 14's footing. This request was made because the contract specified plastic supports could not adequately support the weight of the footing rebar cage. Even after Flatiron assured TranSystems that the Dobie blocks were made specifically from a previous pour at Bent 10's cap with a confirmed strength above 4,000 psi, an unnecessary and excessive amount of back-and-forth continued. Four revisions were made to the RFI, which included trivial items such as removing typos, a change in submission date, and an additional request to use the blocks as spacers. This RFI process lasted until on or about September 10, 2015, twenty-five (25) days after it began.

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- **Delays to Superstructure Completion (E.g., Flange Repairs at Span N)**: TranSystems' maladministration and excessive oversight also impacted Flatiron progress on Superstructure activities. TranSystems significantly limited Flatiron's progress and exposed Flatiron to additional impacts including delays, resequencing, disruption, and additional costs. For example, on November 14, 2017, Flatiron was ordered to stop work on welding the SIP decking supports on the Span N flange. Two days later, SCDOT confirmed that welding these supports directly to the steel girders was not permitted while also admitting that a mistake was made in approving the shop drawings that indicated this exact installation. SCDOT provided direction for the repair procedure on December 6, 2017, and Flatiron completed the repairs on December 14, 2017 (Thursday). However, Flatiron subcontractor could not mobilize and resume work until at least the following Monday, December 18, 2017.

- **Delays to Approving the Anchor Bolt Repair Procedure:** The Anchor Bolt Repair Procedure (Transmittal 411) went back and forth with TranSystems/SCDOT eleven (11) times, and Flatiron had to respond to twenty (20) comments, some multiple times.

- **Other Response Examples Incorporated**: Flatiron incorporates its Responses to Interrogatories 9, 10, 11, 13, and 14 into this Response to the extent there are overlapping examples of TranSystems' misconduct that applies to this Interrogatory.

13. Identify and describe with particularity all "contract administration and inspection work" Flatiron contends in Paragraph 33 of its Complaint that TSC failed to timely and properly perform, and all facts and documents on which Flatiron bases that allegation.

ANSWER:

As a preliminary matter, TranSystems' First Set of Interrogatories contained a typo resulting in two questions being labeled as Interrogatory Number 8. These Responses have been corrected to correspond with Flatiron's reasonable interpretation of the intended number of each interrogatory. Thus, the answer to this interrogatory, which was originally Int. 12, is labeled as Int. 13, and this applies for the remainder of the Interrogatory Responses.

Flatiron objects to this interrogatory for being unduly burdensome. A full recounting of each and every instance of TranSystems' failure to timely and properly perform contract administration and inspection work would require a detailed recounting of vast numbers of communications, actions and inactions by TranSystems over the course of the entire Project. TranSystems is in possession of this information already. Moreover, TranSystems can glean this information from a review of the relevant documents just as easily as Flatiron can. Further, the answer to this interrogatory may be derived or ascertained from the business records to be produced by Flatiron pursuant to Rule 33(c) of the South Carolina Rules of Civil Procedure. Flatiron is still in the process of reviewing hundreds of thousands of documents and communications related to TranSystems' conduct on the Project, including those that relate to TranSystems' failure to timely perform contract

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administration and inspection work. Flatiron, therefore, reserves the right to amend these Interrogatory Responses as additional information becomes available.

Notwithstanding the foregoing, Flatiron has provided representative examples of this conduct in its Answers to Interrogatory 9, 10, 11 and 12, where it set forth some of the occasions where TranSystems failed to timely review submittals, as well as other instances of contract administration failures. Flatiron provides the following additional representative example of TranSystems' failure to properly and timely perform its inspection work to Flatiron's detriment:

- **FRP Cap 20 Delay**: On March 22, 2017, there was a planned pour for Cap 20 P2; however, Flatiron lost three (3) days due to TranSystems' refusal to do rebar inspection at the time requested. When TranSystems finally agreed to perform the necessary inspection, TranSystems unjustifiably refused to render a decision. By the time the issue was worked out at 11 a.m., the pump was already on site and concrete was coming in at too high of a temperature to safely complete the pour and it had to be rescheduled.

14. Identify and describe with particularity each instance in which Flatiron contends TSC "[f]ailed to properly inspect and observe the construction in accordance with the standards and procedures set forth in the SCDOT Construction Manual, 2004 edition, and the Specification," as alleged in Paragraph 42 of its Complaint.

ANSWER:

As a preliminary matter, TranSystems' First Set of Interrogatories contained a typo resulting in two questions being labeled as Interrogatory Number 8. These Responses have been corrected to correspond with Flatiron's reasonable interpretation of the intended number of each interrogatory. Thus, the answer to this interrogatory, which was originally Int. 13, is labeled as Int. 14, and this applies for the remainder of the Interrogatory Responses.

Flatiron objects to this interrogatory for being unduly burdensome. A full recounting of each and every instance in which TranSystems failed to properly inspect and observe the construction in accordance with the required standards and procedures would require a detailed recounting of vast numbers of communications, actions and inactions by TranSystems over the course of the entire Project. TranSystems is in possession of this information already. Moreover, TranSystems can glean this information from a review of the relevant documents just as easily as Flatiron can. Further, the answer to this interrogatory may be derived or ascertained from the business records to be produced by Flatiron pursuant to Rule 33(c) of the South Carolina Rules of Civil Procedure. Flatiron is still in the process of reviewing hundreds of thousands of documents and communications related to TranSystems' conduct on the Project, including those that relate to TranSystems' failure to properly inspect and observe the construction in accordance with the standards and procedures set forth in the SCDOT Construction Manual, 2004 edition, and the Specifications. Flatiron, therefore, reserves the right to amend these Interrogatory Responses as additional information becomes available.

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Notwithstanding the foregoing, Flatiron has provided representative examples of this conduct in its Answers to Interrogatory 9, 10, 11, 12, and 13 each of these responses containing instances in which TranSystems incorrectly interpreted the technical requirements contained within Construction Manual and the Specifications to impose undue burdens, costs, and delays on Flatiron, as well as instances in which TranSystems exceeded the scope of inspection authority contemplated by Section 105.10 of the Construction Manual.

15. Identify all employees or designated representatives of Flatiron who were designated points of contact with SCDOT, Horry County or TSC during the construction of the Project, and state the dates on which each of these persons were working in development of the Project.

ANSWER:

As a preliminary matter, TranSystems' First Set of Interrogatories contained a typo resulting in two questions being labeled as Interrogatory Number 8. These Responses have been corrected to correspond with Flatiron's reasonable interpretation of the intended number of each interrogatory. Thus, the answer to this interrogatory, which was originally Int. 14, is labeled as Int. 15, and this applies for the remainder of the Interrogatory Responses.

Flatiron objects to this interrogatory to the extent that this information is already known by TranSystems because its employees know which Flatiron employees were points of contact. Accordingly, Flatiron objects to this interrogatory to the extent it seeks information that would be less burdensome for TranSystems to compile.

Notwithstanding the foregoing, please see the chart attached as Exhibit A to these Responses, which identifies certain Flatiron personnel that are known points of contact between SCDOT, Horry County, and/or TranSystems on the Project. The chart contains highlights of various personnel. Any person's information who is highlighted is someone that Flatiron has determined spoke directly with a TranSystems or SCDOT representative at one point on the Project. All other unhighlighted personnel are merely those with knowledge of the Project, but those persons have not yet been identified as points of contact on the Project. Because Flatiron is still in the process of reviewing thousands of emails, as well as other written communications, Flatiron reserves the right to update its answer to these interrogatory responses as new information arises during the document review process.

16. Identify all other claims, lawsuits or arbitrations which Flatiron has filed, related to alleged defects in the design, construction, payment or supervision of or for the Project.

ANSWER:

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As a preliminary matter, TranSystems' First Set of Interrogatories contained a typo resulting in two questions being labeled as Interrogatory Number 8. These Responses have been corrected to correspond with Flatiron's reasonable interpretation of the intended number of each interrogatory. Thus, the answer to this interrogatory, which was originally Int. 15, is labeled as Int. 16, and this applies for the remainder of the Interrogatory Responses.

Flatiron is aware of three claims related to the construction of the Project: (1) a claim regarding Bearing Metallization and Anchor Bolt Repairs; (2) the Span N Deck Cracking Claim that was partially resolved at the DRB; and (3) the Global Certified Claim for Delay against the SCDOT, which is currently pending.

17. Identify all other claims, lawsuits, demands for arbitration or other proceedings from 2011 to present wherein Flatiron has asserted claims alleging excessive supervision in construction of highway projects.

ANSWER:

As a preliminary matter, TranSystems' First Set of Interrogatories contained a typo resulting in two questions being labeled as Interrogatory Number 8. These Responses have been corrected to correspond with Flatiron's reasonable interpretation of the intended number of each interrogatory. Thus, the answer to this interrogatory, which was originally Int. 16, is labeled as Int. 17, and this applies for the remainder of the Interrogatory Responses.

Flatiron objects to this interrogatory for being irrelevant and outside the scope of discovery under Rule 26. This interrogatory is intentionally directed towards matters having absolutely no bearing on the dispute, or even Project, at issue in this lawsuit, and thus cannot lead to the discovery of any discoverable or admissible evidence. Therefore, Flatiron also objects to this interrogatory for being unduly burdensome and directed for the purpose of harassing or embarrassing Flatiron.

18. Identify all other claims, lawsuits, demands for arbitration or other proceedings from 2011 to present wherein Flatiron has been subject to claims for damages relating to alleged errors or delays in construction of highway projects.

ANSWER:

As a preliminary matter, TranSystems' First Set of Interrogatories contained a typo resulting in two questions being labeled as Interrogatory Number 8. These Responses have been corrected to correspond with Flatiron's reasonable interpretation of the intended number of each interrogatory. Thus, the answer to this interrogatory, which was originally Int. 17, is labeled as Int. 18, and this applies for the remainder of the Interrogatory Responses.

Flatiron objects to this interrogatory for being irrelevant and outside the scope of discovery under Rule 26. This interrogatory is intentionally directed towards matters having absolutely no bearing on the dispute, or even Project, at issue in this lawsuit, and thus cannot lead to the discovery of any discoverable or admissible evidence. Therefore, Flatiron also objects to this interrogatory for being unduly burdensome and directed for the purpose of harassing or embarrassing Flatiron.

Respectfully submitted this 16th day of August, 2021.

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Attorneys for Plaintiff Flatiron Constructors Inc.

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF HORRY	)	**C.A. NO. 2018-CP-26-02633**
Flatiron Constructors, Inc.,	)	
	)	**CERTIFICATE OF SERVICE**
Plaintiff,	)	
	)	
v.	)	
	)	
TranSystems Corporation,	)	
	)	
Defendant.	)	
	)	

I hereby certify that I have this 16th day of August, 2021 served **Flatiron Constructors, Inc.'s Responses to TranSystems Corporation's First Set of Interrogatories** via email and by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, at Greenville, South Carolina addressed to the following persons at the following address which is the last address known to me:

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Exhibit A

Last Name	First Name	Project Role
Beiter	Jeremiah	**Structures Engineer**
Brannon	Matthew	**Project Controls Manager**
Chute	Craig	**Construction Manager**
Couture	John	**Vice President**
Cruz	Anthony	**Superintendent**
Daley	Gabriel	**Director of Contract Change Management**
DiMuro	Stephen	**Construction Manager**
Edge	Jamie	**Office Manager/EEO Officer**
Fischer	Forrest	**Project Manager**
Gaidanowicz	Bryan	**Project Engineer**
Houx	Brandon	**Field Engineer**
Hutcherson	Lou	**Assistant Project Manager**
Kaptur	Dustin	**Engineer**
Kirk	Ted	**Vice President**
Lieberman	Dan	**Operations Manager**
Martel	Ryan	**Field Engineer**

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McGrath	Ken	**Project Engineer**
Peterson	Rachel	**Office Manager**
Powell	Kevin	**Senior Vice President**
Ramer	Justin	**Field Engineer**
Sanborn	Todd	**Superintendent**
Starling	Eric	**Field Engineer**
Taylor	Ollie	**Safety Manager**
Warren Jr.	Thomas (Tom)	**Senior Project Manager**
MacFawn	Ian	Construction Manager

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Exhibit B

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Flatiron Construction
Carolina Bays Project

Category	Damages	Mark Up	Total
A. Direct Costs			
Bridges			
I. Bearings	$ 225,098	$ 36,944	$ 262,042
II. Bridge Support	752,336	123,475	875,811
III. Concrete	1,872,972	307,397	2,180,369
IV. Formwork	4,174,860	685,189	4,860,049
V. Girders	448,174	73,556	521,730
Subtotal	***$ 7,473,439***	***$ 1,226,561***	***$ 8,700,000***
Paving			
VI. Paving	$ 2,949,933	$ 484,151	$ 3,434,084
Subtotal	***$ 2,949,933***	***$ 484,151***	***$ 3,434,084***
Additional Direct Costs			
VII. Extended Maintenance	$ 365,408	$ 59,972	$ 425,380
VIII. Hurricane Impact Costs	2,790,452	457,976	3,248,429
IX. Additional Mobilizations	178,581	29,309	207,890
X. Salvage Loss	2,407,318	395,095	2,802,413
Subtotal	***$ 5,741,760***	***$ 942,353***	***$ 6,684,113***
Outstanding Claims			
XI. Pot Bearing Metalization	$ 95,616	$ 11,824	$ 107,440
XII. Anchor Bolts	439,870	80,711	520,581
XIII. Deck Replacement	1,692,221	277,732	1,969,953
XIV. Traffic Control	121,583	19,955	141,538
Subtotal	***$ 2,349,290***	***$ 390,221***	***$ 2,739,511***
Direct Cost - Subtotal	***$ 18,514,422***	***$ 3,043,285***	***$ 21,557,708***
B. Time Related Costs			
XI. Overhead - Extended	$ 5,367,868	880,989	6,248,856
XII. Additional Management and Oversight	2,124,009	-	2,124,009
Overhead - Subtotal	***$ 7,491,876***	***$ 880,989***	***$ 8,372,865***
C. Cost of Capital			
Cost of Capital is 13% of Total Direct and Overhead	$ 3,380,819	$ -	3,380,819
Subtotal	***$ 3,380,819***		***$ 3,380,819***
D. Liquidated Damages			
Remaining Liquidated Damages ($5,000 x 395 Days)	$ 1,975,000	$ -	1,975,000
Subtotal	***$ 1,975,000***		***1,975,000***
Total	**$ 31,362,118**	**$ 3,924,274**	**$ 35,286,392**

EXHIBIT H
to TSC's Brief in Support of Motion for Summary Judgment

Flatiron v. TranSystems
C.A. No. 2022-CP-26-06116

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2013 WL 9921457 (S.C.Com.Pl.) (Trial Order)
Court of Common Pleas of South Carolina.
Greenville County

Kevin MCCARTHY, et al.,
v.
KEOWEE FALLS INVESTMENT GROUP, L.L.C., et al.

No. 2011CP236376.
July 22, 2013.

West Headnotes (1)

[1] **Negligence** Engineers

Engineer retained to prepare a report regarding lot adjacent to real property later purchased by landowners did not owe them a legal duty to discover deep-seated slope failure that was causing lots to fall into the lake; there was no statutory duty, no contractual duty through engineer's contract with developer, no duty of care based upon any legally recognized status or special relationship, and landowners had no property interest in the adjacent lot.

Order Granting S&ME Inc.'s Motion for Summary Judgment

Clifton Newman, Judge.

***1** This matter came before the Court on Defendant S&ME, Inc.'s Motion for Summary Judgment. A hearing was held on May 3, 2013. Representing the parties at the hearing were Thomas E. Dudley, III attorney for Plaintiffs, Elizabeth M. McMillan attorney for Defendants Keowee Falls Investment Group, LLC, The Cliffs Communities, LLC, Cliffs Real Estate, Inc., and The Cliffs Golf and Country Club, Inc., and Stephanie H. Burton attorney for Defendant S&ME, Inc.

FINDINGS OF FACT

1. On December 16, 2002, Keowee Falls Investment Group, LLC ("KFIG") purchased approximately 2000 acres of land from Crescent Resources, LLC for development. (Oconee Cnty. Reg. of Deeds, Bk. 1256, p. 257). A portion of that land was developed as the Cliffs at Keowee Falls South development.

2. In early 2005, Plaintiffs Kevin McCarthy and his girlfriend Courtney Rountree, now Courtney McCarthy, began looking for a vacation home in the Lake Keowee area. (K. McCarthy Dep. p. 9). Plaintiffs chose Lake Keowee because it was equidistant between Kevin McCarthy's residence in Atlanta, Georgia and Courtney McCarthy's residence in Charlotte, North Carolina. (K. McCarthy Dep. p. 61).

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3. In June 2005, Plaintiffs met Jay Scott of Cliffs Real Estate, Inc. to look at waterfront property at Lake Keowee. (K. McCarthy Dep. p. 17). Plaintiffs looked at a number of potential lots, including Lot 32 at the Cliffs at Keowee Falls South, as well as several homes which had been constructed. (K. McCarthy Dep. p. 15; C. McCarthy Dep. pp. 8-9).

4. Thereafter, Plaintiffs decided to purchase Lot 32. On June 20, 2005, Plaintiffs each entered into a Real Estate Sale and Purchase Agreement with KFIG as the Seller for the purchase of Lot 32. (K. McCarthy Dep. p. 35, Ex. 3; C. McCarthy Dep. Ex. 1).

5. Pursuant to the Real Estate Sale and Purchase Agreement, Plaintiffs agreed to purchase Lot 32 for $1,105,000.00. Plaintiffs also agreed to purchase a membership in the Cliffs Golf and Country Club for $75,000.00. (K. McCarthy Dep. Ex. 3, p. 1; C. McCarthy Dep. Ex. 1, p.1).

6. On June 22, 2005, S&ME's geotechnical engineers Walker Birdsong and Michael Revis sent a proposal to Don Nickell, Vice President of Planning Engineering and Development for The Cliffs Communities, Inc. to perform a geotechnical evaluation of three unidentified lots. (Pls.' Mem. Opp. Ex. F).

7. Birdsong and Nickell subsequently agreed that S&ME's geotechnical evaluation services would be limited to evaluation of Lot 31 at the Cliffs at Keowee Falls South. (Birdsong Aff. ¶ 2). Thus, S&ME never investigated geotechnical conditions at Lot 32. (Birdsong Aff. 11 3).

8. On June 27, 2005, Don Nickell executed an Agreement for Services for S&ME's services to be performed at Lot 31. (Pls. Mot. Opp. Ex. H.) The Agreement for Services contains the following terms:

7. Reports: In connection with the performance of the Services, Consultant shall deliver to Client one or more reports or other written documents reflecting Services provided and the results of such Services. All reports and written documents delivered to Client are instruments reflecting the Services provided by Consultant pursuant to this Agreement and are made available for Client's use subject to the limitations of this Agreement. Instruments of Service provided by Consultant to Client pursuant to this Agreement are provided for the exclusive use of Client, and Client's agents and employees for the Project and are not to be used or relied upon by third parties or in connection with other projects....

> ***2** Any Instruments of Service, including reports, generated as part of this Agreement are intended solely for use by Client and shall not be provided to any other person or entity without Consultant's written authorization....
>
> **9. Confidentiality:** Subject to any obligation Consultant may have under applicable law or regulation, Consultant will endeavor to release information relating to the Services only to its employees and subcontractors in the performance of the Services to Client's authorized Representative(s) and to persons designated by the authorized representative to receive such information.

9. Thereafter, S&ME performed a geotechnical investigation of Lot 31. (Birdsong Aff. ¶ 2).

10. On June 18, 2005, S&ME issued a report directly to the Cliffs. (Birdsong Aff. Ex. A). The July 18, 2005 report found that unique features exist on Lot 31 and recommended either the installation of rammed aggregate piers or the undercut and replacement of soils on a portion of the lot to support a residence. S&ME did not find that an ongoing slope failure was occurring on lot 31. (Birdsong Aff. Ex. A, p. 2). Plaintiffs were not aware of nor did they see the S&ME report. (K. McCarthy Dep. pp. 89-91).

11. On August 5, 2005, Plaintiffs and KFIG closed on Plaintiffs' purchase of Lot 32. (K. McCarthy Dep. p. 35). By deed dated August 5, 2005, KFIG transferred title to Lot 32 to Plaintiff Kevin McCarthy. (K. McCarthy Dep. Ex. 9). By deed of the same date, Kevin McCarthy transferred an undivided one-half interest in Lot 32 to Courtney Rountree. (C. McCarthy Dep. Ex. 2).

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12. Plaintiffs never constructed a house on Lot 32. (K. McCarthy Dep. pp. 101-102).

13. Plaintiffs were not aware of any problem with Lot 32 until six years after purchase when in April 2011, Jack Harrell, the current owner of Lot 31, called Kevin McCarthy and advised him: "Well, I'm your neighbor down there, and we got a problem. The lots are falling into the lake." (K. McCarthy Dep. p. 75).

14. Sometime thereafter, Jack Harrell or his counsel sent Plaintiffs or their counsel a portion of the July 18, 2005 report prepared by S&ME. (K. McCarthy Dep. p. 89).

15. Prior to receiving a portion of S&ME's July 18, 2005 report, Plaintiffs had never heard of S&ME. (K. McCarthy Dep. p. 90). Plaintiffs have never hired S&ME to perform any work on Lot 32. (K. McCarthy Dep. p. 91).

16. On September 27, 2011, Plaintiffs filed their Complaint alleging a single cause of action for professional negligence against S&ME. Plaintiffs allege that a deep-seated slope failure is occurring at Lot 32 and that S&ME was negligent because it failed to discover such condition on Lot 31, report the condition to the Cliffs, and advise the Cliffs that the condition might affect adjacent lots.

17. Defendants have retained an expert who opines that the installation of a composite system of micropiles and tieback anchors would make Lot 32 suitable for residential construction. His estimated cost is $679,000.00. (D. Chappell Dep. Ex. 4).

CONCLUSIONS OF LAW

18. This case presents a novel legal question in South Carolina: whether an engineer owes a legal duty to a future owner of real property that is adjacent to property at which the engineer is hired to perform professional services.

***3** 19. Plaintiffs must prove three elements: (1) a duty of care owed by S&ME to Plaintiffs; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach. See *Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006).

S&ME DID NOT OWE PLAINTIFFS A DUTY OF CARE

20. A key legal issue in this novel case is whether S&ME owes any duty of care to Plaintiffs arising from the preparation of its July 18, 2005 report to the Cliffs regarding adjacent Lot 31. Whether a defendant owes a plaintiff a duty of care is a matter of law for this Court to determine. *See Oblachinski v. Reynolds*, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011), reh'g denied (Apr. 7, 2011)("A motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine."); *Huggins v. Citibank. N.A.*, 355 S.C. 329, 332, 585 S.E.2d 275, 276 (2003) ("In a negligence action, the court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff."); *Doe v. Batson*, 345 S.C. 316, 323, 548 S.E.2d 854, 857 (2001) ("The existence of a duty owed is a question of law for the courts.").

21. In South Carolina, a legal duty exists if created by statute, contract, status, property interest, or other special circumstance or relationship. *See McCullough v. Goodrich & Pennington Mort. Fund. Inc.*, 373 S.C. 43, 47-48, 644 S.E.2d 43, 46 (2007); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456. 578 S.E.2d 711. 714 (2003).

S&ME Does Not Owe Plaintiffs a Duty of Care Arising from Statute

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22. Plaintiffs did not plead that S&ME breached any statute in their Complaint. However, at the hearing, they argued that S&ME owed them a duty of care pursuant to Chapter 22 of Title 40 of South Carolina's Code. Title 40 relates to "Professional and Occupations". Chapter 22 specifically addresses "Engineers and Surveyors". Plaintiffs contend that Section 40-22-20(14), which defines "fraud or deceit", gives rise to a duty of care. Plaintiffs also contend that certain of the Rules of Professional Conduct for Engineers and Land Surveyors promulgated by the Department of Labor, Licensing and Regulation also create a duty of care. Specifically, Plaintiffs point to Section 49-301, which is titled "Responsibility to the Public", and section 49-303, "Public Statements". At the hearing, the plaintiffs in *Jack R. Harrell, Jr., et al. v. Keowee Falls Investment Group. LLC*, C.A. No. 2011-CP-23-5000, also argued that South Carolina Code Sections 40-22-20(17), which defines "Gross Negligence", and 40-22-295, entitled "Engineer Immunity", created a duty of care. Since both cases were heard at the same hearing, this Court will address all of the identified statutes.

23. As a general rule, "a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability." *Whitworth v. Fast Fare Markets of South Carolina. Inc.*, 289 S.C. 418, 420,338 S.E.2d 155,156 (1985) (*quoting* 73 Am. Jur. 2d *Statutes* § 432 (1974). When a statute does not specifically create a private cause of action, such claim can be implied only if the legislation was enacted for the special benefit of a private party. *See* *Citizens for Lee Cnty. v. Lee Cnty.*, 308 S.C. 23, 28-29, 416 S.E.2d 641, 645 (1992) ("The threshold consideration here is whether or not appellants—a special-interest group and two private citizens—have an implied cause of action under the statute…[A]ssuring that legislation was enacted for the special benefit of the private party is a test for determining whether a right of private action is created by implication.")

***4** 24. To determine whether a cause of action is implied, this Court must consider whether: (1) the essential purpose of the statute is to protect from the kind of harm suffered by Plaintiffs; and (2) Plaintiffs are a member of the class of persons the statute is intended to protect. *See Norton v. Opening Break of Aiken. Inc.*. 313 S.C. 508, 512, 443 S.E.2d 406, 409 (Ct. App. 1994) (holding a regulation may create a duty of care and applying the same standard); *Summers v. Harrison Constr.*, 298 S.C. 451, 455, 381 S.E.2d 493, 496 (Ct. App. 1989) (*citing* *Rayfield v. South Carolina Dep't of Corrections*, 297 S.C. 95, 103, 374 S.E.2d 910, 914) (Ct. App. 1988)).

25. The purpose of Chapter 22 of Title 40 of the South Carolina Code is:

> *Purpose*. It is the policy of this State and the purpose of this chapter to encourage the development of professional engineers in this State and to promote the accountability for engineering practice in a global economy. The State recognizes the need for more qualified engineers to support the local and global economy and, to that end, encourages efforts to increase access to accredited education, the examinations, and the experience necessary and appropriate to protect the health, safety, and welfare of South Carolina citizens and to support licensure as the basis of accountability.

S.C. Code Ann. § 40-22-2 (2013).

26. The regulations serve the same purpose. S.C. Code Ann. § 40-22-60(A) (2013) ("The board may adopt rules governing its proceedings and may promulgate regulations necessary to carry out the provisions of this Chapter."); S.C. Code Regs. 49-300(A) (2013) (the Rules of Professional Conduct are intended to "safeguard the life, health, property and welfare of the public").

27. The engineering licensure regulations do not give rise to any implied right of action or impose a legal duty upon S&ME in favor of Plaintiffs. The South Carolina Court of Appeals squarely addressed this issue in *Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). In *Hurst*, the plaintiffs asserted a negligence claim against an engineer licensed in California whose California stamp was affixed to plans to be used for construction of a residence in South Carolina. Id. at 475, 494

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S.E.2d at 849. The plaintiffs argued that the engineer engaged in the unauthorized practice of engineering in violation of South Carolina Code Section 40-22-30 and asserted a claim for negligence *per se*. *Id.* at 477-78, 494 S.E.2d at 850.

28. The South Carolina Court of Appeals held that the provisions of Chapter 22 of Title 40 are intended to regulate the practice of engineering by licensing and registration requirements. *Id.* at 478, 494 S.E.2d at 850. The court further held that the provisions are directed to the engineering profession because it authorizes the Registration Board to sanction a registrant who violates any provision of the statute or regulations. Id. at 479, 494 S.E.2d at 851. Accordingly, the court held:

> Our reading of the relevant South Carolina code sections and cases convinces us that the essential purpose of the statute, as alleged by the Hursts, is inconsistent with the legislative intent in enacting this statute. Further, we find that a licensing statute will not ordinarily provide a basis for a negligence per se action. Therefore, we hold, as to this claim, the Hursts have not demonstrated that an issue of material fact is in dispute. We affirm the trial court on this cause of action.

***5** Id.

29. This Court adopts the ruling in *Hurst* and concludes that the statute and regulations cited by Plaintiffs do not create a duty of care owed by S&ME to Plaintiffs.

S&ME's Contract with The Cliffs Communities Did Not Create a Tort Duty in Favor of Plaintiffs

30. A contract between two parties can create a duty of care to a third party. *See McCullough v. Goodrich & Pennington Mortgage Fund. Inc.*, 373 S.C. 43, 49, 644 S.E.2d 43, 46 (2007).

31. A contract may create a duty to a third party if its contractual terms indicate that the contracting parties intended to benefit that third party. See *Barker v. Sauls*, 289 S.C. 121, 345 S.E.2d 244 (1986) (Holding that an insurance broker who contracted with an employer to sell workers' compensation insurance was liable to an employee for negligence in failing to procure the policy because the employee was an intended third party beneficiary of the contract). Whether such a duty is created depends upon the contract's language. *See* *Cullum Mechanical Constr., Inc. v. South Carolina Baptist Hosp.*, 344 S.C. 426, 432, 544 S.E.2d 838, 842 (2001) (finding that a factual issue existed whether "special conditions" in the contract documents imposed a duty of care on an architect to assure payment to non-contracting third party); *Gilbert v. Miller*, 356 S.C. 25, 30, 586 S.E.2d 861, 864 (Ct. App. 2003)("It is clear the language of the lease did not intend to make [the plaintiff], as either a tenant or a guest, a third party beneficiary by imposing a duty in tort on the landlord to prevent a tenant's dog from injuring another."); *Dorrell v. South Carolina Dep't of Transp.*, 361 S.C. 312, 318, 605 S.E.2d 12, 15 (2004) (Contractor hired to repave a road owed a duty to the traveling public at large to not negligently perform its work because contract's terms required the contractor to perform its work in a manner to insure the safety of the traveling public); *Andrade v. Johnson*, 356 S.C. 238, 246, 588 S.E.2d 588, 592 (2003) (In reviewing the terms of an agreement between a utility company and contractor which granted the contractor preferred vendor status the court held that the agreement did not give rise to a duty of care owed relating to the contractor's negligent installation of an HVAC system).

32. Here, there is no evidence that S&ME's report was used by the Cliffs for any purpose other than evaluation of Lot 31. Furthermore, the contract between S&ME and the Cliffs specifically prohibits distribution of any reports prepared by S&ME to third parties without S&ME's written consent:

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7. REPORTS:

> […] Instruments of Service provided by Consultant to Client pursuant to this Agreement are provided for the exclusive use of Client, and Client's agents and employees for the Project and are not to be used or relied upon by third parties or in connection with other projects. […]

[…] Any Instruments of Service, including reports, generated as part of this Agreement are intended solely for use by Client and shall not be provided to any other person or entity without Consultant's written authorization. […]

***6** (Pl. Memo. Opp. Exh. H).

33. There is no evidence that S&ME authorized the Cliffs to distribute the report to Plaintiffs or did so. In fact, there is no evidence that S&ME was aware of Plaintiffs' existence. Admittedly, Plaintiffs never saw the report until several years after they purchased their lot. (K. McCarthy Dep. pp. 89-91). Accordingly, there is nothing in the contract between S&ME and The Cliffs Communities, Inc. that indicates S&ME assumed a duty of care to any third party, including Plaintiffs.

Plaintiffs Are Not Owed a Duty of Care Based on Any Legally Recognized Status

34. South Carolina's courts have limited imposition of a duty based upon "status" to cases involving premises liability, products liability, and volunteers. See *Singleton v. Sherer*, 377 S.C. 185, 200, 659, S.E.2d 196, 204 (Ct. App. 2008) ("The nature and scope of a duty in a premises liability action, if any, is determined based upon the status or classification of the person injured at the time of his or her injury."); *Sims v. Giles*, 343 S.C. 708, 715, 541 S.E.2d 857, 861 (Ct. App. 2001) (In a premises liability case, the standard of care is dependent upon the plaintiff's status as an invitee, licensee, trespasser, or child); *Bray v. Marathon Corp.*, 356 S.C. Ill, 117, 588 S.E.2d 93, 95-96 (2003) (Recognizing differing duties of care owed by a manufacturer to a plaintiff based on his status as a user of its products or a bystander); *Miller v. City of Camden.* 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997) (When an act is voluntarily undertaken, the actor may owe a duty based on their status as a volunteer). There are no South Carolina cases which hold that a future adjacent landowner has any special legal status and the - Court declines to impose one here.

Plaintiffs Do Not Have Any Legally Recognized Property Interest

35. A duty may be owed to persons with certain property interests. For instance, the courts have held that a third party may owe a duty to the holder of a secured interest in damaged personal property. *Compare McCullough v. Goodrich & Pennington Mort. Fund. Inc.*, 373 S.C 43, 50-52, 644 S.E.2d 43, 47-48 (2007) (finding that a mortgage servicer did not owe any duty to a lender who had a security interest in the borrower's contractual right to receive payments) *with* *Universal C.I.T. Credit Corp. v. Trapp*, 232 S.C. 297, 101 S.E.2d 829 (1958) (holding one who damages personal property owes a duty to the holder of a security interest in the property); *Wilkes v. S. Ry. Co.*, 85 S.C. 346, 67 S.E. 292 (1910) (same). Unlike these cases, Plaintiffs have never had any property interest in lot 31. Furthermore, they did not have a property interest in adjacent Lot 32 at the time that S&ME prepared its July 18, 2005 report. This Court declines to find that the future ownership of adjacent property is a legally recognized property interest establishing a duty of care.

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S&ME Did Not Owe a Duty of Care Arising From a Special Relationship and Plaintiffs' Claims are Barred by the Economic Loss Rule

36. The economic loss rule, initially created in the products liability context, provides generally that "[t]here is no tort liability […] if the damage suffered by the plaintiff is only to the product itself. In other words, tort liability only lies where the damage done is to other property or is personal injury." *Kennedy v. Columbia Lumber & Mfg. Co., Inc.*, 299 S.C. 335, 341, 384 S.E.2d 730, 734 (1989).

***7** 37. South Carolina's courts have adopted two narrow exceptions to this rule: (1) a plaintiff may pursue tort remedies for purely economic losses against a residential home builder who breaches a legal duty in constructing a home, *Kennedy*, 299 S.C. at 345-46, 384 S.E.2d at 737; and (2) in certain circumstances, where a non-contracting third party shares a "special relationship" with the alleged tortfeasor which gives rise to a distinct extra-contractual legal duty, he may recover in tort for the breach of such duty. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan. Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995).

38. The Court finds that the residential home builder exception is inapplicable here. S&ME is not a residential homebuilder and did not construct defective housing. *See Sapp v. Ford Motor Co.*, 386 S.C. 143, 150, 687 S.E.2d 47, 51 (2009) (finding that the framework adopted by *Kennedy* "is a narrow one," and is "applicable only in the residential real estate construction context").

39. The Court also finds no "special relationship" based upon the evidence in the record. Whether a "special relationship" exists "depend[s] on the facts and circumstances of each case." *Tommy L. Griffin*, 320 S.C. at 55-56, 463 S.E.2d at 88. In design and construction cases, South Carolina's courts have found a "special relationship" only where there is either a close working relationship between project participants or where a third party foreseeably relies upon the services of the professional in taking some action. See *Tommy L. Griffin*, 320 S.C. at 55-56, 463 S.E.2d at 89; *Cullum Mechanical Constr., Inc. v. South Carolina Baptist Hosp.*, 344 S.C. 426, 544 S.E.2d 838 (2001); *South Carolina State Ports Authority v. Booz-Allen & Hamilton. Inc.*, 289 S.C. 373, 346 S.E.2d 324 (1986).

40. In *Tommy L. Griffin*, the court found a "special relationship" to exist between a project engineer and a subcontractor giving rise to a tort duty because the engineer closely supervised and controlled construction. *Tommy L. Griffin*, 320 S.C. at 56, 463 S.E.2d at 89. Similarly, in *Cullum*, the court found that a "special relationship" might exist between an architect and a subcontractor because the architect assumed responsibility under its contract with the owner to withholding certifications for payments if the subcontractors were not paid. *Cullum*, 344 S.C. at 432, 544 S.E.2d at 842.

41. Here, Plaintiffs did not enter into any contract with S&ME nor did S&ME provide any professional services on the lot ultimately purchased by Plaintiffs. Unlike the engineer in *Tommy L. Griffin* and the architect in *Cullum*, S&ME did not have a close working relationship or any relationship with Plaintiffs. Moreover, S&ME's contract with the Cliffs Communities, Inc. expressly prohibited distribution of its reports to third parties. (J. Harrell Dep. Exh. 30, § 7).

42. Plaintiffs have not demonstrated that they relied on S&ME's report in taking some action. Indeed, Plaintiffs testified that they did not even see S&ME's report until six years after they bought lot 32. (K. McCarthy Dep. pp. 89-91). See *South Carolina State Ports Authority v. Booz-Allen & Hamilton. Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986) (finding that a consultant owes a duty only to "non-contracting parties who have reasonably relied on their reports in taking some action").

43. Plaintiffs do not claim any personal injury or property damage; rather, they seek damages for the purchase price of their property. Accordingly, Plaintiffs' claims are barred by the economic loss rule.

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***8** 44. This conclusion is supported by two recent unpublished decisions from the Federal District Court for the District of South Carolina. In *Ross Dress for Less. Inc. v. Lauth Constr. Group, LLC et al*, C.A. No, 0:10-703-CMC (D.S.C. 2012), Judge Cameron Currie granted a motion for summary judgment filed by a geotechnical engineering firm finding that "Plaintiff has not established a special relationship between MacTec and Plaintiff creating a legal duty from MacTec, as a geotechnical engineer hired by a general contractor to complete soil analysis on property for a developer, to Plaintiff, as a subsequent commercial purchaser of the property."

45. Likewise, in *Long v. O'Reilly's Automotive Stores. Inc., et al*, C.A. No., 6:12-901-MGL (D.S.C. 2013), Judge Mary Lewis granted a motion to dismiss filed by a civil engineer and his firm ruling that the engineer did not owe any duty of care to an adjacent landowner who complained of water entering his property as a result of the design and construction of an adjacent O'Reilly's store. Judge Lewis concluded that the mere fact that an engineer provides services at an adjacent property is not legally sufficient to establish a duty of care owed to an adjacent landowner.

46. Other states that have considered similar cases have concluded that a consultant hired to prepare a report does not owe a duty of care to future purchasers. See *Hartman v. Urban*, 946 S.W.2d 546 (Tex. App. 1997) (holding that even though a surveyor knew that the purpose of the subdivision was to sell lots to the public, the surveyor did not owe any duty to the plaintiffs who were subsequent lot purchasers). See *also* *Essex v. Ryan*, 446 N.E.2d 368 (Ind. App. Dist. 2 1983) (surveyor did not owe duty of care to future lot purchaser when they relied on erroneous survey and built addition that encroached on their neighbor's lot because plaintiffs were not in privity with surveyor and surveyor did not have actual knowledge that the plaintiff would rely on the survey).

47. This Court concludes that a special relationship does not exist between an engineer hired to perform professional services for real property and future purchasers of an adjacent lot.

SAME'S ALLEGED NEGLIGENCE DID NOT PROXIMATELY CAUSE PLAINTIFFS' DAMAGES

48. Proximate cause consists of two parts: (1) causation in fact; and (2) legal cause. *See* *Oliver v. South Carolina Dep't of Transp.*, 309 S.C. 313, 316, 422 S.E.2d 128, 130 (1992). Causation in fact is proved by establishing that the plaintiff's injury would not have occurred "but for" the defendant's negligence. *Id.* Legal cause is proved by establishing foreseeability and that the injury occurred as a natural and probable consequence of the defendant's negligence. *See* *Vinson v. Hartley*, 324 S.C. 289, 400, 477 S.E.2d 715, 721 (Ct. App. 1996).

49. If there is no genuine issue of material fact whether a defendant's actions were the proximate cause of a plaintiff's injury, then summary judgment is appropriate. See *Singleton v. Sherer*, 377 S.C. 185, 203, 659 S.E.2d 196, 206-07 (Ct. App. 2008).

50. Plaintiffs argue that S&ME's failure to discover a slope failure at Lot 31 and report that the geologic condition may extend into Lot 32 in its July 18, 2005 report proximately caused their damages. Plaintiffs theorize that had S&ME so informed the Cliffs, it would have informed KFIG, which would have informed Plaintiffs, who would have cancelled their pending contract to purchase Lot 32.

51. There is no evidence in the record to support Plaintiffs' speculation. Had S&ME reported the alleged slope failure, it would not have been responsible for the cost of repair because it did not own the lot or sell it. When a consultant erroneously reports about soil conditions, the cause of any damage is the condition itself and not the consultant's failure to identify the condition. *See* *Gagne v. Bertran*, 43 Cal. 2d 481, 492, 75 P.2d 15 (1954) ("Because of defendant's negligence plaintiffs erroneously believed [the property] was more suitable for their purpose than it actually was. The additional expense [in removing extra fill] they incurred, however, flowed from the condition of their land and not from defendant's report as to what that condition was.");

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Wendward Corp. v. Group Designs. Inc., 428 A.2d 57 (Me. 1981) (holding that geotechnical engineer's failure to discover and report defects at a site which increased the cost to develop the property did not proximately cause damages because the increased costs were due to the soil condition); *Progressive Survey v. Pearson*, 120 N.H. 58, 410 A.2d 1123 (1980) (holding that erroneous survey containing inaccurate elevations did not proximately cause increased development costs because "the elevation of the brook, and not defendant's erroneous survey, caused the increase in development costs"); *Mosteller Mansion, LLC v. Mactec Eng'g & Consulting*, 661 S.E.2d 788 (N.C. App. 2008) (unpublished) (upholding limitation of liability and indirect damages clauses for increased development costs due to a geotechnical engineer's failure to correctly identify soil types because the costs "do not flow directly and immediately from any action of Defendant."). Thus, S&ME's alleged negligence did not proximately cause Plaintiffs' damages because the damages flow from the condition of Lot 32 itself and not S&ME's failure to report the condition.

***9** 52. This principle is true regardless of whether Plaintiffs would have decided not to purchase Lot 32 had they known its true condition. In *Gagne*, plaintiffs argued they would not have purchased their lot had they known the true extent of fill dirt. *Gagne*, 43 Cal. 2d at 485, 275 P.2d 15.

53. Plaintiffs never saw the July 18, 2005 report prior to purchasing Lot 32. Although there are no South Carolina cases directly on point, other jurisdictions addressing similar questions hold that a negligently prepared report in connection with the purchase of real property cannot proximately cause any damages when a plaintiff does not actually see or review the report prior to purchasing real property. See *Hughes v. Holt*, 140 Vt. 38,435 A.2d 687 (1981) (holding that an allegedly negligent appraisal performed after the plaintiff homebuyers executed a purchase and sale agreement could not proximately cause plaintiffs' damages); *Williams v. United Community Bank*, 724 S.E.2d 543, 549 (N.C. App. 2012) (holding that plaintiffs failed to establish a prima facie case of negligence because the evidence showed that the plaintiffs signed the purchase contracts without reviewing the allegedly negligently prepared appraisals).

54. Plaintiffs never saw the July 18, 2005 report prior to purchasing Lot 32. It could not have been the proximate cause of their claimed damages.

PLAINTIFFS' ARE NOT ENTITLED TO RECOVER THE PURCHASE PRICE OF LOT 32 FROM S&ME

55. Plaintiffs seek to recover the purchase price of Lot 32. This is not a proper measure of damages unless the injury to real property is permanent. See *Yadkin Brick Co.. Inc. v. Materials Recovery Co.*, 339 S.C. 640, 529 S.E.2d 764 (Ct. App. 2000) (diminution in value of property is proper measure of damages where the injury to real property is of a permanent nature).

56. Where a repair is feasible, the proper measure of damages is the cost of repair. *See Scott v. Fort Roofing & Sheet Metal Works. Inc.*, 299 S.C. 449, 385 S.E.2d 826 (1989) ("Cost of repair or restoration is a valid measure of damages for injury to a building although compensation may be limited to the value of the building before damage was inflicted."); *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986); *Joyner v. St. Matthews Builders.* 263 S.C. 136, 140, 208 S.E.2d 48, 50 (1974) ("In the absence of evidence of specific damages, the measure of damages for injury to real property is the difference between the value of the entire premises before and after injury thereto."); *John Thurmond & Assoc. Inc. v. Kennedy.* 284 Ga. 469, 470, 668 S.E.2d 666, 668 (Ga. 2008) ("…damages for defective construction, whether those damages are the result of a breach of contract or negligence of the contractor, are determined by measuring the cost of repairing or restoring the damage, unless the cost of repair is disproportionate to the property's probable loss of value").

57. At the hearing, Plaintiffs asserted that their expert Carroll Crowther had established that a repair on Lot 32 would be impossible. However, the record reflects that Crowther has stated only that a repair might be expensive, not that it would be impossible.

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58. On August 8, 2011, Crowther issued a report to Plaintiffs' counsel in which he stated only that "Stabilization of this lot sufficient for construction of a house would be very expensive, if even possible." (Crowther Dep. Exh. 5, p. 4)

***10** 59. Moreover, Crowther testified that he has not completed the analysis necessary to determine whether a repair of Lot 32 would be feasible:

Q. Have you done any analysis to determine what the topography of the weak zone is?

A. No.

Q. Can that be done?

A. Yes.

Q. Why haven't you done it?

A. **I haven't been asked to. Because that would be necessary to trying to evaluate if there is a possible remediation.** All I'm telling you is, from the surface, it's obvious that the slope is failing.

Q. And if one was going to determine - if somebody asked you, Mr. Crowther, I want you to determine whether there's a possible remediation. What work would you have to accomplish that task?

A. I'd have to, number one, determine where the slide is occurring, what's the mass of soil that we've got to try to stabilize.

Q. […] That would be number one. Number two, what would you do?

A. That would be the starting point. And then determine what the forces are that caused that to fail. And what kind of force you would have to install or what kind of strength you'd have to add to that mass to keep it from moving.

(Crowther Dep. pp. 55-57) (emphasis added).

60. The evidence establishes that a repair is feasible. Doug Chappell testified that his company performed a similar repair at Lake Keowee and, assuming a slope failure is occurring, the estimated cost to repair lot 32 is $679,700.00 (Chappell Dep. Exh. 4).

61. In this case, the uncontroverted evidence is that the lot can be repaired at a cost of $679,000.00. There is no evidence that the repair cost is grossly disproportionate to the value of the property. Accordingly, Plaintiffs' damages are limited to the cost of repair.

PLAINTIFFS ARE NOT ENTITLED TO RECOVER ATTORNEY'S FEES

62. In their complaint, Plaintiffs seek recovery of attorney's fees against S&ME. At the hearing, Plaintiffs conceded that such fees are not recoverable.

PLAINTIFFS ARE NOT ENTITLED TO AN AWARD OF PUNITIVE DAMAGES AGAINST S&ME

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63. In South Carolina, punitive damages are recoverable where a defendant's misconduct is willful, wanton, or in reckless disregard of the plaintiff's rights. See *Mellen v. Lane*, 377 S.C. 261, 290, 659 S.E.2d 236, 251 (Ct. App. 2008). Plaintiffs' primary contention is that S&ME should have discovered that an ongoing slope failure was occurring on Lot 31 when it conducted its investigation of that lot in July 2005 and recognized that this condition might affect other properties. Even if those allegations are true, this Court does not find that such a misdiagnosis is a willful, wanton, or reckless disregard of Plaintiffs' rights that would justify an award of punitive damages

27. For the foregoing reasons, S&ME's Motion for Summary Judgment is GRANTED.

AND IT IS SO ORDERED.

<<signature>>

Clifton Newman, Presiding Judge

July *15*, 2013

Columbia, South Carolina

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The Non-Jury motions roster for the term starting on August 7, 2023 with the Honorable Kristi Curtis presiding, to be heard via WEBEX, has been posted on the Judicial Website. To access the Judge's virtual courtroom, please go to https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.sccourts.org%2F&data=05%7C01%7Cmharper%40elmoregoldsmith.com%7C31e75580fc884247492d08db7ee2a88b%7Caf909057ceb043bd8e403d6e95878066%7C0%7C0%7C638243284211954792%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=DiIAfP615jPwews0D7mbHqhgAC7FNUdFd3BtdoGByYE%3D&reserved=0, under Calendar - Monthly View, click Circuit on the day of your hearing and find the Judge's virtual courtroom under his/her name.

If your motion is resolved/withdrawn, please e-mail Cecilia Cessna at cessnac@horrycountysc.gov.
Any memos/briefs are to be e-mailed/mailed to the Judge of the week 10 days prior to the hearing.

To request a continuace: Please e-file a motion and a proposed order along with a $25.00 filing fee no later than July 31, 2023. Attorneys: Please notify all Pro-se parties if applicable.
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