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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2020-CP-04-00085
Appellate Case No. 2024-001911

Moats Construction, Inc. and Russell Moats,

Appellants,

v.

Anderson County, Rusty Barns, Matt Schell, and Holt Hopkins,

Respondents.

RECORD ON APPEAL
(VOLUME 3 OF 3)

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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A. Yes, sir.
Q. All right. Thank you. How do you -- how does your office know to issue checks?
A. Typically, it's an invoice submitted to our department signed by the department head. Construction invoices like this typically were signed by Mr. Burns, our administrator, and lots of times in addition to the project manager of that project.

MR. DAVIDSON: Okay. All right. Your Honor, that's all I have for Ms. Davis.

THE COURT: Mr. Goodwyn.

MR. GOODWYN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GOODWYN:
Q. Ms. Davis, I want to ask you a few questions here. Do you know what the checks that you were just referring to were for? Why they were being paid?
A. Do I personally know why they were being paid?
Q. Yeah, you were asked to cut these check, rights?
A. I'm sorry. I didn't understand your question.
Q. You were asked to cut these checks for these various businesses, right?

A. That is correct. Based upon the application for payment, yes, or invoice.
Q. Okay. Do you know why -- why those checks were being cut or what the -- what the reason for making these payments was?
A. Yes, sir. They're itemized on the invoice. Application for payment says the project name at the top of the invoice.
MR. GOODWYN: Okay. I'm sorry. Which tab is that?
MR. DAVIDSON: 27.
MR. GOODWYN: Thank you.
BY MR. GOODWYN:
Q. All right. And let's go through those. Those four -- four figures that you were just talking about.
A. Yes, sir. That was four I was asked about.
Q. All right. Let's -- let's start at the bottom. The irrigation service and repair, do you know why that was being paid or do you know what the purpose of that was for?
A. My understanding is a sprinkler system.
Q. For a sprinkler system. Do you know why the county's asking Russell Moats to pay for the sprinkle system -- sprinkler system?

A. No, sir. I don't get involved with that level of detail. The project manager typically would sign off on that ---

Q. Okay.

A. --- and negotiate that.

Q. All right. And -- all right. So the next item you have is 90 -- $9450 to Mike Duncan?

A. Yes, sir.

Q. All right. Again, do you know why the county is asking Russell Moats to pay for Mike Duncan's work?

A. Just concrete work for the pedestrian bike path.

Q. All right. But do you know why the county's asking Russell Moats to pay for it?

A. No, sir. Again, I don't get involved in that level of detail. That's the project manager.

Q. Okay. And what's the next one up that you -- that you were asked to testify about? It's got the 11,600 figure for the irrigation?

A. Right.

Q. Mike Duncan is 9450?

A. That's right.

Q. And what else?

A. The Moseley Brothers, 1,750, the car stops at

the parking lot.
Q. Okay. Again, do you know why the county is asking my client to pay for those?
A. No, sir. That would be the project manager's duties.
Q. And do you have -- what was the -- what was the other number you had? Was it just those three or was there more?
A. There's four. There was the irrigation, 11,600; the 5242, which was the -- I think we're missing the landscaping. The first three items are First Impressions.
Q. Oh, here we go.
A. Yes, sir. 5,242.
Q. Okay. And that's the first three items ---
A. Yes, sir.
Q. --- of the landscape. I gotcha. Okay. And, again, do you know why the county is asking my client to pay First Impressions for those -- for those three bills?
A. No, sir. I don't -- I don't know that.
Q. Okay.
A. That's the project manager's duties.
Q. All right. Do you know if any of the items that -- that we just discussed were part of the

original contract or -- or a part from that contract?

A. No, sir. I don't get involved in that level of detail.

Q. Do you know if the county ever issued Russell Moats a -- any kind of a notice related to the irritation system.

A. Any kind of notice?

Q. Right.

A. Notice to perform or what kind ---

Q. Or notice that -- notice that they believed there was an issue with the irrigation system?

A. No, sir. That's not finance's responsibility.

MR. GOODWYN: Okay. All right. That's all I have, Your Honor.

THE COURT: Redirect.

MR. DAVIDSON: No, Your Honor.

THE COURT: Thank you, ma'am.

THE WITNESS: Thank you, sir.

THE COURT: May this witness be excused?

MR. DAVIDSON: She may, Your Honor.

THE COURT: Thank you.

(Witness excused.)

MR. DAVIDSON: Your Honor, my next witness is Brian Richardson. He's across the street. He's on

the way.

THE COURT: Go ahead and call him and let him that he'll be testifying right quick.

MR. DAVIDSON: Yes, sir. We did. He's on the way.

(From 2:20 to 2:24 p.m., brief recess.)

MR. DAVIDSON: Your Honor, we call Brian Richardson.

THE CLERK: If you'd come forward and raise your right hand.

THE WITNESS: (Complying.)

THE CLERK: Do you swear or affirm the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, I do.

THE CLERK: Thank you, sir. If you would please take a seat at the witness stand.

THE WITNESS: (Complying.)

BRIAN RICHARDSON,

having been produced and first duly sworn as a witness on behalf of the Defendant, then testified as follows:

DIRECT EXAMINATION

BY MR. DAVIDSON:

Q. Good afternoon, Mr. Richardson.

A. Hello.
Q. How are you?
A. I'm good. How about you?
Q. I'm good.
A. Good.
Q. I just got a couple of questions for you ---
A. All right.
Q. --- on -- about the people that did finish-up work at the East-West Parkway Project.
A. Okay.
Q. Okay. I think yesterday when you were testifying, we talked about Mike Duncan kind of briefly, right?
A. Right.
Q. Okay. And what -- what work did he do?
A. The -- I believe pouring the concrete down on the left -- the lower parking lot, connecting the lower parking lot to the existing bike trail.
Q. Okay. What about First Impressions Landscaping?
A. I believe we had them come in putting mulch out. Mulched some of the bare areas, the beds. Maybe some plantings, maybe. I don't recall exactly what they did, but they're -- they're a landscape contractor of ours.

Q. Okay. How about the Moseley Brothers?
A. I'm pretty sure Moseley striped the lower parking lot, the parking lot striping. I think that's all they did.
Q. Okay. Let me -- I'm going to show you what we've marked as exhibit -- Defendant's Exhibit 1, Tab 27. I'm trying to get this. So -- so do you see that document? I mean, you don't see the whole thing, but...
A. Yes, sir.
Q. Okay. Let me -- all right. Do you see the heading that says parking lot?
A. Yes, sir.
Q. Do you see Moseley Brothers down there?
A. Yes, sir.
Q. Does that refresh your recollection on what they might've done?
A. Twenty-five car stops. Yeah, that was, I guess, the concrete curb stops, you know, in -- in each parking space. I think they probably installed those, too.
Q. Okay. And what about irrigation service and repair?
A. That was -- they came back in and basically replaced the entire irrigation system in the park.

The one that was installed did not function properly when we tried to start it up. And they came in and basically started over, repaired the entire irrigation system.

Q. Okay. And just to be clear, is -- is that the name of the company, "Irrigation Service and Repair," or is that the work they did?

A. That's the name of the company. Yes.

Q. Do you believe this is all of the -- all of the vendors that were paid to finish up this project?

A. I -- I believe so. Yes.

Q. To the best of your knowledge, that's -- that's what it is?

A. To the best of my knowledge. Yes.

MR. DAVIDSON: That's all the questions. Thank you.

THE WITNESS: All right.

CROSS-EXAMINATION

BY MR. GOODWYN:

Q. Mr. Richardson, the irrigation system, was that the only water system in the East-West Park Project? Is there a separate water system that Mr. Moats would've installed or worked on?

A. I don't believe so. I think we only had irritation in the park at that time.

Q. Okay. I'm going to show you a portion of this mediated settlement agreement again. Direct your attention to paragraph 8. Can you see that?
A. Yes, sir.
Q. I'll read it. It says, "The water line installed by Moats is warranted by Moats." And this water line they're talking about, that's the irrigation system, right?
A. I would assume so. Yes.
Q. Okay. All right. "And -- and its surety bond as set forth in the contract documents and Moats and/or its surety agent agrees to make any repairs to the water line after notice to Moats." Do you see that?
A. Yes, sir.
Q. Was notice ever given to Moats about any defects with this water line?
A. I can't recall if we did or not. I'm not sure.
Q. Are you aware of any notice that was ever given to Mr. Moats?
A. I'm not aware of any, no.
Q. Okay. All right. And Mr. -- Mr. Duncan's work pouring the concrete, I believe -- I believe you testified earlier. I think Ms. Sexton testified that he poured concrete and had it torn out once,

she said twice, and had to have it repoured. Do you recall that?

A. I'm sorry. Could you repeat?

Q. Yeah. Mike Duncan, when he came in and he poured the concrete for that sidewalk, that it had to be torn out and put back in, once, maybe, you said twice, Ms. Sexton said. Does that sound about right?

A. I don't recall Mike tearing it out. Like I said, I remember I thought he had to do some grinding, some concrete grinding.

Q. All right. Was concrete torn out at some point? We saw the pictures.

A. According to the pictures, yes. I -- I don't specifically recall having the concrete torn out. I don't.

Q. All right. And is there any way for us to tell by these payments -- those payments summary whether Mike Duncan was paid to pour concrete more than once?

A. According to that, yes.

Q. That he was paid more than once to pour concrete?

A. That he was paid more than once. Yes.

Q. Okay. All right. And this $1750 for the car

stops to Moseley Brothers, did Mr. Moats put car stops out there while you were the project manager?
A. I don't remember. I don't -- I don't recall.
Q. All right. If -- if -- do you have any reason to dispute that if -- if he -- if he claims that he did?
A. That he installed them or put them onsite?
Q. Put them onsite.
A. Again, I don't recall if they were onsite or not.
Q. All right. Fair enough. All right. I believe these other items here to First Impressions Landscaping, this landscaping that you're being charged for, is that -- is the county asking Mr. Moats to pay for that landscaping?
A. In -- in ---
Q. In this lawsuit. This is what we're here for.
A. Oh, I don't -- I don't -- I don't know that. I don't know the answer to that.
Q. Okay. Do you -- do you have any reason to believe why Mr. Moats would be responsible for paying for this -- this landscaping bill?
A. I mean, I would assume it was because it wasn't done under the original contract.
Q. All right. Do you know if this landscaping

work was even part of the original contract?

A. I would assume it probably was.

Q. But you're just assuming?

A. Yes. I mean, I don't -- I don't recall.

MR. GOODWYN: Okay. And the -- okay. That's all I have, Your Honor.

THE COURT: Any redirect?

MR. DAVIDSON: No redirect.

THE COURT: Thank you, sir. You may be excused.

THE WITNESS: Yes, sir. Thank you.

(Witness excused.)

MR. DAVIDSON: Your Honor, Anderson County rests.

THE COURT: All right. Madam forelady, the county says that it rests, so I have some more administrative matters to take up. And I'll bring you back out here for continuation or we could be doing closing arguments or more testimony, okay, in just a few minutes.

(At 2:34 p.m., jury left the courtroom.)

THE COURT: All right. Motions.

MR. GOODWYN: Yes, Your Honor. Plaintiff moves for a directed verdict on the -- on the breach of contract claim with relationship -- relationship to

the $50,000. That's paragraph 4 of the mediated settlement agreement. As stated before, there are no conditions listed in paragraph 4 as to that would limit or prevent the defendants from paying it at a reasonable time.

Mr. Burns testified that he himself made up a provision that it was to be paid once the project was completed. It is unambiguous on its face. There's no genuine material of fact to state the motion.

THE COURT: Mr. Davidson.

MR. DAVIDSON: Your Honor, I don't think Mr. Burns said he made it up, but it -- the -- the county has maintained and all of its witnesses have maintained that it's his understanding and the intent of the document was that the East-West Project had to be finished before Toxaway was done. And if you -- if you look at the time frames in that document, it -- it all matches up.

For instance, the paragraph 5, and I'm looking at Defendant's 1, Tab 4. Paragraph 5 says that Moats will remobilize to the project on the start date not before 4/17/18 and then it goes on to say and complete work within 30 calendar days.

THE COURT: Let me ask you this.

MR. DAVIDSON: Yes, sir.

THE COURT: Paragraph 4, first ---

MR. DAVIDSON: Yes, sir.

THE COURT: --- you -- you would agree with me in paragraph 4, there's no contingency language in that ---

MR. DAVIDSON: There is not any ---

THE COURT: --- paragraph.

MR. DAVIDSON: Sorry. There's not any contingency language in that sentence.

THE COURT: And that stated purpose for the $50,000 is delayed damages, right?

MR. DAVIDSON: Yes, sir. That's ---

THE COURT: Delayed damages is something that occurred prior to the mediation, right?

MR. DAVIDSON: Yes, sir.

THE COURT: So is there any real issue of fact that these monies were owed to the defendant -- plaintiff -- excuse me -- and since there wasn't a definitive time within a reasonable time?

MR. DAVIDSON: It was certainly to be paid -- I would agree that it would be paid within a reasonable time. Yes, sir.

THE COURT: And there's nothing in this agreement that makes it contingent upon the

completion of the East-West.

MR. DAVIDSON: Well, I would argue that the -- that where it becomes contingent is in paragraph 13.

THE COURT: Sir?

MR. DAVIDSON: It's in paragraph 13.

THE COURT: I understand that.

MR. DAVIDSON: I think paragraph 13 makes a completion of the East-West contingent, and paragraph 5 -- excuse me -- paragraph 4 is one of those paragraphs as to the East-West Project.

THE COURT: Looking at the unambiguous language of your mediation agreement that the 50,000 is not contingent upon the finishing of the East-West agreement. That is based on the language of the agreement. It has to do with mobilization and finishing up the project, the East-West, and then going over to the Toxaway.

Past due delay damages certainly are not contingent in this language. I don't see any inference that you can draw from the language that it is, even in the light most favorable to the county.

MR. DAVIDSON: Well, respectfully, I think that the -- that paragraph 13 provides that the parties further agree that Anderson County counsel's

approval of the East-West Project or the -- excuse me. I read that wrong. The parties further agree that subject to Anderson County counsel's approval of the East-West Project, then -- then we move into Toxaway.

So I think -- and -- and where I was going with that whole discussion is that was going to happen within 30 days. Okay. It was going -- this project was going to be complete in 30 days by the terms of the agreement. And all amounts would be paid at that -- you know, shortly after the completion of that project, other than the ones that were specifically called out to be paid ahead. So when we talk about a reasonable time to pay, I think it would've been within 30 to, you know, 45 days to get the checks cut when the project was completed.

THE COURT: Well, that may very well be, but you're trying to add an element to that and that is the acceptance of the East-West Project's completion by county counsel, and there's nowhere in the language that I see that ---

MR. DAVIDSON: Well ---

THE COURT: --- to the $50,000.

MR. DAVIDSON: I'm sorry. I didn't mean to imply that the approval by the county was that, but

that it was a staged process. Okay. And so the 30 days -- Toxaway can't start until June 1st at the earliest according to this.

THE COURT: Okay.

MR. DAVIDSON: Okay. And so there were staged progress throughout. And the -- and then so the $50,000 delay damage, had everything gone according to plan, would've been paid at the end of East-West.

THE COURT: And that's fine and that's your thing, but I'm looking at the agreement that you entered into. There's not a time frame. You stipulated with me I think, don't let me put words in your mouth, but since there was not a time period given, that the law imputes reasonable time.

MR. DAVIDSON: I agree.

THE COURT: And that date was March 29, 2018. It is now February the 18th, 2024. I think as a matter of law, that's unreasonable.

MR. DAVIDSON: Well, Your Honor, the ---

THE COURT: Can you show me language that gives you the right to withhold it for this period of time?

MR. DAVIDSON: Well, the agreement was breached.

THE COURT: Sir?

THE DAVIDSON: The plaintiff breached the agreement.

THE COURT: That didn't say anything about -- there's nothing in there about the plaintiff breaching the agreement. It just said we're not going to pay you 50 -- it says we're going to pay you 50 as delay damages.

MR. DAVIDSON: Well, Your Honor, I think part and parcel of this agreement was the completion of both projects.

THE COURT: Well, you should've said that.

MR. DAVIDSON: These have been -- these have been troublesome projects for everybody, not casting dispersions anywhere. And the goal was to get it completed and everybody go their way.

THE COURT: I'm sure that was the case, but that's not the language that was used in your -- in your mediated agreement. It's not. And I think the way I looked at it, and even giving the county the benefit of the doubt, which is what I'm supposed to do at this juncture, I look at it in the light most favorable to the county. I can't see any language in there that makes the $50,000 not payable before today's date, and that is April the 18th or 19th, 2024. I mean, that's -- that's unreasonable as a

matter of law.

MR. DAVIDSON: Well, Your Honor, the county's position is that when the -- when the contract was breached, when the mediated settlement agreement was breached, Mr. Moats walked off the job, then ---

THE COURT: And I agree with you. Let me -- sorry I interrupted you.

MR. DAVIDSON: No, that's fine.

THE COURT: I agree with you, number three, the 15,000, not 26. And then any additional monies have made to be there, but the 50 is not contingent. I mean, it's just -- it's payable. And I don't see how you can construe it any other way.

MR. DAVIDSON: Well, Your Honor, on a typical project, you would be paid for the work done. Okay. And if you don't finish the project, then the owner completes the project and it gets to offset its cost against whatever would've otherwise been paid.

THE COURT: That's what retainage is for.

MR. DAVIDSON: Well, retainage ---

THE COURT: You were paying him -- you were paying him for past damages for delay. That's what you agreed to, right?

MR. DAVIDSON: Well, we paid -- we agreed to pay $50,000 for delay damages, yes.

THE COURT: And so that had nothing to do with anything that goes forward in the future. You said we caused you damage in the past. We owe you $50,000 for that. There's nothing about going in the future that changes that. Did I -- I mean, I'm -- I'm sympathetic, but I just don't see it. Mr. ---

MR. DAVIDSON: Well, I think what that'll end up doing then is it's a windfall to a plaintiff then who -- who collects the $50,000 but doesn't finish the project, which was the point of the agreement.

THE COURT: Well, I mean, I understand that, but, you know, you wanted the agreement finished, but the way this -- this language is worded, it doesn't say, you know, this -- this money will be paid at the completion of this project. Says we owe him 50,000 for delays damages. So project finished or not, we owe him $50,000. I look at it that way.

MR. DAVIDSON: Okay. Well, Your Honor, I don't ---

THE COURT: And I see how there's an issue of fact for a jury to make that call. So whether you and I agree on the interpretation of the contract is one thing, but if there's an inference or something to be drawn in the light most favorable to the

county, tell me what it is that makes you question the fact for the jury.

MR. DAVIDSON: Well, Your Honor, the jury has heard every county witness that -- that could speak to the issues say that their -- that their understanding of the contract and the deal was that the amounts, the -- the 26,000 is clearly called out to be paid at the -- at the notice to proceed would be paid. The other amounts would be paid on the completion of the work. I think -- I think that's what ---

THE COURT: Well, so, number three, when he says 15,000, that's payable on the completion of the work.

MR. DAVIDSON: Well, it's a change order, so the work has to be done in order to pay.

THE COURT: Well, it doesn't say completion of the project. It's completion of that work that represents the $15,000 and the change order.

MR. DAVIDSON: Well, you -- I mean, you submit monthly pay applications on the project, and the change orders then are included in that pay application.

THE COURT: I understand that.

MR. DAVIDSON: And so when the pay application

came in, the change order was going to be approved when the change order came when the work was done and it was added to a -- to the pay application, it would've been paid at that point.

THE COURT: So your -- your -- your argument to me is that the inference or something to be drawn are questions for the jury to determine whether or not -- even under paragraph 3 that -- that he was not entitled to payment until the end of East-West Project and had been accepted by the county?

MR. DAVIDSON: Yes, sir. That's the term of the agreement.

THE COURT: I disagree with that. I don't think there's any -- I don't think there's nothing in there that reads that way.

MR. DAVIDSON: Okay.

THE COURT: But, Mr. Goodwyn, I'll be glad to hear -- I'll be glad to hear you back in just a second, but Mr. Goodwyn.

MR. GOODWYN: Your Honor, I respectfully disagree with the point that anything was contingent -- contingent upon payment ---

THE COURT: Speak up for me.

MR. GOODWYN: I disagree that there was any contingency to pay that $50,000 that should've been

paid at the same time as the $26,000. It should've been paid, and then whether he did anything on the work is irrelevant. It just says he's entitled to $50,000 in delay damages unconditional. That's the term of the agreement.

THE COURT: I agree. I'm going to grant directed verdict as far as the 50,000.

Now, guys, let me ask y'all this: First, let me ask the plaintiff, do you intend to put up a reply?

MR. GOODWYN: I do intend to -- well, I'd like to get through these directed verdict motions. Depending on the outcome, I might need to call him to respond in our defense.

THE COURT: Okay. All right. Did you -- do you have any other directed verdict motions?

MR. GOODWYN: Yes, Your Honor.

THE COURT: Alright, sir.

MR. GOODWYN: Going back to our claims again, I'd like to move for a directed verdict on the -- on that $15,000 in paragraph 3. I know I submitted my jury charges in advance. You may have looked at it. You may be familiar with the Spearman doctrine, which basically ---

THE COURT: I read the case.

MR. GOODWYN: Yeah, it basically says if a contractor performs work in accordance with the plans provided by the owner and something is defective, the owner can't come after him and he's entitled to money.

THE COURT: No. That's not what it says. It says he has a right to rely on the plans that were provided to him by him.

MR. GOODWYN: Right. And maybe I said that wrong. But, basically, what it means is in this case, the evidence and the testimony shows that after the mediated settlement agreement, he did come back out. He did perform. He moved the pipe. Put the forms for the concrete in and then realized it can't be done. The plans are wrong. And then he -- Mr. Harman testified he did receive a pay application from Mr. Moats' attorney and they didn't pay.

Later, of course, someone else comes in. The plans are redesigned. Natasha Sexton gets back involved. The concrete is poured, torn out, poured, torn out, put back in and it's not still ADA compliant according to Sandy Hanebrink, which is very convincing evidence that the plans were not right at the time Mr. Moats was out there.

THE COURT: I -- you know, the evidence and the testimony was that there's deviations from ADA requirements to be either contract related or plan related. In this case, and refresh my memory if I'm wrong, I don't recall any inspection of the forms at that point that were put up. I know that they were later taken down.

MR. GOODWYN: I think they're -- I think both sides testified that when Mr. Moats put up his forms, Mr. Moats inspected it, and the county had somebody come out and inspect it. Holt Hopkins had somebody come out and inspect it, and they both agreed that it would not be ADA compliant if it was poured like that.

THE COURT: Was that the testimony?

MR. GOODWYN: That was the testimony from both sides and that's why the concrete wasn't poured.

MR. DAVIDSON: Well, Your Honor, I think the testimony was that Mr. Moats was given a couple of locations to revise the forms and that it would be acceptable if -- if he -- if he -- I think Mr. Hopkins characterized it as "take it down a little bit over here and raise it up a little bit over here" was sort of the vernacular he used. And then the county would be able to approve -- would be

able to approve it if it were poured that way.

THE COURT: I'm going to deny your motion. I think it's a question for the jury.

MR. GOODWYN: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. GOODWYN: I'd like to move for directed verdict. I'm going to address each of these four payments that they are asking for individually.

The first one is irrigation. As I alluded to in my question, there was a provision in the mediated settlement agreement, paragraph 8, where Mr. Moats agrees to warrant these -- the irritation system, and he agrees to make any repairs to the water lines after notice to Moats -- excuse me -- after notice to Moats. The testimony from the stand was no -- nobody knew of any notice given to Moats. There's no notice, letter in evidence, that -- that I've -- that I've seen. And since they did not give him notice of any defect and give him a chance to repair on his own, I don't think it's appropriate to send it to the jury and ask him to pay for them sending it out to somebody else.

THE COURT: Well, what about the testimony that he walked off the job? I'm not -- I'm not saying that ---

MR. GOODWYN: Well, this was a year later.

THE COURT: --- he wasn't justified, but he did walk off the job.

MR. GOODWYN: No, he did. That's not related. Keep in mind, this irrigation repair was a year later. They didn't, you know, try to fight the irrigation system until a year later. Then they said, well, it doesn't work so they called in somebody to repair it. He -- at that time he had warranted the repair and they still had to give him notice to give him a chance to repair it.

THE COURT: What's your response?

MR. DAVIDSON: Well, Your Honor, there's -- Mr. Moats left the job. All right. He walked off the job a year earlier. The county was left to get the job finished. When it got to the point of starting up the irrigation system, it was found to have -- to have problems. I don't think that there was any reason to expect that Moats was going to change his mind about being on the project if he can come back and do something. We were in a dispute. He had walked off the job. I think at the very least that there could be an inference that we don't expect that he's going honor that provision and it should at least get to the jury.

MR. GOODWYN: I would -- in response to that I would say, they may have thought he wasn't going to honor the provision, but it's not up to them to decide. They agreed that they would send him notice and give him a chance to -- to abide by it. They can't just unilaterally say he's not going to abide by it.

THE COURT: I hear you. I'm going to let that be a jury issue, as well. Okay, sir?

MR. GOODWYN: Okay.

THE COURT: I note your objection.

MR. GOODWYN: All right. And I'd like to move for directed verdict on the landscaping claim that was $5200 or so in landscaping. The testimony -- Ms. Davis says that they paid a landscaper to do some landscaping, but there was -- Mr. Brian Richardson came in and said he didn't even know if that was part of the original contract or not. He didn't -- he didn't know. I think they have to have more than just a payment to a vendor.

And if you notice on the pay app -- or not the pay application -- the summary of payments made, there are a number of vendors that were paid that they're not asking for because they know it's not related to the contract. There's no tie in between

that payment and what Mr. Moats was supposed to do. They have to -- they have to bring that together before it can go to the jury.

MR. DAVIDSON: Your Honor, I would say that -- that the -- that the landscaping, my understanding is from the testimony, is related -- well, that in the Moats' contract for East-West, he was responsible for plantings and throughout the project. We talked a lot about the trees and root balls and how you handle the -- how you handle trees, so the landscaping part, it's my understanding, is certainly within the scope of the original contract.

MR. GOODWYN: Well, and in response to that, I would direct the Court's attention to the summary here that is under landscaping. There's six checks that were paid. They're only asking for three of the checks for Mr. Moats ---

THE COURT: Asking for what?

MR. GOODWYN: They're only asking Mr. Moats to pay for three of these checks that they paid to this vendor, to these landscapers. Why not the other three? Maybe they know it's not related. I don't know, but my point is is that they have to have testimony or evidence that these three payments were

related to the original contract. They can't just say landscaping is related because clearly some of the landscaping is not.

And just -- I don't think there's any evidence that they presented to show that these three items were related to work that Mr. Moats was supposed to have done.

THE COURT: No. I think that there was testimony that if you add those all up, it's the difference between the unpaid balance due on the total contract amount is what I heard; is that correct.

MR. DAVIDSON: I didn't -- I didn't hear you, Your Honor. I'm sorry.

THE COURT: When you add all the monies that were paid out, I think the balance that was paid out was 21-something thousand dollars was the same figure that was left unpaid after the contract; is that right?

MR. DAVIDSON: Umm ---

THE COURT: No?

MR. DAVIDSON: I don't -- I don't think that's the same thing.

THE COURT: Okay. Well, then where is there something in the record things that says that these

payments go towards the work he's supposed to do?

MR. DAVIDSON: Well, the -- I think that it was the -- it is part in parcel -- alright, look, the first three were work done within 2019. And I believe based upon the testimony, and I think it was Matt Schell's testimony, the landscaping and the plannings were included in that original contract. And that's -- that's the whole root ball discussion.

The other three for Carolina Fresh Farms Mulch and Boulders were a year later and I think unrelated to that because that was a -- sort of a beautification project. There's no testimony about that. I'm just telling you.

THE COURT: I'm going to let it go the jury. Okay. What else do you have?

MR. GOODWYN: With respect to Mike Duncan's pouring of the concrete, I move for a directed verdict again based on the Spearman doctrine that the plans were -- were defective. Mr. Moats did not pour those because the plans did not -- they would not have made it ADA compliant, which was proven later by the fact that that path was poured and torn up twice, and the plans were modified after that. Under the Spearman doctrine, the contract, the original contract can't be held for -- for -- and

responsibile for those damages after.

MR. DAVIDSON: I think if there's a Spearman doctrine argument, it would be Mike Duncan, not -- not Mr. Moats on that because this is related back. This was work that had to be done to finish his -- to finish this. I think there's no question that this -- that this sidewalk that was done was in -- within the scope of work, Moats' scope of work. And the cost from Mike Duncan was the -- was over, I guess, two pay applications to finish that work.

Now, to the extent that the county may've had him come back and do things because this was all paid before Mr. Moats and Sandy Hanebrink were onsite in later March and later April. So we're not asking for anything beyond that time period for Mike Duncan. It's the pouring of the sidewalk which was -- and that -- Brian Richardson was clear.

THE COURT: Well, now Mr. Goodwyn says that when Mr. Moats put up the forms ---

MR. DAVIDSON: Yes, sir.

THE COURT: --- and they were inspected, the forms that he built pursuant to the plans showed that it could not be built and be compliant with ADA. And everybody said they got to build ADA, and that's -- that's what he said. That was the

testimony from both sides establishing that those -- those bands were -- were not -- were not -- were defective.

MR. DAVIDSON: Well, there's no testimony that the plans that Mike Duncan built from were the same plans. So we're talking about whether or not we can recover for the cost we paid to Mike Duncan to complete Mr. Moats' work. Mr. Moats was told on -- about his -- about his forms that there were two locations that needed to be -- or I shouldn't say two. There were some locations that needed to be fixed a little bit according -- using the testimony of Holt Hopkins and that that -- that we would be good. It would be approved if it were poured as those forms were laid out as they were revised. So -- and remember the mediated settlement agreement has a lesser standard in it on the ADA than the original contract.

THE COURT: All your witnesses ADA was necessary. They had to build it to ADA.

MR. DAVIDSON: It certainty is, but the final contract document between the two parties says he is responsible for complying with ADA, provided that the drawings comply with ADA.

THE COURT: Well, I'm going to -- I think

that's a closer call, Mr. Goodwyn. I'm going to let that one be decided by the jury, as well. I think the point that the plans that Mr. Duncan built to, there's no evidence of that in the record so those costs may or may not be right.

MR. GOODWYN: All right. We would move for directed verdict on the same issue, but different ground. The paragraph 3 of the mediated settlement agreement states that Mr. Moats was to paid $15,000 to finish up the work, which would be primarily pouring that sidewalk. He was never paid that money. Mr. Duncan was paid to do it later.

Now, I can understand their argument if Mr. Moats had been paid the 15,000 and then didn't pour the concrete -- didn't pour the sidewalk and they had to get somebody else to come in and do it. He needs to reimburse some of that money to pay the other guy, but that's not what happened. He was never paid to pour the sidewalk. He didn't get the $15,000, so they essentially took that 15,000 and paid Mike Duncan a portion of it to finish it, so they're not out anything the way it stands right now.

So for them to say we don't have to pay the 15,000 and you have to pay us 9,000, they're double

dipping. Does that -- do you follow what I'm saying? They're getting -- they're getting paid twice essentially for the same work. They're having him pay somebody else to do it but not paying him. They have to pay for the sidewalk one way or the other. I don't think anybody disputes that, but they didn't pay him to do it. And now they're asking him to pay Mike Duncan to do it. And if the jury decides that, that -- then that means they never paid for the sidewalk. They didn't pay anybody for the sidewalk. And that's what's not right about this.

What the issue that should go to the jury is should they pay -- they have to pay someone for the sidewalk, either my client or Mr. Duncan, but they got to pay someone. The way it's set up now is nobody -- if they are -- if the jury agrees with them and they make my guy pay for the sidewalk, then they've not paid anything for the sidewalk and that's -- that's not right.

MR. DAVIDSON: Your Honor, our cost to complete will always have to be offset against what we would've paid Moats, okay, which would've been the $15,000. So at worst, we, the county, should be able to get a credit for the 9 -- the $9450.

THE COURT: Well, that's going to be my question. Why shouldn't you go to the jury for the differential?

MR. DAVIDSON: That's -- I think that ---

THE COURT: I think that's right.

MR. DAVIDSON: I can't argue with that. I think that's the way it works.

THE COURT: I think that's right.

MR. GOODWYN: All right.

THE COURT: All right. So at least we all agree on one thing.

MR. GOODWYN: Right. One more ---

THE COURT: Yes, sir.

MR. GOODWYN: --- one more issue, Your Honor. Move for directed verdict just with respect to the entire defense request for any damages based on this reason.

The -- according to the mediated settlement agreement, the total contract sum to date is 324,000 and some change. They paid Russell Moats 248,000. So 248,000 is what they paid him. They paid him another 26,000, you know, right about 26,000 after that to make it 274,000. We're asking for $27,000 in retainage. That's 301,000.

And so right now, even if you -- again, we're

asking for that. So right there, they're up $23,000 on this contract as it stands. They aren't -- even if you add the 28 that they say they're owed, that's -- they're still coming out ahead regardless of what happens.

THE COURT: And what's your response?

MR. GOODWYN: They're asking my client to pay them money ---

THE COURT: I'm sorry.

MR. GOODWYN: --- but they're -- they're -- they're ahead. Without -- without getting anything from my client, they're still profiting from whatever he did. Whatever -- whatever gets worked out, they were expecting to pay 324,000. They have not paid that to date. If they haven't paid that, then fine. If they paid over 324,000, then maybe they could ask him to refund some, but they haven't.

THE COURT: Well, one -- one -- the contract of 324761.28 is the contract for the East-West project.

MR. GOODWYN: Phase 1 and 2.

THE COURT: Your -- this case is for breach of mediation agreement. And so those are different terms and different things.

Now, when you put in retainage to make it simplistic, but we're not going on the East-West

agreement, right?

MR. GOODWYN: Right. Yeah, we're working on the mediated settlement agreement ---

THE COURT: Right.

MR. GOODWYN: --- plus the retainage.

THE COURT: So, I mean, I see what you're saying. All right.

Now, guys, let me ask you -- anything further, Mr. Goodwyn?

MR. GOODWYN: No, Your Honor. That's it.

THE COURT: All right. Thank you, sir.

MR. DAVIDSON: Your Honor, if I may? I won't belabor it, but I would like to renew my requests for directed verdict that were denied.

THE COURT: Denied again.

MR. DAVIDSON: Thank you, sir.

THE COURT: All right. Thank you. Let me ask y'all. I was always taught by Judge Miller out of Greenville that you don't give a case to the jury after four o'clock in the afternoon because they'll rush to a judgment. I'm glad to go forward. We can argue and charge now, or come back in the morning and argue and charge. What would be your preference, Mr. Goodwyn?

MR. GOODWYN: Well, first, I do think I want to

call my client to refute some of the evidence they put forth on their counterclaims, but ---

THE COURT: Are you going to put up a reply?

MR. GOODWYN: Yeah, a short one.

THE COURT: Okay. And it's not going to be about his damages.

MR. GOODWYN: Oh, no, no. Just going to be responding to their claims for damages.

THE COURT: Okay. All right. Well, I'm sorry. I jumped ahead then.

MR. GOODWYN: No. That's fine. To your question, though, yes. I -- I have to go back to Columbia tonight. I would love to be finished today. I can save money for the weekend.

THE COURT: Well, and if you're going to put -- if you're going to put him up on the stand, about the time we have the charge conference and everything, it's going to be -- let's -- tell you what. You know, let's do the charge conference, send the jury out, and then we'll come back in the morning. Okay?

MR. DAVIDSON: That's fine.

THE COURT: All right. Would you bring the jury in? Are you ready?

MR. GOODWYN: Yes, sir.

THE COURT: Are you ready?

MR. DAVIDSON: Yes, sir.

THE COURT: All right. Thank you. And I note that both of you objected to points y'all lost on in the directed verdict.

MR. DAVIDSON: Thank you.

(At 3:09 p.m., jury entered the courtroom.)

THE COURT: Let me do something. I'm going to need you to go back to your jury room because I got to go over this with these guys, and then we'll bring you back out.

THE FORELADY: Okay. We weren't sure what the process was.

(At 3:09 p.m., jury left the courtroom.)

THE COURT: Questions from the jury: "Did the county lose any grant money on the East-West Park? Has the UCC-1 been released or expired from Toxaway?"

My concern is they've been back there deliberating on the case. And regardless of what you tell them sometimes, they just never get it. Let me ---

MR. GOODWYN: I don't -- I'm not going to ask for a mistrial, just a curative instruction maybe to stop deliberating.

THE COURT: I think that I need to bring the jury out here, and I'll entertain one from you, too. Talk to the foreperson, ask her how much deliberation has been going on. If they recall me telling them they can't do it and see -- or see if that's impacted their beliefs as to the evidence in this case so that they can't give everybody a fair trial based on the charge that they get that they heard at the closing arguments.

MR. DAVIDSON: Yeah, I agree.

THE COURT: I mean, I know nobody wants a mistrial. So in your mind, Mr. Goodwyn, do I bring out just the forelady or the whole jury?

MR. GOODWYN: I would say the whole jury.

THE COURT: I think you're probably right.

MR. GOODWYN: It's probably more than just her talking.

THE COURT: I think you're probably right. What about you?

MR. DAVIDSON: I agree with that. I think those are incredibly specific questions.

THE COURT: There's no way they can't be back there not discussing it.

MR. DAVIDSON: No way they can't be talking about it.

THE COURT: All right. Let me tell you this: When I talk to a jury, I give them up and down. If y'all want me to say something to them or give the charge to them, write it out, and let me look at it. And then bring it to my attention after I talk to them and send them out, and we'll discuss it. Okay. But you got to ask for it and you got to tell me what you're asking.

MR. GOODWYN: Thank you, Judge.

THE COURT: All right. Bring the jury in.

(At 3:13 p.m., jury entered the courtroom.)

THE COURT: All right. Madam forelady, do you remember, and ladies and gentlemen of the jury, at the beginning of this case, I gave you some instructions? One big one was you are not to engage in deliberations about this case. Do you remember that?

THE FORELADY: Yes.

THE COURT: Your question tells me that you've been engaging in deliberations about the case.

THE FORELADY: That was questions that I had.

THE COURT: That was a question that you had?

THE FORELADY: Yes.

THE COURT: It was not the jury?

THE FORELADY: No.

THE COURT: Does every -- let me ask the jury. I'm going to ask you, and then I'm going ask the jury. I'm not thinking you're telling me a story. That's not what I meant. Has there been any deliberations about this case during the break? If so, raise a hand. You don't have to tell on anybody. I just want to see if there has been. I'm not saying you did or somebody else did. These are your questions. Your questions alone?

THE FORELADY: (Affirmative response.)

THE COURT: Does everybody else on the jury agree with that?

THE JURORS: (Affirmative responses.)

THE COURT: All right. Thank you. I don't mean to be mean.

THE FORELADY: No, that's fine.

THE COURT: It's my job. Okay. I'm not answering those.

THE FORELADY: Okay.

THE COURT: And at the end of the day, that'll be a decision that you'll have to make once you begin your deliberations, okay, if it's relevant. I'm going to charge you on the law that you'll apply. So right now, you don't even know what you're supposed to be doing. All right.

THE FORELADY: Yes.

THE COURT: Okay. So let me get you to go back, and these lawyers are going to tell me that I either said something I shouldn't have said or I should've said more. And if I need to, I'll bring you back in here. And, otherwise, we're going to come back, and here's the plan:

As I told you, in all cases you -- the plaintiff goes first because they have the presentation of the evidence. The defense then goes. And the plaintiff has the right to reply. And the plaintiff is going to put up testimony in reply to the defendant's case.

By the time we hear that, then I need to go over the law that I'm going to charge to the jury, it'll be 4:30 or better. Too late now for me to give it to you to start your deliberations, so I'll bring you back. My plan is to bring you back at 9:30 for closing arguments and charge you on the law. Okay. Just so you know.

But that being said, would you mind -- and I don't mean to chastise all of you, but if you mind going back to the jury room, please.

(At 3:15 p.m., jury left the courtroom.)

THE COURT: Any additions or exceptions from

the plaintiff?

MR. GOODWYN: No, Your Honor.

THE COURT: From the defense?

MR. DAVIDSON: No, Your Honor.

THE COURT: You know, you never know. I had a foreperson send me a note on one that says, "Can you get rid of Juror No. 185. He's a stupid SOB." Okay. Well, you just never know. Y'all ready to go?

MR. GOODWYN: Yes, sir.

THE COURT: All right. You need a break or are you ready to go?

MR. DAVIDSON: If I could run to the restroom right quick.

THE COURT: All right.

(From 3:16 to 3:21 p.m., brief recess.)

THE COURT: Bring the jury in.

(At 3:21 p.m., jury entered the courtroom.)

THE COURT: All right. Mr. Goodwyn.

MR. GOODWYN: Thank you, Your Honor. I call Russell Moats in reply.

THE COURT: Come around.

THE WITNESS: (Complying.)

THE COURT: You're still under oath.

THE WITNESS: Yes, sir.

REPLY EXAMINATION

BY MR. GOODWYN:

Q. All right. Russell, I want to ask you a few questions in response to the county's claim for damages against you. First, I'm going to start with this bottom -- bottom item from the irrigation system. Do you recall this provision in the mediated settlement agreement, provision number eight there, where you agree to warrant the irrigation system, that water line?

A. I do.

Q. And you agree to make any repairs to it, correct?

A. I did.

Q. And you agreed to make the repairs after notice to Moats, correct?

A. Correct?

Q. Did you ever receive notice that there was any issues with the irrigation line or the water line?

A. We did not.

Q. All right. Then would you have made an effort to make the repair had you received any notice?

A. We would have.

Q. Okay. Do you feel you're responsibile for paying this $11,000 for somebody else to come repair

something that you had already agreed to do?
A. No. I do not. I -- I will say that we did get a bill from Anderson County for a water bill that -- somebody -- I think in a -- I think it was when they had a sewer line that came through there that we didn't know anything about. The City of Anderson had something to do with that. Somebody had cut the water line and nobody knew it, didn't know where it was at, and it was -- had been leaking for a while. I think they had like a $900 water bill from Hammond Water District ---
Q. All right.
A. --- and they expected us to pay it.
Q. Did you pay it?
A. We did not. Aside from that, I don't ---
Q. Okay.
A. --- that was all I knew about the water line or anything to do with the water line.
Q. All right. Now, I was going to ask you some questions about these -- this 50-something hundred dollars to this First Impressions Landscaping company that the county is asking you to pay for.
We've looked at a lot of pictures of the project over the last couple of days here. And I -- there's, you know, this photo here showing, you

know, some mulch in these areas, these areas. This is at the beginning. That's not really what we're talking about, but was there any sod called for in the contract -- in your contract?

A. The only sod that was called out in the contract for either phase that we worked on was for the area around the picnic tables.

Q. Okay.

A. And that was also the only area that received any kind of, like, sprinkler irrigation. Everything else is to be just grass and straw. That was it.

Q. Okay. Is this sod that we're looking at right here?

A. Yes, sir.

Q. All right. And that was put in after you -- after you left?

A. It was.

Q. Was there any -- again, this -- this was not called for in your contract?

A. It was not.

Q. All right. What about these little bushes that are in this center area here?

A. I don't remember any plantings down there. I can be wrong on that, but I don't remember anything down there. And that -- that area changed, you

know. There was no landscaping rock. They put that rock there I think because the way whoever -- whoever poured the concrete there originally or at whatever point in time, they didn't form that area correctly.

If you notice in some of those past pictures, it was supposed to be kind of a triangle area with some radiuses in the ---

Q. All right.

A. --- that looked like it was all kind of wavy. And so I think it was just kind of esthetic thing, so they put that landscaping right there so that it would look good. Again, that's just my ---

Q. All right. And you can see ---

A. --- assumption and opinion.

Q. --- you can see some sod going along the side of the sidewalk here. Was that called for in your contract?

A. No, sir.

Q. All right. And do you believe that -- well, first, let me ask you this: In the -- in the summer here, I'm going to zoom in a little bit so you can read this a little better. I'm looking at the first item there dated September 19, 2018.

This would've -- if you were off the job in May

of 2018 and -- May, June, July, August, September -- four months after you left, clean up park, mow, trim, edge, and hall away debris. Is that something that -- that you had already done? Is that something that was done extra? How do you see that?

A. I mean, that was five months later, so anything could've happened in five months as far as clean up goes. Hall away debris, you could've a storm or something come through. There were a lot trees that were left between both parking lots in the middle -- it was phase 3. They left a number of trees in that area.

Q. Okay.

A. So it could've been that. Mowing and trimming, I mean, that's just a maintenance item from the county that they would've done. I don't know how we would've been -- we weren't required in our contract, never had been required in our contract to maintain anything after that, unless it was like to water grass, you know, so that it would, you know, establish, just clean up park.

Q. Is there anything from these -- the February 18th and February 9, 2019, payments that would suggest that those -- that work was in any way part of your contract?

A. No, sir. I mean, I don't have -- unless you got an invoice or something that shows the detail for that particular transaction or amount.
Q. Okay.
A. I mean, I don't know of anything that they would've done. They were -- I mean, they've been doing different things out there since we left. I mean, they put in some solar lights along the East-West trail. They've done a lot of -- they've added a lot of other stuff like landscaping items since we left.
Q. Okay. So it is possible that these ---
A. They were not in the original plan.
Q. Right. Is it possible that these items that the county's asking you to pay for are all these additional items that they added later?
A. Those were additional things they just added later. I guess they're trying to ---
Q. Okay. This is in February of 2019 now, about 8 or 9, 10 months after you left, correct?
A. It is.
Q. All right. Let me ask you some questions about the $1750 for the -- to Moseley Brothers for 25 car stops.
A. Can you zoom out a little bit?

Q. Oh, zoom out a little bit?
A. Right there.
Q. All right. Can you see that now?
A. Yes, sir.
Q. All right. Is this accurate? What do you know about the car stops?
A. So, originally, in the contract, it called for wheel stops or car stops. So those are just pinned down in the parking lot in each parking space to stop a car so they don't run over the sidewalk.

Like I had testified earlier, when I first got up here, we were on track to complete the first phase. And if you look at those pay applications that were discussed with Ms. Davis, by November the 6th, I think is when they actually cut the check. So we were -- we had to submit it for that in middle -- middle October. We were almost finished with the first phase and we just started, you know, 45 days before that.

Q. So what you saying about the car stops, though?
A. So those were included in our original contract. And we were on track -- we even had our asphalt paver up there ready to pave the parking lot, the first parking lot. And we had already purchased those. Those were onsite. They were on a

pallet sitting on the sidewalk. I know you might not be able to find it, but I'm pretty sure it's in the exhibits in discovery. Those were there.

Q. Okay.

A. And the pins were there also because I think it's got another $122, but it's like 121.98 for those, so that was there.

Q. So you believe that's not fair for them to be asking you to pay for ---

A. No, sir.

Q. --- car stops that you've already provided?

A. Correct.

MR. GOODWYN: All right. That's all I have, Your Honor.

MR. DAVIDSON: Very briefly.

CROSS-EXAMINATION

BY MR. DAVIDSON:

Q. I want to make sure I understand on the car stops, Mr. Moats. So the original contract at the time -- so it was billed in the first pay application?

A. The car stops?

Q. Yes, sir.

A. Well, I don't know. I'm not sure. I mean, if you got the first pay application, we can look at

it, but I don't know if it was billed in the first one.

Q. Okay. Well, I thought you mentioned the first pay application that was paid in November. You were almost finished and you had the car stops ---

A. Right.

Q. --- sitting on the -- on a pallet?

A. Right. Yeah, I don't know if -- I don't know if we had them there then, but we were -- what I -- what I meant by that is we were getting ready to pave that parking lot in November because we'd already put our paving equipment up there.

We had just a small paver because we didn't do any big paving jobs. We did the smaller parking lots and different things like that. So we had our paving -- paving equipment up there ready to pave that parking lot and finish that first phase. That would've been in November.

So we already had those wheel stops ready to go in, but there were -- there were changes there that prevented us from doing that, so those remained onsite.

And when we -- when we moved down to the second phase, the same deal -- the same thing. We had -- we had purchased all the material for that phase to

finish it out. We were ready to pave. Ready to pour the sidewalk.

The only reason why we -- the only reason why we did not do that was because we were waiting to pour that sidewalk. This was really light-duty paving, which means it's very thin. It'll only hold up to really like light-duty traffic -- pick-up trucks, cars -- things like that that would typically be parked in a park.

And we were going to have to -- we were considering pumping the concrete because of where it's at to stay out of the East-West Connector, so we were going to have to put a loaded concrete truck and a pump truck on the parking lot, so we didn't want to pave it because it would've tore the parking lot up, but we -- we were ready. We had everything there to finish the job, like ready to finish it. So those were sitting on a pallet on the sidewalk, I remember, in that phase 2 parking lot.

Q. Okay. What became of them?

A. I believe they used them. They probably used those and Moseley charged them the full price for the material, but the material was already there.

Q. But you don't ---

A. Nobody was going to walk off with a little stop

that weighs like 3- or 400 pounds.
Q. Understood.
A. It's concrete, I mean.
Q. But when you assume that Moseley just used them and charged full price, you have no basis ---
A. I'm assuming based on the price because I put a lot of them down. We have -- we used to have people call us all the time just to pull old ones up and put them down, so I know about what they cost and how much they cost to replace one. And they had $370 on there. I don't know if I ever even charged that much to swap one out.
Q. Okay.
A. So I'm just assuming they charged them for material and labor.
Q. But those weren't ever installed by -- by Moats?
A. We never installed them. You had to -- you had to pave the parking lots first before they did that.
Q. Okay. And that -- and you did not pave the parking lots?
A. We did not.
Q. Okay. On First Impressions, you and Mr. -- Mr. Goodwyn talked -- talked about sod a fair amount. Do you see anything that tells you that

that sod on First Impressions?

A. I don't see anything right now.

Q. Okay.

A. I mean, there's nothing up there.

MR. DAVIDSON: Yeah, you're right. Good call.

MR. GOODWYN: That is not his contract.

BY DAVIDSON:

Q. All right. Mr. Moats, I'm going to put back up Defendant's Exhibit 1, Tab 27. The expenditures for East-West Parkway Price -- Parkway Park, phase 1 and 2. Is that what's in front of you?

A. Yes, sir.

Q. Okay. So I was just asking if there was any -- what the basis was for the sod discussion on First Impressions Landscaping.

A. So the only sod that was called out for in our contract that we were responsible for installing was in the picnic area, which was an add-on. That was add-on alternate that Matt Schell had referred to when we first started the job.

Phase 1, the original contract amount was, like, I think 106. And then there was add alternate for extra plantings and picnic area and this -- in that particular area. And that was the only area they wanted to put sod -- install sod. And that was

the reason why they had it irrigated. They had the sprinkler irrigation there because they had the sod. Nowhere else. Everything else was grass and straw, and we had done that and maintained that the entire time.

Q. Okay. Well, maybe I -- I might've misunderstood you early on then. I thought what you were saying was you weren't responsible for any of the First Impressions' charges because it had to do with sod?

A. Right. Correct. Because like the sod that they would've put down I believe is in the picture, too.

Q. Well, my questions is, how -- I saw the pictures with the -- the sod strips running on each side of the parking -- on each side of the sidewalk, right?

A. Well, that and then around all the concrete, you know, from the sidewalk that got us here.

Q. Okay. I guess what my question is, is how do you know that's what First Impressions charged for?

A. Because I don't remember seeing any other sod out there. I mean, if they put any other sod anywhere on the job site, it would've been the same -- it would've been the same explanation. I

mean, there was no other sod called out for on the job anywhere by us that we were supposed to install. So if they put any other sod out down anywhere, it would've been something that the county added.

Q. Okay. My -- my question and I don't want to beat a dead horse, but I just want to make sure I understand. The question -- my question was: Do you know if First Impressions put any sod out there?

A. I don't even know who First Impressions is.

Q. Okay. That was it. I think you also mentioned some boulders or rock that were out there. You see the -- the only mention of boulders and rock or mulch are on Carolina Fresh Farms, those -- those three items, correct?

A. Yes, sir.

Q. And that's not included in the county's claim, correct?

A. Oh, I don't know. I don't know what is -- I really don't know what's included in the county's claim. I don't think I've ever -- I don't think I've ever seen that like an amount anyway ---

Q. Yeah.

A. --- or like an itemized amount. I don't know if you guys are claiming all of these expenditures or part of them or, I mean, there's nothing

highlighted or, you know, delineating what you guys are claiming.

Q. Well, that was discussed in the -- with -- with Ms. Davis and Brian Richardson, but the ones I've asked about are the ones that we're talking about. And so it's Moseley, Duncan, First Impressions, and Irrigation Services.

A. Okay.

MR. DAVIDSON: All right. No further questions, Your Honor.

THE COURT: Redirect.

MR. GOODWYN: No Your Honor.

THE COURT: Thank you, sir. You can step down.

(Witness excused.)

THE COURT: Any other witnesses in reply?

MR. GOODWYN: No, Your Honor.

THE COURT: Very good. All right. Madam forelady, ladies and gentlemen of the jury, that concludes phase 2 of this case, which is the presentation of the evidence. I'm going to spend part of the rest of the afternoon going over the law. We'll charge you in the morning. Is there any reason y'all can't be back at the same time, 9:30 tomorrow?

(No responses.)

THE COURT: So tomorrow what we'll do so you'll know, the lawyer will give you their closing arguments. I'll then charge you on the law that you'll apply and then you'll begin your deliberations. Do not begin deliberations until then. Okay. Thank you.

THE FORELADY: I have one question. The alternate, the second alternate, does she have to be here tomorrow?

THE COURT: Yes.

THE FORELADY: Okay.

THE COURT: Yes, ma'am. Until the conclusion of the charge from me and I send you back. At that point, I say, "Begin your deliberations." Once the alternate comes back out, because something may happen tomorrow.

THE FORELADY: Right.

THE COURT: Okay.

THE FORELADY: Okay.

THE COURT: Thank you.

THE FORELADY: Thank you.

(At 3:39 p.m., jury left the courtroom for the day.)

THE COURT: Any additions or exceptions from the plaintiff?

MR. GOODWYN: No, Your Honor.

THE COURT: From defense?

MR. DAVIDSON: No, Your Honor.

THE COURT: If you will hand that suff out?

(Brief recess.)

THE COURT: Mr. Goodwyn, have you had chance to read the proposed charges?

MR. GOODWYN: On the breach of contract?

THE COURT: We're going to go over what else you want. I'm talking about my charge.

MR. GOODWYN: Oh, yeah, this is fine for breach of contract.

THE COURT: Okay. As to the county, Mr. Davidson?

MR. DAVIDSON: Your Honor, the only -- the only part that is the law, I didn't know if we need to tell them about a meeting of the minds. I don't think there's been any -- I don't think there's any suggestion that this isn't a contract or that the parties ---

THE COURT: I took that out just because everybody disagreed there was -- I'm glad to charge the meeting of the minds. Those are things that go into the creation of the contract. It's kind of unnecessary, so y'all agree?

MR. DAVIDSON: Yes, sir. It's in here. That's what I'm saying.

THE COURT: Sir?

MR. DAVIDSON: The meeting of the minds language is in here.

THE COURT: Oh, it is in here?

MR. DAVIDSON: Yes, sir. It's -- it's completely right. I just don't think we need to tell them about that. It begins on the bottom of the first page.

THE COURT: I don't see the harm in it, but if you want it out. Do you have a problem with it coming out? Whatever. It doesn't matter to me.

MR. GOODWYN: No. I'm fine with that. I think ---

THE COURT: You're fine with taking it out?

MR. GOODWYN: Taking out the meeting of the minds language, but I do see an issue with the next paragraph.

THE COURT: You do see an issue with what?

MR. GOODWYN: With the next paragraph where it says the parties stipulate the reason there was a contract entered into, which was referred to as the mediated settlement agreement. I think it should say "and the original contract which is referred to

by -- by reference in the mediated settlement agreement," because that's where I think ---

THE COURT: I'm glad to add anything you want to, but the only issue before them is breach of mediation.

MR. GOODWYN: I know it, but we talked about the retainage being in there. I don't want them thinking that that's not a part of that.

THE COURT: Hey, listen, again, let's go back to the language you want out.

MR. GOODWYN: Okay.

THE COURT: Okay. So you want to start on page 1, Mr. Davidson, 1, 2, 3, 4, 5 lines up starting before the agreement could be considered a contract, and the rest of that until the top of page 2 taken out.

MR. DAVIDSON: Yes, sir. I think that would do it.

MR. GOODWYN: No objection from me.

THE COURT: Okay. So I'm taking out, so it's clear, "For the agreement to be considered a contract, the parties must have intended to enter a contract and have reached a mutual understanding of the terms of the contract. This is sometimes called a meeting of the minds. The parties must intend to

be mutually bound by the agreement." All of that language comes out.

MR. GOODWYN: That's agreed.

THE COURT: Okay.

MR. DAVIDSON: Thank you, sir.

THE COURT: Yes, sir. Then going back to you, Mr. Goodwin. The parties stipulate there was a contract and what is referred to as a mediated settlement agreement, as well as an East-West Connector agreement and the Toxaway agreement.

MR. GOODWYN: Maybe we could say this. We could say, "The contract that was entered into, which was the East-West contract project as modified by the mediated settlement agreement."

THE COURT: What do you want to do?

MR. DAVIDSON: Well, if it's -- if it's as to the -- if -- if that -- because that's to bring in the retainage issue, right?

MR. GOODWYN: Right.

MR. DAVIDSON: So I guess if it's simply to bring in the retainage issue, it might be easier to just say the mediated settlement agreement with the addition of retainage. I forget how you said it earlier.

MR. GOODWYN: That's fine with me.

MR. DAVIDSON: I think that -- I think ---

THE COURT: And did I hear you and everybody agree that there's no real damages claim under on Toxaway or is there a damage claim?

MR. GOODWYN: Well, there are because he -- the rescission letter was never issued, which he's saying caused him damage.

THE COURT: What?

MR. GOODWYN: The rescission letter -- they -- they were supposed to rescind the termination. That was the number one thing, and that caused him a lot of problems because now he has to say he's been terminated from a job, so that was the breach. I'd like to be able to argue that.

THE COURT: So going back then, however you want to -- the parties stipulate that there was an East-West Project agreement entered into by the parties, as well as the subsequent Toxaway ---

THE COURT: Well, that was my suggestion. I kind of like his idea a little better just saying that ---

THE COURT: Well, if you're going into the retainage, then you start bringing up -- you're bringing up things other than retainage.

MR. GOODWYN: Well, the mediated settlement

agreement says that they were to issue the letter rescinding the termination. So that's in my mediated settlement agreement, so I'm good with that.

THE COURT: You're right. You're right. Okay. Then I say parties stipulate and agree that there was a contract entered into, which was referred to as the mediated settlement agreement. By stipulation, the parties also included the retainage from the East-West Connector contract, as well. Is that okay?

MR. GOODWYN: Yes.

MR. DAVIDSON: Yes.

THE COURT: So, basically, it'll say, "The parties stipulate and agree that there was a contract entered into, which was referred to as the mediated settlement agreement. By stipulation, the agreement retainage from the East-West Project is included, as well." Do you want any more specific than that?

MR. GOODWYN: That's fine with me, Your Honor.

MR. DAVIDSON: I think that's fine.

THE COURT: You know, I charge a lot of juries, and I'm telling you what I can't tell you. Most of them just look at you like a deer in headlights.

MR. DAVIDSON: I suspect we were.

THE COURT: We just of all these things. I had one in Pickens that the charge was three hours. It was the god awfulist thing in the world. And the jury, about 10 minutes in, said, "We're done."

All right. Other than this requested part change from the plaintiff, any other requested changes in the proposed charge?

MR. GOODWYN: No, Your Honor.

THE COURT: How about you, Mr. Davidson, from the county?

MR. DAVIDSON: No, Your Honor.

THE COURT: All right. Now, both parties wanted to put other matters. The first one was the *Hill v. Public Entries* case, which says that the parties furnish specifications for plans for contract for follow-up in a construction job. That's correct. Proposition, even though that was a negligence case, it's still a correct proposition on the law.

MR. DAVIDSON: It is, except I think that the language of the mediated settlement agreement, I think actually gives -- I don't know that it works with the -- with the language of the contract, which was the -- the -- you build it to ADA, unless -- you

build according to ADA provided that ---

THE COURT: You certainly have a right to argue that to the jury, but also, you know, the witnesses testified almost uniformly that the ADA was the standard they had to build to, so I think it's both ways. You can argue what you think. I mean, I think that's the correct statement.

MR. DAVIDSON: I have no problem that it's a correct statement of that.

THE COURT: Okay. So I'm going to add that at some point. My -- my typical way of handling the requested charge would be at the -- at the end of my regular charge. If you think I need to insert them somewhere else, I'm glad to do it. That's fine.

MR. GOODWYN: At the end is fine with me.

THE COURT: That would addition number one. Okay. The second one is the word breach, et cetera. That's in the standard charge.

MR. GOODWYN: Yeah, I think -- I don't need you to go through any more of mine. You covered the breach of contract. The rest of them are defamation.

THE COURT: All right. So you withdraw the rest of your charge requests?

MR. GOODWYN: Yeah, punitive damages is out.

THE COURT: All right. I know that you're not -- you're not conceding the punitive damages aren't appropriate in this case. You're just seeing what's being charged to the jury?

MR. GOODWYN: Correct.

THE COURT: All right. So that's taken care of. Either one of you, if you want, I don't let you charge come in. You can give it to the court reporter and we can make it a Court exhibit in case I'm not right.

Anderson County's charge request. The burden of proof, I think it's in the standard charge.

The second contract says by agreement is standard charge.

Meeting of the minds, we just took that out. Meeting of the minds, we just took out.

That next one deciding the plaintiff's breach of contract. This applies to the record. That's in there.

The word breach, that's described in my charge.

You were charged if you find by a preponderance of the evidence there was a contract, there is -- there is a contract. I don't think there is a dispute about that, so that would not be a correct statement.

MR. DAVIDSON: I object. I probably over gave myself.

THE COURT: Sir?

MR. DAVIDSON: I probably over gave these charges in anticipation of trying to anticipate things. Sorry about that.

THE COURT: I used to do the same thing. It's safer than not.

I'm not -- I won't charge that about damages. That's me commenting on the facts of the case. It's probably a true statement, but I'm not going to charge that. That's the one that says I don't have to charge the law of damages. There's an instruction about damages. You should find for the plaintiff, blah, blah, blah. I'm not going to charge that.

MR. DAVIDSON: Okay.

THE COURT: I have that next one in breach of contract. Damages, but not breach of party.

The next one, measure of damages is also in there.

The next one, if you find the plaintiff breached the contract. Actual damages is in there. And there's no punitive damages in this case.

MR. DAVIDSON: Just to make sure. You're

saying those are already in your standard charge?

THE COURT: Yeah.

MR. DAVIDSON: Yeah, okay. That's fine.

THE COURT: It's the one you have before. The one you had with you now.

MR. DAVIDSON: Yes. That's what I meant. I just wanted to make sure.

THE COURT: Listen, I don't have a problem with y'all sitting around and y'all coming back in the morning and saying look at it again. I'll look at it again. I know this is on the fly.

I don't hear any mitigation issues in this case.

MR. GOODWYN: I was going to object to it because I didn't hear anything either, but...

MR. DAVIDSON: No. I don't think there's any mitigation.

THE COURT: All right.

MR. DAVIDSON: So punitives are not being -- are you charging punitives?

THE COURT: For what?

MR. DAVIDSON: I didn't think so. I was just making sure.

THE COURT: Absolutely not. There's no defamation in this case, so there's no punitives.

FOIA, that was -- we separated that out. Are you going to have a trial on that at a later date?

MR. GOODWYN: I want to talk to him about it. I'm kind of glad we didn't get to it this week.

THE COURT: All right. So as far as yours are concerned, Mr. Davidson, I'm not going to charge any of them. I think they're included. Either included in my standard charge or just not applicable.

So the only charge that I'd be adding to my charge would be the charge from the Polar Pantries case that says if the parties specifications, plans, or contract to follow, the construction job he warrants is sufficient. And that will be only additional charge. Any addition or exceptions to that from the plaintiff?

MR. GOODWYN: No, Your Honor.

THE COURT: From the defense?

MR. DAVIDSON: No, Your Honor.

THE COURT: And, again, I'm not holding you to it. If you want to add to it tomorrow, if you'd get it to my law clerk earlier so I can look at it.

Verdict form.

MR. GOODWYN: It's pretty simple. I don't have any issues here. It's about as simple as it gets. I think it sums it up with the case narrowed down

like it is.

MR. DAVIDSON: I agree.

THE COURT: All right. Guys. See you in the morning.

MR. GOODWYN: Okay. 9:30 right?

THE COURT: Yep.

(At 4:00 p.m., court proceedings adjourned for the day.

April 19, 2024

THE COURT: Good morning. Mr. Davidson, my law clerk says that you had some questions about the scope of the argument.

MR. DAVIDSON: Yes, sir. Just -- just one. I think Mr. Goodwyn said yesterday, we had a talk, that he was going to ask the jury to award damages in some way on the failure to rescind the termination on Toxaway. And I think what you said was that he could do that, and I would be able to just argue that there were no damages associated with it in the record. I just want to make sure I understood that.

THE COURT: I think that's pretty much the scope of it.

MR. GOODWYN: That's my recollection of the argument, too.

THE COURT: In fact, let me just say something. I was going to -- you know, when I'm charging the jury, I tell them that they can't -- they have to accept any stipulations by you guys. And I had written down that you're going to put the retainage from the ---

MR. GOODWYN: Right. We would agree on that.

MR. DAVIDSON: We would agree on the amount of the retainer that was held. Right. I think I'm still going to argue he's not entitled to get it, but we ---

THE COURT: Right.

MR. GOODWYN: The amount ---

THE COURT: I think the point is retainage and, what's that, failure to terminate to rescind the termination?

MR. DAVIDSON: Yes, sir.

MR. GOODWYN: That -- well, just -- just make sure we're on the same page on the retainage.

THE COURT: What if I just say retainage and certain other aspects of the agreements, the lawyers will tell you about.

MR. GOODWYN: Right. And we'll -- and I'll just say that we've -- that's we've talked. He's disputing retainage is owed, but if it is owed, the

amount is 27555.81.

MR. DAVIDSON: Well, yeah, I think you can say the full amount withheld.

MR. GOODWYN: The full amount, that's what we're asking for. He's going to argue against it, but we have agreed to the full amount ---

THE COURT: Y'all agree with that.

MR. GOODWYN: And there's one more issue. It think -- do you remember how yesterday we were talking about on the directed verdict motions about a potential double payment or no payment of the pouring of the concrete?

THE COURT: I can't hear you.

MR. GOODWYN: I think we agreed that they're not going do ask for Mr. Mike Duncan's -- the amount they paid Mike Duncan for my client. And I'm only going to ask for the difference between 15,000 and that amount, which is 5550.

THE COURT: Right. Ninety-five ---

MR. GOODWYN: Ninety-four fifty minus that ---

THE COURT: Ninety-four fifty minus fifty.

MR. GOODWYN: Make sure we're on the same page.

MR. DAVIDSON: Yeah, I think that's fine.

THE COURT: Also, I was going to tell the jury at the beginning when I start to say someone notice

that Mr. McDade is still not here and that's because I dismissed the individual defendants for the case and the defamation case.

In addition, I -- I granted a directed verdict as to unpaid $50,000 referenced in the mediation agreement, along those lines. Any problem -- I know you don't have a problem. Well, you probably on the defamation side.

MR. GOODWYN: Well, I don't have a problem with you -- regardless of my position on the merits, I have no problem with you telling the jury that.

THE COURT: Very good.

MR. DAVIDSON: Yes, sir. And so, I mean, we -- you denied my directed -- with the directed verdict on all of that, so I understand that. I'm okay with what you just explained.

THE COURT: All right.

MR. GOODWYN: And I do have -- I would like to renew my motion for directed verdict. I think I need to do that before we close.

THE COURT: Okay.

MR. GOODWYN: So I'd like to renew to -- the motions that you denied, I want to renew those on the same basis that I -- that I moved before.

THE COURT: Do you want to do the same?

They're denied and you're denied and you're all denied.

MR. DAVIDSON: No, sir. So I'm denied, too. I renew my motions.

THE COURT: I think you did. All right. Anything else before we bring the jury in?

MR. GOODWYN: Can you give me just a minute? There's a lot of exhibits I'm not going to use. We are all -- and I just got to go through and pull out the ones I plan on using.

THE COURT: Are you going to use the overhead, too?

MR. GOODWYN: Yeah.

THE COURT: If anybody can get it working.

MR. GOODWYN: Yeah, that's a good idea.

THE COURT: So, procedurally, you're going to open on your claim, and he's going to open in full -- close in full, and you're going to reply to his claims?

MR. GOODWYN: Yeah, I mean, I think I was going to address his counterclaims partially in my close with the right to come back after.

THE COURT: I don't care. If you have a problem with it, let me know. It's y'all's case.

MR. DAVIDSON: I think that's right.

MR. GOODWYN: Your Honor, I just realized and I think we're in agreement: That there's two plaintiff's, Moats Construction and Russell Moats, individually. The defamation claims related to Russell Moats, individually, but the breach of contract claims and what we're going to the jury on are just Moats Construction, Inc.

THE COURT: Say that again, please.

MR. GOODWYN: The -- what we're going to the jury on ---

THE COURT: You argued for defamation as to the company. That's the whole -- I granted as to both.

MR. GOODWYN: Well -- well, my point is: I don't think we need to have Russell Moats as a -- really the party arguing to the jury about it, because he's not asking for anything personally on the breach of contract claim.

The breach of contract claim, which is the only thing before the jury, is just between Russell -- Moats Construction and the county and vice versa. The county is not suing him personally.

THE COURT: What are you saying that I'm doing wrong on here?

MR. GOODWYN: No. I'm just saying where it says as to the plaintiff's claim, I think it's one

plaintiff. We're talking about Moats Construction, Inc., here.

THE COURT: You're splitting hairs.

MR. GOODWYN: Maybe I am splitting hairs.

THE COURT: I'm not changing that. Okay. It's plaintiffs. It is what it is. You can argue what you want to about it, but it's breach of contract claim that the company has and it's fine. It's certainty not Mr. Moats' individual claim.

MR. GOODWYN: All right. And I'm not going to argue -- I was just going to argue company.

THE COURT: I'll be glad to tell that to the jury if you want me to.

MR. GOODWYN: Well, I don't think it matters really.

THE COURT: I don't -- I really don't think it does either. I'll take if out if you want me to. Mr. Davidson, if you don't care, take out Mr. Moats individually.

MR. DAVIDSON: I mean, I don't think it matters to me.

THE COURT: I don't think it matters at all either way. Bring the jury in.

(At 9:52 a.m., jury entered the courtroom.)

THE COURT: Good morning.

THE JURORS: (Collectively:) Good morning.

THE COURT: I hope you had a nice evening. Ladies and gentlemen, I'm going to ask you again this morning. During the break, has anybody read, heard, or seen anything about this case? If so, would you raise your hand?

THE JURORS: (No responses.)

THE COURT: And also, if anybody spoke to you or you spoke to anybody about this case, would you also raise your hand?

THE JURORS: (No responses.)

THE COURT: Excellent. All right. Ladies and gentlemen, we're about to engage in the third phase of this case, which is closing arguments. You may notice that Mr. McDade is not here today, the attorney who was seated way over on the other side of the courtroom. And that's because he represented the individuals under the defamation case. I have dismissed the individual defendants and I've dismissed the defamation case. It's no longer a part of this case.

In addition, if you remember in the mediation agreement, there was various items. One of which was the payment of $50,000. I directed a verdict in favor of the plaintiff. That issue is not before

you, that $50,000. It needs to be paid.

With that being said, there's certain aspects of the agreement that is going to be incorporated all under the rubric of being in the mediation agreement. I think the issues of retainage and failure to terminate or rescission or some other issues. The lawyers will tell you about that, but instead of having three different contracts, we're arguing all under the rubric of one contract. Okay. That's by stipulation of the plaintiff and the defendant; is that correct?

MR. DAVIDSON: That's correct, Your Honor.

MR. GOODWYN: Yes, Your Honor.

THE COURT: Are you ready for your closing arguments?

MR. GOODWYN: Yes, Your Honor.

THE COURT: You may proceed.

MR. GOODWYN: Thank you. All right. It's been a long week. I don't think any of us thought it was going to take this long, but it has and we're here and I appreciate you sticking with us.

I want to start by talking about what this case is about from our perspective and what it's not about. You heard a lot of testimony at the beginning of this trial about what led up to the --

to the mediation and, ultimately, the mediated settlement agreement. All of those issues got resolved in the mediated settlement agreement. And really what we're talking about is who, if anybody, breached the mediated settlement agreement.

You heard a lot of testimony about issues that were going on. Matt Schell testified about tree root balls and holding the tree wrong and all that stuff. And you heard a lot of testimony about the Toxaway Mill Project about were the asbestos permits and the storm water permits obtained? Do they need to be obtained? Was he remove -- was he properly removing what he was removing at the time? Was the air quality guy out there? Was he not out there? Shouldn't he have been out there? All that stuff, that's really not part of this case.

And if you think about that and you go through all of that and you're thinking about that, that's not what we contend is the right place to go. Honestly, listening to all of that, it's enough to put somebody to sleep. And I commended all of you who managed to stay awake for this whole trial.

So what we believe is important in this case is really what came after the mediated settlement agreement and what the county didn't do. Really,

you know, we've gone over this and you've seen this. All right. I don't know how to get it on. Does anybody know how to ---

All right. We've seen this time and again. This is the mediated settlement agreement. And we know that the county did pay the 26,160 or 15589 figure, but that's really all they did. They didn't do anything else that they said they were going to do with respect to the East-West Project. They didn't do anything at all with respect to the Toxaway Mill Project.

And why they were mad at Russell Moats, you know, that's -- that's really why. They should've paid the $50,000, and the judge has already ruled on that. Just -- you heard time and again, tell you how they inserted extra terms into the agreement to justify them not doing what they were supposed to be doing, trying to argue that there was no time -- there was no time to pay the $50,000, that there was no -- that they thought that -- that was only going to be paid at the end of the -- or when the contract was complete, even though it doesn't say that.

And, again, likewise, they're trying to say that -- that the Toxaway Mill portion doesn't apply at all unless the East-West Park Project was

completed and approved by the counsel, but it doesn't say that in the agreement. They're just inserting these terms into this agreement to try to justify them not performing.

So, again, Mr. Moats is claiming they breached this agreement and he was justified in -- in not completing the project. I think it's -- I think it's undisputed at this point. After the mediated settlement agreement, Mr. Moats came back out to the project and fixed a pipe. Created the forms for the sidewalk with the -- yet another revision of the -- of the plans that Ms. Sexton had produced. He put the -- he put the forms where he was told the put the forms according to the plans. And they measured them. He measured them. Holt Hopkins said somebody from the county came out and measured it. It was not going to be compliant if it was poured.

And given the history of this project, given the fact that he had one set of plans here that Ms. Sexton admitted the survey was wrong for, and it's got a design for this sidewalk that, you know, was redesigned many times. The shape is very different now.

It -- it had been delayed time and again, and the county admitted that the delay was their fault.

They agreed to pay $50,000 in delay damages. They admitted they were responsible for the delays to the tune of $50,000. That's a lot of money, and they're not paying that because Mr. Moats is responsible for the delays. They're paying it because they know they're responsible for the delays.

Why are they responsible for the delays? Because the design plans weren't right. I mean, we have one plan, the 2016 plans show multiple revisions on those plans. And then we have the 2017 plans. This is all leading up to where we were right after the mediated settlement agreement.

I think y'all can appreciate Mr. Moats' frustration at that point. He got so frustrated. It was delay, delay, and delay, revision, revision, revision of these plans. Getting to -- finally get to mediation. Let's get this thing settled. Let's get it resolved. Let's get this project finished. And, of course, he made the point to put in the mediated settlement agreement paragraph 9 here that says that, yeah, Moats will comply with the ADA requirements provided the design drawings comply with the ADA requirements. Well, we get out there and he puts the sidewalk, puts the molds where he was told and, again, they still don't comply.

So at that point, he's like I'm done. He's justified at that point in saying, look, I tried. I tried. I tried. I tried. I tried. You admitted you were responsible for these delays. You said you were going to pay me $50,000 for that and you didn't. I -- there's nothing's more he can do.

And if -- if Mike Duncan had come in and laid these forms, poured the sidewalk and it was ADA compliant, first try, wham bam, then maybe there'd be an argument that Russell Moats was incompetent. He doesn't know what he's doing. The next guy came in and did it first try. That's not what happened. It's the opposite of what happened.

The next guy that came in, Mike Duncan, he came in, he had the exact same problems Russell Moats did. He poured it according to Natasha Sexton. He poured it and it got ripped out twice. You've seen the -- you've seen the pictures of the -- of the concrete that got ripped out that Mr. Moats happened to catch on whatever day he came by to look at it. So you've seen it. You know he didn't get it right the first time. He was having the same problems Mr. Moats was having.

This was with yet -- with yet another revised plan. Ms. Sexton came in. I think she was out on

her own at that point. You saw the new contract she had. She came in and redesigned it for Mike Duncan. He couldn't get it right. He didn't get it right the first time. Didn't get it right the second time. Did he get the right the third time? The last time? Is what you're looking at today right? Is it -- is it ADA compliant?

Well, the county didn't bring anybody in to say that they -- they looked at it and they measured it after Mike Duncan's final pour. Nobody came in and said, yep, I measured it. It was ADA compliant. The only evidence we have in this case as to what -- whether it was ADA compliant is from Russell Moats when he went out and got Sandy Hanebrink to come back in April, about two or three months after Mike Duncan was finished with this work to measure, and it's not ADA compliant.

And it's interesting and curious as to why the county didn't call Sandy Hanebrink to come out and measure it after Mike Duncan had his final pour. They went on and on about how good she was and how -- how -- how much respect they had for her, and they used her previously in this project. She had came out multiple times she said to measure this along the way. Why didn't they get her out there at

the end? Because they knew it wasn't ADA compliant.

I think what probably happened and nobody testified to this, but I think there's reasonable inferences from the evidence to this is that Mike Duncan, well, they had all the issues with Russell Moats not being able to pour it in an ADA compliant fashion. They redesigned it, redesigned it, redesigned it. Russell Moats left. Mike Duncan came in. He couldn't get it right twice -- at least twice -- and then he pours it. I think they probably just gave up and realized this cannot be done in an ADA compliant fashion, and that's why you didn't see any testimony from anybody from the county side come in here saying I measured it after Mike Duncan poured it, and it was ADA compliant.

So I think there's very strong evidence that Russell Moats was right. It cannot -- it could not be done in an ADA compliant fashion. Certainly not with the plans that he had at the time he was setting those forms right after the mediated settlement agreement. Because if you look at it today, it is not ADA compliant if you assume that it's in the same condition that it was when Ms. Hanebrink measured it three months after. Now, there -- they may say, well, maybe magically it

settled into ADA compliance. You know, there's no evidence of any settling at all in this case.

So where are we? If you agree with Mr. Moats that he was justified in leaving the job at that point, that the county did not comply with the settlement agreement and did not supply the -- an ADA compliant set of plans, where does that leave us? We have -- this was the mediated settlement agreement. So what is Mr. Moats entitled to? Well, Moats Construction rather.

We've talked about the $50,000. That's not before you right now. The judge has already directed a verdict on that, so the county should pay that. There's -- I want to try to explain to you what -- what we discussed related to this $15,000. There's an issue that if you think about this, the county did not pay Russell Moats the $15,000 to finish out that last sidewalk. He did do some work. In all fairness, he should be getting paid something for that.

They did pay Mike Duncan to pour the last sidewalk. They may've paid him twice, but what -- then they paid him, I think it was the $9450 is what they paid him to do that work. What we've agreed is that the county is not going to be asking Russell

Moats to pay the county for that $9450. And Russell Moats is not going to be asking for the full 15,000, just the difference between the 15,000 and the 9450 that was paid.

So Russell Moats is asking for $5550 out of that 15,000 for the work that he did do, which was moving the pipe and laying these forms and staking it out before he realized it could not be done. So we have that 5550 that we're asking for.

We're also asking for the retainage. You heard the judge say that the retainage is wrapped into all of this. The testimony on retainage, I think it was pretty clear. A number of witnesses testified to it, but it's money that Mr. Moats has earned. It's money for this -- if you look at the -- fortunately, they did layout in the mediated settlement agreement what the contract sum was and then Moats has been paid a lump sum of $248,003.23.

What that means, if he's been paid 248, he's actually earned -- done work for something more than that. They withheld 10 percent of it, but they only paid him that. And the idea is at the end of the project when it's completed, he'll get that extra 10 percent paid to him at the end. Just got a little -- it's a little insurance policy for the --

for the owner to -- to withhold some money and pay it all at the end.

So while the defense is disputing whether or not that -- that money is owed, we have at least agreed that the amount withheld was $27,555.91, so that -- if you -- essentially, it's what he billed or what he was owed was essentially $275,559.10. And if you take 10 percent of that, that gives you -- if you remove 10 percent from that, that gives you the 248 number.

So if you agree with Mr. Moats that he was justified in pulling off the job when he did because the plans weren't accurate, then he would be entitled to that retainage. He had already done the work. Already billed for it. It was just money that was withheld, so we're asking for that.

We're also asking for other damages related to this breach, particularly the breach with respect to the Toxaway Project. You heard the testimony about how important it is when you're bidding on jobs to be able to answer that question about have you ever been terminated from a job before? If you can -- if you have to say yes to that, then you have -- everybody else has a leg up on you.

The fact that they refused, they did not

rescind this termination letter or they had issued this -- the rescinding of the termination letter and reinstate him on this job, that is a breach and, you know, you might be thinking to yourself, well, why -- why aren't you just asking Mr. Goodwyn for us to order Anderson County to issue that letter rescinding the termination? That's simple enough, right?

The law doesn't allow that. I can't -- I can't ask that you do that. Juries don't have that authority. The only thing you can do is award money damages. And so what I'm asking you to do is award an appropriate amount of money that you think is -- is commensurate with this breach.

I want you to think about everything you've heard in this case related to Mr. Moats, how it's affected his business, his ability to get work, and how it's essentially run this business. You heard it. His business is nonexistent now. It exists as a company, but they can't get the work that they used to get because of it, so that's going to be an amount of your -- of -- of your choosing, whatever you believe is appropriate.

And on this point, I know -- I think I need to address this here. The language of paragraphs A

through I is fairly clear in itself. And, you know, Mr. Davidson, of course, is going to argue that, well, it says subject to Anderson County's approval of the East-West Park Project. You know, and what he -- what he wants it to mean, again, what the county is doing, they're inserting new words into this agreement that aren't there. They want you to read this to say upon Anderson County's approval of the completion of the East-West Park Project. It's not what it says, but that's what they want you to believe. We don't think it means that.

If you look at the agreement, paragraph 11 says that this agreement is subject to county -- the above agreement is subject to Anderson County counsel's approval. The above agreement at this point of 11, this is all related to the East-West Park Project. And then it makes sense that they want both of these -- these settlement agreements from both projects approved at the same time. Not one, not the other, but both, and so they put in a provision here. "The parties further agree that subject to Anderson County counsel's approval of the East-West Park Project." I'm reading that as approval of this portion of the agreement, then this agreement is -- then the Toxaway terms apply. I

think that's the only thing that really makes sense there.

This is -- I want to show you the verdict form that we -- that the Court has drafted for us and we've agreed on. It's pretty simple. It's two pages. The first page relates to Mr. Moats' claims, the plaintiff's claims, Russell Moats Construction claims.

It simply says, "As to the plaintiff's claim for breach of contract, we the jury unanimously -- unanimously find as follows." You would check or "X" box A if you find for the plaintiff, and then you put the amount of damages that you determine like we talked about. The retainage damage, the $27,000 figure, the -- that $5500 figure, which is what's left of that 15,000, and then any other amounts you think is appropriate for breach of the contract. If you find for the defendant, you would mark B.

And then as you know, the county has claims against Moats Construction, as well. And I want to talk about those for a minute. After I'm done, Mr. Davidson will argue his counterclaim and argue the defense to our claim, and then I'll have a chance to come back up and respond, but that will

not be very long. But as you know, the county is asking for Mr. Moats to pay them.

First, I'd like to -- I'd like to point out -- I'd like to point out one law, one charge it's called. The judge after we're done here, after we're done arguing, he's going to read you the law, and he'll tell you what the law is, and then he's going to ask you to apply the law to the facts of this case.

One of the laws, which I think is one of the most important ones here, is that if an owner provides plans, design plans for a project, then they warrant those plans as being accurate. Meaning if -- if a builder builds according to the plans that were given to him by an owner, he's not responsible if it's not the way they want. They gave him the plans. And that's a big part of this case for all the reasons we talked about.

All Mr. Moats can do is put the sidewalks where the builder or designer tells him to put the sidewalks. If they're not ADA compliant, you know, well, you decided to build a sidewalk in a hilly area. You tell me where to put it. I put it there. If it can't be done in an ADA compliant fashion, what more can he do?

So let's look at what the plaintiff -- or excuse me -- what Anderson County is -- is asking for, because that concept applies to some of their claims. Some of their claims, there are other issues with. I tell you my version. It's highlighted and it's going to make it easier for all of us to see what I'm talking about. All right.

All right. First, I want to talk about the irrigation issue. We -- they're asking Mr. Moats to pay them $11,000 for work that was done on the irrigation system. First, I'd like to say you didn't hear anything from anybody in this trial about any problems with the irrigation system. There's been no sworn testimony at all for you to consider there. So I don't know how they are expecting you to make Mr. Moats pay for this irrigation work.

Second, if there is an issue with the irrigation system, you can see paragraph A. You might remember the testimony on this. The waterline, which everybody agreed was the irrigation system, installed by Moats, is warranted by Moats. He agreed that, yes, I will warrant that, make the repairs or a surety bond as set forth in the contract documents, and Moats or surety agrees to

make the repairs to the waterline after notice to Moats.

They never notified Moats. They agreed. They got no -- no notice that they know about. Mr. Moats testified about it. I didn't receive any notice. And if he had, he would've made repairs. It's a lot cheaper for a contractor to make any repairs that are necessary than to go pay somebody else to do it. I think they're barred from being able to ask him to pay for repairs when they did not put him on notice according to the contract. And I understand they were sour on Russell Moats at that time, but that doesn't relieve them of their requirements of the contract to have to notify him of any issues they had to give him a chance to fix it. So for those reasons, I contend they -- and in addition to the fact that we haven't heard anything, any testimony about the condition of the -- of the irrigation system, they're not entitled to those damages.

Landscaping. These -- these First Impressions. I'm going to try to zoom back -- well, I know it's small, but that's about as close as I can get I think to see it all. These First Impressions amounts that they're asking for. You can see the three below there, they're not asking for. They

concede that was not related to the contract. They concede that those -- those payments were for other beautification projects that they decided to do outside of the contract with Mr. Moats.

Now, what they've listed, they've listed three other payments they made to First Impressions. One in September of 2018, which is -- that Mr. Moats was off the job in May of 2018. May, June, July, August, September. That's about four months later for cleanup the park, mow, trim, edge. I mean, mowing the grass four months later at the end of the summer. I mean, that -- that's -- that's something they're doing to get their park clean. There's no -- there's nothing that I've seen in the evidence to suggest that that was something Russell Moats would've been responsible for, should've done before he left the job.

The other two entries, they're just payments to First Impressions. No description at all. Gail -- I believe her name is Gail Jeter I believe was her name. She testified that she's just the person in the county department who writes the checks. Somebody else tells her to write the check to somebody. She writes it. She doesn't know what it's for at all.

Brian Richardson. He came back up and testified he didn't know either. He had no idea whether this was part of a contract that Russell Moats should have done, but he didn't do. These are just payments to First Impressions for some type of landscape work that nobody testified to at all as to what they were for. So I cannot -- I don't think we can -- I don't think they've met their burden to prove that this is something that Russell Moats should have done, but didn't do under the contract.

With respect to the Mike Duncan payments, we've talked about that. They agreed, they're not asking for that. And in exchange, we're not asking for the full 15,000. We're only asking for the difference between the 15,000 and that $9450 or that $5550 that I talked about earlier.

And then the car stops, the $1750. Mr. Moats agreed the car stops were in his portion of the contract, but he -- his testimony was he already had them out there. They didn't need to buy car stops, so he doesn't -- he doesn't believe he should be responsible for those.

So at the end of the day, again, the way this is broken up, I know it's one way to potentially work this is you come up with a figure you think the

county owes Mr. Moats, and then subtract out anything you think that Mr. Moats owes the county. Put that on one line, but that's not how we're doing it. The judge can offset those at some point. That's not your job, though.

Your job is to come up with an amount that the county owes Mr. Moats, put it here. And then on the next page if you think Mr. Moats owes the county anything, you would put that -- put that amount here. And then it would be up to the judge to do any subtraction, so I just want to make sure you understand that.

I do want to -- I do want to mention this. I think this is important to note. It's such an important part of this case about the -- Mr. Moats' contention that the plans were not right when he left the job in 2018. This is -- this is an important exhibit here that I want you to pay attention to. It's Natasha Sexton's site visit report in January of 2019.

This is now -- you know, Mr. Moats left May of 2018. This is, what, eight -- seven or eight months after that. She goes out there and she's inspecting the most recent pour that Mike Duncan did and sees that it's not compliant. And so we're -- you know,

we are eight months after. I don't know how -- I don't know if this is the first pour, second pour, I don't know what it was, but this is kind of -- this is interesting. I want you to look at this. That's January of -- January 23rd of 2019.

Let's look to see when Mike Duncan was paid. He was paid January 4th of 2019 and then February 1st of 2019. And the testimony was that to get paid, you had to do the work, submit a pay application, it would be approved, and then you would be paid. So we know if Mike Duncan was paid January 4th, he had done some work. What exactly he did? I don't know. We didn't hear from him, but he had done some work. He had gotten paid. February 1st he got paid again. So January 23rd, about a week before, he gets paid for the last time.

Natasha Sexton is out there saying it's not right, so -- and takes pictures of it and all that. So what we don't know is had Mike Duncan made his last pour and Natasha Sexton said it's not right and then they just left it because they were sick of dealing with this thing or did Mike Duncan make another pour after that? We don't know, but we know that about the time Mike Duncan is finishing up his work, the designer is saying it's still not right.

Again, all of that goes to confirm and vindicate Mr. Moats and his position that this sidewalk cannot be poured in an ADA compliant fashion. You know, he told them that over and over and over. They redesigned, redesigned, redesigned it. He left. Mr. Mike Duncan comes in. Pours it. Tears it out. Pours it. Tears it out. Right about the time he's about finishing up, Natasha Sexton is saying it's still not right. And then two months, three months later, Ms. Hanebrink comes and says, no, it's not right.

It's -- all -- by all reports, it's not right today. Mr. Moats is right. It cannot be done. This is too hilly of an area for what they were trying to do. He was totally justified in leaving the project when he did because they didn't give him plans that were workable.

I'm going to leave it to you here with that for now. Mr. Davidson will have an opportunity to speak to you, and I'll have an opportunity to come back up after that briefly. Thank you.

MR. DAVIDSON: Good morning.

THE JURORS: (Collectively:) Good morning.

MR. DAVIDSON: I think we're all happy it's Friday. Me too. I get to go home just like y'all

do.

So let me -- let me first tell you, Anderson County, I thank you very much for your time and attention this week. It's been a long week. It's probably not where any of you wanted to spend the week, but we appreciate your time and your effort in paying attention to us and listening to us and helping us to resolve a dispute that we haven't been able to get resolved ourselves, so we really appreciate that.

This is my only chance to talk to you and to summarize our case and to argue to you. The plaintiff gets another chance. I think you've seen that throughout the -- throughout the trial that we -- we disagree on the -- on -- on issues. And when issues get brought up by the plaintiff, we usually have a response to those issues. I don't get to -- this is my only time to do that, so I won't get to answer him later, but I want you to think back that there really hasn't been an issue that we haven't been able to talk about and -- and resolve -- excuse me -- and refute to some extent, if not fully.

Now, I want to make sure I say this correctly. We did agree on the retainage issue. We agree that

-- that the amount of the retainage is what Mr. -- Mr. Goodwyn said. We dispute that they're entitled to it, but that -- so I don't want you to think that the stipulation is that that's the amount and we agree that it ought to be awarded. We -- we -- in fact, don't misunderstand me. We absolutely do not believe that. We do not believe he's entitled -- that Moats Construction is entitled to that retainage.

However, we concede and agree that you don't have to figure out what retainage is. It is that amount. That's what was withheld. And we sought when -- I mean, if you think back to -- I guess it was Tuesday, which seems a long time ago now. But if you think back to Tuesday when I was doing cross-examination on Mr. Moats, we went through the contract. I think we went through both of them, but certainly went through the East-West contract that talked about retainage. And it provided that there would be a 10 percent retainage and then that -- that 10 percent gets paid back at the end of the job.

Now, the other -- the other stipulation that we've agreed to is that a lot of the stuff that you heard throughout the trial was the specifics

about -- about the East-West Park Project contract and the Toxaway contract. And how -- how those disputes went on from about 2016 until we reached the mediated settlement agreement in March of 2018.

Mercifully, for all of us, we -- we don't have to go through all of those part in parcel. Okay. We're now down to the mediated settlement agreement, but I do think that some -- a little bit of background on all of that is very helpful. And so, you know, it was -- it was necessary to go through that to get you to the point of -- of having the background to understand the mediated settlement agreement.

Now, the mediated -- let me put this up for a second. You've all seen this a ton. You probably know it as well as I do now, but the mediated settlement agreement is entered in, and I think the dates are important here. Everybody wants to make out in this case. So the plaintiff wants to make out in this case like there's some -- there's some conspiracy against Moats Construction for -- we were doing something that we shouldn't have been doing with this because, you know, things weren't paid and all that.

Let's look at the time line of this. Let's

look at the time line. This now what we're talking about on East-West at this point is not the whole contract. Okay. It's -- I don't know -- I don't how many feet. Some number of small feet of sidewalk. It's one sidewalk that's really got to get done. All right. Might be a complicated sidewalk, but it's one sidewalk. And there's 30 days to get it done.

We can look at paragraph 5. I can blow that up. Whoops. Too much. All right. Paragraph 5: "Moats will remobilize on the project on the start date, not before April 17, 2018." We'll talk about that in a second. "Set forth in the notice to proceed issued by Anderson County. And the work shall be complete within 30 calendar days of the start date subject to weather and unforeseen conditions."

Okay. So this -- finishing this project was 30 days worth of work. Probably not 30 days worth of work, but it was 30 days given in the agreement to get it done. It doesn't start -- that time doesn't start until some time after April the 17th because that was the date of the -- of the county counsel meeting at which -- I think at the next one they could get this agreement on for approval by the

county. So those dates -- so that's -- that's where we are. Thirty calendar days from start to finish the work.

There's no -- there's no question on number 6, "Moats shall be paid a lump sum of 26,155.89 on or before the start date set forth in the notice to proceed." No question that was done. You saw the check. You saw the letter. You saw the notice to proceed.

Now, we've got some different interpretations as -- as you've all heard. We've got different ways to do different interpretations of the agreement. I think ours is the more accurate because it works well with all of the provisions, but let's -- let's talk through that for a minute. And I'm going to stay on East-West for right now, and then we'll talk about Toxaway in a second.

Paragraph number 9. I know you may not want to hear it, but I got to -- I got to talk about the ADA again. Y'all probably heard more ADA stuff this week than you ever have before. I -- I certainly have. "Moats' work shall comply with the ADA -- with ADA requirements provided that the design drawings issued to Moats complied with the ADA design -- the requirements."

Now, you know the history of these projects. You've heard testimony from Mr. Moats. You've heard testimony from every one of the county employees. You heard testimony from Natasha Sexton that the early part of the East-West Project had several redesigns. Some done by the county for the county's purposes. Some done to address issues that were brought up by the contractor or otherwise.

You also heard testimony, that's not unusual. Designing a project is a process. And building a project is a process. And at some points, you have to get -- you have to address those things. And there have to be redesigns. Even Ms. Hanebrink said that in most instances, if there was a redesign, there would be a change order or something like that. If it were a plan issue or if it were a workmanship issue, maybe not.

But you've also seen and heard -- you've seen the documents and you've heard the testimony that there were at least seven -- at least six change orders given on the East-West Project before we ever got to the mediated settlement agreement. So this is tracking along the way -- the way it should, albeit maybe more disputes than normal, okay, but it goes along like it should.

You -- you heard testimony from Leon Harman and Rusty Burns and Holt Hopkins that the county's goal was to get the project finished. It had been -- it had been under construction for maybe over two years at that point, and everybody was ready for it to get -- to get resolved. The county counsel wanted it finished. So that was the goal here.

So you see in number 9, in paragraph 9, I would argue a little bit lesser standard on the ADA requirements than was required in the original East-West Project contract. Okay. Yes. The county absolutely wanted it to be ADA compliant, but to get the project complete, it says, "Moats shall comply with the ADA requirements provided the design drawings issued to Moats complied with the requirements." So there were some leeway there for Mr. Moats and you heard that discussion where he and I spoke about it during the cross-examination.

That -- the county -- and you heard Mr. Holt Hopkins testify that, you know, they were there. They looked at it. They saw there were problems with some of the forms. The surveyors and the people that -- that looked at it said that it could be built according to the plans. And, you know, I said it some yesterday. You heard that Mr. --

Mr. Hopkins say, you know, a little bit up here, a little bit down here, and that'll be good. We can accept it.

That could've been the end right there. All they had to do was pour that -- to -- to make those changes to the form and pour it. And if the finished product matched where the forms were, that was going to be it. You heard that testimony. And that would've been the end of this -- the East-West dispute.

But that didn't happen. That didn't happen for reasons that I don't know. All right. Moats Construction opted not to finish it and to walk off the job. And I will tell you that the -- that walking off the job, we contend, is a breach by Moats Construction of the mediated settlement agreement. The mediated settlement agreement, I think everybody would have to concede is to finish both of these projects, to get both of these projects done. If you walk off the project, you're not getting it done. We've got to get somebody else to do it. And so that's what we eventually had to do.

Now, let's talk for a minute about -- about the Toxaway Project. All right. So on the Toxaway

Project, paragraph 13, which has also been talked about a lot. I'm sure you -- I'm sure you've memorized that, too. "The parties further agrees that subject to Anderson County counsel's approval of the East-West Park Project, Anderson County and Moats Construction company agree on the following settlement terms on the Toxaway project."

Okay. Now, it certainly says the parties further agree subject to the county counsel's approval of the East-West Project. To me, that seems pretty clear what -- but it -- it has been argued about an awful lot in this case. We're not adding any language to that. We're saying that the approval of the projet.

Okay. Now, the plaintiff and Mr. Goodwyn have argued that, well, the -- the East-West Park Project was approved years before. It was approved years before, before it could get even started. Well, that doesn't make sense here. Why would you include a term in the contract that had happened years before? This says that the parties agree that upon the approval of the East-West Project, then we -- then we agree on the terms of the Toxaway Project.

So and -- and every county witness that is -- that was knowledgeable about how the contract worked

has been -- has been consistent in what they -- in their reading of that and their understanding of it. If East-West didn't get finished, then Toxaway didn't happen.

Now, that is certainly the way it came down, isn't it? I mean, East-West didn't happen. It didn't get finished. Not under this agreement. And Toxaway, we never got to it. Nothing happened on Toxaway. All right.

Now, I will tell you, we can look at paragraph B, "Anderson County will reinstate the contract list of $59,000 previously paid." I want you to -- I want to make sure you understand. They worked -- Moats Construction was paid the $59,000 that it -- that it applied for, for the work that it did in that three to four-day space between being told that they could cut brush only. And when it was determined that they moved beyond that and did that work that required permits to be in place before those permits were there.

Now, understand I'm not saying that the permits were his fault -- were his responsibility to have. They were not. And their reading of the -- of the termination letter is just incorrect. It -- we never -- that letter and you saw it. I can put it

back up, but that letter never says that you're being terminated because you didn't get a permit. It said -- hang on. I'll put it up.

And this is Defendant's Exhibit 1, Tab No. 5, the June 21, 2017, termination letter. And what it says was, "As you are aware, you were directed to stop work on the reference project on June the 19th, 2017. Work was proceeding on the project beyond removal of brush on less than 1 acre," which was what he had been approved to do, "in the absence of and asbestos permit from DHEC and a storm water permit." It doesn't say because you didn't get that -- the permit or because you did -- from DHEC on for asbestos or a storm water permit. It doesn't say that.

It says that the -- that you were doing work before those permits were in place. That's what we're talking about. And you saw and you heard the -- the cross-examination with Mr. Moats and myself that there were earlier e-mails where -- where he was told permits aren't in place. All right. Gail Jeter from Cardno is awaiting the DHEC storm water permit, and we will -- we will let you know when -- when you can get with the other parties and get -- get the work started.

Let's look at paragraph -- let's look at 13. Is that big enough? Can y'all see that?

THE JURORS: (Affirmative responses.)

MR. DAVIDSON: All right. This is Defendant's Exhibit 1, Tab 13. And -- all right. So you see this is from Michael Foreman, who, although he did not testify, I think was -- he was mentioned as being the early -- one of the early project people on the Toxaway Project. And this is an exhibit that we -- that Mr. Moats and I went through for some time here in the first set of cross-examination.

Mr. Foreman says, "Gail, I -- and Gail Jeter with Cardno. You can see her e-mail address. "Gail, I believe we have just [sic] about everybody signed on the dotted line.

"Russell, I know you want to get started as soon as possible. K2-D is available as soon as this upcoming Monday for air monitoring. Gail is awaiting word for DHEC regarding the storm water permitting.

"Gail/David, please coordinate with Russell's schedule scheduling forward."

So he was told that we don't have the permits. Nothing suggests it, and it was not in his scope of work to have to get those permits. So the idea that

the termination was because he didn't get the permits is incorrect. That's not what the county's position was ever.

Now, so what should -- let's go back now. What should've gone on at Toxaway? The idea certainly was that after East-West was finished and approved, that Toxaway would begin and that list of things there would happen. We never got there. Toxaway never got started because East-West was never finished. All right. East-West didn't finish and we'll -- we contend that East-West didn't finish. And you've heard the testimony that Mr. -- not Mr. Moats, but Moats Construction left the job. They did not finish the job.

Now, we certainly do not -- we contend that Anderson County did nothing to breach the provisions of the -- of the -- of the mediated settlement agreement as to East-West. We accept what the -- what the judge has said on the -- on the delay damages. But certainly as to anything else we have that is still in the case, we do not agree that there was any breach by Anderson County.

And, in fact, the breach of the agreement was when Mr. Moats left the job and didn't complete. It's at -- and that's -- there's nothing you can say

about that. We absolutely know he didn't finish it. Everybody has testified to that, including him.

Now, let's -- let's talk about damages some. So you'll see in paragraph 3 there. You've got the $15,000 change order for the work. And you've heard that that relates to the completion of the pour for the sidewalk. All right. You -- you heard the testimony that -- excuse me -- the -- the stipulation from Mr. Goodwyn that we've agreed for purposes of making the math easier for everybody, we will not argue the money we spent on Mike Duncan, although it was clearly -- you know what it was. I mean, it was $9,450. We did that, but we will not seek that damage in an exchange for that.

Moats claim is reduced on the change order from 15,000 to 55 -- $5,550. So we agree with the math. We don't agree that they're entitled to the change order or to that 5550 because they did not complete the work. That work was not complete. And so there -- there is no reason for, we believe, there to be an award to Moats for that amount. Moats is the one that breached the agreement.

The -- another issue that was talked about an awful lot is whether the plans -- whether the plans can be drawn -- excuse me -- can be built as drawn.

The plans changed. We all agree to that. All right. There's no dispute about that. And I don't think there's anything that says that that's wrong. All the people that testified said -- and I think Mr. Moats agreed with me -- there -- there's no perfect project. There's no perfect set of plans. And it's expected, particularly on -- on ADA projects that you draw it. You have to conform it to the field. You may have to update the drawings. And then at the end, you have a set of as-built plans that show you how it actually got built because that might be a little bit different in some respects from the way it was on the plans. And it gets worked out that way, except in this case it didn't because we never got a chance to get it finished.

All right. But there's a suggestion and I'm not sure what exactly they're trying to say, but that somehow Mike Duncan got a pass or something on -- on complying. There's really no testimony that that can possibly be supported. The testimony -- the only testimony that was -- that's in the record to my knowledge about the status of the ADA compliance of the -- of the park right now was from Matt Schell in -- in his direct -- in his

questioning, I think, by Mr. Goodwyn that where it was asked if the park is ADA compliant and he answered yes. All right. The park now, however many years later as we sit here now today, that park is compliant.

Now, you also heard a lot about Sandy Hanebrink during the trial. She's very impressive. She obviously knows her stuff. And on the day that she was out there in 2019, she found a couple of areas that had been poured that she did not find to be in compliance. But as you'll see, you know, I don't know that I need to pull that one out, but what she said was based on how I measured, it was not in compliance. But she cautions in the -- at the end of that letter, "I did not have a set of plans to look at. I was not given a set of plans to look at. I cannot speak to whether or not what is there is what was on the plan."

So I think that information is a very limited help in your -- in determining what went on. And, in fact, really it's irrelevant because that was later. It was after Mr. Moats had left the job. So the county and its replacement contractors and the designers have to get -- have to figure out a way to get it fixed. And as if now, it is. All right.

According to the only testimony in the record about the status of it right now from Matt -- Matt Schell.

Now, let's talk for a minute about the damages that Mr. Moats -- excuse me -- not Mr. Moats -- Moats Construction are seeking. They've asked for the full $15,000 for the change order in paragraph 3, the mediated settlement agreement with which we absolutely disagree. All right. Mr. Moats and -- excuse me -- Moats Construction is an entity that breached the contract, not the county. So by that part, Mr. Moats is not entitled ---

MR. GOODWYN: Your Honor, I'm sorry. We agreed that we're only asking for the 5550.

MR. DAVIDSON: Okay. You're right. On the change order?

MR. GOODWYN: Yeah.

MR. DAVIDSON: Oh, yeah, yeah. I'm sorry.

So the change order, which is now only in the amount of $5,550 is -- is what they've asked for. We disagree with that just like we did the 15. Okay. That breach was on Mr. Moats -- on Moats Construction.

We talked about the retainage. We disagree that they're entitled to that based on the breach also.

Then you were asked to -- you were asked to provide compensation to Moats Construction for the county's failure, as they term it, to -- let me bring back up this -- to as in paragraph A to rescind the termination letter.

Now, Mr. Moats and -- and -- and Mr. Goodwyn would have you believe that the reason Mr. Moats had trouble getting bonding capacity was all the county's fault. We heard that several times, until yesterday on cross-examination when we went through all of the other reasons given by the surety company on why he was not getting bonded. So let's -- let's look at that.

So this is Defendant's Exhibit 1, Tab 23. You see it's a set of e-mails that begin on August the 2nd, 2018, and it's Russell Moats writing to a person named Matthew Clark at Contract Assurity Group. And I -- I want to keep moving, so I'm not going to read through all of this. You heard all the testimony yesterday, but Mr. Moats is writing to get approval for some bid bonds that he wanted to -- that he wanted to have to be able to bid on some projects.

Now, Mr. Moats' testimony originally was that the -- was that Anderson County's termination letter

and the bond -- and the bond letters written were the reason he could not get -- he couldn't get bonded.

Now, I can short circuit this a little bit I think. Here we go, but you see here just -- just briefly. You see here they're asking for financial information -- 2017, '16, and '15 -- corporate info, personal financials less than a year old, filed federal tax returns, and updated profit and loss and balance sheets. All right. It's what -- that's what they're saying is needed to go through the underwriting process to get the bonds.

Now, on -- on March 11th, so you can see this. March 11th, Matthew Clark writes back to Mr. Moats. There's a series of e-mails that have been ongoing during that time. Writes back to Mr. Moats and says he's submitted Moats Construction to a standard surety with competitive rates. They don't have any issues with asbestos.

"What I think will happen is that the surety will support you on the two upcoming bids. In exchange, I think they will want to retain -- want you to retain a construction oriented CPA asap with the clear understanding that he will do a 12/13/18 review." Okay. Then it goes, "And then they

suggest you get a $200,000 rolling credit line."

And then later say, "That's one way. Another way is to simply assign that warehouse asset to the surety in exchange for your surety credit." So there were options there to try to get that done. Now, so far we've not seen any mention of East-West, Toxaway, or Anderson County.

Now, a few days later on August the 14th, Matthew Clark writes -- I guess informally calls Mr. Moats, "Boss, before we go any further, the bonding company asked me about the following: New Beach Construction partners, Travelers Casualty Insured lawsuit, Doug Proctor lawsuit, and the AT&T lawsuit." So their claims they are otherwise that -- that concerns were raised by the bonding company that do not mention Anderson County whatsoever.

All right. Last. Now, this is -- this is, I guess, a final e-mail it looks like from Matthew Clark to Mr. Moats. And he says, "We have -- good morning. We have prepared a sworn sequence of events statement leading to the denial of your request for surety support for the Greenville demolition job.

"The statement's currently in possession of our

legal counsel. A synopsis of the reason for the denial is provided here. Personal credit remained locked after repeated attempts. Unable to continue underwriting. Preponderance of open lawsuits and West Law inquiries, specifically New Beach Construction Partners and claims against Travelers Casualty and Surety, Doug Proctor, and AT&T.

"Requested amount of surety support was $400,000 above previously completed largest job, lack of CPA prepared financial statements, lack of bank line of credit, lack of requested personal and corporate tax returns."

Now, after I asked those questions, Mr. Moats response was, "Well, we were busy. I was trying to do things. I was out of town some. My CPA was -- was slow." None of which had to do with Anderson County. And nothing in the information from the surety company that denied those bonds blamed it on Anderson County.

So there's really no evidence before you that would justify that Moats did not get a bond because of Anderson County, and certainly not because of a termination letter on Toxaway or the -- or the lack of a recision of the termination letter on Toxaway.

Anderson County did not cause Mr. Moats bonding

problems. And that's -- that is clear from every piece of paper that have to do with this -- with the bonding capacity. There may be some mention by Mr. -- Mr. Goodwyn when he gets up about the -- the Toxaway. There's some discussion of a UCC-1 or something. Anderson County doesn't file UCC-1s. They don't have the ability to do that against somebody.

If there is a UCC-1, I've -- I've not seen it. I don't know whether there is or not, but if there is a UCC-1, it would've had to have come from the surety or somebody. It doesn't come from a -- it doesn't come Anderson County. And Anderson County is not to blame. Even if it did, Anderson County is absolutely not to blame for Mr. Moats -- excuse me -- for Moats Construction lack of bonding capacity.

So I don't think there's anything in front of you, any evidence that would give you any reasonable basis to award any kind of money to Mr. Moats and Moats Construction on the bonding capacity issue. It's just not there. There were too many other reasons for that. Obviously, there were a few -- the lawsuits, the lack of financial information, all of that -- that, you know, that list of six or seven

things that the bonding company gave to you and that Mr. Moats and I went through yesterday are the justification for him not having the -- the bonding capacity.

Now, let's -- let's talk for a second about Anderson County's damages that we claim. The -- the project had to be finished. Okay. It couldn't -- it was too close to being complete not to finish it. And so when Mr. Moats left the job, what -- what choice would Anderson County have except to finish it, so it did. And it had -- it hired Mike Duncan to do the concrete work. All right. And Mike Duncan charged and was paid $9450 for that work.

That has -- although, that is -- you know, I want you to understand what was spent, but you heard that we agree that that comes off of the $15,000 so that that net number -- that reduces the net number that Moats is seeking to $5,550 on -- on that change order.

You heard that Moseley Brothers was paid $1750 for 25 car stops. Mr. Moats testified that -- well, he left a pallet of them out there. Look, I'm not disputing what he -- what he's saying. I don't know whether he did or not, but I don't know why the county would've paid $1750 for 25 car stops if there

was some out there to be used. So I think -- I think you can draw your inference from that.

First Impressions Landscape work. Brian Richardson -- there was -- there was a discussion that nobody testified anything about that landscape work. Well, that's just wrong. Okay. Brian Richardson testified to it, and he testified that the work was -- that his belief and understanding was that the work done by First Impressions Landscaping was part of the original package of Mr. Moats' work.

And the same with the irrigation system. Mr. -- Mr. Richardson testified that the work -- that when -- the company is called Irrigation Service and Repair. And when they were out doing work on -- went out to inspect and do work at the site realized that the sprinkling system and irrigation system was not correct. They did an investigation into it, and then made the repair. And that repair was $11,600. So our total -- our total amount, after taking into consideration the -- the net swap on the -- on the concrete and -- and the change order is $18,592.

Now, before I sit down, let me just say this. We submit to you that the evidence shows that Anderson County did not breach the mediated

settlement agreement as to the change order. It didn't breach the mediated settlement agreement as to rescinding the termination.

Moats Construction breached it by leaving the job without finishing it. And because it didn't finish it, because that job wasn't finished, they're not entitled to the net number on that change order. They're also not entitled to the retainage. And in addition, even if you find that they are entitled to some of that, it should be offset by the amount spent by Anderson County to finish the job.

All right. Now, I told you a few minutes ago this was my only chance to talk to you, and I appreciate it. I wish we could -- I hope we can talk some day, not in here, about ADA. But for now, that's -- that's what we're limited to.

Mr. Goodwyn will now get up, and I don't get a chance to reply to it, but I think you understand and you've seen this week that there's really not anything that we don't have a response to. And so I want you to think about that as you -- as we finish up today.

I really appreciate your time. I hope I didn't wear out my welcome. We very much appreciate all the time and effort you put into it, and I look

forward to finishing this up. Thank you very much.

THE COURT: Madam forelady, ladies and gentlemen, let's take about a 10-minute break, and then we'll continue with the final closing arguments.

THE FORELADY: Thank you.

(At 11:12 a.m., jury left the courtroom.)

(From 11:12 to 11:25 a.m., a recess was had.)

THE COURT: Are you ready?

MR. GOODWYN: Yes, sir.

THE COURT: Would you bring the jury in?

(At 11:26 a.m., jury entered the courtroom.)

THE COURT: Reply, Mr. Goodwyn?

MR. GOODWYN: Yes, Your Honor. Thank you.

All right. I'm going to jump around a little bit and reply to some of the arguments Mr. Davidson made.

First, I want to hit a few points that he made. The mediated settlement agreement in paragraph 9, he talks about Mr. Moats. Mr. Moats could've built the project in, you know, as long as the drawings were within ADA compliance. You heard every -- first, they weren't within ADA compliance. I think we've established that. You heard everybody testify that Mr. Moats could not have built -- could not have

poured a concrete -- a sidewalk if it were not in ADA compliance.

Holt Hopkins said, no. It didn't matter what the plans were. Whatever he poured, it had to do within ADA compliance. Everybody said it had to be ADA compliant. And this paragraph here is just designed to protect Mr. Moats. If the plans are not ADA compliant and he follows the plans, he didn't want to be held responsible. That's what that's for. I think we established that the plans were not in ADA compliance.

To respond to Mr. Davidson's comments about Holt Hopkins saying, hey, Mr. Moats, if you just lower it here and raise it a little bit here, it'll be good. No. That's not how it works. He has to follow the plans. The plans say put it here, put it this height, he's got to do that.

And what Holt Hopkins should've done is say, well, I think if you lower it here and raise it here, then it'll be in compliance. Fine. Go back to Natasha Sexton, get her to put that in the plans, then he can do that. He didn't offer that. He just told Mr. Moats deviate from the plans. Don't follow the rules basically. Mr. Moats said, no, I'm following the rules. If I don't follow the rules,

now I'm in trouble for not following the rules. I think that's a pretty fair position to take from Mr. Moats' point of view.

I want to mention something about the dates of this mediated settlement agreement, how it was all scheduled out. Keep in mind, Mr. Moats is not that big a company. He had to do the East-West Project -- Project first. He was being mobilized. It was -- you know, I think the county was to approve it April 17th of 2018. The notice to resume work letter came shortly thereafter. I don't have the letter handy, but it was -- it was -- I think it was April 25th was when that was issued with the $26,000 check. He went back to work right after that.

He couldn't have been doing the Toxaway Mill Project at that time. His crews would've been completely dedicated to the East-West Park Project. That's why the Toxaway Mill Project was put out till June because he needed his crews there. It had nothing to do with getting -- making sure East-West Park Project was finished before the Toxaway Project was even a park.

I want to -- I want to finish by talking to you about the retainage issue and kind of where -- where we are. Looking at this from a fairness point of

view with respect to the county and what they pay, what they expected to pay for this job, and really what they're -- what they're here asking. And I'll submit that it's -- it's not fair. They're asking for a windfall here. And let me explain what I mean by that.

In the mediated settlement agreement, fortunately, again, we know what the contract price was 324,761.28. That's the total amount that they were expecting to pay for this job. They had it budgeted. They had their grants in place. That's what they were expecting to pay.

As of the mediation, they paid Moats $2483.23. And I've done the math. That's a difference of $76,758.05. So that means I'm going to -- I'm going to put this down here and I hope you can follow me. This is some numbers that I have written out on my pad.

So they had $76,500 -- 758.05 left in the budget as of the mediation. Now they paid Moats that $26,000 figure. There's no dispute about that. That leaves $50 -- $50,602.16 left in their budget on this project. So what did they pay to finish out the project? According to them, they paid 9450 to Mike Duncan. They paid $1750 for those parking

curbs. They paid 54 -- 5242 in landscaping, which we dispute that that was related to the original contract, but assuming that is true. And I'm not including the irrigation costs because that was a warranty item. Mr. Moats said he would fix that for free for them if they put him on notice. They never put him on notice. So that's not -- I don't contend that's fair for them to be asking for him to pay or include in the cost of the project. He had already installed it and he had warranted it.

So taking these items out, that leaves $34,160.16 left in their budget. If you award Mr. Moats the 5550 that he's asking for the work that he did in moving the pipe and putting in those forms after the mediated settlement agreement, that leaves $28,610.16 left in the budget. That's more than we're asking for the retainage. The retainage is only that $27,555 number.

Why shouldn't they pay him the retainage? He's done work. He's earned the money. They held it back in case they needed it to pay for other damages. They don't need it. It was in the budget. They got the project finished within the budget. Why not pay him the retainage? If you don't, then they're just keeping $27,555 for themselves that

they already budgeted for this project.

I think I hit the points that I wanted to make. I think that makes sense. I hope you understand the arguments. I know we've been through it. And one of the disadvantages of this kind of a system is that we can't get any feedback from the jury. I can look at you and see some expressions and see if you may be getting what I'm saying from time to time, but I can't hear what you're thinking. I can't field any questions and answer you. I just have to kind of guess what y'all are thinking and what I think is important for y'all to hear.

So I hope I've answered all your questions, but there are 12 of you back there. And it's -- it's -- it's amazing how often juries get it right. With twelve minds working on it, you -- you generally get it right. So I encourage you do listen to each other. Hash this out. Please be done by three o'clock. But it is Friday, but, anyway, take your time. Do what you got to do. And I appreciate your efforts.

THE COURT: Madam forelady, ladies and gentlemen of the jury, I anticipate my charge will take about 25 minutes give or take. I'm ready to go forward with it. If you'd like a break since you've

been sitting for a little while during these closing arguments, I'll let you make that call. Would you like to have a break, or would you like me to continue with my charge?

THE FORELADY: Continue.

THE COURT: Let me say something to you, and I say this somewhat in response to your question yesterday. And it happens quite frequently, and that is this: You have to make your decision collectively as a jury based on the testimony and the evidence that's in the record.

Quite frankly, I get a lot of kind of questions that says, can we have them tell us about this? Can they give us this additional information? The information on which you must make your determination is in the record. And you will have to make your call based on that. And in addition to that, I'm not allowed to make a comment on the facts of the case. Okay. I say that just to kind of ward you off from asking a question about that.

Anytime, madam forelady, you do have a question, I want you to write it down, knock on the door, give it to our bailiff, and I'll respond to it here in the courtroom accordingly. Okay.

Now, ladies and gentlemen, now that you have

heard the arguments from the attorneys and all the testimony and evidence in this case, it is my duty to charge you on the law that you'll apply in this case.

My charge is in three different parts. The first part of my charge is on the general duties that define and control your duties as jurors.

The second part will be the substantive law that applies in this case, and that is the law of contract -- breach of contracts.

And then I'll go over some considerations about your deliberations.

And then, madam forelady, I'll go over the verdict form with you and explain how to fill it out.

If you recall, at the beginning of this case, I told you that you are the sole judges of what the facts are in this case. You're the sole judges of your verdict. And you'll -- it is your duty to make findings of fact. You make a finding on your verdict from the testimony in evidence you have heard in this case. And you also must follow the law as I give it to you now. You must not and shall not be considered or should consider what it is. If I'm wrong on what the law is, I will be corrected,

but you must follow it as I give it to you now. And if you don't, it will be a dereliction of your oath that you took at the beginning of this case.

Also, ladies and gentlemen, you must not be influenced by any personal likes, dislikes, opinions, prejudice, or undue sympathy that you may have for one side of this case or the other. And what that simply means is this: You make your decision based on the testimony in evidence that's been presented here in this courtroom and according to the law as I give it to you now. And if you recall at the beginning of this case when you took your oath, you swore or affirmed to do just that.

Also, ladies and gentlemen, following my instructions, you can't pick out certain aspects of it and say we agree with that and we want to follow those parts of the instruction, but disregard other aspects of my instructions. They are all equally important.

And I'll remind you, if I have said or done anything throughout the course of this trial that indicates to you how you are to find the facts or the verdict you are to reach, I'm going to ask you but also charge you that you shall not consider that. I do not have an opinion one way or the

other. Our constitution does not allow me to have an opinion on the case. You will make that determination.

Now, you will decide what the facts are by evaluating and weighing the evidence. We say "weighing the evidence." Obviously, you can't weigh evidence in the literal sense. You use your good common sense and your sense of sound judgement when you walk through and talk through the evidence and hopefully come to a unanimous decision about what the verdict is in this case.

Now, I remind you in this case, you have a plaintiff who filed suit and said the county has breached the contract. County has responded saying, no, you breached the contract. They both claim the other breached the contract. Each has the burden of proving their claim against the other.

And I will tell you that the burden each side has to meet is called a preponderance of the evidence. A preponderance is this: It simply means the greater weight of the evidence. It is evidence which as a whole shows facts sought to be proven is more likely than not true.

Now, if you imagine a set of scales being equal. At the end of this case when you are told to

begin your deliberations, you go in there and you consider the plaintiff's claim. And at the end of your discussions about the plaintiff's claim, if those scales remain equal or they tilt ever so slightly in favor of the defendant, then the plaintiff would've not met their burden of proof and your verdict would not be for the plaintiff on this claim.

On the other hand, if it tilts ever so slightly in favor of the plaintiff, then the plaintiff has met the burden and you will term determine how much the plaintiff is entitled to.

Next, you'll consider the defendant's claim and you'll go through exact same process. If the scales remain equal or they tilt ever so slightly in favor of the plaintiff, then the defense would not have met their burden of proof and you would not give any award for the defendant.

On the other hand, if the defendant's -- if the scales tilt ever so slightly in favor of the defense, then they have met their burden of proof and you will determine how much they're entitled to in their claim against the plaintiff. You can have an award for the plaintiff. You can have an award for the defense. You can have an award for neither.

And I'll go over that with you further. Okay.

Now, in this case, ladies and gentlemen, there's certain things that are considered evidence and there's certain things that are not considered evidence. The sworn testimony that you heard from the witness stand is evidence. The exhibits that I have allowed into evidence is evidence. And that is the only evidence that you may consider in this case as evidence, except that the parties had stipulated that the retainage and certain other aspects of the other agreements will be considered under the overarching, you know, title of the mediation agreement; is that correct, counsel?

MR. GOODWYN: Yes, Your Honor.

MR. DAVIDSON: Yes, Your Honor.

THE COURT: So you can't change that, but other than the sworn testimony and exhibits and the stipulation by the defendants, there's no other evidence in this case. And from that, you will have to make your decision and apply the law in this case.

So that leads me to what is not evidence. Now, the arguments by these fine lawyers in their opening and their closing or certain other times in this case is not evidence. It's not to minimize what

they tell you, but it is not evidence. They're not being subjected to cross-examination. They're not sworn in and put on the witness stand. It's designed to help you understand what their contentions is, but what they tell you is not evidence.

Also, if what they told you or either one of them told you throughout any part of this trial differs from your memory of that issue or somebody's notes on that issue, then your memory will control.

And ladies -- madam forelady, I remind you that just because something may appear in one of your juror's notes doesn't mean it trumps somebody's memory on that issue. Some people are better note takers. Some people are better listeners. That's why they're called deliberations.

And, also, the fact that there have been objections in this case, just like any other case out there, that is simply the process that's followed in all cases. Madam forelady, if one of your jurors tries to insinuate that, the fact that there's an objection or my rulings on it to the extent you saw it, into the jury's deliberations, it's your job to make sure that that is not part of the jurors' deliberations. Suffice it to say, that

is the process that's followed in every case.

Now, one thing jurors sometimes have a hard time understanding is that only the responses by the witness to the questions being asked is evidence. The questions themselves asked by the lawyers is not evidence. Okay. Also, anything that I have stricken from the record, you may not consider as evidence in this case.

So that leads me to the types of evidence that we recognize. In South Carolina, we recognize direct evidence and circumstantial evidence. Direct evidence is pretty straightforward, but it's this: It is evidence that is testimony of a person who claims to have actual knowledge of facts such as an eyewitness. It is evidence that immediately establishes the fact to be proven in the case.

For example, if the issue in the case was whether I ran a stop sign and my law clerk testified that he saw me run that stop sign, that would immediately establish that issue. You don't have to infer or deduce anything from it. That is direct evidence.

On the other hand, we have circumstantial evidence. And it's also recognized. Circumstantial evidence is a little trickery and it's this:

Circumstantial evidence is a proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. It is proof that does not actually establish the fact in question, but that a search describes something else from what you may either reasonably infer the truth of the fact or at least reasonably infer an increase in the probability that that fact is true.

Now, that sounds like a lot of lawyer talk, okay, and it is. Let me just give you an example so you can understand it. If all of you were to go to bed at night and have a fresh sheet of snow in your front yard. If you were to wake up in the morning and see tracks through that snow. You can reasonably infer or deduce that some thing or someone walked through your yard, although you did not see it. That is circumstantial evidence. You are inferring or deducing a fact from something that you see.

The only prohibition is the conclusion that you reach can't be speculation or surmise or conjecture.

You have to come to a conclusion that is reasonably certain based on the facts from what you're basing your inference. Okay. But the law does not make a distinction between the weight or value that you the jury will give direct evidence or circumstantial evidence. The state -- I mean, the law allows you, the jury, to consider both on equal parts of one another in making your decision of what the facts in the case are.

Now, in this case as in all cases, ladies and gentlemen, in deciding what the facts are, you have to decide which evidence you wish to believe and whether or not there's any evidence you wish not to believe. You have the right as the jury as a whole to disbelieve any part of a witness's testimony. You have a right to disbelieve all of it or part of it. You have a right to believe all of the witness's testimony.

In making this determination of what we call the credibility of the witnesses, I'm going to give you a non-exhaustive list of factors that you may consider in making this determination.

First, you can ask yourself was the witness able to see or hear or know about the things which was the subject of their testimony. You can ask

yourself how well they were able to recall their testimony while they were giving it to you and what was their manner while they were testifying. In other words, what was their demeanor while they were up here on the witness stand. You can ask yourself was there some reason that a witness would want to give testimony that would help or hurt one side of the case or the other or whether or not that witness had bias or prejudice for or against one side of the case or the other or involving any issues involved in this case.

Also, you can ask if that witness's testimony was reasonable considered in light of all the testimony in this case and also whether that witness's testimony had been contradicted by what that witness said at another time or place or by any other witnesses in this case or any evidence in this case.

Now, ladies and gentlemen, those are just some factors that you may consider in making this determination of the believability or credibility of the testimony. And, of course, one thing you don't do when you're sworn in is check your common sense. You should use those things in your day-to-day lives that you find indicative of truthfulness and

indicative of a lack of truthfulness when making this determination of the believability of the credibility of the witnesses.

One thing that you may not do is add up the number of witnesses who may have appeared on one side of this case or the other or add up the number of exhibits that have been admitted on side of this case or the other in making this determination.

Now, madam forelady, ladies and gentlemen, those are the rules that generally define your rules and your duties as jurors. I don't send my charge back to you because -- or with you because I want you considering the facts of the case, not concerning yourselves with the law. If you want me to repeat any part of my charge to you, I'll be more than happy to do so and as many times as you want me to do so.

So that leads me to the substantive law that applies in this case and that is the law of contract and breach of contracts. In this case, ladies and gentlemen, each party, the plaintiff and the defendant, claims that the other breached a contract that existed between them. Now, in order for a party to recover for a breach of contract, they must prove that their claim -- their claim by a

preponderance or a greater weight of the evidence as I defined to you earlier.

Now, ladies and gentlemen, a contract is an agreement entered into by two or more parties in which each party agrees to perform or not to perform certain acts. It may be shown by words, written or oral, or by conduct. However, a contract is more than mere exchange of promises.

In this case, ladies and gentlemen, the parties stipulate and agree that there was a contract entered into which was referred to as the mediated settlement agreement. And also by stipulation, the parties have agreed to include retainage of certain other aspects of the other contracts in that agreement, as well.

Now, in interpreting contracts, ladies and gentlemen, you must determine what the parties intended and put those intentions into effect. In doing this, you must consider only the outward expressions of the parties and you cannot consider any undisclosed or secret intentions of the parties. A contract should be literally construed to carry out the intentions of the parties and it is the substance of the agreement and not the form which must control the construction of the contract.

When you are interpreting a contract, you are not limited to the literal meaning of any term of the contract if you decide that the literal meaning would defeat the parties true intentions. The contract is to be considered by looking at its subject matter, nature, and purpose. When you have determined the general purpose of the contract, you should look at the language of the contract in light of its purpose.

Now, it must be shown by a preponderance or greater weight of the evidence that either the plaintiff or the defendant unjustifiably breached the contract or that both the plaintiff and the defendant breached the contract. The word breached means failure without legal excuse to perform any promise that forms the whole or a part of the contract.

This includes the refusal of a party to recognize the existence of the contract or the doing of something inconsistent with the existence of a contract. A party breaches the contract when that party does not perform as agreed under the contract by failing to carry out a term, promise, or condition of the contract.

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recognize the existence of the contract or the doing of something inconsistent with the existence of a contract. A party breaches the contract when that party does not perform as agreed under the contract by failing to carry out a term, promise, or condition of the contract.

When the contract is in writing, you must determine the intentions of the parties primarily from the contents of the written document itself. The intentions of the parties must be determined from the entire agreement and not from any particular clause or provision. When the written contract is clear, its meaning must be determined by the contents of the document alone. If the circumstances warrant terms which do not contradict, the written language of the contract may be implied in order to carry out the intentions of the parties.

Ladies and gentlemen, a party to a contract has a duty to read it and learn its contact -- contents before signing it. A party cannot complain of misrepresentation -- misrepresentation in the contents of the contract if the truth could have been discovered by reading the contract, unless the party is ignorant and unwary. Education, business experience, and intelligence are all considered in

determining whether a party may be considered ignorant and unwary so as to excuse a failure to read a contract.

Now, madam forelady, ladies and gentlemen, in every contract, whether it be written or spoken, there is an unspoken but legally enforceable promise that each party will engage in good faith and fair dealings with one another in the contract.

Now, finally, ladies and gentlemen, it must be proven by a preponderance or greater weight of the evidence that either the plaintiff or the defendant or both of them suffered damages which were proximately caused by the defendants or the plaintiff's breach of contract or both of their breaches of contract.

Damages must be proven by a preponderance or greater weight of the evidence. This does not mean that damages must be proven to a mathematical certainty or that a party must produce evidence for the exact amount of damages suffered. However, the amount of damages cannot be left to guesswork or speculation. Instead, the evidence presented must be enough to allow you to determine the amount of damages with reasonable certainly and accuracy.

Damages for breach of contract are those that

may fairly and reasonably be considered to arise naturally from the breach of the contract itself or those that may be reasonably supposed to have been in the minds of the parties at the time the contract was made. Damages may not be recovered from breach of contract unless it is shown that the prevailing party has performed their part of the contract or at least was able, ready, and willing to perform at the appropriate time.

Finally, ladies and gentlemen, if a party furnishes specifications in plans for a contractor to follow in a construction job, he thereby complied with any warrants there is sufficiency.

Now, ladies and gentlemen, those are the general rules or the substantive rules that you will apply in determining each party's claims against one another for breach of contract. And, again, I will repeat it as many times as you need me to do so.

That leads me to some final thoughts about your deliberations. If you remember at the beginning of this case, you either expressly stated or by your silence implied that you could be fair and impartial to both sides of this case. That's why you were selected to serve on this jury because both the plaintiff and the defense thought based on your

representations that you would be fair and impartial. You're not partisans. You're not advocates for one side of this case or the other. You are judges of the facts and you are to use that in approaching the facts of this case and discussing that with your fellow jurors to hopefully come to a unanimous decision.

So let me say something about deliberation. This is the definition: It is a careful consideration weighed up with a view to a decision. It is a careful consideration weighed up with a view to a decision. Now, regardless of what any of you may think about our jury system, I would submit to you that the genius of the system is it allows 12 men and women such as yourselves to come from different backgrounds who have different experiences and different perspectives to walk through and talk through the evidence and to ultimately reach a unanimous consider -- unanimous verdict.

Now, I'll remind you you're not advocates or partizans for one side of the case or the other. When you go back and you begin your deliberations in just a few minutes when I tell you to do so, I'm going to ask you and charge you to listen to your fellow jurors' views about what they think the

evidence is.

So let me explain to you why they have that view, and they will do the same to you. You're not to be in a hurry. This case is very important to both the plaintiff and the defendant. And this is their only day in court. They do not get a second bite at the apple.

Now, in order for you to reach an agreement, all of you will have to agree what your verdict will be. In other words, it has to be unanimous. With that being said, do not be afraid to change your view as to the weight of the evidence if your discussions with your fellow jurors convinces you that you should change your view on what the facts are in this case. On the other hand, do not change a firmly held belief as to the facts of this case simply to appease your fellow jurors in order to reach a unanimous verdict.

Now, madam forelady, again, if at any time you need to have any questions to me, write it down and give it to the bailiff. One thing that I would ask you never to do is tell us where the jury stands numerically. In order words, whether it's 10, 2, 6, 6 or some other numerical part of the 12 of you decision making process. It's none of our business.

Okay.

Once you do reach a decision as to the facts of the case, then it'll be your job to fill out the verdict form. I know it was shown to you earlier, but it's pretty straightforward. And the order in which the options appear is no consequence. I have to put them in some order, but your options are this:

"As to the plaintiff's claim for breach of contract, we the jury unanimously find (a) for the plaintiff in the amount of" -- and there's a line drawn there. And since you are probably not 18 years old, you probably remember how to fill out a check. I know some people don't anymore, but it's like filling out a check. You'll write it out in words and then write the numbers down, okay, if you find that damages are available for the plaintiff.

The other option is, "We find for the defendant." Then you go over to the defendant's claim, and it'll be the same process again. If you find that defendant's entitled to a verdict, you'll write it out like a check. And then at the end, you'll sign your name to the verdict form. You'll fold it over, crease it, knock on the door, tell our bailiff we've reached a unanimous verdict.

On the other hand, if you feel like the defendant has not proven its claim, then your other option would be, "We find for the plaintiff."

Again, once you have answered both of these questions, you'll sign it, knock on the door, and we'll receive your verdict here in the jury room -- I mean, in the courtroom. Keep the verdict form with you in your hand. Okay.

Before I let you begin your deliberations, I'm going to ask that our alternate bring your -- when we go back, get your personal things and come on back out.

Don't start your deliberations yet. I've got to go over with these attorneys whether or not I said something I shouldn't have said or correct something I didn't say. If not, we'll send the verdict form and the exhibits back to you with word to begin your deliberations.

Now, my clerk says she's got you ordered lunch. You can go ahead and deliberate over lunch. You can stop while you're eating lunch. That's solely up to you. Okay. With that being said, I'm going to ask that you go back to your jury room and ask our alternate to come back out.

(At 12:01 p.m., jury left the courtroom.)

THE COURT: Any additions or exceptions from the plaintiff?

MR. GOODWYN: No, Your Honor.

THE COURT: From the defense?

MR. DAVIDSON: No, Your Honor.

THE COURT: I want to thank counsel, both of you, at this juncture because after the jury verdict comes out, it's not important. I want to thank both of you for being prepared and being professional in your presentations in this case. I say it mainly to you -- well, you know, because you're a lawyer anyway, but trials are battles. And it's just an intellectual battle that it's hard. And sometimes I've watched lawyers get out of control and get emotional and it's somewhat embarrassing. We had two professional lawyers who did a good job, and I want to thank you for that.

That being said, if you're going to leave here, don't go too far and also give my law clerk your cell phones so I can chase y'all down if we need a question. Okay. Thank you again.

Would you go over the verdict -- get the verdict form and make sure all the exhibits are okay and send them back with our bailiff. Do y'all have a problem with our bailiff telling them to go ahead

and start their deliberations?

MR. GOODWYN: No, that's fine.

THE COURT: Okay. And, Mr. Davidson, do you have a problem with our bailiff telling the jury to start their deliberations?

MR. DAVIDSON: Oh, I'm sorry, Your Honor. No, I do not.

(From 12:09 to 2:35 p.m., jury deliberated.)

(At 2:35 p.m., a verdict was reached.)

THE COURT: All right. We have a verdict I understand. Anything from the plaintiff before we bring our jury out?

MR. GOODWYN: No, Your Honor.

THE COURT: From the defense?

MR. DAVIDSON: No, Your Honor.

(At 2:57 p.m., jury entered the courtroom.)

THE COURT: Madam forelady, my understanding is the jury reached a verdict; is that correct?

THE FORELADY: Yes, sir.

THE COURT: Is it unanimous?

THE FORELADY: Yes, sir.

THE COURT: Would you pass the verdict form to the bailiff, please? Did you sign it?

THE FORELADY: Yes, sir.

THE COURT: Good, good, good.

THE CLERK: State of South Carolina, County of Anderson, in the Court of the Common Pleas, Tenth Judicial Circuit, *Moats Construction, Inc., Plaintiff, v. Anderson County, Rusty Burns, Matt Schell, and Holt Hopkins, defendants*. Civil action No. 2020-CP-04-00085. This is the verdict form.

As to Count 1, breach of contract. As to the plaintiff's claims for breach of contract, we the jury unanimously find as follows: (a) for the plaintiff in the amount of $412,105.

As to Count (b): As to the defendant, Anderson County's counterclaim, we the jury unanimously find as follows, (a) for the defendant in the amount of $1,900. And that is signed by our forelady April 19, 2024, Anderson, South Carolina.

Ladies and gentlemen, if that was your verdict in the jury room and it remains your verdict here now, would you please raise your right hand?

THE JURORS: (Complying.)

THE CLERK: Thank you. Let the record reflect that all 12 jurors raised their hands.

THE COURT: Very good. Madam forelady, ladies and gentlemen, the Court is never concerned with what your verdict is, but that you paid attention to the trial and the instructions from the Court. I

watched all of you throughout the trial and paid close attention and you followed the instructions, so I want to thank you for your service. I know it's not easy to come and sit in judgment over people or over entities, but without you our system is nonexistence, so thank you for your service.

One thing good about it, you cannot be required to come back to State Court for three years. So City Court or Magistrate Court, you're open game. But back here, we can get out of it, but we do thank you and I hope you have a nice weekend. You're excused.

(At 2:59 p.m., jury left the courtroom.)

THE COURT: All right. Gentlemen, normally, I give lawyers 10 days to file post-trial motions.

MR. GOODWYN: We discussed that beforehand. We were both on board with that.

THE COURT: Sir?

MR. GOODWYN: We discussed that before the jury came out. I think we're both in agreement with that.

THE COURT: You want 10 days?

MR. DAVIDSON: Yes, please.

MR. GOODWYN: Yes, sir.

THE COURT: All right. Very good. Do y'all

want to look at it? Take a quick look and see?

MR. GOODWYN: Yes.

MR. DAVIDSON: Yes.

THE COURT: All right.

THE CLERK: Do you want me to make a copy, Judge?

THE COURT: Yeah, make them a copy.

THE CLERK: Yes, sir.

MR. GOODWYN: Can we get a copy?

THE CLERK: Yes, sir.

THE COURT: That's what she's getting.

MR. GOODWYN: Can you make me two copies?

THE CLERK: Yes, sir.

THE COURT: All right. Guys, thank you. Appreciate it.

MR. GOODWYN: Thank you, Your Honor.

THE COURT: I'll be waiting for your post-trial motions. Just to give you a heads up, I'm out of town and out of the country next week. And then I'll be down in Sumpter the following few days, so it'll probably be towards the end of week after next before I can respond to those post-trial motions.

MR. GOODWYN: Well, good luck on the wedding trip. Congratulations.

THE COURT: Thank you. And if you would,

indicate whether you want an in-person hearing or you want to let me do it all on paper.

MR. GOODWYN: Okay.

THE COURT: Thank you.

(At 3:01 p.m., the trial proceedings concluded.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 19th day of April, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 23, 2025

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

State of South Carolina

Court of Common Pleas

County of Anderson

Russell Moats	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2020-CP-04-00085
	)	
Anderson County	)	
	)	
Defendant.	)	

July 22, 2024
Anderson, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge.

A P P E A R A N C E S:

Thomas J. Goodwyn, Jr., Esquire
Attorney for the Plaintiff

John W. Davidson, Esquire
Attorney for the Defendant

James V. McDade, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

P R O C E E D I N G S

- - -

THE COURT: All right. This is plaintiff's motion for post-trial jury verdict. It was rendered -- I can't even see the date -- within the recent history. All right. Your motion.

MR. DAVIDSON: Yes, sir. Thank you, Your Honor.

For the record, I'm John Davidson. I represent Anderson County in this. Your Honor, we -- we raised several post-trial motions, and we've submitted to you a pretty detailed brief with that motion, but did want to hit some highlights of all this.

And, essentially, while we had motions for judgement notwithstanding the verdict, a motion for new trial absolute, and also under the thirteenth juror standard, and then a motion for new trial nisi additur and remittitur.

They really all boil down to a couple of -- a couple of primary things. And -- and I know we had a week-long trial, but it has been four months or whatever, so I want to give you just a little bit of -- a little bit of background.

You might recall, this had to do with two

projects that Moats Construction did for Anderson County.

THE COURT: I read my trial notes.

MR. DAVIDSON: Okay. All right. Perfect. Then we can short circuit some of that. I would just point out that -- that the essential things that we believe are not -- that there was not adequate evidence in -- presented at trial to -- to justify a verdict had to do with liability on the part of Anderson County, and then separately the amount of damages.

So while each of those motions, you know, have their own standard and have their own language, they all relate to the same -- to the same issues. So, you know, happy to go through them any way you'd like, but just so we're clear on -- on -- on that. I don't want to belabor and -- and bombard you with telling you the same thing three times.

However, let's -- we can start with the motion notwithstanding the verdict. So pursuant to Rule 50(b), we -- we would hold that the evidence is insufficient to support the jury's verdict of liability on the breach of contract and the damages awarded under the mediated settlement agreement.

Now, the insuffiencey of that -- of that

evidence goes to -- has to do with a performance under both of those under the mediated settlement agreement, which -- which we would suggest as the trial evidence, we believe, proved that Anderson County had paid Moats all of the payments required under the mediated settlement agreement for which there was a term or a time provided for those payments to happen.

Now, the -- and that -- that goes, Your Honor, to both the liability and also to the Court's directed verdict on the -- on the damages number -- excuse me -- on the delay damages portion. Specifically, the mediated settlement agreement did not set a time of payment of the delay damages.

It didn't set a time for the payment of the $15,000 change order, but I would say that the change order, you know, relied upon the information to be submitted by Moats. And throughout the project, the change orders had been paid after the work was done, and the work under that change order was not complete.

Now, again, the $50,000 delay damage that was the subject of the directed verdict, we believe, also contain no -- no time. And this was all argued in the motion -- the directed verdict motion and

understand Your Honor's -- Your Honor's ruling on that. Although, we respectfully would disagree with that.

Then, Your Honor, so on the -- on the non -- on the evidence of the nonperformance, it was clear that Moats did not complete the East West Project, which our -- the testimony of the county was that the East West Project had to be complete before we ever got to Toxaway -- the completion of the Toxaway Project and the obligations under the settlement agreement as to Toxaway. So we never got to that -- that part of -- of the contract for the county to perform.

We'd also argue, Your Honor, and I'll point out, you know, also from our motion, that the evidence on the damages we believe are insufficient to justify the award of $412,105, I think and change, based on what the -- based on the jury's verdict.

So the amount asked for by the plaintiff included several things. It included, one, the difference between -- well, there was a net number of $5,550 for -- on the change order. Then there was a $27,105 roughly on retainage under the East West Project. And then the $50,000 directed verdict

that -- that you gave, which, you know, obviously we disagree with, but we understand for purposes of calculating that, we got -- you know, that's got to be included.

So those damages on the contract that can be properly calculated and have some, you know, doesn't have to be with certainty, but these can be done with certainty, are $83,105 and change. The jury verdict, however, is five times that. And the only type of damage that was requested and allowed to go to a jury, other than, you know, isn't capable of this kind of a calculation, has to do with the alleged failure of the county to rescind the termination letter or the termination of Moats Construction on the Toxaway Project.

And if you recall, that termination was -- and going back just a little bit more in the background. That termination resulted from Moats Construction exceeding the work to be done on the project prior to the county obtaining the permits for storm water and asbestos removal.

Now, the county, as an accomodation, allowed Moats to begin to do some work on the site, which was supposed to be cleaning up the site to be able to remove those -- those piles, but the work went

beyond that, and that's why that work had to be stopped. Moats was paid $59,000, which was his invoice for the work that had been done, but it could not progress farther until the -- the permits were in place.

Now, that recension of that termination letter, however, is -- has been the basis of the request by the plaintiff for some sort of damages for what damage they say was caused by the county not rescinding that termination letter. That recension though is not at the heart of and I don't believe that the evidence bore out at trial that it was the failure to rescind that termination letter that was the reason for the plaintiff's damages.

It was essentially -- you know, you heard and -- and directed a verdict, and we argued several times on this, about lost profits. The lost profits and all, and then so the lost profits weren't in, but it was a lot of testimony about because of the -- the issues that Moats had gone through, he could not obtain bid bonds to be able to bid on public work.

However, that -- there's not sufficient evidence, we would argue, in the -- in the trial that Anderson County is responsible for or should be

liable for the lack of ability for Moats to get bonded to get bid bonds. And, in fact, when we look closer at it, the -- the bonding company to which Moats Construction went to get bid bonds, gave specific reasons why it declined to give him bonds. None of which had to do with Anderson County.

It said, in fact, "Personal credit remained locked after repeated attempts. We were unable to continue underwriting. The preponderance of open lawsuits and a West Law inquiry, specifically to New Beach Partners, Inc., and claim against Travelers Casualty and Surety, Doug Proctor, and AT&T. The requested amount of surety support was $400,000 above the previously completed largest job. Lack of CPA prepared financial statements. Lack of back line of credit, and lack of requested personal and corporate tax returns."

That was -- that was in the documents that came from Moats Construction's documents that were entered into evidence and it's -- it was Defendant's Exhibit 123 that showed this is why he was not given bid bonds. It had nothing to do with Anderson County. There's no mention of a termination letter or anything else.

So the only -- the only testimony about that

was Mr. Moats who said I had -- I had to disclose that I had been terminated from a public job on a case -- on future work, but there is nothing beyond that that came into evidence.

And, in addition, there is nothing in the -- in the damages, and I would submit, there's nothing at all. There's no number. There's no nothing that -- that was in evidence that would allow a jury to properly consider that and to award damages. There's nothing that it can tie back to.

It's a contract damage that while it doesn't have to be proven with mathematical certainty, I think it's clear that it has to have some basis in -- in that and it cannot just be a number that's pulled from the air. There's good to be some basis on which they can award that amount.

To the extent that -- that -- and I would submit that if the 83 is really sort of the floor of where that number -- where that -- where the damage calculation can be made, then the award was five times that. And I don't think that there was anything that would justify a $300-something thousand award for failing or -- I mean, I -- I think that's the way it was stated as failing to terminate or to resend the termination letter.

I don't think that the language of the -- of the agreement, nor the way that the information was presented to the jury and what the jury had justifies anything close to that kind of number. And so while we can certainly go through these others, I think that is really at the heart of each one of these motions.

There is just a -- a lack of -- lack of proof in the record to justify that, and we think Your Honor has any number of ways of dealing with that. Certainly, you can -- you could find -- you could issue a judgment notwithstanding the verdict.

You can, by the same token, also order a new trial absolute on these under Rule 59.

I think you can amend the verdict as the thirteenth juror. You could essentially hang the jury on -- on this issue.

Further, we could do the new trial nisi additur for the -- I would say paltry amount that was awarded by the jury unknown to the counterclaim by the county, the $1900 that was awarded on that.

Or a -- what I think even makes the most sense, if you're inclined to not grant one of the others, is a new trial nisi remittitur that would set as to the amount awarded to plaintiff based on something

more appropriately approaching the true contract damages that, while we don't agree them, have maybe -- probably have much more of a basis in the record than the $400,000 do.

So I know we sort of talked around all of that, but I think those are all -- those are the reasons at the heart of each one of the motions.

THE COURT: All right. Thank you, sir.

MR. DAVIDSON: Yes, sir.

MR. GOODWYN: Thank you, Your Honor. With respect to all of these motions, we did submit a memorandum in more -- in more detail than what I'm going to say -- say now. I'm addressing each of these issues, but to respond to these issues, I'm going to start with the liability issue as -- as was stated.

THE COURT: Let me ask you a question and let me break it down first.

MR. GOODWYN: Sure.

THE COURT: With regard to the verdict, $412,105, what evidence is there in the record that would -- as to damages that would support that award? And what element of damages would this be awarded under?

MR. GOODWYN: Right. I addressed that in my

brief. I cite the contract damages section of the South Carolina damages book about that. The -- the -- the text lays out all categories of damages.

You have actual damages, of course; general damages; special damages; incidental or consequential damages. I think that's where lost profits would fit. Punitive damages; damages for loss of good will; and attorney's fees. Not all of those went to the jury, of course. You had a verdict for lost profits issues, punitive damages went to the jury, and attorney's fees went before the jury, but all the other categories were theirs, including loss -- the loss of goodwill. I think that's where this failure to rescind the ---

THE COURT: Assuming that that's correct ---

MR. GOODWYN: Right.

THE COURT: --- what evidence of loss of goodwill damages do you have in the record in this case?

MR. GOODWYN: He testified pretty extensively, Mr. Moats did, about his business generally, the kind of business he's had, how he built it up from, you know, a relative -- a very small construction business. And testified about how when you get -- when you start out, you can't get a bond for very,

very big because you don't have a track record. And he built it up to the point where he was able to get, I think, around $600,000 worth of bonding capacity, at least he had at this point. He was able to get this job.

He testified about the value of this job, what the East West Project -- Park Project, Toxaway job, and all of those other bid bond applications that he had, that was not evidence specifically of lost profits for those jobs, but it was evidence of profit margin that he does get on jobs and the types of jobs that he regularly bids on.

And the fact that his testimony was, you know, now that I have to, you know, check the box admitting that I've been fired from a government job before, that set me back, you know, an awful lot.

THE COURT: Well, let me ask you this: I mean, obviously, you don't have to establish damages to a mathematical certainty. I tell the jury that, but I also tell them you can't engage in speculation.

MR. GOODWYN: Sure.

THE COURT: What is there in the record that takes this award out of the realm of speculation?

MR. GOODWYN: Well, I want to point out two things. One, it's a general verdict form.

THE COURT: Fair.

MR. GOODWYN: There's one line. You don't know exactly what that one number ---

THE COURT: There has to be something in the record that it can be based on.

MR. GOODWYN: Sure. And I think the way he describes it in his -- in his brief is, you know, we presented damages for the, you know, 15 -- or 15,000 and the 27 or so retainage. Everything else, where did that come from kind of thing?

You know, if you say there's no evidence of any other damages, that's the most we ever could've gotten, then that means he can't get anything for that loss of goodwill for the -- it's a brief of not -- of not rescinding that termination letter. That means we wouldn't be entitled to anything.

I think my argument before the jury because of the instruction of "we can't argue lost profits" was, this is worth something. You know, not rescinding that letter is worth something. Y'all come up with a fair amount, and they did that obviously. And even based on all the testimony we heard about his business, the size of his business, the type ---

THE COURT: Let me change gears with you real

quick.

MR. GOODWYN: Sure.

THE COURT: Going back. What about the $1900 that was awarded to the county? Is there any evidence in the record to support that?

MR. GOODWYN: I think there was. I think -- they asked for more, a lot more. Something like 18,000 is what they were asking for, but we -- we had defenses for all that. I thought it was weak, but, you know, it was -- it was -- it was in the record. I didn't think it was great evidence. They -- I think they said he had not performed some of the work up to standards.

Some of that was that irrigation system that he had warrantied, but they never asked him to come repair it and they got somebody else to repair it. So we said that was not fair to be asking for that. I think there was some other -- one other line item that they said they had to pay somebody else to do. He should've done it under the contract, so I think that's where the 1900 came from.

THE COURT: Assuming that that's the case, I mean, do those numbers anywhere correspond with that 1900 figure, or is that just something you plucked out of the air? It seems like to me, you plucked it

out of the air.

MR. GOODWYN: Yeah, I mean, the jury's compromising everything. And I learned that in my -- my trial experience. Who knows? I mean, obviously, they had some kind of way to get that $412,000 -- $412,105.

THE COURT: Have you looked at various ways the jury -- I know you don't know or never know exactly, but have you -- a lot of times you go back and try to recreate. Sometimes you can say, okay, we can see what they're doing.

MR. GOODWYN: Right.

THE COURT: I haven't seen -- I was not able to come up with what they ---

MR. GOODWYN: No. I mean, if we had a special verdict form that says, you know, damages for these different elements, that would've been a lot easier, but we don't.

THE COURT: Sure.

MR. GOODWYN: And we're just guessing at this point. So it's -- I mean, I think we're engaging in a lot of speculation to try to figure out what the jury did and how they got there. I think it's -- I think there was evidence in the record to support something for the goodwill lost by not being able

to -- having that recension letter or that termination letter.

THE COURT: So what figure, you know, in this case, I grant $50,000 that's related to damages.

MR. GOODWYN: Right.

THE COURT: You paid -- you were paid 26,000 or something.

MR. GOODWYN: That wasn't part of what was going to the jury. They had already been paid.

THE COURT: That had been paid.

MR. GOODWYN: That's right.

THE COURT: Other than the $50,000, and I told you no lost profits and you prove it.

MR. GOODWYN: Right.

THE COURT: If I recall, right?

MR. GOODWYN: Yeah, the retainage.

THE COURT: What evidence is there in the record about goodwill and any kind of numerical figure related to that?

MR. GOODWYN: All of his testimony about the business. These jobs were jobs that he got and he earned money on these. And, again, those bid bond proposals that we saw, you can look and see what the profit margins were on jobs that he did generally.

THE COURT: And assuming that those jury used

those. Are you talking about those insurance forms or whatever you're talking about?

MR. GOODWYN: Right. And I'm not talking about actual. I'm not talking about assuming he would've gotten those jobs. I'm just saying, you can look to see what kind of profit margins he gets. And he talked about the fact that he had $600,000 worth of bonding capacity. He's used that for the last few years. He used it for these jobs. And so you can -- you can start computing what kind of profits -- not profits, but what kind of goodwill -- you've heard, if he's got not getting this work, you know, because of the bad will that was generated by having to say I was fired from this job. They can -- they can use those numbers to come up with something. You know, again, it's not a mathematical certainty.

THE COURT: The question I had, you're talking about the figures that shows this is this job, this is what I'm supposed to net out of this as far as the bond is concerned. That evidence that was in the record?

MR. GOODWYN: Right. That evidence, it -- yeah. That evidence shows generally what kind of profit margins he gets on his jobs. Not to say, you know, the jury was not to consider those jobs as

lost jobs, lost future profits. You instructed them not to consider that, and I did not argue about that.

THE COURT: No, you didn't.

MR. GOODWYN: I didn't. All I argued was this not rescinding that termination letter cost him, and he's entitled to damages for that for whatever you think is reasonable. And I think all of the testimony about his business, his bonding capacity, what his profit margins are, they did something. We have no idea. We never will know, but they did something to come up with a number. What portion of that 412 is that? What portion of it is actual damage for other categories? We don't know, so -- and I know that ---

THE COURT: Would you -- would you -- other a new trial absolute the jury's verdict as a result of passion, prejudice or caprice, than finding that to say we're going to start all over again, seems to me a burden of that magnitude based on the evidence is exactly what we're talking about here.

MR. GOODWYN: Well, I thought about that. I read his brief. And this is -- part of my response to that is, the two -- the two -- the two judge rule. When a judgment is based on two different

grounds and one of them is questionable, the Court can affirm based on the ground. It's not questionable. So in my ---

THE COURT: I agree you're talking about general versus specific verdict form, but in this case, I mean, I just don't see anything in there that comes close to supporting a verdict of that magnitude at all.

MR. GOODWYN: And if that's the case ---

THE COURT: I was taken aback.

MR. GOODWYN: What you -- I think you would agree that there is plenty of evidence to support a portion of it, but just not all. Like you said, there was clear evidence of the retainage, the 50,000 and 15, that was all clear. It was clear cut. It's the -- it's the addition that -- that's the real dispute. So I don't think a new trial absolute would be the solution here, the proper solution. If the Court is concerned about ---

THE COURT: So you think I should do a remittor?

MR. GOODWYN: That would be more appropriate than a new trial absolute.

THE COURT: In my case, then I'm -- in my judgment remittor would be down to $50,000 that I

grant verdict for. Why would -- why should that -- and I hear you. I know you're don't -- I know you're not going to agree to that. I wouldn't either.

MR. GOODWYN: And I'm not asking you to, but I want to explain what I'm talking about. If that was going to be the case, we didn't have to go to the jury at all, because you already granted the verdict on the 50. Why do we go to the jury at all?

THE COURT: Well, that's a question I was asking myself.

MR. GOODWYN: You're looking at 27,000 in the retainage. We had the 15,000 for lost -- or not lost -- the -- the unpaid portion of the work that he didn't do. That was in there. And then we had other damage, so that's -- that's mathematical damages that we were asking for going to the jury.

THE COURT: So you got 50, 15, what else?

MR. GOODWYN: The 20 -- it's 27,000. I think we agreed on the exact amount of retainer was 27,155 I believe it was. I've got it in my brief. Yeah, 27,155. So those amounts are not -- I think are not subject or to the idea of past prejudice or caprice.

THE COURT: Well, the 27,000 was monies that was remaining to be paid under full performance of

contracts, right?

MR. GOODWYN: Right.

THE COURT: Which he didn't do that.

MR. GOODWYN: Well, the jury -- the question for the jury was, look, we know we didn't complete the job; however, it wasn't our fault. We were justified in doing that because their plans wouldn't allow us to complete it. So we, essentially, did complete the job. They owe us the retainage. That was the argument. I think that's a fair argument. Obviously, the jury bought that.

THE COURT: They bought something.

MR. GOODWYN: Yeah, they sure did.

THE COURT: I mean, listen, I mean, I give you credit. When I saw -- when I heard that verdict, I went, "Wow."

MR. GOODWYN: Yes.

THE COURT: I was surprised.

MR. GOODWYN: We were pleasantly surprised, too.

THE COURT: Huh?

MR. GOODWYN: We were pleasantly surprised, too.

THE COURT: You don't see them over here like that very often, but that makes it even more so to

me the fact that it was passion, prejudice, or reason not supported by anything in the record. You know, to me in this case, I can just do a thirteenth juror. I don't have to tell y'all why.

MR. GOODWYN: You don't. It's under the law.

THE COURT: Say it's reversed and say it's hung, and walk out. I think that, you know, not necessarily the best way to treat the parties after litigating the case for a week, but I can tell you my view that 412 is nowhere close to the real damages in this case. Have y'all talked about trying to resolve this case at all?

MR. GOODWYN: Pardon?

THE COURT: Have y'all talked about trying to resolve it?

MR. GOODWYN: We have not yet.

THE COURT: Do y'all want to go try this case again?

MR. GOODWYN: We ---

THE COURT: Because y'all are close to it.

MR. GOODWYN: Yeah, I don't.

THE COURT: What if I do this: I mean, I can tell you that I'm very close to granting a new trial or doing a thirteenth hung juror. Just letting you know.

MR. GOODWYN: Thank you.

THE COURT: I think if you want to, if you think it would be productive, and I'm not trying to force anything down your throats one side or the other, but you think it's worth your time to talk? Do you think it's worth your time to talk? Do you want to stop and just say we'll decide to wait and we'll figure that out later?

MR. GOODWYN: Yeah, the only issue about talking at all, I think county counsel has to ---

THE COURT: Well, I mean, we all understand that, but more than likely county counsel doesn't approve what y'all do, what y'all agree upon, it would be very unheard of.

MR. GOODWYN: Good point, but that's going to take some time.

THE COURT: Yeah, it does. So does a new trial.

MR. GOODWYN: Yes, it does.

THE COURT: And to start all over again. I'm not going to force you. If you think that would be productive, I'm glad to sit back.

MR. DAVIDSON: I certainly have my clients here. I've never known them not to -- not to be willing to engage in a reasonable discussion, I

mean.

THE COURT: Well, I assume they would, but I tell you what. Let me walk out of here. Y'all talk about it for a second as to the only issues and whether you want to talk anymore about it. If you don't, it doesn't hurt my feelings at all. I promise you.

One question that I wanted to ask everybody. Was there any post-trial motions with regard to the individual defendants? I don't think there was, was there?

MR. GOODWYN: No.

THE COURT: So they're out. They're gone because there's nothing you can do about that now. You can't appeal the law of the case, right? It is law of the case, I can tell you.

Anyway, so affidavit you guys free. Y'all are gone. You're certainly welcome to stay. I'm going to step out. If you want me to proceed with the motion, send word back. If you want me to sit back, send word back.

MR. GOODWYN: Okay. Thank you.

MR. DAVIDSON: Thank you, Your Honor.

(From 2:34 to 2:45 p.m., brief recess.)

MR. GOODWYN: Your Honor, we do want to talk

some.

THE COURT: Sir?

MR. GOODWYN: We do want to talk.

THE COURT: Okay.

MR. GOODWYN: We're not sure where it's going to go. Both of us have vacations coming up in the next week and a half or so. Mine's like in ten days.

THE COURT: I can delay making a decision for a while if y'all want me to.

MR. GOODWYN: Yeah, at least three or four weeks because we're both gone for a week and a half.

THE COURT: I see your clients are making smirk faces. You don't have to. I'll make the decision right now if you want me to.

MR. MOATS: Good ahead.

THE COURT: Okay. I'll be glad to. I'll make a decision right now.

MR. GOODWYN: Your Honor, if I may, one more argument.

MR. MOATS: I really don't think it's going to matter.

THE COURT: Sir?

MR. MOATS: I said I really don't think it's going to matter.

THE COURT: I'm sorry?

MR. MOATS: I said I really don't think it's going to matter.

THE COURT: Okay. Well, if you want me to make a decision now, I will.

MR. GOODWYN: May I -- may I make one more remark before the Court rules? The Court granted a directed verdict on the 50,000. It sounds like the Court's concern is not with that 50,000 so much. It's with what's above the 27,000 retainage and the 15 or so, the other amounts that were owed. It's that excess that's worrying me.

My recommendation if the Court is concerned about that is to essentially deny their motion for 50,000. That's directed verdict. You carefully considered that and you ruled.

THE COURT: Let me tell you, if I grant a new trial, I want a new trial for everybody for everything.

MR. GOODWYN: I know. I understand.

THE COURT: And I hear you. I think that's -- I thought and I still do think that they had no right to hold that 50 the way they did. It should've been paid subject to trial.

MR. GOODWYN: Sure.

THE COURT: That's mine and I know they don't agree with me. It's the first time that somebody hasn't agreed with me sitting up here, just like your client doesn't agree with me now. That's fine. That's just the way it is.

MR. GOODWYN: I get it. Us lawyers get used to it. The clients don't so much.

THE COURT: I do understand. If you want me to hold off, I will. If y'all tell me to go ahead and make a call later on, I will.

MR. GOODWYN: I think it may be productive. And, again, if you don't settle and you rule and it's appealed for a new trial on that, this extra three weeks is not going to make a hill of beans.

THE COURT: I don't think it will either.

MR. DAVIDSON: The county agrees with that, Your Honor. We're fine with that.

THE COURT: Well, somebody -- one of y'all let me know when y'all -- he can call me or you can call me with his permission or something. Just send me an e-mail.

MR. GOODWYN: If the Court will hold off on ruling until you hear from one of us, that would be ---

THE COURT: Yeah, I'll do that.

MR. DAVIDSON: Okay. That's fair.

THE COURT: All right. Thanks, guys.

MR. GOODWYN: Thank you, Your Honor.

MR. DAVIDSON: Thank you, Your Honor.

(At 2:48 p.m., the proceedings concluded.)

- - -

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 22nd day of July, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 12, 2025

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

ELECTRONICALLY FILED - 2024 Apr 10 2:01 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0400085

'24 APR 22 AM11:55:29
Anderson, SC COC CP/GS

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	Civil Action No.: 2020-CP-04-00085
Moats Construction, Inc. and Russell Moats,	)	
Plaintiffs,	)	**MOTION TO CHANGE VENUE**
vs.	)	
Anderson County, Rusty Burns, Matt Schell, Holt Hopkins,	)	
Defendants.	)	

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, by and through their undersigned counsel, pursuant to S.C. Code §15-7-100 and §15-7-110, hereby move for an order changing venue of this trial currently scheduled for the week of April 9, 2024 and show the court as follows. Pursuant to S.C. Code §15-7-100, the court may change the place of trial if there is reason to believe that a fair and impartial trial cannot be had there or the convenience of witnesses and the ends of justice would be promoted by the change. For the reasons set forth below, Plaintiffs contend that he will not be able to receive a fair trial in Anderson County and that the ends of justice would be promoted by a change in venue.

Plaintiffs seek a transfer of venue to Greenville or Spartanburg County, a county that is reasonably convenient for the witnesses who live in Anderson County and a county that does not have the inherent conflicts and bias that exist in Anderson County. Plaintiffs also show that a motion to change venue may be brought at any time prior to trial and that the age of this case is not a valid ground to deny the motion. *Bryan v. Richardson,* 124 S.C. 731, 240 S.E.2d 92 (S.C.

COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT.#
DATE: 4/15/24
PENGAD 800-631-6989

1962) (since the statute fixes no time at which the motion to change the place of trial shall be made, we hold that there was no abuse of discretion in granting the change in this case). This motion is supported by the pleadings, the attached affidavit of Russell Moats as Exhibit "A" and the facts as established in the case.

One of the named defendants in this case is Anderson County and Plaintiffs will be asking for substantial sums of money to be paid by Anderson County. Anderson County is funded, of course, in large part by the taxpayers of Anderson County. Plaintiffs have legitimate concerns about an Anderson County jury being fair and impartial when they are being asked essentially to have themselves, as the local taxpayers, to pay Plaintiffs for the wrongs of their county officials. It is reasonable to think that Anderson County jurors will lean the way of Anderson County on the issue of liability or if they find against Anderson County on the issue of liability, they will be reluctant to require Anderson County to pay the substantial monetary award being sought by Plaintiff for fear of their taxes going up or county services being reduced because a large judgment had to be paid. Whether these fears are justified or not, it is reasonable to think that the average Anderson County juror will be affected by these fears and be biased in Anderson County's favor. A transfer of venue to Greenville or Spartanburg County will eliminate any potential of this bias.

In addition to these reasons, other defendants and witnesses in the case include Rusty Burns, the County Administrator, Holt Hopkins, the Deputy County Administrator, and Brian Richardson, the facilities manager for Anderson County. These witnesses hold significant and influential county positions. It is reasonable to think that Anderson County jurors may feel reluctant to find against Anderson County itself or these individuals for fear of retaliation by these influential county leaders, whether justified or not, leading to a bias against Plaintiffs.

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Lastly, Russell Moats has heard a local radio news broadcast on WAIM, 1230 AM, specifically the Rick Driver show, speak directly of this case on his radio show in the past two weeks leading up to the scheduled trial date. On its website, WAIM touts the Rick Driver show as Anderson's most listened to local talk show. Russell Moats has heard multiple negative comments about him and his company on this show and believes that an Anderson County jury will be bias against Plaintiffs as a result.

As shown above, there are inherent natural conflicts and bias in favor of Anderson County for a case tried before Anderson County jurors. In addition, the most popular local talk show is making negative comments about Plaintiffs in the weeks leading up to the scheduled trial date. A transfer of venue to Greenville or Spartanburg Counties eliminates these inherent conflicts associated with having Anderson County as a defendant and having influential county officials testifying on Anderson County's behalf as well as eliminating any bias that may come from the local radio making negative comments about Plaintiffs. At the same time, the change of venue will not have any significant effect on the convenience of the witnesses since Greenville and Spartanburg are very close to Anderson.

For the above reasons, ends of justice would be promoted by a change of venue by eliminating any chance that an Anderson County jury would not be fair and impartial due to the inherent conflict associated with having Anderson County as a defendant and having influential county officials testifying on Anderson County's behalf. Transferring venue will also eliminate any possible influence of the local talk radio shows while at the same time preserving the convenience of the witnesses. As a result, Plaintiff respectfully asks the court to transfer venue of this trial to Greenville or Spartanburg Counties.

ELECTRONICALLY FILED - 2024 Apr 10 2:01 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0400085

Respectfully submitted,

GOODWYN LAW FIRM, LLC

s/T. Jeff Goodwyn, Jr.
T. Jeff Goodwyn, Jr. (73789)
2309 Devine Street
Columbia, SC 29205
(803) 251-4517 Phone
(803) 251-4527 fax
jgoodwyn@goodwynlaw.com
Attorney for Plaintiff

Columbia, South Carolina
April 10, 2024

ELECTRONICALLY FILED - 2024 Apr 10 2:01 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0400085

ELECTRONICALLY FILED - 2024 Apr 10 2:01 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0400085

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
Moats Construction, Inc. and Russell Moats, Plaintiffs, vs. Anderson County, Rusty Burns, Matt Schell, Holt Hopkins, Defendants.	)	Civil Action No.: 2020-CP-04-00085 **AFFIDAVIT OF RUSSELL MOATS IN SUPPORT OF MOTION TO CHANGE VENUE**

PERSONALLY APPEARED BEFORE ME, the undersigned Russell Moats, who, being duly sworn and over the age of 18, deposes and states the following:

I am a Plaintiff in this case and the owner of Moats Construction, Inc. I am also a resident and taxpayer in Anderson County. I own real property in Anderson County.

As a taxpayer in Anderson County, I would be very reluctant to rule against Anderson County or give any plaintiff a large monetary award for fear of a reduction in county services or an increase in county taxes. I believe that there is a legitimate concern that the average Anderson County juror will be biased toward Anderson County if the case is tried in Anderson County for this reasons. I believe the interests of justice will be served by transferring venue to Greenville or Spartanburg Counties to get a jury that can not possibly have these inherent conflicts and biases.

Since Plaintiffs have brought this case, Anderson County administrators have retaliated against me by maliciously targeting Moats' companies and properties by weaponizing the County Building and Codes Department and personally targeting me even though I did not personally own these company and properties. With my personal experience being retaliated against, I believe

EXHIBIT A

that it is reasonable that an Anderson County jury would have some fear, justified or not, that Anderson County officials may retaliate against them for an adverse verdict. I believe the interests of justice will be served by transferring venue to Greenville or Spartanburg Counties to get a jury that can not possibly have these inherent conflicts and biases.

I listen to talk radio on WAIM, 1230 AM on a regular basis. Over the past two weeks, I have local radio news broadcast on WAIM, 1230 AM, specifically the Rick Driver show, speak directly about this case. I have heard negative comments toward me and Moats Construction on this show giving me legitimate concern as to whether I can get a fair and impartial jury in Anderson County. Transferring the case to Greenville or Spartanburg County would eliminate any chance of the jurors having a negative impression of me or my company before the trial begins.

For all of these reasons, I am respectfully asking the court to eliminate the possibility of having a jury that is not fair and impartial by transferring the trial in this case to Greenville or Spartanburg County.

FURTHER AFFIANT SAYETH NOT.

Russell Moats

Sworn to and subscribed before me
this 10 day of April, 2024

Notary Public for South Carolina
My Commission Expires: 10/02/2029

ELECTRONICALLY FILED - 2024 Apr 10 2:01 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0400085

Did county loose any grant money on E/W Park?

Has the UCC-1 been released or expired from Toxaway?

'24 APR 22 AM 11:55:20
Anderson, SC COC, CP/GS

'24 APR 22 AM11:56:19
Anderson, SC COC. CP/GS

ANDERSON COUNTY
SOUTH CAROLINA

June 21, 2017

Tommy Dunn
Chairman
Council District 5

Ray Graham
Vice Chairman
Council District 3

Craig Wooten
Council District 1

Gracie S. Floyd
Council District 2

Thomas F. Allen
Council District 4

Ken Waters
Council District 6

M. Cindy Wilson
Council District 7

Kimberly A. Poulin
Clerk to Council

Rusty Burns
County Administrator

Mr. Russell Moats
Moats Construction, LLC
1523 Old Roberts Church Road
Anderson, SC 29626

RE: Toxaway Mill Site
Clean up & Remediation Contract
With Anderson County

Dear Mr. Moats:

As you are aware, you were directed to stop work on the referenced project on June 19, 2017. Work was proceeding on the project beyond removal of brush on less than one (1) acre in the absence of an asbestos permit from DHEC and a stormwater permit. The directive to stop work was issued immediately upon the County learning the extent of these circumstances.

It is the County's position that work without appropriate permits constitutes a material breach of contract as per Section IV.1.b of the agreement between the County and Moats Construction, LLC. Therefore, the County is hereby terminating the Contract.

The County is willing to discuss with you payment of work performed as of the time of issuance of the stop work directive. Please contact me if you wish to engage in such discussions.

Sincerely yours,

Rusty Burns

Post Office Box 8002
Anderson, SC 29622-8002
www.andersoncountysc.org

PLAINTIFF'S EXHIBIT
1

ANDERSON COUNTY
SOUTH CAROLINA

June 21, 2017

Tommy Dunn
Chairman
Council District 5

Ray Graham
Vice Chairman
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EXHIBIT
A

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ANDERSON COUNTY
SOUTH CAROLINA

June 21, 2017

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Dear Mr. Moats:

As you are aware, you were directed to stop work on the referenced project on June 19, 2017. Work was proceeding on the project beyond removal of brush on less than one (1) acre in the absence of an asbestos permit from DHEC and a stormwater permit. The directive to stop work was issued immediately upon the County learning the extent of these circumstances.

It is the County's position that work without appropriate permits constitutes a material breach of contract as per Section IV.1.b of the agreement between the County and Moats Construction, LLC. Therefore, the County is hereby terminating the Contract.

The County is willing to discuss with you payment of work performed as of the time of issuance of the stop work directive. Please contact me if you wish to engage in such discussions.

Sincerely yours,

Rusty Burns

Post Office Box 8002
Anderson, SC 29622-8002
www.andersoncountysc.org

EXHIBIT
A

'24 APR 22 AM11:56:34
Anderson, SC COC: CP/GS

June 7, 2017

Cardno
Shaping the Future

1812 Lincoln Street
Suite 301
Columbia, South Carolina
29201
USA

Phone (803) 929-6059
Fax (803) 851-1329

www.cardno.com

Mr. Michael Forman
Manager
Planning and Community Development
Anderson County
Post Office Box 8002
Anderson, South Carolina 29622-8002

RE: Toxaway Mill Site

Dear Mike:

Thank you for the opportunity to assist the County of Anderson with the oversight of the remaining environmental cleanup/capping associated with Toxaway Mill Site. This revised proposal describes our intended scope of work and presents the compensation for our services.

We have prepared this proposal based on our general understanding of the project. All work will be performed in accordance with reasonable efforts and generally accepted practices. Please find below our proposal including cost:

Task 1. GPA Professional Land Surveyors, a subcontractor to Cardno, will stake and grade the proposed earth moving which will entail installation of grade stakes for the proposed finished capped surface and include either staking the finished surface on a 50' x 50' grid, or staking the proposed contours and surface in a manner conducive for a site contractor to grade the site.

Task 2: Civil Engineering Services for Stormwater Permitting: It is understood that the client intends to rough grade the existing re-development site in preparation to cap the surface to conform to the proposed environmental remediation plan. Cardno will provide the general, rough grading of the surface area to facilitate surface drainage and proper final grades for the final top soil cap. This task does not include any site plan engineering with respect to roadways, driveways, parking facilities, buildings, storm sewer or stormwater management BMP designs. The intent of the grading design will be to respect the existing drainage patterns and storm conveyance structures.

Cardno will create the necessary erosion and sedimentation control construction documents utilizing the provided boundary and topographic survey to be submitted to SCDHEC for permitting. This work includes erosion and sedimentation control plans, SWPPP Document, details, calculations and reports necessary for obtaining approvals. This work includes two sets of minor revisions per phase based upon review comments. It does not include architectural, structural engineering or site engineering for any

PLAINTIFF'S EXHIBIT #4
tabbies

detailed site grading, buildings, structures, roadways, parking facilities, utilities, walkways or equipment.

Cardno will provide the above documents and services for erosion and sedimentation necessary to assist Anderson County in obtaining approvals and permits from SCDHEC so that construction can occur. Permits will be in Anderson County's name and permit fees will be the responsibility of the County. Construction documents will be submitted only to DHEC for approvals and permits for the project. Please be aware that Cardno is not responsible for permit acquisition nor can we control permit schedules or approval dates.

Task 3. Pre-start meeting (1) on Toxaway Mill Site.

Task 4. General Project Management:

a. Review invoices;

b. Coordinate the subcontractors;

c. Ensure activities meet requirements of DHEC's Brownfields Cleanup Revolving Loan Fund and the County's Voluntary Cleanup Contract 06-5687-NRP;

d. Serve as technical liaison between DHEC, the Catawba Council of Governments, and the Anderson County; and,

e. Davis Bacon monitoring of time sheets: Anderson County will require the submission of capping contractor's time sheets to Cardno via electronic mail on a weekly basis. Cardno will review the time sheets and report any discrepancies/concerns to Anderson County and its capping contractor.

Task 5. Oversight Visits: 1 during the debris removal work while asbestos inspector is present and 2 per week for up to 3 weeks during capping activities. Davis Bacon interviews will be conducted during the site visits.

Task 6: As Built Survey Services: GPA will perform a field run topographic and location survey for all structures, roadways, and areas within the limits of the project. GPA will produce a signed, sealed topographic as-built, and provide a Cad file along with a land.xml file.

Task 7: Closeout Report: Cardno will prepare a close-out report and revisions if necessary in accordance with County and DHEC comments. One hard copy and one electronic copy will be provided to the County and to DHEC.

We will initiate work upon contract approval. We will complete a draft final report for County review to include the as built survey within forty-five (45) days of on-site work completion.

Cardno
Shaping the Future

Fee schedule:

Task 1: Construction Staking for grading: $3,150

Task 2: Stormwater Permitting: $10,150

Tasks 3 and 5: All site visits & Davis Bacon interviews: $10,530

Task 4: General Project Management: $2,050

Task 6: As Built Survey: $1,950

Task 7: Close-out Report: $5,510

Total: $33,340

Anderson County will be billed by three invoices, one after the final storm water permit Page 2 is submitted, one after site work is completed, and the final after the report is completed.

Again, we appreciate the opportunity to submit this proposal and perform the oversight work. If you have any questions or wish to discuss, please contact me at 803 929 6059.

Very truly yours,

Gail Rawls Jeter
Brownfields Specialist

TRUPER
PLAINTIFF'S EXHIBIT
#9
tabbies

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Anderson, SC COC, CP/GS

2

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R-001022

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R-001024

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R-001028

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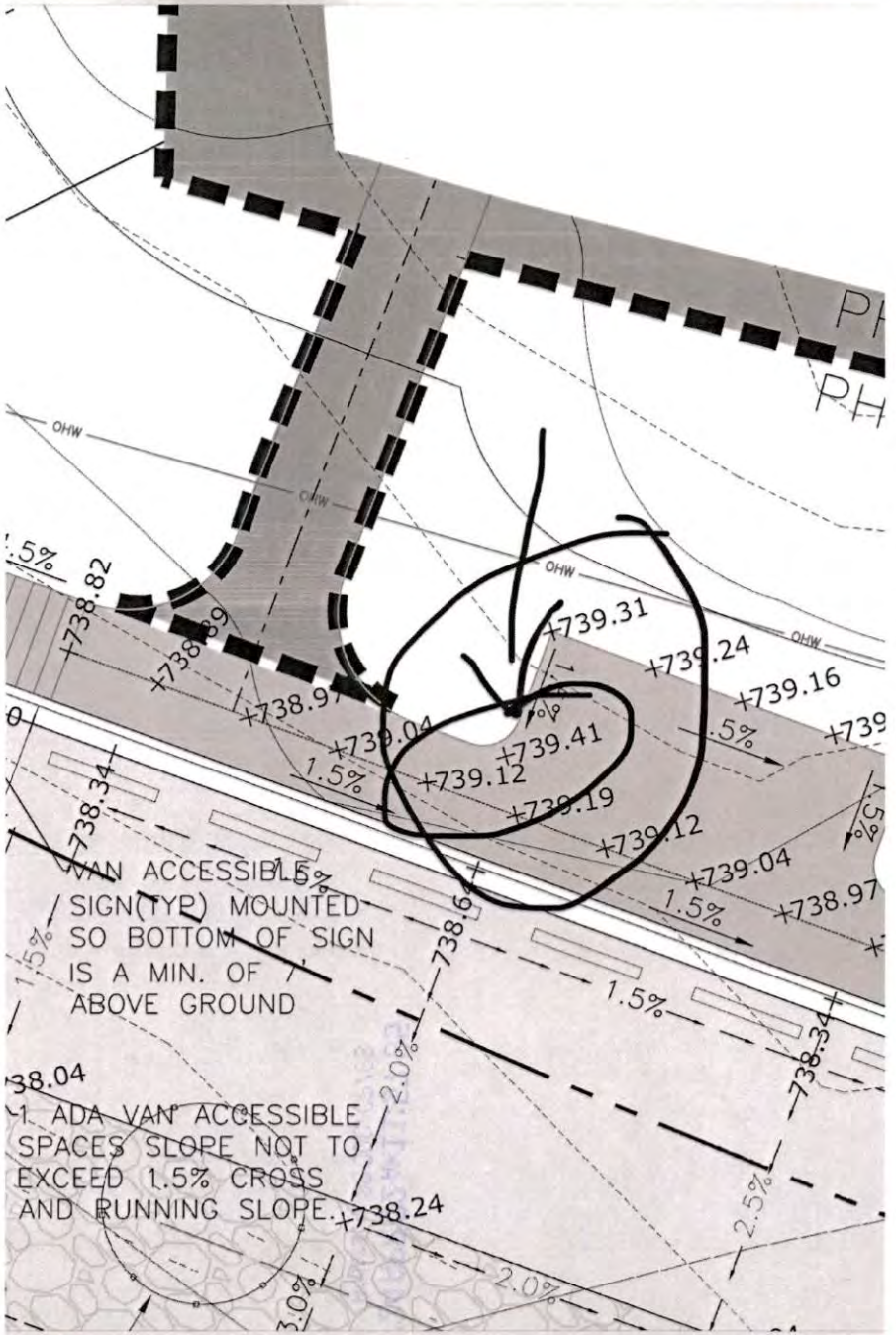
Anderson, SC COC, CP/GS

Verizon LTE 2:22 PM

Done 16099_East West Parkway Park_C...



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Anderson, SC COC, CP/GS

Another Quality Project Enriching
Our Neighborhood | Our County
ANDERSON COUNTY
SOUTH CAROLINA
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ARCHITECTURE
EAST WEST PARKWAY PARK
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Charter 193
www.AndersonCountySC.org
AC MEDIA

12

R-001035

Another Quality Project Enriching
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SGA
Continuing to be . . . "A great place to live, work & play."

R-001036

'24 APR 22 AM11:57:57
Anderson, SC COC, CP/GS

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R-001039

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Anderson, SC COC, CP/GS

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Anderson, SC COC, CP/GS

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Anderson, SC COC, CP/GS

R-001051

R-001052

C & J Portable Toilets

R-001055

R-001056

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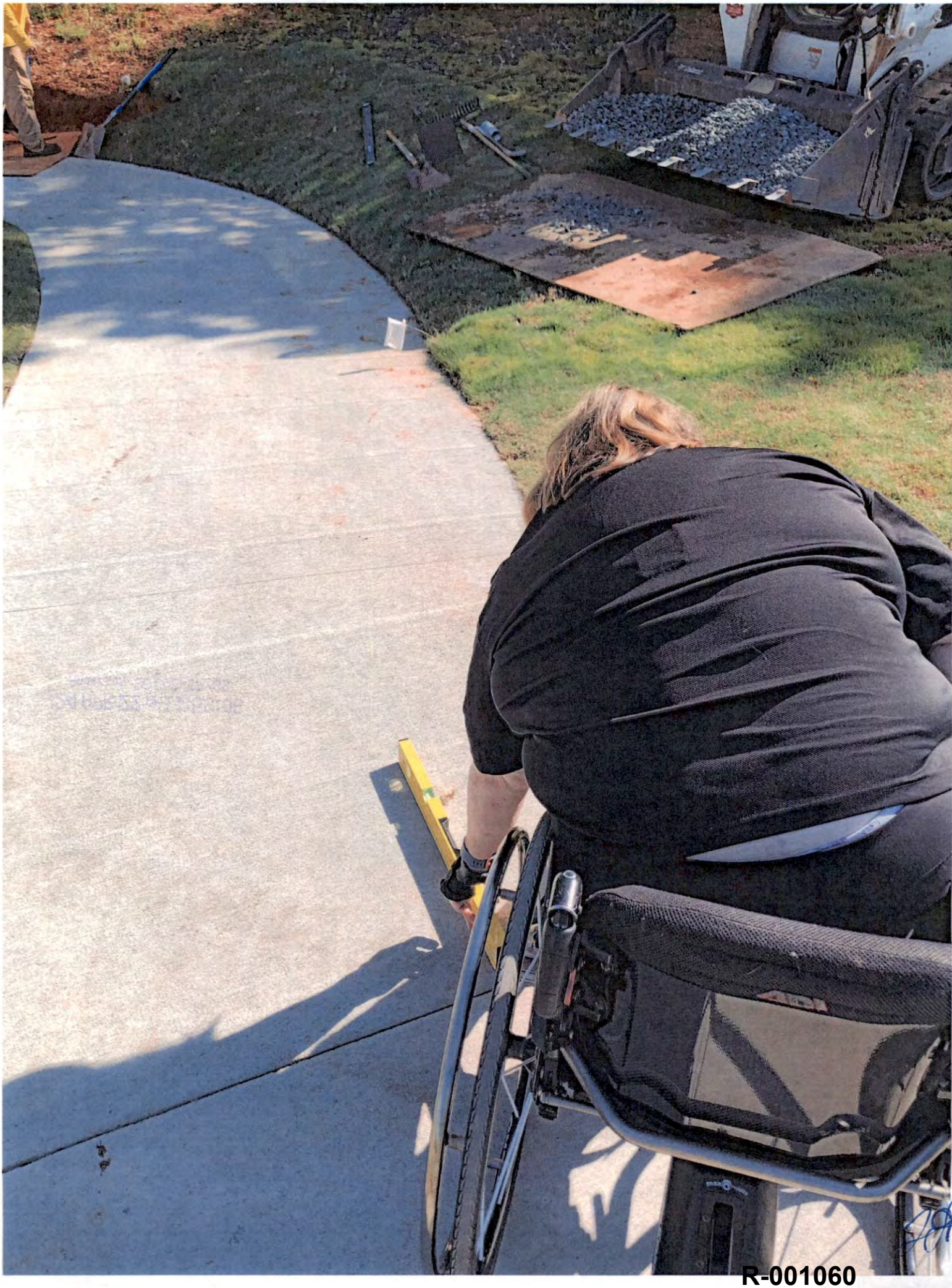
Anderson, SC COC, CP/GS

R-001058

'24 APR 22 AM11:59:02
Anderson, SC COC, CP/GS



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'24 APR 22 AM11:59:06
Anderson, SC COC, CP/GS

CAUTION
DANGER

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R-001068

'24 APR 22 AM11:59:31
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CAUTION
DANGER
CAUTION
DANGER
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'24 APR 22 AM11:59:41
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CAUTION
CAUTION
CAUTION

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Anderson, SC COC, CP/GS

touch the future
A LINK to Independent Living
www.touchthefuture.us

'24 APR 22 PM12:00:30
Anderson SC COC CP/SS

April 30, 2019

Russell Moats, Principle
Moats Construction Company
1523 Old Roberts Church Road
Anderson, SC 29626

Dear Russell Moats:

Thank you for the opportunity to provide input on the Phase 2 work at the East West Connector Park lower section to ensure you are providing work that is readily accessible to and usable by individuals with disabilities as specified in the 2010 ADA Standards. This is not legal advice. For legal advice you should contact legal counsel.

At your request, I reviewed Phase 2 work including the accessible parking spaces, the pedestrian route from the trashcan (existing element) to the newer concrete route down to the connector's pedestrian route. The slopes and cross slopes were verified with my smart level and Moats' smart level. I found areas that do not meet the ADA 2010 Standards as currently in place.

Parking Space 1 (closest to the connecter) has a raised area in the space that exceeds 2% and there is a standing water area with residual sediment. ADA requires that parking spaces not exceed 2% in all directions for the entire space and access aisle and that it be slip resistant. **Space 2**, I found no issues. **Access aisle**, I found no issues. **ADA signs,** I found no issues.

ADA 2010 Standards: 502.4 Floor or Ground Surfaces. Parking spaces and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

The accessible route from the trashcan to in front of the parking and adjoining the access aisle to the start of the pedestrian route to the connecter, does not exceed 5% slope and has cross slopes under 2% for greater than 36 inches width.

The pedestrian route beginning at the older concrete in front of the parking leading down to the parkways walking/biking route, does not start or end at a level landing and has a slope exceeding 5%, **after the first turn in the area that had white flags**, slopes again exceed 5% and **after the next turn leading to the split slopes** exceeds 5%. There are no level landings at the top and bottom of these ramps nor were handrails present. **The split area** is not a level landing and the run from each of the splits creates a cross slope on the turning path that exceeds 2%. This split landing is not level as would be needed as stated to ensure no cross slope issues but also because the route from the top exceeds 5% and requires handrails, rail extensions and level landings at top and bottom of the ramp. No areas exceeded 8.33%, therefore if level landings, handrails, rail extensions and as needed edge protection are added, this could possibly meet standards though would require alterations from what is present. The route could possibly be designed to keep the route under 5% eliminating the need

PLAINTIFF'S EXHIBIT #10

for ramp elements. **Then at the end of each routes where they adjoin the parkway,** there is no level landing and there are slopes and cross slopes exceeding 2% and 5% at both routes coming from the split.

There **was new concrete on the Connector's route** but it appeared to be similar to the original asphalt version. It did not level out at where the park's pedestrian routes join and continues to follow the grade of the road and has cross slopes that exceed 2%.

ADA 2010 Standards:

402.2 Components. Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

Advisory 402.2 Components. Walking surfaces must have running slopes not steeper than 1:20, see 403.3. Other components of accessible routes, such as ramps (405) and curb ramps (406), are permitted to be more steeply sloped.

403 Walking Surfaces

403.1 General. Walking surfaces that are a part of an accessible route shall comply with 403.

403.2 Floor or Ground Surface. Floor or ground surfaces shall comply with 302.

403.3 Slope. The running slope of walking surfaces shall not be steeper than 1:20. The cross slope of walking surfaces shall not be steeper than 1:48.

405.2 Slope. Ramp runs shall have a running slope not steeper than 1:12.

405.3 Cross Slope. Cross slope of ramp runs shall not be steeper than 1:48.

405.7 Landings. Ramps shall have landings at the top and the bottom of each ramp run. Landings shall comply with 405.7.

Advisory 405.7 Landings. Ramps that do not have level landings at changes in direction can create a compound slope that will not meet the requirements of this document. Circular or curved ramps continually change direction. Curvilinear ramps with small radii also can create compound cross slopes and cannot, by their nature, meet the requirements for accessible routes.

405.7.1 Slope. Landings shall comply with 302. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

405.7.2 Width. The landing clear width shall be at least as wide as the widest ramp run leading to the landing.

405.7.3 Length. The landing clear length shall be 60 inches (1525 mm) long minimum.

405.7.4 Change in Direction. Ramps that change direction between runs at landings shall have a clear landing 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum.

405.8 Handrails. Ramp runs with a rise greater than 6 inches (150 mm) shall have handrails complying with 505.

405.9 Edge Protection. Edge protection complying with 405.9.1 or 405.9.2 shall be provided on each side of ramp runs and at each side of ramp landings.

04.7 Wet Conditions. Stair treads and landings subject to wet conditions shall be designed to prevent the accumulation of water.

505 Handrails

505.1 General. Handrails provided along walking surfaces complying with 403, required at ramps complying with 405, and required at stairs complying with 504 shall comply with 505.

Advisory 505.1 General. Handrails are required on ramp runs with a rise greater than 6 inches (150 mm) (see 405.8) and on certain stairways (see 504). Handrails are not required on walking surfaces with running slopes less than 1:20. However, handrails are required to comply with 505 when they are provided on walking surfaces with running slopes less than 1:20 (see 403.6). Sections 505.2, 505.3, and 505.10 do not apply to handrails provided on walking surfaces with running slopes less than 1:20 as these sections only reference requirements for ramps and stairs.

505.2 Where Required. Handrails shall be provided on both sides of stairs and ramps.

EXCEPTION: In assembly areas, handrails shall not be required on both sides of aisle ramps where a handrail is provided at either side or within the aisle width.

505.3 Continuity. Handrails shall be continuous within the full length of each stair flight or ramp run. Inside handrails on switchback or dogleg stairs and ramps shall be continuous between flights or runs.

EXCEPTION: In assembly areas, handrails on ramps shall not be required to be continuous in aisles serving seating.

505.4 Height. Top of gripping surfaces of handrails shall be 34 inches (865 mm) minimum and 38 inches (965 mm) maximum vertically above walking surfaces, stair nosings, and ramp surfaces. Handrails shall be at a consistent height above walking surfaces, stair nosings, and ramp surfaces.

I did not have plans to review during this onsite assessment and cannot speak to if what exists is built to plan.

Based on these findings, as the park currently exists, it does not meet the ADA 2010 Standards. Please let me know if you have any questions or require any additional information.

Thank you,

Sandy Hanebrink
Executive Director
Touch the Future Inc.
100 Construction Way #8
Anderson, SC 20625
(864) 221-4011

2010 ADA Standards: https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm#c4

ee Prickett

'24 APR 22 PM 12:00:36
Anderson, SC COC. CP/GS

From: Russell Moats <rtmoats@moatsconstruction.com>
Sent: Wednesday, November 15, 2017 2:20 PM
To: Lee Prickett
Subject: Fwd: East West Parkway

Begin forwarded message:

From: Natasha Sexton <Natasha@SGAarchitecture.com>
Subject: East West Parkway
Date: February 8, 2017 at 3:22:06 PM EST
To: Moats Construction <rtm@moatsconstruction.com>, Moats Construction <pholden@moatsconstruction.com>
Cc: Matthew Schell <mschell@andersoncountysc.org>

Gentlemen,
I have not received the photo Russell mentioned to Matt regarding ADA compliancy. We will be reissuing complete phase one drawings tomorrow morning and want to make sure all issues are addressed. Please let me know as soon as possible of any field issues. Thank you.

Natasha Sexton, RLA

Principal

SGA ARCHITECTURE
Architecture • Landscape Architecture • Landplanning
28 W. North St.
Greenville SC 29601
Telephone: 864.609.4199
Cell Phone: 864.634.5443
Web Address: www.SGAarchitecture.com

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Moats 01065

R-001082

Taylor Moore

From: Russell Moats <rtmoats@moatsconstruction.com>
Sent: Wednesday, November 15, 2017 2:21 PM
To: [redacted]
Subject: [redacted]

Begin forwarded message:

From: Natasha Sexton <Natasha@SGAarchitecture.com>
Subject: RE: East West Parkway
Date: February 9, 2017 at 3:53:16 PM EST
To: Matthew Schell <mschell@andersoncountysc.org>, Paul <pholden@moatsconstruction.com>
Cc: Moats Construction <rtm@moatsconstruction.com>

We are fighting with the drawings right now. Our network has been down since 10:30 and we are fighting to get the files off the server to print the finals. I apologize for the delay as this is a totally unexpected inconvenience. Thank you for your patience.

Natasha Sexton, RLA

Principal

SGA ARCHITECTURE
Architecture • Landscape Architecture • Landplanning
28 W. North St.
Greenville SC 29601
Telephone: 864.609.4199
Cell Phone: 864.634.5443
Web Address: www.SGAarchitecture.com

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From: Matthew Schell [mailto:mschell@andersoncountysc.org]
Sent: Thursday, February 09, 2017 10:05 AM
To: Paul; Natasha Sexton
Cc: Moats Construction
Subject: RE: East West Parkway

Moats 01066

I am handling the paperwork side of the council approved change order.

Though there will need to be some price revisions based on Natasha's changes.

But the original amount (as in my last excel sheet, is being moved for use)

You all keep me posted please. I am not sure how the parking pad worked out... last I heard was it was not compliant and Russell was canceling the pour and was going to communicate with Natasha.

Let's all be mindful of keeping the this cart on path, and avoiding any decisions that will negatively affect a seamless completion moving forward.

Thank you all,

Matt

From: Paul [mailto:pholden@moatsconstruction.com]
Sent: Thursday, February 09, 2017 9:20 AM
To: Natasha Sexton
Cc: Moats Construction; Matthew Schell
Subject: Re: East West Parkway

Natasha,
It was on the bench pad on the upper parking lot.
We raised the corners 0.1' and everything should be compliant now.
We will be waiting for the new documents.
Will you be issuing the change order this week for the other work that went before Counsel on Tuesday?
Thank you,

Sent from my iPhone

On Feb 8, 2017, at 3:22 PM, Natasha Sexton <Natasha@SGAarchitecture.com> wrote:

> Gentlemen,
> I have not received the photo Russell mentioned to Matt regarding ADA compliancy. We will be reissuing complete phase one drawings tomorrow morning and want to make sure all issues are addressed. Please let me know as soon as possible of any field issues. Thank you.
>
> Natasha Sexton, RLA
>
> Principal
>
> ---
>
> SGA ARCHITECTURE
> Architecture • Landscape Architecture • Landplanning
> 28 W. North St.
> Greenville SC 29601
> Telephone: 864.609.4199
> Cell Phone: 864.634.5443
> Web Address: www.SGAarchitecture.com

From: Horace Nabers hnabers@directsurety.com
Subject: Re: Moats - Clemson University Bids
Date: Apr 15, 2019 at 4:46:47 PM
To: Rtmoats rtmoats@moatsconstruction.com
Cc: Jan Rivera bondrequest@directsurety.com, David Druml ddruml@directsurety.com, Lisa Sayno lsayno@directsurety.com

'24 APR 22 PM12:00:41
Anderson, SC COC, CP/GS

Russell,

Just left a message with your office.
We have presented you and your company's financial information, to many surety companies. The answer from the surety companies is: will consider once the UCC-1 is removed, which is a business filing.

We need your help to help you. It appears this relates to the Toxaway Mill Cleanup project. Is there a resolution to this project?

We look forward to your response.

Regards,

Lex

Horace "Lex" Nabers CPCU, AFSB / Underwriter
hnabers@directsurety.com / 650.727.3443

Direct Surety
http://www.directsurety.com

Click HERE to send me files securely.

Confidentiality Note: This email may contain confidential and/or private information. If you received this email in error please delete and notify sender.

tabbies
PLAINTIFF'S EXHIBIT
12

Send new bond requests to: bondrequest@directsurety.com

Confidentiality Note: This email may contain confidential and/or private information. If you received this email in error please delete and notify sender.

On Mon, Apr 15, 2019 at 10:03 AM Rtmoats <rtmoats@moatsconstruction.com> wrote:

Good Morning Jan,

Hope you are doing well. I wanted to check on these 2 bid bond applications.

Thank you,

Russell T. Moats
Principle
Moats Construction Company
1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904 Office
864.964.9764 Fax
864.276.5021 Direct
7672 Little Britton Road
Yonges Island, South Carolina 29449
www.moatsconstruction.com

On Apr 10, 2019, at 6:36 PM, Jan Rivera <bondrequest@directsurety.com> wrote:

Hello Russell,

This email is to confirm receipt of your two bid requests for Clemson University. Our in-house underwriter is currently reviewing your file and will

'24 APR 22 PM12:00:54
Anderson, SC COC, CP/GS

From: Rtmoats rtmoats@moatsconstruction.com
Subject: DS Bid Request Form.pdf
Date: Apr 10, 2019 at 2:21:11 PM
To: bondrequest@directsurety.com, lsayno@directsurety.com
Cc: pdholden@moatsconstruction.com, lbkingcu@moatsconstruction.com

Please see the attached.
The project documents will follow.

bondrequest@directsurety.com

BID BOND REQUEST FORM

DirectSurety

PROJECT INFORMATION

Company: Moats Construction, Inc. Today's Date: 04/09/2019

Company Address: 1523 Old Roberts Church Road Anderson, SC 29626 Contact: Russell Moats

Obligee (Project Owner) Name: Clemson University / Board of Trustees

Obligee Address: 191 Old Greenville Hwy. Clemson, SC 29634-5952

Obligee Contact (Name & phone): John Gambrell 864-643-6074 Email: john3@clemson.edu

Name of Job (Exact Title): CU Athletics, Lot 5 Renovation

Job Location: Clemson, SC Main Campus

Job Description/Scope: Removal of trees, re-grading the slope and addition of concrete curb and asphalt spaces, adjust 2 utility lines, grass and landscape

Estimated Bid Amount: $490,000 Engineer's Estimate: $$725,000-775,

Estimated Start Date: May 21, 2019 Current Estimated Cost to Complete Backlog: $30,000.00

Estimated Completion Date: 08-01-2019 Liquidated Damages (LDs): $500/day

Warranty Period: 12 months Covered By Manufacturer? ☐ Yes ☐ No

Contractor's Guarantee Period(s): 12 months Maintenance Bond & Term: None

Breakdown: Labor: ____% or $80,000 Materials: ____% or $140,000

Subs: ____% or $90,000 Profit: ____% or $180,000

Haz Mat: scope of work: ____ ____% or $0

List Major Subcontractors	Amount	Sub Bonded
Stepping Stone Landscaping	$30,000	☐ Yes ☑ No
Hubbard Paving	$45,000	☐ Yes ☑ No
The Sharon Company	$15,000	☐ Yes ☑ No

Bond Forms: ☑ Attached ☐ None Provided

Shipping Instructions: **UPS:** ☐ Next Day ☐ 2nd Day FedEx/UPS Acct #: Email is preferred

FED EX ☐ 1st Overnight ☐ Priority ☐ Standard ☐ Hold Station/location: ____

BID BOND INFORMATION

Bid Date and Time: 04-17-2019 Bid Bond Amount: 5 % or $____

Need bonds by: (date) 04-15-2019

PLAINTIFF'S EXHIBIT 14

REQUIRED DOCUMENTS

Invitation to bid
Instruction to bidders
Notice to Bidder
Specifications to include: Copy of the contract, General Conditions, Bid, Performance, Payment & Maintenance bond forms

R052516

Russell T. Moats
Principle
Moats Construction Company
1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904 Office
864.964.9764 Fax
864.276.5021 Direct
7672 Little Britton Road
Yonges Island, South Carolina 29449
www.moatsconstruction.com

8-17-CV-2009-TMC cmn_ecf@scd.uscourts.gov

SE-310 092-SC-T1700219-NR 011-SB-106399735 **2018 Edition**

INVITATION FOR DESIGN-BID-BUILD CONSTRUCTION SERVICES

AGENCY/OWNER: Clemson University

PROJECT NAME: CU Athletics, Lot 5 Renovation

PROJECT NUMBER: CUP-4002636

PROJECT LOCATION: Clemson University Main Campus

DESCRIPTION OF PROJECT/SERVICES: This project includes the removal of existing trees on slope between Lot 5 and Avenue of Champions. The slope is then to be regraded to allow for more parking area in Lot 5. Concrete curb and asphalt spaces to be added to Lot 5. Utilities within the existing slope to be adjusted. Proposed slope to be stabilized and landscaped.

BID/SUBMITTAL DUE DATE: 4/17/2019 **CONSTRUCTION COST RANGE:** $ 725,000 to $ 775,000 **N/A** ☐

PROJECT DELIVERY METHOD: Design-Bid-Build

BID SECURITY IS REQUIRED IN AN AMOUNT NOT LESS THAN 5% OF THE BASE BID.

PERFORMANCE BOND REQUIRED? Yes ☒ No ☐ **PAYMENT BOND REQUIRED?** Yes ☒ No ☐

BIDDING DOCUMENTS/PLANS MAY BE OBTAINED FROM: https://cufacilities.sites.clemson.edu/capital/projects#2

PLAN DEPOSIT AMOUNT: $_____ **IS DEPOSIT REFUNDABLE** Yes ☐ No ☐ N/A ☒

Bidders must obtain Bidding Documents/Plans from the above listed source(s) to be listed as an official plan holder. Bidders that rely on copies obtained from any other source do so at their own risk. All written communications with official plan holders & bidders will be via email or website posting.

All questions & correspondence concerning this Invitation shall be addressed to the A/E.

A/E NAME: Beeson Rosier Group

A/E CONTACT: Troy Rosier, P.E.

A/E ADDRESS: Street/PO Box: 110 West 1st Avenue, Suite D

City: Easley **State:** SC **ZIP:** 29640-

EMAIL: design@beesonrosier.com **TELEPHONE:** 864-859-6900

AGENCY PROJECT COORDINATOR: John Gambrell

ADDRESS: Street/PO Box: 310 Klugh Avenue

City: Clemson **State:** SC **ZIP:** 29634-

EMAIL: john3@clemson.edu **TELEPHONE:** 864-643-6074

PRE-BID CONFERENCE: Yes ☒ No ☐ **MANDATORY ATTENDANCE:** Yes ☐ No ☒

PRE-BID DATE: 4/3/2019 **TIME:** 10:00 AM **PLACE:** 191 Old Greenville Highway, Clemson, SC 29634

BID DUE DATE: See Above **TIME:** 3:00 PM **PLACE:** 191 Old Greenville Highway, Clemson, SC 29634

BID DELIVERY ADDRESSES:

HAND-DELIVERY:
Attn: Pat Crowther, P.E.
191 Old Greenville Highway
Clemson, SC 29634-5952

MAIL SERVICE:
Attn: Pat Crowther, P.E.
191 Old Greenville Highway
Clemson, SC 29634-5952

IS PROJECT WITHIN AGENCY CONSTRUCTION CERTIFICATION? ***(Agency MUST check one)*** Yes ☒ No ☐

APPROVED BY: _____ **DATE:** _____
(OSE Project Manager)

R-001089

From: Rtmoats rtmoats@moatsconstruction.com
Subject: Clemson Lot 5 Renovation Docs
Date: Apr 10, 2019 at 2:24:20 PM
To: bondrequest@directsurety.com, lsayno@directsurety.com

https://cufacilities.sites.clemson.edu/capital/projectsApp/uploads/CUP-4002636/A201_Lot%205.pdf

Tap to Download
A201_Lot 5.pdf
7.6 MB

Russell T. Moats
Principle
Moats Construction Company
1523 Old Roberts Church Road
Anderson, South Carolina 29626
864.224.0904 Office
864.964.9764 Fax
864.276.5021 Direct
7672 Little Britton Road
Yonges Island, South Carolina 29449
www.moatsconstruction.com

SE-370
NOTICE OF INTENT TO AWARD

2018 Edition

AGENCY: Clemson University

PROJECT NAME: CU Athletics, Lot 5 Renovation

PROJECT NUMBER: CUP-4002636

POSTING DATE: 4/18/2019

TO ALL BIDDERS:

Unless stayed by protest or canceled, the Agency intends to enter into a contract as noted below. The successful bid will be accepted and the contract formed by execution of the contract documents. All bid bonds remain in effect for the bid acceptance period as provided in Section 4 of the Bid Form, except as otherwise provided in the Instructions to Bidders.

NAME OF BIDDER: McJunkin Grading, Inc.

DATE BIDS WERE OPENED: 4/17/2019

BID INFORMATION:

BASE BID AMOUNT: $ 596,219.00

ALTERNATES:

#1	ACCEPTED ☐	$	
#2	ACCEPTED ☐	$	
#3	ACCEPTED ☐	$	

TOTAL AWARD (BASE BID AND ACCEPTED ALTERNATE(S)): $ 596,219.00

REMARKS (*explain any negotiations that resulted in a change in any Bid amounts*): NA

Contractor should not incur any costs associated with the contract prior to receipt of a contract from the Agency for execution. Contractor should not perform any work prior to (1) delivering to the Agency both certificates of insurance and Performance and Payment Bonds meeting the requirements of the solicitation; and (2) receipt of the Agency's written Notice to Proceed. The State assumes no liability for any expenses incurred by the Contractor prior to issuance of a Notice to Proceed, other than the Contractor's non-reimbursable costs incurred in providing such bonds.

RIGHT TO PROTEST (SC Code § 11-35-4210)

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may protest within ten (10) days of the date the Notice of Intent to Award is posted. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided.

PROTEST - CPO ADDRESS - OSE: Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: protest-ose@mmo.sc.gov, (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the e-mail address from which you sent your protest.

Josh McGuire — *(Agency Procurement Officer Signature)*

Director Capital Projects — *(Print or Type Name)*

INSTRUCTIONS TO THE AGENCY:

1. Post a copy of this form at the location specified by the Instructions to Bidders and announced at the Bid Opening.
2. Send a copy of this form and the final Bid Tabulation to all responsive Bidders and OSE.

'24 APR 22 PM12:00:59
Anderson SC COC: CP/GS

From: Moats Construction Company rtmoats@moatsconstruction.com
Subject: Moats / Greenville Demo Bid Bond Request
Date: Feb 8, 2019 at 1:20:30 PM
To: jrivera@directsurety.com, bondrequest@directsurety.com
Cc: info@moatsconstruction.com

Please see the attached.
The bid package or link to will follow.

bondrequest@directsurety.com

BID BOND REQUEST FORM

Direct Surety

PROJECT INFORMATION

Company: Moats Construction, Inc. Today's Date: 02/08/2019
Company Address: 1523 Old Roberts Church Road Contact: Russell
Obligee (Project Owner) Name: City of Greenville, SC
Obligee Address: 206 South Main St. Greenville, SC 29601
Obligee Contact (Name & phone): _____ Email: mdiaz@greenvillesc.gov
Name of Job (Exact Title): Demolition Service for Old Public Works Campus - IFB NO 19-3669-
Job Location: 360 S. Hudson St. Greenville, SC
Job Description/Scope: Demolition of remaining concrete floors, asphalt paving and associated structures

Estimated Bid Amount: $650,000.00
Estimated Start Date: March 15, 2019
Estimated Completion Date: September 15, 2
Warranty Period: 12 mo
Contractor's Guarantee Period(s): 12 mo
Breakdown: Labor: 100,000 % or $
Subs: 8 % or $75,000
Haz Mat: scope of work: _____ % or $

Engineer's Estimate: $None
Current Estimated Cost to Complete Backlog: $25-30k
Liquidated Damages (LDs): $50.00 /day
Covered By Manufacturer? ☐ Yes ☐ No
Maintenance Bond & Term: 12 mo
Materials: 15 % or $85,000
Profit: 30 % or $200,000

List Major Subcontractors	Amount	Sub Bonded
Geological Resources	$ $75,000.00	☑ Yes ☐ No
	$	☑ Yes ☐ No
	$	☐ Yes ☐ No

Bond Forms: ☑ Attached ☐ None Provided

Shipping Instructions: **UPS**: ☐ Next Day ☐ 2nd Day FedEx/UPS Acct #: Emailed Copy

FED EX ☐ 1st Overnight ☐ Priority ☐ Standard ☐ Hold Station/location: Emailed Copy

BID BOND INFORMATION

Bid Date and Time: February 12, 2019
Need bonds by: (date) February 11, 2019
Bid Bond Amount: 5 % or $

REQUIRED DOCUMENTS

Invitation to bid

PLAINTIFF'S EXHIBIT 15 tabbies

R-001092

bondrequest@directsurety.com

BID BOND REQUEST FORM

DirectSurety

PROJECT INFORMATION

Company: Moats Construction, Inc. Today's Date: 04/07/19

Company Address: 1523 Old Roberts Church Road Anderson, SC 29626 Contact: Russell Moats

Obligee (Project Owner) Name: Clemson University / Board of Trustees

Obligee Address: 191 Old Greenville Hwy. Clemson, SC 29634-5952

Obligee Contact (Name & phone): Micheal Parker Email: pmicheal@clemson.edu

Name of Job (Exact Title): Clemson Apparel Research

Job Location: 502 C Lebanon Rd. Pendleton, SC 29670

Job Description/Scope: Construct a Strong Floor in Existing Apparel Research Facility

Estimated Bid Amount: $195,000

Engineer's Estimate: $$175-220,000

Estimated Start Date: 05-21-2019

Current Estimated Cost to Complete Backlog: $20,000

Estimated Completion Date: 06-21-2019

Liquidated Damages (LDs): $100 /day

Warranty Period: 12 months

Covered By Manufacturer? ☐ Yes ☐ No

Contractor's Guarantee Period(s): 12 months

Maintenance Bond & Term: None

Breakdown: Labor: ____% or $20,00

Materials: ____% or $60,00

Subs: ____% or $____

Profit: ____% or $100,0

Haz Mat: scope of work: ____ ____% or $0

List Major Subcontractors	Amount	Sub Bonded
	$	☑ Yes ☐ No
	$	☑ Yes ☐ No
	$	☑ Yes ☐ No

Bond Forms: ☑ Attached ☐ None Provided

Shipping Instructions: **UPS**: ☐ Next Day ☐ 2nd Day FedEx/UPS Acct #: Email is preferred

FED EX ☐ 1st Overnight ☐ Priority ☐ Standard ☐ Hold Station/location: ____

BID BOND INFORMATION

Bid Date and Time: 05-09-2019

Bid Bond Amount: 5 % or $____

Need bonds by: (date) 05-09-2019

REQUIRED DOCUMENTS

Invitation to bid
Instruction to bidders
Notice to Bidder
Specifications to include: Copy of the contract, General Conditions, Bid, Performance, Payment & Maintenance bond forms

R052016

PLAINTIFF'S EXHIBIT 16 R-001093

To: bondrequest@directsurety.com

BID BOND REQUEST FORM

Direct Surety

'24 APR 22 PM12:01:13

PROJECT INFORMATION

Contractor: MOATS CONSTRUCTION, INC Contact: RUSSELL Today's Date: 10-23-17

Obligee (Project Owner) Name: SCPR+T

Obligee Address: EDGAR BROWN BUILDING 1205 PENDLETON ST. RM. 251

Obligee Contact (Name, phone, email): DAVID SIMMS, PE 803-734-0258 dsimms@scpet.com

Name of Job (Exact Title): EDISTO BEACH STATE PARK HURRICANE MATTHEW RECOVERY

Job Location: EDISTO BEACH STATE PARK

Job Description/Scope: INSTALLATION OF 445 LF OF 5' SIDEWALK AND 2 ADA CONCRETE COMPOSITES AND USE PADS. - BID BOND ONLY REQ.

Estimated Bid Amount: $ 27,300.00

Estimated Start Date: 11-15-17

Estimated Completion Date: 12-15-17

Warranty Period: 12 mo.

Contractor's Guarantee Period(s): 12 mo.

Current Estimated Cost to Complete Backlog: $ 65,000.00

Liquidated Damages (LDs): $ 100 /day

Covered By Manufacturer? ☐ Yes ☑ No

Maintenance Bond & Term: 12mo.

Breakdown: Labor: _____ % or $ 5,000.00 Materials: _____ % or $ 7,500.00

Subs: _____ % or $ 0 Profit: _____ % or $ 15,300.00

List Major Subcontractors	Amount	Sub Bonded
NONE	$	☐ Yes ☐ No
	$	☐ Yes ☐ No
	$	☐ Yes ☐ No

Bond Forms: ☐ Attached ☑ None Provided

Mailing Instructions: ☐ ~~Regular Mail~~ ☐ Pick up ☐ ~~Overnight (FedEx/UPS Acct #:~~ E-MAIL)

BID BOND INFORMATION

Bid Date and Time: 10-26-17 2pm.

Bid Bond Amount: 5 % or $ Bid Bond ONly Req.

NOTE: PLEASE ATTACH A COPY OF THE INVITATION TO BID

BID RESULTS

Low Bidder: _____ Bid Amount: $ _____

2nd Bidder: _____ Bid Amount: $ _____

3rd Bidder: _____ Bid Amount: $ _____

4th Bidder: _____ Bid Amount: $ _____

PLAINTIFF'S EXHIBIT 11

R-001094

'24 APR 22 PM12:01:36
Anderson, SC COC CP/GS

Lizzy R. Wilkes

From: Gail Jeter <Gail.Jeter@cardno.com>
Sent: Wednesday, April 19, 2017 11:09 AM
To: Michael Forman (mforman@andersoncountysc.org)
Subject: Asbestos - Toxaway

I found enough information in the reports that you sent. I think that it is smart to be cautious.

I think that you need to include a paragraph in the RFP that states that asbestos was found on site – indicate the types and that a good faith effort was made to remove all of it; however, there is always the possibility that some could be buried in the debris that is left on site. Contractor needs to be alert to that possibility and ready to take appropriate steps if suspected asbestos is found.

I am happy to help you with the wording if you would like.

We will leave our oversight costs as proposed, and adjust if asbestos is found.

Gail Rawls Jeter
BROWNFIELDS SPECIALIST
GOVERNMENT AND INFRASTRUCTURE
MID-ATLANTIC REGION
CARDNO INC.

Cardno
Shaping the Future

Direct +1 803 929 6059 Mobile +1 803 210 6080
Address 1812 Lincoln Street Suite 301, Columbia, SC 29201
Email gail.jeter@cardno.com Web www.cardno.com

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'24 APR 22 PM 12:01:42
Anderson, SC COC, CP/GS

Lizzy R. Wilkes

From: Robert Carroll <rcarroll@andersoncountysc.org>
Sent: Wednesday, May 03, 2017 3:31 PM
To: Michael Forman
Subject: Fwd: Emailing: Bid #17-083 Toxaway Mill Cleanup and Remediation 20170424_11471248.pdf

Can you answer the following questions?

Sent from my iPhone

Begin forwarded message:

From: Russell Email <rtmoats@moatsconstruction.com>
Date: May 3, 2017 at 3:10:42 PM EDT
To: Barry Duncan <bduncan@andersoncountysc.org>
Cc: Robert Carroll <rcarroll@andersoncountysc.org>, Paul Email <pdholden@moatsconstruction.com>
Subject: Re: Emailing: Bid #17-083 Toxaway Mill Cleanup and Remediation 20170424_11471248.pdf

Barry,
I was not sure who to direct these questions to.
I tried to call earlier, and also tried to call Robert.
Per the bid solicitation and Exhibit A:
1.) Will the bidding party be required to submit any additional pricing for remediation work not specifically noted in the exhibit A? I.e. Cost to abate and dispose of any ACM discovered.
If so, does it need to be on a formal letterhead, or can it be written in on the bid form?
2.) what method of capping would the County prefer? The addendum mentions 3 methods.
a.) import of fill and use of existing crushed material.
b.) onsite borrow and use of crushed material.
c.) excavate areas and move onsite to area not to be included in new development plan, cap and barricade.
3.) Will the entire capped area need to be seeded?
4.) Will any New permits (SCDHEC Demolition, Storm Water or Anderson County Demolition Permits be required? We contacted SCDHEC and no one could give a straight answer so far.
Thank you for the help.

Best Regards,

Russell T. Moats
Principle
Moats Construction Company
1523 Old Roberts Ch. Rd.
Anderson, South Carolina 29626
864.224.0904 Office
864.964.9754 Fax
864.276.5021 Direct
Charleston

7672 Little Britton Rd.
Yonges Island, South Carolina 29449
www.moatsconstruction.com

On Apr 27, 2017, at 4:26 PM, Barry Duncan <bduncan@andersoncountysc.org> wrote:

From: Robert Carroll
Sent: Monday, April 24, 2017 12:06 PM
To: Barry Duncan
Cc: Robert Carroll
Subject: FW: Emailing: Bid #17-083 Toxaway Mill Cleanup and Remediation 20170424_11471248.pdf

<Bid #17-083 Toxaway Mill Cleanup and Remediation 20170424_11471248.pdf>

<Addendum E_Toxaway Mill Debris Removal Report May 2013 Final.pdf>

<Addendum B_VCC Toxaway Mill_4-4-07.pdf>

<Addendum C_Toxaway Debris Piles Survey_6-11-13.pdf>

'24 APR 22 PM12:01:51
Anderson SC COC: CP/GS

Lizzy R. Wilkes

From: Michael Forman <mforman@andersoncountysc.org>
Sent: Thursday, May 11, 2017 10:04 AM
To: Gail Jeter
Subject: RE: Asbestos Survey - Toxaway

Gail, Robert had to back out of our meeting this morning, not sure why or when it will be rescheduled. I will keep you informed as I learn more. As far as the prices below, it looks as if both firms are relatively close, cost-wise. Do you have any problems with using Emerald, as they appear to be ready to move?

Regarding your contract, adjust your estimate as necessary to include stormwater permitting as well as the asbestos inspection as discussed below. When I finally talk to Robert I will get it ironed out.

Thanks.

-MF

From: Gail Jeter [mailto:Gail.Jeter@cardno.com]
Sent: Wednesday, May 10, 2017 5:14 PM
To: Michael Forman
Subject: Asbestos Survey - Toxaway

I tried to reach you this afternoon. I am going to be leaving shortly, and I will not be in tomorrow. I am headed to Clemson for my nephew's graduation. I will be traveling this evening and available by cell phone and available tomorrow on and off by cell phone.

I have gotten quotes from the two firms who usually give us the lowest bids.

Emerald will do the survey for	
Asbestos Survey & Report	$550.00
PLM Analytical (30 samples @ $8.30 ea)	249.00
TEM Analytical (5 samples @ $70.00 ea)	350.00
TOTAL	$1149.00

We could have someone there the first part of next week to do the survey with the final report via email either Friday (May 19) or Monday (May 22). Let me know as soon as you can because we will set next week's schedule Friday morning.

Apex wants to see the site to give an exact estimate – They can visit the site – between Thursday or Friday between 9:30 and 12:00. Since I have not heard from you this afternoon, I will tell her that we do not have anything scheduled for tomorrow.
Estimate $650 plus samples at $7 each. If we have to run any TEM samples they would be $40 each. Without seeing the site I would say about $1200 maybe less.
I do not know how APEX gets the TEM sample analysis so low – no other company that we deal with gets that rate, but they use the same certified lab that others do.
I asked but they have not replied as to when they can do the work.

Further, I have found out that you will probably need an independent inspector on site during debris removal to segregate asbestos – we need to talk about this. We will not sign our contract that Robert sent until we do.

Also, is the selected removal/capping contractor going to handle the stormwater issues? Permitting, etc. It takes a bit, so they need to get started in order to get the permit for an early June start.

Do not hesitate to call tonight or tomorrow. If I cannot take the call, I will call you back.

Thanks, G

Gail Rawls Jeter
BROWNFIELDS SPECIALIST
GOVERNMENT AND INFRASTRUCTURE
MID-ATLANTIC REGION
CARDNO INC.

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Direct +1 803 929 6059 Mobile +1 803 210 6080
Address 1812 Lincoln Street Suite 301, Columbia, SC 29201
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'24 APR 22 PM12:01:55
Anderson, SC COC, CP/GS

Lee Prickett

From: Paul Email <pdholden@moatsconstruction.com>
Sent: Thursday, January 18, 2018 4:17 PM
To: Lee Prickett
Subject: Fwd: Former Toxaway Mill Site - Asbestos Survey Report

Begin forwarded message:

From: Russell Email <rtmoats@moatsconstruction.com>
Date: June 16, 2017 at 1:51:49 PM EDT
To: Michael Forman <mforman@andersoncountysc.org>
Cc: "David Sykes (david.sykes@cardno.com)" <david.sykes@cardno.com>, Paul Email <pdholden@moatsconstruction.com>
Subject: Re: Former Toxaway Mill Site - Asbestos Survey Report

No Mike this is the first I've seen of a current asbestos report.
If you want to abate the material you will most likely need a project design unless it is provided in the report. The VCC may offer some discretion as to permitting and removal methods.
How would you like to handle the change order regarding the abatement?
If you apply for your permit today and SCDHEC received notice today, it would still be 10 days before you can start any removal. We had asked for some clarification on all of this prior to the bid opening, and have asked for updates from the County since then, but no one had been responsive until now.
As I mentioned in the email to Mr. David, the County is requiring us to be 25% complete by June 30, and 100% complete by July 21. That is less than 2 weeks away, so it might be something that needs to be discussed and addressed with Robert Carroll and Rusty Burns.
Please let me know if I can be of any assistance, or if you have any questions for us.
Best Regards,

Russell T. Moats
Principle
Moats Construction Company
1523 Old Roberts Ch. Rd.
Anderson, South Carolina 29626
864.224.0904 Office
864.964.9754 Fax
864.276.5021 Direct
Charleston
7672 Little Britton Rd.
Yonges Island, South Carolina 29449
www.moatsconstruction.com

On Jun 16, 2017, at 11:23 AM, Michael Forman <mforman@andersoncountysc.org> wrote:

> Russell, not sure if you have received this yet, just FYI. Thanks.

PLAINTIFF'S EXHIBIT 24
tabbies

R-001100

-MF

From: Ronny Lowder [mailto:rlowder@emeraldinc-us.com]
Sent: Thursday, May 25, 2017 3:33 PM
To: Gail Jeter
Cc: Michael Forman
Subject: Former Toxaway Mill Site - Asbestos Survey Report

Good Afternoon All,

Please find attached the asbestos survey report for the Former Toxaway Mill site in Anderson. As the report shows, specifically in Table 1, the site does contain both friable and non-friable asbestos in the debris piles found at the site. Removal of these materials will have to be conducted by a SC licensed abatement contractor as an outdoor abatement project and cleanup with air monitoring. When you can, let me know how many hard copies of the report you will need and who to send the hard copies to. If there are any questions, please let me know. Thanks

Ronny L. Lowder
President
Emerald, Inc.
(O) 803-469-5454
(F) 803-469-5465
(C) 803-491-5143
rlowder@emeraldinc-us.com
www.emeraldinc-us.com

<Asbestos Survey 5-24-17.pdf>

'24 APR 22 PM 12:02:01
Anderson, SC CDS, CP/GS

Lizzy R. Wilkes

From: Sandy Hanebrink <sandy.hanebrink@touchthefuture.us>
Sent: Tuesday, January 31, 2017 11:06 AM
To: Natasha Sexton
Cc: Sandy Hanebrink; Matthew Schell
Subject: RE: As-built for East West parkway
Attachments: L103-with As-built Survey Spot Elevations and Hardscape (4)ttf.pdf

Importance: High

Open in adobe and see comments...there are still slope and cross slope concerns and missing ramp features. Some of the slopes and cross slopes are not indicated in some areas on the pdf provided.

Sandy

> Here you go. Thank you
>
> Natasha Sexton, RLA
> Principal
> _____
>
> Architecture • Landscape Architecture • Landplanning
> 28 W. North St.
> Greenville SC 29601
> Telephone: 864.609.4199
> Cell Phone: 864.634.5443
> Web Address: www.SGAarchitecture.com
>
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> contained herein is STRICTLY PROHIBITED. If you receive this
> transmission in error, please immediately contact the sender and
> destroy the material in its entirety, whether in electronic or hard
> copy format.
>
>
> -----Original Message-----
> From: Sandy Hanebrink [mailto:sandy.hanebrink@touchthefuture.us]
> Sent: Monday, January 30, 2017 11:16 PM
> To: Natasha Sexton
> Cc: sandy.hanebrink@touchthefuture.us; Matthew Schell
> Subject: Re: As-built for East West parkway
> Importance: High
>

Moats 01064

'24 APR 22 PM12:02:17
Anderson SC COC CP/GS

SEXTON
Design + Development

Site Visit Report

To: Brian Richardson, Anderson County
Chris Nordmeyer, SGA Architecture
From: Natasha Sexton
CC: File

Attendees: Natasha Sexton
Date: 1/23/2019

RE: 1/23/19 East West Parkway Concrete Form Review
Pages Included: 5

Natasha Sexton visited the site Tuesday, January 23rd to review the Phase 2 sidewalk connection form work for the East West Parkway construction project.

All forms are installed, and horizontal layout was spot verified.

The middle section (straight section) appears to be a steeper slope than the rest of the form work. Natasha Sexton attempted to obtain running slopes with a Smart Level but was unable to get an accurate reading due to the variance in the sub grade. Concrete contractor to verify that all running slopes are less than 5% and cross slopes are less than 2%.

The radiuses above and below the section of slope concern appear to be tighter than the provided construction documents. This was a field observation only and all spot checks for horizontal layout were verified.

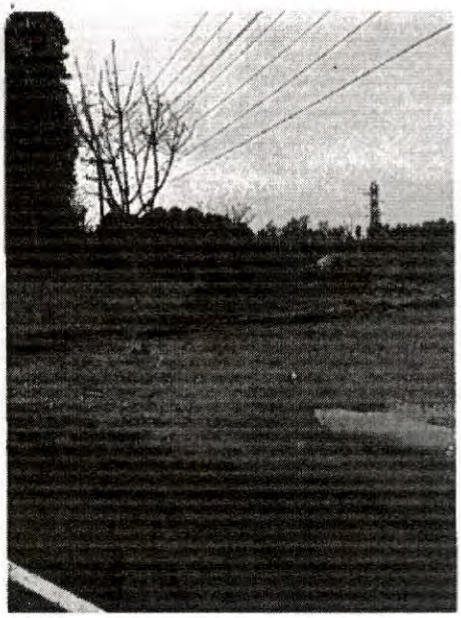
Forms are approved assuming finished slopes are below 5% for all running slopes and below 2% for all cross slopes.

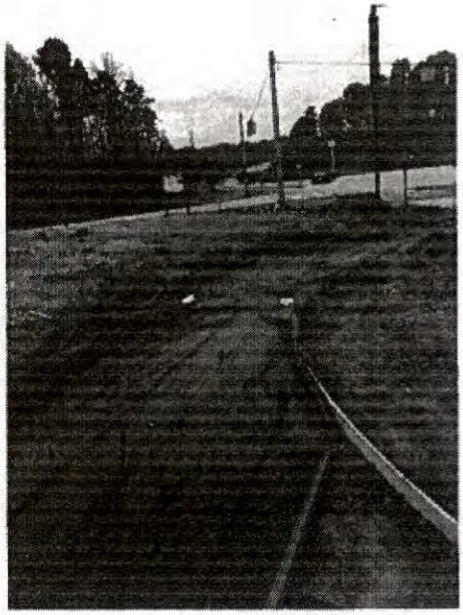
Photos are included below.

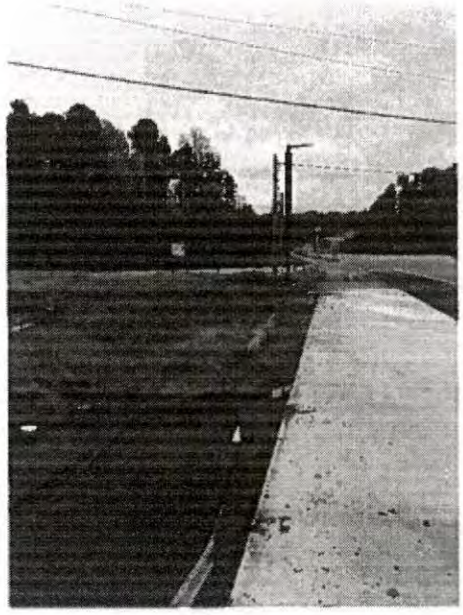
Please review the site visit report and notify Natasha Sexton within 24 hours of any discrepancies, revisions, or comments. Thank you.

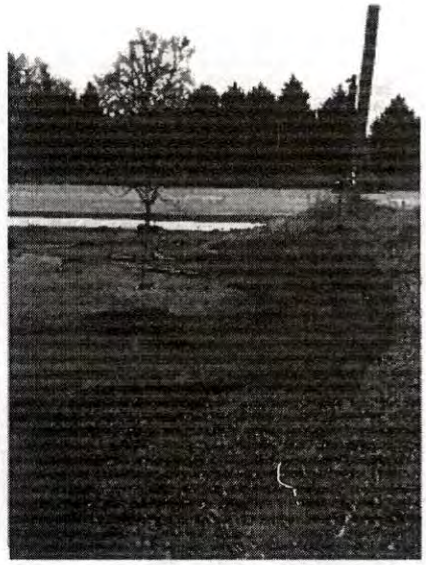
PLAINTIFF'S EXHIBIT
tabbies

217 E. Stone Ave. Suite 46, Greenville SC 29609
phone 864.634.5443









217 E. STONE AVE. SUITE 46, GREENVILLE SC 29609
PHONE 864.634.5443

NEXSEN|PRUET

RECEIVED
JUL 23 '18
EKB - AW

'24 APR 22 PM 12:03:24
Anderson, SC COC, CP/GS

John W. Davidson
Member
Admitted in SC

July 20, 2018

Allied World Specialty Insurance Company
30 S. 17th St., Suite 1600
Philadelphia, PA 19103

Re: Contract Between Anderson County, SC and Moats Construction Inc.
Bond No. S001-4104
East-West Parkway Park Construction

To Whom It May Concern:

We represent Anderson County, South Carolina. Anderson County is the Owner/Obligee under the above-referenced Performance Bond issued by Allied World Specialty Insurance Company ("Allied"). Moats Construction, Inc. is the Principal.

This Performance Bond guarantees the performance of the contract for the construction of East-West Parkway Park. Work has commenced but is no longer progressing. Moats Construction has informed Anderson County that it does not intend to complete the project. The parties participated in a mediation in late March 2018 to discuss and resolve various claims and issues raised by the parties and to work to have the project completed. Despite reaching an agreement during that mediation, Moats Construction now refuses to complete the project and has abandoned the project.

Anderson County is undertaking to complete the work called for in the Contract. We hope that the remaining retainage and contract balance will be sufficient to complete the work. We provide this information for your consideration and use. We will update your as the work is completed.

Thank you for your attention to this matter and let me know if there is any other information that you need, or if you would like to discuss this further.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

1230 Main Street
Suite 700 (29201)
PO BOX 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.540.2023
F 803.727.1427
E JDavidson@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

tabbies
PLAINTIFF'S EXHIBIT
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Sincerely,

John Davidson KLT

John W. Davidson

JWD/mos

cc: Leon C. Harmon, Esquire

'24 APR 22 PM12:03:28
Anderson SC COC. CP/GS

PROJECT STATUS REQUEST

Direct Surety

February 13, 2019

Anderson County
101 S. Main St. Room 115 Anderson SC 29624

rcarroll@andersoncountysc.org

RE: **Moats Construction, Inc.**
Bid #17-083 Toxaway Mill Cleanup and Remediation, $223,000

Allied World Specialty Insurance Company
Bond #S001-5490 effective 06/09/2017

DIRECT SURETY IS REQUESTING AN UPDATE ON THE PROGRESS OF THIS PROJECT AND ANY COMMENTS THAT YOU WISH TO SHARE. YOUR COMPLETION AND PROMPT RETURN OF THIS BRIEF INQUIRY WOULD BE APPRECIATED.

If the contract has been completed:

Date of Completion: _____

Date of Acceptance: _____

Date of Final Payment: _____

Final Contract Amount: _____

If the contract has NOT been completed:

Percent of Completion: 27%

Amount of Payment to Date: $59,600.00

Contract Amount to Date: $223,000.00

COMMENTS: Contractor failed to meet their obligations as required by Mediation.

Please sign, date, and return this inquiry to:

Direct Surety
1065 E. Hillsdale Blvd. Suite #230
Foster City, CA 94404

Or email response to: status@directsurety.com

Signature: [signature]

Title: Central Service Dir.

Date: 4/8/19

Phone: _____

Email: _____

It is understood that the information contained herein is furnished as a matter of courtesy for the confidential use of the surety and is merely an expression of opinion. It is also agreed that in furnishing this information, no guaranty or warranty of accuracy or correctness is made and no responsibility is assumed because of reliance by the surety whether such information is furnished by the owner or by an architect or engineer as the agent of the owner.

It is expressly recommended that you call us immediately at 650.727.3411 if there is a situation that could potentially give rise to a claim under the bond provided. A proactive response ensures that all parties work together towards a rapid resolution.

PLAINTIFF'S EXHIBIT 43

'24 APR 22 PM12:03:32
Anderson, SC COC, CP/GS

ANDERSON COUNTY
SOUTH CAROLINA

April 10, 2019

Ms. Yvette Sistare
SCPRT Director of Finance
1205 Pendleton Street
Columbia, SC 29201

Tommy Dunn
Chairman
Council District 5

Ray Graham
Vice Chairman
Council District 3

Craig Wooten
Council District 1

Gracie S. Floyd
Council District 2

Brett Sanders
Council District 4

Jimmy Davis
Council District 6

M. Cindy Wilson
Council District 7

Lacey Croegaert
Clerk to Council

Rusty Burns
County Administrator

Dear Ms. Sistare:

In response to your March 12, 2019 email regarding a status update on the Connector Park Grant, please be advised that we have completed Phase 2. We have $230,077.24 remaining from the grant funds to spend on Phase 3. We are currently checking on contractual items in order to begin the bid process. We hope to have it out to bid by the end of May 2019 and complete the work by December 1, 2019. The scope of work in Phase 3 includes:

- Adding a bathroom,
- Installing a small playground,
- Adding more picnic tables, and
- Connecting the upper and lower parking lots.

We believe SC Parks, Recreation & Tourism would be very pleased with the appearance and usage of Phases 1 and 2 improvements to the East-West Connector. It is an added bonus to that new community. We will provide the final closeout once Phase 3 is complete to include pictures and the total budget (sources and used of funds).

Thank you for your patience as we negotiated contractual matters and dealt with inclement weather. If you have any questions regarding this project, please feel free to contact me at (864) 260-4031.

Sincerely,

Rusty Burns
County Administrator

ADMINISTRATION DIVISION
Rusty Burns | County Administrator
O: 864-260-4031 | F: 864-260-4548 | rburns@andersoncountysc.org
Historic Courthouse | 101 South Main Street, Anderson SC 29624
PO Box 8002, Anderson, South Carolina 29622-8002 | www.andersoncountysc.org

tabbies
PLAINTIFF'S EXHIBIT
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SECTION IV

AGREEMENT FOR TOXAWAY MILL CLEANUP AND REMEDIATION

THIS AGREEMENT FOR TOXAWAY MILL CLEANUP AND REMEDIATION (the "Agreement") has been made and entered into this 7th day of June, 2017, by and between Anderson County, South Carolina (the "County"), and Moats Construction, LLC ("Contractor").

WHEREAS, the County desires to allow Contractor, a legal entity properly licensed and registered under the laws of the State of South Carolina, to provide services for certain County property known as the Toxaway Mill located at the corner of East Whitner and Gossett Streets and,

WHEREAS, the Contractor desires to provide such services:

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Performance by Contractor.**

   a. The Contractor shall fully perform and execute all of the work necessary to complete this project for the County, as outlined in the Bid Package and in accordance with the specifications attached hereto as **Exhibit A** (the "Specifications") and incorporated herein by reference (collectively the "Work").

   b. The Contractor shall perform all work in accordance with federal, state, and local laws and regulations regarding the abatement of asbestos and the removal of materials containing asbestos including, but not limited to, 40 CFR Parts 61.145 and 61.150 and S.C. Code Regs. 61-86.1.

   c. The Contractor represents that it has investigated the conditions for the Work prior to submitting its bid and any delays or damages caused by adverse conditions which were capable of being identified prior to the submission of Contractor's bid, shall be at the sole risk of Contractor.

2. **Commencement and Completion of Work.**

   a. The Work shall commence not longer than seven (7) days from mailing of a Notice to Proceed from the County to the Contractor.

   b. All of the services to be provided by the Contractor hereunder shall be performed and completed on or before ~~June 30th~~ July 21, 2017 (the "Completion Date"). GFC

   c. In the event the Contractor is unable to complete all of the Work by the Completion Date, the Contractor shall pay to the County as liquidated damages and not as a penalty, the sum of Three Hundred Dollars ($300.00) per day commencing the day after the Completion Date, until all Work is completed to the satisfaction of the County. Such damages shall be deducted from any payments due or to become due to the Contractor.

3. **Payment by County.**

a. For the Work, the County shall pay the Contractor the contract sum of $ 223,000.00 Dollars (the "Contract Sum") for the Service required by the Contract Documents, subject to adjustment as provided in the General Conditions defined below.

4. **General Conditions.**

This Agreement shall be subject to and governed by the General Conditions attached hereto as **Exhibit B** and incorporated herein by reference (the "General Conditions"). The General Conditions, together with the Specifications, the Bid Package, and this Agreement, together with all exhibits, shall collectively constitute the "Contract Documents."

5. **Inspection and Monitoring.**

a. The County shall have the right to inspect the Work to evaluate the Contractor's compliance with the Contract Documents for the County's sole benefit, and said right to inspection shall not make the County responsible for the compliance of the Contractor with the terms of the Contract Documents.

b. In accordance with Section VII of S.C. Code Regs. 61-86.1 and South Carolina Department of Health and Environmental Control ("SCDHEC") regulations, the County, or its agent, will provide independent air sampling for the asbestos abatement.

6. **Bonds and Certificates of Insurance.**

The Contractor shall execute and present to the County a performance bond in an amount of one hundred percent (100%) of the amount of the total Contract Sum, as required by state law, at the time of execution of this Agreement. The Contractor shall also furnish a separate faithful performance bond in the amount of one hundred percent (100%) of the total Contract Sum as well as a separate payment (labor and material) bond in an amount not less than one hundred percent (100%) of the Contract Sum, and certificates of insurance (as stated in the General Conditions) at the time of execution of this Agreement.

7. **Authority to Act.**

If Contractor is a corporation or limited liability company, the undersigned hereby represents and warrants that the said entity is duly formed and registered and in good standing in the State of South Carolina and that Russell Moats, whose title is President, is authorized to act for and bind the entity to the Contract Documents.

IN WITNESS OF THIS AGREEMENT, Contractor and the County have caused their names to be subscribed and their seals to be affixed as to the day and year first above written.

ANDERSON COUNTY, SOUTH CAROLINA

By: _____
Print Name: Rusty Burns
Title: County Administrator

CONTRACTOR

Moats Construction, Inc.
(Name of Corporation or Entity)

By: _____
Print Name: Russell T. Moats
Title: Principle

EXHIBIT A

SPECIFICATIONS

1. SCHEDULE

The Company shall complete the work pursuant to the Contract Documents by June 30th, 2017.

2. SOURCE OF FUNDS

The County has no more than $260,000 available for the activities specified in the Scope of Work outlined below. No additional funds are available, nor shall the County have any obligation to pursue or obtain other funding sources for the Work. The Company shall complete the work as allowed by the budget established by the available funding without further liability or obligation on the part of the County.

3. SCOPE OF WORK

All work shall be in accordance with Anderson County's Voluntary Cleanup Contract VCC #06-5687-NRP (Addendum B).

The scope of work will include coordination with Cardno, County staff, and DHEC staff to remediate all remaining debris on site, a map and description of which can be found in the Toxaway Mill Remaining Debris Pile Survey (Addendum C); in addition to capping of the site in accordance with the Toxaway Mill Corrective Measures Plan from November 2009 (Addendum D).

During previous cleanup activities on the site, visible asbestos containing materials (ACM's) were observed and removed. A good faith effort was made by the County at the time to remove all ACM's; however, there is a possibility that additional ACM's remain on site within the debris piles. The Company should be alert to the possibility of additional ACM's on-site, and should be ready to take appropriate steps with Cardno's guidance if suspected asbestos is located.

Bids should include detailed costs associated with the scope of work.

At least one appropriately trained Cardno employee or County employee may be on site at any time during the field work portion of the project. Cardno and County staff shall be allowed access to all aspects of the company's operations on site, and will thoroughly observe and document the types of materials that are removed from the mill site using field notes and photographs and will collect all landfill tickets from the transportation contractor to document the type and quantity of debris removed and disposed. In no event shall on-site observation and documentation by Cardno or the County relieve the Company of its sole and exclusive responsibility and liability for properly removing and disposing of all material in accordance with all applicable laws and regulations.

The Company will be responsible for providing adequate power and water for the project.

EXHIBIT B

GENERAL CONDITIONS

1. County's Right to Stop the Work. If the Company fails to correct Work which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the County may issue a written order to the Company to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the County to stop the Work shall not give rise to a duty on the part of the County to exercise this right for the benefit of the Company or any other person or entity.

2. County's Right to Carry Out the Work. If the Company defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the County to commence and continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to other remedies the County may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Company the reasonable cost of correcting such deficiencies, including County's expenses and compensation for the additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Company are not sufficient to cover such amounts, the Company shall pay the difference to the County.

3. Supervision. The Company shall supervise and direct the Work, using the Company's best skill and attention. The Company shall be solely responsible for and have control over the Work, means, methods, techniques, equipment, sequences, and procedures and for coordinating all portions of the Work, pursuant to the specifications and the Contract Documents. The Company shall be responsible to the County for acts and omissions of the Company's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Company or any of its subcontractors.

4. Labor and Materials.

4.1. The Company shall provide and pay for all labor, materials and equipment necessary for proper execution and completion of the Work.

4.2. The Company shall enforce strict discipline and good order among the Company's employees and other persons carrying out the Work. The Company shall not permit employment of persons not properly licensed to perform the work assigned, unfit persons, or persons not skilled in tasks assigned to them.

5. Warranty. The Company warrants to the County that services furnished and Work performed under the Contract Documents will be of good quality, consistent with industry standards, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

6. Company Assurance of Good Standing. Company warrants that it is not in arrears to the County upon debt or contract and is not in default as surety, contractor or otherwise on any obligation to the County.

7. Taxes. The Company shall pay all sales, consumer, use and similar taxes for the Work provided by the Company.

8. Permits, Fees and Notices.

8.1. Unless otherwise provided in the Contract Documents, the Company shall secure and pay for any permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract Documents and which are legally required when Proposals are received or negotiations concluded.

8.2. The Company shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

8.3. If the Company performs Work knowing it to be contrary to laws, statutes, ordinances, and/or rules and regulations, the Company shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

9. Limitation on Liability, Release, and Indemnification.

9.1. The Company hereby releases the County from any claim or liability for damages that the Company may have arising out of the Contract Documents for property damage, injury or death.

9.2. The Company will hold the County harmless and indemnify the County, its agents, officers, County Council members, and employees from and against any and all claims, actions or causes of action and for any and all damages, liabilities, claims, penalties, expenses and costs, including, but not limited to, attorney's and other professional fees, arising out of the Contract Documents or the performance of the services described or referred to in the Contract Documents, specifically including, without limitation, the Work, but only to the extent caused by the negligent or intentional acts or omissions of the Company, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation will not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person.

9.3. Company shall assume all risks and responsibilities for losses of every description in connection with the service that can be attributed either directly or indirectly to the Company.

9.4. All indemnification and release provisions in favor of the County shall survive the expiration or sooner termination of the Contract Documents.

10. Status of Company as Independent Contractor. It is expressly agreed that Company's status hereunder is that of an independent contractor and is neither agent, employee, servant, partner, nor joint venturer of the County. Company is exclusively responsible for and in control of performance of Company's duties hereunder. Neither Company nor any person hired by Company shall be considered employees of the County for any purpose.

11. Subcontractual Relations.

11.1. Company will not subcontract work or services under the Contract Documents without the prior written consent of the County, and any such subcontract without consent of the County shall be null and void.

11.2. If Company proposes to subcontract any of work or services under the Contract Documents, the Company will submit to the County the name of each proposed Subcontractor along with the proposed scope of work which its Subcontractor is to undertake. The County has the right to reject access to any Subcontractor which the County considers unable or unsuitable to satisfactorily perform its duties.

11.3. Company agrees it shall be as fully responsible to the County for any act or omission of the Company's Subcontractors, their agents, representatives, and persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Company. Neither this provision, the County's authorization of Company's agreement with Subcontractor, County's inspection of a Subcontractor's facilities or work, or any other action taken by the County in relation to a Subcontractor shall create any contractual relationship between any Subcontractor and the County.

11.4. By appropriate agreement, written where legally required for validity, the Company shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Company by terms of the Contract Documents, and to assume toward the Company all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Company, by these Documents, assumes toward the County. Each subcontract agreement shall preserve and protect the rights of the County with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Company shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Company shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents.

12. Contingent Assignment of Subcontracts. Each subcontract agreement for a portion of the Work is assigned by the Company to the County provided that: (a) assignment is effective only after termination of the Contract Documents by the County for cause and only for those subcontract agreements which the County accepts by notifying the Subcontractor and Company in writing; and, (b) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract Documents.

13. Limitations on Assignment of the Contract Documents. Company will not assign or transfer any interest in the Contract Documents without the prior written consent of the County, and any attempt to do any of the foregoing without such prior written consent shall be null, void, and of no effect. Any assignment or transfer of any interest in the Contract Documents will be subject to compliance with the provisions of the Contract Documents and will not alleviate any of Company's obligations in the Contract Documents.

14. Termination by the County for Cause.

14.1. If the Company persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or is guilty of any other material breach of a provision of the Contract Documents, the County may, without prejudice to any other rights or remedies of the County, provide written notice of termination of the Contract Documents and subsequently terminate the Contract Documents seven (7) days after said written notice and may accept assignment of subcontracts as provided herein; or finish the Work by whatever reasonable method the County may deem expedient. Upon request of the Company, the County shall furnish to the Company a detailed accounting of the costs incurred by the County in finishing the Work.

14.2. When the County terminates the Contract Documents for one of the reasons stated in the preceding paragraphs, the Company shall not be entitled to receive further payment until the Work is completed.

14.3. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, and other damages incurred by the County which have not been expressly waived, such excess shall be paid to the Company as set forth in the Agreement. If such costs and damages exceed the unpaid balance, the Company shall pay the difference to the County. This obligation of payment to the Company or County, as the case may be, shall survive termination of the Contract Documents.

15. Suspension by the County for Convenience. The County may, without cause, order the Company in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the County may determine.

16. Termination by the County for Non-Appropriation. The Company hereto agrees that payments due from the County, as required under the terms of the Contract Documents, if any, are contingent upon the availability of appropriated funds. In the case of non-appropriation of funds, the County may terminate the Contract Documents in whole or in part without further obligation to the Company.

17. Termination by the County for Convenience.

17.1. The County may, at any time, terminate the Contract Documents for the County's convenience and without cause.

17.2. Upon receipt of written notice from the County of such termination for the County's convenience, the Company shall:

17.2.1. cease operations as directed by the County in the notice;

17.2.2. take actions necessary, or that the County may direct, for the protection and preservation of the Work; and

17.2.3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

17.3. In case of such termination for the County's convenience, the Company shall be entitled to receive payment for Work executed, and costs incurred without further liability on the part of the County.

18. Changes in the Work

18.1. General

18.1.1. Changes in the Work may be accomplished after execution of the Contract Documents, and without invalidating the Contract Documents, by Change Order only in the form attached hereto as **Addendum A**, and incorporated herein by reference.

18.1.2. A Change Order shall be based upon agreement among the County and Company.

18.1.3. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Company shall proceed promptly, unless otherwise provided in the Change Order.

18.2. Change Orders. A Change Order is a written instrument (*see Addendum A*) prepared by the County and signed by the authorized County official (Central Services Division Director) and Company stating their agreement upon all of the following:

18.2.1. change in the work;

18.2.2. the amount of the adjustment, if any, in the Contract Sum; and

18.2.3. the extent of the adjustment, if any, in the Contract Time.

18.3. Minor Changes in the Work. The Contracting Officer for the County shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Completion Date and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the County and Company. The Company shall carry out such written orders promptly.

19. Insurance. The Company shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services rendered under the Contract Documents,

insurance in the types and limits specified below. In addition to the insurance coverage and limits listed herein, the Company shall obtain any other insurance coverage as may be required by law.

19.1. General Liability Insurance:

19.1.1. Limits of Liability: $1,000,000 in the aggregate and per occurrence.

19.1.2. Coverage: Premise operations, blanket contractual liability, personal injury liability (employee exclusion deleted), products and completed operations, independent contractors, employees and volunteers as additional insureds, joint liability, and broad form property damage (including completed operations).

19.1.3. Pollution Endorsement: Said policy shall have a pollution endorsement against claims or claim expenses arising from the Work.

19.2. Workers' Compensation and Employers' Liability Insurance:

19.2.1. Limits of Liability: Workers' Compensation - Statutory Limits.
Employers' Liability - Statutory Limits.

19.2.2. Other States' coverage and South Carolina endorsement.

19.3. Professional Liability Insurance:

19.3.1. Limit of Liability: $2,000,000 per occurrence

19.4. Automobile Liability Insurance:

19.4.1. Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

19.4.2. Coverage: Owner, non-owned and hired vehicles.

19.5. All insurance provided for in this section shall be obtained under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the State of South Carolina. The County requires that Certificates of Insurance evidencing the existence of such insurance shall be submitted to the County at least ten (10) days before the Work is started. If the term of the Agreement coincides with the term of the selected firm's insurance coverage, a Certificate from the expiring policy will be accepted, but a Certificate evidencing renewed coverage of a new policy must be presented to the County no later than thirty (30) days after the effective date of the policy.

19.6. With the exception of the Automobile Insurance Policy, each policy and Certificate of Insurance shall contain an endorsement naming the County as additional insured party thereunder; and a provision that at least thirty (30) days prior written notice be given to the County in the event coverage is canceled or non-renewed or coverage is reduced.

19.7. If the Company desires to self insure any or all of the coverages listed in this section, it shall provide to the County documentation that such self insurance has received all the approvals required by law or regulations, as well as the most recent audited financial statement of the selected firm's insurance. Any coverage which is self insured shall provide the same coverage limits and benefits as the coverages listed in this section.

19.8. The County reserves the right to review categories and levels of insurance coverage held by the Company in an ongoing program of risk management. The selected firm will be notified, in writing, of coverage requirements as determined by this review and the Company agrees to secure such requested coverage.

19.9. If the Company fails to obtain or maintain the required insurance, the County shall have the right to treat such failure as a material breach of the Contract Documents and to exercise all appropriate rights and remedies.

19.10. The Company shall include all subcontractors as insureds under its policies or shall furnish separate Certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in the Contract Documents.

20. No Waiver of Breach. No failure by either the County or Company to insist upon the strict performance by the other of any covenant, agreement, term or condition of the Contract Documents, or to exercise any right or remedy consequent upon a breach of any covenant, agreement, term or condition of the Contract Documents, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter the Contract Documents, but each and every covenant, condition, agreement and term of the Contract Documents shall continue in full force and effect with respect to any other then existing or subsequent breach.

21. Waivers and Amendments to the Contract Documents. No modification, waiver, amendment, discharge or change of the Contract Documents will be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

22. Mediation.

22.1. If the parties are unable to resolve any claims between them, the parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Commercial Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party.

22.2. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Anderson, South Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

23. Federal Excise and South Carolina Sales Tax. The County, as a political subdivision of the State of South Carolina, may be exempt from Federal Excise Taxes and South Carolina Sales Taxes.

When applicable, net prices as shown in the proposal shall exclude such Federal and State Tax amounts.

24. No Liens. South Carolina law provides that no lien may be attached to public property.

25. Notice to Company and the County. Unless otherwise specifically provided in the Contract Documents or by law, any and all notices or other communications required or permitted by the Contract Documents or by law to be served on, given to, or delivered to any party to the Contract Documents will be in writing and will be deemed duly served, given, delivered and received when personally delivered (including confirmed overnight delivery service to the party to whom it is directed), or without personal delivery, when three (3) business days have elapsed following deposit of the notice or other communication in the United States mail, first-class postage prepaid, certified, return receipt requested, and:

If to County, addressed to:

Anderson County
101 S. Main Street
Anderson, SC 29624
Attn: Central Services Division Director

If to Company, addressed to:

MOATS CONSTRUCTION, INC.
1523 OLD ROBERTS CH. RD.
ANDERSON, SC 29626
Attn: RUSSELL MOATS

Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

26. Compliance with the Davis-Bacon Act. The Company acknowledges that all construction contracts exceeding Two Thousand Dollars ($2,000.00) on Federal-aid participation jobs are subject to the provisions of the Davis-Bacon Act. 29 CFR, Parts 1,3 and 5.

27. Compliance with Federal and State Immigration Laws. Neither the Company nor any of its subcontractors may knowingly obtain the labor or services of an alien not legally authorized to work in the United States. The Company or its subcontractors, and not the County, must verify eligibility for employment of its employees as required by the Immigration Reform and Control Act of 1986 ("IRCA") and South Carolina Code Section 8-14-10 *et seq.* The Company herby specifically warrants and certifies that at all times during the performance of services hereunder, it and any of its subcontractors shall be in full compliance with the provisions of IRCA and South Carolina Code Section 8-14-10 *et seq.* in the hiring of its employees, and, further, the Company agrees to provide the County upon request with documentation sufficient to establish the Company's compliance with South Carolina Code Section 8-14-10 *et seq.* or the Company's exemption therefrom (if applicable). The Company will indemnify, hold harmless and defend the County against any and all actions, proceedings, penalties or claims, including, but not limited to County's attorney's fees arising out of the Company's failure to comply strictly with IRCA or South Carolina Code Section 8-14-10 *et seq.* It is agreed that if the Company fails to strictly comply with the IRCA or South Carolina Code Section 8-14-10 *et seq.*, the Company shall pay the County the sum of Five Thousand Dollars ($5,000) per violation in liquidated damages.

28. Undue Influence. Company agrees not to hire any County personnel who may exercise or has exercised discretion in the awarding, administration or continuance of the Contract Documents for one (1) year following the termination of the employee from County service.

29. Unavoidable Delay - Force Majeure. If either party shall be delayed or prevented from the performance of any act required by the Contract Documents by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act will be excused for the period of the delay; and the period for the performance of any such act will be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section will excuse Company from the prompt payment of any fee or other charge required of Company except as may be expressly provided elsewhere in the Contract Documents.

30. Compensation Terms and Conditions.

30.1. The Company shall be compensated for the Work as described above by payment of the Contract Sum. Company's travel, meals, lodging, parking or other expenses incidental to the performance of responsibilities under the Contract Documents shall be borne solely by the Company.

30.2. The County will not make payment on behalf of the Company to any fringe benefit program, or withhold any money from compensation for any federal, state or local tax program or for any other reason.

31. Severability of Terms of the Contract Documents. In the event any portion of the Contract Documents is declared invalid or unenforceable, the remaining portions of the Contract Documents shall remain in full force and effect.

32. Captions. Captions in the Contract Documents are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of the Contract Documents or any of the terms of the Contract Documents.

33. Applicable Law to the Contract Documents and Venue. The Contract Documents shall at all times be construed and interpreted in accordance with the laws of the State of South Carolina, without regard to conflict of law principles. Subject to the mediation provision in Paragraph 22 above, any legal proceedings between the parties shall be brought exclusively in the Anderson County, South Carolina Court of Common Pleas.

IN WITNESS WHEREOF, the parties have executed these General Conditions as of the date first written above.

ANDERSON COUNTY, SOUTH CAROLINA

By: _____

Print Name: Rusty Burns

Title: County Administrator

COMPANY

MOATS CONSTRUCTION INC.

(Name of Corporation or Entity)

By: _____

Print Name: RUSSELL T. MOATS

Title: Principle

2

Notice of Award 8/17/2016

To: **Moats Construction Company**
1523 Old Roberts Church Road
Anderson, S.C. 29626

Bid #16-007 **Project Description: East-West Parkway Park Construction**

The owner has considered the bid due September 17, 2015 submitted by you for the above-described work in response to its Advertisement for Bids and its Information and Conditions for Bidders.

You are hereby notified that your bid has been accepted for items in the amount of $159,604.75 to include the following: (Base Bid + Alternate #1 + Alternate #2(minus Benches) $106,354.75; also to include clearing the phase 3 site area except for marked trees down to contour elevation 748' and establishing permanent grass per specifications $15,000.00; and grading, concrete walk, picnic table pads, picnic tables per specifications, trash cans per specifications , irrigation, sod, 4 trees, 4 planter beds with edging and mulch $ 38,250.00.

You are required by the Information and Conditions for Bidders and the General Conditions to execute the Contractor's Agreement and furnish the required Faithful Performance Bond, Payment Bond and certificates of insurance within seven (7) days of mailing of this notice. It is understood and agreed that should bidder fail or refuse to return executed copies of the Contractor's Agreement, Workers Compensation Certificate, insurance certificates, and required payment and performance bonds to the County within the time specified, the bid security shall be forfeited to the County.

You are required to return an acknowledged copy of this Notice of Award to the owner.
Dated this 17th day of August, 2016.

By: _____
Rusty Burns
Title: **County Administrator**

Acceptance of Notice

Receipt of the above Notice of Award is hereby acknowledged by _____.
Company Name

By: _____ **Title:** _____

SECTION IV

ARBITRATION NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT (SC CODE §15-48-10 *ET SEQ.*) AND ANY AMENDMENTS THERETO, AS MODIFIED HEREIN.

CONTRACTOR'S AGREEMENT

THIS CONTRACTOR'S AGREEMENT FOR EAST WEST PARKWAY PARK CONSTRUCTION (the "Agreement") has been made and entered into this 17 day of August, 2016, by and between Anderson County, South Carolina (the "County"), and Mouts Construction Co. ("Contractor")

WHEREAS, the County issued an Invitation to Bid for EAST WEST PARKWAY PARK CONSTRUCTION ("Invitation to Bid"), advertised on August 25, 2015, for a Contractor to provide construction services at East-West Parkway Park within Anderson County; and,

WHEREAS, the Contractor has complied with all requirements set forth in the Invitation to Bid and was the successful bidder; and,

WHEREAS, the County desires to allow the Contractor, a legal entity properly registered under the laws of the State of South Carolina, to provide the services sought by the Invitation to Bid; and,

WHEREAS, the Contractor desires to provide the construction services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Performance by Contractor.

The Contractor shall fully perform and execute all of the work (the "Work") described in the Scope of Work attached hereto and incorporated herein by reference (the "Scope of Work"), up to the standards and in accordance with the specifications and drawings attached hereto collectively and incorporated herein by reference (the "Specifications").

2. Commencement and Term of Agreement.

a. *Term of Agreement.*

The date of commencement shall be seven (7) days from mailing of the Notice to Proceed to the Contractor and the Work is anticipated to be completed by

12-15-2016 **("Completion Date").**

b. *Investigation by Contractor Prior to Submission of Proposal*

The Contractor represents that it has investigated the conditions for the Work prior to submitting its proposal and any delays or damages caused by adverse conditions which were capable of being identified prior to the submission of the Contractor's proposal, shall be at the sole risk of the Contractor.

c. *Non-completion of Work*

In the event the Contractor is unable to complete the Work by the Completion Date, Contractor shall pay to County, as liquidated damages, **$200 per day** until all Work is completed to the satisfaction of County. Such damages shall be deducted from any payment due or to become due to the Contractor.

3. **Contract Sum.**

For the Work performed hereunder, the Contractor shall be paid by the County the contract sum of $159,604.75 Dollars (the "Contract Sum"). The Contract Sum is subject to adjustment as payments due hereunder are based on a per unit price as set forth in the Bid Form contained in the Bid Package and incorporated herein by reference. The Contract Sum set forth above shall be used for purposes of setting values of any and all bonds required herein.

4. **Payments.**

a. *County Payment of Contract Sum*

The County shall make payment of the Contract Sum, as adjusted by unit pricing of actual quantities of work, in the form of progress payments based upon applications for payment submitted by the Contractor to the County on a monthly basis, subject to a retainage as set forth herein. The amount of the progress payment shall be calculated on a per unit basis, less a retainage of ten (10%) percent. The County shall be responsible for making a full and final payment of the Contract Sum, as adjusted, to the Contractor no later than thirty (30) days after completion of all the Contractor's Work under this Agreement and inspection and acceptance by the County.

b. *Application for Payment by Contractor*

The Contractor shall submit all applications for payment to: Anderson County Parks and Recreation Department, 101 S. Main Street, Room 11, Anderson, SC 29624, Attention: Matt Schell. The period covered by each application for payment shall be one calendar month ending on the last day of the month. Incorrect applications for payment will be returned to the Contractor. All invoicing or billing questions should be directed to: Matt Schell at (864)231-4275.

5. **General Conditions.**

This Agreement shall be subject to and governed by the General Conditions attached hereto as **Exhibit C** and incorporated herein by reference (the "General Conditions"). The General Conditions, together with the Bid Documents, this Agreement, and all exhibits, shall collectively constitute the "Contract Documents."

6. **Inspections.**

County shall have the right to inspect the Work to evaluate the Contractor's compliance with the Contract Documents for County's sole benefit, and said right to inspection shall not make County responsible for the compliance with the terms of the Contract Documents.

7. **Authority to Act.**

If Contractor is a corporation or limited liability company, the undersigned hereby represents and warrants that the said entity is duly formed and registered and in good standing in the State of South Carolina and that Russell Mootz, whose title is Principle, is authorized to act for and bind the entity to this Agreement.

IN WITNESS OF THIS AGREEMENT, The Contractor and the County have caused their names to be subscribed and their seals to be affixed as to the day and year first above written.

ANDERSON COUNTY, SOUTH CAROLINA

By: _____
Print Name: Rusty Burns
Its: County Administrator

CONTRACTOR

Mootz Construction Inc.
(Name of Corporation or Entity)

By: _____
Print Name: Russell T. Mootz
Its: Principle

EXHIBIT A

SCOPE OF WORK/SPECIFICATIONS
(See attached)

EXHIBIT B

Specifications/Drawings
(See Attached)

EXHIBIT C

GENERAL CONDITIONS

1. County's Right to Stop the Work. If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the County may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the County to stop the Work shall not give rise to a duty on the part of the County to exercise this right for the benefit of the Contractor or any other person or entity.

2. County's Right to Carry Out the Work. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the County to commence and continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to other remedies the County may have, correct such deficiencies. In such a case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including County's expenses and compensation for the additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the County.

3. Supervision and Construction Procedures.

3.1. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, pursuant to the Contract Documents. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the County and shall not proceed with that portion of the Work without further written instructions from the County. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by the Contractor, the County shall be responsible for any resulting loss or damage.

3.2. The Contractor shall be responsible to the County for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.3. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

4. Labor and Materials.

4.1. The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.2. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons not properly licensed to perform the work assigned, unfit persons, or persons not skilled in tasks assigned to them.

4.3. The Contractor warrants to the County that the services, materials and equipment furnished under the Contract will be of good quality, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operations, or normal wear and tear and normal usage.

4.4. The Contractor shall store construction materials offsite due to the limited and constrained space, inside the subdivision.

4.5. The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor.

5. Permits, Fees and Notices.

5.1. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract Documents and which are legally required when bids are received or negotiations concluded.

5.2. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

5.3. If the Contractor performs Work knowing it to be contrary to laws, statues, ordinances, building codes, and rules and regulations without such notice to the County, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

6. Cleaning Up.

6.1. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract Documents. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

6.2. If the Contractor fails to clean up as provided in the Contract Documents, the County may do so and the cost thereof shall be charged to the Contractor.

7. Limitation on Liability, Release and Indemnification. THE CONTRACTOR HEREBY RELEASES THE COUNTY FROM ANY CLAIM OR LIABILITY FOR DAMAGES THAT THE CONTRACTOR MAY HAVE ARISING OUT OF THE CONTRACT DOCUMENTS FOR PROPERTY DAMAGE, INJURY OR DEATH. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the County and council members, officers, agents and employees of County from and against all claims, damages, penalties, losses, costs and expenses, including but not limited to, attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent or intentional acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, except for liability resulting from the sole active gross negligence or willful misconduct of the County. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnify which would otherwise exist as to a party or person. Contractor shall assume all risks and responsibilities for losses of every description in connection with the Contract Documents, specifically including, without limitation, the Work, that can be attributed either directly or indirectly to the Contractor. All indemnification and release provisions in favor of the County shall survive the expiration or sooner termination of the Contract Documents.

8. Claims for Additional Time.

8.1. If the Contractor wishes to make Claim for an increase in the time to complete the Work, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

8.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

8.3 County shall evaluate the claims for additional time and provide a response to the claim within ten (10) days.

9. Mediation.

9.1. If the parties are unable to resolve any Claims between them, the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association.
The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 30 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

9.2. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Anderson, South Carolina, unless another location is mutually agreed upon, in writing. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10. Arbitration.

10.1. Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association.

10.2. Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

10.3. Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

11. Subcontractual Relations. By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extend of the Work to be performed by the Subcontractor, to be bound to the Contractor and the County by terms of the Contract Documents, and to assume toward the Contractor and the County all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the County. Each subcontract agreement shall preserve and protect the rights of the County with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and upon written request of the Subcontractor, identify to the

Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents.

12. Contingent Assignment of Subcontracts. Each subcontract agreement for a portion of the Work is assigned by the Contractor to the County provided that:

(a) assignment is effective only after termination of the Contract by the County for cause and only for those subcontract agreements which the County accepts by notifying the Subcontractor and Contractor in writing; and

(b) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

13. Changes in the Work.

13.1. General

13.1.1. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order only in the form attached hereto as Addenda A, and incorporated herein by reference.

13.1.2. A Change Order shall be based upon agreement among the County and Contractor.

13.1.3. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order.

13.2. Change Orders. A Change Order is a written instrument (*see Addendum B*) prepared by the County and signed by the authorized County official (Purchasing Director) and Contractor stating their agreement upon all of the following:

(a) change in the work;

(b) the amount of adjustment, if any, in the Contract Sum; and

(c) the extent of the adjustment, if any, in the Contract Time.

13.3. Minor Changes in the Work. The County will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the County and Contractor. The Contractor shall carry out such written orders promptly.

14. Protection of Persons and Property.

14.1. Safety Precautions. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

14.2. Safety of Persons and Property.

14.2.1. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(a) employees performing the Work and other persons who may be affected thereby;

(b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

(c) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(d) horses, cattle, goats, or any livestock of adjacent property owner.

14.3. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

14.4. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and user of adjacent sites and utilities.

14.5. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

14.6. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts of omissions of the County and not attributable to the fault or negligence of the Contractor.

15. Insurance. The Contractor shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services rendered under the Contract Documents, insurance in the types and limits specified below. In addition to the insurance coverage and limits listed herein, the Contractor shall obtain any other insurance coverage as may be required by law.

15.1. General Liability Insurance:

15.1.1. Limits of Liability: $1,000,000 in the aggregate and per occurrence.

15.1.2. Coverage: Premise operations, blanket contractual liability, personal injury liability (employee exclusion deleted), products and completed operations, independent contractors, employees and volunteers as additional insureds, joint liability, and broad form property damage (including completed operations).

15.1.3. Pollution Endorsement: Said policy shall have a pollution endorsement against claims or claim expenses arising from the Work.

15.2. Workers' Compensation and Employers' Liability Insurance:

15.2.1. Limits of Liability: Workers' Compensation - Statutory Limits.
Employers' Liability - Statutory Limits.

15.2.2. Other States' coverage and South Carolina endorsement.

15.3. Professional Liability Insurance (if available):

15.3.1. Limit of Liability: $2,000,000 per occurrence

15.4. Automobile Liability Insurance:

15.4.1. Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

15.4.2. Coverage: Owner, non-owned and hired vehicles.

15.5. All insurance provided for in this section shall be obtained under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the State of South Carolina. The County requires that Certificates of Insurance evidencing the existence of such insurance shall be submitted to the County at least ten (10) days before the Work is started. If the term of the Agreement coincides with the term of the selected firm's insurance coverage, a Certificate from the expiring policy will be accepted, but a Certificate evidencing renewed coverage of a new policy must be presented to the County no later than thirty (30) days after the effective date of the policy.

15.6. With the exception of the Automobile Insurance Policy, each policy and Certificate of Insurance shall contain an endorsement naming the County as additional insured party thereunder; and a provision that at least thirty (30) days prior written notice be given to the County in the event coverage is canceled or non-renewed or coverage is reduced.

15.7. If the Contractor desires to self insure any or all of the coverages listed in this section, it shall provide to the County documentation that such self insurance has received all the approvals required by law or regulations, as well as the most recent audited financial statement of the selected firm's insurance. Any coverage which is self insured shall provide the same coverage limits and benefits as the coverages listed in this section.

15.8. The County reserves the right to review categories and levels of insurance coverage held by the Contractor in an ongoing program of risk management. The selected firm will be notified, in writing, of coverage requirements as determined by this review and the Contractor agrees to secure such requested coverage.

15.9. If the Contractor fails to obtain or maintain the required insurance, the County shall have the right to treat such failure as a material breach of the Contract Documents and to exercise all appropriate rights and remedies.

15.10. The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate Certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in the Contract Documents.

15.11. Performance Bond and Payment Bond.

15.11.1. The County requires the Contractor to furnish a bond covering faithful performance of the Contract and a bond covering payment of all obligations arising thereunder in the full amount of the Contract Price, as specifically required in the Contract Documents and by state law, on the date of execution of the Contract.

15.11.2. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

16. Correction of Work.

16.1. Before or After Substantial Completion. The Contractor shall promptly correct Work failing to conform to the requirements of the Contract Documents, whether discovered before or after Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and expenses made necessary thereby, shall be at the Contractor's sole expense.

16.2. After Substantial Completion. If, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established hereunder, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the County to do so unless the County has previously given the Contractor a written acceptance of such condition. The County shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the County fails to notify the Contractor and give the Contractor an opportunity to make the correction, the County waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the County, the County may correct it at Contractor's sole cost.

16.3. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Completion by the period of time between Completion and the actual performance of the Work.

16.4. The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to the preceding paragraph.

16.5. The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

16.6. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 17.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

16.7 Acceptance of Nonconforming Work: If the County prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the County may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

17. Termination by the County for Cause.

17.1. The County may terminate the Contract if the Contractor:

(a) persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

(b) fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;

(c) persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

(d) otherwise is guilty of a material breach of a provision of the Contract Documents.

17.2. When any of the above reasons exist, the County, may without prejudice to any other rights or remedies of the County and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

(a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor,

(b) accept assignment of subcontracts; and

(c) finish the Work by whatever reasonable method the County may deem expedient. Upon request of the Contractor, the County shall furnish to the Contractor a detailed accounting of the costs incurred by the County in finishing the Work.

17.3. When the County terminates the Contract for one of the reasons stated in the preceding paragraph, the Contractor shall not be entitled to receive further payment until the Work is finished.

17.4. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, and other damages incurred by the County which have not been expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the County. This obligation of payment to the Contractor or County, as the case may be, shall survive termination of the Contract.

18. Suspension by the County for Convenience.

18.1. The County may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the County may determine.

18.2. The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption. No adjustment shall be made to the extent:

(a) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

(b) that an equitable adjustment is made or denied under another provision of the Contract.

19. Termination by the County for Convenience.

19.1. the County may, at any time, terminate the Contract for the County's convenience and without cause.

19.2. Upon receipt of written notice from the County of such termination for the County's convenience, the Contractor shall:

(a) cease operations as directed by the County in the notice;

(b) take actions necessary, or that the County may direct, for the protection and preservation of the Work; and

(c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

19.3. In case of such termination for the County's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

20. Parking Restrictions. Contractor warrants that it shall not allow its employees, agents, subcontractors or any other party affiliated with Contractor to park vehicles or equipment on any private property without first receiving consent to such activity from the owner of said property.

21. Side Jobs. Contractor warrants that, during the term of this Agreement, neither it nor any of its employees, agents, subcontractors or any other party affiliated with Contractor shall engage in the provision of any related services for any party other than the County on properties adjoining any of the roads on which Work is being performed hereunder.

22. Contractor Assurance of Good Standing. Contractor warrants that it is not in arrears to the County upon debt or contract and is not in default as surety, contractor or otherwise on any obligation to the County.

23. Status of Contractor as Independent Contractor. It is expressly agreed that Contractor's status hereunder is that of an independent contractor and is neither agent, employee, servant, partner, nor joint venturer of the County. Contractor is exclusively responsible for and in control of performance of Contractor's duties hereunder. Neither Contractor nor any person hired by Contractor shall be considered employees of the County for any purpose.

24. Limitations on Assignment of the Contract Documents. Contractor will not assign or transfer any interest in the Contract Documents without the prior written consent of the County, and any attempt to do any of the foregoing without such prior written consent shall be null, void, and of no effect. Any assignment or transfer of any interest in the Contract Documents will be subject to compliance with the provisions of the Contract Documents and will not alleviate any of Contractor's obligations in the Contract Documents.

25. Termination by the County for Non-Appropriation. The Contractor hereto agrees that payments due from the County, as required under the terms of the Contract Documents, if any, are contingent upon the availability of appropriated funds. In the case of non-appropriation of funds, the County may terminate the Contract Documents in whole or in part without further obligation to the Contractor.

26. Federal Excise and South Carolina Sales Tax. The County, as a political subdivision of the State of South Carolina, may be exempt from Federal Excise Taxes and South Carolina Sales Taxes. When applicable, net prices as shown in the proposal shall exclude such Federal and State Tax amounts.

27. No Liens. South Carolina law provides that no lien may be attached to public property.

28. Notice to Contractor and the County. Unless otherwise specifically provided in the Contract Documents or by law, any and all notices or other communications required or permitted by the Contract Documents or by law to be served on, given to, or delivered to any party to the Contract Documents will be in writing and will be deemed duly served, given, delivered and received when personally delivered (including confirmed overnight delivery service to the party to whom it is directed), or without personal delivery, when three (3) business days have elapsed following deposit of the notice or other communication in the United States mail, first-class postage prepaid, certified, return receipt requested, and:

If to County, addressed to:
Anderson County
101 S. Main Street
Anderson, SC 29624
Attn: Anderson County Administrator

If to Contractor, addressed to:
Mayer Construction Inc.
1523 Old Roberts Ch Rd.
Anderson, SC 29626
Attn: Russell Mayer

Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

29. Compliance with the Immigration Reform and Control Act. Neither the Contractor nor any of its subcontractors may knowingly obtain the labor or services of an alien not legally authorized to work in the United States. The Contractor or its subcontractors, and not the County, must verify eligibility for employment of its employees as required by the Immigration Reform and Control Act of 1986 ("IRCA"). The Contractor hereby specifically warrants and certifies that at all times during the performance of services hereunder, it and any of its subcontractors shall be in full compliance with the provisions of IRCA in the hiring of its employees, and the Contractor will indemnify, hold harmless and defend the County against any and all actions, proceedings, penalties or claims, including, but not limited to County's attorney's fees arising out of the Contractor's failure to comply strictly with IRCA. It is agreed that if the Contractor fails to strictly comply with the IRCA, the Contractor shall pay the County the sum of five thousand dollars ($5,000) per violation in liquidated damages.

30. Compliance with the Davis-Bacon Act. The Contractor acknowledges that all construction contracts exceeding $2,000 on Federal-aid participation jobs are subject to the provisions of the Davis-Bacon Act, 29 CFR, Parts 1, 3 and 5.

31. Undue Influence. Contractor agrees not to hire any County personnel who may exercise or has exercised discretion in the awarding, administration or continuance of the Contract Documents for one (1) year following the termination of the employee from County service.

32. Unavoidable Delay - Force Majeure. If either party shall be delayed or prevented from the performance of any act required by the Contract Documents by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act will be excused for the period of the delay; and the period for the performance of any such act will be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section will excuse Contractor from the prompt payment of any fee or other charge required of Contractor except as may be expressly provided elsewhere in the Contract Documents.

33. Compensation Terms and Conditions.

33.1 The Contractor shall be compensated for the Work as described above by payment of the Contract Sum. Contractor's travel, meals, lodging, parking or other expenses incidental to the performance of responsibilities under the Contract Documents shall be borne solely by the Contractor.

33.2 The County will not make payment on behalf of the Contractor to any fringe benefit program, or withhold any money from compensation for any federal, state or local tax program or for any other reason.

34. Severability of Terms of the Contract Documents. In the event any portion of the Contract Documents is declared invalid or unenforceable, the remaining portions of the Contract Documents shall remain in full force and effect.

35. No Waiver of Breach. No failure by either the County or Contractor to insist upon the strict performance by the other of any covenant, agreement, term or condition of the Contract Documents, or to exercise any right or remedy consequent upon a breach of any covenant, agreement, term or condition of the Contract Documents, shall constitute a waiver of any such

breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter the Contract Documents, but each and every covenant, condition, agreement and term of the Contract Documents shall continue in full force and effect with respect to any other then existing or subsequent breach.

36. Waivers and Amendments to the Contract Documents. No modification, waiver, amendment, discharge or change of the Contract Documents will be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

37. Captions. Captions in the Contract Documents are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of the Contract Documents or any of the terms of the Contract Documents.

38. Applicable Law to the Contract Documents. The Contract Documents shall at all times be construed and interpreted in accordance with the laws of the State of South Carolina, without regard to conflict of law principles.

IN WITNESS WHEREOF, the parties have executed these General Conditions as of the date first written above.

COUNTY

In the presence of:

Kimberly A. Parker
Robert E. Carroll
As to County

By: _____
Name: Rusty Burns
Its: County Administrator

CONTRACTOR

Moats Construction, Inc.

Lane B. King
Secretary
As to Contractor

By: _____
Name: Russell T. Moats
Its: Principle

MEDIATED SETTLEMENT AGREEMENT
SUBJECT TO ANDERSON COUNTY COUNCIL APPROVAL

Settlement reached this 29th day of March 2018, by and between Moats Construction Company and Anderson County regarding the East West Park Project as follows:

1. That the contract sum to date is $324,761.28.

2. Moats has been paid the lump sum of $248,003.23 to date.

3. Moats is entitled to an additional $15,000.00 for additional changes in the work and will submit backup for the $15,000.00 and a Change Order for $15,000.00 will be issued by Anderson County before the start date.

4. Moats shall be entitled to an additional $50,000.00 for delay damages.

5. Moats will remobilize on the project on the start date (not before 4/17/18) set forth in the Notice to Proceed issued by Anderson County and the work shall be complete within 30 calendar days of the start date subject to weather or unforeseen conditions.

6. Moats shall be paid a lump sum of $26,155.89 on or before the start date set forth in the Notice to Proceed

7. Moats shall submit as-built drawings and comply with any other contractual requirements for final payment of the remaining monies due under the contract.

8. The water line installed by Moats is warranted by Moats and its surety bond as set forth in the contract documents and Moats and or its surety agrees to make any repairs to the water line after notice to Moats.

9. Moats' work shall comply with ADA requirements provided that the design drawings issued to Moats complied with ADA requirements.

10. All other terms and conditions of the contract remain in place.

11. The above agreement is subject to Anderson County Council approval at their April 17, 2018 council meeting, or earlier, and the undersigned Anderson County Attorney, Leon Harmon, agrees to recommend this proposed settlement to Anderson County Council.

12. The parties agree on specification submittals as set forth in Exhibit A attached hereto and incorporated herein by reference.

FLP

13. The parties further agrees that subject to Anderson County Council's approval of the East West Park Project, Anderson County and Moats Construction Company agree on the following settlement terms on the Toxaway Project.

a. Anderson County will rescind its termination letter.
b. Anderson County will reinstate Moats contract less the $59,000.00 previously paid.
c. Moats will remobilize on the project on or after June 1, 2018 as directed by the Notice to Proceed issued by Anderson County.
d. A Change Order will be issued to implement and comply with a stormwater permit.
e. Anderson County will issue a change order for an abatement permit and abatement pursuant to the original bid.
f. The termination for convenience clause will be deleted from said contract.
g. Moats compensation under said contract shall be limited to the balance remaining in the contract subject to written change orders issued in accordance with the contract documents.
h. No work will proceed without air monitoring being in effect.
i. All other terms and conditions of said contract shall remain in place.

14. The parties are responsible for their own costs expenses and attorneys' fees related to these projects and disputes.

Moats Construction Company

BY: _____

ITS: Principle

_____

Moats' Attorney

_____

Leon C. Harmon
Anderson County Attorney

East West Parkway Phase 1 and 2 Submittals

Section	Spec	Submittal	Received
12 93 00 (02870)	Site Furnishings	Specification Drawing: Detail drawing of product including overall dimensions and options	no X TRASH CAN ✓ OK
		Samples: Various component samples available upon request	no
		Qualifications: Installer must submit evidence of a successful installation history with comparable materials and designs specified	no
31 20 00	Earth Moving	Test Reports: submit the following reports directly to the Owner form the testing services with copy to contractor: 1. Graduation test reports on borrowed material. 2. Field reports; in-place soil density tests. 3. One optimum moisture-maximum density curve for each type of soil compacted	OWNER TO TEST. no
		The Contractor shall submit samples of all materials from off-site sources to the testing laboratory at least ten (10) calendar days prior to use in the work. The Contractor shall not deliver or use any material for off-site sources until written approval is received from the Engineer based upon test results showing compliance with these specifications.	NO OFF SITE no
		On-site excavated material, including fill and topsoil, if available, may be submitted for testing.	no
32 12 00	Flexible Paving	In accordance with the General Requirements, submit samples, materials certifications, manufacturer's product data and test reports as hereinafter required: 1. Bituminous concrete design mix 2. Manufacture data on pavement marking paint 3. Sieve analysis on subbase and base material	✓ OK no
32 16 00	Curbs, Gutters, Sidewalks, and Driveways	In accordance with the General Requirements, submit samples, materials certifications, manufacturer's product data and test reports as hereinafter required: 1. Submit concrete design mix	Submit LOAD Tickets OK no
32 80 00	Irrigation	Shop drawings for water supply assembly including backflow preventer and booster pump if needed	no RELEASED, Submitted

EXHIBIT "A" (1)

Anderson County 001128

		Contractor to provide three (3) sets of drawings and specifications which depict system design, distribution piping, valves, and coverage	yes ✓	OK
		Maintenance and Operating Instructions: The Contractor shall furnish the owner a written and detailed description for the care and maintenance of the irrigation system. Such instructions shall include, but not be limited to, specific instructions for the operation of controller clock, periodic inspection of double check valve, draining of the main line, etc., for winterizing, and periodic inspection of heads and spray patterns. The Contractor shall also furnish the Owner with a set of reproducible "As-Built" drawings, which show precise locations of piping, wiring, heads, and valves. Such instructions and "As-Built" drawings shall accompany the Contractor's request for final review for establishing a date of acceptance of irrigation system and shall be subject to Engineer's review and approval	no ✓	OK
		Substitutions: Substitutions will be permitted only upon proof that the specified material or product is not obtainable. Present alternate material or product having the same and equivalent characteristics to the Engineer for approval with an equitable adjustment of contract sum.	no	
32 92 00	Landscape Work	Material Samples: Submit to Owner's Representative, three 1-gallon sized zip lock plastic bags full of each of the following: 1. Mulch (except lawn mulch) 2. Topsoil	no ✓	OK
33 40 00	Storm Drainage	In accordance with the General Requirements, submit samples, materials certifications, manufacturer's product data and test reports as hereinafter required	RCP ✓ no	OK
		Product data for drainage pipe, gasket material, and any of the miscellaneous drainage items	no ✓	OK
		Shop drawings for concrete storm drainage manholes, sediment chambers, and drainage basins including frames, covers, grates, and underground detention structures	no NA	

EXHIBIT A (2)

Anderson County 001129

R-001146

5

ANDERSON COUNTY
SOUTH CAROLINA

June 21, 2017

Tommy Dunn
Chairman
Council District 5

Ray Graham
Vice Chairman
Council District 3

Craig Wooten
Council District 1

Gracie S. Floyd
Council District 2

Thomas F. Allen
Council District 4

Ken Waters
Council District 6

M. Cindy Wilson
Council District 7

Kimberly A. Poulin
Clerk to Council

Rusty Burns
County Administrator

Mr. Russell Moats
Moats Construction, LLC
1523 Old Roberts Church Road
Anderson, SC 29626

RE: Toxaway Mill Site
Clean up & Remediation Contract
With Anderson County

Dear Mr. Moats:

As you are aware, you were directed to stop work on the referenced project on June 19, 2017. Work was proceeding on the project beyond removal of brush on less than one (1) acre in the absence of an asbestos permit from DHEC and a stormwater permit. The directive to stop work was issued immediately upon the County learning the extent of these circumstances.

It is the County's position that work without appropriate permits constitutes a material breach of contract as per Section IV.1.b of the agreement between the County and Moats Construction, LLC. Therefore, the County is hereby terminating the Contract.

The County is willing to discuss with you payment of work performed as of the time of issuance of the stop work directive. Please contact me if you wish to engage in such discussions.

Sincerely yours,

Rusty Burns

Post Office Box 8002
Anderson, SC 29622-8002
www.andersoncountysc.org

SECTION IV

AGREEMENT FOR TOXAWAY MILL CLEANUP AND REMEDIATION

THIS AGREEMENT FOR TOXAWAY MILL CLEANUP AND REMEDIATION (the "Agreement") has been made and entered into this 7th day of June, 2017, by and between Anderson County, South Carolina (the "County"), and Moats Construction, LLC ("Contractor").

WHEREAS, the County desires to allow Contractor, a legal entity properly licensed and registered under the laws of the State of South Carolina, to provide services for certain County property known as the Toxaway Mill located at the corner of East Whitner and Gossett Streets and,

WHEREAS, the Contractor desires to provide such services:

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Performance by Contractor.**

   a. The Contractor shall fully perform and execute all of the work necessary to complete this project for the County, as outlined in the Bid Package and in accordance with the specifications attached hereto as **Exhibit A** (the "Specifications") and incorporated herein by reference (collectively the "Work").

   b. The Contractor shall perform all work in accordance with federal, state, and local laws and regulations regarding the abatement of asbestos and the removal of materials containing asbestos including, but not limited to, 40 CFR Parts 61.145 and 61.150 and S.C. Code Regs. 61-86.1.

   c. The Contractor represents that it has investigated the conditions for the Work prior to submitting its bid and any delays or damages caused by adverse conditions which were capable of being identified prior to the submission of Contractor's bid, shall be at the sole risk of Contractor.

2. **Commencement and Completion of Work.**

   a. The Work shall commence not longer than seven (7) days from mailing of a Notice to Proceed from the County to the Contractor.

   b. All of the services to be provided by the Contractor hereunder shall be performed and completed on or before June 30th, 2017 (the "Completion Date").

   c. In the event the Contractor is unable to complete all of the Work by the Completion Date, the Contractor shall pay to the County as liquidated damages and not as a penalty, the sum of Three Hundred Dollars ($300.00) per day commencing the day after the Completion Date, until all Work is completed to the satisfaction of the County. Such damages shall be deducted from any payments due or to become due to the Contractor.

3. **Payment by County.**

a. For the Work, the County shall pay the Contractor the contract sum of $ 223,000.00 Dollars (the "Contract Sum") for the Service required by the Contract Documents, subject to adjustment as provided in the General Conditions defined below.

4. **General Conditions.**

This Agreement shall be subject to and governed by the General Conditions attached hereto as **Exhibit B** and incorporated herein by reference (the "General Conditions"). The General Conditions, together with the Specifications, the Bid Package, and this Agreement, together with all exhibits, shall collectively constitute the "Contract Documents."

5. **Inspection and Monitoring.**

a. The County shall have the right to inspect the Work to evaluate the Contractor's compliance with the Contract Documents for the County's sole benefit, and said right to inspection shall not make the County responsible for the compliance of the Contractor with the terms of the Contract Documents.

b. In accordance with Section VII of S.C. Code Regs. 61-86.1 and South Carolina Department of Health and Environmental Control ("SCDHEC") regulations, the County, or its agent, will provide independent air sampling for the asbestos abatement.

6. **Bonds and Certificates of Insurance.**

The Contractor shall execute and present to the County a performance bond in an amount of one hundred percent (100%) of the amount of the total Contract Sum, as required by state law, at the time of execution of this Agreement. The Contractor shall also furnish a separate faithful performance bond in the amount of one hundred percent (100%) of the total Contract Sum as well as a separate payment (labor and material) bond in an amount not less than one hundred percent (100%) of the Contract Sum, and certificates of insurance (as stated in the General Conditions) at the time of execution of this Agreement.

7. **Authority to Act.**

If Contractor is a corporation or limited liability company, the undersigned hereby represents and warrants that the said entity is duly formed and registered and in good standing in the State of South Carolina and that _____, whose title is _____, is authorized to act for and bind the entity to the Contract Documents.

IN WITNESS OF THIS AGREEMENT, Contractor and the County have caused their names to be subscribed and their seals to be affixed as to the day and year first above written.

ANDERSON COUNTY, SOUTH CAROLINA

By: _____

Print Name: _____

Title: _____

CONTRACTOR

_____

(Name of Corporation or Entity)

By: _____

Print Name: _____

Title: _____

EXHIBIT A

SPECIFICATIONS

1. SCHEDULE

The Company shall complete the work pursuant to the Contract Documents by June 30th, 2017.

2. SOURCE OF FUNDS

The County has no more than $260,000 available for the activities specified in the Scope of Work outlined below. No additional funds are available, nor shall the County have any obligation to pursue or obtain other funding sources for the Work. The Company shall complete the work as allowed by the budget established by the available funding without further liability or obligation on the part of the County.

3. SCOPE OF WORK

All work shall be in accordance with Anderson County's Voluntary Cleanup Contract VCC #06-5687-NRP (Addendum B).

The scope of work will include coordination with Cardno, County staff, and DHEC staff to remediate all remaining debris on site, a map and description of which can be found in the Toxaway Mill Remaining Debris Pile Survey (Addendum C); in addition to capping of the site in accordance with the Toxaway Mill Corrective Measures Plan from November 2009 (Addendum D).

During previous cleanup activities on the site, visible asbestos containing materials (ACM's) were observed and removed. A good faith effort was made by the County at the time to remove all ACM's; however, there is a possibility that additional ACM's remain on site within the debris piles. The Company should be alert to the possibility of additional ACM's on-site, and should be ready to take appropriate steps with Cardno's guidance if suspected asbestos is located.

Bids should include detailed costs associated with the scope of work.

At least one appropriately trained Cardno employee or County employee may be on site at any time during the field work portion of the project. Cardno and County staff shall be allowed access to all aspects of the company's operations on site, and will thoroughly observe and document the types of materials that are removed from the mill site using field notes and photographs and will collect all landfill tickets from the transportation contractor to document the type and quantity of debris removed and disposed. In no event shall on-site observation and documentation by Cardno or the County relieve the Company of its sole and exclusive responsibility and liability for properly removing and disposing of all material in accordance with all applicable laws and regulations.

The Company will be responsible for providing adequate power and water for the project.

EXHIBIT B

GENERAL CONDITIONS

1. County's Right to Stop the Work. If the Company fails to correct Work which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the County may issue a written order to the Company to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the County to stop the Work shall not give rise to a duty on the part of the County to exercise this right for the benefit of the Company or any other person or entity.

2. County's Right to Carry Out the Work. If the Company defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the County to commence and continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to other remedies the County may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Company the reasonable cost of correcting such deficiencies, including County's expenses and compensation for the additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Company are not sufficient to cover such amounts, the Company shall pay the difference to the County.

3. Supervision. The Company shall supervise and direct the Work, using the Company's best skill and attention. The Company shall be solely responsible for and have control over the Work, means, methods, techniques, equipment, sequences, and procedures and for coordinating all portions of the Work, pursuant to the specifications and the Contract Documents. The Company shall be responsible to the County for acts and omissions of the Company's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Company or any of its subcontractors.

4. Labor and Materials.

4.1. The Company shall provide and pay for all labor, materials and equipment necessary for proper execution and completion of the Work.

4.2. The Company shall enforce strict discipline and good order among the Company's employees and other persons carrying out the Work. The Company shall not permit employment of persons not properly licensed to perform the work assigned, unfit persons, or persons not skilled in tasks assigned to them.

5. Warranty. The Company warrants to the County that services furnished and Work performed under the Contract Documents will be of good quality, consistent with industry standards, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

6. Company Assurance of Good Standing. Company warrants that it is not in arrears to the County upon debt or contract and is not in default as surety, contractor or otherwise on any obligation to the County.

7. Taxes. The Company shall pay all sales, consumer, use and similar taxes for the Work provided by the Company.

8. Permits, Fees and Notices.

8.1. Unless otherwise provided in the Contract Documents, the Company shall secure and pay for any permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract Documents and which are legally required when Proposals are received or negotiations concluded.

8.2. The Company shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

8.3. If the Company performs Work knowing it to be contrary to laws, statutes, ordinances, and/or rules and regulations, the Company shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

9. Limitation on Liability, Release, and Indemnification.

9.1. The Company hereby releases the County from any claim or liability for damages that the Company may have arising out of the Contract Documents for property damage, injury or death.

9.2. The Company will hold the County harmless and indemnify the County, its agents, officers, County Council members, and employees from and against any and all claims, actions or causes of action and for any and all damages, liabilities, claims, penalties, expenses and costs, including, but not limited to, attorney's and other professional fees, arising out of the Contract Documents or the performance of the services described or referred to in the Contract Documents, specifically including, without limitation, the Work, but only to the extent caused by the negligent or intentional acts or omissions of the Company, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation will not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person.

9.3. Company shall assume all risks and responsibilities for losses of every description in connection with the service that can be attributed either directly or indirectly to the Company.

9.4. All indemnification and release provisions in favor of the County shall survive the expiration or sooner termination of the Contract Documents.

10. Status of Company as Independent Contractor. It is expressly agreed that Company's status hereunder is that of an independent contractor and is neither agent, employee, servant, partner, nor joint venturer of the County. Company is exclusively responsible for and in control of performance of Company's duties hereunder. Neither Company nor any person hired by Company shall be considered employees of the County for any purpose.

11. Subcontractual Relations.

11.1. Company will not subcontract work or services under the Contract Documents without the prior written consent of the County, and any such subcontract without consent of the County shall be null and void.

11.2. If Company proposes to subcontract any of work or services under the Contract Documents, the Company will submit to the County the name of each proposed Subcontractor along with the proposed scope of work which its Subcontractor is to undertake. The County has the right to reject access to any Subcontractor which the County considers unable or unsuitable to satisfactorily perform its duties.

11.3. Company agrees it shall be as fully responsible to the County for any act or omission of the Company's Subcontractors, their agents, representatives, and persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Company. Neither this provision, the County's authorization of Company's agreement with Subcontractor, County's inspection of a Subcontractor's facilities or work, or any other action taken by the County in relation to a Subcontractor shall create any contractual relationship between any Subcontractor and the County.

11.4. By appropriate agreement, written where legally required for validity, the Company shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Company by terms of the Contract Documents, and to assume toward the Company all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Company, by these Documents, assumes toward the County. Each subcontract agreement shall preserve and protect the rights of the County with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Company shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Company shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents.

12. Contingent Assignment of Subcontracts. Each subcontract agreement for a portion of the Work is assigned by the Company to the County provided that: (a) assignment is effective only after termination of the Contract Documents by the County for cause and only for those subcontract agreements which the County accepts by notifying the Subcontractor and Company in writing; and, (b) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract Documents.

13. Limitations on Assignment of the Contract Documents. Company will not assign or transfer any interest in the Contract Documents without the prior written consent of the County, and any attempt to do any of the foregoing without such prior written consent shall be null, void, and of no effect. Any assignment or transfer of any interest in the Contract Documents will be subject to compliance with the provisions of the Contract Documents and will not alleviate any of Company's obligations in the Contract Documents.

14. Termination by the County for Cause.

14.1. If the Company persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or is guilty of any other material breach of a provision of the Contract Documents, the County may, without prejudice to any other rights or remedies of the County, provide written notice of termination of the Contract Documents and subsequently terminate the Contract Documents seven (7) days after said written notice and may accept assignment of subcontracts as provided herein; or finish the Work by whatever reasonable method the County may deem expedient. Upon request of the Company, the County shall furnish to the Company a detailed accounting of the costs incurred by the County in finishing the Work.

14.2. When the County terminates the Contract Documents for one of the reasons stated in the preceding paragraphs, the Company shall not be entitled to receive further payment until the Work is completed.

14.3. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, and other damages incurred by the County which have not been expressly waived, such excess shall be paid to the Company as set forth in the Agreement. If such costs and damages exceed the unpaid balance, the Company shall pay the difference to the County. This obligation of payment to the Company or County, as the case may be, shall survive termination of the Contract Documents.

15. Suspension by the County for Convenience. The County may, without cause, order the Company in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the County may determine.

16. Termination by the County for Non-Appropriation. The Company hereto agrees that payments due from the County, as required under the terms of the Contract Documents, if any, are contingent upon the availability of appropriated funds. In the case of non-appropriation of funds, the County may terminate the Contract Documents in whole or in part without further obligation to the Company.

17. Termination by the County for Convenience.

17.1. The County may, at any time, terminate the Contract Documents for the County's convenience and without cause.

17.2. Upon receipt of written notice from the County of such termination for the County's convenience, the Company shall:

17.2.1. cease operations as directed by the County in the notice;

17.2.2. take actions necessary, or that the County may direct, for the protection and preservation of the Work; and

17.2.3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

17.3. In case of such termination for the County's convenience, the Company shall be entitled to receive payment for Work executed, and costs incurred without further liability on the part of the County.

18. Changes in the Work

18.1. General

18.1.1. Changes in the Work may be accomplished after execution of the Contract Documents, and without invalidating the Contract Documents, by Change Order only in the form attached hereto as **Addendum A**, and incorporated herein by reference.

18.1.2. A Change Order shall be based upon agreement among the County and Company.

18.1.3. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Company shall proceed promptly, unless otherwise provided in the Change Order.

18.2. Change Orders. A Change Order is a written instrument (*see Addendum A*) prepared by the County and signed by the authorized County official (Central Services Division Director) and Company stating their agreement upon all of the following:

18.2.1. change in the work;

18.2.2. the amount of the adjustment, if any, in the Contract Sum; and

18.2.3. the extent of the adjustment, if any, in the Contract Time.

18.3. Minor Changes in the Work. The Contracting Officer for the County shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Completion Date and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the County and Company. The Company shall carry out such written orders promptly.

19. Insurance. The Company shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services rendered under the Contract Documents,

insurance in the types and limits specified below. In addition to the insurance coverage and limits listed herein, the Company shall obtain any other insurance coverage as may be required by law.

19.1. General Liability Insurance:

19.1.1. Limits of Liability: $1,000,000 in the aggregate and per occurrence.

19.1.2. Coverage: Premise operations, blanket contractual liability, personal injury liability (employee exclusion deleted), products and completed operations, independent contractors, employees and volunteers as additional insureds, joint liability, and broad form property damage (including completed operations).

19.1.3. Pollution Endorsement: Said policy shall have a pollution endorsement against claims or claim expenses arising from the Work.

19.2. Workers' Compensation and Employers' Liability Insurance:

19.2.1. Limits of Liability: Workers' Compensation - Statutory Limits.
Employers' Liability - Statutory Limits.

19.2.2. Other States' coverage and South Carolina endorsement.

19.3. Professional Liability Insurance:

19.3.1. Limit of Liability: $2,000,000 per occurrence

19.4. Automobile Liability Insurance:

19.4.1. Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

19.4.2. Coverage: Owner, non-owned and hired vehicles.

19.5. All insurance provided for in this section shall be obtained under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the State of South Carolina. The County requires that Certificates of Insurance evidencing the existence of such insurance shall be submitted to the County at least ten (10) days before the Work is started. If the term of the Agreement coincides with the term of the selected firm's insurance coverage, a Certificate from the expiring policy will be accepted, but a Certificate evidencing renewed coverage of a new policy must be presented to the County no later than thirty (30) days after the effective date of the policy.

19.6. With the exception of the Automobile Insurance Policy, each policy and Certificate of Insurance shall contain an endorsement naming the County as additional insured party thereunder; and a provision that at least thirty (30) days prior written notice be given to the County in the event coverage is canceled or non-renewed or coverage is reduced.

19.7. If the Company desires to self insure any or all of the coverages listed in this section, it shall provide to the County documentation that such self insurance has received all the approvals required by law or regulations, as well as the most recent audited financial statement of the selected firm's insurance. Any coverage which is self insured shall provide the same coverage limits and benefits as the coverages listed in this section.

19.8. The County reserves the right to review categories and levels of insurance coverage held by the Company in an ongoing program of risk management. The selected firm will be notified, in writing, of coverage requirements as determined by this review and the Company agrees to secure such requested coverage.

19.9. If the Company fails to obtain or maintain the required insurance, the County shall have the right to treat such failure as a material breach of the Contract Documents and to exercise all appropriate rights and remedies.

19.10. The Company shall include all subcontractors as insureds under its policies or shall furnish separate Certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in the Contract Documents.

20. No Waiver of Breach. No failure by either the County or Company to insist upon the strict performance by the other of any covenant, agreement, term or condition of the Contract Documents, or to exercise any right or remedy consequent upon a breach of any covenant, agreement, term or condition of the Contract Documents, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter the Contract Documents, but each and every covenant, condition, agreement and term of the Contract Documents shall continue in full force and effect with respect to any other then existing or subsequent breach.

21. Waivers and Amendments to the Contract Documents. No modification, waiver, amendment, discharge or change of the Contract Documents will be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

22. Mediation.

22.1. If the parties are unable to resolve any claims between them, the parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Commercial Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party.

22.2. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Anderson, South Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

23. Federal Excise and South Carolina Sales Tax. The County, as a political subdivision of the State of South Carolina, may be exempt from Federal Excise Taxes and South Carolina Sales Taxes.

When applicable, net prices as shown in the proposal shall exclude such Federal and State Tax amounts.

24. No Liens. South Carolina law provides that no lien may be attached to public property.

25. Notice to Company and the County. Unless otherwise specifically provided in the Contract Documents or by law, any and all notices or other communications required or permitted by the Contract Documents or by law to be served on, given to, or delivered to any party to the Contract Documents will be in writing and will be deemed duly served, given, delivered and received when personally delivered (including confirmed overnight delivery service to the party to whom it is directed), or without personal delivery, when three (3) business days have elapsed following deposit of the notice or other communication in the United States mail, first-class postage prepaid, certified, return receipt requested, and:

If to County, addressed to:

Anderson County
101 S. Main Street
Anderson, SC 29624
Attn: Central Services Division Director

If to Company, addressed to:

_____
_____
_____
Attn: _____

Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

26. Compliance with the Davis-Bacon Act. The Company acknowledges that all construction contracts exceeding Two Thousand Dollars ($2,000.00) on Federal-aid participation jobs are subject to the provisions of the Davis-Bacon Act, 29 CFR, Parts 1,3 and 5.

27. Compliance with Federal and State Immigration Laws. Neither the Company nor any of its subcontractors may knowingly obtain the labor or services of an alien not legally authorized to work in the United States. The Company or its subcontractors, and not the County, must verify eligibility for employment of its employees as required by the Immigration Reform and Control Act of 1986 ("IRCA") and South Carolina Code Section 8-14-10 *et seq*. The Company herby specifically warrants and certifies that at all times during the performance of services hereunder, it and any of its subcontractors shall be in full compliance with the provisions of IRCA and South Carolina Code Section 8-14-10 *et seq*. in the hiring of its employees, and, further, the Company agrees to provide the County upon request with documentation sufficient to establish the Company's compliance with South Carolina Code Section 8-14-10 *et seq*. or the Company's exemption therefrom (if applicable). The Company will indemnify, hold harmless and defend the County against any and all actions, proceedings, penalties or claims, including, but not limited to County's attorney's fees arising out of the Company's failure to comply strictly with IRCA or South Carolina Code Section 8-14-10 *et seq*. It is agreed that if the Company fails to strictly comply with the IRCA or South Carolina Code Section 8-14-10 *et seq*., the Company shall pay the County the sum of Five Thousand Dollars ($5,000) per violation in liquidated damages.

28. Undue Influence. Company agrees not to hire any County personnel who may exercise or has exercised discretion in the awarding, administration or continuance of the Contract Documents for one (1) year following the termination of the employee from County service.

29. Unavoidable Delay - Force Majeure. If either party shall be delayed or prevented from the performance of any act required by the Contract Documents by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act will be excused for the period of the delay; and the period for the performance of any such act will be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section will excuse Company from the prompt payment of any fee or other charge required of Company except as may be expressly provided elsewhere in the Contract Documents.

30. Compensation Terms and Conditions.

30.1. The Company shall be compensated for the Work as described above by payment of the Contract Sum. Company's travel, meals, lodging, parking or other expenses incidental to the performance of responsibilities under the Contract Documents shall be borne solely by the Company.

30.2. The County will not make payment on behalf of the Company to any fringe benefit program, or withhold any money from compensation for any federal, state or local tax program or for any other reason.

31. Severability of Terms of the Contract Documents. In the event any portion of the Contract Documents is declared invalid or unenforceable, the remaining portions of the Contract Documents shall remain in full force and effect.

32. Captions. Captions in the Contract Documents are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of the Contract Documents or any of the terms of the Contract Documents.

33. Applicable Law to the Contract Documents and Venue. The Contract Documents shall at all times be construed and interpreted in accordance with the laws of the State of South Carolina, without regard to conflict of law principles. Subject to the mediation provision in Paragraph 22 above, any legal proceedings between the parties shall be brought exclusively in the Anderson County, South Carolina Court of Common Pleas.

IN WITNESS WHEREOF, the parties have executed these General Conditions as of the date first written above.

ANDERSON COUNTY, SOUTH CAROLINA

By: _____
Print Name: _____
Title: _____

COMPANY

_____
(Name of Corporation or Entity)

By: _____
Print Name: _____
Title: _____

Moats 00015

ADDENDUM A

CHANGE ORDER NO:_____

Project:_____

TO: _____

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: _____

_____

COST (This cost shall not be exceeded): _____

Original contract price: $_____

Change Order amount: $_____

New contract price: $_____

TIME FOR COMPLETION: _____

Original completion date: _____

Time for completion of Change Order: _____

New completion date: _____

Company agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Contract Documents. The adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Company arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Company accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

COMPANY

_____

(Name of Corporation or Entity)

By: _____

Print Name:_____

Title: _____

Date: _____

ANDERSON COUNTY

By: _____

Print Name: _____

Title: County Administrator

Date: _____

East West Park Project

Change Orders	Date	Purpose
1 $ 1,500.00	November 14, 2016	Underbrush/Mow Adjacent Row
2 $ 99,734.88	November 18, 2016	ALT
3 $ 7,928.10	January 25, 2017	Concrete Parking
4 $ 22,074.55	March 23. 2017	Accessible route improvements to East West Connector playground and picnic area
5 $ 3,067.00	April 3, 2017	Remove Forms regrade and reform
6 $ 30,852.00	May 26, 2017	Design changes
7 Additional time	July 24, 2017	Weather Related delays
8 Additional time	August 7, 2017	Conflict with PNG Natural gas
9 $ 198,232.00	August 7, 2017	Lower parking lot unsuitable soils
10 Additional time		Additional time related to PNG gas line
11 $ 3,750.00	October 5, 2017	Traffic Control to complete concrete walks, additional survey staking at walk $1,500.00, regrading, reforming walk to East-West

ADDENDUM D

ANDERSON COUNTY

CHANGE ORDER NO: 001

Project: EAST WEST PARKWAY PARK

TO: M.A.S Const.

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: UNDERBRUSH / MOW ADJACENT ROW.

COST (This cost shall not be exceeded): 1500

Original contract price: $ 159,604.74

Change Order amount: $ 1,500

New contract price: $ 161,104.74

TIME FOR COMPLETION: N/A

Original completion date:

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Agreement and Project documents. This adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR

By:

Print Name: Russell T. Vickers

Its: Principle

Date: 11/14/16

ANDERSON COUNTY

By:

Print Name: Rusty Burns

Its: County Administrator

Date: 11/16/16

ADDENDUM D

ANDERSON COUNTY

CHANGE ORDER NO: 002

Project: EAST & WEST PARKWAY

TO: MOATS CONST.

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: ALT (3, 4, 5, 6) 86,095.88(3) 3,570.00(4) 6,769.00(5) 3,300(6) [TOTAL 99,734.88]

COST (This cost shall not be exceeded): 99,734.88

Original contract price: $ 159,604.75

Change Order amount: $ 99,734.88

New contract price: $ 260,839.63 (INCLUDES C.O. 001 [1500])

TIME FOR COMPLETION: February 28, 2017

Original completion date: DEC. 15, 2016

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Agreement and Project documents. This adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR

By: [signature]

Print Name: Russell T. Watts

Its: Principle

Date: 11/18/2016

ANDERSON COUNTY

By: [signature]

Print Name: Rusty Burns

Its: County Administrator

Date: 11/21/16

ADDENDUM D

ANDERSON COUNTY

CHANGE ORDER NO: 003

Project: EAST & WEST PARKWAY PARK

TO: MOATS CONST

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: SEE ATTACHED EXCEL (FIRST COLUMN & IN ORANGE) 10 ITEMS RELATED TO CONCRETE PARKING

COST (This cost shall not be exceeded): $7,928.10

Original contract price: $ 159,604.75

Change Order amount: $ 7,928.10

New contract price: $ 268,767.73 (INCLUDES 001 & 002)

TIME FOR COMPLETION: ADD 28 + MARCH 28

Original completion date: DEC 15, 2016

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Agreement and Project documents. This adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR

By: _____

Print Name: Paul D. Holcher

Its: Superintendent MOATS Construction

Date: _____

ANDERSON COUNTY

By: _____

Print Name: RUSTY BURNS

Its: County Administrator

Date: JAN 25, 2017

ADDENDUM D

ANDERSON COUNTY

CHANGE ORDER NO: 004

Project: East West Parkway Park

TO: Moats Const.

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: Accessible route improvements to Eastwest connector playground & Picnic area. DOT Bike lane and stormwater runoff improvements

COST (This cost shall not be exceeded): 22,074.55

Original contract price: $ 159,604.25

Change Order amount: $ 22,074.55

New contract price: $ 290,842.28 (includes 001, 002 & 003)

TIME FOR COMPLETION: March 28, 2017

Original completion date: Dec 15, 2016

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Agreement and Project documents. This adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR

By: [signature]

Print Name: RUSSELL T. MOATS

Its: Principle

Date: March 22, 2017

ANDERSON COUNTY

By: [signature]

Print Name: Rusty Burns

Its: County Administrator

Date: March 23, 2017

ADDENDUM B

ANDERSON COUNTY

CHANGE ORDER NO: 5

Project: EAST WEST PARKWAY

TO: MOATS CONST.

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: WALK $2,022.00 (1), PICNIC AREA $35.00 (2), REMOVE FORMS REPAIR & REPAIR $450.00, ADDITIONAL SHRUBS $560.00 TOTAL $3,067

COST (This cost shall not be exceeded): $ 3,872.00 +75 WEATHER/DESIGN/DAYS

Original contract price: $ 159,604.75

Change Order amount: $ 3,067.00

New contract price: $ 293,909.28

TIME FOR COMPLETION: => JUNE 4, 2017

Original completion date: DECEMBER 15, 2016

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Agreement and Project documents. This adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR

By: [signature]

Print Name: RUSSELL T. MOATS

Its: PRINCIPLE

Date: 03-29-2017

ANDERSON COUNTY

By: [signature]

Print Name: Rusty Burns

Its: County Administrator

Date: 4/3/17

ADDENDUM B

ANDERSON COUNTY

CHANGE ORDER NO: 6

Project: EAST WEST PARK PROJECT

TO: MOATS CONSTRUCTION

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: Design changes

COST (This cost shall not be exceeded): #30,852.00

Original contract price: $ 159,604.75

Change Order amount: $ 30,852.00

New contract price: $ 324,761.28 (INCLUDES C.O.#'S 001,002,3,4+5)

TIME FOR COMPLETION: July 6, 2017

Original completion date: DEC. 15, 2016

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Agreement and Project documents. This adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR

By:

Print Name: RUSSELL T. MOATS

Its: Principle

Date: MAY 25, 2017

ANDERSON COUNTY

By:

Print Name: Rusty Burns

Its: County Administrator

Date: 5/26/17

ADDENDUM B

ANDERSON COUNTY

CHANGE ORDER NO: 07

Project: EAST WEST PARK PROJECT

TO: MOATS CONSTRUCTION

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: WEATHER RELATED DAYS

CONTRACT TIME EXTENTION (23 RAIN DAYS) Significant Precip + Wet Site

COST (This cost shall not be exceeded): — 0 —

Original contract price: $ 154,604.75 TO $324,761.28

Change Order amount: $ — 0 —

New contract price: $ $324,761.28

TIME FOR COMPLETION: July 29, 2017

Original completion date: Dec. 15, 2016

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Agreement and Project documents. This adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR

By: [signature] for MOATS CONSTRUCTION

Print Name: RUSSELL T. MOATS

Its: Principle

Date: July 07, 2017

ANDERSON COUNTY

By: [signature]

Print Name: Rusty Burns

Its: County Administrator

Date: 7/24/17

ADDENDUM B

ANDERSON COUNTY

CHANGE ORDER NO: 08

Project: EAST WEST PARK PROJECT

TO: MOATS CONSTRUCTION, INC.

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: Additional time due to conflict with PNG Natural Gas Main - Contract Time Extention (30 DAYS)

COST (This cost shall not be exceeded): - 0 -

Original contract price: $ 159,404.75

Change Order amount: $ -0-

New contract price: $ 324,761.28 Includes CO(s) # 1-7

TIME FOR COMPLETION. Sept. 10, 2017

Original completion date: Dec. 15, 2016

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Agreement and Project documents. This adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR

By: for MOATS CONSTRUCTION, INC.

Print Name: RUSSELL T. MOATS

Its: Principle

Date: August 07, 2017

ANDERSON COUNTY

By:

Print Name: Rusty Burns

Its: County Administrator

Date:

ADDENDUM B

ANDERSON COUNTY

CHANGE ORDER NO: 09

Project: EAST WEST PARK Project

TO: MOATS CONSTRUCTION, INC.

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: Lower Parking Lot unsuitable soils (Rock Excavation) 150 cy @ $120.00/cy = $1,800.00 4days, Remove and Re-install 76 LF of 18" RCP $2,432.00 1/2 day, Erroneous Design

COST (This cost shall not be exceeded): Design Related Cost and Delays / Day $ 2,000.00 per Day

Original contract price:	$ 159,604.75 to $321,741.28	Dec. 15, 2016 - Feb. 22, 2017 ADA Picnic Area
Change Order amount:	$ 198,232.00	AND PHASE I SCDOT Permitting,
New contract price:	$ 522,998.28	65 DAYS @ 2,000.00 = $130,000.00
TIME FOR COMPLETION:	Aug. 31, 2017	MAY 25, 2017 - Aug. JUNE 26, 2017
Original completion date:	DEC. 15, 2016	Phase 2 SCDOT Exc Haul 320 DAYS @ 2,000 = $ 64,000.00.

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Agreement and Project documents. This adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR

By: [signature] for Moats Construction, Inc.

Print Name: Russell T. Moats

Its: Principle

Date: Aug. 07, 2017

ANDERSON COUNTY

By: _____

Print Name: _____

Its: County Administrator

Date: _____

ADDENDUM B

ANDERSON COUNTY

CHANGE ORDER NO: 10

Project: EAST WEST PARK PROJECT

TO: MOATS CONSTRUCTION, INC.

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: Additional Time Related to PNG Natural Gas Main Relocation - Contract Time Extension 60 DAYS

COST (This cost shall not be exceeded): -0-

Original contract price: $ 159,604.75

Change Order amount: $ -0-

New contract price: $ 324,761.28 Includes CO #(s) # 1-9

TIME FOR COMPLETION: October 27, 2017

Original completion date: Dec. 15, 2016

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Agreement and Project documents. This adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR

By: for Moats Construction, Inc.

Print Name: RUSSELL T. MOATS

Its: Principle

Date: _____

ANDERSON COUNTY

By: _____

Print Name: _____

Its: County Administrator

Date: _____

ADDENDUM B

ANDERSON COUNTY

CHANGE ORDER NO: 11

Project: EAST WEST PARK PROJECT

TO: ANDERSON COUNTY PARKS AND REC. ATTN: BRIAN RICHARDSON - SG4 ARCHITECTS

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: Traffic Control to complete concrete walks $750.00, Additional Survey Staking at walk $1,500.00, Re-grading + Re-forming walk to Eastwest $1500.00, Erosion Seeding, Additional DELAY 14days

COST (This cost shall not be exceeded): $3,750.00 / 14 days

Original contract price: $ 159,604.75

Change Order amount: $ 3,750.00

New contract price: $ 328,511.28

TIME FOR COMPLETION: NOV. 10, 2017

Original completion date: DEC. 15, 2016

Contractor agrees to perform the above-described work in accordance with the above terms and in compliance with applicable sections of the Agreement and Project documents. This adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time due Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order.

No additions or deletions to this Change Order shall be allowed, except with written permission of the County. Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising from this Change Order. This Change Order is hereby agreed to, accepted and approved.

CONTRACTOR

By: MOATS CONSTRUCTION, INC.

Print Name: RUSSELL T. MOATS

Its: PRINCIPLE

Date: October 05, 2017

ANDERSON COUNTY

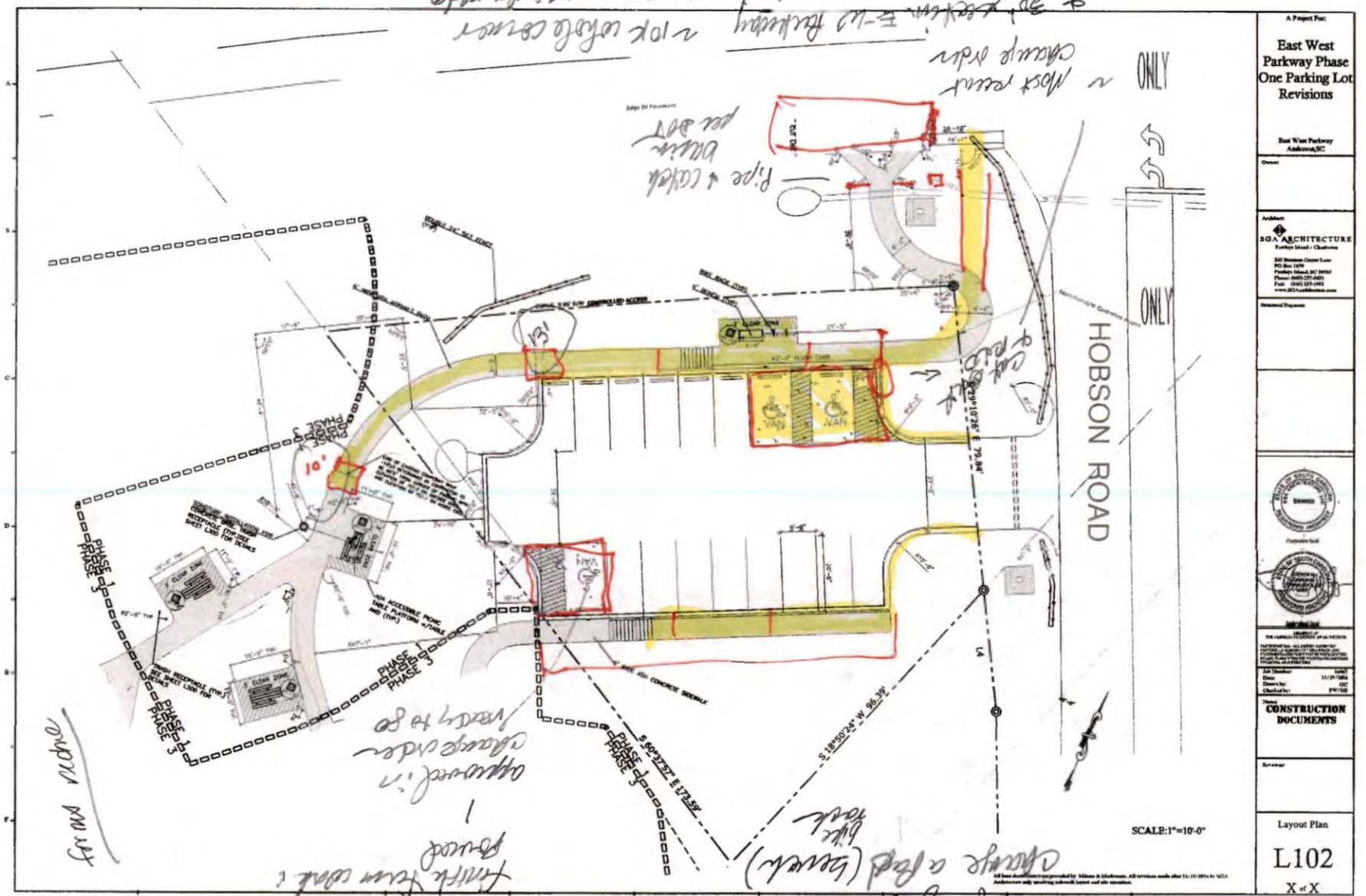
By: _____

Print Name: _____

Its: County Administrator

Date: _____

PHASE 1 - CD'S - SUPERCEDED



Anderson County 001186

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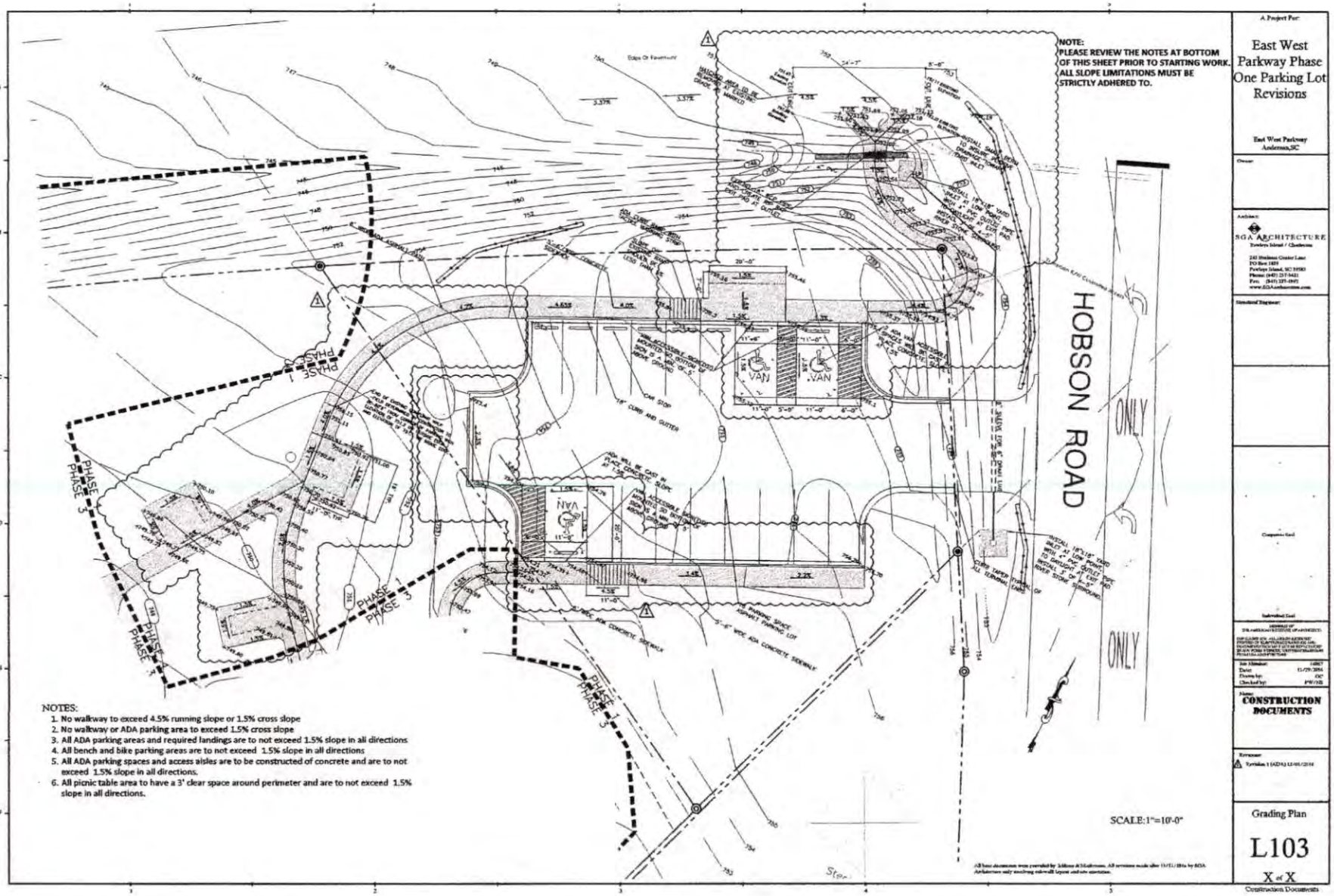


A Project For:

East West Parkway Phase One Parking Lot Revisions

East West Parkway
Anderson,SC

Owner:

Architect:
SGA ARCHITECTURE
Travelers Island / Charleston

Structural Engineer:

Civil Engineer:

Landscape Architect:

Individual Seal

Job Number: 14067
Date: 11/25/2014
Drawn by: JGC
Checked by: PW/SB

Issue:
CONSTRUCTION DOCUMENTS

Revisions:
1 (ADA) 12/05/2014

Grading Plan

L103

X of X

Construction Documents

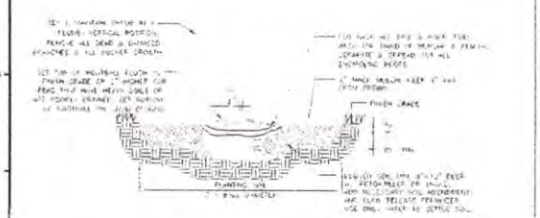
All basic documents were provided by Address A/E/Address. All revisions made after 11/11/2014 by SGA Architecture only involving sidewalk layout and site orientation.

Anderson County 001187

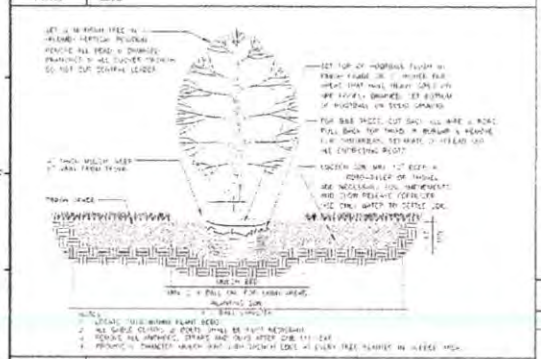
Anderson County 001188

R-001177

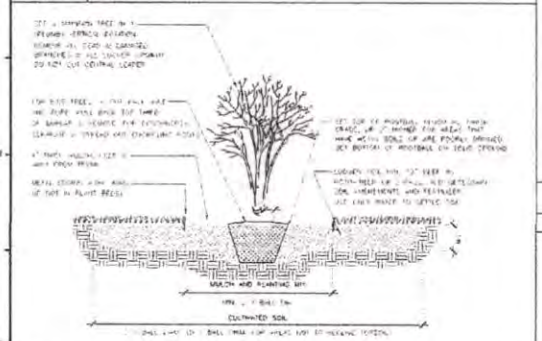
R-001178



B1	SHRUB DETAIL
N.T.S.	L202



D1	MULTI-STEMMED TREE
N.T.S.	L202

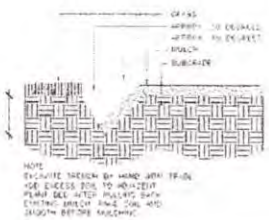


F1	TREE DETAIL
N.T.S.	L202

PLANTING NOTES

1. ALL TREE AND SHRUB PLANTINGS ARE TO HAVE DRIP IRRIGATION INSTALLED AT THE TIME OF PLANTING. CONTRACTOR IS TO PROVIDE LANDSCAPE ARCHITECT IRRIGATION DESIGN PLANS FOR REVIEW PRIOR TO INSTALLATION. IRRIGATION SYSTEM IS TO MEET THE PROJECT IRRIGATION SPECIFICATION.
2. THE CONTRACTOR SHALL LOCATE ALL PROPOSED & EXISTING UTILITIES PRIOR TO THE BEGINNING OF WORK. THE CONTRACTOR SHALL REPAIR ANY DAMAGE TO UTILITIES THAT ARE DISTURBED AS A RESULT OF THE WORK.
3. SEED ALL DISTURBED AREAS TO LAWN SOD SPECIFICATIONS
4. ALL PLANTING BEDS SHALL HAVE 12" MINIMUM DEPTH OF TOPSOIL.
5. THE CONTRACTOR SHALL PROVIDE A 3" MIN. DEPTH OF DARK BROWN DOUBLE GROUND MULCH OVER ALL PLANTING BEDS AND TREE PLANTINGS. MULCHED PLANT BEDS SHALL EXTEND 12" FURTHER THEN THE ADJACENT BED PLANTINGS TREE SHALL RECEIVE 6' DIAMETER MULCH RING. EDGE OF PLANT BEDS AND TREE RINGS SHALL HAVE 4" MINIMUM DEPTH V-EDGE.
6. ALL PLANT MATERIAL IS SUBJECT TO INSPECTION AND APPROVAL BY THE LANDSCAPE ARCHITECT PRIOR TO AND AFTER PLANTING.
7. PLANT SPECIES MAY BE ADJUSTED BASED ON AVAILABILITY AT TIME OF PLANTING. ALL PLANT MATERIAL SUBSTITUTIONS ARE SUBJECT TO REVIEW AND APPROVAL BY THE LANDSCAPE ARCHITECT.
8. ALL PLANT MATERIALS SHALL CARRY A FULL GUARANTEE FOR A PERIOD OF ONE YEAR FROM THE DATE OF ACCEPTANCE. TO INCLUDE PROMPT TREATMENT OR REMOVAL AND REPLACEMENT OF ANY PLANTS FOUND TO BE IN AN UNHEALTHY CONDITION BY THE LANDSCAPE ARCHITECT. ALL REPLACEMENTS SHALL BE OF THE SAME KIND AND SIZE OF PLANTS SPECIFIED IN THE PLANT LIST.
9. MAINTENANCE SHALL BEGIN IMMEDIATELY AFTER PLANTING AND SHALL CONTINUE UNTIL ACCEPTANCE BY THE LANDSCAPE ARCHITECT. MAINTENANCE SHALL INCLUDE WATERING, MULCHING, TIGHTENING & REPLACING OF GUYS, REPLACEMENT OF SICK OR DEAD PLANTS, RESETTING PLANTS TO PROPER GRADE OR UPRIGHT (PLUMB) POSITION, RESTORATION OF SAUCERS, AND ALL OTHER CARE NEEDED FOR PROPER GROWTH OF THE PLANTS.
10. WHERE A SIZE RANGE IS SPECIFIED AT LEAST 50% OF PLANTS PROVIDED SHALL BE OF THE LARGER SIZE.
11. CONTRACTOR TO REMOVE TREE STAKES AFTER ONE GROWING SEASON.
12. ALL PLANT MATERIAL MUST BE INSPECTED BY LANDSCAPE ARCHITECT PRIOR TO PLANTING.
13. CONTRACTOR TO PROVIDE DRIP IRRIGATION SYSTEM TO ALL TREES AND PLANT BEDS
14. THE CONTRACTOR SHALL MAINTAIN ALL GRASSED AREAS, INCLUDING THE REPAIR OF EROSION AREAS, UNTIL GRASS HAS REACHED THE LEVEL OF FINAL ACCEPTANCE & THROUGHOUT MAINTENANCE CONTRACT PERIOD, IF APPLICABLE.
15. ALL AREAS THAT ARE DISTURBED BY CONSTRUCTION INSIDE OR OUTSIDE THE LIMIT OF WORK SHALL BE REPAIRED, GRADED, & GRASSED.
16. LANDSCAPE CONTRACTOR IS RESPONSIBLE FOR PLANT QUANTITIES ON LANDSCAPE PLAN NOT IN PLANT SCHEDULE.
17. THE CONTRACTOR SHALL REVIEW THE EXISTING SITE CONDITIONS, AND IF ANY DISCREPANCIES ARE FOUND, THE CONTRACTOR SHALL CONTACT THE LANDSCAPE ARCHITECT.
18. THE LANDSCAPE CONTRACTOR IS RESPONSIBLE FOR FINE GRADING AND PROVIDING A SMOOTH TRANSITION INTO EXISTING GRADES. GRADE TO PREVENT PONDING AND TO PROVIDE POSITIVE DRAINAGE FROM BUILDINGS.

C2	PLANTING SCHEDULE & NOTES
N.T.S.	L202



E2	TRENCH EDGING DETAIL
N.T.S.	L202

All base documents was provided by Mahan & Mathewes. All contractor work after 11/11/2016 by SGA Architecture only on working sets of layout and site execution.

A Project For:

East West Parkway Phase One Parking Lot Revisions

East West Parkway
Anderson,SC

Owner:

Architect:

SGA ARCHITECTURE
Fenwyn Island / Charleston

347 Seaview Center Lane
PO Box 1839
Fenwyn Island, SC 29587
Phone: (843) 237-5421
Fax: (843) 237-5912
www.SGAArchitecture.com

Structural Engineer:

STATE OF SOUTH CAROLINA
REGISTERED ARCHITECT
Corporate Seal

Individual Seal

Job Number: 16007
Date: 11/21/2016
Drawn by: GJC
Checked by: JWT/SD

Status: CONSTRUCTION DOCUMENTS

Revisions:

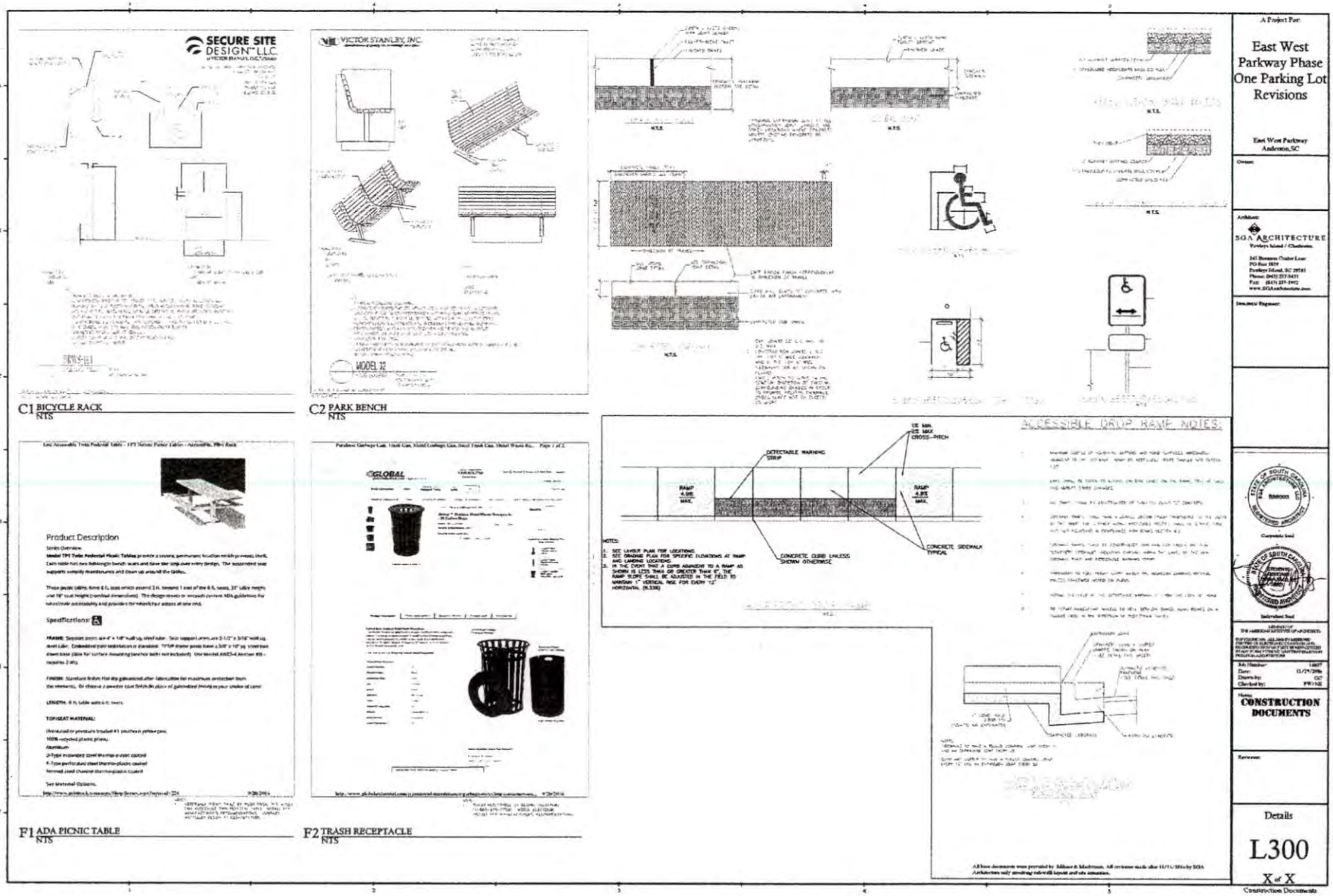
Planting Details

L202

X of X

Construction Documents

Anderson County 001189



C1 BICYCLE RACK
NTS

C2 PARK BENCH
NTS

F1 ADA PICNIC TABLE
NTS

F2 TRASH RECEPTACLE
NTS

Anderson County 001190

R-001179

R-001180

Anderson County 001192

STANDARD NOTES - EROSION CONTROL

GENERAL:

THESE GUIDELINES SHALL APPLY TO ALL WORK CONSISTING OF ANY AND ALL

1. TEMPORARY AND/OR PERMANENT MEASURES TO CONTROL WATER POLLUTION AND SOIL EROSION, AS MAY BE REQUIRED, DURING THE CONSTRUCTION OF THE PROJECT.
2. IN GENERAL, ALL CONSTRUCTION ACTIVITIES SHALL PROCEED IN SUCH A MANNER SO AS NOT TO POLLUTE ANY WETLANDS, WATERCOURSE, WATER BODY, AND CONDUIT CARRYING WATER, ETC. THE CONTRACTOR SHALL LIMIT, INSOFAR AS POSSIBLE, THE SURFACE AREA OF EARTH MATERIALS EXPOSED BY CONSTRUCTION METHODS AND IMMEDIATELY PROVIDE PERMANENT AND TEMPORARY POLLUTION CONTROL MEASURES TO PREVENT CONTAMINATION OF ADJACENT WETLANDS, WATERCOURSES, AND WATER BODIES, AND TO PREVENT, INSOFAR AS POSSIBLE, EROSION ON THE SITE.

LAND GRADING

GENERAL:

1. THE RESHAPING OF THE GROUND SURFACE BY EXCAVATION AND FILLING OR A COMBINATION OF BOTH, TO OBTAIN PLANNED GRADES, SHALL PROCEED IN ACCORDANCE WITH THE FOLLOWING CRITERIA:
   a. THE CUT FACE OF EARTH EXCAVATION SHALL NOT BE STEEPER THAN TWO HORIZONTAL TO ONE VERTICAL (2:1).
   b. THE PERMANENT EXPOSED FACES OF FILLS SHALL NOT BE STEEPER THAN TWO HORIZONTAL TO ONE VERTICAL (2:1).
   c. THE CUT FACE OF ROCK EXCAVATION SHALL NOT BE STEEPER THAN ONE HORIZONTAL TO FOUR VERTICAL (1:4).
   d. PROVISION SHOULD BE MADE TO CONDUCT SURFACE WATER SAFELY TO STORM DRAINS TO PREVENT SURFACE RUNOFF FROM DAMAGING CUT FACES AND FILL SLOPES.
   e. EXCAVATIONS SHOULD NOT BE MADE SO CLOSE TO PROPERTY LINES AS TO ENDANGER ADJOINING PROPERTY WITHOUT PROTECTING SUCH PROPERTY FROM EROSION, SLIDING, SETTLING, OR CRACKING.
   f. MD FILL SHALL BE PLACED WHERE IT WILL SLIDE OR WASH UPON THE PREMISES OF ANOTHER OWNER OR UPON ADJACENT WETLANDS, WATERCOURSES, OR WATERBODIES.
   g. PRIOR TO ANY REGRADING, A STABILIZED CONSTRUCTION ENTRANCE SHALL BE PLACED AT THE ENTRANCE TO THE WORK AREA IN ORDER TO REDUCE MUD AND OTHER SEDIMENTS FROM LEAVING THE SITE.

TOPSOILING

GENERAL:

1. TOPSOIL SHALL BE SPREAD OVER ALL EXPOSED AREAS IN ORDER TO PROVIDE A SOIL MEDIUM HAVING FAVORABLE CHARACTERISTICS FOR THE ESTABLISHMENT, GROWTH, AND MAINTENANCE OF VEGETATION.
2. UPON ATTAINING FINAL SUBGRADES, SCARIFY SURFACE TO PROVIDE A GOOD BOND WITH TOPSOIL.
3. REMOVE ALL LARGE STONES, TREE LIMBS, ROOTS AND CONSTRUCTION DEBRIS.
4. APPLY LIME ACCORDING TO SOIL TEST OR AT THE RATE OF 1000 POUNDS PER ACRE.

MATERIAL:

1. TOPSOIL SHOULD HAVE PHYSICAL, CHEMICAL, AND BIOLOGICAL CHARACTERISTICS FAVORABLE TO THE GROWTH OF PLANTS.
2. TOPSOIL SHOULD HAVE A SANDY OR LOAMY TEXTURE.
3. TOPSOIL SHOULD BE RELATIVELY FREE OF SUBSOIL MATERIAL AND MUST BE FREE OF STONES OVER 1" IN DIAMETER, LUMPS OF SOIL, ROOTS, TREE LIMBS, TRASH, OR CONSTRUCTION DEBRIS. IT SHOULD BE FREE OF ROOTS OR RHIZOMES SUCH AS THOSE MATERIALS, AND QUACKGRASS.
4. AN ORGANIC MATTER CONTENT OF SIX PERCENT (6%) IS REQUIRED. AVOID LIGHT COLORED SUBSOIL MATERIAL.
5. SOLUBLE SALT CONTENT OF OVER 500 PARTS PER MILLION (PPM) IS LESS SUITABLE.
6. THE pH SHOULD BE MORE THAN 6.0. IF LESS, ADD LIME TO INCREASE pH TO AN ACCEPTABLE LEVEL.

APPLICATION:

1. AVOID SPREADING WHEN TOPSOIL IS WET OR FROZEN.
2. SPREAD TOPSOIL UNIFORMLY TO A DEPTH OF AT LEAST FOUR INCHES (4"), OR TO THE DEPTH SHOWN ON THE LANDSCAPING PLANS.

TEMPORARY VEGETATIVE COVER

GENERAL:

1. TEMPORARY VEGETATIVE COVER SHALL BE ESTABLISHED ON ALL UNPROTECTED AREAS THAT PREVIOUS SEDIMENT, AREAS WHERE FINAL GRADING HAS BEEN COMPLETED, AND AREAS WHERE THE ESTIMATED PERIOD OF BARE SOIL EXPOSURE IS LESS THAN 12 MONTHS. TEMPORARY VEGETATIVE COVER SHALL BE APPLIED IF AREAS WILL NOT BE PERMANENTLY SEEDED BY NOVEMBER 1.

SITE PREPARATION:

1. INSTALL REQUIRED SURFACE WATER CONTROL MEASURES.
2. REMOVE LOOSE ROCK, STONE, AND CONSTRUCTION DEBRIS FROM AREA.
3. APPLY LIME ACCORDING TO SOIL TEST OR AT A RATE OF ONE (1) TON OF GROUND DOLOMITIC LIMESTONE PER ACRE (2 LBS. PER 100 SQ. FT.).
4. APPLY FERTILIZER ACCORDING TO SOIL TEST OR AT THE RATE OF 300 LBS. OF 10-10-10 PER ACRE (7 LBS. PER 1,000 SQ. FT.) AND SECOND APPLICATION OF 200 LBS. OF 10-10-10- (5 LBS. PER 1,000 SQ. FT.) WHEN GRASS IS FOUR INCHES (4") TO SIX INCHES (6") HIGH. APPLY DAILY WHEN GRADES IS DRY.
5. UNLESS HYDROSEEDED, WORK IN LIME AND FERTILIZER TO A DEPTH OF FOUR (4") INCHES USING A DISK OR ANY SUITABLE EQUIPMENT.
6. RELEASE SHOULD ACHIEVE A REASONABLY UNIFORM LOOSE SEEDBED WORK ON CONTOUR IF SITE IS SLOPING.

ESTABLISHMENT:

1. SELECT APPROPRIATE SPECIES FOR THE SITUATION. NOTE RATES AND SEEDING DATES (SEE VEGETATIVE COVER SELECTION & MULCHING SPECIFICATION BELOW).
2. APPLY SEED UNIFORMLY ACCORDING TO THE RATE INDICATED BY BROADCASTING, DRILLING, OR HYDRAULIC APPLICATION.
3. UNLESS HYDROSEEDED, COVER WITH GRASS SEEDS WITH NOT MORE THAN 1/4 INCH OF SOIL USING SUITABLE EQUIPMENT.
4. MULCH IMMEDIATELY AFTER SEEDING, IF REQUIRED. (SEE VEGETATIVE COVER SELECTION & MULCHING SPECIFICATION BELOW.) APPLY STRAW OR HAY MULCH AND ANCHOR TO SLOPES GREATER THAN 3% OR WHERE CONCENTRATED FLOW WILL OCCUR.

PERMANENT VEGETATIVE COVER

GENERAL:

1. PERMANENT VEGETATIVE COVER SHALL BE ESTABLISHED AS VARIOUS SECTIONS OF THE PROJECT ARE COMPLETED IN ORDER TO STABILIZE THE SOIL, REDUCE DOWNSTREAM DAMAGE FROM SEDIMENT AND RUNOFF, AND TO ENHANCE THE AESTHETIC NATURE OF THE SITE. IT WILL BE APPLIED TO ALL CONSTRUCTION AREAS SUBJECT TO EROSION WHERE FINAL GRADING HAS BEEN COMPLETED AND A PERMANENT COVER IS NEEDED.

SITE PREPARATION:

1. INSTALL REQUIRED SURFACE WATER CONTROL MEASURES.
2. REMOVE LOOSE ROCK, STONE, AND CONSTRUCTION DEBRIS FROM AREA.
3. PERFORM ALL PLANTING OPERATIONS PARALLEL TO THE CONTOURS OF THE SLOPE.
4. APPLY TOPSOIL AS INDICATED ELSEWHERE HEREIN.
5. APPLY FERTILIZER ACCORDING TO SOIL TEST OR:
   SPRING SEEDING: WORK DEEPLY IN SOIL, BEFORE SEEDING, 300 LBS. OF 10-10-10 FERTILIZER PER ACRE (7 LBS. PER 1,000 SQ. FT.). THEN 300 (8) TO EIGHT (8) WEEKS LATER, APPLY ON THE SURFACE AN ADDITIONAL 200 LBS. OF 10-10-10 FERTILIZER PER ACRE. AFTER NOVEMBER 1, TEMPORARY VEGETATIVE COVER SHALL BE APPLIED.
   FALL SEEDING: WORK DEEPLY IN SOIL, BEFORE SEEDING, 600 LBS OF 10-10-10 FERTILIZER PER ACRE (14 LBS. PER 1,000 SQ. FT.).

ESTABLISHMENT:

1. SMOOTH AND FIRM SEEDBED WITH CULTIPACKER OR OTHER SIMILAR EQUIPMENT PRIOR TO SEEDING (EXCEPT WHEN HYDROSEEDING).
2. SELECT ADAPTED SEED MIXTURE FOR THE SPECIFIC SITUATION. NOTE RATES AND THE SEEDING DATES (SEE VEGETATIVE COVER SELECTION & MULCHING SPECIFICATION BELOW).
3. APPLY SEED UNIFORMLY ACCORDING TO RATE INDICATED, BY BROADCASTING, DRILLING, OR HYDRAULIC APPLICATION.
4. COVER GRASS AND LEGUME SEED WITH NOT MORE THAN 1/4 INCH OF SOIL WITH SUITABLE EQUIPMENT (EXCEPT WHEN HYDROSEEDING).
5. MULCH IMMEDIATELY AFTER SEEDING, IF REQUIRED, ACCORDING TO TEMPORARY MULCHING SPECIFICATIONS. (SEE VEGETATIVE COVER SELECTION & MULCHING SPECIFICATION BELOW).
6. USE PROPER INOCULANT ON ALL LEGUME SEEDINGS, USE FOUR (4) TIMES NORMAL RATES WHEN HYDROSEEDING.
7. USE SOD WHERE THERE IS A HEAVY CONCENTRATION OF WATER AND IN CRITICAL AREAS WHERE IT IS IMPORTANT TO GET A QUICK VEGETATIVE COVER TO PREVENT EROSION.

MAINTENANCE:

1. TEST FOR SOIL ACIDITY EVERY THREE (3) YEARS AND LIME AS REQUIRED.
2. ON SITES WHERE GRADED PREDOMINATE, BROADCAST ANNUALLY 300 POUNDS OF 10-10-10 FERTILIZER PER ACRE (13 LBS. PER 1,000 SQ. FT.) OR AS NEEDED ACCORDING TO ANNUAL SOIL TESTS.
3. ON SITES WHERE LEGUMES PREDOMINATE, BROADCAST EVERY THREE (3) YEARS OR AS INDICATED BY SOIL TEST 300 POUNDS OF 0-20-20 OR EQUIVALENT PER ACRE (9 LBS PER 1,000 SQ. FT.).

VEGETATIVE COVER SELECTION & MULCHING

TEMPORARY VEGETATIVE COVER:
1. ANNUAL RYEGRASS @ 7 LBS/1000 SF
   LOLIUM MULTIFLORUM (SEED FROM AUGUST THROUGH MARCH)
2. BROWNTOP MILLET @ 15 LBS/1000 SF
   PANICUM RAMOSUM (SEED FROM MARCH THROUGH AUGUST)

PERMANENT COVER:
1. FESTUCA ARUNDINACEA @ 10 LBS/1000 SF
   (WINTERGY 36 TALL FESCUE)
   (SEED FROM AUGUST 15 THROUGH MARCH 15)
2. DICHONDRA DPM/HYDRO/KBS @ 10 LBS/1000 SF
   (CENTIPEDE GRASS)
   OR
   PANICUM RAMOSUM (BROWNTOP MILLET) @ 1/2 LBS/1000 SF
   (SEED FROM MARCH 15 THROUGH AUGUST15)

TEMPORARY MULCHING:
STRAW OR HAY 70-90 LBS./1,000 SQ.FT.
(TEMPORARY VEGETATIVE AREAS)

WOOD FIBER IN HYDROMULCH SLURRY 25-30 LBS./1,000 SQ. FT.

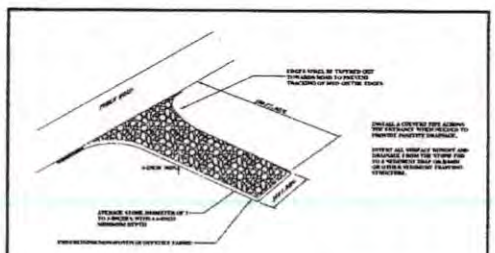
EROSION CONTROL MATTING TO BE ANCHORED IN ACCORDANCE WITH MANUFACTURERS RECOMMENDATIONS.

PLAN VIEW

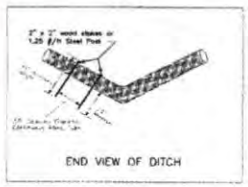
FRONT ELEVATION VIEW

SECTION VIEW

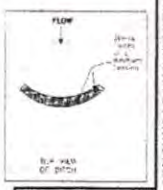
CONCRETE DRAINAGE APRON
NTS



South Carolina Department of Health and Environmental Control
STABILIZED CONSTRUCTION ENTRANCE
SC-06 Page 1 of 3



END VIEW OF DITCH



SIDE VIEW OF DITCH

South Carolina Department of Health and Environmental Control
SEDIMENT TUBE
SC-05 Page 1 of 3

SEDIMENT TUBE SPACING

1%	250'
2%	250'
5%	250'
10%	250'
15%	250'
20%	250'
25%	250'
50%	250'

South Carolina Department of Health and Environmental Control
SEDIMENT TUBE
SC-05 Page 2 of 3

South Carolina Department of Health and Environmental Control
SEDIMENT TUBE
SC-05 Page 3 of 3

Construction documents was provided by Milton P. Mathewson. All revisions made after 11/11/2016 by SGA Architecture only involving sidewalk layout and site elevations.

A Project For:

East West Parkway Phase One Parking Lot Revisions

East West Parkway
Anderson, SC

Owner:

Architect:
SGA ARCHITECTURE
Fraser Island / Charleston
240 Seven Farms Center Lane
PO Box 1459
Fraser Island, SC 29581
Phone: (843) 297-3435
Fax: (843) 297-3495
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Structural Engineer:

STATE OF SOUTH CAROLINA
REGISTERED ARCHITECT
Corporate Seal

STATE OF SOUTH CAROLINA
REGISTERED ARCHITECT
Individual Seal

ARCHITECTS
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Job Number: 16067
Date: 11/29/2016
Drawn by: DC
Checked by: EW/SG

Status:
CONSTRUCTION DOCUMENTS

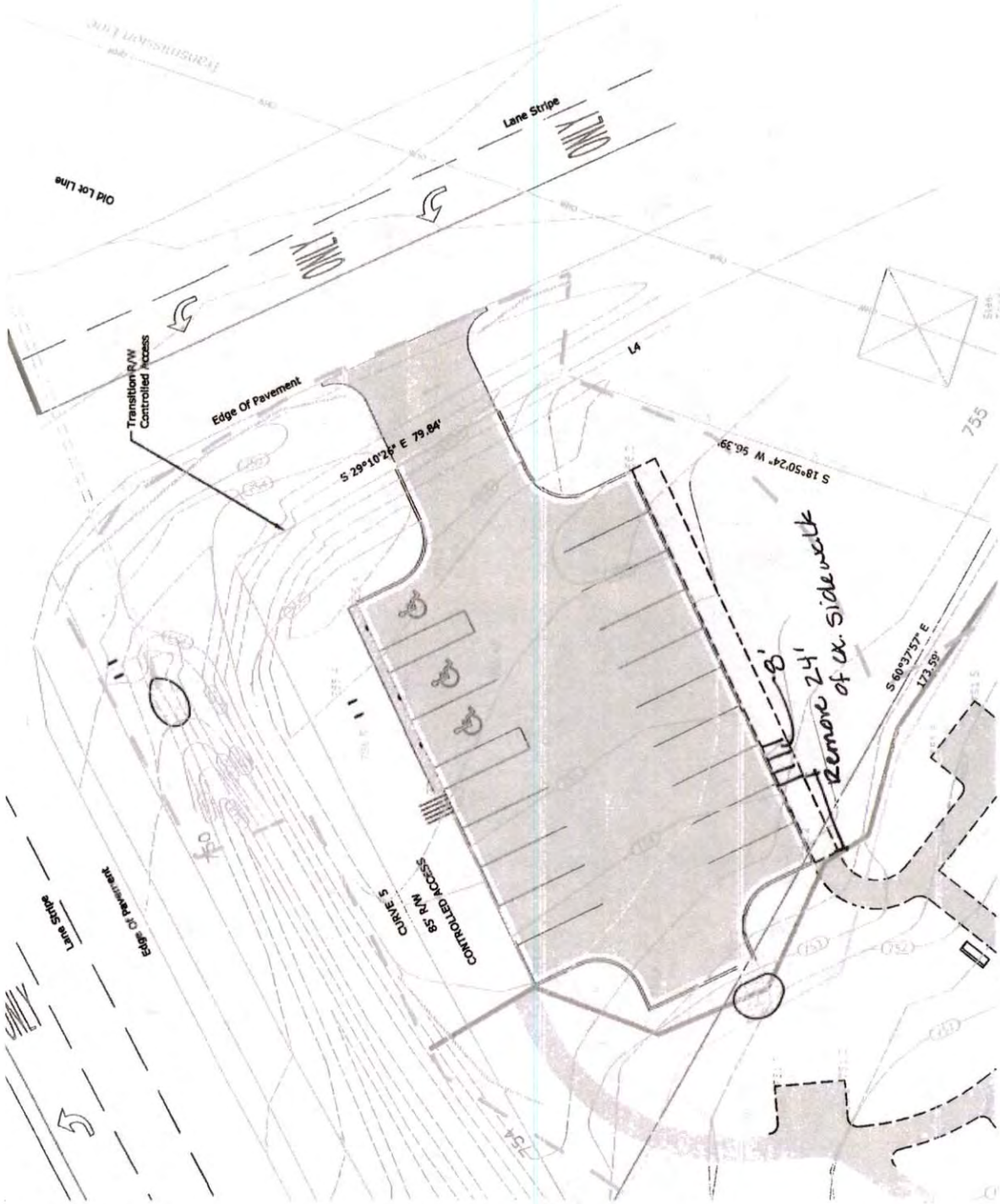
Revised:

Details

L301

X of X
Construction Documents

Moats' 1/20/17 reply		Change Order 003+ Items 1/12/17				
Req'd $225	1		$ 135.00			Picnic group - demo 10' accessible route - (M - 10 lf @ $2.25sf = $225) **not built to plan, slope and cross slope issues, 3rd party ADA verified** (unit price conflict - (10'l x 6'w) $2.25sf
	2		$ 3,335.00			Picnic group - remove 50% formwork, regrade, compact, reinstall formwork **route to code, pads not to code. Moats adjusted on site; fixed pads but created an error**
	3	$ 456.00				Picnic group - add concrete for ADA compliance **req'd for ADA compliance, not in orignal plan** **non compliant ripple effe
$ 150.00	4	$ 150.00				Trash can pad (sonotube) **required $600 payment t
	5	$ 190.00				ADA bench pad parkway side - regrade, reform, shift tree **req'd for ADA compliance, not in orignal plan**
	6	$ 210.00				ADA bench pad concrete increase - parkway side **req'd for ADA compliance, not in orignal plan**
$ 3,083.10	7	$ 3,083.10				P lot - parkway pad - 6" concrete in lieu of asphalt (M - 680sf @ $7 = $4,760 (less 680sf @ $2.22 = $1,509.60) = $3,250.40) (N - 645sf = $3,083.40)
	8	$ 150.00				P lot - playground pad - remove existing curb form work for ADA pad
	9	$ 2,500.00				P lot - playground pad - regrade, fill, compact approx 12" fill over 2,600sf for ADA parking pad, shift flume
	10	$ 150.00				P lot - playground pad - reinstall curb formwork for ADA pad
	11	$ 300.00				P lot - playground pad - demo existing curbing for ADA pad - 30 lf@ $10 lf
	12					P lot - playground pad - ramp and sidewalk for ADA pad (M - 190sf @ $12 = $2,280) (N - 177sf @ $6 = $1,062) *ramp = 66sf & sidewalk/flush curb = 111sf
Req'd $1,320	12a		$ 990.00			P lot - playground pad - concrete sidewalk 30' x 5.5' (M - 165sf @ $8 = $1,320) (N - 165sf @ $6 = $990)
$ 165.00	12b	$ 165.00				P lot - playground pad - 11 lf of 18" curb and gutter @ $15 per lf
$ 190.00	12c	$ 190.00				P lot - playground pad - 19 lf flush curb @ $10 per lf
HOLD	13	HOLD	$ 2,022.00	HOLD	HOLD	P lot - playground pad - sidewalk (M - 378sf @ $6 = $2,268) (N -337sf @ $6 = $2,022) **unintended pour**
	14	$ 1,720.80				P lot - playground pad - ADA parking pad - concrete in lieu of asphalt - 360sf @ $7 = $2,520 (less 360sf @ $2.22 = 799.20) = $1,720.82
	15	$ 2,700.00				P lot wheel stops - (9) @ $300 ea **req'd for ADA compliance, not in orignal plan**
	16			$ 375.00		Trash can pad planting (3) 7G Soft touch hollies
	17			$ 1,820.00		Upsize 3G knockout rose - (27) 5G - additional $70 per unit
	18			$ 475.00		Upsize soft touch holly - (19) 7G - additional $25 per unit
$ 933.75	19	$ 933.75				Accessible route to E / W - asphalt demo (M - 450sf @ $2.25 = $1,012.50) (N - 415sf @ $2.25 =) **E/W Conn & plan errors, % not built to plan, slope and cross slope issues, 3rd party AI
	20	$ 1,000.00				Accessible route to E / W - layout / construction **see above & 3rd party ADA verified**
	21	$ 768.00				Accessible route to E / W - 24 lf additional RCP @ $32 / lf
	22	$ 1,000.00				Accessible route to E / W & Drive apron - (2) 18" NDS Catch basins
	23	$ 1,225.00				Accessible route to E / W & Drive apron - 111 lf 6" SDR 35 pipe, 8" SDR sleeve, demo existing 18" RCP for invert
	24	$ 765.00				E / W - demo 340sf asphalt @ $2.25 sf (340sf)
	25	$ 140.00				Accessible route to E / W - 20 lf 3" schd 40 sleeves @ $7 / lf
	26	$ 390.00				Accessible route to E / W & Drive apron - Install (36") 4" - 5" river rock at catch basins # $130 / ton
Req'd $7,112	27		$ 5,334.00			Accessible route to E / W & E / W - concrete walks (M - 920sf @ $8 = $7,360) (N - 889sf @ $6 per bid = $5,334) **E/W Conn & plan errors, % not built to plan, slope and cross slope issu
						Accessible route to E / W & E / W - concrete walks Moats' reply 1/20/17 - OK with 889 - (M - 889sf @ $8 = $7,112) (N - 889sf @ $6 per bid = $5,334) **see above & 3rd party ADA verif
	28				$ 850.00	Deduct - 2 bike racks @ $425 ea
	29				$ 636.00	Deduct - 106 sf concrete pad along connector @ $6 sf
		$ 18,186.85	$ 11,816.00	$ 2,670.00	$ 1,486.00	


Old Lot Line
Lane Stripe
ONLY
ONLY
Transition R/W
Controlled Access
Edge Of Pavement
S 29°10'26" E 79.84'
L4
S 18°50'24" W 56.39'
755
Remove 24' of ex. sidewalk
8'
S 60°37'57" E
173.59'
CURVE 5
85' R/W
CONTROLLED ACCESS
Edge Of Pavement
Lane Stripe
ONLY
754

i..izzy **R. Wilkes**

From: Michael Forman <mforman@andersoncountysc.org>
Sent: Thursday, June 15, 2017 2:05 PM
To: Gail Jeter (GailJeter@cardno.com)
Cc: David Sykes (david.sykes@cardno.com); rtmoats@moatsconstruction.com; jakellett07 @gmail.com; Joe Morici (Joseph.Morici@cardno.com); Rhonda Sloan
Subject: Toxaway

Gail, I believe we have just about everybody signed on the dotted line.

Russell, I know you want to get started as soon as possible. K2D is available as soon as this upcoming Monday for air monitoring. Gail is awaiting word from DHEC regarding the stormwater permitting. Gail/David, please coordinate with Russell scheduling forward.

Contact information below:

Michael Forman, Anderson County: (864) 260-1057 Rhonda Sloan, Anderson County: (864) 260-4720 Gail Jeter, Cardno: (803) 210-6080 David Sykes, Cardno: (803) 960-0090 James Kellett, K2D Environmental: (864) 419-2177

Thanks.

-MF

19

ANDERSON COUNTY
SOUTH CAROLINA

Office of the County Attorney

April 25, 2018

F. Lee Prickett, Jr., Esquire
Holder, Padgett, Littlejohn & Prickett, LLC
P.O. Box 1804
Greenville, SC 29602

RE: Moats Construction

Dear Mr. Prickett,

Enclosed please find the Notice to Proceed in the referenced matter along with a check to Moats Construction in the amount of $26,155.89. This notice and payment under the mediated settlement now starts the thirty (30) day period to conclude the work for Phases I and II of the East-West Park.

With personal regards, I am

Sincerely yours,

Leon C. Harmon

LCH/lw
Enclosure

Moats 01145

Leon C. Harmon | Anderson County Attorney
O: 864-222-2123 | F: 864-260-4548 | lharmon@andersoncountysc.org
Historic Courthouse | 101 South Main Street, Anderson SC 29624
P.O. Box 8002, Anderson, SC 29622-8002

Notice to Proceed 4/25/2018

To: Moats Construction Company
1523 Old Roberts Church Road
Anderson, S.C. 29626

Project Description: East-West Parkway Park Construction

Owner: County of Anderson, S.C.

Bid # 16-007

You are hereby notified to commence WORK in accordance with the terms of the mediated settlement.

County of Anderson

BY: Rusty Burns

Acceptance of Notice

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by _____ this the ____ day of _____, 2018.

BY: _____

TITLE: _____

Moats 01146

COUNTY OF ANDERSON
GENERAL FUND
P.O. BOX 8002
ANDERSON, SC 29622

67-219/539 7580

DATE 4-24-18

PAY TO THE ORDER OF Moats Construction, Inc. $ 26,155.89

twenty six thousand one hundred fifty five & 89/100 DOLLARS

Security Features Included. Details on back

CAROLINA FIRST

FOR Mediation

AUTHORIZED SIGNATURE

SAFEGUARD SECURE

[redacted]

Moats 01147

And thanks for the email!
<image003.jpg>

-----Original Message-----
From: Russell Email <rtmoats@moatsconstruction.com>
Sent: Thursday, August 2, 2018 2:30 PM
To: Matthew Clarke <mclarke@contractorsuretygroup.com>
Cc: Laura <lbkingcu@moatsconstruction.com>
Subject: Bond Line

Matthew,

I spoke to you 2
1/2 years ago regarding a new bond line for my contacting company.
Would you still be interested in helping with lining up another bond carrier for our bonding needs.
We had been with Direct Surety, but they have taken on a new partner / investor, their service has deteriorated since, they have delayed Bid Bonds we have them ample time to produce, they have terrible turnover and we never know who will be our account rep. Etc.
We have completed millions of dollars in Public projects all over SC for Counties, Citys and Universities, and have never had a bond claim.

We are very busy now with other Private and smaller Public jobs, but are missing some great opportunities with the economy thriving as it is currently.

Are these questionnaires, forms still valid or do you have some others that you currently use.
I have 1 job in particular bidding on the 16th, we just had the pre-bid yesterday, and I hate to miss this one. It is a demolition job in Greenville for Greenville Tech who is a customer of ours. It has a estimated value of 750k-900k.
Demo is actually a specialty of ours. We have completed numerous projects large and small across the state. They have another one coming out in a few weeks budgeted around $120k.
We are a group 5 unlimited GC in SC and are also a licensed SCDHEC Asbestos Contractor. We self perform everything with the exception of MEP's and very specialized work.
I don't know about Dun and Bradstreet's PAYDEX score, I really don't care for them and

their extortion strategies, but our financials are good. I am the sole owner of the INC S-Corp, and my personal credit is GOOD. We have good, current, national vendor accounts and references.
We would like to work with someone in-state if possible.
Please contact me if you think you have a program that fits our needs.

Russell T. Moats
Principle
Moats Construction Company
1523 Old Roberts Ch. Rd.
Anderson, South Carolina 29626
864.224.0904 Office
864.964.9754 Fax
864.276.5021 Direct
Charleston
7672 Little Britton Rd.
Yonges Island, South Carolina 29449
www.moatsconstruction.com

<CSG WIP_fillable.pdf>
<!CSG_CQ.pdf>
<Matthew Clarke.vcf>

From: Russell Email rtmoats@moatsconstruction.com
Subject: Fwd: LINK TO ADDENDUM 1 h59-6124-CA-B
Date: Aug 8, 2018 at 3:52:02 PM
To: Matthew Clarke mclarke@contractorsuretygroup.com

Matthew,
Here is a link to this project.
I will be sending over the requested information shortly.

Thank you,

Russell T. Moats
Principle
Moats Construction Company
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Anderson, South Carolina 29626
864.224.0904 Office
864.964.9754 Fax
864.276.5021 Direct
Charleston
7672 Little Britton Rd.
Yonges Island, South Carolina 29449
www.moatsconstruction.com

Begin forwarded message:

From: Lorna Cardenas <lcardenas@dp3architects.com>
Date: August 1, 2018 at 5:29:01 PM EDT
To: "estimatingsc@melloulusa.com" <estimatingsc@melloulusa.com>, "clundgren@fandr.com" <clundgren@fandr.com>, "bhillen@deco.us.com" <bhillen@deco.us.com>, "aevans@harpergc.com" <aevans@harpergc.com>, "sjordan@carolinawrecking.com" <sjordan@carolinawrecking.com>, "aeshort@DHGRIFFIN.com" <aeshort@DHGRIFFIN.com>, "dsshort@DHGRIFFIN.com" <dsshort@DHGRIFFIN.com>, "est@doreassoc.com" <est@doreassoc.com>, "jmartin@celyconstruction.com" <jmartin@celyconstruction.com>, "rtmoats@moatsconstruction.com"

Moats 01461

<rtmoats@moatsconstruction.com>, "info@thegreenmancan.com" <info@thegreenmancan.com>, "gpressley@neocorporation.com" <gpressley@neocorporation.com>, "James@elukegreene.com" <James@elukegreene.com>, "Victor@elukegreene.com" <Victor@elukegreene.com>, "dean@tristaramerica.net" <dean@tristaramerica.net>
Cc: "Bill.Tripp@gvltec.edu" <Bill.Tripp@gvltec.edu>
Subject: LINK TO ADDENDUM 1 h59-6124-CA-B

https://dp3.sharefile.com/d-s71708fbf3a14f1fb
Please let me know of any problems downloading.
Thanks for looking at bidding this project.

DP3
ARCHITECTS

Lorna P. Cardenas, AIA, LEED AP
15 South Main Street, Suite 400
Greenville, SC 29601
(864) 232-8200 Ext. 1019
www.DP3architects.com
PEOPLE PLACES PURPOSE

From: Paul Email pdholden@moatsconstruction.com
Subject: Fwd: FORMER MANUFACTURING BUILDING - CDBG # 4-CE-17-003
Date: Aug 8, 2018 at 3:53:02 PM
To: Matthew Clarke mclarke@contractorsuretygroup.com

Matthew,
Here is another project we are looking at that bids the end of this month.

Begin forwarded message:

From: Russell Email <rtmoats@moatsconstruction.com>
Date: August 3, 2018 at 1:10:11 PM EDT
To: Moats Con Paul <pdholden@moatsconstruction.com>
Subject: Fwd: FORMER MANUFACTURING BUILDING - CDBG # 4-CE-17-003

Russell T. Moats
Principle
Moats Construction Company
1523 Old Roberts Ch. Rd.
Anderson, South Carolina 29626
864.224.0904 Office
864.964.9754 Fax
864.276.5021 Direct
Charleston
7672 Little Britton Rd.
Yonges Island, South Carolina 29449
www.moatsconstruction.com

Begin forwarded message:

From: Barbara Johnson <bjohnson@lowcountrycog.org>
Date: August 3, 2018 at 12:32:20 PM EDT

To: "rtmoats@moatsconstruction.com" <rtmoats@moatsconstruction.com>
Subject: FW: FORMER MANUFACTURING BUILDING - CDBG # 4-CE-17-003

Barbara A. Johnson

Lowcountry
COUNCIL OF GOVERNMENTS

Affordable Housing Manager
Beaufort County/Lowcountry Regional HOME Consortium
P. O. Box 98, Yemassee, SC 29945
(843) 473-3951 ***phone*** (843) 726-5165 ***fax***
email: bjohnson@lowcountrycog.org

From: Barbara Johnson
Sent: Friday, August 03, 2018 12:30 PM
To: 'rtmoat@moatconstruction.com' <rtmoat@moatconstruction.com>
Subject: FORMER MANUFACTURING BUILDING - CDBG # 4-CE-17-003

Thanks for your interest. I have attached a copy of the ad, the Infor for Bidders, a copy of asbestos study, construction contract, mitigation measures and a copy of the bid form. Please let me know if you have any questions or need additional information. THANKS!

Barbara A. Johnson

Lowcountry
COUNCIL OF GOVERNMENTS

Affordable Housing Manager
Beaufort County/Lowcountry Regional HOME Consortium
P. O. Box 98, Yemassee, SC 29945
(843) 473-3951 ***phone*** (843) 726-5165 ***fax***
email: bjohnson@lowcountrycog.org

pdf
ESTILL DE...073018.pdf
1.4 MB
Tap to Download
440 Grays...till, SC.PDF
2.6 MB

Moats 01465

From: Matthew Clarke mclarke@contractorsuretygroup.com
Subject: RE: Bond Line
Date: Aug 3, 2018 at 2:09:51 PM
To: Russell Email rtmoats@moatsconstruction.com

Right on

From: Russell Email <rtmoats@moatsconstruction.com>
Sent: Friday, August 3, 2018 2:09 PM
To: Matthew Clarke <mclarke@contractorsuretygroup.com>
Subject: Re: Bond Line

Yes that's no problem.

Russell T. Moats
Principle
Moats Construction Company
1523 Old Roberts Ch. Rd.
Anderson, South Carolina 29626
864.224.0904 Office
864.964.9754 Fax
864.276.5021 Direct
Charleston
7672 Little Britton Rd.
Yonges Island, South Carolina 29449
www.moatsconstruction.com

On Aug 3, 2018, at 1:32 PM, Matthew Clarke <mclarke@contractorsuretygroup.com> wrote:

Can you get a 2017 year-end P&L/Balance Sheet?

<image001.png>

From: Russell Email <rtmoats@moatsconstruction.com>
Sent: Friday, August 3, 2018 1:30 PM
To: Matthew Clarke <mclarke@contractorsuretygroup.com>
Subject: Re: Bond Line

Ok thanks Matthew.
I don't think 2017 is complete, Greg always files an extension.
How about 2016, 15 and 14.

However he is currently working on the audit for our 2018 renewal due by October 31. So we'll have that soon.

Russell T. Moats
Principle
Moats Construction Company
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864.964.9754 Fax
864.276.5021 Direct
Charleston
7672 Little Britton Rd.
Yonges Island, South Carolina 29449
www.moatsconstruction.com

On Aug 3, 2018, at 1:16 PM, Matthew Clarke <mclarke@contractorsuretygroup.com> wrote:

Russell,

Since we spoke I ran your model by some underwriters and suffice to say, you have some pretty good options available from us. Help me facilitate bonding by addressing the following please:

FINANCIAL

1. 2017, 2016, 2015 corporate info. We underwrite off year-ends, so I need whatever you have for those years i.e. CPA prepared financial statements, internal P&L/ Balance Sheets (on the **accrual** basis with corresponding AR Aging). Might was well give me the federal tax returns for those years as well.
2. Personal financial, less than a year old of the owner (s) please.
3. Can you get me the latest filed federal return for #2?
4. YTD, or most recently reconciled period corporate P&L/Balance Sheet, on accrual basis.

UNDERWRITING

1. Need updated surety questionnaire please. See attached two pager
2. Can you get me a WIP? Feel free to use attached. If it bogs you down just give me an approximate dollar figure of your cost to compete in the field right now.
3. Any bank lines? If so any present borrowings?

UPCOMING JOBS

1. Need a URL or advertisement for bid on the Greenville Tech and the $120,000 one please sir.
2. If anything else comes up before we finish this process, just let me know.

Holler with questions or concerns. We appreciate the opportunity.

<image004.png>

From: Russell Email <rtmoats@moatsconstruction.com>
Sent: Thursday, August 2, 2018 2:48 PM
To: Matthew Clarke <mclarke@contractorsuretygroup.com>
Cc: Laura <lbkingcu@moatsconstruction.com>
Subject: Re: Bond Line

Ok thank you Mathew sounds fine I will be available most all afternoon today.

Russell T. Moats
Principle
Moats Construction Company
1523 Old Roberts Ch. Rd.
Anderson, South Carolina 29626
864.224.0904 Office
864.964.9754 Fax
864.276.5021 Direct
Charleston
7672 Little Britton Rd.
Yonges Island, South Carolina 29449
www.moatsconstruction.com

On Aug 2, 2018, at 2:41 PM, Matthew Clarke <mclarke@contractorsuretygroup.com> wrote:

Hey Russell. I think I may have something for you. Will give you a ring either later today or in the morning, if that suits you. Running into couple of meetings today.

From: Russell Email <rtmoats@moatsconstruction.com>
Sent: Thursday, August 9, 2018 3:10 PM
To: Matthew Clarke <mclarke@contractorsuretygroup.com>
Cc: Laura <lbkingcu@moatsconstruction.com>
Subject: Re: New Bonding Line

Matthew,
Thank you for taking a look. Please let me know if you should need anything else.

Best Regards,

Russell T. Moats
Principle
Moats Construction Company
1523 Old Roberts Ch. Rd.
Anderson, South Carolina 29626
864.224.0904 Office
864.964.9754 Fax
864.276.5021 Direct
Charleston
7672 Little Britton Rd.
Yonges Island, South Carolina 29449
www.moatsconstruction.com

On Aug 9, 2018, at 11:11 AM, Matthew Clarke <mclarke@contractorsuretygroup.com> wrote:

Russell,

I received everything from Laura. Had a quick look and everything looks good. I'm going to fully underwrite it myself this afternoon.

So far we have the jobs below requiring bid security. Let me know of any other needs please sir.

1. Greenville Tech 8/16
2. Estill Demo 8/30

Will report back to you late today if I need anything further to proceed. We appreciate the opportunity.

From: Rtmoats <rtmoats@moatsconstruction.com>
Sent: Monday, August 13, 2018 4:28 PM
To: Matthew Clarke <mclarke@contractorsuretygroup.com>
Subject: Re: New Bonding Line

Matthew,
Thank you for the update.
The recommendations should not be a problem.
I can get you the other pages of the return, but I have been out of my office today and probably won't be back until Wednesday.
I had to pull them for Laura the other day.
With that said, when can I get a commitment from the surety on these projects bidding this week and on the 30th?
I would really need to know something soon.
I don't want to miss the opportunity to bid on either project.
Thanks again for all the help.

On Aug 11, 2018, at 7:11 PM, Matthew Clarke <mclarke@contractorsuretygroup.com> wrote:

Russell I submitted your business to a standard surety with competitive rates, and they don't have any issues with asbestos. What I think will happen is the surety will support you on the two upcoming bids. In exchange I think they will want you to retain a construction oriented CPA asap, with the clear understanding he will do a 12.31.18 Review. Your immediate challenge is the AR we discussed a lot of which seems to be stuck and non-representative of what is going on. We might need that to be cleared up as well asap. Another thing is a bank line of credit. I suggest getting one rolling asap in the $200,000 range and possibly securing it by real property perhaps.

That's one way, another way is to simply assign that warehouse asset to the surety (different bonding company) in exchange for surety credit. This one however has a problem with asbestos if it is more than 25% of the job. But I don't think they would have any of the requirements in the paragraph above.

Some additional items I need are the latest complete federal tax returns of the two affiliate companies mentioned on the Contractor's Surety Questionnaire. Also, we only received a few pages of your personal return – please provide your complete latest filed federal return please.

Let me know your questions and comments please.

<image003.png>

From: Rtmoats rtmoats@moatsconstruction.com
Subject: Re: New Bonding Line
Date: Aug 14, 2018 at 4:59:58 PM
To: Matthew Clarke mclarke@contractorsuretygroup.com

Yeah it's not Matthew. I unlocked right after I emailed you and received a confirmation email.

On Aug 14, 2018, at 4:58 PM, Matthew Clarke <mclarke@contractorsuretygroup.com> wrote:

They said credit is still locked

From: Rtmoats <rtmoats@moatsconstruction.com>
Sent: Tuesday, August 14, 2018 4:57 PM
To: Matthew Clarke <mclarke@contractorsuretygroup.com>
Subject: Re: New Bonding Line

Matthew,
What's the word?
I need to know where we are at with this thing.
I need to know today.
Thanks

On Aug 14, 2018, at 1:13 PM, Matthew Clarke <mclarke@contractorsuretygroup.com> wrote:

The bonding company also wants to check your personal credit and asked that it be unfrozen please.

From: Rtmoats <rtmoats@moatsconstruction.com>
Sent: Tuesday, August 14, 2018 11:35 AM
To: Matthew Clarke <mclarke@contractorsuretygroup.com>
Subject: Re: New Bonding Line

Matthew,

You are welcome to contact my attorney Lee Prickett at HPL&Prickett regarding these cases. If you like I can inform him that you might be contacting him regarding these actions.

1.) AT&T. There is no suit with At&t. Where is that information coming from? Moats 01472

2.). Doug Proctor case is a debt collection case. We filed a complaint to collect a balance

on his account. He has tried to settle with us, but we have never been able to reach an agreement as of yet.

3.) New Beach is a breach of contract case. We had an out of town contractor that was awarded a job in Anderson that we actually bid on as well, but she did not have anyone to perform the work. We originally contacted her to provide containers and recycling / hauling service for the job, but we wound up contracting with her to perform the work as well. We kept her to a strict contract, on a short string to make sure we were not left not being paid at the end of the job. She never made progress payments as agreed. She did not pay us when she had been paid by the owner we know now. We sent her demand letters and she never paid so we had to file a claim against her payment bond. We had a meditation, and she would not get close to the amount we were pushing for. I really don't think at this point she has the cash to pay. The trial is set for December. We should recover the majority of the balance and our attorneys fees if not from her from the surety.

Please review this and give me a call. I need to know where we are with everything. I know that you said 4-5 days to process, but the bid date for the Greenville project is quickly approaching.

Thank you again Matthew.

On Aug 14, 2018, at 10:03 AM, Matthew Clarke <mclarke@contractorsuretygroup.com> wrote:

Boss,

Before we go any further, the bonding company asked me about the following:

New Beach Construction Partners Inc./Travelers Casualty and Surety – Lawsuit

Doug Proctor – Lawsuit

AT&T South Carolina – Lawsuit

<image001.png>

From: Experian support@e.usa.experian.com
Subject: Confirmation: You've unlocked your Experian credit file, Russell
Date: Aug 14, 2018 at 2:27:54 PM
To: <rtmbom@gmail.com> rtmbom@gmail.com

experian.

Membership ID# 1001685673873 | Member Sign In

You've unlocked your Experian credit file

Inquiries into your Experian credit info will not be blocked until you lock it again.

Sign in >

This email was sent because it contains important information about your account. Please note that if you have previously unsubscribed from Experian CreditWorks℠ Premium, you will no longer receive newsletters or special offers. However, you will continue to receive email notifications regarding your account. To ensure that you'll receive emails from us, please add support@e.usa.experian.com to your address book.

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P.O. Box 2390 Allen, TX, 75013, US

Moats 01474

From: Matthew Clarke mclarke@contractorsuretygroup.com
Subject: RE: New Bonding Line
Date: Aug 27, 2018 at 9:06:16 AM
To: Rtmoats rtmoats@moatsconstruction.com

Good morning. We have prepared a Sworn Sequence of Events Statement leading to the denial of your request for surety support for the Greenville – Demolition of Building 602 Rebid H59-6124-CA-B. The Statement is currently in the possession of our legal counsel.

A synopsis of the reasons for denial is provided herein:

1. Personal credit remained locked after repeated attempts. Unable to continue underwriting. – WAS UNLOCKED, SEE EMAIL
2. Preponderance of open lawsuits shown in Westlaw inquiry, specifically New Beach Construction Partners, Inc. and claim against Travelers Casualty and Surety, Doug Proctor, and AT&T. – AT&T ERRONEOUS, EXPLANATION GIVEN PRIOR TO
3. Requested amount of surety support was $400,000 above previously completed largest job. – YES, BUT THIS WAS A DEMOLITION PROJECT, NOT A CONSTRUCTION PROJECT.
4. Lack of CPA prepared financial statements – SENT WITH CPA AUDIT
5. Lack of bank line of credit – SENT
6. Lack of requested personal and corporate tax returns – SENT

Re yours below *<< You caused us to loose that job. We would have been the low bidder by $ 45,000.00 on a $935,000.00 contract>>*, the attached Instructions for Bidders, Paragraph 4, Section 2.1 states that "Bid security shall be a bid bond or a certified cashier's check".

Thank you,

Contractor Surety Group
Matthew L.J. Clarke, Director
O: 843 300 1890
M: 843 872 8165
557 King St., Charleston, SC 29403

From: Rtmoats <rtmoats@moatsconstruction.com>
Sent: Friday, August 24, 2018 11:56 AM
To: Matthew Clarke <mclarke@contractorsuretygroup.com>
Subject: Re: New Bonding Line

Moats 01475

"Boss",
I thought surely I would have heard something back from you by now.
I am disappointed that you have not replied with some kind of explanation and reason why

Independent Mail

NEWS

The A Team: What happened with the East-West Connector park?

Mike Ellis Anderson Independent Mail

Published 5:59 p.m. ET Feb. 1, 2018 | Updated 2:31 a.m. ET Feb. 2, 2018

Question: Reader Christy Richey asked what was holding up progress on a park connected to the East-West Parkway. She said her husband, Scott, bicycles and runs on the pathways. Every time he passes, he's going nuts trying to get a hint of when the park will be done.

Answer: Well, Anderson County Administrator Rusty Burns said there have been a lot of hurdles on the park that's connected to the parkway, once called the East-West Connector.

There have been disputes with the contractor, which are being resolved, Burns said. There have been issues with rights of way, sewer lines and last week the area was resurveyed to make sure it was compliant with the Americans with Disabilities Act, Burns said.

"And that's not counting all the rain days," he said.

A Team: How did 'The Hundreds' in Pendleton get its name?

Team: What's happening behind the Waffle House in Pendleton?

The first phase of the park should be finished by late spring, Burns said. The next stage, making it a fully-functional park with a playground and bathrooms, will be done "hopefully by summer," Burns said. He hopes that means early in the summer, not the middle or end.

In the meantime, expect to see some changes to the areas around the park.

In the last week, solar lights with solar panels that are round and wrapped around a pole, have been installed. In the next few weeks, county employees are expected to begin additional site work in preparation for the build.

"I know there's been a lot of interest and people are right to ask about it," Burns said.

A Team: How many veterans live in Anderson County?

A Team:: What are the mysterious circular objects at Anderson University?

Reporters Georgie Silvarole, Abe Hardesty and Mike Ellis make up the A Team. Their weekly column is dedicated to answering any and all of our readers' questions. To submit a question, email ateam@independentmail.com or send a letter to the Independent Mail at 1000 Williamston Road, Anderson, SC 29621. The question-and-answer articles will appear in print on Saturdays as well as online at independentmail.com and on our Facebook page.

'24 APR 22 AM11:55:35
Anderson, SC COC, CP/GS

R-001204

RECEIVED
Apr 08 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2020-CP-04-00085
Appellate Case No. 2024-001911

Moats Construction, Inc. and Russell Moats,

Appellants,

v.

Anderson County, Rusty Barns, Matt Schell, and Holt Hopkins,

Respondents.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, the undersigned certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material

s/ David L. Paavola
David L. Paavola, SC Bar No.: 100714
KENISON, DUDLEY & CRAWFORD, LLC
440 Knox Abbott Drive, Suite 510
Cayce, South Carolina 29033
Telephone: (864) 242-4899
Email: paavola@conlaw.com
Attorney for Appellants

April 8, 2026
Cayce, South Carolina