# THE STATE OF SOUTH CAROLINA
# In The Court of Appeals

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## APPEAL FROM PICKENS COUNTY

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SC Court of Appeals

Court of Common Pleas
Jessica A. Salvini, Circuit Court Judge

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Case No. 2021-CP-39-00329

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Court of Appeals Case No. 2025-001327

Michael and Mary Smith,

Appellants,

v.

King Asphalt, Inc.

Respondent.

# RECORD ON APPEAL

**VOLUME 3 OF 5, Pages 545 to 866**

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Clerk of Court Pickens County, SC
JAN 23 '25 PM 1:50

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF PICKENS | IN THE COURT OF COMMON PLEAS<br>FOR THE THIRTEENTH JUDICIAL CIRCUIT |
| Michael and Mary Smith,<br><br>Plaintiffs,<br><br>vs.<br><br>Themistoklis Economou and King Asphalt Inc.,<br><br>Defendants. | CASE NO.: 2021-CP-39-00329<br><br>**PLAINTIFFS' REQUEST TO CLARIFY RULINGS AND PRESERVE ISSUES FOR APPEAL** |

## PLAINTIFFS' REQUEST TO CLARIFY RULINGS AND PRESERVE ISSUES FOR APPEAL

**To the Honorable Court:**

The Plaintiffs, Michael and MaryAnn Smith, respectfully submit this written request to ensure that the Court's rulings, findings, and decisions made during the hearing on the Defendant's Motion for Summary Judgment and the Plaintiffs' Cross-Motion for Summary Judgment are clearly stated and preserved in the record for purposes of appeal (should an adverse ruling be made).

Plaintiffs acknowledge that they cannot match the experience or resources of defense counsel, particularly in the context of the upcoming hearing. In light of this disparity, Plaintiffs seek to proactively address this matter to ensure a fair and equitable proceeding. Additionally, due to limited literacy, Plaintiffs face difficulties in fully understanding and participating in the proceedings in a manner that adequately protects their claims. Despite these obstacles, the facts of this case remain clear and incontrovertible as to negligence per se, negligent entrustment, fraudulent misrepresentation, and obstructive litigation tactics. The defense counsel's strategy appears to rely on ensuring that the plaintiffs remain unrepresented, thereby seeking to procedurally defeat their claims rather than address the merits of the case.

To support these assertions, Plaintiffs are prepared to provide a list of attorneys whom defense counsel has conversed with when contacted, and dissuaded from representing Plaintiffs. Plaintiffs respectfully submit this document, as an addendum to their Cross Motion for Summary Judgment, to ensure the record is clear and complete, and to seek the Court's understanding and assistance doing what is just in preserving their rights.

Pursuant to SCRCP 52(a) and *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976), Plaintiffs respectfully request that the Court provide specific findings of fact and conclusions of law to support its rulings on the motions for summary judgment. This will ensure compliance with legal standards and facilitate a complete record for appellate review.

As established in *The Kitchen Planners, LLC v. Samuel E. Friedman*, Op. No. 28173 (S.C. Aug. 23, 2023), the Court must carefully evaluate whether a genuine issue of material fact exists under SCRCP

56(c) when ruling on a motion for summary judgment (even when the defendants have not raised any material issues of fact in their Summary Judgment motion). Plaintiffs request that the Court comply with this standard by providing written explanations of its reasoning and conclusions.

---

**I. REQUEST TO CLARIFY RULINGS AND FINDINGS**

1. Plaintiffs request that the Court provide specific clarification on all rulings and findings, including but not limited to:
   - The disposition of the Defendant's Motion for Summary Judgment.
   - The disposition of the Plaintiffs' Cross-Motion for Summary Judgment.
   - Any findings of fact or conclusions of law the Court deems relevant to its rulings.
2. Plaintiffs request that the Court indicate on the record whether all filings, including Plaintiffs' Cross-Motion for Summary Judgment and all supporting documents, have been properly considered.

**Supplemental Request for Compliance with Legal Authority:**
Pursuant to SCRCP 56(c) and *The Kitchen Planners*, Plaintiffs respectfully request that the Court carefully evaluate the evidence and explain its reasoning to ensure compliance with the "genuine issue of material fact" standard for summary judgment.

3. Plaintiffs respectfully request the Court issue a written order detailing its findings and conclusions to facilitate compliance with SCRCP 52(a) and to ensure clarity for all parties.

---

**II. REQUEST TO ADDRESS DEFENDANT'S CLAIMS REGARDING SERVICE**

1. Plaintiffs anticipate that the Defendant may raise objections regarding service of the Plaintiffs' Cross-Motion for Summary Judgment.
2. Plaintiffs have filed with the Court all USPS receipts and return cards demonstrating proper service. In accordance with SCRCP 5(b) and *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), Plaintiffs have attached as **Exhibit A** all USPS receipts and return cards demonstrating proper service in compliance with the rules of civil procedure.
3. Plaintiffs request that the Court confirm on the record that service was properly effectuated.

---

**III. PRESERVATION OF ISSUES FOR APPEAL**

1. Plaintiffs request that the Court explicitly include in the record:
   - All arguments, motions, and supporting evidence presented by Plaintiffs.
   - Any objections raised by the Defendant and the Court's rulings on such objections.

**Supplemental Preservation Request:**
Pursuant to SCRCP 46, Plaintiffs respectfully request that the Court confirm on the record that all objections and arguments have been preserved for appellate review.

2. Plaintiffs respectfully request that the Court's final order memorialize all rulings and findings to ensure a complete record for appellate review, should such a step be necessary.

---

**IV. HISTORY OF BAD FAITH CONDUCT AND OBSTRUCTION BY DEFENSE COUNSEL**

**A. Filing Inflammatory Documents on the Public Record**

1. **Confidential Attorney List Misused by Defense Counsel:**
   During a prior hearing on May 19, 2023 (Plaintiff's attorney's motion to be relieved as counsel), Plaintiffs provided the Court with a confidential list of attorneys as evidence of their diligent efforts to secure substitute counsel. Despite the confidential nature of this document, defense

counsel subsequently published those attorneys names on the public record on November 1, 2023, and February 23, 2024, as exhibits attached to their Rule to Show Cause motion. This action appears calculated to create the impression that the Plaintiffs' inability to retain counsel falsely reflects on the merits of their case as it had no relevance to the subject matter of defendant's Show Cause motion, thereby designed and intentioned purely to discourage new attorneys from taking the case as substitute counsel.

2. **Publication of Confidential Communications:**
Defense counsel also filed on the public record confidential communications between Plaintiffs and their Power of Attorney (POA), which were mistakenly forwarded to defense counsel by Plaintiff. These communications, explicitly marked as **"Confidential – Not for Dissemination"**, were published on November 1, 2023, and February 23, 2024, as an exhibit alongside the Defendant's Rule to Show Cause motion. This action constitutes a violation of trust and demonstrates bad faith in handling sensitive materials. Rule 4.4(b), RPC, Rule 407, SCACR specifically addresses this issue, requiring that a lawyer who knows or reasonably should know that such information was inadvertently sent must promptly notify the sender. The South Carolina Supreme Court has upheld this principle, emphasizing the ethical obligations of attorneys to safeguard the integrity of privileged communications (*In re Amendments to the Rules of Professional Conduct, Rule 407, SCACR*, 435 S.C. 67, 865 S.E.2d 777 (2021)) **attached as Exhibit C.** By filing these communications publicly, defense counsel has breached their ethical obligations, compounding the prejudice against Plaintiffs. These exhibits having nothing to do with their filing, but are designed to dissuade any attorney from taking their case as substitute counsel.

**B. Negative Calumny to Deter Potential Counsel**
Defense counsel has actively discouraged potential attorneys from representing Plaintiffs by making prejudicial and disparaging remarks. Via feedback from attorney's approached for representation, Plaintiffs are aware of defense counsel:

- Commenting negatively on Plaintiffs' 'presentability,' lack of sophistication, and literacy, suggesting that they would not be effective witnesses or credible clients.
- Making derogatory remarks about Plaintiffs' personal challenges, including references to their history of substance use disorders (despite Plaintiff's DUI being fifteen years prior and drug conviction 35 years prior), all in a manner that is irrelevant to the merits of the case.
- Leveraging these remarks to create doubt about the viability of the case, refusing to discuss the merits of the case, insisting on the longest and most costly path of litigation and relying on personal attacks against Plaintiffs to give these attorneys pause, thereby deterring potential representation.

**C. Denial of SCDOT Work Zone Status Despite Clear Evidence**
For six years, Defendants have continuously denied that they were operating an SCDOT work zone at the time of the incident, despite overwhelming evidence proving otherwise. Plaintiffs have presented multiple sources, including amended SCHP accident reports, deposition testimony, documentary evidence, and **video and photographic evidence**, which establish that the area in question was an active SCDOT work zone. These denials directly contradict:

1. The amended TR-310 accident report explicitly identifies the site as an SCDOT work zone. This conclusion is further corroborated by a FOIA response from SCDOT, which confirms that the accident occurred within an SCDOT work zone. Given this documented evidence, it is unclear how Defendants can continue to deny this fact.

2. **Violations of MUTCD, Division 600, and South Carolina Code,** demonstrating the Defendants' failure to meet statutory and regulatory safety requirements for work zones, clearly support a claim of negligence per se.
3. **Video and Photographic Evidence,** which corroborates the hazardous conditions created by Defendants' actions.
    - Plaintiffs have submitted still frames and video footage from a South Carolina Highway Patrol (SCHP) dashcam, accompanied by irrefutable documentation from SCDOT and King Asphalt, Inc. themselves, as to the facts and conditions at the time of the accident, that visually depict the significant lane height differential and the absence of required traffic control devices at the scene. Courts have consistently recognized the **veracity and reliability of photographic evidence** in substantiating factual claims. See *Scott v. Harris*, 550 U.S. 372, 381 (2007).

Despite this clear and compelling evidence, Defendants have pursued a strategy of denial and obfuscation for six years, choosing to avoid the substantive issues of negligence per se, negligent entrustment, fraudulent misrepresentation, and obstruction. Instead, Defendants have relied on procedural gamesmanship, and made every effort to deny the Plaintiffs representation, with actions seemingly designed to frustrate and exhaust Plaintiffs' efforts to obtain justice and be made whole.

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**V. GOOD FAITH EFFORTS TO SETTLE**

Plaintiffs have made repeated efforts to resolve this matter without the need for prolonged litigation. On January 17, 2025, Plaintiffs sent an email to Defendants (attached as **Exhibit B**) outlining the substantial evidence of liability, statutory violations, and the financial and reputational risks of continued litigation. Plaintiffs also invited Defendants to engage in meaningful settlement discussions to avoid unnecessary expenses and further harm to all parties. Despite this good faith effort, Defendants failed to respond. This nonresponse not only underscores Defendants' pattern of bad faith conduct but also imposes an undue burden on Plaintiffs, who are elderly and managing significant health challenges exacerbated by the ongoing litigation. Over the grueling six years of this case, defense counsel has remained in denial or willfully ignorant of their culpability. Two years ago, defense counsel denied a request for a **40(j)** dismissal, despite knowing it was a prerequisite for several attorneys who had shown interest in taking the case. These attorneys expressed the need for additional time to thoroughly unpack and address the case. Since then, other attorneys have also indicated an interest in representing Plaintiffs if a **40(j)** dismissal could be granted. However, subsequent requests for a **40(j)** have been denied, further impeding Plaintiffs' ability to secure representation.

During this time, the Defendant, King Asphalt, Inc., has even changed ownership, adding further complexity to the case and highlighting the defense's unwillingness to engage constructively in resolution efforts.

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## VI. GENERAL REQUEST FOR CLARITY

1. Plaintiffs, due to their limited ability to participate actively in oral proceedings, respectfully request that the Court ensure all rulings and findings are fully explained on the record.
2. Plaintiffs further request that the Court provide direction on any additional steps required to ensure that the record is complete and that all issues are preserved for potential appeal.
3.

## REQUEST TO MAKE THIS DOCUMENT PART OF THE PERMANENT RECORD

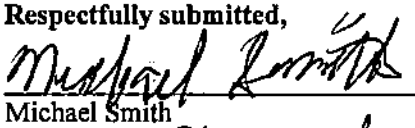
Plaintiffs respectfully request that this document be made part of the permanent record of this case. Plaintiffs ask that the Court either read this document into the record or formally acknowledge and admit it to the record to ensure that all issues, requests, and arguments are preserved for appellate review.

## Conclusion

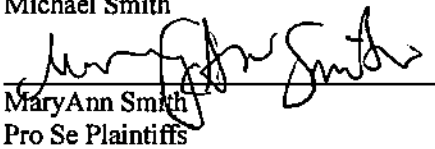
For the reasons stated above, Plaintiffs respectfully request that the Court:

1. Clarify its rulings and provide specific findings of fact and conclusions of law.
2. Confirm proper service of Plaintiffs' Cross-Motion for Summary Judgment.
3. Ensure that all issues are preserved for potential appeal by creating a complete and accurate record.
4. Make this document part of the permanent record of this case.

**Respectfully submitted,**



Michael Smith — January 22, 2025 (Date)



MaryAnn Smith — January 22, 2025 (Date)

Pro Se Plaintiffs
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Easley, S.C. 29640
MichaelDSmith@housemail.com

Clerk of Court Pickens County, SC
JAN 24 '25 PM 2:32

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF PICKENS<br><br>Michael and Mary Smith,<br><br>Plaintiffs,<br><br>vs.<br><br>Themistoklis Economou and King Asphalt Inc.,<br><br>Defendants. | IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT<br><br>CASE NO.: 2021-CP-39-00329<br><br>**PLAINTIFFS' REQUEST TO CLARIFY RULINGS AND PRESERVE ISSUES FOR APPEAL** |

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## IV. HISTORY OF BAD FAITH CONDUCT AND OBSTRUCTION BY DEFENSE COUNSEL

### A. Filing Inflammatory Documents on the Public Record

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**B. Negative Calumny to Deter Potential Counsel**
Defense counsel has actively discouraged potential attorneys from representing Plaintiffs by making prejudicial and disparaging remarks. Via feedback from attorney's approached for representation, Plaintiffs are aware of defense counsel:

- Commenting negatively on Plaintiffs' 'presentability,' lack of sophistication, and literacy, suggesting that they would not be effective witnesses or credible clients.
- Making derogatory remarks about Plaintiffs' personal challenges, including references to their history of substance use disorders (despite Plaintiff's DUI being fifteen years prior and drug conviction 35 years prior), all in a manner that is irrelevant to the merits of the case.
- Leveraging these remarks to create doubt about the viability of the case, refusing to discuss the merits of the case, insisting on the longest and most costly path of litigation and relying on personal attacks against Plaintiffs to give these attorneys pause, thereby deterring potential representation.

**C. Denial of SCDOT Work Zone Status Despite Clear Evidence**
For six years, Defendants have continuously denied that they were operating an SCDOT work zone at the time of the incident, despite overwhelming evidence proving otherwise. Plaintiffs have presented multiple sources, including amended SCHP accident reports, deposition testimony, documentary evidence, and **video and photographic evidence**, which establish that the area in question was an active SCDOT work zone. These denials directly contradict:

1. The amended TR-310 accident report explicitly identifies the site as an SCDOT work zone. This conclusion is further corroborated by a FOIA response from SCDOT, which confirms that the accident occurred within an SCDOT work zone. Given this documented evidence, it is unclear how Defendants can continue to deny this fact.

2. **Violations of MUTCD, Division 600, and South Carolina Code**, demonstrating the Defendants' failure to meet statutory and regulatory safety requirements for work zones, clearly support a claim of negligence per se.
3. **Video and Photographic Evidence**, which corroborates the hazardous conditions created by Defendants' actions.
    - Plaintiffs have submitted still frames and video footage from a South Carolina Highway Patrol (SCHP) dashcam, accompanied by irrefutable documentation from SCDOT and King Asphalt, Inc. themselves, as to the facts and conditions at the time of the accident, that visually depict the significant lane height differential and the absence of required traffic control devices at the scene. Courts have consistently recognized the **veracity and reliability of photographic evidence** in substantiating factual claims. See *Scott v. Harris*, 550 U.S. 372, 381 (2007).

Despite this clear and compelling evidence, Defendants have pursued a strategy of denial and obfuscation for six years, choosing to avoid the substantive issues of negligence per se, negligent entrustment, fraudulent misrepresentation, and obstruction. Instead, Defendants have relied on procedural gamesmanship, and made every effort to deny the Plaintiffs representation, with actions seemingly designed to frustrate and exhaust Plaintiffs' efforts to obtain justice and be made whole.

---

## V. GOOD FAITH EFFORTS TO SETTLE

Plaintiffs have made repeated efforts to resolve this matter without the need for prolonged litigation. On January 17, 2025, Plaintiffs sent an email to Defendants (attached as **Exhibit B**) outlining the substantial evidence of liability, statutory violations, and the financial and reputational risks of continued litigation. Plaintiffs also invited Defendants to engage in meaningful settlement discussions to avoid unnecessary expenses and further harm to all parties. Despite this good faith effort, Defendants failed to respond. This nonresponse not only underscores Defendants' pattern of bad faith conduct but also imposes an undue burden on Plaintiffs, who are elderly and managing significant health challenges exacerbated by the ongoing litigation. Over the grueling six years of this case, defense counsel has remained in denial or willfully ignorant of their culpability. Two years ago, defense counsel denied a request for a **40(j)** dismissal, despite knowing it was a prerequisite for several attorneys who had shown interest in taking the case. These attorneys expressed the need for additional time to thoroughly unpack and address the case. Since then, other attorneys have also indicated an interest in representing Plaintiffs if a **40(j)** dismissal could be granted. However, subsequent requests for a **40(j)** have been denied, further impeding Plaintiffs' ability to secure representation.

During this time, the Defendant, King Asphalt, Inc., has even changed ownership, adding further complexity to the case and highlighting the defense's unwillingness to engage constructively in resolution efforts.

---

## VI. GENERAL REQUEST FOR CLARITY

1. Plaintiffs, due to their limited ability to participate actively in oral proceedings, respectfully request that the Court ensure all rulings and findings are fully explained on the record.
2. Plaintiffs further request that the Court provide direction on any additional steps required to ensure that the record is complete and that all issues are preserved for potential appeal.

**REQUEST TO MAKE THIS DOCUMENT PART OF THE PERMANENT RECORD**

Plaintiffs respectfully request that this document be made part of the permanent record of this case. Plaintiffs ask that the Court either read this document into the record or formally acknowledge and admit it to the record to ensure that all issues, requests, and arguments are preserved for appellate review.

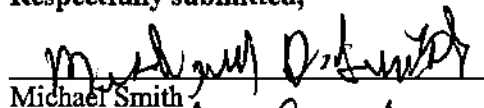
---

**Conclusion**

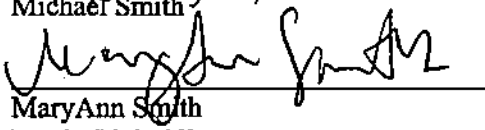
For the reasons stated above, Plaintiffs respectfully request that the Court:

1. Clarify its rulings and provide specific findings of fact and conclusions of law.
2. Confirm proper service of Plaintiffs' Cross-Motion for Summary Judgment.
3. Ensure that all issues are preserved for potential appeal by creating a complete and accurate record.
4. Make this document part of the permanent record of this case.

**Respectfully submitted,**



Michael Smith — January 22, 2025 — Date



MaryAnn Smith — January 22, 2025 — Date

Pro Se Plaintiffs
220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com

Clerk of Court Pickens County, SC
JAN 24 '25 PM 9:32

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF PICKENS<br><br>Michael and Mary Smith,<br><br>Plaintiffs,<br><br>vs.<br><br>Themistoklis Economou and King Asphalt Inc.,<br><br>Defendants. | IN THE COURT OF COMMON PLEAS<br>FOR THE THIRTEENTH JUDICIAL<br>CIRCUIT<br><br>CASE NO.: 2021-CP-39-00329<br><br>**CERTIFICATE OF SERVICE** |

## CERTIFICATE OF SERVICE

I hereby certify that a copy of this **Request to Clarify Rulings and Preserve Issues for Appeal** (and Exhibits A, B, & C) was served upon the following counsel of record:

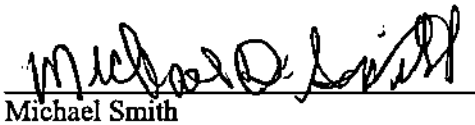
**Catharine Garbee Griffin, Esq.**
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

The documents were served via the following methods:

By Email to: CGriffin@brblegal.com
Date of email service: January 23, 2025

To the above address by U.S. Mail via certified mail (return receipt requested),
Certified Mail Number: USPS 70210950000135867910
Date of Mailing: January 23, 2025

**Respectfully submitted,**



January 23, 2025
Michael Smith — Date
Pro Se Plaintiff
220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com

# EXHIBITS

## A, B, C

**PLAINTIFFS' REQUEST TO CLARIFY RULINGS AND PRESERVE ISSUES FOR APPEAL**
CA# 2021-CP-39-00329

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF PICKENS | IN THE COURT OF COMMON PLEAS<br>FOR THE THIRTEENTH JUDICIAL<br>CIRCUIT |
| Michael and Mary Smith,<br><br>Plaintiffs,<br><br>vs.<br><br>Themistoklis Economou and King Asphalt Inc.,<br><br>Defendants. | CASE NO.: 2021-CP-39-00329<br><br>**CERTIFICATE OF SERVICE** |

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2024 DEC -1 P 2:

**CERTIFICATE OF SERVICE**

I, Michael D. Smith, hereby certify that I have this day served the following documents:

**PLAINTIFFS' OPPOSITION TO DEFENDANT KING ASPHALT, INC.'S MOTION FOR SUMMARY JUDGMENT, CROSS-MOTION FOR SUMMARY JUDGMENT, AND PRAYER FOR ALTERNATIVE RELIEF**

along with all attached exhibits and digital exhibits on USB drive/and by email attachment.

The aforementioned documents were served upon the following counsel of record:

**Catharine Garbee Griffin, Esq.**
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

The documents were served via the following methods:

By Email to: CGriffin@brblegal.com
Date of email service: 12/13/2024

By U.S. Mail return receipt requested via certified mail,
Certified Mail Number: USPS 70210950000135867958
Date of Mailing: 12/13/2024

I further certify that a copy of this Certificate of Service was also included with the documents sent by U.S. Mail and email.

Respectfully submitted,

Michael D. Smith 12-12-2024

Michael D. Smith
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Date

NOTARY ACKNOWLEDGEMENT

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

I, Kendra Taylor, the undersigned Notary Public, do hereby certify that Michael D. Smith, personally appeared before me this day and acknowledged the due execution of the foregoing Certificate of Service.

Sworn to and subscribed before me this 12 day of December, 2024.

Kendra Taylor

Notary Public, State of South Carolina
My Commission Expires: 07/07/2032

KENDRA TAYLOR NOTARY PUBLIC SOUTH CAROLINA My Comm. Expires JULY 7, 2032

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

2025 JAN 17 P 2:07

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Michael and Mary Smith,

Plaintiffs,

vs.

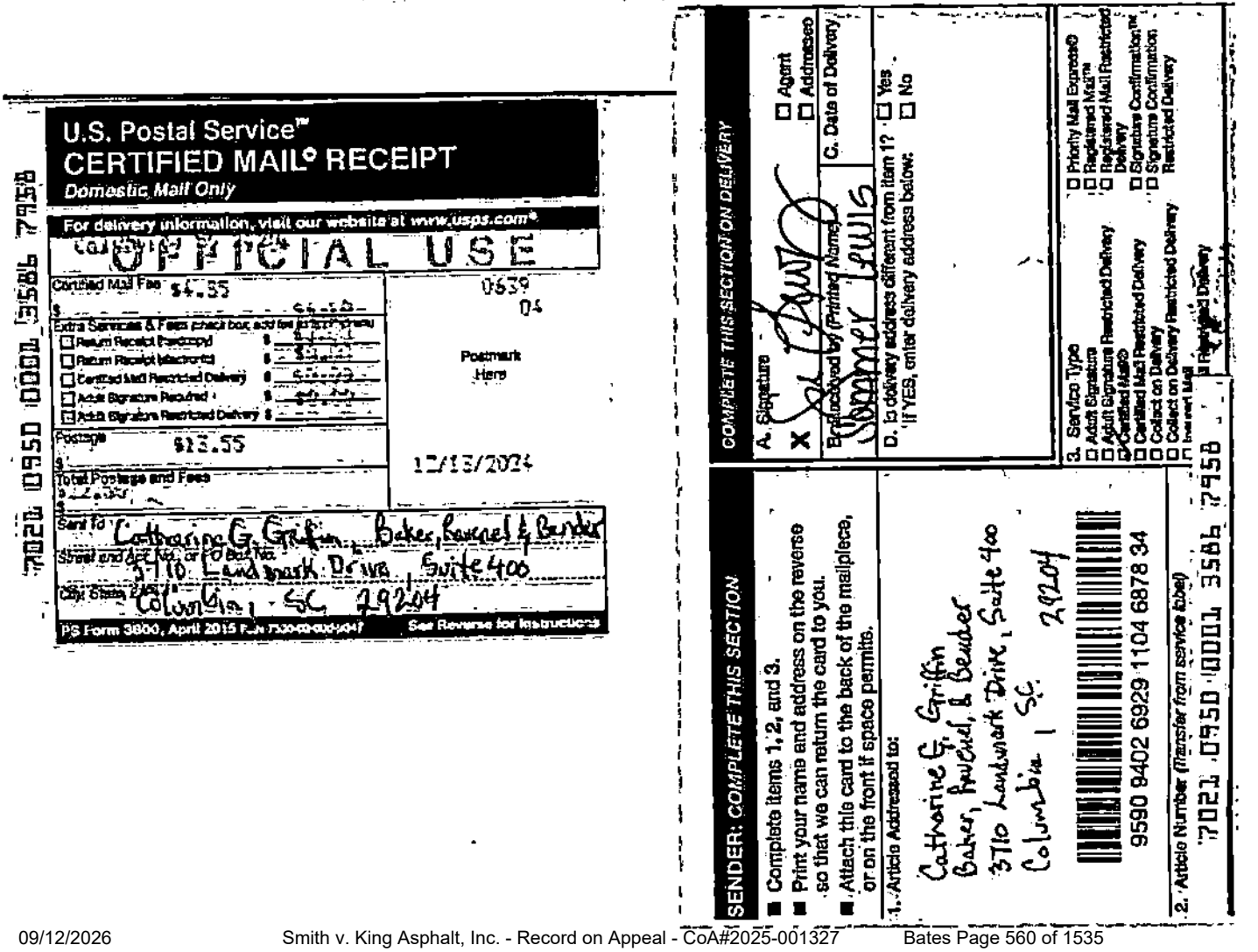
Themistoklis Economou and King Asphalt Inc.,

Defendants.

CASE NO.: 2021-CP-39-00329

**PLAINTIFFS' OPPOSITION TO DEFENDANT KING ASPHALT, INC.'S MOTION FOR SUMMARY JUDGMENT, CROSS-MOTION FOR SUMMARY JUDGMENT, AND PRAYER FOR ALTERNATIVE RELIEF**

## PROOF OF SERVICE



mail.com

# FW: Letter to King Asphalt Inc.

From:

"Michael Smith" <MichaelDSmith@housemail.com>

To:

"Griffin, Catharine G." <CGriffin@brblegal.com>, "t k" <TKowalewski@brblegal.com>

Date:

Jan 17, 2025 3:38:52 AM

Dear King Asphalt, Inc.,

We are writing to address the substantial and well-documented liabilities of King Asphalt, Inc., in the matter of Smith v. Economou, King Asphalt Inc. The evidence, combined with statutory and contractual obligations, leaves little doubt about the outcome should this case proceed further. We hope this letter serves as an opportunity to engage constructively and avoid unnecessary expenses for all parties involved.

The liability of King Asphalt is rooted in multiple breaches of statutory, contractual, and safety standards that directly caused the accident. South Carolina Code § 56-5-1535 mandates the proper use of traffic control devices and signage within a work zone. As detailed in the provided evidence, King Asphalt failed to maintain these devices, leaving the work zone unmarked and unsafe at the time of the incident. This negligence undermined public safety and violated clearly established legal obligations.

The construction contract and SCDOT regulations explicitly prohibit public exposure to grade elevation differences exceeding 1 inch in adjacent lanes between a milled lane and a newly paved HMA lane, and expressly instruct contractors that lanes shall remain closed while such conditions exist. Documented evidence establishes that the elevation difference was greater than 2.16 inches, the LISL remained milled beyond the ten days permitted, and the work zone was devoid of any traffic control. These violations compounded the premature removal of lane closure devices before compliance with regulatory requirements. Such breaches significantly increased the risk of accidents, as corroborated by eyewitness accounts.

The unambiguous statutory and contractual breaches substantiate a claim of negligence per se. The Department of Transportation's requirements, including compliance with the MUTCD and Division 600, further underscore the standards

that were violated. The SCDOT has affirmed that this occurred within a designated work zone, and the SCHP's amended accident report (while not admissible in court, it is indicative of what Trooper Laginestra will testify to at trial) acknowledges the work zone's status and its critical role in the incident. Eyewitness statements and video evidence further illustrate how these unsafe conditions directly contributed to the outcome.

While the evidence speaks for itself, we recognize that litigation entails costs and risks for all parties. Courts tend to view violations of public safety obligations unfavorably, which could further exacerbate the reputational impact on King Asphalt Inc. A proactive resolution demonstrates accountability and a commitment to public safety while also mitigating the financial and procedural burdens of extended litigation.

In addition, the plaintiffs, Michael and MaryAnn Smith, are elderly and managing significant health challenges that have been exacerbated by the prolonged litigation. Their injuries from the incident continue to require medical attention and care, which has been hindered by the ongoing delays. This has not only impacted their physical well-being but has also added emotional and financial strain. The extended timeline in this case imposes a significant burden on the plaintiffs, a factor that will not be lost on a jury should this matter proceed to trial.

We also acknowledge King Asphalt's substantial punitive exposure, especially in light of their demonstrated bad faith and obstructionist conduct. This position presents significant challenges that will likely intensify as litigation proceeds. Addressing this now through meaningful resolution not only avoids unnecessary escalation; but, also serves as a prudent step in mitigating further financial and reputational risks.

We remain committed to a resolution that reflects fairness and efficiency and welcome an opportunity to engage in meaningful discussions. After taking this communication to your clients, we trust you will see the merit in addressing this matter efficiently and in a way that serves the interests of all parties involved. We look forward to your response.

This correspondence is provided for the purpose of facilitating discussion and is made without prejudice to any rights, defenses, or claims of the parties. Nothing contained herein shall be construed as an admission of liability, nor shall it be deemed a waiver of any legal or equitable rights. This communication does not constitute a binding agreement or formal offer.

Sincerely,

Michael and MaryAnn Smith

Pro Se Plaintiffs

Appellate Case 2020-000666
Supreme Court of South Carolina

# In re Amendments To The Rules of Prof'l Conduct, Rule 407, S.C. Appellate Court Rules

435 S.C. 67 (S.C. 2021) · 865 S.E.2d 777
Decided Nov 17, 2021

Appellate Case No. 2020-000666

11-17-2021

RE: AMENDMENTS TO the RULES OF PROFESSIONAL CONDUCT, RULE 407, SOUTH CAROLINA APPELLATE COURT RULES

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67 ORDER*67 The South Carolina Bar has proposed a number of amendments to the Rules of Professional Conduct (RPC), which are found in Rule 407 of the South Carolina Appellate Court Rules (SCACR). These amendments incorporate modified versions of a number of amendments the American Bar Association (ABA) made to the ABA Model Rules of Professional Conduct in 2012 as part of the ABA's Ethics 20/20 initiative. The purpose of the amendments is to provide guidance about lawyers' ethical duties in light of the advancement of technology in the practice of law.

Pursuant to Article V, Section 4 of the South Carolina Constitution, we adopt the amendments proposed by the South Carolina Bar, with some modifications. Rules 1.0, 1.1, 1.18, 4.4, 5.3, 5.5, and 8.5, RPC, Rule 407, SCACR, are amended as set forth in the attachment to this order. These amendments are effective immediately.

s/ Donald W. Beatty, C.J.

s/ John W. Kittredge, J.

s/ Kaye G. Hearn, J.

68 s/ John Cannon Few, J.*68 s/ George C. James, Jr., J.

Attachment

## Rule 1.0(c), RPC, Rule 407, SCACR, is amended to provide:

(c) "Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client or other person to appreciate the significance of the matter in question.

## Comment 9 to Rule 1.0, RPC, Rule 407, SCACR, is amended to provide:

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any
778 contact *778 with any firm files or other

information, including electronic information, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including electronic information, relating to the matter, and periodic reminders of the screen to the screened lawyer and all other firm personnel.

The Comments to Rule 1.1, RPC, Rule 407, SCACR are amended to add new Comments 6 and 7, with the subsequent comments renumbered to reflect the addition. New Comments 6 and 7 provide:

## Retaining or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a
69 client, the lawyer must reasonably *69 believe that the service of the other lawyer(s) will contribute to the competent and ethical representation of the client, and the lawyer may be required to obtain the informed consent of the client under other Rules. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections and professional conduct rules of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Rule 1.18, RPC, Rule 407, SCACR, is amended to provide:

## RULE 1.18: DUTIES TO PROSPECTIVE CLIENT

(a) A person who engages in mutual communication with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client only when there is a reasonable expectation that the lawyer is likely to form the relationship

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

...

## Comment

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other
70 property in the lawyer's *70 custody, or rely on the lawyer's advice. A lawyer's mutual communications with a prospective client can be written, oral, or electronic and usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. Whether communications, including written, oral, or electronic communications, create a prospective client-lawyer relationship depends on the circumstances. For example, such a relationship is likely to be formed if a lawyer, either in person or through the lawyer's advertising

in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and
779 a person provides information *779 in response. See also Comment [4]. In contrast, such a relationship does not arise solely if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is likely to form a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a). Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial conference prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how
71 brief the initial conference may be.*71 [4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit mutual communication to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition communication with a prospective client on the person's informed consent that no information disclosed during the communication will prohibit the lawyer from representing a different client in the matter. See Rule 1.0(g) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

....

## Rule 4.4, RPC, Rule 407, SCACR is amended to provide:

(b) A lawyer who receives a document or electronic information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronic information was inadvertently sent shall promptly notify the sender.

## Comment

...

[2] Paragraph (b) recognizes that lawyers sometimes receive a document or electronic information that was mistakenly sent or produced by opposing parties or their lawyers. A document or electronic information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronic information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronic information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective
72 *72 measures. Whether the lawyer is required to take additional steps, such as returning the document or electronic information, is a matter of law beyond the scope of these Rules, as is the

question of whether the privileged status of a document or electronic information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronic information that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document or electronic information" includes, in addition to paper documents, email and other forms of electronic information, including embedded data (commonly referred to as "metadata"), that is subject to being
780 read or put into *780 readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

[3] Some lawyers may choose to return a document or delete electronic information unread, for example, when the lawyer learns before receiving it that it was inadvertently sent. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronic information is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

Rule 5.3, RPC, Rule 407, SCACR, is amended to change the title of the rule to read: "Responsibilities Regarding Nonlawyer Assistance." Comments 1 and 2 are amended, and new Comments 4 and 5 are added, and provide:

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm engaged by the firm act in a way compatible with the professional obligations of the lawyer. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for
73 the conduct of such nonlawyers within or *73 outside the firm that would be a violation of the Rules of Professional conduct if engaged in by a lawyer.

[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

...

[4] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information;

and the legal and ethical rules of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with
74 the professional obligations of the lawyer.*74 [5] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal,
781 lawyers *781 and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

## Rule 5.5, RPC, Rule 407, SCACR is amended to provide:

(d) A lawyer admitted in another United States jurisdiction, and not debarred, disbarred or suspended from practice in any jurisdiction, may provide legal services, including through an office or other systematic and continuous presence, in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law or rule of this jurisdiction.

...

## Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

...

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically
75 present here. *75 Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

...

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5. See also Rule 418, SCACR.

## Comment 5 to Rule 8.5, RPC, Rule 407, SCACR, is amended to provide:

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably

believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule. With respect to conflicts of interest, in determining a lawyer's reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as within the scope of paragraph (b)(2) may be considered if the agreement was obtained with the client's informed consent confirmed in the agreement.

---

casetext

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 19

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Memorandum in Support of King Asphalt's Motion for Summary Judgment and in Opposition to Plaintiff's Cross-Motion for Summary Judgment, filed January 27, 2025, with the attachments filed therewith. (Resp. 11) / Memorandum in support. (App. 4)

ELECTRONICALLY FILED - 2025 Jan 27 8:38 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

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|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOR THE THIRTEENTH JUDICIAL CIRCUIT |
| COUNTY OF PICKENS | ) | |
| | ) | C.A. No.: 2021-CP-39-00329 |
| Michael and Mary Smith, | ) | |
| | ) | **MEMORANDUM** |
| Plaintiff, | ) | **IN SUPPORT OF KING ASPHALT'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGEMENT** |
| v. | ) | |
| Themistoklis Economou, King Asphalt Inc. and South Carolina Department of Transportation (SCDOT), | ) | |
| Defendants. | ) | |

This matter is before the court on King Asphalt, Inc.'s ("King Asphalt") Motion for Summary Judgment on the grounds that the plaintiffs Michael and Mary Smith ("Plaintiffs" or "the Smiths") have failed to present any expert testimony that any alleged negligent conduct of King Asphalt on the date of the incident deviated from any professional standard of care which is required to prove the allegations in the Complaint and/or the plaintiff has no evidence to support their allegations. Accordingly, King Asphalt requests that the court grant its Motion for Summary Judgment and dismiss the plaintiffs' case with prejudice.

## BACKGROUND

This case arises out of an incident which occurred on March 22, 2019, when the plaintiffs, Michael Smith ("Mr. Smith") who was driving a moped, and Mary Smith ("Mrs. Smith"), who was riding as a passenger, were involved in a motor vehicle collision with a car driven by Themistoklis Economou ("Economou") on Highway 8, Gentry Memorial Highway, in Pickens County, South Carolina. The plaintiffs initially sued Economou, King Asphalt, Inc., and S.C. DOT. The plaintiffs voluntarily dismissed S.C. DOT. The plaintiffs settled the claims against Mr. Economou and dismissed their claims against him with prejudice. The remaining allegations in the

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complaint are against King Asphalt, Inc., a road construction company operating in Pickens County.

The plaintiffs have brought their case against King Asphalt on the following grounds:

- King Asphalt, Inc. failed to properly train employees;
- King Asphalt, Inc. failed to have proper warning signage alerting motorists of the upcoming road conditions;
- King Asphalt, Inc. failed to maintain proper signage alerting motorists to reduce speed and utilize only one lane until the crew completed the scheduled work for the day including but not limited to, the complete removal of cones previously blocking the lane under construction;
- Failing to comply with the guidelines set by S.C. DOT for Work Zone Traffic Control; and
- Failing to exercise the reasonable degree of care which a reasonable and prudent person would exercise under the same circumstances.

(Comp. ¶ 22).

Plaintiffs further allege King Asphalt removed the orange cones separating the two lanes and a worker who picked up the cones caused and contributed "to confusion in the flow of traffic, when a better/safer methodology was available." (Compl. ¶ 11.) Plaintiffs further allege King Asphalt was negligent because it had a duty "to use due care with the use of proper signage to alert drivers to the upcoming road construction, for drivers to reduce their speed, and for drivers to be prepared to stop to avoid injuries to both motorists and road crew." (Compl. ¶ 19.)

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FACTS

King Asphalt, Inc. ("King Asphalt") contracted with South Carolina Department of Transportation ("S.C. DOT") under Contract number 3948130 to perform road construction work on Highway 8, Gentry Memorial Highway, a four-lane road, in Pickens County, South Carolina. (Exhibit 1, Contract; Dep. of Makison, p. 9). The King Asphalt contract with S.C. DOT called for road work to be done, including full depth patching of certain areas, the removal of two inches of existing asphalt from the road, and the replacement of the asphalt with new asphalt so that there would be a final surface for the public to drive their cars on. (Dep. of Limbaugh, p. 15). Limbaugh, an employee of King Asphalt who is knowledgeable regarding the road construction process, testified regarding the process to meet the standards under the S.C. DOT contract. He stated that after the road has been milled or the asphalt has been removed then the new asphalt is installed. He testified that the asphalt mix is put into a paving machine which lays the asphalt down at a specified controlled rate. (Dep. of Limbaugh, p. 28-30). He noted that the thickness to be achieved would be two inches after compaction through a roller pattern established with S.C. DOT. (Dep. of Limbaugh, p. 28).

Before the work began on the project, King Asphalt installed permanent signs for the work site which were approved by S.C. DOT. (Dep. of Michael, p. 20). These permanent construction signs stay in place until S.C. DOT conducts a final inspection of the project and S.C. DOT agrees that King Asphalt can remove the permanent signs. (Dep. of Michael, p. 21) In addition to the permanent signs, S.C. DOT required that temporary traffic control be installed when a lane closure was needed to perform work. (Dep. of Michael, p, 19). King Asphalt used the S.C. DOT primary route daytime lane closure drawing to install the temporary construction signs. (Exhibit 2, S.C. DOT Standard Drawing 610-025-00, Lane Closure Daytime Multilane Primary Routes; Dep. of

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Michael, p. 19-20.) Mr. Michael identified the signs required for the temporary lane closure as fourteen temporary warning signs, an arrow board, barricades transitioning traffic to the open lane, a sign in the middle of the barricades and a second arrow board. (Exhibit 2, S.C. DOT Standard Drawing 610-025-00, Lane Closure Daytime Multilane Primary Routes; Dep. of Michael, pp 5, 19-20).

The Highway 8 project had been ongoing for some time before March 22, 2019. On the day that the plaintiffs had their accident with Mr. Economou, King Asphalt had previously milled both eastbound lanes of Highway 8. (Dep. of Zachary Michael, p. 29). After the milling had been completed, King Asphalt commenced the paving work in the milled lanes which was to be done in one lane until that lane was completed which could take more than one day depending on the length of the lane being paved. (Dep. of Doug Limbaugh, p. 24). It is not disputed that at the time of the collision between the moped operated by Smith and the car operated by Economou that the inside left lane had been milled and was in that condition and the outside lane had been paved with new asphalt.

With respect to the area where the plaintiffs claim the accident occurred, Limbaugh, the vice-president of Milling and Reclamation Services at King Asphalt testified that "everything was started and finished in that area. Everything was tacked and paved. Everything that was paved was compacted." (Dep. of Limbaugh p 32-33). All the road work done on March 22, 2019 was accepted by the S.C. DOT. (Dep. of Limbaugh p. 32-33). Limbaugh also testified that S.C. DOT documented on a daily basis both the quality and the thickness of the asphalt and the compaction of the asphalt. (Dep. of Limbaugh, p. 42-43). Limbaugh further testified that the grade elevation difference between the paved lane and non-paved lane was either two inches or less which is the DOT requirement. (Dep. of Limbaugh p. 44). S.C. DOT engineer, Laws, also confirmed that the

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DOT regulation was that the lane differential not exceed two inches. (Dep. of Laws, p.19) S.C. DOT had their own inspector on site for every project and the inspector would have inspected the lane differential to make sure that the measurement was two inches. (Dep. of Limbaugh, p. 44). Zachary Michael, King Asphalt's Director of Personnel and Safety, also testified that the asphalt was installed according to SCDOT specifications in the outside lane, allowing for a two-inch differential between the milled lane and the newly asphalted right lane. (Dep. of Michael, p. 36). Michael testified that King Asphalt did "exactly as S.C. DOT contracted us to do." (Dep. of Michael, p. 37). He specifically stated that the contract required that they remove two inches of the asphalt and install two inches which is what they did. (Dep. of Michael, p. 38).

On March 22, 2019, King Asphalt was performing road construction on Highway 8 in the vicinity of Old Easley Pickens Highway. King Asphalt had previously milled two of the lanes on Highway 8, removing the asphalt, according to the S.C. DOT contract, to a depth of approximately two inches. (Dep. of Limbaugh, pp 22-23.) The King Asphalt road construction crew then installed new asphalt in the outside lane on March 22, 2019. To place the new asphalt in the designated outside lane and allow the traffic to flow unimpeded in the inside lane, King Asphalt, according to the specifications of S.C. DOT, implemented a temporary lane closure of the lane in which they were performing paving operations. To close a lane, King Asphalt would have placed delineation devices or cones at the beginning of the lane closure, tapering the closing of the lane to direct the live traffic to the left lane while construction was being done in the right lane. (Dep. of Laws, pp. 27-29). Beyond the taper closing the lane, King Asphalt would have placed cones every 50 feet in the work zone to protect the ongoing construction activities of their employees from the danger of the traffic. (Dep. of Michael, p. 46). The standard established by the S.C. DOT and within the

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road construction industry allows for temporary lane closures so that work can safely proceed in one lane while traffic proceeded in the adjacent lane.

When the work was finished for the day, the temporary signs and cones which had been placed for the safety of the King Asphalt employees and the motoring public would be removed. King Asphalt would open the closed lane by picking up the delineation devices, the cones, in reverse order from how the lane was closed. (Dep. of Michael, p. 54). As each cone was removed from the highway, it would be considered to be the end of the lane closure, thus allowing the traffic to proceed in that lane. (Dep. of Michael, p. 54). Once each cone for the lane closure was picked up, then the closed lane was completely reopened for traffic to flow. (Dep. of Michael, p. 55). The motoring public would know that the lane was open for use because there would be no cones in the area which had previously indicated that the lane was closed. (Dep. of Michael, p. 55).

Joseph Laws, the resident construction engineer for S.C. DOT, testified that the removal of the traffic cones falls under the 2007 SCDOT Standards and Specifications Manual and the traffic control plan of the contractor. (Dep. of Joseph Laws, p. 25). Laws testified that cones are typically removed from the back taper to the front taper against the traffic to open the lane. (Dep. of Laws, pp. 9 and 28- 29).

Joshua Makison, a district construction engineer for SCDOT, testified generally regarding the removal of cones from a lane closure on a construction site by stating:

> They are picked up backwards in order to provide the taper until the last – the last moment. When you're approaching in the lane, you'll have your cones at an angle, which is your taper that directs you into the other lane. When you're removing the cones, you remove them backwards. People can start moving over earlier, but the taper remains there to protect anything that still may be in the closure, as well as the workers removing the cones.

(Dep. of Makison, p. 18).

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On March 22, 2019, King Asphalt had set up the lane closure, including a taper, directing the traffic into the left inside lane. (Dep. of Michael, p. 23). According to the standards applicable in the construction industry, the removal of the cones, when the work was done for the day, would be done in reverse order from where the lane closure began on the highway, or near the taper, for the safety of the workers and the public. (Dep. of Michael, p. 54). King Asphalt's employees would work moving against the traffic in the closed lane, picking up cones and removing the apparatus that delineated the closed lane, opening the lane from the end of the project and back toward the beginning or the taper. (Dep. of Limbaugh, p. 34).

The plaintiff, Michael Smith, testified that on the day of the accident he was aware that construction was ongoing in the area and had been present for several months. (Dep. of Mr. Smith, p. 103.) Mr. Smith was aware that "they were peeling up asphalt and putting fresh asphalt down." (Dep of Mr. Smith, p. 104). Smith further was aware that there was a lane differential between the milled outside lane and newly paved inside lane, so he brought his moped to a complete stop before he commenced his right turn from the left lane. (Dep. of Mr. Smith p. 117-119).

Smith testified that he was aware that the King Asphalt truck was on Highway 8 "picking up cones" on the date of the accident. (Dep. of Smith, p. 121). He also noticed that the King Asphalt truck was "going the wrong way" in the closed lane picking up the cones. (Dep. of Mr. Smith, p. 120-121). Mr. Economou was travelling on Highway 8 from Pickens to Easley on March 22, 2019. (Dep. of Economou p. 22-26.) Economou testified that there was construction ongoing that day and that there was a sign which stated, "Uneven Pavement." (Dep. of Economou, p. 19). Economou was travelling in the outside lane until Smith entered his lane and the collision with Smith and his moped occurred. (Dep. of Economou, p. 25, 40-41).

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The testimony is conflicting as to how the Smiths' accident occurred. Mr. Smith either "gator walked" his moped across the intersection between the milled lane and the new asphalt as testified to by Frank Pressly, his now power of attorney, but then a witness to the accident, and then was hit by the car driven by Economou. (Dep. of Pressly, pp 7-10). Alternatively, Smith may have driven, after stopping, his moped from the outside lane into the inside lane of travel after stopping. (Dep. of Mr. Smith p. 116-118.) Or, as one witness testified, he never stopped in the left lane and made a right turn in to the lane of travel of Mr. Economou. (Dep. of Kathy Ellenberg p. 13). For the purposes of this motion, it is immaterial to determine exactly how Mr. Smith crossed into the lane of travel of Mr. Economou.

## STANDARD OF REVIEW

Summary judgment is appropriate where "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Rule 56(c) mandates entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

In deciding whether there is a genuine issue of material fact, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in the nonmovant's favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A fact is "material" if proof of its existence or non-existence would affect disposition of the case under applicable law. *Anderson*, at 248. An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. However, "[o]nly disputes over facts that might affect the outcome of the suit under the

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governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 248.

Moreover, "[w]hen a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must – by affidavits or as otherwise provided in this rule – set out specific facts showing a genuine issue for trial." Fed.R.Civ.P. 56(e)(2). With respect to this burden, "it is the responsibility of the plaintiff, not the court, to identify with particularity the evidentiary facts existing in the record which can oppose the defendant's summary judgment motion." *Malina v. Baltimore Gas & Elec. Co.*, 18 F.Supp.2d 596, 604 (D.Md.1998). *See also United States v. Metz*, No. 8:08-2173-HMH, 2009 U.S. Dist. LEXIS 37529, at *1 (D.S.C. May 1, 2009). The "obligation of the nonmoving party is 'particularly strong when the nonmoving party bears the burden of proof.'" *Hughes v. Bedsole*, 48 F.3d 1376, 1381 (4th Cir. 1995) (quoting *Pachaly v. City of Lynchburg*, 897 F.2d 723, 725 (4th Cir. 1990)). Summary judgment is not "a disfavored procedural shortcut," but an important mechanism for weeding out "claims and defenses [that] have no factual bases." *Celotex*, at 327.

## ARGUMENT

### King Asphalt is entitled to summary judgment because absent expert testimony Plaintiffs cannot establish essential elements of their claims.

Under South Carolina law, to prove negligence and recover damages, the plaintiff must establish (1) a duty of care owed by the defendant; (2) a breach of that duty; and (3) damage proximately resulting from the breach. *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2013). While the existence of a duty of care is an issue of law, the existence of the remaining elements of the negligence cause of action is a factual matter—each one of them needs to be proven by preponderance of admissible evidence.

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*See Nelson v. Piggly Wiggly Cent., Inc.,* 390 S.C. 382, 391, 701 S.E.2d 776, 780–781 (S.C. App. 2010).

Plaintiffs cannot prove negligence, let alone recklessness, on King Asphalt's part, because they lack competent evidence necessary to establish the scope of the duty or standard of care incumbent upon King Asphalt as a paving contractor, and have no evidence that such duty had been breached, leading to their injuries.

Note that the Smith's case is predicated on King Asphalt's alleged failure to adhere to the South Carolina Department of Transportation's work zone traffic control guidelines. (Compl. ¶¶ 22(d) and 28.) The plaintiffs specifically state that King Asphalt failed "to comply with . . . Division 600 Regulations, SCDOT Standard Specifications for Highway Construction and contract-specific provisions." (Plaintiffs' Opposition to King Asphalt's Motion for Summary Judgment at 1 or 000006.). Paving industry standards, the manner in which a work zone is to be marked and secured by a road-paving contractor, and the applicable rules, regulations and specifications, however, are not matters familiar to an average juror. In cases such as this, expert testimony is necessary because the finding of liability depends "on the existence of facts which are not common knowledge, and which are peculiarly within the knowledge of men whose experience or study enables them to speak with authority upon the subjects in question." *Kale v. Douthitt*, 274 F.2d 476, 481 (4th Cir. 1960). The jury's "conclusions to be drawn from the facts stated, as well as knowledge of the facts themselves, depend on professional or scientific knowledge not within the range of ordinary training or intelligence." *Id.*

According to Plaintiffs, King Asphalt's liability hinges on the allegedly premature removal of traffic control cones, which removal in turn can be judged as premature only by reference to the height differential between the lanes. As noted in the "facts" section above, which recited

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testimony of King Asphalt's and SC DOT's witnesses who are industry professionals and are familiar with pertinent regulations, King Asphalt adhered to all applicable standards for reopening the lanes. To contradict those testimonies and prove their case, Plaintiffs need an expert. No witness identified by Plaintiffs in their discovery responses can do that, nor can the Smiths themselves, as by their own admission, they are not adequately literate and "face difficulties in fully understanding and participating in the proceedings . . . ." (Plaintiffs' Request to Clarify Rulings and Preserve Issues for Appeal.)[1]

Note here that "evidence of industry safety standards is relevant to establishing the standard of care in a negligence case. *Elledge v. Richland/Lexington Sch. Dist. Five*, 352 S.C. 179, 186, 573 S.E.2d 789, 793 (2002) (citations omitted). And the evidence of such standards is generally offered "in connection with expert testimony which identifies it as illustrative evidence of safety practices or rules generally prevailing in the industry, and as such it provides support for the opinion of the expert concerning the proper standard of care." *Id*. at 188, 573 S.E.2d at 794 (citing *McComish v. DeSoi*, 42 N.J. 274, 200 A.2d 116, 121 (N.J. 1964)).

Similarly, the analysis of King Asphalt's performance of its scope of work requires more than common knowledge and experience of a layperson. Expert testimony is required in this case because "juries must be informed of the criteria upon which a defendant's conduct is to be judged." *Kemmerlin v. Wingate*, 274 S.C. 62, 65, 261 S.E.2d 50, 51 (1979). Here, Plaintiffs have no witness, who by virtue of his or her education, training and experience, could be competent to inform the

[1] Note that Plaintiffs' filing of December 13, 2024, styled "Plaintiffs' Opposition to Defendant King Asphalt, Inc.'s Motion for Summary Judgment, Cross-Motion for Summary Judgment, and Prayer for Alternative Relief" cannot be a work-product of persons of limited literacy. This filing, as well as the above-cited "Request to Clarify," bear hallmarks of unauthorized practice of law by Mr. Frank Pressly. Cf. Michael Smith's Response filed on March 25, 2024.

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jury on what signage was required for a construction zone, the process of the removal of safety devices, or which SCDOT guidelines King Asphalt failed to follow.

The Smiths, who lack any relevant education, training or experience, nonetheless argue that the "Daily Report of Asphalt Roadway Inspection" establishes a breach of a duty of care. (Plaintiff's Opposition at 000018). This argument is baseless for the following reasons. First, they failed to present any evidence of precisely where the accident took place; the Smiths' mere conjecture in guessing the location of the station number without expert support should be disregarded. Second, even if we assume that the Smiths are correct in pointing to a station number referenced in the report as the correct location of the accident, it is contrary to the law to allow a layperson to give an opinion regarding the quality of work of a road construction company and whether the work deviated from the standard of care. The Smiths argue that a layperson—apparently like them—can look at the report, look at a manual and then divide the amount of asphalt used in a specific area of the project without any consideration of the road topography, the depth of the milling and then determine that the difference between the milled lane and the newly paved lane exceeded two inches and thus violated the SC DOT standards. This conclusion makes so many assumptions that it is completely unreliable and should be rejected by this Court. If laypeople were allowed to make calculations according to something they had read in the materials exchanged in this case, or on the Internet or through the use of Artificial Intelligence, like ChatGPT, without the training, experience and education of an expert, then it would expand the evidentiary standards beyond our precedential case law.

If you follow the Smiths' logic here, you must know the precise level of milling in the adjacent lane to know what the depth of the asphalt is in the newly paved lane. There is no testimony on this issue and no evidence from an expert. There must then be an analysis of the

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conditions of the road to determine if there were any uses of the asphalt for something other than surface paving, such as filling in potholes and/or the slope of the road. There also must be testimony from an expert, through taking core samples, as to the precise depth of the milling under the new asphalt and the depth of the new asphalt. There is no evidence whatsoever that contradicts the testimony of the King Asphalt employees as to how the asphalt was applied on March 22, 2019. The only competent evidence regarding the asphalt depth is from the King Asphalt witnesses who said that they complied with all the standards set by the SCDOT. The road was built according to the owner SC DOT's specifications. To refute this testimony, the plaintiffs need to present expert testimony on the applicable standard of care and the alleged breach of that standard by King Asphalt.

Despite the complexity of their proof, which their submission to the Court in and of itself clearly demonstrates, Plaintiffs argue that an expert is not required because these are matters of common knowledge and experience. (Plaintiffs' Opposition at 000050–53.) To support their argument, Plaintiffs cite five court opinions, one of which is nonexistent—*Ingram v. Norfolk Southern Railway Co.*, 365 S.C. 545, 618 S.E.2d. 418 (2005) (a Lexis search of the S.E.2d citation reveals a West Virgina case of *Wood v. Acordia of W.Va. Inc.*)—and only two are barely relevant. Contrary to the Smiths' short summary, *Wise v. Broadway*, 315 S.C. 273, 433 S.E.2d 587 (1993), did not involve "absence of traffic control signage." It involved a rear-end collision in which the at-fault driver was found to have violated the statute regulating the proper distance between vehicles and whether such negligence *per se* was the evidence of recklessness necessary for the punitive-damages award. Similarly, *Austin v. Specialty Transportation Services, Inc.*, 258 S.C. 298, 594 S.E.2d 867 (Ct. App. 2004), involved a collision caused by a driver who disobeyed a stop sign. Contrary to the Smiths' summary, the opinion does not mention the word "expert." The cases of

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*Brouwer v. Sisters of Charity Providence Hospitals*, 763 S.E.2d 200, 205 (S.C. 2014) and *Hickam v. Sexton Dental Clinic*, 295 S.C. 164, 367 S.E.2d 453 (Ct. App. 1988), while somewhat relevant are distinguishable. Both involve medical malpractice and the common knowledge exception to the statutory requirement for expert testimony. Unlike here, the facts in those cases were simple and easy to understand: in *Hickman* a dental assistant jammed an object into a patient's mouth when taking a dental impression and caused an injury; in *Brouwer* the court held that a Notice of Intent to Sue did not require an affidavit of an expert where the alleged malpractice consisted in the hospital staff failing to make sure that the patient who was allergic to latex was not exposed to it—the information that the patient was allergic was included in the surgery consent form and the pre-anesthesia evaluation and was displayed on the wristband. The *Brouwer* court held that the negligent act, that is the surgery performed with latex gloves despite the warnings that resulted in severe allergic reaction, fell with the common knowledge exception.

The facts here, and in particular the milling depth and the thickness of the new layer of asphalt, location of the accident, standards of care, industry standards, and regulatory requirements for lane closures and re-openings, are far from simple and easy to understand. Indeed, they require the testimony of an accident reconstructionist and a road-paving industry expert.

## CONCLUSION

Because they have no testifying expert, Plaintiffs cannot establish the standard of care for the road construction practices of King Asphalt, including the signage on the construction site, the temporary lane closure criteria, and the alleged deviation from such standard of care that could constitute the breach element of their negligence and recklessness claims.

For this reason, King Asphalt asks this Court to grant summary judgment in its favor and to deny Plaintiffs' cross-motion for summary judgment.

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January 27, 2025

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 19a

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SCDOT's Primary Route Daytime Lane Closure Drawing. (Resp. 18)

REFERENCES

WORK ZONE TRAFFIC CONTROL ENGINEER

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER NO. 24242 WILLIE E. McCONNELL, JR.

SIGNATURE

8/2/12
DATE

| # | DATE | CHK | DESCRIPTION |
|---|---|---|---|
| 6 | | | |
| 5 | | | |
| 4 | | | |
| 3 | | | |
| 2 | | | |
| 1 | 2-15-11 | JCS | GENERAL UPDATE |
| 0 | 8-22-07 | JCS | DRAWING NO. UPDATE |

SCDOT

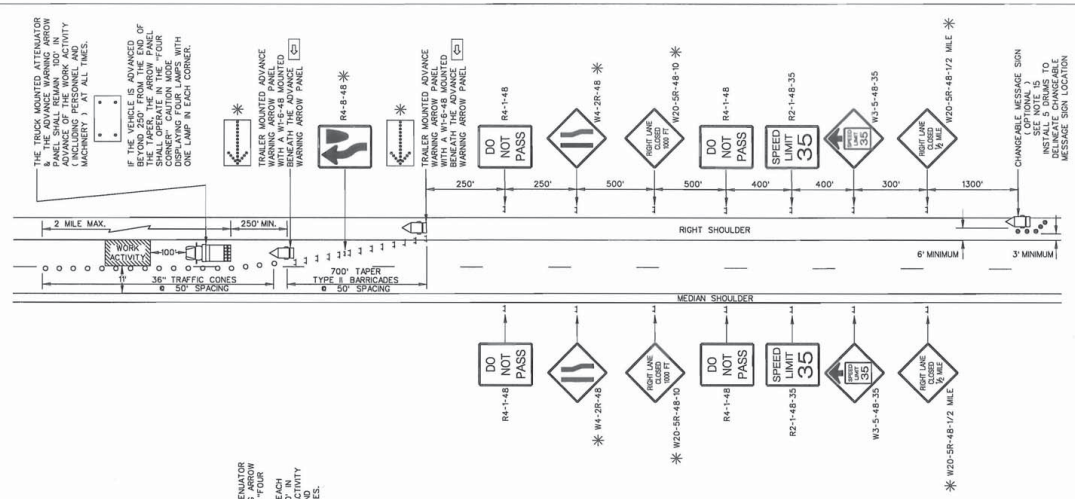
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
DESIGN STANDARDS OFFICE
955 PARK STREET
ROOM 405
COLUMBIA, SC 29201

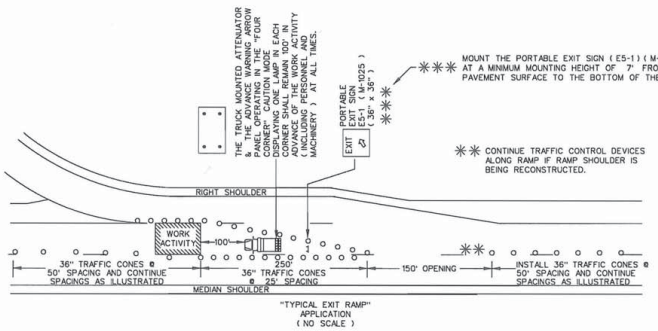
STANDARD DRAWING

LANE CLOSURE
DAYTIME
MULTILANE
PRIMARY ROUTES

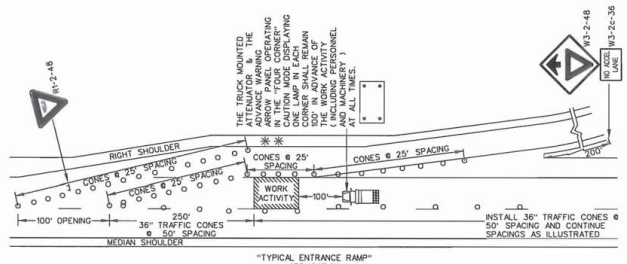
610-025-00

EFFECTIVE LETTING DATE JAN. 2013 THIS DRAWING IS NOT TO SCALE




"TYPICAL EXIT RAMP" APPLICATION ( NO SCALE )




"TYPICAL ENTRANCE RAMP" APPLICATION ( NO SCALE )

## ✳ LEFT LANE CLOSURE

1. SIGNS ILLUSTRATED ARE FOR A RIGHT LANE CLOSURE.
2. WHEN CLOSING THE LEFT TRAVEL LANE, USE THE FOLLOWING:
   2 - W20-5L-48-10 2 - W20-5L-48-1/2 MILE
   2 - W4-2L-48 1 - R4-7-48
3. THE STRIPES ON THE BARRICADES TO THE LEFT OF TRAFFIC SHALL SLOPE DOWNWARD FROM THE UPPER LEFT TO THE LOWER RIGHT.
4. THE FLASHING ARROW AND THE "LARGE ARROW" SIGN (W1-6-48) SHALL POINT TO THE RIGHT.
5. THE CHANGEABLE MESSAGE SIGN SHALL FLASH ALTERNATELY TO READ "LEFT LANE CLOSED", "MERGE RIGHT".

## PORTABLE TRUCK MOUNTED ATTENUATOR

1. UTILIZE A TRUCK MOUNTED ATTENUATOR ATTACHED TO THE REAR OF A TRUCK WITH A MINIMUM GROSS VEHICULAR WEIGHT (GVM) OF 15,000 POUNDS (ACTUAL WEIGHT). IF THE ADDITION OF SUPPLEMENTAL WEIGHT TO THE VEHICLE AS BALLAST IS NECESSARY, CONTAIN THE MATERIAL WITHIN A STRUCTURE CONSTRUCTED OF STEEL. CONSTRUCT THIS STEEL STRUCTURE TO HAVE A MINIMUM OF FOUR SIDES AND A BOTTOM. A TOP IS OPTIONAL. BOLT THIS STRUCTURE TO THE FRAME OF THE TRUCK. UTILIZE A SUFFICIENT NUMBER OF FASTENERS FOR ATTACHMENT OF THE STEEL STRUCTURE TO THE FRAME OF THE TRUCK TO ENSURE THE STRUCTURE WILL NOT SEPARATE FROM THE FRAME OF THE TRUCK DURING AN IMPACT UPON THE ATTACHED TRUCK MOUNTED ATTENUATOR. UTILIZE EITHER DRY LOOSE SAND OR STEEL REINFORCED CONCRETE FOR BALLAST MATERIAL WITHIN THE STEEL STRUCTURE TO ACHIEVE THE NECESSARY WEIGHT. THE BALLAST MATERIAL SHALL REMAIN CONTAINED WITHIN THE CONFINES OF THE STEEL STRUCTURE AND SHALL NOT PROTRUDE FROM THE STEEL STRUCTURE IN ANY MANNER.
2. LOCATE THE TRUCK MOUNTED ATTENUATOR 100 FEET IN ADVANCE OF THE WORK AREA UNLESS OTHERWISE SPECIFIED.
3. PROVIDE, INSTALL AND MAINTAIN THE TRUCK MOUNTED ATTENUATOR AS SPECIFIED BY THE STANDARD SPECIFICATIONS AND AS DIRECTED BY THE ENGINEER.
4. DUE TO THE WEIGHT OF A TRUCK MOUNTED ATTENUATOR, THE TRUCK MOUNTED ATTENUATOR SUPPLEMENTED WITH AN ADVANCE WARNING ARROW PANEL MAY BE REPLACED WITH A TRAILER MOUNTED ADVANCE WARNING ARROW PANEL WHEN THIS TRAFFIC CONTROL SETUP IS UTILIZED FOR ASPHALT CONCRETE PAVEMENT OPERATIONS. REPLACEMENT WITH A TRAILER MOUNTED ADVANCE WARNING ARROW PANEL SHALL REQUIRE THE ENGINEER'S APPROVAL.

## GENERAL NOTES

1. ALL SIGN LOCATIONS ARE TO BE MEASURED FROM THE WORK AREA. WORK LIMITS FOR THE PROJECT WILL BE DETERMINED BY THE ENGINEER AND AS INDICATED IN THE CONTRACT.
2. INSTALL ADVANCE WARNING SIGNS MOUNTED ON PORTABLE SIGN SUPPORTS NO LESS THAN 4 FEET FROM THE NEAR EDGE OF THE SIGN TO THE NEAR EDGE OF AN ADJACENT TRAVEL LANE ON ROADWAYS WITH EARTH SHOULDERS AND NO LESS THAN 6 FEET FROM THE NEAR EDGE OF THE SIGN TO THE NEAR EDGE OF AN ADJACENT TRAVEL LANE ON ROADWAYS WITH PAVED SHOULDERS. WHEN CURB & GUTTER IS PRESENT, INSTALL THE SIGN NO LESS THAN 2 FEET FROM THE NEAR EDGE OF THE SIGN TO THE FACE OF THE CURB.
3. SPACINGS INDICATED ARE FOR NORMAL CONDITIONS; ADJUSTMENTS MAY BE REQUIRED DUE TO HORIZONTAL AND/OR VERTICAL ALIGNMENTS OR OTHER SIGHT DISTANCE RESTRICTIONS.
4. ALL SIGNS MOUNTED ON PORTABLE SIGN SUPPORTS SHALL HAVE A MINIMUM MOUNTING HEIGHT OF 5 FEET FROM THE GROUND TO THE BOTTOM OF THE SIGN. ALL SIGNS MOUNTED ON GROUND MOUNTED U-CHANNEL POSTS OR SQUARE STEEL TUBE POSTS SHALL HAVE A MINIMUM MOUNTING HEIGHT OF 7 FEET FROM THE GRADE ELEVATION OF THE NEAR EDGE OF THE ADJACENT TRAVEL LANE TO THE BOTTOM OF THE SIGN UNLESS OTHERWISE DIRECTED BY THE DEPARTMENT. MOUNT ALL SIGNS STRAIGHT AND LEVEL AND WITH THE FACE OF THE SIGNS PERPENDICULAR TO THE SURFACE OF THE ROADWAY.
5. REFLECTORIZE ORANGE ADVANCE WARNING SIGNS AND ANY ORANGE AREAS OF A MULTI-COLORED ADVANCE WARNING SIGN WITH A FLUORESCENT ORANGE COLORED PRISMATIC RETROREFLECTIVE SHEETING. REFLECTORIZE WHITE REGULATORY SIGNS AND ANY WHITE AREAS OF A MULTI-COLORED ADVANCE WARNING SIGN WITH A WHITE COLORED PRISMATIC RETROREFLECTIVE SHEETING.
6. ALL TRAFFIC CONTROL DEVICES SHALL COMPLY WITH ALL NCHRP REPORT 350 REQUIREMENTS AND SHALL REQUIRE APPROVAL BY THE DEPARTMENT. ONLY THOSE TRAFFIC CONTROL DEVICES INCLUDED ON THE "APPROVED PRODUCTS LIST FOR TRAFFIC CONTROL DEVICES IN WORK ZONES" ARE CONSIDERED ACCEPTABLE FOR USE. THIS LIST MAY BE ACCESSED ON THE DEPARTMENT'S WEB SITE AT: www.scdot.org .
7. THE CONTRACTOR SHALL PROVIDE AND UTILIZE ANY SPECIAL SIGN MOUNTING ASSEMBLIES AND HARDWARE THAT MAY BE NECESSARY FOR INSTALLING AND MOUNTING SIGNS IN AREAS OF CONCRETE MEDIAN BARRIER, BRIDGE PARAPET WALLS OR DOUBLEFACED GUARDRAIL.
8. REFLECTORIZATION OF 36" TRAFFIC CONES USED DURING DAYLIGHT HOURS IS NOT REQUIRED. IF THIS TRAFFIC CONTROL SETUP EXTENDS INTO THE NIGHTTIME HOURS, REPLACE ALL 36" TRAFFIC CONES WITH EITHER PORTABLE PLASTIC DRUMS OR 42" OVERSIZED TRAFFIC CONES. REFLECTORIZE ALL PORTABLE PLASTIC DRUMS AND 42" OVERSIZED TRAFFIC CONES WITH TYPE III FLEXIBLE PRISMATIC RETROREFLECTIVE SHEETING UNLESS OTHERWISE DIRECTED BY THE DEPARTMENT.
9. REFLECTORIZE ALL BARRICADES WITH A TYPE VIII OR IX PRISMATIC RETROREFLECTIVE SHEETING ON ALL PROJECTS LET TO CONTRACT AFTER MAY 1, 2012 UNLESS OTHERWISE DIRECTED BY THE DEPARTMENT.
10. TYPE II BARRICADES SHALL HAVE A MINIMUM WIDTH OF 3 FEET UNLESS OTHERWISE DIRECTED BY THE DEPARTMENT.
11. CONDUCT THE WORK IN SUCH A MANNER THAT WILL MINIMIZE ENCROACHMENT OF TRAFFIC CONTROL DEVICES, EQUIPMENT, PERSONNEL, MATERIALS OR ANY WORK RELATED VEHICLES ONTO AN ADJACENT TRAVEL LANE OPEN TO TRAFFIC. INSTALL, MAINTAIN AND ADJUST THE TRAFFIC CONTROL DEVICES AS NECESSARY TO ENSURE PROPER DELINEATION OF THE WORK AREA.
12. LANE CLOSURES ARE RESTRICTED TO MAXIMUM LENGTHS OF 2 MILES UNLESS OTHERWISE DIRECTED BY THE SPECIAL PROVISIONS AND/OR THE DEPARTMENT.
13. IF WORK IS BEING CONDUCTED SIMULTANEOUSLY AT TWO DIFFERENT LOCATIONS WITHIN THE SAME TRAVEL LANE UNDER TWO SEPARATE LANE CLOSURES ON A PRIMARY ROADWAY WITH A POSTED REGULATORY SPEED LIMIT OF 40 MPH OR GREATER, SEPARATE THE TWO LANE CLOSURES BY NO LESS THAN 2 MILES FROM THE END OF THE FIRST CLOSURE THAT A MOTORIST WILL ENCOUNTER TO THE BEGINNING OF THE TAPER OF THE SECOND CLOSURE.
14. IF WORK IS BEING CONDUCTED SIMULTANEOUSLY AT TWO DIFFERENT LOCATIONS IN THE SAME DIRECTION BUT WITHIN DIFFERENT TRAVEL LANES UNDER TWO SEPARATE LANE CLOSURES ON A PRIMARY ROADWAY WITH A POSTED REGULATORY SPEED LIMIT OF 40 MPH OR GREATER, SEPARATE THE TWO LANE CLOSURES BY NO LESS THAN 4 MILES FROM THE END OF THE FIRST CLOSURE THAT A MOTORIST WILL ENCOUNTER TO THE BEGINNING OF THE TAPER OF THE SECOND CLOSURE.
15. UTILIZATION OF A CHANGEABLE MESSAGE SIGN IS OPTIONAL WITH THIS TRAFFIC CONTROL SETUP. HOWEVER, WHEN A CHANGEABLE MESSAGE SIGN IS UTILIZED, INSTALL THE SIGN AS ILLUSTRATED ON THIS STANDARD DRAWING UNLESS OTHERWISE DIRECTED BY THE SPECIAL PROVISIONS, THE PLANS AND/OR THE ENGINEER. INSTALL THE CHANGEABLE MESSAGE SIGN NO LESS THAN 6 FEET FROM THE NEAR EDGE OF THE ADJACENT TRAVEL LANE AND SUPPLEMENT THE SIGN LOCATION WITH NO LESS THAN 5 PORTABLE PLASTIC DRUMS FOR DELINEATION AS ILLUSTRATED. 36" STANDARD TRAFFIC CONES OR 42" OVERSIZED TRAFFIC CONES ARE PROHIBITED AS SUBSTITUTES FOR THE PORTABLE PLASTIC DRUMS IN THIS APPLICATION. DURING A RIGHT LANE CLOSURE, THE SIGN SHOULD FLASH ALTERNATELY TO READ "RIGHT LANE CLOSED", "MERGE LEFT" AT A RATE THAT WILL PERMIT MOTORISTS TO READ BOTH MESSAGES AT LEAST ONCE.
16. THE DEPARTMENT RESERVES THE RIGHT TO RESTRICT WORK OPERATIONS AND/OR WITHHOLD THE MONTHLY ESTIMATE IF THE TRAFFIC CONTROL IS NOT PROPERLY INSTALLED AND MAINTAINED AS DIRECTED BY THE STANDARD SPECIFICATIONS, THE SPECIAL PROVISIONS, THE STANDARD DRAWINGS, THE PLANS AND/OR THE ENGINEER.
17. THIS TYPICAL TRAFFIC CONTROL SETUP APPLIES TO THE INSTALLATION OF A LANE CLOSURE ON A PRIMARY ROADWAY WITH A POSTED REGULATORY SPEED LIMIT OF 40 MPH OR GREATER.

## ADVANCE WARNING ARROW PANEL

ALL ADVANCE WARNING ARROW PANELS SHALL BE 48" x 96" WITH A MINIMUM LEGIBILITY DISTANCE OF 1 MILE. PLACEMENT OF AN ADVANCE WARNING ARROW PANEL MAY REQUIRE ADJUSTMENTS DUE TO HORIZONTAL AND/OR VERTICAL ALIGNMENT OR OTHER SIGHT DISTANCE RESTRICTIONS. THE PANEL FACE SHALL BE NONREFLECTIVE BLACK. ALL ADVANCE WARNING ARROW PANELS SHALL COMPLY WITH THE STANDARD SPECIFICATONS FOR HIGHWAY CONSTRUCTION, LATEST EDITION.

WHEN AN ADVANCE WARNING ARROW PANEL IS REQUIRED TO OPERATE IN THE CAUTION MODE, THE ADVANCE WARNING ARROW PANEL SHALL DISPLAY THE "FOUR CORNERS" CAUTION MODE, WITH ONE LAMP IN EACH CORNER. DISPLAY OF ANY OTHER TYPE OF CAUTION MODE OTHER THAN THE "FOUR CORNERS" CAUTION MODE SUCH AS THE "FLASHING BAR" OR THE "ALTERNATING DIAMOND" CAUTION MODES ARE UNACCEPTABLE AND PROHIBITED.

## LEGEND

○ 36" TRAFFIC CONES

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Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 19b

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Transcript of Deposition of Douglas Eugene Limbaugh, Jr., title page and pages 15, 22 through 25, 28 through 30, 32 through 34, and 42 through 44, as filed. (Resp. 20; Supp. 26) Page 45, designated at Supp. 26, does not appear in the record below.

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|---|---|
| STATE OF SOUTH CAROLINA | ) IN THE COURT OF COMMON PLEAS |
| COUNTY OF PICKENS | ) CASE NO.: 2021-CP-39-00329 |
| Michael and Mary Smith,<br><br>Plaintiffs,<br><br>v.<br><br>Themistoklis Economou and King Asphalt, Inc.<br><br>Defendants. | ) |

30(b)(6) DEPOSITION OF

DOUGLAS EUGENE LIMBAUGH, JR.

**********

Tuesday, May 24th, 2022

12:08 p.m. - 1:33 p.m.

The 30(b)(6) deposition of Douglas Eugene Limbaugh, Jr., taken before Marcie Smith, a notary public in and for the State of South Carolina, commencing on Tuesday, May 24th, 2022, in Clemson, South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

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would do this throughout the entire project before we started the second step. Which the second step is the two inch milling of the roadway. And the two inch milling of the roadway would be preparing it, preparing the roadway for the final surface, which would be the third step. Which would be applying the two inch lift compacted surface for -- to be the final surface that the public's going to ride on.

**Q. Okay, so there's more than three jobs, right?**

BY MS. GRIFFIN:

Object to the form.

EXAMINATION RESUMED BY MR. SMITH:

**Q. I mean don't you have to dust it first? Or clean off the road. What is that called?**

A. When you say dust, what do you mean?

**Q. Do you have to clean off the road?**

A. We do, yes.

**Q. All right, what's that called?**

A. Clean up of -- well, it goes along with asphalt milling. But if we milled the road, we would have a cleanup operation right behind the milling machine that would clean it up. Remove all the debris before we open the road back up to traffic at the end of the day.

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**both lanes? Or is that done as you do the job, that section?**

A. You mean after we've -- after we've done the patching on the job? When we start doing the milling to get ready?

**Q. Yes, sir.**

A. For final surface?

**Q. Yes, sir. When you do all the tacking and so forth. But you mill it first, right?**

A. We do, yes.

**Q. Okay. And is the milling done for the segment that you're doing that day? Or is it done for the whole two miles, so it's all down to the two inches or -- or down two inches, I guess would be the proper phrase. So it's down two inches. Is it the entire two miles both lanes, or do you mill each segment as you do it?**

BY MS. GRIFFIN:

Object to the form.

BY THE WITNESS:

A. Different roads call for different methodology on how we approach that. A road this size, we would typically two inch mill the entire length and width of the project and begin paving operations after we had -- immediately after we had paved --

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completed the paving of the road. Or completed the milling of the road, excuse me.

EXAMINATION RESUMED BY MR. SMITH:

**Q. So two inches off the entire two mile section on the left inside and left outside lanes. And then you began the process of putting it back or resurfacing?**

A. Correct. I would have to go back and look and see if there -- there may have been a few days where we actually had a milling crew out there working maybe northbound. All the paving crew was working southbound since they're delineated by paved median. And it would be allowable to have a lane closure in both directions by DOT standards.

**Q. All right, so you've done the milling and you're going to tack it. You're only going to tack what you're going to put the asphalt on for that day, right?**

A. Correct.

**Q. And on March 22nd, 2019, did you do one segment the whole day? Or did you do a segment in the morning and a segment in the afternoon?**

A. When you say a segment, you mean like switch lanes or work in multiple lanes?

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**Q. No, it would be the same lane. Because you're only working one lane at a time, right?**

A. Yes, but you -- when you say segment, I'm not exactly sure what you're asking.

**Q. How would you ---**

A. If the lane is two miles long, right? When we started at the beginning of that two miles. We would stay in that same lane moving down the road in the same process until we got to the end of that lane that day. We're probably -- our production would probably be based on around one mile a day paved. Would be a goal. So we would -- once we started that day, we would stay in the same lane paving the same lane that day.

**Q. Yes, sir. So if your goal is one mile that day, are you going to do a half mile in the morning and then a half mile in the afternoon?**

A. I mean what ---

**Q. Are you going to tack the whole mile?**

A. Oh, no. I'm sorry. Okay, no. Our tacking operation -- our tacking and cleaning operation stays about a thousand feet in front of our paving operation the whole time. Normally 500 feet. The reason for that is if there's an equipment breakdown. If there's an equipment --

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if there's an issue at the plant, if there's an unforeseen that we cannot control. If there's a weather event like yesterday, where storms pop up. Once that tack is down, we have to do something with it. If it's not covered with asphalt, we have to make it safe for the general public to sit on -- or to drive on later, because we can't keep the lane closed till the next day when work is not going on. So we keep it as tight as humanly possible or conceivable to still have room to operate.

**Q. So it is the objective of the DOT to keep the road open whenever there's not work going on?**

A. Absolutely.

**Q. And that is your goal as well?**

A. Absolutely.

**Q. So let's say before lunch, the tacking and cleaning is 500 feet ahead. Is there a point where they stop because, you know, you're going to go to lunch, and then the paver -- the asphalt catches up to that where they stop?**

A. Our crews do not leave the job site for lunch.

**Q. Okay.**

A. Our crews take a 30 minute break, where lunch is either someone runs and gets lunch and the --

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**what has already been tacked?**

A. Correct. Yes.

**Q. And how much asphalt is dropped on that tack?**

A. No asphalt is actually -- no asphalt is dumped on the tack. Asphalt is dumped into the paver, which then lays the tack at a specified controlled rate.

**Q. Yes, sir. And the rate you're talking about is the amount -- it's the amount, isn't it?**

A. Rate is ---

**Q. The rate of -- is it a rate of ---**

A. Thickness.

**Q. Thickness, okay.**

A. Yes.

**Q. And what was the rate of thickness on this particular project?**

A. Two inches.

**Q. All right.**

A. Two inches of compacted material.

**Q. And when you say two inches of compacted material, is that after the rolling and stuff has taken place?**

A. Yes. After the rolling has taken place.

**Q. How much ---**

A. There are ---

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**Q. What is the depth at the time that the asphalt is put in the machine?**

A. Okay, so the general rule for an asphalt surface is that there is a quarter inch of roll down per inch of asphalt. So in order to get two inches of compacted material after the rollers and the compaction process, a two inch mat of material or new asphalt would need to come out of the back end of the paver at two and a half inches. To account for a quarter inch per inch roll down on average. So it would come out of the back of the paver at two -- two and a half inches. It would be rolled and then the compacted depth would be at two inches.

**Q. And how was it rolled?**

A. I'm not ---

**Q. Could you describe the rolling process.**

A. Sure. We have a breakdown roller. The breakdown roller hits the asphalt right directly behind the paver. Where most of the compaction process takes place. Different size rollers are different size applications. We then have a pneumatic roller, which is a rubber tire roller that rolls the mat as well or the new asphalt. Which it is more of like a kneading action, more

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pinpoint pressure if you will. That actually helps tighten maybe five extra percent compaction on the asphalt mat. And then we have a third roller called the finished roller. That its sole purpose, it provides a little added -- a little added compaction. But its sole purpose is to iron out any wrinkles, any marks that the actual first two rollers caused through the mat. And to basically finish it off in a slick -- a slick, no dips or irregularities across the new surface. So that's a three roller process.

**Q. And each roller goes over the surface area that's been completed how many times?**

A. That's determined on each individual base -- each individual job basis by a roller pattern that is -- that is set up. A good rule of thumb -- I can't speak to the actual roller pattern for this because there's a -- the first 900 foot of a job is what's known as a roller pattern area, where our QC department and the DOT monitor for compaction and agree upon what that roller pattern will be to achieve the maximum compaction that we can get per roller. Typically it's a three, three, three, which means each roller -- each roller crosses over the surface area three

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that lane. At the end of that day.

EXAMINATION RESUMED BY MR. SMITH:

**Q. Okay, the road that you had worked on was completed? The area that you worked on that day. There was nothing more to do with that area?**

BY MS. GRIFFIN:

Object to the form.

BY THE WITNESS:

Can I ask a question to clarify what you're saying.

BY MR. SMITH:

Absolutely.

BY THE WITNESS:

Okay, so what you're saying is the asphalt that we laid that day had been completed from start to finish?

EXAMINATION RESUMED BY MR. SMITH:

**Q. Yes. On that area, that segment.**

A. Then yes, it had.

**Q. All right.**

A. From the area that we actually paved. We still had -- we still had more lane to pave. We still had adjacent lanes to pave.

**Q. Yes, sir.**

A. But where we started to where we finished that

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day, everything was started and finished in that area. Everything that was tacked was paved. Everything that was paved was compacted. Through acceptance with the SCDOT.

**Q. It had been rolled three times -- nine times then?**

A. Well, it had been rolled whatever our roller pattern dictated, yes.

**Q. How far did you get, do you know?**

A. How far?

**Q. Yes.**

A. If memory serves me just from -- just from looking at the reports that were provided. I believe we were around a mile, if not a little over a mile.

**Q. And you did all that in one day?**

A. Mm-hmm.

BY MS. GRIFFIN:

You have to say yes or no.

BY THE WITNESS:

I'm sorry. Yes. Apologies.

EXAMINATION RESUMED BY MR. SMITH:

**Q. With regard to opening the lane when you get done with your work on like this particular day, you open the lane in what manner?**

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A. With this particular setup, which would be a lane closure on a multi lane highway. Our traffic control would work against traffic in the closed lane that was being opened for their safety, picking up cones and removing the apparatus that delineates the closed lane and the open lane from the end of the project and back towards the beginning.

**Q. Do you have lighted arrow machines?**

BY MS. GRIFFIN:

Message boards.

BY THE WITNESS:

Could you be more specific? On the vehicle that's picking up the cones at the beginning of the lane closure -- I'm not sure ---

EXAMINATION RESUMED BY MR. SMITH:

**Q. At the beginning of the lane closure, what signs would I find? At the beginning of the lane closure for this day.**

A. Did Zach not already talk about ---

BY MS. GRIFFIN:

Object to the form. Yes, but if you know, you can answer. For a temporary lane closure I think is what he's asking.

BY THE WITNESS:

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**lane, right?**

A. But this road is five lanes wide.

**Q. All right. Two weeks?**

A. Plus ancillary work that comes with that.

**Q. Yes, sir. The eight inches that's discussed in the project. Does that relate to just the damaged area?**

A. It relates to the repair of damaged areas, yes.

**Q. There's a weekly inspection report every week. Is that safe to say?**

BY MS. GRIFFIN:

Object to the form. By King Asphalt or by DOT?

EXAMINATION RESUMED BY MR. SMITH:

**Q. By King Asphalt. Do you do a weekly report?**

A. What type of weekly report? I apologize.

**Q. An inspection of your work.**

A. I mean, we do -- we do not have a form for inspection of our work, no.

**Q. Okay. Is there anybody responsible for giving an update on a project each week?**

A. Okay, so we do reports. We do internal documentation daily. If that -- if that is what you were asking previously. The QC that I mentioned earlier is running between -- they and the SCDOT is daily running rates and running

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productions to make sure that the state is getting what they're paying for. So that documents both quality and that documents the thickness of the asphalt. That documents compaction of the asphalt. That kind of -- that is an all inclusive kind of function of what our quality control, QC department, does on the daily on a project such as this. So if you're asking something different, please let me know.

**Q. When the cones were lifted, were there any lines delineating which lanes -- I mean separating the lanes? So in other words, were there lines separating the lanes?**

A. Would there have been the dotted lines?

**Q. Yes, yes.**

A. Part of our requirement and part of our function is repainting back the paved area daily. Yes.

**Q. And what ---**

A. That would have been done by a sub-contractor. Or making sure that there are adequate marks that were not covered in our operation that day.

**Q. So like a double yellow line, for instance, ---**

A. Yes.

**Q. --- might not be covered?**

A. Correct.

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**Q. There has been testimony about the depth of the two lanes. I think somebody said six inches. Somebody said four. You would say that the measurement is two, right?**

A. The grade elevation difference between the paved lane and the non paved lane was either two inches or less. Yes. Which is the SCDOT requirement. Or it would not have been reopened to traffic.

**Q. Who is responsible for making sure that measurement was two inches?**

A. Everyone on the job site. King Asphalt, SCDOT.

**Q. Does SCDOT have someone with you daily?**

A. Absolutely. There's an inspector daily.

**Q. So the inspector is an inspector inspecting all of your projects or just that project?**

A. We have a inspector on site for every project. Every individual project.

**Q. King actually does, correct? Does SCDOT have one as well?**

A. SCDOT would have an inspector on this job as well as a job across town at a separate location. There would not be an inspector jumping back and forth. There would be one inspector per job location. Many times multiple.

**Q. If the asphalt is greater than two inches, that**

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Transcript of Deposition of Zachary Shane Michael, title page and pages 19 through 21, 23, 29, 36 through 38, 46, 54, and 55, as filed. (Resp. 22)

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# ZACHARY SHANE MICHAEL

*May 24, 2022*

**Michael and Mary Smith**

vs

**Themistoklis Economou, et. al.**

**2021-CP-39-00329**

REPORTER: Marcie L. Smith

| | |
|---|---|
| STATE OF SOUTH CAROLINA | ) IN THE COURT OF COMMON PLEAS |
| COUNTY OF PICKENS | ) CASE NO.: 2021-CP-39-00329 |
| Michael and Mary Smith,<br><br>Plaintiffs,<br><br>v.<br><br>Themistoklis Economou and, King Asphalt, Inc.<br><br>Defendants. | ) |

30(b)(6) DEPOSITION OF

ZACHARY SHANE MICHAEL

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Tuesday, May 24th, 2022

10:14 a.m. - 11:54 a.m.

The 30(b)(6) deposition of Zachary Shane Michael was taken before Marcie Smith, a notary public in and for the State of South Carolina, commencing on Tuesday, May 24th, 2022, in Clemson, South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

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A. The traffic control we use is not the same in every case. It depends on the situation that we're in.

EXAMINATION RESUMED BY MR. SMITH:

**Q. Okay, in this particular situation we have a two lane road that's going in the same direction. So is that a four lane road or a two lane road?**

BY MS. GRIFFIN:

Object to the form.

BY THE WITNESS:

A. Okay, I consider that a four lane road.

EXAMINATION RESUMED BY MR. SMITH:

**Q. Okay, so what is the protocol for the four lane road?**

A. It's a primary route daytime lane closure drawing with the SCDOT.

**Q. All right, what is the traffic control situation for that then?**

A. There's 14 temporary warning signs that are installed. There's an arrow aboard installed. Barricades transitioning traffic to the open lane; closing the lane we're going to -- there's going to be work activity in. Another sign in the middle of those barricades. A second arrow board at the end of the taper with the

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barricades. Both arrow boards have an arrow flashing pointing traffic to the open lane. Once you get to the second arrow board, then you start installing your delineation devices.

**Q. And those were all present at this location?**

A. Yes, sir.

**Q. At the end of the day -- well, when you start a project you can't do the entire stretch of road in that one day, can you? And let's just talk about this case. You couldn't do the entire stretch of road that you were contracted for in one day. Is that right?**

A. There's different variables that could change that.

**Q. Okay. We know that it wasn't done in one day?**

A. Are you talking lane specific or job as a whole specific?

**Q. The road, Route 8.**

A. You can't do the entire project in one day. No, sir.

**Q. Okay. And so the the signage begins at the very beginning of the road that you start with, right?**

A. There's permanent construction signs installed before we ever begin work on that project.

**Q. And those remain until the project is done?**

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A. Till we have a final inspection with the SCDOT, and they agree that we're able to take them up.

**Q. And so the work area is the first sign to the last sign?**

BY MS. GRIFFIN:

Are you talking about the work zone?

EXAMINATION RESUMED BY MR. SMITH:

**Q. The work zone.**

A. The work zone to me would start where the signs designate you -- designate the work starts.

**Q. So the first sign would say work zone ahead or something to that effect?**

A. Correct.

**Q. So that would be the beginning of the work zone?**

A. Not the beginning of where we would actually start our work or our process of road construction.

**Q. Okay. So in this particular case, the work zone began before the segment that was worked on that day? Do you understand that?**

A. Yes, sir.

**Q. So those signs would be back up Route 8? Meaning it -- was this a northbound lane?**

A. I'm trying to think of which way that road runs. It's back towards Easley from Pickens.

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specific to the -- he'll know the scheme of the permanent signs.

BY MS. GRIFFIN:

So Doug is going to testify about the scheme of the permanent signs. I think they're designated on the drawing.

EXAMINATION RESUMED BY MR. SMITH:

**Q. When you say barricades. What does barricade mean? What is that?**

A. It's a metal stand with reflective tape on -- two parts on each side that the slash marks -- there's white slash marks and orange slash marks. And the slash marks are installed to point to the direction of the lane the cars are supposed to travel in.

**Q. And does it taper?**

A. Those barricades create a taper/transition, telling the cars which lane to get in. Yes, sir.

**Q. So on this day, the traffic was tapered into the left inside lane?**

A. Correct.

**Q. Is the taper the same on both ends?**

A. There's only a taper on one end of the job. If we're only working on that one side of the project. There's only one taper -- one lane

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**with that segment when it's level I guess?**
A. We were installing the hot mix asphalt in the right hand lane. So that -- we would have had to have completed paving the rest of the lanes.
**Q. All right, with regard to the outside lane. Were you done with that segment?**
A. That particular lane specifically?
**Q. Yes, sir. Work done that day, which would have been on the outside lane. Was that completed?**
A. That specific lane completed?
**Q. Yes, sir.**
A. Yes.
**Q. And so the next day they would have moved on to the inside lane?**
A. Should have.
**Q. And you would taper and cone off that lane so you could work on it?**
A. Correct.
**Q. Do you know what exactly you were doing? What was the title of the project? Meaning we're going to redo this. I mean, is there different terms for how far you go down on what's existing or how much you put on top of what's already there?**
A. It's specified in the DOT contract.

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in the roadway.
**Q. And is that measured in weight, or is it measured in yards? Or how's that ---**
A. Asphalt is measured in tons.
**Q. How many tons would you do like on this particular day for that lane that you were doing? How much would you do?**
A. I'd have to know the exact lengths and widths and -- yeah, lengths and widths. Depth.
**Q. How many times do you apply the asphalt? Do you do it all at the same time to get to that height, or do you put on a layer and then put another layer?**
A. It's contract specific depending on how much we've milled and the depth. This contract in particular, we installed one lift. Different contracts require different lifts of different material.
**Q. Okay, a lift would be the amount of asphalt you're putting on this project?**
A. Correct. Currently, yes, that installation is.
**Q. How much were you doing on this one?**
A. We were compliant with SCDOT specification. I believe it was two inches.
**Q. You were adding two inches?**

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A. Installing back two inches.
**Q. But first you would mill or remove a certain amount?**
A. Correct.
**Q. How much does a road have to have depth-wise? Like that road there. Does it have a certain depth that it has to be throughout the road?**
A. Underneath the area that we're working, I'm not aware of something it has to be. If we remove two, we reinstall two.
**Q. Okay. But the road itself, before you touch it, how many inches is there supposed to be or how deep is it supposed to be?**
A. I'm not sure there was a requirement. Each road is different, depending on how it was built before.
**Q. Okay. So if I want to build a road, I can just put two inches on the ground and that'll be good?**
A. If that meets your specifications depending on what you're doing.
**Q. All right, Route 8. Did you just put two inches?**
A. We did exactly as the DOT contracted us to do.
**Q. Okay, what was that?**
A. Should have been milled two and reinstalled two.
**Q. Okay.**

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A. There's some full depth patching in there as well. And Doug would know exactly the depth of -- Doug Limbaugh would know the depth of the full depth patching. That's contract specific.

**Q. All right, I'm going to show you from the trooper's vehicle, the depth of the road. So what is it? Can you tell me what we see there with regard to the asphalt.**

A. There's a discrepancy between the milled surface and the new pavement.

**Q. You believe that's two inches?**

A. I cannot confirm that from this video. It should be.

**Q. Yes, sir. So you wanted to take two inches and put two inches back?**

A. If that's what the contract said specifically for us to do. Yes, that's what we did.

**Q. When the project for that day -- when you're done for the day, what are the requirements with regard to the road that you've done?**

A. Once we install the asphalt, we have to make sure we have three rollers that compact the asphalt. Once that's complete, we remove the traffic control and open it back up to the general public.

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**Q. And for the cones there is no set person?**
A. The traffic control crew assigned to that project, yes.
**Q. And is there a manner in which you place the cones?**
A. Is there a manner in which we place the cones?
**Q. Yes.**
A. To the DOT's specification and drawings, yes.
**Q. Okay. So how would that be?**
A. Every 50 feet. A delineation device every 50 feet.
**Q. And you pick those up every day and put them down every day?**
A. Depending on the circumstances of what's required. In this particular situation, we would have installed them and then picked them back up at the end of the day. Yes.
**Q. Is there ever a time you don't pick them up?**
A. No, we don't -- we don't leave them in the roadway like that.
**Q. If the cone person was not there, you would just put a flag man there?**
A. We would have tried to adjust from a different traffic control crew, yes.
**Q. I'm looking now at King Asphalt production number**

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when we can and can't.

**Q. Specified in the contract or in the DOT manual?**

A. There's contract amendments, depending on traffic counts. And it's contract specific.

**Q. On March 22nd 2019, was the project in line to be completed on time?**

A. To my understanding, yes.

**Q. Mr. McKee was the person that offered up the traffic control plan?**

A. He would have submitted the traffic control plan, with other documents, to the SCDOT. Correct.

**Q. With regard to the removal of the cones. Is there a signal or any manner in which you open up the lane? Reopen the lane to traffic?**

A. We pick the delineation devices back up in reverse manner.

**Q. So you're driving against traffic and picking up the cones. So as each cone is picked up, that means you can go into that lane?**

A. I understand it as each cone is picked up, that's where the end of that lane closure is at the time. Yes.

**Q. Despite the fact that the cones are being picked up, it's still a work zone. Right?**

A. It could be considered a work zone. But the

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active -- or the work activity for that day stops at the end of that cone.

**Q. But it is a work zone?**

A. Depending on the definition, yes. It could be a work zone.

**Q. Are you allowed to pass in work zones?**

A. Not within where the lane closure is installed.

**Q. So as it relates to that particular segment of road when the cones were picked up, there's no prohibition against passing on that raised road?**

A. Not that I'm aware of. Once the lane closure is picked up, it's open to traffic

**Q. And the individuals in the front, let's say in the left lane that was open. Are they aware that the lane has been opened?**

BY MS. GRIFFIN:

Object to the form.

BY THE WITNESS:

A. If they do not see any more cones letting them know -- indicating that there's a lane closure there, they should know it's open.

EXAMINATION RESUMED BY MR. SMITH:

**Q. Okay, they should. But there is nothing that tells them that, right?**

BY MS. GRIFFIN:

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 19d

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Transcript of Deposition of Michael Smith, pages 103, 104, 116 to 121. (Resp. 23)

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| | |
|---|---|
| STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS |
| | FOR THE |
| COUNTY OF PICKENS | THIRTEENTH JUDICIAL CIRCUIT |
| Michael and Mary Smith, | |
| | C/A NO. 2021-CP-39-00329 |
| Plaintiffs, | |
| vs. | |
| Themistoklis Economou, King Asphalt, Inc. and South Carolina Department of Transportation (SCDOT), | |
| Defendants. | |

DEPOSITION OF

MICHAEL SMITH

**********

Wednesday, December 15, 2021
11:06 a.m.- 2:50 p.m.

The deposition of Michael Smith, taken on behalf of the Defendants at the Attorney Office of Donald Smith, 122 North Main Street, Anderson, South Carolina on the 15th day of December, 2021 before Lyn Allen Hudson, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

Q. All right. Before March 22nd 2019 were you aware that they were doing an asphalt repaving project on Highway 8?
A. Oh, yeah. I knew exactly where, when I went down there across the highway it was going on and like it was right there, I mean, they was working from right there up to the Highway Department building about a mile and a half up the road on both sides.
Q. So you knew for how many days that they were working on the highway?
A. I didn't, they had been working for several months on it.
Q. Okay. So you were aware for several months that there was construction on the highway; is that right?
A. I mean, all up and down. They been moving up and down. I mean, they was in that particular spot during that time.
Q. Right. And you live in that area; right?
A. I'm about, you know, two streets, I have to cross the road to get into the main highway.
Q. So maybe half a mile from where the accident happened?
A. No. No. It's only, it can't be more than, I'd say probably about a quarter of a mile.
Q. A quarter of a mile. Right.
A. I know a mile is over that first hill up there.



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Q. And so during those two months that they were doing the highway construction, did you go out there and watch to see what they were doing?
A. No. I knew what they were doing really.
Q. How did you know what they were doing?
A. Repaving and, peeling up the asphalt and putting new fresh asphalt down.
Q. So you knew that?
A. Yeah. I mean --
Q. So you knew they would pick up asphalt and put new asphalt down; right?
A. Yeah. Peeling it up and then you come back along and put it back down.
Q. And after your accident did you ever send anybody to go watch the operations of them picking up the asphalt and putting it back down?
A. No. I mean, I know what they do.
Q. Okay.
A. I know people's done it before. They, you know, Song (ph) does it and the guy that was doing it out of Liberty, King Asphalt, they do it too.
Q. Right. So when you were riding your moped were you careful in the area where they were picking up the asphalt?
A. Oh, it was very, yeah, it was very, like getting over



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that I was going on was the Old Easley Pickens Highway.
Q. Okay.
A. That was where I was trying to, I would cross off of Highway 8 and just get to the other side. That's all I had to do.
Q. All right.
A. Everybody was stopped. Wasn't nobody down here. I mean, I didn't pull, I didn't just all of a sudden pull out in front of nobody. It wasn't nothing there to be seen on that bridge. But I never made it.
Q. Okay.
A. All the way to the other side. I never did get to go up on it. As soon as I got to the other side, we was hit.
Q. All right. So let me back you up. You were traveling with your moped going 30 miles an hour?
A. No. We dead, we come to a dead stop.
Q. You had come to a dead stop.
A. Right.
Q. Is there a car in front --
A. Right. I'm in --
Q. Hold on.
A. I'm in a single file lane. Ain't nobody moving nowhere.
Q. Okay. Single file lane?



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A. They're going to give me the opportunity to cross over here at that fresh asphalt.
Q. Okay. Was it fresh asphalt or was it no asphalt?
A. Excuse me?
Q. Fresh asphalt --
A. Fresh asphalt.
Q. -- or no asphalt?
A. Huh?
Q. Was there no asphalt in that lane?
A. Fresh asphalt. It just happened.
Q. Fresh. Okay. So hold on. We're in the left lane?
A. Left lane.
Q. Is that right?
A. Right.
Q. And you say traffic stops in front of you; is that right?
A. Everybody behind me is stopped.
Q. Hold on. The traffic in front of you is stopped; is that right?
A. Yeah. I mean, ain't nobody moving past me.
Q. No. That's a different thing. Is there any traffic in front of you stopped?
A. No. No. No.
Q. You're the first one in line?
A. I got my signal on and I'm sitting there and I'm



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waiting to go across.
Q. Okay. So you're the first one in line stopping the traffic; is that right?
A. I'm the only person. There ain't nobody else but me.
Q. And there's nobody behind you?
A. Yeah. Everybody's behind me.
Q. Everybody's behind you. So the traffic had been proceeding in the left lane until you stopped because you wanted to get across the right lane; is that fair?
A. Well, if they were going to allow me to do that.
Q. If they were going to allow you to do that?
A. Right. I mean, that was what I was supposed to do. I mean, I had to stop and turn directly, I had to get my moped wheel going straight into it because if you don't, you know, it won't go over it to start with.
Q. Won't go over the what?
A. Won't go over where the new asphalt has been put.
Q. Okay.
A. I mean, you can't hit it sideways. You've got to hit it straight across.
Q. All right. So let me get it straight. You're traveling on Highway 8, you're going 30 miles an hour. Then you stop; right?
A. I'm --
Q. You stop?



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A. Right.
Q. Because you want to go across the lane to get to Old Easley Pickens Highway?
A. Right. I want to get off the highway onto that lane.
Q. And you've got to cross the right lane --
A. Right.
Q. -- to get to --
A. That's fresh asphalt laid from there to the Highway Department.
Q. And you're going to the right; is that right?
A. No. I'm turning but I'm going like at an angle, you know.
Q. Right. Okay. So you're going at an angle across the right lane?
A. Yeah. It's like that right there. I mean, and I'm over here. So I've got to hit that little fresh asphalt with a straight tire, you know.
Q. Right.
A. Because I'm just going maybe, a moped don't take off fast, you know. Got two people on it to start with so --
Q. So how fast are you going when you're trying to hit the fresh asphalt with the straight tire?
A. Hell, it won't go but maybe, it won't be going five miles an hour.



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Q. Five miles an hour?
A. Yeah. I mean --
Q. Are your feet on the ground as you hit the fresh asphalt?
A. That's when he knocked the motorcycle out from under us. They wasn't, he had to be, there was no car between, from the time I started until I went over, I'll tell you about 50 or a hundred yards up there; okay?
Q. Okay.
A. I mean, the road's closed. There ain't nobody supposed to be behind it and all that stuff. I mean, the road, that lane's closed. So all I had to do --
Q. How do you know the road is closed?
A. Because I just have come by it. I mean, they just have finished the, not finished but ending that part of it and trying, then they start trying to pick the cones up.
Q. Well, did you see them picking up cones?
A. Well, they were start picking them up right there in that section.
Q. In what section?
A. They wasn't 20 yards, they wasn't past the bridge right there.
Q. So did you see them picking up the cones?



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A. Yeah.
Q. Yes?
A. Right there at the --
Q. And you saw them at the bridge picking up the cones?
A. Just right past the bridge a little bit. Now you're going all the way up this hill and all the way over the hill.
Q. Well, what were they riding in picking up the cones?
A. They were riding in a small, what's his name, a King truck.
Q. You saw it?
A. Right.
Q. And so you knew that they were opening the lane?
A. Well, you know, the lane's not open until all the cones are picked up.
Q. How do you know that?
A. Well, you start paving up here and finish paving down here, you can't start picking up cones at the end of the project and the lanes be open.
Q. How do you know that?
A. Well, that's common sense.
Q. Okay.
A. I mean, there's probably some, there's some people that do. But, you know, that's illegal.
Q. How do you know what's legal and illegal about opening



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Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 19e

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Transcript of Deposition of Themistoklis Georgios Economou, title page and pages 19 through 26, 40, and 41, as filed. (Resp. 24)

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# THEMISTOKLIS GEORGIOS ECONOMOU

*January 13, 2022*

**Michael and Mary Smith**

VS

**Themistoklis Economou, et. al.**

**2021-CP-39-00329**

REPORTER: Marcie L. Smith

| | |
|---|---|
| STATE OF SOUTH CAROLINA | ) IN THE COURT OF COMMON PLEAS |
| | ) |
| COUNTY OF PICKENS | ) CASE NO.: 2021-CP-39-00329 |
| Michael and Mary Smith, | ) |
| | ) |
| Plaintiffs, | ) |
| | ) |
| v. | ) |
| | ) |
| Themistoklis Economou, King Asphalt, Inc., and South Carolina Department of Transportation (SCDOT), | ) |
| | ) |
| Defendants. | ) |

_____

DEPOSITION OF

THEMISTOKLIS GEORGIOS ECONOMOU

**********

Thursday, January 13, 2022

1:05 p.m. - 2:03 p.m.

The deposition of Themistoklis Georgios Economous was taken before Marcie L. Smith, a notary public in and for the State of South Carolina, commencing on Thursday, January 13th, 2022, in Clemson, South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

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**Q. What is your definition of congested?**
A. Well, what you might picture in my mind, it could be different than yours or somebody else's perception. It was construction going on. One lane, I remember distinctly, the sign says uneven pavement. So the right side was a little more than the left.
**Q. You say there was construction?**
A. Yes. Isn't that the word called when the roads are fixed?
**Q. What construction was happening?**
A. We don't understand each other. Right? I just said when the roads are fixed. That means they were paving the roads. That's construction.
**Q. So construction is paving the roads?**
A. Construction, to my understanding in my language, is anything people do to create something with their hands. Buildings, roads, bridges. I think that's called construction.
**Q. Okay.**
A. So clarify to me what you want to hear. And if it's right, I'll tell you.
**Q. That's really what I want to hear is what you thought was construction on that day.**
A. No, no, no, no, no, no. Just a second. Don't

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put words in my mouth. I didn't say I thought. I said they were fixing the road. Technically, that's construction.

**Q. I didn't use the term construction until you did.**

A. Listen, we're playing games here. They were fixing the road. Is that correct?

**Q. That's my understanding. I wasn't there.**

A. Okay, that's it. They were fixing the road.

**Q. And what did that consist of?**

A. Can you please clarify?

**Q. What were they fixing?**

A. The pavement I think. That's what they call it, I believe.

**Q. When did you learn on the road that there was construction going ---**

A. A few days.

**Q. So they'd been working on it for a few days?**

A. I believe so. Both sides that means.

**Q. How far were they going each day?**

A. I didn't have my tape measure with me.

**Q. I appreciate that.**

A. Good.

**Q. How much would you say it was?**

A. I have no idea. Because I passed going to work. Came back. It wasn't my interest to see how far

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they were going. My interest is to look in front of me where the traffic is.

**Q. How many lanes of travel were there?**

A. Two going towards Pickens. Two coming to Easley.

**Q. And when you were traveling, all four lanes were active. Is that right?**

A. I believe so.

**Q. So at 10:00 that morning when you went to Pickens, there were two lanes to drive in on your side of the road?**

A. I don't know. I traveled on the right side going to Pickens. Because if I say there were two lanes and there weren't, that means I'm lying. So I don't remember. I remember driving to the right side of the road going to Pickens.

**Q. Far right or inside right?**

A. What's that supposed to mean?

**Q. There's a lane outside and a lane inside.**

A. When I'm saying right, it means right. I didn't say left. I'm on the right lane. And there is a left lane. What is far side, I don't understand. You want me to draw it for you on the board?

**Q. I think we're going to get to that, yes.**

A. Okay.

**Q. If you were in the right lane, there was a left**

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**lane. And was there traffic in the left lane?**

A. I don't remember.

**Q. The congestion you spoke of. Was there two lanes or one lane at that time?**

BY MS. GRIFFIN:

Object to the form.

BY THE WITNESS:

What did you say?

EXAMINATION RESUMED BY MR. SMITH:

**Q. Was there one lane in use or two lanes in use ---**

A. Going towards Easley?

**Q. Yes.**

A. Two lanes.

**Q. And going towards Pickens?**

A. I didn't pay attention to them. I pay attention going to Easley.

**Q. Well, you went to Pickens that morning?**

A. But what does that have to do with going back home?

**Q. I'm just asking you to answer the question.**

A. Clarify the question, and I'll answer it for you.

**Q. Yes, sir. On the way to Pickens.**

A. Yeah.

**Q. You were in the right lane?**

A. Yes, sir.

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**Q. That's the slow lane?**
A. Yes, sir.
**Q. All right. Was there any traffic in the left lane?**
A. I don't remember. I'm not going to perjure myself. Don't try to entrap me in anything like that. Okay? Straight questions, straight answers.
**Q. When did you find the congestion on the way home? How close were you to your house?**
A. I believe it was real traffic going on because of the time people going home from work or wherever they are. People go to Walmart, going back home. Going to this, going back home.
**Q. What's the speed limit?**
A. I believe the speed limit in that area is about 45. Because it starts in Pickens at 35.
**Q. At that spot on Route 8, how close are you to Pickens?**
A. I was closer to Easley. Can I please have a bottle of water.

(OFF THE RECORD)

EXAMINATION RESUMED BY MR. SMITH:

**Q. As you were approaching Easley, was there any indication that there was construction going on?**

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A. No.
**Q. There was no indication?**
A. No. Traffic was flowing easily. There were no people giving signs.
**Q. Were both the right and left lanes of the road that you were traveling, were they the same height?**
A. No.
**Q. Why not?**
A. Because there was uneven pavement.
**Q. Because of what?**
A. Because of the construction of the road.
**Q. Were there any signs indicating that there was construction coming up for you as you traveled?**
A. There were signs that says uneven pavement.
**Q. Did you prefer to travel on the repaved road or the non paved road?**
A. Okay. What do you want to know? Which way I was traveling?
**Q. I asked you which one ---**
A. I asked you to clarify. Preferences don't exist here. Tell me what you want, and I'll tell you.
**Q. What did you ---**
A. I always travel to the right. I'll explain to you why. I leave Carolina Fine Foods. Coming

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home it's Savalot. It's Walmart. It's my exercise at YMCA. Then I have to turn to Brazil to go around to pick up my mail or go to the shooting range. So instead of being to the left and going in and now then turning, I prefer to stay on the right and turn in what I want. That's all. It's simple.

**Q. Was the right lane open the entire time you were traveling home from Pickens?**

A. Yes.

**Q. Were you ever behind Mr. Smith's moped? Not necessarily right directly behind him, but behind him in the left lane?**

A. No. Excuse me. Behind him on the left lane?

**Q. Yes.**

A. Directly behind him?

**Q. Not directly behind him. In the left lane behind him.**

A. I wasn't in the left lane. I was on the right lane.

**Q. At the time of the incident, I recognize that. Were you ever in the left lane?**

A. No.

**Q. The lane that Mr. Smith was in with his moped. Was it traveling slower than the traffic in the**

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**right lane?**

A. I don't know. I don't remember. I know I was traveling the same speed as the car in front of me. I stayed a little bit behind because in his back window there were lights. Cop's lights. So I'm not that stupid to pass him around and go faster than him.

BY THE COURT REPORTER:

Did you say cop's lights?

BY THE WITNESS:

There was a vehicle that belonged probably to the police department or something, because that's the only ones who they have, by law, the lights like that. So for me, it was an indication that an officer was driving. Maybe it wasn't. I don't know. But an officer was driving at the time it turned out to be.

EXAMINATION RESUMED BY MR. SMITH:

**Q. Could you have passed him if you'd wanted to?**

A. I didn't want to.

**Q. I didn't ask ---**

A. Because I had to turn to the right a few yards down the road. Why should I pass him?

**Q. Was there room to pass him on the left?**

A. I didn't pay attention because I had no intention

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**Q. Was there only one?**
A. I don't remember.
**Q. Where did you see that?**
A. Going and coming.
**Q. Where in relation to the wreck did you see it?**
A. Way before the wreck and way after the wreck.
**Q. Is there a road called Doolittle Trail?**
A. I don't know.
**Q. So in your travel home.**
A. Yes.
**Q. You never recognized or never saw one lane of travel?**

(OFF THE RECORD DISCUSSION)

EXAMINATION RESUMED BY MR. SMITH:

**Q. You never saw where the two lanes were pushed into one lane?**
A. No, I don't -- I don't -- I didn't pay that much attention. No. I was on the right lane going home. And that's what I was doing.
**Q. So as we said, you never went into the left lane?**
A. No.

BY MR. SMITH:

I have nothing further.

BY MS. GRIFFIN:

I don't have any questions.

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EXAMINATION BY MR. STILL:

**Q. I want to clarify one thing if you don't mind. You used the term pass earlier, talking about the moped passing you. Were you talking about him turning in front of you?**

A. No. No, he was to my left, coming this way. He -- obviously probably the traffic was going slower at the moment. And he was going this way. The next thing I know, he hit the front of my car. I couldn't stop. It was so instant. And after he hit the front of my car, the signal light, his helmet flew in front of me and he's barely hit my mirror.

BY MR. STILL:

Nothing further.

RE-EXAMINATION BY MR. SMITH:

**Q. Where did the impact with the moped take place on your car?**

A. I just said. My signal. Right driver's side signal light.

**Q. And you never saw him until when?**

A. Until he went boom. I thought he was going straight. I don't know. I saw him next to me. I mean, I felt -- then all of a sudden he slipped in front of me.

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 19f

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Transcript of Deposition of Frank Pressly, pages 7 to 10. (Resp. 25)

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF PICKENS C.A. No.: 2021-CP-39-00329

Michael Smith and Mary Smith,

Plaintiffs,

v.

Themistoklis Economou, King Asphalt, Inc. and South Carolina Department of Transportation (SCDOT),

Defendants.

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DEPOSITION OF

FRANK PRESSLY

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Pursuant to Notice of Deposition and/or agreement in the above-entitled case, a deposition was taken on the 18th day of October 2021, beginning at approximately 3:40 p.m. attended by counsel as follows:

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A. Well, in the process of that I started my IT business here.
Q. When did you graduate from Erskine?
A. 1990.
Q. And so you went from Brittanica to Lucent or was there something in between there?
A. No. After I graduated, I wandered around trying to find what I wanted to do, and then I had an offer to work for Lucent in Atlanta and so I moved down there.
Q. How long did you live in Atlanta?
A. Ten years.
Q. And your house in Abbeville, it was still there the whole time you were ---
A. Yes.
Q. Can you tell us about this particular wreck?
A. It's been a few years now, so I don't -- it was March of 2019 I believe and I was coming back from Pickens to Easley on the Old Easley Pickens Highway. It was in the afternoon, I don't remember exactly what time, it was after like 3 or 4:00 and in the Arial area of Easley, which is the area where next to where the Arial plant used to be. There was like, I don't know, maybe a couple of miles of work zone where they were like paving the road. They were paving the right hand lane on both sides and the fast lane or the left hand lane was open for traffic to go

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through and I was driving down through there. There was a line of cars, a single file line of cars, and way up at the front I could see a moped that was leading the pack here and we were cruising down through there. At about Owen Lane or the Old Greenville Pickens Highway turn off right there the whole line of cars came to a stop. And so I looked up ahead and there was a truck, a DOT truck, coming towards us that was picking up the cones down in the middle of the road. And way up at the front, I think I was about seven, eight, nine cars back, I don't remember exactly, I saw a moped starting to try to gator-walk across the freshly paved road there to turn down the Old Easley Pickens Highway road. And about that time, a car jumped out of line, in the line of cars there were cars in front of me, and a BMW had jumped out of line into the right hand lane and jumped ahead to, you know, go around the line of cars and T-boned the moped just as it was trying to get across the road there.

Q. And so how far back were you in the line?

A. In my mind I remember being seven or eight cars, I don't remember exactly. I don't really take notes while I'm driving of what I'm doing necessarily, but in my mind I remember being back about maybe seven, eight, nine cars.

Q. Where was the BMW in comparison to you?

A. He was like three cars in front of me.



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Q. Do you recall how far back he went past the vehicle picking up the cones?

A. No, we hadn't passed it. It passed us coming this way. The whole line of traffic stopped and right about then that car, the truck, came along picking up those cones so everybody was waiting for it to get by us so we could continue going, you know, straight.

Q. The vehicle picking up the cones, would that have been in the lane of ---

A. The slow -- the fast line, the right hand lane. We were all in the left hand lane lined up and the moped I guess that come to a stop was going to turn. So everybody stopped behind him and right about then they came through to pick up those cones and as soon as the pickup of cones passed, the BMW jumped out of line and the moped pulled out and it all just happened like in an instant I mean.

Q. How would you characterize the movement of the BMW?

A. Well, he jetted out of there pretty, you know, pretty fast.

Q. How far, how far do you think he traveled when he struck the moped?

BY MS. GRIFFIN:

Object to the form.

A. Huh?

BY MR. STILL:



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You can answer.

BY MS. GRIFFIN:

You can answer the question.

A. Oh, I guess maybe it'd be 100 feet, 150 feet. I mean I don't remember exactly. But it's just, you know, people were waiting in line and stuff and were getting inpatient and you could tell just by the way he jetted out of there that he was in a hurry to get somewhere.

Q. How fast was the moped going?

A. It was stopped. Well, he was gator-walking. There was a man and a woman and they were trying to push across the highway, but they were not moving at all. They had stopped and were going to turn to the right I guess to go in, go turn into their turn.

Q. We're looking at what's marked as Defendant's Exhibit 4 (referring to Exhibit 4 to Michael Laginestra's deposition). Can you tell me where the wreck happened?

A. Right about right here, the line of cars were coming back right here and this is the right hand lane right here that was blocked off before, and the moped was like right about I guess right here. And like I said, the line of cars, we were lined up behind him, and he was crossing over here I guess to turn into that lane or maybe it was that lane, I'm not sure which, one of those two roads right there, he was turning into one of them.



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Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

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SCDOT Proposal and Contract No. 3948130, as filed by Respondent on January 27, 2025, in its entirety. (App. 7) / SCDOT Proposal, Contract and Bond for Highway Construction: Resurfacing/Reconstruction, FDR; Bid Received: June 12, 2028; Award Date: July 3, 2018, with attachments. (Resp. 17)

*Name: KING ASPHALT, INC.*

*Address: LIBERTY, SC*

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**SOUTH CAROLINA DEPARTMENT OF TRANSPORATION**
**COLUMBIA, SC**

# PROPOSAL, CONTRACT AND BOND FOR HIGHWAY CONSTRUCTION

**BIDS RECEIVED**
**June 12, 2018**

**AWARD DATE**
**July 3, 2018**

**DESCRIPTION OF CONTRACT**

**RESURFACING/RECONSTRUCTION - FDR, MILL & REPLACE,**
**S-171, SC 8**

**S.C. File Number: 3948130**

**County: Pickens**

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## SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

## COLUMBIA , SOUTH CAROLINA

Notice is hereby given that the SCDOT will accept electronic bid proposals for the highway improvements herein specified until the advertised time for opening of the proposal on June 12, 2018. Unless otherwise advertised, the proposals will be publicly opened in Room 332C, SCDOT Headquarters Building, 955 Park Street, Columbia, South Carolina at 2:00 o'clock p.m. on the above date and read aloud. The Contracts Engineer, or his designee, at the site of the opening of the proposals shall be the sole judge of determining the local time and the arrival of the designated time for the opening of the proposals.

Electronic bid proposals can only be submitted through the Bid Express, On-Line Bidding Exchange website. Bid Express can be contacted by phone at (352) 381-4888 or through their website at www.bidx.com.

**Minimum Contractor Performance Score (CPS)**

The Department evaluates the performance of Contractors on SCDOT construction projects and issues each Contractor a Contractor Performance Score (CPS) quarterly. The Department may set a Minimum CPS for bidding on construction projects. If a Minimum CPS has been set for this project, it is indicated below. Only Contractors with a CPS equal to or higher than the Minimum CPS for the Quarter ending on the date indicated below may submit a bid proposal on this project.

Minimum CPS: **NA** for the Quarter ending on: **NA**

Contractors that do not have a Contractor Performance Score are not prohibited from submitting a bid proposal.

Description of work to be done: See Cover Sheet .

This project is to be constructed under the S. C. Department of Transportation's Standard Specifications for Highway Construction, Edition of 2007. Detailed plans of the work may be seen for examination at the Office of the S. C. Department of Transportation, 955 Park St., Columbia, S. C. 29201.

The Department reserves the right to reject any or all proposals and waive any technicalities.

Bids cannot be withdrawn after the opening hour commences.

Electronic bids may be declared irregular for any of the following reasons:

(1) If in the Schedule of Items,
  (a) alteration of a part of bid item except for the unit price; or
  (b) failure to enter a bid item unit price; or
  (c) a bid item unit price is not in the proper form or is incomplete.

(2) If in the DBE Folder, when a project has DBE goal, in the DBE's subcontractors information, work items, unit prices, or other required information has not been entered in the proper form fields or is incomplete.

(3) If in the Miscellaneous Data Folder, "yes" is not selected as the response in the drop down form field for acceptance and acknowledgment of the conditions set forth in the Proposal Form.

(4) If in the Equal Employment Opportunity section, Certification 1 or 2 is not selected and/or choices in the drop down form fields for the selected Certification are not made.

(5) If in the Bid Bond Section, a method of submission is not selected, and the required information is not furnished in the appropriate form fields.

(6) If a properly executed Bid Bond is not furnished in accordance with the selected manner of submission.

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# SPECIAL PROVISIONS

| PROPOSAL ID | PROJECT ID | COUNTY |
|---|---|---|
| 3948130 | P037242, P037243 | PICKENS |

This project is to be constructed under the South Carolina Department of Transportation's Specifications For Highway Construction Edition of 2007, the South Carolina Department of Transportation's 2004 Construction Manual, the Supplemental Technical Specifications in effect at the time of the letting, and the following Special Provisions and Supplemental Specifications.

**(1) ERRATA TO 2007 STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION:**
See attached Supplemental Specification dated **January 1, 2017** on page **35.**

**(2) SECTION 101: SUBSTANTIAL COMPLETION OF WORK**
**Section 101.3.76** is hereby replaced with the following:

**101.3.76 Substantial Completion of Work**
Substantial Completion of Work is the point in the project when work has been constructed to the typical section in the Plans over the entire length of the project including tie-ins, all pay items have been installed in reasonable conformance with the plans and specifications over the entire length of the project and all lanes of traffic are open to the public in their final configuration with the final applications of thermoplastic and raised pavement markers with the only remaining work to be performed being punch list items.

**(3) SECTION 101: STANDARD DRAWINGS:**
The Bidders are hereby advised that this project shall be constructed using the Current Standard Drawings with all updates effective at the time of the letting. The Standard Drawings are available for download at http://www.scdot.org/doing/sd_Disclaimer.aspx. . All drawings that are updated are labeled with their effective letting date in red.

The Standard Drawings are available to purchase through the SCDOT Engineering Publications Sales Center. The Engineering Publication Sales Center is located in Room 122 (College Street Entrance) of the SCDOT Headquarters Building, 955 Park Street, Columbia, South Carolina.

All references in the plans, standard specifications, supplemental specifications, supplemental technical specifications or special provisions to drawings under the previous numbering system are hereby updated to the new drawing numbers. Refer to sheets 000-205-01 through 000-205-07 to find new drawing numbers when looking for references to older drawing numbers. “Old sheet numbers” are also visible on the website when using the full set of drawings “current” search and are sortable by clicking the header over the appropriate column on the results page. Be aware that some older drawings now span over multiple pages due to detailing changes.

**(4) SECTION 102: IMMINENT STANDARD DRAWINGS:**
On the Standard Drawings search page, enter status of Imminent with other fields blank to see a list of upcoming Standard Drawings and their corresponding effective let date.



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Imminent drawings may be used at any time they are available if approved by the Resident. Follow procedure shown in imminent drawings when noted in this section.

**(5) SECTION 102: STANDARD DRAWING ERRATA:**

The Bidders are hereby advised that the following note changes apply to the published Standard Drawings.

On sheet **000-205-05**, add the following information under the columns below:

| OLD DRAWING NAME | NEW DRAWING NAME |
|---|---|
| 720-905-01 to 720-905-05 | 720-901-01 to 720-993-32 |

On sheet **605-005-05 (ver 1-1-2013)**, replace entire text of General Note #4 with the following text:

4. The square footage of sign panels attached to 2½" x 2½" 12 gauge sign support secured to a 3" x 3" 7 gauge breakaway anchor shall not exceed 20 square feet.

On sheet **720-305-00 (ver May 2008)**, delete the entire note directly above main detail:

~~If sidewalk exists, the driveway opening should...~~

On sheet **720-405-00 (ver May 2009)** Detail 2 replace dimension 2'-6" maximum with:

2'-6" minimum

On sheet **720-901-01 (ver Feb 2015)** replace note 5.04 with:

5.04 When a mid-block crossing is required, consider mid-block staggered crossing (720-955-41) to encourage eye contact between the pedestrian and the oncoming traffic. Always angle the stagger so that the pedestrian travels through the refuge facing the oncoming traffic.

On sheet **722-305-00 (ver May 2010)** Detail 4 replace note "French Drain see note 21" with:

French Drain see note 4.5.

On sheet **722-305-00 (ver May 2010)** table 722-305A, 4th column, change the following:

Delete ~~(SF)~~

Replace text "up to 36" with "up to 3'X3' "

Replace text "larger than 36" with "larger than 3'X3' "

On sheet **804-105-00 (ver May 2008)** Title Block replace text "Rirap (Bridge End)" with:

Riprap (Bridge End)

On sheet **805-325-00 (ver Jan 2011)** detail 2 replace text "rectangular washers (FWR03) See 805-005-00" with:

"rectangular washers (FWR03) See 805-090-00"

On sheet **805-325-00 (ver Jan 2011)** change text of note 5 to the following:

5. For project specific requirements such as additional offset blocks, extra length posts, and post attachment details, see Project Plans. Include all costs of project specific requirements in the Guardrail Thrie-Beam Bridge Connector pay item.

On sheet **805-330-00 (ver Jan 2011)** detail 2 replace text "rectangular washers (FWR03) See 805-005-00" with:

"rectangular washers (FWR03) See 805-090-00"

On sheet **805-330-00 (ver Jan 2011)** change text of note 4 to the following:



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4. For project specific requirements such as additional offset blocks, extra length posts, and post attachment details, see Project Plans. Include all costs of project specific requirements in the Guardrail Thrie-Beam Bridge Connector pay item.

On sheet **805-510-00 (ver Jan 2011)** detail 3 replace guardrail base plate note with the following:
See standard drawings 805-655-xx for guardrail base plate options.

On sheet **805-655-M1 (ver Jan 2011)** replace note 30.4 with the following:
30.4 Install adhesive anchors to a depth sufficient to develop a minimum factored (reduced) ultimate tensile capacity of 21 kips per anchor bolt. Increase minimum embedment shown in detail 4 as required by adhesive manufacturer's recommendations for the existing material properties, anchor bolt pattern, edge conditions, and any other design reduction.

On sheet **815-002-00 (ver Jan 2013)** Type B, D1, & D2 Inlet Structure Filters, revise as follows:
Replace all references of #5 stone with #5 or #57 stone.
Payment for either #5 or #57 stone will be made under the pay item for ***Aggregate No. 5 for Erosion Control (6 " Uniform)***

**(6) SECTION 102: EXAMINATION OF THE PROPOSAL OR PLANS:**

Plan holders desiring further information or interpretation of the Proposal or Plans shall make a written request for such information to SCDOT no later than **Noon on May 30, 2018**. Facsimiles are accepted at (803) 737-0608. The fax should be addressed to the attention of the Letting Preparation Engineer. Correspondence can be mailed to the following address:

SCDOT
955 Park St.
Columbia, SC 29201
Letting Preparation, Room 409

The contacts for SCDOT are:

| Mark H. Anthony. | Brad Latham |
|---|---|
| Letting Preparation Engineer | Lettings Preparation Manager |
| (803) 737-1379 | (803) 737-2020 |

Modifications to the Proposal or Plans will be made by addendum **only**. A copy of each addendum will be mailed to the plan holders and posted on the Bid Express web site (www.BidX.com).

**(7) SECTION 102: BIDDERS REQUIREMENTS AND CONDITIONS:**

- **Section 102.8.1.C** is hereby replaced with the following:

  C. There is reason to believe that the Bidder, or one of its employees, owners or managers, has an economic interest in more than one bid on the same project or that there has been collusion among the bidders, or one of its employees, owners or managers.

- **Section 102.12.2** is hereby replaced with the following:

  Not more than one bid from an individual, a firm or partnership, a corporation, or any association, under the same or different names, will be considered for any single project. Reasonable grounds for believing that a Bidder, or one of its employees, owners or managers, has an interest in more than one bid proposal for a single project is cause for the rejection of all bids in which such bidder, or one of its employees, owners or managers, is believed to have an interest.



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**(8) SECTION 102: PROPOSAL ITEMS AND QUANTITIES:**

A list of bid items and quantities is on page **95**. This list is for information only. The official "Schedule of Prices" for bidding is available from Bid Express at www.bidx.com.

**(9) SECTION 103: BONDS AND INSURANCE:**

Bonds and Insurance consists of all Bonds and Insurance required of the contractor. A maximum allowable amount of 2.0% of the total contract amount will be paid on the first pay estimate after work begins. If there is a remaining amount of the lump sum price for Bonds and Insurance after payments are made according to the limit above, then the remaining amount will be paid on the final estimate.

If special insurance is required by the contract provisions, such as railroad or coastal insurance, no maximum limit will apply to this bid item.

| Item No. | Pay Item | Unit |
|---|---|---|
| 1032010 | BONDS AND INSURANCE | LS |

**(10) SECTION 103.8: CONTRACTOR'S LIABILITY INSURANCE:**

Delete the second sentence in paragraph 4.

Delete the third sentence in paragraph 5, and replace it with the following sentence:

Ensure that all policies contain a provision that coverage afforded under the policies cannot be cancelled or reduced by the Contractor until at least 30 days prior written notice has been provided to SCDOT and that the policies cannot be cancelled for non-payment of premiums until at least 10 days prior written notice has been provided to SCDOT. Send Notice of Cancellations to Director of Construction Room 330, PO Box 191, Columbia, SC 29202.

Add the following as paragraph 6 at the end of Subsection 103.8:

By execution of the contract, the Contractor accepts the responsibility to provide the liability insurance policies and endorsements as specified herein. Failure of SCDOT to identify a deficiency in the Certificate of Insurance submitted by the Contractor's insurance agent as evidence of the specified insurance or to request other evidence of full compliance with the liability insurance specified shall not be construed as a waiver of the Contractor's obligation to provide and maintain the required insurance for the duration of the contract.

**(11) SECTION 103: AWARD OF CONTRACT:**

Subsection 103.2 of the Standard Specifications is amended to allow sixty (60) days for the award of a contract after the opening of proposals.

**(12) SECTION 105: CONSTRUCTION STAKES, LINES AND GRADES:**

Section 105.8.1 applies to this project.



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**(13) SECTION 105: CLAIMS PROCEDURE:**

See attached Supplemental Specification entitled "South Carolina Department of Transportation Claims Procedure" dated **July 1, 2017** on page **39**. For this project, the STANDING DISPUTE REVIEW BOARD is designated. Form 100.04 (Contractor Notice of Claim) and Form 100.04(a) (Certification of Claim) can be found on the SCDOT's Construction Extranet at: http://extranet.sharepoint.dot.state.sc.us/ce/Construction%20Forms/Forms/AllItems.aspx.

**(14) SECTION 106: QUALIFIED PRODUCT LISTINGS**

All references to "Approval Sheet" or "Approval Policy" are to be replaced with "Qualified Products Listings (QPL)" and "Qualified Products Policies (QPP)" respectively. This change includes all references in the SCDOT Standard Drawings, SCDOT Standard Specifications, SCDOT Supplemental Specifications, SCDOT Special Provisions, SCDOT Supplemental Technical Specifications, SCDOT Internet and Intranet websites, and all other documents produced by SCDOT.

**(15) SECTION 106: SOUTH CAROLINA MINING ACT:**

See Attached Supplemental Specification Dated **March 20, 2003** on page **43.**
This Suplemental Specification is hereby modfied as follows:

Paragraph 9 is hereby deleted and replaced with the following:

> The deputy secretary for engineering, or his duly appointed representative, will make a final inspection of the reclaimed area and keep a permanent record of his approval thereof. A map or sketch providing the location and approximate acreage of each pit used on the project will be provided to the resident construction engineer for inclusion in the final plans.

The last paragraph is hereby deleted and replaced with the following:

> The contractor shall comply with the provisions of the plan that are applicable to the project as determined by the engineer. Seeding or other work necessary to comply with the plan on pits furnished by the contractor shall be at the expense of the contractor. Seeding shall be in accordance with SC-M-810 (latest version) which can be found at http://www.scdot.org/doing/road_SupTechSpec.aspx.

**(16) SECTION 107: COORDINATION OF UTILITY RELOCATION WORK WITH HIGHWAY CONSTRUCTION:**

As it is not economically feasible to complete the rearrangement of all utility conflicts in advance of the highway construction, such rearrangements may be underway concurrently with construction.

***It shall be the responsibility of the contractor to inspect the site for potential utility conflicts.***

It is the responsibility of the Contractor to call Palmetto Utility Protection Service at **811** or 1-888-721-7877 three (3) days prior to work so that existing utilities can be properly marked

**(17) SECTION 107: DBE PARTICIPATION:**

The Bidder is encouraged to use DBE subcontractors on this project. All DBE participation shall be reported to the RCE on the DBE Quarterly Report.

**(18) SECTION 107: CRANE SAFETY:**

See attached Supplemental Specification dated August 1, 2013 on page **44**.



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**(19) SECTION 107: REQUIRED MEDIA NOTIFICATION FOR CONSTRUCTION PROJECTS:**
Contractors are encouraged to co-operate with the news media since all projects are constructed with public funds. Because the scope of this project will cause disruption of normal traffic flow, the Contractor is required to notify the public, in a timely manner, of disruptive activities such as lane closures.

The Contractor is required to utilize area media to accomplish public notification of traffic disruptions.

The Contractor is required to deal directly with the news media and all reasonable efforts should be made to co-operate with the media. However, the safety, security and construction schedule on site should not be disrupted in order to accomplish this. The Contractor may co-ordinate these activities with and receive guidance from the SCDOT Public Affairs Office.

**(20) SECTION 107: CONTRACT PROVISION TO REQUIRE CERTIFICATION AND COMPLIANCE CONCERNING ILLEGAL ALIENS**

By submission of this bid, the bidder as the prime contractor does hereby agree:

a. to certify its compliance with the requirements of Chapter 14 of Title 8 of the S.C. Code of Laws regarding Unauthorized Aliens and Public Employment;
b. to provide SCDOT with any documents required to establish such compliance upon request; and
c. to register and participate and require agreement from subcontractors and sub-subcontractors to register and participate in the federal work authorization program to verify the employment authorization of all new employees, or to employ only workers who supply the documents required pursuant to S.C.Code 8-14-20(B)(2).

**(21) SECTION 107: IRAN DIVESTMENT ACT:**
By submission of this bid/proposal, the bidder/proposer as the prime contractor/consultant/vendor does hereby certify his compliance to the following:

1. CERTIFICATION: (a) The Iran Divestment Act List is a list published pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: https://procurement.sc.gov/iran-divestment (.) Section 11-57-310 requires the government to provide a person ninety days (90) written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the SCDOT to award a contract to you. (b) By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the SCDOT immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List.

2. ONGOING OBLIGATIONS: (a) You must notify SCDOT immediately if, at any time during the contract term, you are added to the Iran Divestment Act List. (b) Consistent with Section 11-57-330(B), you shall not contract with any person to perform a part of the Work, if, at the time you enter into the subcontract, that person is on the then-current version of the Iran Divestment Act List.

3. OPTION TO RENEW RESTRICTION: Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio.

**(22) SECTION 107: CORRECTING LOW SHOULDER CONDITIONS:**
See attached Supplemental Specification dated **August 1, 2014** on page **45**.





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**(23) SECTION 108: SUBLETTING OF CONTRACTS (SPECIALTY ITEMS):**

The following items of work, when not performed by the Prime Contractor, will be designated as Specialty Items in all contracts in which the item does not constitute thirty percent (30%) or more of the original contract value:

| | |
|---|---|
| Pavement Markings | Permanent Roadway Signs |
| Guardrail | Signalization |
| Milling Asphalt Pavement | Electrical/Lighting |
| Grassing | Specialized Retaining Walls |
| Landscaping | Fencing |
| Erosion Control | Right of Way Surveying |
| Permanent Construction Signs | Railroad Track Work |
| Utilities | Jacking and Boring |
| Contaminated Soil & Tank Removal | Bridge Floor Grooving |
| Bridge Barrier Walls | Milled Rumble Strips |
| Traffic Count Stations | Buildings |
| Drilled Shafts & Casings | Navigational Lighting |
| Pier Fender Systems | Sound Barrier Walls |

**(24) SECTION 108: PARTNERING:**

**(A) Covenant of Good Faith and Fair Dealing**

This Contract imposes an obligation of good faith and fair dealing in its performance and enforcement.

The Contractor and Department, with a positive commitment to honesty and integrity, agree to the following mutual duties:

(1) Each will function within the laws and statutes applicable to their duties and responsibilities.
(2) Each will avoid hindering the other's performance.
(3) Each will proceed to fulfill its obligations diligently.
(4) Each will cooperate in the common endeavor of the Contract.

**(B) Partnering**

The Department encourages the foundation of cohesive partnering with the Contractor and its principle subcontractors and suppliers. This partnering is not a legal partnership as defined by South Carolina law. Partnering will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives are effective and efficient contract performance and completion within budget, on schedule, and in accordance with the Contract.

The establishment of a partnering charter will not change the legal relationship of the parties to the contract nor relieve either party from any of the terms of the Contract.

Any cost associated with effectuating partnering will be agreed to by the Department and the Contractor and will be shared equally between them.

**(25) SECTION 108: TEMPORARY SUSPENSION OF THE RESURFACING WORK:**

In addition to complying with Sub-section 108.7 of the Standard Specifications, the Contractor must abide by the following:



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Once work on a road commences, the Contractor must not suspend work on the road without written permission from the Engineer. In the event the Contractor suspends work without such approval, additional liquidated damages in the amount of **$500.00** per calendar day will be assessed for the unauthorized suspended work period.

**(26) SECTION 108: PROSECUTION OF THE RESURFACING WORK:**

It is the Department's intention that work on the roads in this contract be performed in a sequential manner. Once a construction activity (paving, shoulder work, guardrail) has started on a road, the Contractor will continue this activity until it is complete before moving to another road. In the event the Contractor elects to use multiple crews on this project, work may proceed on more than one road, however in no case will construction activities be initiated on more roads than the number of work crews engaged in the work without the approval of the Resident Construction Engineer.

**(27) SECTION 108: PAVING OPERATIONS:**

The asphalt overlay shall be applied in two separate and distinct operations, each operation representing about one-half of the roadway width and traffic shall be maintained continuously. Unless otherwise directed by the Engineer, paving operations shall be scheduled such that the length of the longitudinal joint exposed to traffic shall not extend beyond the length of pavement placed in one normal days operation (or 3 miles, whichever is greater) before dropping back to bring the adjacent lane forward.

**(28) SECTION 108: CONTRACT TIME AND DETERMINATION AND EXTENSION OF CONTRACT TIME:**

Completion Date for this project is ***July 31, 2019***.

**(29) SECTION 108: CRITICAL PATH METHOD CONSTRUCTION SCHEDULES:**

See attached Supplemental Specification dated **November 4, 2013** on page **48**.

This Project is a Level 1 project.

**(30) SECTION 108: FAILURE TO COMPLETE THE WORK ON TIME**

Paragraph 1 of **Section 108.9** is hereby replaced with the following:

If the Contractor fails to substantially complete the work by the contract completion date, the Contractor is liable for liquidated damages. Liquidated damages will be assessed for each day beyond the contract completion date that work items are not completed. This includes the application of thermoplastic, raised pavement markers and grassing. Days to be charged for liquidated damages will not stop due to seasonal restrictions. The daily liquidated damages rate is determined from the following schedule. The date of substantial completion is determined by the RCE.



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**(31) SECTION 108: FAILURE TO COMPLETE WORK ON TIME:**

Add the following paragraph to the end of Subsection 108.9 of the SCDOT 2007 Standard Specifications for Highway Construction:

The punch list must be completed within 30 days of the final inspection unless another time frame is agreed upon by the RCE and Contractor at the final inspection. Seasonal restrictions and temperatures may be considered for individual items. Failure to complete the punch list may result in the RCE charging liquidated damages at the specified rate for any punch list item remaining incomplete beyond 30 days. Liquidated damages will be applied daily until all items are complete. If a final inspection is held prior to the contract completion date, liquidated damages shall not be charged prior to the contract completion date for incomplete punch list items.

**(32) SECTION 108: FAILURE TO COMPLETE WORK ON TIME**

See attached Supplemental Specification dated **January 1, 2018** on page **59.**

**(33) SECTION 109: RETAINAGE**

If the Contractor's progress is judged to be delinquent or portions of the work are defective, the Department reserves the right to withhold retainage. The total amount retained will be sufficient to cover anticipated liquidated damages and the cost to correct defective work.

**(34) SECTION 109: PROMPT PAYMENT CLAUSE:**

See attached Supplemental Specification dated **July 1, 2017** on page **60**.

**(35) SECTION 109: CONSTRUCTION ESTIMATES:**

See attached Special Provision dated **November 10, 1999** on page **62**.

**(36) SECTION 109: FUEL ADJUSTMENT INDEXES:**

See attached Supplemental Specification dated M**arch 2, 2009** on page **63**.

The following items are hereby included in the table entitled "Items of Work Eligible for Fuel Adjustments" on page **63**:

| | | | |
|---|---|---|---|
| Smooth Wall Pipe (24" or less) | Gallons/LF | 0.50 | 0.15 |
| Smooth Wall Pipe (greater than 24") | Gallons/LF | 0.75 | 0.15 |
| Corrugated Wall Pipe (24" or less) | Gallons/LF | 0.50 | 0.15 |
| Corrugated Wall Pipe (greater than 24") | Gallons/LF | 0.75 | 0.15 |

The following Section of the Supplemental Specification is hereby modified:



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Additional Provisions:

A. The Department will calculate and apply adjustments to estimates based on index values set at the beginning of the estimate period.

- Estimate period begins on the 1st of the month and ends on the last day of the month. The 1st of the month Index will be compared to the contract Base Index to determine index adjustments for the estimate period.

This Special Provision shall apply to the following:

| |
|---|
| ALL ASPHALT MIXES |
| FULL DEPTH PATCHING |

For this project the diesel fuel and unleaded gasoline indexes will be determined on the first calender day of the month in which this project is let. The indexes and price adjustment tables will be available on the internet at http://206.74.144.31/doing/constructionLetting_MonthlyIndex.aspx or from the office of the Contracts' Administrator.

**(37) SECTION 203: UNCLASSIFIED EXCAVATION:**

The unclassified excavation quantity for this project is an estimate only. Bidders are encouraged to inspect the site in order to determine the actual amount of unclassified excavation needed to complete the project.

**(38) SECTION 203: BORROW EXCAVATION (FOR SHOULDERS):**

This work shall consist of satisfactory placement of all materials necessary to bring the shoulder grade to within 2 inches of the final pavement edge grade. The Contractor shall furnish all earth material necessary to eliminate any edge of final pavement to shoulder gradient differential that exceeds 2 inches. The quantities shown on the plans are the Engineering estimate of the number of units that will be necessary for this project, actual field measurements may cause these quantities to vary.

Selected materials shall be used for this operation. The selected material shall consist of a friable material such as topsoil, etc., containing grass roots and having the properties of being comparatively porous, capable of growing grass and of a stable nature in that when compacted it will resist erosion and be capable of supporting vehicles when relatively wet. When the area where material is to be placed, is greater than 4 feet in width, it shall be scarified and/or disked to a minimum depth of 3 inches prior to placing any material. Scarifying or disking is not required for areas less than 4 feet in width. Borrow shall be mixed with the existing scarified and/or disked shoulder material in such a manner as to provide a seed bed in accord with Section 810.15 of the Standard Specifications. The Contractor has the option of placing the borrow material (a) Prior to placing final surface course or (b) Following the placing of the finished surface course.

The method of measurement will be the volume in cubic yards, determined in accordance with Section 203 of the Standard Specifications. The Contractor, at his option, may elect to base the quantity measured on the loose volume at the point of delivery by scaling and counting the loads, with a deduction of 35 percent made for shrinkage. All cost for borrow material including obtaining, hauling, and placing shall be included in the unit price.

**(39) SECTION 305: MAINTENANCE STONE:**

Maintenance Stone used on this project shall conform to the gradation requirements of Section 305, or to the gradation specified for Aggregate No. CR-14 in the Standard Specifications.



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**(40) SECTION 400: HOT MIX ASPHALT QUALITY ASSURANCE:**
**Section 3.9** of **SC-M-400** will not apply.

**(41) SECTION 401: LIQUID ASPHALT BINDER AND ADDITIVES:**
See attached Supplemental Specification dated **March 1, 2016** on page **65.**

**(42) SECTION 401: ASPHALT BINDER ADJUSTMENT INDEX:**
See attached Supplemental Specification Dated **March 3, 2009** on page **67**. For this project the Basic Bituminous Material Index will be determined on the first calender day of the month in which this project is let.
The index and adjustment table will be available on the internet at http://www.scdot.org/doing/constructionLetting_MonthlyIndex.aspx, or may be obtained from the office of the Contracts' Administrator.

The following is hereby included in the table entitled "**Items of Work Eligible for A.C. Binder Adjustments**" on page **67**:

| | | |
|---|---|---|
| PREVENTATIVE MAINTENANCE SURFACE TREATMENT | SY | 0.0026 |
| ASPH. SURF. TREAT. (TRIPLE T-1) | SY | 0.0024 |

**All items of work included in this project, that are listed in the table entitled "Items of Work Eligible for A.C. Binder Adjustments" below paragraph 4 of the Supplemental Specification, on page 67 will be subject to price adjustment.**

The following Section of the Supplemental Specification is hereby modified:

Additional Provisions:

A. The Department will calculate and apply adjustments to estimates based on index values set at the beginning of the estimate period.

- Estimate period begins on the 1st of the month and ends on the last day of the month. The 1st of the month Index will be compared to the contract Base Index to determine index adjustments for the estimate period.

**(43) SECTION 401: RATE OF APPLICATION:**
The pounds per square yard specified are set up as an average rate of application. The Engineer may direct variations wherever conditions warrant.

**(44) SECTION 401: DRESSING OF SHOULDERS:**
Prior to the placement of asphalt mixtures on existing roadways, the contractor will be required to remove all vegetation adjacent to the edge of pavement which impedes the placement of the asphalt mixture to the specified width. The contractor shall also remove and dispose of all excess asphalt which is disturbed during minor grading for widening, or during removal of debris or grass from existing surface during preparation of surface for new lift. After the asphalt mixture has been placed, the contractor shall blade the disturbed material to the extent that the shoulder is left in a neat and presentable condition. All excess material shall be removed from the project.



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No direct payment shall be made for this work, all costs are to be included in the price of other items of work.

**(45) SECTION 401: TRANSPORTATION AND DELIVERY OF MIXES:**
See attached Supplemental Specification dated **July 1, 2010** on page **69.**

**(46) SECTION 401: SLOPED EDGE LONGITUDINAL SHOULDER JOINTS:**
See attached Supplemental Specification Dated **December 2, 2010**, on page **70**.

**(47) SECTION 401: MATERIAL FOR FULL DEPTH PATCHING:**
See attached Supplemental Specification Dated **January 1, 2018**, on page **71**.

**(48) SECTION 401: REMOVAL OF EXISTING ASPHALT PAVEMENT BEFORE PATCHING:**
See attached Supplemental Specification Dated **January 1, 2018**, on page **71**.

**(49) DIVISION 600: MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES:**
The Contractor is advised that all work involving design or installation of traffic control devices, including but not limited to signs, pavement markings, elements of work zone traffic control, signals, etc., shall be in compliance with the FHWA's Manual on Uniform Traffic Control Devices (MUTCD), latest edition. The latest edition is defined as the edition that the Traffic Engineering Division of SCDOT recognizes as having been officially adopted (Engineering Directive, Memorandum 19) at the time the project is let, unless stated otherwise in the Special Provisions.

**(50) DIVISION 600: TRAFFIC CONTROL:**
The Contractor shall execute the item of Traffic Control as required by the Standard Specifications, the plans, the Standard Drawings For Road Construction, these special provisions, all supplemental specifications, the MUTCD, and the Engineer. This is an amendment to the Standard Specifications to require the following:

**GENERAL REGULATIONS -**

These special provisions shall have priority to the plans and comply with the requirements of the MUTCD and the standard specifications. Revisions to the traffic control plan through modifications of the special provisions and the plans shall require approval by the department. Final approval of any revisions to the traffic control plan shall be pending upon review by the Director of Traffic Engineering.

Install and utilize changeable message signs in all lane closures installed on high volume high-speed multilane roadways. Use of changeable message signs in lane closures installed on low volume low speed multilane roadways is optional unless otherwise directed by the plans and the Engineer. Install and use a changeable message sign within a lane closure set-up as directed by the Standard Drawings For Road Construction. When a lane closures is not present for any time to exceed 24 hours, remove the changeable message sign from the roadway. Place the sign in a predetermined area on the project site, as approved by the Engineer, where the sign is not visible to passing motorists. The preprogrammed messages utilized shall be in accordance with the Standard Drawings For Road Construction when used as part of the traffic control set-up for lane closures. Only those messages pertinent to the requirements of the traffic control situation and the traffic conditions are permitted for display on a changeable message sign at all times. At no time will the messages displayed on a changeable message sign duplicate the legends on the permanent construction signs.



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During operation of changeable message signs, place the changeable message sign on the shoulder of the roadway no closer than 6 feet between the sign and the near edge of the adjacent travel lane. When the sign location is within 30' of the near edge of a travel lane open to traffic, supplement the sign location with no less than 5 portable plastic drums placed between the sign and the adjacent travel lane for delineation of the sign location. Install and maintain the drums no closer than 3 feet from the near edge of the adjacent travel lane. This requirement for delineation of the sign location shall apply during all times the sign location is within 30' of the near edge of a travel lane open to traffic, including times of operation and non-operation. Oversized cones are prohibited as a substitute for the portable plastic drums during this application.

All signs mounted on portable sign supports shall have a minimum mounting height of 5' from the bottom of the sign to the ground. All signs mounted on ground mounted u-channel posts or square steel tube posts shall have a minimum mounting height of 7' from the bottom of the sign to the grade elevation of the near edge of the adjacent travel lane or sidewalk when a sidewalk is present.

On multilane primary routes, avoid placement of signs mounted on portable sign supports within paved median areas utilized for two-way left turns unless otherwise directed by the RCE.

When mounting signs on multiple ground mounted sign supports, ensure that each post is of the same type. Combining and installing both ground mounted u-section and square steel tube posts within the same sign assembly is prohibited.

When mounting signs on ground mounted u-section or square steel tube posts, utilize either a sign support / ground support post combination with an approved breakaway assembly or a single direct driven post for each individual sign support of a sign assembly installation. Do not combine a sign support / ground support post combination and a direct driven post on the same sign assembly installation that contains two or more sign supports. Regarding sign support / ground support post combination installations, ensure that post lengths, stub heights and breakaway assemblies comply with the manufacturer's requirements and specifications. Use approved breakaway assemblies found on the Approved Products List For Traffic Control Devices in Work Zones.

Temporary "Exit" signs (M1025-00) shall be located within each temporary gore during lane closures on multilane roadways. Mount these signs a minimum of 7' from the pavement surface to the bottom of the sign in accordance with the requirements of the MUTCD.

When covering signs with opaque materials, the Department prohibits attaching a covering material to the face of the sign with tape or a similar product or any method that will leave a residue on the retroreflective sheeting. Residue from tape or similar products, as well as many methods utilized to remove such residue, damages the effective reflectivity of the sign. Therefore, contact of tape or a similar product with the retroreflective sheeting will require replacement of the sign. Cost for replacement of a sign damaged by improper covering methods will be considered incidental to providing and maintaining the sign; no additional payment will be made.

Overlays are prohibited on all rigid construction signs. The legends and borders on all rigid construction signs shall be either reversed screened or direct applied.

Signs not illustrated on the typical traffic control standard drawings designated for permanent construction signs shall be considered temporary and shall be included in the lump sum price bid item for "Traffic Control" unless otherwise specified.

Install "Grooved Pavement" signs (W8-15-48) supplemented with the "Motorcycle" plaque (W8-15P-30) in advance of milled or surface planed pavement surfaces. On primary routes, install these signs no further than 500 feet in advance of the beginning of the pavement condition. On interstate routes, install these signs no less than 500 feet in advance of the beginning of the pavement condition. Install two sign assemblies at each sign location, one on each side of the roadway, on multilane roadways when the pavement condition is present.



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Install these signs immediately upon creation of this pavement condition and maintain these signs until this pavement condition is eliminated.

Install “Steel Plate Ahead” signs (W8-24-48) in advance of an area of roadway where temporary steel plates are present. Install these signs no further than 300 feet in advance of locations where steel plates are present. On multilane roadways, comply with the same guidelines as applied to all other advance warning signs and install two sign assemblies at each sign location, one on each side of the roadway, when roadway conditions warrant. Install these signs immediately upon installation of a temporary steel plate and maintain the signs until the temporary steel plates are removed.

Install and maintain any necessary detour signing as specified by the typical traffic control standard drawings designated for detour signing, Part VI of the MUTCD, these Special Provisions, and the Engineer. The lump sum price bid item for “Traffic Control” includes payment for installation and maintenance of the detour signing.

The Contractor shall maintain the travel patterns as directed by the traffic control plans and shall execute construction schedules expeditiously. The Contractor shall provide the Resident Engineer with no less than a two-week prior notification of changes in traffic patterns.

During nighttime flagging operations, flaggers shall wear a safety vest and safety pants that comply with the requirements of ANSI / ISEA 107 standard performance for Class 3 risk exposure, latest revision, and a fluorescent hard hat. The safety vest and the safety pants shall be retroreflectorized and the color of the background material of the safety vest and safety pants shall be fluorescent orange-red or fluorescent yellow-green.

During nighttime flagging operations, the contractor shall illuminate each flagger station with any combination of portable lights, standard electric lights, existing street lights, etc., that will provide a minimum illumination level of 108 Lx or 10 fc.

During nighttime flagging operations, supplement the array of advance warning signs with a changeable message sign for each approach. These changeable message signs are not required during daytime flagging operations. Install the changeable message signs 500’ in advance of the advance warning sign arrays. Messages should be “Flagger Ahead” and “Prepare To Stop”.

Upon completion of the final riding surface on each road, the Contractor will be allowed up to 3 working days to begin eliminating shoulder drop-offs greater than 2” and continue the work until these drop-offs are eliminated.

During paving operations, the Department requires lane closures at all times where grade elevation differences and drop-offs greater than 2" exist adjacent to or between the travel lanes of a roadway opened to traffic, unless otherwise specified by these special provisions. Maintain lane closure restrictions at all times unless otherwise directed by these special provisions.

During surface planing and milling operations, grade elevation differences greater than 1 inch in areas with pavements composed of hot mixed asphalt (HMA) base courses, intermediate courses or surface courses and Portland cement concrete are PROHIBITED between adjacent travel lanes open to traffic unless otherwise directed by the Department. However, during surface planing and milling operations for removal of Open-Graded Friction courses ONLY, a grade elevation difference of 1½ inches between adjacent travel lanes opened to traffic may exist unless otherwise directed by the Department.

During any surface planing and milling operations, lane closures are required at all times where grade elevation differences and drop-offs greater than the acceptable measurements specified heretofore exist adjacent to or between travel lanes open to traffic unless otherwise specified by the department.



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If a grade elevation difference in excess of the specified acceptable ranges exist, either mill the adjacent travel lane or pave the milled travel lane as necessary to eliminate the grade elevation difference prior to opening the travel lane to traffic at these locations. Maintain the lane closure restrictions at all times unless otherwise directed by these special provisions.

During the paving operations, the length of roadway with an acceptable grade elevation difference less than or equal to 2" shall not exceed 2 miles.

During surface planing and milling operations, the length of roadway with an acceptable grade elevation difference less than or equal to 1" shall not exceed 2 miles.

Supplement and delineate the shoulder edges of travel lanes through work zones with traffic control devices to provide motorists with a clear and positive travel path. Utilize portable plastic drums unless otherwise directed by the Department. Vertical panels may be used where specified by the plans and directed by the RCE. The installation of traffic control devices are required in all areas where those areas immediately adjacent to a travel lane open to traffic have been altered in any manner by work activities, including but not limited to activities such as grading, milling, etc.
Install the traffic control devices immediately upon initiating any alterations to the areas immediately adjacent to or within 15 feet of the near edge line of the adjacent travel lane. When sufficient space is available, place the traffic control devices no closer than 3 feet from the near edge of the traffic control device to the near edge line on the adjacent travel lane. When sufficient space is unavailable, place the traffic control device at the maximum distance from the near edge of the adjacent travel lane available.

**LANE CLOSURE RESTRICTIONS -**

The lane closure restrictions stated below are project specific, for all other restrictions, see supplemental specification, “Restrictions”, dated September 1, 2015.

The Contractor shall install all lane closures as directed by the Standard Specifications For Highway Construction (latest edition), the Standard Drawings For Road Construction, these special provisions, the MUTCD, and the Engineer. The Contractor shall close the travel lanes of two-lane two-way roadways by installing flagging operations. The Contractor shall close the travel lanes of multilane roadways as directed by the typical traffic control standard drawings designated for lane closures on primary routes.

**The Department prohibits lane closures on multilane primary and secondary routes during any time of the day that traffic volumes exceed 800 vehicles per hour per lane per direction.**

**The Department prohibits flagging operations on two-lane two-way primary and secondary routes during any time of the day that traffic volumes exceed 800 vehicles per hour.**

**The Department reserves the right to suspend a lane closure or flagging operation if any resulting traffic backups are deemed excessive by the Engineer. Maintain all lane closure restrictions as directed by the plans, these special provisions and the Engineer.**

**Lane closures, including flagging operations, are restricted to maximum distances of 2 miles. Install all lane closures according to the typical traffic control standard drawings. On occasions when daytime lane closures must be extended into the nighttime hours, substitute the nighttime lane closure standards for the daytime lane closure standards.**

**The Department reserves the right to suspend a lane closure if any resulting traffic backups are deemed excessive by the Engineer. Maintain all lane closure restrictions as directed by the Standard Specifications, these special provisions, and the Engineer.**

**Installation and maintenance of a lane closure is PROHIBITED when the Contractor is not actively engaged in work activities specific to the location of the lane closure unless otherwise specified and approved by the Engineer. The length of the lane closure shall not exceed the length of roadway anticipated to be subjected to the proposed work activities within the work shift time frame or the maximum lane closure length specified unless otherwise approved by the Engineer. Also, the maximum lane closure length specified does not warrant installation of the specified lane closure length when the length of the lane closure necessary for conducting the work activity is less. The length and duration of each lane closure, within the specified parameters, shall require approval by the Engineer prior to installation. The length and duration of each lane closure may be reduced by the Engineer if the work zone impacts generated by a lane closure are deemed excessive or unnecessary.**

**The presence of temporary signs, portable sign supports, traffic control devices, trailer mounted equipment, truck mounted equipment, vehicles and vehicles with trailers relative to the installation or removal of a closure and personnel are prohibited within the 15 to 30 foot clear zone based upon the roadway speed limit during the prohibitive hours for lane closures specified by these special provisions.**

**MOBILE OPERATIONS -**

**A mobile operation moves continuously at all times at speeds 3 mph or greater without any stops. The minimal traffic flow impacts generated by these operations involve brief traffic flow speed reductions and travel path diversions. Conduct work operations that cannot be performed at speeds of 3 mph or greater under standard stationary lane closures.**

The distance intervals between the vehicles, as indicated in the *Standard Drawings For Road Construction*, may require adjustments to compensate for sight distance obstructions created by hills and curves and any other conditions that may obstruct the sight distance between the vehicles. However, adjustments to the distance intervals between the vehicles should be maintained within the range of variable distance intervals indicated in the standard drawings unless otherwise directed by the Engineer.

Maintain two-way radio communication between all vehicles in the vehicle train operating in a mobile operation.

Supplement the work vehicles and the shadow vehicles with amber colored flashing dome lights. The vehicles may also be supplemented with advance warning arrow panels and truck mounted attenuators as directed in the *Standard Drawings For Road Construction* and the Standard Specifications.

The Contractor shall install, operate and maintain all advance warning arrow panels, truck mounted attenuators and truck mounted changeable message signs as required by these special provisions, the manufacturer's specifications, the *Standard Drawings For Road Construction*, the Standard Specifications, the plans and the Engineer.

**TYPICAL TRAFFIC CONTROL STANDARD DRAWINGS -**

**The typical traffic control standard drawings of the "Standard Drawings For Road Construction", although compliant with the MUTCD, shall take precedence over the MUTCD. The typical traffic control standard drawings of the "Standard Drawings For Road Construction" shall apply to all projects let to contract.**

**Install the permanent construction signs as shown on the typical traffic control standard drawings designated for permanent construction signing.**

**ADDENDUMS**



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**(Addendums to the "2007 Standard Specifications for Highway Construction")**

**(A) Construction (Sub-section 601.4) –**

**Sub-section 601.4.2 Construction Vehicles (paragraph 2) -**

When working within the rights-of-way of access-controlled roadways such as Interstate highways, the Contractor's vehicles may only change direction of travel at interchanges. These vehicles are prohibited from crossing the roadway from right side to the median or vice versa. Use a flagger to control the Contractor's vehicles when these vehicles attempt to enter the roadway from a closed lane or the median area. Ensure the flagger does not stop roadway traffic, cause roadway traffic to change lanes, or affect roadway traffic in any manner. The Contractor's vehicles may not disrupt the normal flow of roadway traffic or enter the travel lane of the roadway until a sufficient gap is present.

The Contractor shall have flaggers available to control all construction vehicles entering or crossing the travel lanes of secondary and primary routes. The RCE shall determine the necessity of these flaggers for control of these construction vehicles.
The RCE shall consider sight distance, vertical and horizontal curves of the roadway, prevailing speeds of roadway traffic, frequency of construction vehicles entering or crossing the roadway and other site conditions that may impact the safety of the workers and motorists when determining the necessity of these flaggers. Ensure these flaggers do not stop roadway traffic, cause roadway traffic to change lanes or affect roadway traffic in any manner. The Contractor's vehicles may not disrupt the normal flow of roadway traffic or enter the travel lane of the roadway until a sufficient gap is present.

When working within the rights-of-way of access-controlled roadways with posted regulatory speed limits of 55 MPH or greater and average daily traffic volumes {ADT} of 10,000 vehicles per day or greater, all construction and work vehicles possessing any one or more of the vehicular characteristics listed below are only permitted to enter and exit a right or left shoulder work area during the presence of active lane closures unless otherwise directed by the RCE. These vehicles are not permitted to enter or exit these work areas without the presence of active lane closures unless otherwise directed by the RCE. Shoulder closures are unacceptable and insufficient methods for control of traffic at ingress / egress areas for these vehicles. The restrictive vehicular characteristics include the following:

- Over six (6) tires
- Tandem rear axles
- A base curb weight greater than 8000 lbs.
- A gross vehicular weight greater than 12000 lbs. unless performing duties as a shadow vehicle while supporting a truck mounted attenuator
- A trailer in tow except under the following conditions:

o Trailers transporting traffic control devices (including but not limited to standard and 42" oversized traffic cones, portable plastic drums, signs, portable sign supports, u-channel and square steel tube sign posts) relative to the installation of lane closures, shoulder closures or other traffic control operations approved by the RCE

o Trailer mounted traffic control devices (including but not limited to advance warning arrow panels, changeable message signs, temporary traffic signals, highway advisory radios, work zone intelligent transportation systems and trailer towed truck mounted attenuators)

**(B) Construction (Sub-section 601.4) –**

**Sub-section 601.4.2 Construction Vehicles -**

**Auxiliary Warning Lights for Vehicles and Equipment -**



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Supplement all construction and/or construction-related vehicles and equipment that operate in a stationary or mobile work zone within or adjacent to a roadway within the highway rights-of-way with AMBER or YELLOW colored high intensity rotating or strobe type flashing auxiliary warning light devices. Utilize, install, operate and maintain a single or multiple lighting devices as necessary to provide visibility to approaching motorists.

All auxiliary warning light models shall meet *Society of Automotive Engineers* (SAE) Class I standards and SAE Standard J575 relative to *Tests for Motor Vehicle Lighting Devices and Components* and these specifications.

The amber/yellow color of the dome/lens of an auxiliary warning light device shall meet SAE Standard J578 for amber/yellow color specifications.

Auxiliary warning lights with parabolic reflectors that rotate shall rotate around a halogen lamp at a rate to produce approximately 175 flashes per minute. The parabolic reflector shall produce a minimum 80,000 candle power and a minimum 54,000 candela through an SAE Standard J846 approved amber dome.

Equip strobe type flashing auxiliary warning light devices with photosensitive circuit controls to adjust the lighting intensity in response to changes in ambient light conditions such as from day to night. These lights shall have a double-flash capability rated at approximately 80 double flashes per minute and produce a minimum 24 joules of flash energy at the highest power level setting.

Acceptable auxiliary warning light models shall provide sufficient light output to be clearly recognizable at a minimum distance of 1750 feet.

Mount all auxiliary warning light devices intended to function as the auxiliary warning light system or as an element thereof on vehicles and equipment at locations no less than 3 feet above the ground and in conspicuous locations to provide visibility to approaching motorists.

Auxiliary warning light devices and/or models that mount in the locations of the standard vehicle lighting system are unacceptable as the specified auxiliary warning light system due to restrictive simultaneous visibility capabilities from multiple sight angles. However, auxiliary warning light devices that mount in the standard vehicle lighting system locations are acceptable as supplements to the specified lighting devices mounted in locations that do meet the minimum height requirements and provide simultaneous visibility capabilities from multiple sight angles.

Standard vehicle hazard warning lights are only permitted as supplements to the specified auxiliary warning light devices.

**(C) Category I Traffic Control Devices (Section 603) –**

****** (Effective on all projects let to contract after May 1, 2010) ******

**Sub-section 603.2.2 Oversized Traffic Cones (paragraph 6) -**

Reflectorize each oversized traffic cone with 4 retroreflective bands: 2 orange and 2 white retroreflective bands. Alternate the orange and white retroreflective bands, with the top band always being orange. Make each retroreflective band not less than 6 inches wide. Utilize Type III – Microprismatic retroreflective sheeting for retroreflectorization on all projects let to contract after May 1, 2010 unless otherwise specified. Separate each retroreflective band with not more than a 2-inch non-reflectorized area. Do not splice the retroreflective sheeting to create the 6-inch retroreflective bands. Apply the retroreflective sheeting directly to the cone surface. Do not apply the retroreflective sheeting over a pre-existing layer of retroreflective sheeting.

**Sub-section 603.2.3 Portable Plastic Drums (paragraph 3) -**

Reflectorize each drum with Type III – Microprismatic retroreflective sheeting: 2 orange and 2 white retroreflective bands, 6 inches wide on all projects let to contract after May 1, 2010 unless otherwise specified. Alternate the orange and white retroreflective bands with the top band always being orange. Ensure that any non-reflectorized area between the orange and white retroreflective bands does not exceed 2 inches. Do not splice the retroreflective sheeting to create the 6-inch retroreflective bands. Apply the retroreflective sheeting directly to the drum surface. Do not apply the retroreflective sheeting over a pre-existing layer of retroreflective sheeting.

**(D) Category II Traffic Control Devices (Section 604) –**

***** *(Effective on all projects let to contract after May 1, 2012)* *****

**Sub-section 604.2.1 Type I and Type II Barricades (paragraph 3) -**

Reflectorize these barricades with Type VIII or IX Prismatic retroreflective sheeting on all projects let to contract after May 1, 2012 unless otherwise specified. Ensure that the retroreflective sheeting has alternate orange and white stripes sloping downward at a 45-degree angle in the direction of passing traffic. The stripes shall be 6 inches wide.

**Sub-section 604.2.2 Type III Barricades (paragraph 3) -**

Reflectorize these barricades with Type VIII or IX Prismatic retroreflective sheeting on all projects let to contract after May 1, 2012 unless otherwise specified. Ensure that the retroreflective sheeting has alternate orange and white stripes sloping downward at a 45-degree angle. Apply the sloping orange and white stripes in accordance with the requirements of the Plans, SCDOT Standard Drawings and the MUTCD. The stripes shall be 6 inches wide.

**(E) Construction Signs (Sub-section 605.4.1.1) –**

***** *(Effective on all projects let to contract after January 1, 2016)* *****

On all projects relative to **interstate highways** let to contract after January 1, 2016, all signs attached to portable sign supports on and/or adjacent to **interstate highways** shall be rigid. Fabricate each of these rigid signs from an approved aluminum laminate composite rigid sign substrate approved by the Department. Utilization of signs fabricated from roll-up fabric substrates attached to portable sign supports installed on and/or adjacent to **interstate highways** will no longer be acceptable on projects let to contract after January 1, 2016.

ONLY those portable sign supports specified and approved for support of rigid signs fabricated from approved aluminum laminated composite rigid sign substrates and included on the *Approved Products List for Traffic Control Devices in Work Zones*, latest edition, are acceptable. To facilitate location of acceptable portable sign supports, the listing of portable sign supports is now separated into two (2) sections; “Portable Sign Supports for Use with Roll-Up Signs ONLY” and “Portable Sign Supports for Use with Roll-Up Sign Substrates and Rigid Sign Substrates”.

**The trade names of the approved aluminum laminate composite rigid sign substrates are “Acopan”, “Alpolic”, “Dibond” and “Reynolite”. These rigid sign substrates are restricted to thicknesses no greater than 2 millimeters.**

Rigid signs fabricated from standard aluminum sign blanks or any other rigid material other than Acopan, Alpolic, Dibond or Reynolite are PROHIBITED for attachment to portable sign supports. However, rigid signs fabricated from standard 0.080 and 0.100 inches thick aluminum sign blanks will continue to be acceptable for mounting on ground mounted sign supports.



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Signs fabricated from roll-up fabric substrates approved by the Department will continue to be acceptable for use on and/or adjacent to secondary and primary roadways unless otherwise directed by the Department.

The minimum mounting height of signs mounted on these portable sign supports shall continue to be 5 feet from the ground to the bottom edge of the sign except where a minimum 7 foot mounting height is required in accordance with the standard specifications, the standard drawings, these special provisions and the MUTCD, latest edition.

**(F) Truck-Mounted Attenuator (Sub-section 605.4.2.2) –**

**Sub-section 605.2.2.2.3.3 Color (paragraph 1) -**

Use industrial grade enamel paint for cover of the metal aspects of the unit. Provide and attach supplemental striping to the rear face of the unit with a minimum Type III high intensity retroreflective sheeting unless otherwise directed by the Department.
Utilize an alternating 4 to 8 inch black and 4 to 8 inch yellow 45-degree striping pattern that forms an inverted “V” at the center of the unit that slopes down and to the sides of the unit in both directions from the center.

**(G) Truck-Mounted Attenuator (Sub-section 605.4.2.2) –**

**Sub-section 605.4.2.2 Truck-Mounted Attenuators (paragraph 6) -**

A direct truck mounted truck mounted attenuator is mounted and attached to brackets or similar devices connected to the frame of a truck with a minimum gross vehicular weight (GVW) of 15,000 pounds (actual weight) unless otherwise directed. A trailer towed truck mounted attenuator is towed from behind and attached via a standard pintle hook / hitch to the frame of a truck with a minimum gross vehicular weight (GVW) of 10,000 pounds (actual weight) unless otherwise directed.

Each truck utilized with a truck mounted attenuator shall comply with the manufacturer’s requirements to ensure proper operation of the attenuator. The minimum gross vehicular weight (GVW) (actual weight) for each truck shall comply with these specifications unless otherwise directed within the “Remarks” column of the *Approved Products List For Traffic Control Devices in Work Zones* in regard to specific requirements for the device in question.

If the addition of supplemental weight to the vehicle as ballast is necessary, contain the material within a structure constructed of steel. Construct this steel structure to have a minimum of four sides and a bottom to contain the ballast material in its entirety. A top is optional. Bolt this structure to the frame of the truck. Utilize a sufficient number of fasteners for attachment of the steel structure to the frame of the truck to ensure the structure will not part from the frame of the truck during an impact upon the attached truck mounted attenuator. Utilize either dry loose sand or steel reinforced concrete for ballast material within the steel structure to achieve the necessary weight. The ballast material shall remain contained within the confines of the steel structure in its entirety and shall not protrude from the steel structure in any manner.

**(H) Trailer-Mounted Changeable Message Signs (Sub-section 606.3.2) -**

**Sub-section 606.3.2.7 Controller (paragraphs 1-4) -**

The controller shall be an electronic unit housed in a weatherproof, rust resistant box with a keyed lock and a light for night operation. Provide the unit with a jack that allows direct communications between the on-board controller and a compatible personal computer. The unit shall have a LCD display screen that allows the operator to review messages prior to displaying the message on the sign.



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The controller shall have the capability to store 199 factory preprogrammed messages and up to 199 additional messages created by the user in a manner that does not require a battery to recall the messages. Also, the controller shall allow the operator the capability to program the system to display multiple messages in sequence.

Provide the controller with a selector switch to allow the operator to control the brightness or intensity level of the light source of the sign panel. The selector switch shall include "bright," "dim" and "automatic" modes; inclusion of additional modes is permissible. When the selector switch is in the "automatic" mode, a photosensitive circuit shall control the brightness or intensity level of the light source in response to changes in ambient light such as from day to night and other various sources of ambient light.

Equip each sign with remote communications capabilities, such as utilization of cellular telephone or internet browser technology, to allow the operator to revise or modify the message selection from the office or other remote location. Also, provide protection to prohibit unauthorized access to the controller, (i.e. password protection).

**Sub-section 606.5 Measurement (paragraph 2) -**

Trailer-mounted changeable message signs are included in the lump sum item for Traffic Control in accordance with **Subsections 107.12** and **601.5** of the "2007 Standard Specifications for Highway Construction". No separate measurement will be made for trailer-mounted changeable message signs unless the contract includes a specific pay item for trailer-mounted changeable message signs.

The Contractor shall provide, install, operate, and maintain the trailer-mounted changeable message sign per traffic control set-up as directed by the Plans, the "Standard Drawings for Road Construction", these Special Provisions, the Specifications, and the Engineer.

**Sub-section 606.6 Payment (paragraph 2) -**

In addition to **Subsections 107.12** and **601.6**, the payment for Traffic Control is full compensation for providing, installing, removing, relocating, operating, and maintaining trailer-mounted advance warning arrow panels and trailer-mounted changeable message signs as specified or directed and includes providing the units' primary power source; repairing or replacing damaged or malfunctioning units within the specified time; providing traffic control necessary for installing, operating, and maintaining the units; and all other materials, labor, hardware, equipment, tools, supplies, transportation, incidentals, and any miscellaneous items necessary to fulfill the requirements of the pay item in accordance with the Plans, the Specifications, and other items of the Contract.

**Sub-section 606.6 Payment (paragraph 3) -**

Disregard this paragraph unless the Contract includes a specific pay item for trailer-mounted changeable message signs.

**(I) Temporary Pavement Markings (Sub-section 609.4.1) –**

**Sub-section 609.4.1.1.1 Application Requirements General (in addition to paragraph 3) -**

On two-lane two-way roadways, apply and place temporary or permanent pavement markings, as specified hereupon, prior to the end of each day's work or shift or reopening a closed travel lane to traffic. These pavement markings shall include 4-inch wide solid lines on edge lines and solid center lines and 4-inch wide by 10 feet long broken lines with a 30-foot gap for broken center lines and lane lines unless otherwise specified. The center line pavement markings shall be either double yellow solid lines, yellow broken lines or an appropriate combination of a yellow solid line and yellow broken lines for passing / no passing zones. Placement of a singular yellow solid line for a center line pavement marking is unacceptable. The edge line pavement markings shall be a white solid line.



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On multilane primary and secondary roadways, apply and place temporary or permanent pavement markings, as specified hereupon, to the travel lanes prior to reopening a closed travel lane to traffic. These pavement markings shall include 4-inch wide solid lines, utilized for edge lines and solid center lines, and 4-inch wide by 10 feet long broken lines with a 30-foot gap, utilized for lane lines and turn lanes, unless otherwise specified. The center line pavement markings shall be either double yellow solid lines or an appropriate combination of a yellow solid line and 4-inch wide by 10 feet long yellow broken lines for two-way left turn median areas. The right edge line pavement markings shall be a white solid line and the left edge line shall be a yellow solid line except in areas where the travel lanes separate to create a gore type situation and then the color schemes shall comply with SCDOT application practices for gore areas. The lane lines between travel lanes and turn lanes shall be 4-inch wide by 10 feet long white broken lines with a 30-foot gap.

However, on two-lane two-way and multilane primary and secondary roadways, application of a 4-inch wide solid line utilized for an edge line adjacent to an earth shoulder, white or yellow, may be delayed up to 72 hours after eradication of the original line when the length of eradicated line at a single location is no longer than 250 feet. In the event of multiple locations along the same line, each location must be separated from the adjacent location by no less than 250 feet with a cumulative total distance of eradicated line of no more than 1300 feet within any continuous 1 (one) mile length of roadway measured from a selected location. If the length of eradicated line exceeds 250 feet at any single location, the distance interval between multiple adjacent locations is less than 250 feet or a cumulative total distance of multiple locations of eradicated line exceeds 1300 feet within any continuous 1 (one) mile length of roadway measured from a selected location, replace the eradicated line(s) prior to reopening the adjacent travel lane to traffic.

On interstate roadways, apply and place temporary or permanent pavement markings, as specified hereupon, to the travel lanes prior to reopening a closed travel lane to traffic. These pavement markings shall include 6-inch wide solid lines, utilized for edge lines, and 6-inch wide by 10 feet long white broken lines with a 30-foot gap, utilized for lane lines between travel lanes and auxiliary lanes, unless otherwise specified. The right edge line pavement markings shall be a white solid line and the left edge line shall be a yellow solid line except in areas where the travel lanes separate to create a gore type situation and then the color schemes shall comply with SCDOT application practices for gore areas.

On all roadways, apply and place white stop bars and white triangle yield bars in all locations where previous stop bars and triangle yield bars have been eradicated by the work. Apply and place white stop bars and white triangle yield bars at intersections controlled by stop and yield signs within 72 hours of the eradication of the original pavement marking. Apply and place white stop bars at signalized intersections controlled by traffic control signals and at railroad crossings prior to reopening a closed travel lane to traffic.

Within the limits of existing turn lanes on all roadways, apply and place white arrows in all locations where previous arrows have been eradicated by the work unless otherwise directed by the RCE. Apply and place white arrows within 72 hours of the eradication of the original pavement markings. However, in regard to newly constructed turn lanes, apply and place white arrows the within turn lanes as directed by the RCE.

Within the limits of existing lane-drop sites on all roadways, apply and place white arrows in all locations where previous arrows have been eradicated by the work prior to the end of each day's work or shift or reopening the closed travel lane to traffic. In regard to newly constructed lane-drop sites, apply and place white arrows within the travel lane to be terminated prior to opening the travel lane to traffic and as directed by the RCE.

**(J) <u>Temporary Pavement Markings</u> (Sub-section 609.4.1) –**

**<u>Sub-section 609.4.1.1.1 Application Requirements General (Revision to paragraph 8)</u> -**



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On two-lane, two-way roadways, passing zones may be eliminated within the work zone through application of 4-inch double yellow centerline pavement markings if determined feasible and directed to do so by the Plans and/or the RCE. Apply no passing zone markings as specified by the Plans, the Specifications, the *MUTCD* and the RCE.

**(K) Flagging Operations (Sub-section 610.4.1) –**

**Sub-section 610.4.1.1 Flagging Operations (paragraph 1) -**

Use a flagging operation to control the flow of traffic when two opposing directions of traffic must share a common travel lane. A flagging operation may be necessary during a lane closure on a two-lane two-way roadway, an intermittent ramp closure or an intermittent encroachment of equipment onto a portion of the roadway. Utilize flagging operations to direct traffic around work activities and maintain continuous traffic flow at reduced speeds when determined to be appropriate by the RCE. As stated above, flagging operations shall direct traffic around the work activities and maintain continuous traffic flow, therefore, stopped traffic shall not be required to stop for time durations greater than those listed below unless otherwise directed by the RCE. Begin measurement of the time interval immediately upon the moment the Flagger rotates the Stop/Slow paddle to display the "Stop" condition to the approaching motorists.

| LENGTH OF CLOSURE | MAXIMUM TIME DURATION FOR STOPPED TRAFFIC |
|---|---|
| **1 MILE or LESS** | 5 Minutes |
| **1 to 2 MILES** | 7 ½ Minutes |

If the work activities require traffic to be stopped for periods greater than 5 to 7 ½ minutes as stated above, consider alternate work methods, conducting work activities during times of lowest traffic volumes such as during the hours of darkness or complete road closure with detour installation.

**(L) Paving and Resurfacing (Sub-section 611.4.1) –**

**Sub-section 611.4.1.2 Requirements (paragraph 8) -**

Whenever travel lanes with acceptable grade elevation differences are open to traffic, provide "Uneven Lanes" signs (W8-11-48) or "Uneven Pavement" signs (W8-11A-48). Reflectorize these signs with a fluorescent orange colored prismatic retroreflective sheeting unless otherwise specified. Install these signs adjacent to roadways with uneven pavement surfaces between travel lanes or between travel lanes and the adjacent paved shoulders. Install these signs at intervals no greater than 2600 feet.

**(51) DIVISION 600: TRAFFIC CONTROL:**
See attached Supplemental Specification dated **September 1, 2015** on page **73**.

**(52) DIVISION 600: TRAILER MOUNTED AUTOMATED FLAGGER ASSISTANCE DEVICE SYSTEM (AFAD):**
See attached Supplemental Specification dated **September 1, 2012** on page **75**.



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**(53) DIVISION 600: WORK ZONE TRAFFIC CONTROL TRAINING REQUIREMENTS FOR CONTRACTORS / SUBCONTRACTORS:**
See attached Supplemental Specification dated **September 1, 2013** on page **80**.

**(54) SECTION 602: GENERAL REQUIREMENTS FOR PROVIDING AND MAINTAINING TRAFFIC CONTROL DEVICES IN THE WORK ZONE:**
Delete **Section 602.1.11**.

**(55) SECTION 610: WORK ZONE TRAFFIC CONTROL PROCEDURES:**
The first sentence of Section 610.3 of the 2007 Standard Specifications is hereby revised to:

"Ensure that background color of personal protective apparel is either fluorescent Yellow-Green or fluorescent Orange-Red, and meets ANSI Standard 107-2004 National Standard for High Visibility Apparel Class 2 (or Class 3 as necessary) Performance Criteria, or latest edition."

Note #12 of Standard Drawing 610-005-00 is hereby revised to:

"During nighttime flagging operations, flaggers shall wear a Safety Vest and Safety Pants meeting ANSI Standard 107-2004 National Standard for High Visibility Apparel Class 3 Performance Criteria, or Latest Edition, and a Hardhat. The color of the apparel background material shall be either fluorescent Yellow-Green or fluorescent Orange-Red."

**(56) DIVISION 600: FURNISH AND INSTALL DETECTOR LOOPS**

See attached Traffic Signal Specifications on page **107**.

The Contractor is hereby notified that All Catalog descriptions and documentation are to be submitted within (5) days after the bid openings to the Contracts Administrator.

The loops shall be installed in the surface course on all projects in Engineering Districts 3, 4, 5, 6, & 7.

The loops shall be installed in the binder course for all projects in Engineering District 1.

The loops shall be on installed in the binder course on new construction projects, and in the surface for resurfacing projects in Engineering District 2.

**(57) DIVISION 600, Etal.: ADHESIVELY BONDED ANCHORS AND DOWELS:**
See attached Supplemental Specification dated **September 1, 2008** on page **89.**
This Supplemental Specification applies when Adhesively Bonded Anchors or Dowels are called for in the Plans or Detailed Drawings.

The following Standard Drawings have been identified as showing Adhesively Bonded Anchors or Dowels:



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| | |
|---|---|
| 605-205-03 | Temporary Concrete Barrier |
| 605-210-04 | Temporary Concrete Barrier |
| 605-310-01 | Temporary Concrete Barrier |
| 605-315-00 | Temporary Concrete Barrier |
| 605-320-00 | Temporary Concrete Barrier |
| 605-325-00 | Temporary Concrete Barrier |
| 605-330-00 | Temporary Concrete Barrier |
| 651-105-00 | Barrier Mounted Sign Post |
| 657-100-00 | Overhead Sign Support Roadway Bridges |
| 722-105-01 | Box Culvert (Used to connect headwall, wingwalls, and for extensions) |
| 805-120-00 | Guardrail (W Beam) Base Plate Connection |
| 805-405-03 | Guardrail (Tubular Beam) Bridge Railing |
| 805-405-04 | Guardrail (Tubular Beam) Bridge Railing |
| 806-505-00 | Fence (Ornamental Steel Picket) |

It is the contractor's responsibility to determine if Adhesively Bonded Anchors or Dowels are a part of the project, and to comply with the provisions of the Supplemental Specification.

**(58) SECTION 702: LIQUID CURING COMPOUNDS:**
See attached Supplemental Specification dated **January 1, 2018** on page **93**.

**(59) SECTION 801: PERMANENT GRASSING FOR SMALL PROJECTS:**
Section **1.3.3 of SC-M-810 SEEDING** paragraph two is modified as follows:

Permanent Grassing for small projects will require HECP-Type 3 on all applications, unless otherwise noted in the plans or specifications.



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January 1, 2018

**ERRATA TO 2007 STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION**

Make the changes listed below to correct errata in the SDCOT *2007 Standard Specifications for Highway Construction*:

# DIVISION 100 GENERAL PROVISIONS

## SECTION 101 DEFINITIONS AND TERMS

### Subsection 101.2 Abbreviations and Acronyms

Amend the table of **SCDOT OFFICIALS AND OFFICES** as follows:

| DELETIONS | | REPLACEMENTS | |
|---|---|---|---|
| ~~BDE*~~ | ~~Bridge Design Engineer~~ | PSE* | Preconstruction Support Engineer |
| ~~BDGE*~~ | ~~Bridge Design Geotechnical Engineer~~ | GDSE* | Geotechnical Design Support Engineer |
| ~~SHE*~~ | ~~State Highway Engineer~~ | DSE* | Deputy Secretary for Engineering |

*Wherever it appears in the text, replace the deleted abbreviation with the new abbreviation.

## SECTION 102 BIDDING REQUIREMENTS AND CONDITIONS

### Subsection 102.8 Irregular Bids

Paragraph 2, item E, first sentence; delete the word "the" after the word "When".

## SECTION 105 CONTROL OF WORK

### Subsection 105.6 Cooperation with Utilities

Paragraph 1, last sentence; change the word "THE" to "the".

# DIVISION 200 EARTHWORK

## SECTION 202 REMOVAL OF STRUCTURES AND OBSTRUCTIONS

### Subsection 202.5 Measurement

Paragraph 5, second bullet; change the words "Brick sidewalk" to "Concrete, brick or stone sidewalks".

## SECTION 204 STRUCTURE EXCAVATION

### Subsection 204.2.1.2 Structure Excavation for Culverts

Paragraph 1, at the end of the first sentence; change "**Subsection 204.4**" to "**Subsection 204.5**".

# DIVISION 400 ASPHALT PAVEMENTS

## SECTION 401 HOT MIXED ASPHALT (HMA) PAVEMENT

### Subsection 401.2.1.2 Liquid Anti-Stripping Agent

Paragraph 1, first sentence; delete the period at the end of the sentence and add "and SC-M-406.".

### Subsection 401.2.5 Material for Full Depth Patching

Paragraph 1, delete and replace with the following:

"Use an approved SCDOT Intermediate Type C mix for all Full Depth Patching."

**Subsection 401.5 Measurement**

After paragraph 10, add the following paragraph:

11 The measurement of Prime Coat is the number of gallons of asphalt material applied to the completed and accepted base course.

**Subsection 401.6 Payment**

After paragraph 12, add the following paragraph:

13 "The payment for Prime Coat is at the contract unit price for Prime Coat and includes compensation for all labor, equipment, tools, maintenance, and incidentals necessary to complete that work."

**Subsection 401.6 Payment**

Paragraph 13, **Table of Pay Items**

Change paragraph reference number "13" to "14" and add the following Pay Item:

| Item No. | Pay Item | Unit |
|---|---|---|
| 4010005 | Prime Coat | GAL |

## SECTION 403 HMA SURFACE COURSE

**Subsection 403.5 Measurement**

Paragraph 1, first sentence; change "HMA Intermediate Course" to "HMA Surface Course".

**Subsection 403.6 Payment**

Paragraph 1, first sentence; change "HMA Intermediate Course" to "HMA Surface Course".

## SECTION 407 ASPHALT SURFACE TREATMENT – DOUBLE TREATMENT

**Subsection 407.5 Measurement**

Paragraph 1, first sentence; add the word "is" after "(Double Treatment Type (1, 2, 3, 4, or 5))".

## SECTION 408 ASPHALT SURFACE TREATMENT – TRIPLE TREATMENT

**Subsection 408.5 Measurement**

Paragraph 1, first sentence; add the word "is" after "(Triple Treatment Type (1 or 2))".

# DIVISION 600 MAINTENANCE AND TRAFFIC CONTROL

## SECTION 625 PERMANENT PAVEMENT MARKINGS FAST DRY WATERBOURNE PAINT

**Subsection 625.2.2.4.11 Lead Content**

Paragraph 1, first sentence; change 6% to 0.06%.

## SECTION 627 THERMOPLASTIC PAVEMENT MARKINGS

**Subsection 627.4.10 Inspection and Acceptance of Work**

Paragraph 2, first sentence; change "period of 90 days" to "period of 180 days".

**Subsection 627.4.10 Inspection and Acceptance of Work**

Paragraph 2, second sentence; change "90-day observation period" to "180-day observation period".

**Subsection 627.4.10 Inspection and Acceptance of Work**

Paragraph 3, first sentence; change "90-day period" to "180-day period".



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# DIVISION 700 STRUCTURES

## SECTION 709 STRUCTURAL STEEL

**Subsection 709.4.3.5.2 Submittals and Notification**
Paragraph 1, delete the last two sentences and replace them with, “The Department’s review and acceptance are required before any field welding will be permitted.”

**Subsection 709.6.3 Pay Items (**page 650)
Subsection heading number; change subsection heading number from "**709.6.3**" to "**709.6.4**".

## SECTION 712 DRILLED SHAFTS AND DRILLED PILE FOUNDATIONS

**Subsection 712.4.4 Dry Construction Method**
Paragraph 2, last sentence in A; change "*Drilled Shaft Report* " to "*Drilled Shaft Log".*

**Subsection 712.4.10.4 Excavation Cleanliness**
Paragraph 1, last sentence; change "*Drilled Shaft Report"* to "*Drilled Shaft Log".*

**Subsection 712.4.10.6 Shaft Load Test**
Change first paragraph reference number from “2” to “1”.

**Subsection 712.6.10 Drilled Pile Set-Up**
Insert paragraph reference number “1” to the left of the first paragraph.

## SECTION 723 DECK JOINT STRIP SEAL

**Subsection 723.1 Description**
Insert paragraph reference number “3” to the left of the third paragraph.

## SECTION 726 BRIDGE DECK REHABILITATION

**Subsection 726.4.1 General**
Insert paragraph reference number “1” to the left of the first paragraph.

**Subsection 723.4.6 Full Depth Patching** (page 790)
Subsection heading number; change subsection heading number from "**723.4.6**" to "**726.4.6**"

**Subsection 726.6.8 Concrete Overlay (Latex) or (Portland Cement)** (page 802)
Paragraph 2, the equation is changed to AP=CP X (ACS/RCS) ^ 2

## SECTION 727 CROSSHOLE SONIC LOGGING OF DRILLED SHAFT FOUNDATIONS

**Subsection 726.6 Payment** (page 807)
Subsection heading number; change subsection heading number from "**726.6**" to "**727.6**"

# DIVISION 800 INCIDENTAL CONSTRUCTION

## SECTION 805 GUARDRAIL

**Subsection 805.5 Measurement**
Paragraph 4; amend as follows:

"The quantity for the pay item 8053000 Additional Length Guardrail Post is the length of required post installed in excess of the standard length post based on the system being installed, measured by the linear foot (LF), complete, and accepted."

## SECTION 815 EROSION CONTROL

**Subsection 815.1 Description**

Paragraph 1, first sentence; change “temporary flexible pipe” to “temporary pipe”.

**Subsection 815.5 Measurement**

Paragraph 13; delete the first sentence and replace it with the following sentence:
"The quantity for Temporary Pipe Slope Drains is measured and paid for in accordance with **Subsections 803.5** and **803.6** respectively."

**Subsection 815.5 Measurement**

Delete paragraph 19.

**Subsection 815.6 Payment**

After paragraph 15, add the following paragraph:

16 Payment for Removal of Silt Retained by Silt Fence is full compensation for removing and disposing of sediment deposits accumulated by silt fences as specified or directed and includes all materials, labor, equipment, tools, supplies, transportation, and incidentals necessary to fulfill the requirements of the pay item in accordance with the Plans, the Specifications, and other terms of the Contract.

**Subsection 815.6 Payment**

Change original paragraph number “16” to “17”.

**Subsection 815.6 Payment**

Pay Item table; change the Unit for Item No. 8156214 to "EA".

**INDEX:**

Amend as follows:

Page I-3, after "Bridge Deck Rehabilitation, measurement and payment:"
Delete page 807.

Page I-12, after "Letting:"
Replace page 19 with page 9.

Page I-13, after "Overhead Sign Structure:"
Replace page 488 with page 495.

Page I-15, after "Proof Rolling:"
Delete page 98.

Page I-18, after "Structural Steel, turned and ribbed bolts:"
Replace page 624 with page 625.

Page I-19, after "Waterproofing, bridge deck:"
Delete page 907.

Page I-20, after "Working Drawings:"
Replace page 543 with page 779.



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## CLAIMS PROCEDURE

### 1. Scope of Procedure

The following claims procedure covers all claims for additional time or compensation arising under this contract. The claims procedure is non-binding and is a condition precedent to litigation or any other form of dispute resolution. All communications testimony and all documents prepared for this procedure by either party from the time of filing the CERTIFICATE OF CLAIM, per section 105.16.8 of the 2007 Standard of Specifications for Highway Construction, to the conclusion of the procedure shall be deemed to be settlement negotiations and not admissible in litigation or any other dispute resolution procedure. If at the conclusion of this procedure the claim has not been resolved, litigation may be pursued through the South Carolina Circuit Court. Contractor waives all rights to a jury trial and agrees that all litigation matters shall be heard non-jury and venue for any action shall be in South Carolina Circuit Court.

### 2. Continuation of Work

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

### 3. Submission of Claim

The notice of claim and claim shall be submitted in accordance with §105.16.7 of the Standard Specifications. The notice of claim does not trigger this claims procedure. The claims procedure is initiated when the contractor submits a written fully detailed CERTIFICATE OF CLAIM to the resident construction engineer ("RCE"). The claim shall contain, at a minimum, the information required by §105.16.7 of the Standard Specifications. The RCE shall immediately forward a copy of the claim to the District Engineering Administrator ("DEA") for resolution. If the DEA is unable to resolve the claim within thirty (30) days of receipt, the DEA shall forward it immediately to the Director of Construction ("DOC"), together with documents supporting the Department's position. The DEA shall also submit the supporting documents to the contractor at this time. The DOC shall investigate the claim and attempt to resolve it by mutual agreement with the contractor. If it cannot be resolved, then the DOC shall make a decision and forward the decision to the contractor, no later than thirty (30) days after receipt by the DOC. The contractor shall notify the DOC within five (5) days of receipt of the DOC's decision whether the contractor accepts or rejects the decision.

For all claims under Fifty Thousand Dollars ($50,000.00) the DOC's decision shall be final and shall conclude the claims procedure. For the purpose of determining if a time only claim may be submitted to the Board, the value of a time only claim shall be deemed to be the number of days requested multiplied by the contract daily rate for liquidated damages. The contractor does not have a right to submit claims under $50,000.00 to the Dispute Review Board. If the contractor does not accept the DOC's decision on its claim of less than $50,000.00, then its remedy is litigation in the South Carolina Circuit Court for Richland County as set forth in Paragraph 1 of this Claims Procedure or other mutually agreeable dispute resolution procedures.

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

### 4. Dispute Review Board

A Standing Dispute Review Board has been established and shall be maintained. The Standing Dispute Review Board shall consist of one member selected by the Department, one member selected by the Director of Heavy and Highway Division of the Associated General Contractors (Carolina's Branch), and a third member selected by the first two members. The third member shall be the chairperson of the Standing Dispute Review Board. The selection of qualified Standing Dispute Review Board members shall be made in accordance with the Dispute Review Board rules and procedures. (See Section 6) Each member shall serve a three (3) year term and the terms shall be staggered. Each member is limited to two (2) terms. All board members shall be neutral and unbiased. No party shall have any *ex parte* communication with any Board Member.

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## 5. Hearing Procedure

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

Within fifteen (15) days of notice of submission of the claim to the Board, the contractor may submit to the DOC five (5) copies of any additional documentation supporting its claim. The DOC shall immediately forward three (3) copies to the Board, one (1) copy to the DEA, and the DOC will keep one (1) copy.

Within fifteen (15) days of receipt of the contractor's supplemental documentation, the DEA may submit to the DOC five (5) copies of its additional documentation. The DOC shall immediately submit three (3) copies to the Dispute Review Board, one (1) copy to the contractor, and the DOC will keep one (1) copy. Upon submission of supplemental documentation, the party shall notify the Board whether it requests a hearing.

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

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

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

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

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

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

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

Within sixty (60) calendar days of issuance of the Board's recommendation, both parties shall submit written acknowledgement to the Deputy Secretary for Engineering, whether they accept the Board's decision. Failure to submit such written acknowledgement within the sixty (60) day time frame shall be considered an acceptance of the Board's recommendation.

If at the conclusion of this procedure the claim has not been resolved, litigation may be pursued in South Carolina Circuit Court for Richland County as set forth in Paragraph 1 of this Claims Procedure.

The Board members shall not be compelled to testify, give any type of statements, nor produce any documents or evidence submitted at the DRB hearing in any subsequent proceedings or litigation.

## 6. Dispute Review Board Rules and Procedures

a. Qualifications of Dispute Review Board Members

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

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

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

b. Selection of Dispute Review Board Members

The selection process for Dispute Review Board Members shall begin at the appropriate time in order to allow completion of the Member selection by beginning of the term. The selection process shall be as provided in Section 4.

c. Replacement of Board Members

Each party may elect to replace its Board Member at any time with a showing of reasonable justification. The Chairperson of the Board may be replaced at any time with the consent of both parties. If any Board Member is replaced, the new member shall be selected in the same manner in which the original appointment had been made.

If disputes are pending at the end of a member's term, the existing Board shall complete its hearing on the disputes and issue a decision.

d. Costs

Board Members shall be paid a reasonable hourly rate or salary for their services. Each party shall negotiate the fee arrangements with the Member it selects, however, the other party must agree on the rate. Both parties shall agree on the fee arrangement for the Chairperson.

Board Members shall be reimbursed for out-of-pocket expenses including, but not limited to, travel, copying, telephone, clerical services, and mailings. The Board Members shall be allowed reimbursement of actual expenses for meals up to the daily maximums set forth in the Department's Regulations for Reimbursement of Travel and Subsistence Expenses and actual lodging costs provided they stay in hotels approved by the Department and they obtain a government rate. Board Members must provide documentation for all expenses.



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The parties shall share all Board Members' fees and expenses equally. The total fees and expenses to hear each claim shall not exceed the following maximum amounts unless otherwise agreed to by both parties in writing (one claim shall constitute all issues submitted to the Dispute Review Board at one (1) time):

| Claim Amount | Cumulative Total |
|---|---|
| $ 50,000 - $499,999.99 | $15,000.00 |
| $500,000.00 - $999,999.99 | $25,000.00 |
| $1 million - $4,999,999.99 | $40,000.00 |
| over $5 million | $75,000.00 |

The Department shall pay the Board Members and deduct the Contractor's share from monies owed to the contractor. If monies owed are not sufficient, the Contractor shall pay the Department directly for its share of the fees and expenses.

Board Members and deduct the Contractor's share from the retainage. If retainage is not sufficient, the Contractor shall pay the Department directly for its share of the fees and expenses.

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## THE SOUTH CAROLINA MINING ACT

The South Carolina Mining Act enacted by the General Assembly in 1973 requires that the Department adopt reclamation standards to govern activities of the Department and any person acting under contract with the Department, on highway rights-of-way or material pits maintained solely in connection with the construction, repair and maintenance of the public road systems in South Carolina.

STANDARD PLAN FOR THE RECLAMATION OF EXCAVATED AREAS ADOPTED BY THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

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Reclamation plans as stated herein shall include all areas disturbed in excavations of borrow and material pits, except planned inundated areas.

The final side slopes of areas excavated for borrow and material pits shall be left at such an angle so as to minimize erosion and the possibility of slides. The minimum slope in every case shall be not less than 3:1.

Small pools of water that are, or are likely to become noxious, odious, or foul should not be allowed to collect or remain on the borrow pit. Suitable drainage ditches, conduits, or surface gradient shall be constructed to avoid collection of noxious, odious, or foul pools of water unless the borrow pit is to be reclaimed into a lake or pond.

Borrow pits reclaimed to a lake or pond must have an adequate supply of water to maintain a water sufficient level to maintain a minimum water depth of four (4) feet on at least fifty (50) percent of the surface area of the lake or pond.

Excavated areas will be drained where feasible unless otherwise requested by the property owner where, in such instances, the property owner may wish to develop the excavated area for recreational purposes or for the raising of fish, or for other uses, in compliance with the South Carolina Mining Act.

Where material is stripped from the ground surface in relatively thin layers, the area, after excavation has been completed, will be thoroughly scarified and terraced and planted to establish satisfactory vegetation necessary to control erosion. Vegetative cover should be established on a continuing basis to ensure soil stability appropriate to the area. Conservation practices essential for controlling both on-site and off-site erosion and siltation must be established. A minimum of seventy-five (75) percent vegetative ground cover, with no substantial bare spots, must be established and maintained into the second growing season.

Excavated areas that are drained will be seeded to obtain a satisfactory vegetative cover. The side slopes of excavated area will be planted to vegetation.

The State Highway Engineer, or his duly appointed representative, will make a final inspection of the reclaimed area and keep a permanent record of his approval thereof. A map or sketch providing the location and approximate acreage of each pit used on the project will be made available to the Final Plans Engineer.

All applicable regulations of agencies and statutes relating to the prevention and abatement of pollution shall be complied with by the contractor in the performance of the contract.

**********

The Contractor shall comply with the provisions of the Plan which are applicable to the project as determined by the Engineer. Seeding or other work necessary to comply with the plan on pits furnished by the contractor shall be at the expense of the contractor. Bermuda shall not be planted on ground surface pit areas. The quantity of fescue seed specified in Subsection 810.04 of the Standard Specifications shall be increased by fifteen (15) pounds in lieu of the deleted bermuda seed.

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## CRANE SAFETY

The contractor's attention is directed to the following Crane Safety criteria. All applicable items under the submittal list section shall be submitted to the Resident Construction Engineer (RCE) before any crane operations may begin. If any personnel or equipment is changed or added, all applicable items shall be updated and submitted to the RCE before continuing with crane(s) operations.
All contractors shall comply with the manufacturer specifications and limitations applicable to the operation of any and all cranes and derricks. Prime contractors and sub-contractors shall comply with the latest Occupational Safety and Health Administration (OSHA) regulations, adopted American National Standards Institute (ANSI) and American Society of Mechanical Engineers (ASME) crane standards, and other applicable standards including, but not limited to the following:

- OSHA 29 CFR 1926 Subpart CC "Cranes and Derricks in Construction"
- OSHA 29 CFR 1926.251 "Rigging Equipment for Material Handling"
- ASME B30.5-2007 "Mobile and Locomotive Cranes"
- ASME B30.8-2010 " Floating Cranes and Floating Derricks"
- ASME B30.22-2005 "Articulating Boom Cranes"
- ASME B30.26-2010 "Rigging Hardware"

### Submittal List

1. **Crane Operators:** All crane operators shall be certified by the National Commission for the Certification of Crane Operators (NCCCO), National Center for Construction Education and Research (NCCER), or Crane Institute of America Certification (CIC).

   **a.** Contractor shall submit a copy of the NCCCO, NCCER, or CIC certification for each crane operator prior to performing any crane operations on the job site. The original certification card shall be available for review upon request and must remain current within a 5 year expiration date for the duration of the job. (Contractors with a crane operator-in- training on the jobsite shall comply with all the OSHA Subpart CC requirements).

   **b.** Contractor shall submit a copy of the current Crane Operators Medical Evaluation card (3 year expiration) in the form of NCCCO, NCCER or CIC Physical Examination form or equivalent meeting the ASME B30.5 requirement or a current USDOT Medical Examiner's Certificate card (2 year expiration). The original medical card or equivalent for all crane operators shall be available for review upon request.

2. **Competent Person:** The named competent person will have the responsibility and authority to stop any work activity due to safety concerns.

   **a.** Contractor shall submit the name and qualifications of the "Competent Person" as defined by OSHA Subpart CC responsible for all crane safety and lifting operations.

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## 107.13 Correcting Low Shoulder Conditions

### 107.13.1 Amending Shoulder Conditions Resultant of Roadway Resurfacing Work and Similar Types of Roadway Surface Work on Primary and Secondary Roadways

1 These specifications address the maintenance requirements for earth shoulders adjacent to the edge of pavement on Primary and Secondary roadways relative to typical roadway resurfacing work, various roadway work operations that result in a new roadway surface, work that may alter the grade elevation of the edge of pavement or any similar type work that may disturb the earth shoulder immediately adjacent to the edge of pavement. The earth shoulder immediately adjacent to the edge of pavement is the location where the edge of pavement and the earth shoulder come into contact. The edge of pavement may occur at the edge of a travel lane or a paved shoulder area.

2 Inspect and evaluate the conditions of the earth shoulders prior to, during and upon completion of all types of roadway surface work previously specified. Utilize these evaluations to determine the necessity and type of corrective actions that may be required and implemented.

3 Ensure the presence of acceptable conditions between the surface of the edge of pavement and the surface of the earth shoulder immediately adjacent to the edge of pavement immediately prior to beginning and upon completion of the roadway surface work on each road. Also, during the daily execution of the roadway surface work, ensure the presence of acceptable temporary conditions between the surface of the edge of pavement and the surface of the earth shoulder immediately adjacent to the edge of pavement prior to the end of each workday or work shift. Maintain an acceptable temporary condition, as defined in **Section 107.13.5,** during performance of the roadway surface work. Provide an acceptable final cross-section profile of the earth shoulder, as defined in **Section 107.13.6**, upon completion of the roadway surface work on each road.

### 107.13.2 Identifying Pre-Existing Low Shoulders Before the Commencement of the Roadway Surface Work

1 An acceptable grade elevation of the earth shoulder immediately adjacent to the edge of pavement prior to beginning the roadway surface work will not generate a grade elevation difference greater than an acceptable temporary condition of 3 inches as defined in **Section 107.13.5** during performance of the roadway surface work. An earth shoulder / edge of pavement profile that will generate a temporary grade elevation difference greater than 3 inches between the surface of the edge of pavement and the surface of the earth shoulder immediately adjacent to the edge of pavement during performance of the roadway surface work is considered low and in need of corrective action. When this condition exists prior to beginning the roadway surface work, these areas will be referred to as pre-existing low shoulders.

2 Before beginning the roadway surface work, together with the RCE, inspect the roads within the project to identify pre-existing low shoulders. On each roadway, complete the corrective shoulder work to eliminate the pre-existing low shoulder prior to beginning the roadway surface work that will alter the grade elevation of the edge of pavement of the road.

### 107.13.3 Correction of Pre-Existing Low Shoulders Before the Commencement of the Roadway Surface Work

1 Correct pre-existing low shoulders by bringing in and spreading borrow material where placement of borrow material is considered an acceptable corrective action unless an alternative corrective action is deemed necessary and agreed upon by the Contractor and the RCE. For each roadway, complete all work to correct pre-existing low shoulders prior to starting the roadway surface work on that roadway. Payment for the corrective actions implemented by utilization of borrow material will be at the contract unit bid price for Borrow Excavation in accordance with the requirements of **Section 203**. Alternative corrective actions and/or any corrective actions without a unit bid price item included in the contract should be implemented and payment made for through issuance of a Change Order in accordance with **Section 101.3.10**.

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2 The RCE will inspect the correction of pre-existing low shoulders. If additional corrective action is determined necessary, the RCE will direct and notify, in writing, the need for additional corrective actions. The Contractor shall complete these additional corrective actions within 72 hours of receipt of this written notification from the RCE.

**107.13.4 Installation and Maintenance of "Low Shoulder" Signs**

1 Prior to beginning any roadway surface work that will alter the grade elevation of the edge of pavement of the road, install "Low Shoulder" signs (W8-9) on roadways where the temporary grade elevation difference between the surface of the edge of pavement and the surface of the earth shoulder immediately adjacent to the edge of pavement is anticipated to exceed 2 inches but remain less than or equal to 3 inches. These signs may be mounted on ground mounted or portable sign supports. When installing "Low Shoulder" signs, install the "Low Shoulder" signs in each direction, throughout the length of the road intended for the roadway surface work at intervals not to exceed 1 mile with the initial sign encountered by motorists installed at a location no further than 150 feet beyond the beginning of the project limits of the road subject to the roadway surface work.. Install "Low Shoulder" signs, in each direction, no further than 150 feet beyond intersections with side roads.

2 Maintain all "Low Shoulder" signs within the termini of the project until the shoulder conditions have been dressed and contoured to an acceptable final cross-slope profile as defined in **Section 107.13.6** and to the satisfaction of the RCE upon completion of all work on each road.

3 Payment for the "Low Shoulder" signs will be at the contract unit bid price for Permanent Construction Signs in accordance with the requirements of **Section 605.5**. Measure the quantity of "Low Shoulder" signs installed and mounted on ground mounted or portable sign supports by the square foot (SF) using the outside dimensions of the sign, complete and accepted. No deduction is made for the corner radii of the sign.

4 When installing these signs prior to beginning the roadway surface work, cover the signs with opaque materials and maintain the sign coverings until immediately prior to the Contractor's mobilization onto the road to begin the roadway surface work activities. Maintain the sign coverings, including repair and/or replacement of the sign coverings, as directed by the RCE, until beginning mobilization of personnel and equipment onto the road to commence the roadway surface work activities.

**107.13.5 Maintenance of Temporary Shoulder Conditions During the Implementation of the Roadway Surface Work**

1 During implementation of the roadway surface work, a grade elevation difference of 3 inches or less between the surface of the edge of pavement and the surface of the earth shoulder immediately adjacent to the edge of pavement is considered an acceptable temporary condition. The temporary grade elevation difference of 3 inches between the surface of the edge of pavement and the surface of the earth shoulder immediately adjacent to the edge of pavement may not exceed 3 inches. The acceptable temporary grade elevation difference of 3 inches or less may remain in place until the final corrective shoulder work is implemented as defined in **Section 107.13.6.** The presence of a grade elevation difference greater than 3 inches shall require corrective action by the Contractor. Upon discovery of a grade elevation difference greater than 3 inches, the RCE shall provide notification to the Contractor within 24 hours of the discovery. The notification shall include identification of the location(s) in need of corrective actions. The Contractor should install "Shoulder Drop Off" signs (W8-17-48) in advance of these locations and maintain these temporary sign installations in place until the condition is corrected. These signs may be mounted ground mounted or portable sign supports. The Contractor shall complete the corrective action of the identified location(s) within 72 hours of receipt of notification of discovery of the condition from the RCE.

2 Payment for the "Shoulder Drop Off" signs will be at the contract unit bid price for Permanent Construction Signs in accordance with the requirements of **Section 605.5**. Measure the quantity of "Shoulder Drop Off" signs installed and mounted on ground mounted or portable sign supports by the square foot (SF) using the outside dimensions of the sign, complete and accepted. No deduction is made for the corner radii of the sign.

**107.13.6 Installation of the Final Shoulder Profile Upon Completion of the Roadway Surface Work on Each Road**

1 Within 3 days of completion of the application of the final riding surface to a road during typical roadway resurfacing work, various roadway work operations that result in a new roadway surface, work that may alter the grade elevation of the edge of pavement or any similar type work that may disturb the earth shoulder, begin the corrective action to eliminate the temporary shoulder conditions created by the performance of the roadway surface work to that road. Make reasonable efforts, weather permitting, to continue the corrective shoulder work until the temporary shoulder conditions are eliminated to the satisfaction of the RCE. The corrective action for elimination of the temporary shoulder conditions shall include, but not be limited to, placing borrow material against the edge of pavement as directed by the RCE to achieve a "flush" or "near flush" condition. The final grade elevation of the earth shoulder immediately adjacent to the edge of pavement shall be "flush" or "near flush" with any grade elevation difference no greater than 1 inch between the surface of the edge of pavement and the surface of the earth shoulder immediately adjacent to the edge of pavement. The surface of the earth shoulder immediately adjacent to the edge of pavement shall not exceed the grade elevation of the surface of the edge of pavement.

2 Where the earth shoulders are 6 feet wide or wider, as measured from the edge of pavement to the beginning of the front slope of an adjacent ditch or fill slope, ensure the final cross-section profile of the earth shoulder adjacent to the edge of pavement exhibits a slope no steeper than 12 : 1 in accordance with the *SCDOT Highway Design Manual,* latest edition. In those areas where the earth shoulders are less than 6 feet wide, as measured from the edge of pavement to the beginning of the front slope of an adjacent ditch or fill slope, dress the final cross-section profile of the earth shoulder from the edge of pavement to the beginning of the front slope of the adjacent ditch or fill slope.

3 Situations may arise that require cutting of the shoulder to attain an acceptable final cross-section profile of the earth shoulder adjacent to the edge of pavement as required by these specifications. When the required cutting of the shoulder is sufficient to also require hauling of the cut material from the site, pay for this work in accordance with those requirements specified in **Subsection 203.2.1.2 Unclassified Excavation**.

4 Notify the RCE within 3 days of completing the corrective action for elimination of the temporary shoulder conditions for each road. The RCE will inspect the prescribed shoulder work within 3 working days of receipt of such notification. If additional corrective action is determined necessary, the RCE will direct, in writing, additional corrective actions.

5 Remove "Shoulder Drop Off" and "Low Shoulder" signs within 7 days of completion of



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## CONSTRUCTION SCHEDULES

**General**

This supplemental specification addresses schedule requirements for SCDOT contracts. There are three levels of schedules. The level required is included in the Special Provision. The level of schedule is selected based on the design field review completed in the preconstruction phase or during estimate development.

Level 1 – Minimal Schedule Requirement
Level 2 Schedule – Standard Critical Path Method Schedule
Level 3 Schedule – Critical Path Method Schedule with Monthly Cumulative Payment Clause.

**Level 1 Requirement:**

Provide to the Resident Construction Engineer (RCE) a four-week look-ahead schedule identifying planned weekly work activities. Update the schedule every two weeks. The look-ahead schedule allows the RCE to schedule construction engineering and inspection personnel. The Department will not be responsible for delays which may be caused by the contractor's failure to abide by his schedule. Failure to submit the look-ahead schedule as specified may result in the withholding of partial payment estimates.

Provide the look-ahead schedule in Word or Excel format or as directed by the RCE.

The Contractor may provide a CPM schedule as indicated in **Level 2 Schedule Requirements** in lieu of the four-week look-ahead schedule as follows:

- Notify, in writing, the RCE that a CPM schedule will be provided in lieu of a four-week look-ahead schedule. Provide timely notification so that the baseline schedule is submitted in accordance with **Level 2 Schedule Requirements - *Submission, Review, and Acceptance Process – Baseline Schedule*.**
- No payment will be made if the Contractor elects to provide a CPM as a Level I Requirement. **Measurement and Basis of Payment** will be according to the Level I Schedule.
- Election to provide a CPM schedule in lieu of a four-week look-ahead schedule will be for the duration of the project.

**Level 2 Schedule Requirements:**

For projects requiring a CPM schedule, the Contractor will provide and update a construction schedule to the SCDOT, which will be used as a quantitative basis for:

- Monitoring and evaluating the Contractor's progress in completing contracted work;
- Evaluating requests for additional contract time;
- Budgeting for construction partial payment estimates; and
- Managing SCDOT engineering and inspection personnel.

The Contractor's construction schedule shall encompass the entire contract period, and be developed consistent with the contract milestones and the contract maintenance of traffic plan. Critical path activities shall be identified for the duration of the project. The schedule shall also include sufficient information *as outlined in this supplemental specification* to provide for monetary and quantitative tracking of the work by the SCDOT.

Include and reference in the schedule at the time of occurrence, all documentation and explanations supporting a time adjustment request.

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**Utilities**

The schedule shall reflect the utility relocations noted in the contract documents and discovered during field review and include activities of appropriate duration, location, and logic, as provided by the Utility, for the utility work. Where utility durations are unknown, the Contractor shall provide a reasonable estimate of duration. Utility durations will be reviewed in the baseline approval process as outlined in the section "Submission, Review, and Acceptance Process." Utility durations will be presented at the Preconstruction Conference for concurrence by the utility provider. In the event that the utility representative cannot provide concurrence at the Preconstruction Conference, the Contractor, the Resident Construction Engineer, and the utility provider shall work diligently to reach acceptable durations. If there is no concurrence or input from the utility provider concerning the Contractor's utility durations within 15 calendar days following the Preconstruction Conference, the submission with the Contractor's estimate of utility duration will be reviewed for baseline acceptance. Further utility duration changes beyond this point in time will be assessed in monthly schedule updates. Failure to include activities for any element of work or any known utility work will not relieve the Contractor from completing the work within the allotted contract time.

**Schedule Submissions**

Contractors shall maintain CPM schedules for all applicable projects using at a minimum Primavera Project Management 5.0 or Primavera Contractor 5.0. The Contractor shall coordinate with the Department's District Scheduler to provide an exported schedule importable into the Primavera version used by the Department.

Templates for the CPM schedules are available to download atthe the SCDOT construction Extranet site located:
http://www.scdot.org/doing/constructionLetting_Extranet.aspx
When submitting schedules to the SCDOT, the Contractor shall assign file names to each schedule file (baseline and updates) according to the following conventions (dates are YYMMDD):

| Type of Schedule Submitted: | Baseline | Update | As-Built |
|---|---|---|---|
| File Name Convention: | [Contract ID]b[Data Date] | [Contract ID]u[Data Date] | [Contract ID]ab[Data Date] |
| File Name Example: | 32.82571b060201 | 32.82571u060201 | 32.82571ab060201 |

**Note on Data Dates -** The initial Baseline Construction Schedule shall have a data date equal to the Award Date and not include any work to date. Monthly schedule updates shall have a data date set 1 day beyond the most recent estimate period end date.

Extranet file names upon uploading shall include the contract ID.

All submissions shall be made within the time frames defined under "Submission, Review and Acceptance Process."
**Electronic Files:** Upload each baseline construction schedule and monthly update submission to the SCDOT Construction Extranet site in .xer format.
The Extranet site location is:
http://www.scdot.org/doing/constructionLetting_Extranet.aspx

Provide an Adobe file of each baseline construction schedule, monthly update submission, and schedule narrative to the District Scheduler and the Resident Construction Engineer. The schedule Adobe file shall include the following columns in 11 inch x 17 inch format: Activity ID, Activity Name, Start, Finish, Schedule % Complete, Physical % Complete, Budgeted Total Cost, Actual Total Cost, Remaining Total Cost, At Completion Total Cost, Original Duration, Remaining Duration, At Completion Duration, Earned Value, Planned Value, Schedule Variance Index, and Total Float. Sort on "Start" prior to printing to Adobe.

**Schedule Narrative:** Submit a Schedule Narrative Report with the baseline and each monthly update schedule describing current project schedule status and identifying potential delays. This report will include a description of the progress made since the previous schedule submission and objectives for the upcoming 30 calendar days.

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1) Address all previous schedule review comments;

2) The report shall indicate if the project is *on schedule*, *ahead of schedule* or *behind schedule* as compared to the accepted baseline. Include the Schedule Variance Index, planned value cost and earned value cost. If the project is ahead of schedule or behind schedule, the report shall include the specific number of calendar days. If the project is behind schedule, the report shall include a detailed recovery plan that will put the project back on schedule. The narrative shall compare the Substantial Completion milestone for the baseline with the update;

3) Describe the *current critical path* of the project including the lowest total float value and indicate if this has changed in the last 30 calendar days. Discuss current successes or problems that have affected either the critical path's length or have caused a shift in the critical path within the last 30 calendar days. Identify specific activities, progress, or events that may reasonably be anticipated to impact the critical path within the next 30 calendar days, either to affect its length or to shift it to an alternate path;

4) List all schedule logic or duration changes that have been made to the schedule since the previous submission. Provide an explanation for any *constraint* used. For each change, describe the basis for the change and specifically identify the affected activities by identification number;

5) Scheduling assumptions (considerations for known and foreseeable constraints or restrictions such as weather, traffic, environmental, utility, safety, etc);

6) Identify activities, either in progress or scheduled to occur within the following 30 calendar days that require Department participation, review, approval, etc;

7) Identify any calendars used that are not DOT specific, and explain the details of those calendars;

8) Identify schedule settings used;

9) Identify activity expense item changes;

10) Minimized the use of lag. Where possible, use an activity to represent lag time. In no instance shall negative lag be used;

11) Description of how the schedule is organized (e.g. broken down by road or activity);

12) Explain any actual duration exceeding the original duration;

13) Explain out of sequence activities individually and the overall effect on the schedule;

14) Explain, individually, activities that failed to start in the previous 30 days;

15) Include the current contract completion date;

16) Include the current contract amount and sum of actual cost;

17) Include approved change orders. Explain the costs and schedule change associated with them;

18) Submit the narrative with a naming convention of [Contract ID]n[Data Date].doc (e.g 32.82571n060201.doc). Contractor will upload the electronic copy [in *.doc* format] to the South Carolina Department of Transportation Construction Extranet site;

19) Explain the schedule impacts of all utility work, known or anticipated;

**Schedule Details**

SCDOT reserves the user_text1 and user_text2 fields.

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**Data Date -** The Baseline Construction Schedule shall have a data date equal to award date and not include any completed work to date. Monthly schedule updates shall have a data date set to one day beyond the most recent estimate period end date.

**Milestones -** Schedule shall identify the following milestones as a minimum:

- ***Award Date*****:** The date the Contractor is notified by the Director of Construction that he is awarded the project**.**
- ***Contract Execution Date***: The date the contract is signed by the Department.
- ***Baseline CPM Acceptance:*** *Anticipated date the baseline schedule is accepted. No work will start prior to this milestone date.*
- ***Notice to Proceed Date (NTP):*** the NTP date is determined in coordination between the Engineer and the Contractor.
- ***Work Begin Date:*** Actual date that on-site work commences. In the baseline CPM schedule, this is the anticipated work begin date by either the prime contractor or any subcontractor. Once work begins, status the schedule with the actual date recorded in SiteManager.
- ***Interim Completion Dates or Interim Milestones:*** When interim completion dates or interim milestones (associated with project stages) are included in the contract specifications.
- ***Mobilization:*** Preparations for and moving of equipment, etc., to the project site.
- ***Start of Paving:*** Date paving production and placement is to start. This includes any paving requiring a SCDOT certified inspector representing the Department.
- ***Substantial Work Complete Date:*** The point in the project when all pay items have been installed in reasonable conformance with the plans and specifications over the entire length of the project including tie-ins and all lanes of traffic are open to the public in their final configuration with the final applications of thermoplastic and raised pavement markers. The only remaining work to be performed is punch list items. Place a Finish On or Before constraint on this milestone equal to the completion date in the contract. If a change order is completed for time, update the constraint to the adjusted completion date.
- ***As-Built CPM Schedule Submission***: The point in time in which the final schedule submission is made.
- ***Project Liability Insurance Expiration Date MM/DD/YY:*** This date references the expiration of the insurance as defined in Section 103.8 of the Standard Specification for Highway Construction. Include the date that the project liability insurance expires in the milestone activity name. If the expiration renewal date is prior to the Contract Completion Date, place a “Finish On” constraint on the finish milestone. If the expiration renewal date is beyond the Contract Completion Date, place an “As Late As Possible” constraint on the finish milestone. There are no logic ties for this milestone. Inclusion of this date in the CPM schedule does not relieve the contractor of his responsibility to retain liability insurance as defined by the Standard Specifications for Highway Construction.

**Activities –**

- Each Activity shall be part of the logic driven network, be cost loaded using Expense Categories, and include a predecessor (except the first activity) and a successor (except the last activity).
- Each Activity Name shall include a verb and a noun and represent the work function.
- Activity Names shall include the location of the work when there are multiple activities of the same work in different locations of the project.
- Limit activity original duration to 30 calendar days.

As a minimum, and when applicable, the schedule shall include the following activities when related work is part of the contract.

- ***Mobilization:*** Provide the same number of mobilization activities as for payment in the proposal i.e.
  - ***Mobilization Payment I***
  - ***Mobilization Payment II***
- ***Clearing & Grubbing:*** Self-explanatory.

- ***Utility Relocations:*** The schedule must reflect the utility relocations noted in the contract documents and include activities of appropriate duration for the utility adjustments. Where utility durations are unknown, the Contractor shall provide a reasonable estimate of duration. Relate utility activities to the contract work activities that they effect or are affected by.
- ***Cure Period:*** The period of time between two activities needed for material curing. Examples include concrete and thermoplastic pavement markings. For this activity, use a seven day work week calendar.
    - ***Earthwork:*** Unclassified & borrow excavation, compaction, fine grading, etc.
- ***Drainage:*** Pipe, catch basins, manholes, etc.
- ***Base Course:*** Graded aggregate base courses, cement modified bases, etc.
- ***Paving:*** Hot mix asphalt base, intermediate, and surface courses; Portland cement concrete pavements, etc.
- ***Structures:*** Bridges, box culverts, retaining walls, etc.

Where sufficient detail has not been provided in included activities to determine progress of work and forecast of inspection and cost, the Department will request additional activities be added. The Department requires retain logic be used in scheduling projects. Relationship ties of all out-of-sequence activities should be corrected to reflect the actual occurrence. The use of progress override is not permitted. The monthly schedule update narrative shall justify any logic change(s).

**Suspend Dates** - The use of suspended dates is prohibited. If the activity is disrupted, break out into additional activities and explain in narrative.

**Activity Expected Finish Dates** – Activity Expected Finish dates are prohibited.

**Resources** – The Department will not require any input to the resource component of the schedule by the Contractor.

**Expenses** – Contractor shall assign the SCDOT contract items as expenses to each activity. The information provided under Expenses is used to evaluate daily production rates. SCDOT contract items will be included as Expense Categories and will be made part of the SCDOT schedule template available to download from the construction Extranet site. These shall be the only expense categories associated with activities. Under expenses, populate the fields Budgeted Units, Price/Unit, and Actual Units. If a SCDOT contract item cannot be found in the most current template, SCDOT should be contacted. The template will then be updated and uploaded to the extranet by SCDOT.

**Weather -** Considerations for normal weather shall be addressed within the activity duration.

**Calendars –** Contractor shall assign an appropriate SCDOT calendar to each activity in the schedule. Alternate calendars may be assigned, but specifics of the alternate calendars must be justified in the baseline narrative. Contractor shall assign all calendars as project specific – NOT GLOBAL. Acceptance of the alternate calendars is subject to review by the SCDOT. Considerations for weather shall be addressed within the activities – calendars shall not be modified to account for weather considerations. While calendars have been created to address established seasonal restrictions, it is the Contractor's responsibility to assure that all restrictions, as identified in the contract documents, are included. Where the Contractor elects to not utilize all available contract time in the baseline schedule submission, either by blocking out days in the calendar or including an activity for an extended period of no work, future delays against the time omitted will not warrant additional time.

The Baseline Construction Schedule shall not extend beyond the number of working days or contract completion date originally provided in the contract.

**Cost Loading –** All schedule activities shall be cost loaded using the contract bid items (Expense Categories), unit prices, and units (quantities) under "Expenses" in Primavera. Associated expenses shall correlate with the item of work covered by the activity.

**Float –** Float is not for the exclusive use or benefit of either the Department or the Contractor. Negative float in the original baseline schedule is not allowed.



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**Schedule Layout –** Organize the schedule using a Work Breakdown Structure (WBS) consistent with the phasing and staging noted in the contract documents.

**Default Values** – Contractor shall use the following defaults, physical percent complete, retain logic, longest path critical activities, and under Admin Preferences, make Time Periods 8.0 hours/day, 40 hours/week, 172 hours/month, and 2,000 hours/year.

**Submission, Review and Acceptance Process**

**Baseline Schedule** –

Submission:

Regular Bid Projects:
Contractor shall submit a Critical Path Method (CPM) Contract Schedule and Narrative to the District Scheduler no more than 15 calendar days after execution of the contract or 15 days prior to the preconstruction conference, whichever is earlier. Once the initial baseline schedule is submitted, a preconstruction meeting date may be assigned by the RCE and Contractor. The CPM Schedule and Narrative shall be submitted via upload to the Extranet. Upon upload, the Contractor shall immediately notify the District Scheduler and the Resident Engineer via email that the CPM schedule has been submitted. The accepted CPM baseline schedule is paid for in the first available estimate period after contract execution.

A+B Bid Projects:
Contractor shall submit a Critical Path Method (CPM) Contract Schedule and Narrative to the District Scheduler no less than 15 calendar days prior to the preconstruction conference. Once the initial baseline schedule is submitted, a preconstruction meeting date can be assigned by the RCE and Contractor. The preconstruction meeting shall be assigned no earlier than 15 calendar days after the initial baseline submission. The CPM Schedule and Narrative shall be submitted via upload to the Extranet. Upon upload, the Contractor shall immediately notify the District Scheduler and the Resident Engineer via email that the CPM schedule has been submitted.

Review:

Upon receipt of the CPM Construction Schedule, SCDOT shall review and provide comments to the Contractor within 10 business days of receipt. The Contractor will have 5 business days to respond to SCDOT comments. This process will continue until the Engineer and the District Scheduler determines the construction schedule is acceptable.

The Contractor's representative familiar with the submitted schedule shall present and discuss their accepted schedule at the Preconstruction Conference. In the event the schedule has not been accepted (i.e. review process is ongoing), the most current schedule under review shall be presented.

Acceptance:

Acceptance of the submitted schedule by the SCDOT will establish the baseline schedule for the contract. This acceptance by SCDOT does not serve to excuse any omissions or errors in the Contractor's schedule (i.e. activities not included in baseline will not be considered in any time extensions).

Review and **acceptance of baseline schedule is required prior to start of work.** Delays in reaching this acceptance will not constitute a basis for granting additional contract time. If there is no concurrence or input from the utility provider concerning the Contractor's utility durations within 15 days following the Preconstruction Conference, the submission with the Contractor's estimate of utility duration will be reviewed for baseline acceptance. Further utility duration changes beyond this point in time will be assessed in monthly schedule updates.

**Monthly Updates –**



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Monthly updates shall be made no later than 15 calendar days following the most recent estimate period end date, whether or not an estimate was generated and shall have a data date one day beyond the most recent estimate period end date. If no work was completed during the estimate period, an update with the most current estimate period is required. Upon upload, the Contractor shall immediately notify the District Scheduler and the Resident Engineer via email that the CPM schedule has been submitted. Failure to submit timely updates will result in SCDOT evaluating contract status from the last submitted update schedule by adjusting the data date to the most current estimate period end date. Late update submittals may result in the Contractor being evaluated for preliminary delinquency in accordance with current version of the South Carolina Department of Transportation Standard Specifications for Highway Construction. Habitually late submittals may result in automatic delinquency. Failure to submit acceptable schedule updates as required will result in the withholding of the partial payment estimate regardless of preliminary delinquency. Updates shall include the following:

- Updated schedule to show actual progress on activities;
- Updated schedule to show actual costs on activities;
- Change orders that have occurred during the last estimate period;
- Any task dependent activity greater than 30 days in actual duration that has not incurred additional costs since the last update shall be terminated and broken into additional activities. Document the activity change and reason for late completion in the narrative;
- Remaining costs on completed activities are zeroed (if remaining costs are redistributed, indicate in the narrative the activities containing the costs);
- Update remaining cost appropriately;
- Updated schedule to show actual completion on milestones;
- Narrative to describe progress, planned activities, issues, adjustments to remedy any activities or milestones behind schedule, etc., in the format described in Schedule Submissions***;***
- Any changes other than those to actual start, actual finish, remaining duration, and Percent Complete are considered revisions. Revisions to a schedule update are subject to acceptance by the Engineer;

**As-Built Schedule** – A final As-Built Schedule shall be submitted within 15 calendar days following the contract completion. The as-built schedule should reflect the final project including extra work from change orders.

**Baseline Schedule Changes –** Once the baseline schedule has been accepted, all subsequent schedules provided will be considered schedule updates and compared to the original baseline. A new baseline will only be considered when significant changes in contract scope, changes in SCDOT priorities, or delays beyond the control of the Contractor occur.

If a baseline change is needed, the Contractor shall provide, in writing, a request to the Resident Construction Engineer with the following information:

- An electronic copy of the proposed baseline schedule using the following naming convention and in accordance with **Schedule Types** (included previously)

| Type of Schedule Submitted: | Updated Baseline |
|---|---|
| File Name Convention: | [Contract ID]ub[Data Date] |
| File Name Example: | 32.82571ub060201 |

- Narrative identifying changes warranting a new baseline

A decision for an updated baseline will be made jointly between the Resident Engineer and the District Scheduler within 10 business days of receipt of request.

**Progress Meetings-** The contractor shall present the most current schedule at progress meetings to discuss any issues and upcoming events. If found necessary by the SCDOT, the contractor shall attend meetings to specifically discuss issues about the schedule.



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**Level 3 Schedule Requirements**

Level 3 schedule requirements will be enforced on contracts where the bid amount exceeds $20 million and one of the following occurs:

- SCDOT financial status warrants the specific control of large project monthly payouts
- The contract SVI is less than -0.50 or greater than 0.50 for two consecutive months indicating the project is significantly behind or ahead of the Contractor's baseline schedule.

In the event that the Department chooses to enforce the Level 3 Schedule Requirement, the Contractor will submit an updated baseline schedule within 15 days of notification. The Contractor schedule will be used for payment purposes once the baseline schedule has been accepted by the Department. In addition to meeting the requirements of the Level 2 Schedule, the following shall apply.

Once accepted by SCDOT, the project's initial baseline cost loaded CPM will be used for SCDOT budget purposes and the contractor will not be paid in excess of the cumulative amount shown on the schedule through each payment date; regardless of what subsequent monthly updates indicate. For example, see chart below:

| Pay period ending | 12/31/11 | 1/31/12 | 2/29/12 | 3/31/12 | 4/30/12 | 5/31/12 |
|---|---|---|---|---|---|---|
| Baseline CPM Planned Payout in Millions (Cumulative to Date) | 2.0<br>(2.0) | 3.0<br>(5.0) | 3.0<br>(8.0) | 4.0<br>(12.0) | 4.0<br>(16.0) | 3.0<br>(19.0) |
| Actual work performed (Cumulative to Date) | 1.5<br>(1.5) | 2.0<br>(3.5) | 3.5<br>(7.0) | 6.0<br>(13.0) | 3.0<br>(16.0) | 4.0<br>(20.0) |
| Payout by SCDOT (Cumulative to Date) | 1.5<br>(1.5) | 2.0<br>(3.5) | 3.5<br>(7.0) | 5.0<br>(12.0) | 4.0<br>(16.0) | 3.0<br>(19.0) |

Partial payment estimates will be generated in SiteManager (computerized construction management system) based on actual quantities installed. If actual quantities installed exceed the cumulative schedule amount to date, a negative adjustment will be made in SiteManager to adjust the pay as necessary. For previous work exceeding the schedule amount, payments will be released as work progresses and payouts fall below the scheduled cumulative amount, never to exceed the cumulative scheduled amount through that pay period.

If significant contract changes are necessary, and upon approval by the SCDOT, a re-baseline to the initial CPM will be allowed per the CPM schedule specification and the payout schedule may be adjusted accordingly.

All subcontractors must be paid in accordance with the Prompt Payment Clause (Supplemental Specification dated June 14, 2000) for the quantities used to generate the partial payment estimates. In instances where a payout by SCDOT is less than the actual work installed under a given estimate, the Prompt Payment Clause is hereby amended to require full payment to all subcontractors, for work complete, within 7 days of receipt of said SCDOT payout.

**Contract Schedule Performance Evaluation:**

Project performance is not measured for contracts where the percent time < 0.30 for projects with a Level I Requirement and percent time < 0.20 for projects with the Level II Requirement or Level III Requirement.

Percent Time = (Last Estimate Date – NTP)/[(Adj Completion Date)-(NTP)]

**Level I Requirement: Contracts with a minimal schedule requirement that are not deemed "on-call**:"

Performance curves were developed using historical data from SiteManager based on contract type and ranges of contract amount. For each of these groupings, three curves identifying minimal performance levels are used to measure project performance. On the example below, the curves indicate that projects falling below the 50th percentile line are slower than 50 percent of the projects of same type and in the range of the bid amount indicated. Projects falling below the 40th percentile line are slower than 60 percent of the projects of the same type and in the range of the bid amount indicated. Projects falling below the 25th percentile line are slower than 75 percent of the projects of the same type and in the range of the bid amount indicated.

On a monthly basis at the end of the estimate period, a comparison of Time Percent Complete vs. Work Percent Complete will be made and plotted on a performance curve matching the contract type within the bid amount. The measurements are defined as:

Time Percent Complete = (Last Estimate Date – NTP)/[(Adj Completion Date)-(NTP)]

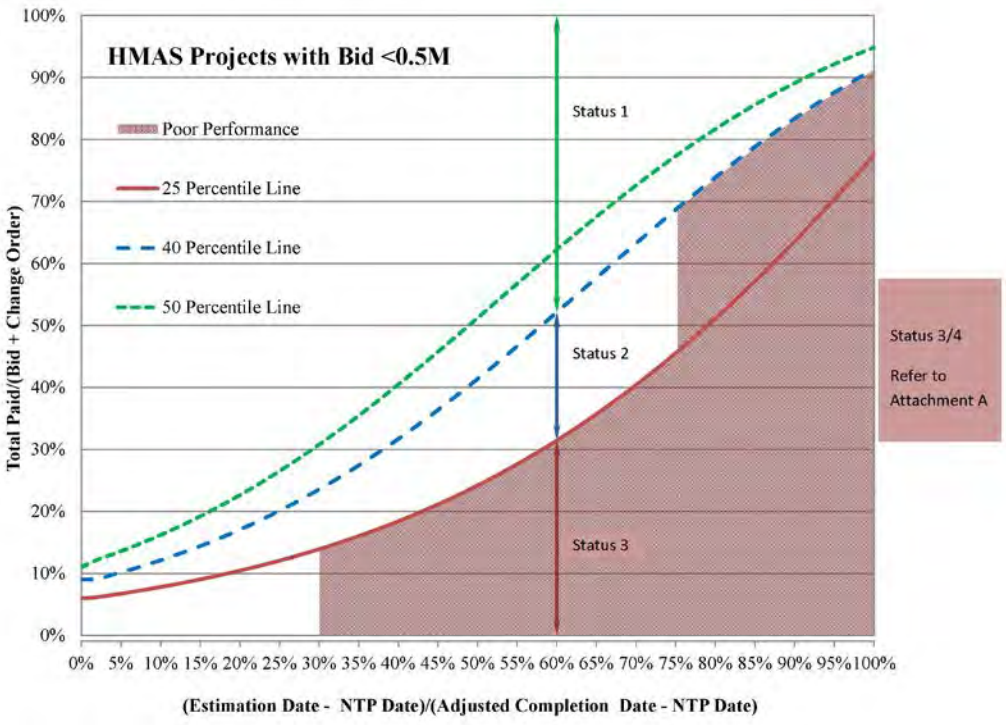
Work Percent Complete = Total Paid/(Total Bid + CO)

Poor Performance is considered when any contract is beyond its Adjusted Contract Completion date or when Time Percent Complete versus Work Percent Complete plots in the shaded area (on the appropriate performance curve) as defined by:

[30%, 75%) time below the 25th percentile line

-or-

[75%,100%] time below the 40th percentile line.




Example Performance Curve

Performance curves may be found under Construction Schedule Templates on the Extranet at:

http://www.scdot.org/doing/constructionLetting_Extranet.aspx





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**Contracts with a CPM – Level II and III Schedule:**

Monthly CPM updates are required for contracts with a CPM Level II or Level III schedule requirement as defined under **Submission, Review and Acceptance Process.** The contractor shall update actual completed quantities and physical percent complete (% of work complete for the activity) for all activities impacted during the most recent estimate period. Budgeted cost of the work performed (Earned Value) from the schedule update and budgeted cost of work planned (Planned Value) from the accepted baseline schedule are used to determine project variance in Primavera utilizing Schedule Variance Index (SVI). The calculation used by Primavera is:

Schedule Variance Index (SVI) = (Earned Value – Planned Value)/Planned Value

Where SVI<-0.10, the contract is considered to be slipping behind plan.

**Contract Performance Action:**

A summary of progress performance action is included in Attachment A. Preliminary Notice of Delinquency is abbreviated as PND.

*Level I Schedules*:
When plotting Time Percent Complete vs Work Percent Complete as indicated above, if the contract falls in the shaded section on the appropriate performance curve,

First Offense:
-PND w/o bonding notification
-Request recovery plan

Second Offense:
-PND w/bonding notice
-Request recovery plan
-Hold PND to monitor recovery plan. If plan not met, move to delinquency

*Level II or III Schedules*:
In any estimate period where the SVI is (-0.20,-1.0] as defined under: **Contracts with a CPM – Level II and III Schedule:**

First Offense:
-PND w/o bonding notification
-Request recovery plan

Second Offense:
-PND w/bonding notice
-Request recovery plan
-Hold PND to monitor recovery plan. If plan not met, move to delinquency

**Measurement and Basis of Payment**

**Level 1 Schedule**
There is no separate measurement or payment for look-ahead schedules. All costs associated with the preparation or revision of a look-ahead schedule are considered incidental to the work.

**Level 2 and 3 Schedules**
The Department will make partial payments according to Section 109, Standard Specifications for Highway Construction, and as modified by the following schedule:

| Basis of Payment | Percentage of Contract Unit Price of Item |
|---|---|
| After the Engineer has accepted the CPM Baseline schedule | 60 |
| After the Engineer has accepted the As-Built CPM schedule | 40 |

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| Type of Schedule | Ahead of Schedule | Status 1 Action | Status 2 Action | Status 3 Action | Status 3 Action | Status 4 Action |
|---|---|---|---|---|---|---|
| Level I Performance Curve | Projects falling above the 50% curve<br><br>Monitor payouts | No Action | When plotting Time Percent Complete vs Work Percent Complete, if the contract falls in the shaded section of Status 2 or Status 3 on the appropriate performance curve, | | If the contract has not reached substantial completion and is beyond contract completion < 45 days | If has not reached substantial completion and contract is beyond the contract completion > 45 days, |
| | | | <u>First Offense</u>:<br>-PND w/o bonding notification<br>-Request recovery<br><br><u>Second Offense</u>:<br>-PND w/bonding notice<br>-Request recovery plan<br>-Hold PND to monitor recover plan. If plan not met, move to delinquency. | | Preliminary Notice of Default w/bonding notice<br><br>- Request plan to complete<br>-Hold preliminary notice to monitor plan to complete. If plan not met, move to Default. | Notice of Default according to the Standard Specifications<br><br>-Request plan to complete |
| Level II or III CPM | SVI > 0.10<br><br>Monitor payouts | SVI > -0.10<br><br>No Action | SVI (-0.10, -0.25] | SVI (-0.25, -1.0] | If the contract is beyond contract completion < 45 days | If contract is beyond the contract completion > 45 days, |
| | | | Where SVI (-0.20, -1.0]<br><br><u>First Offense</u>:<br>-PND w/o bonding notification<br>-Request recovery<br><br><u>Second Offense</u>:<br>-PND w/bonding notification<br>-Request recovery plan<br>-Hold PND to monitor recover plan. If plan not met, move to delinquency. | | Preliminary Notice of Default w/bonding notice<br><br>- Request plan to complete<br>-Hold preliminary notice to monitor plan to complete. If plan not met, move to Default. | Notice of Default according to the Standard Specifications<br><br>- Request plan to complete |
| | Notes: [ indicates inclusive of value<br>( indicates exclusive of value | | | | | |

Attachment A – Summary of Progress Performance Action

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## FAILURE TO COMPLETE THE WORK ON TIME

**Delete Subsection 108.9** of the Standard Specifications in its entirety and replace with the following:

### 108.9 Failure to Complete the Work on Time

If the Contractor fails to substantially complete the work by the contract specified completion date, then the Contractor is liable for liquidated damages for each calendar day past the contract specified completion date. The daily liquidated damages rate is determined from the following schedule. The date of substantial completion is determined by the RCE.

| Schedule of Liquidated Damages for Each Day Overrun in Contract Time | | |
|---|---|---|
| Original Contract Amount | | Daily Charge per Calendar Day at Fixed Rate |
| From More Than | To and Including | |
| $0.00 | $500,000.00 | $600.00 |
| $500,000.00 | $1,000,000.00 | $800.00 |
| $1,000,000.00 | $2,000,000.00 | $1,000.00 |
| $2,000,000.00 | $5,000,000.00 | $1,200.00 |
| $5,000,000.00 | $10,000,000.00 | $1,700.00 |
| $10,000,000.00 | and above | $2,200.00 |

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## PROMPT PAYMENT CLAUSE

(1) Subject to the provisions on retainage provided in Paragraph (2) below, when a subcontractor has satisfactorily performed a work item of the subcontract, the Contractor must pay the subcontractor for the work item within seven (7) calendar days of the Contractor's receipt of payment from SCDOT. A subcontractor shall be considered to have "satisfactorily performed a work item of the subcontract" when the SCDOT pays the Contractor for that work item. In the case of a second or third tier subcontractor, the 7-day time period begins to run when the 1st tier subcontractor receives payment from the Contractor or when the 2nd tier subcontractor receives payment from the 1st tier subcontractor.

(2) The Contractor may withhold as retainage up to five (5%) percent of a subcontractor's payment until satisfactory completion of all work items of the subcontract. "Satisfactory completion of all work items of the subcontract" shall mean when the SCDOT accepts the last work item of the subcontract. The Contractor must release to the subcontractor any retainage withheld within seven (7) calendar days from the date the Contractor receives payment from SCDOT for the last work item of the subcontract or within seven (7) days from SCDOT's acceptance of the last work item of the subcontract, whichever is the latest to occur. However, upon documentation of good cause provided by the contractor and written concurrence by the Director of Construction, the Contractor may continue to withhold the 5% retainage.

(3) Prior to receiving payment of each monthly estimate, the Contractor shall (a) certify to SCDOT that the construction estimate is complete and that its subcontractors have been paid for work covered by previous estimates, for which they are entitled to be paid, in accordance with paragraphs (1) and (2) above, and (b) submit verification that Contractor has received similar certifications or evidence from its subcontractors that lower tier subcontractors have been paid in accordance with paragraph (1). No payment will be made to Contractor unless such documentation/certification is received or SCDOT has issued written approval for delayed payment and required status reports as follows:

(i) The obligation to promptly pay subcontractors (all tiers) or to release retainage does not arise if there is a legitimate subcontract dispute with first tier and/or lower tier subcontractors. If there is a subcontract dispute, the Contractor may submit a written request to SCDOT to approve a delay in payment to the subcontractor which shall explain the nature of the dispute and identify relevant subcontract provisions as support. The explanation may include those reasons set forth in the SC Prompt Pay Act (S.C. Code Section 29-6-40). Payment to the subcontractor shall not be withheld without prior SCDOT written approval.

(ii) Contractor shall submit a status report of the dispute in each monthly progress payment. The status report shall contain:

- justification for the continuation of nonpayment in the form of a pending judicial proceedings, alternate dispute resolution (ADR) process or administrative proceedings, as evidence of why the delay shall continue; or

- a certification that the matter is resolved and payment has been issued to the subcontractor (first tier and/or lower tier subcontractors).

(4) Failure to comply with any of the above provisions shall constitute a material breach of the contract and shall result in one or more of the following sanctions: (1) no further payments to the Contractor unless and until compliance is achieved; (2) monetary sanctions; and/or (3) the Contractor being declared in default and being subject to termination pursuant to Section 108.10 of the Standard Specifications.

(5) Any subcontractor who believes it is due payment in accordance with the Prompt Payment Clause may request information from the servicing Resident Construction Engineer (RCE) as to whether and when payment for the subcontractor's work has been made to the Contractor. If payment has been made to the Contractor, and a subcontractor certifies to the RCE that the subcontractor has not been paid within seven (7) calendar days of SCDOT's payment to the Contractor or paid as provided in paragraph (1) for sub-tiers, the RCE will notify the Director of Construction. If SCDOT has not approved the delay in payment pursuant to paragraph 3 above, appropriate remedies set forth in paragraph (4) will be applied. On federally funded projects, the subcontractor may contact the Federal Highway Administration should SCDOT fail to address the non-payment issue.

(6) The Contractor agrees by submitting this bid or proposal that it will include this clause titled "PROMPT PAYMENT CLAUSE," provided by the SCDOT, without modification, in all subcontracts with its subcontractors. Contractor is responsible for requiring all of its subcontractors to include this PROMPT PAYMENT CLAUSE in all lower tier subcontracts. If Contractor knowingly enters or knowingly allows a subcontractor or lower tier subcontractor to enter into a subcontract without the PROMPT PAYMENT CLAUSE, SCDOT may apply the appropriate remedies set forth in paragraph (4) or pursue other available remedies, including breach of contract.

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# CONSTRUCTION ESTIMATES

The Contractor is advised that the Department will utilize **SiteManager™** for this contract. SiteManager™ is a computerized construction management system designed to record construction contract information and generate progress and final pay estimates.

SiteManager™ will be used to electronically record quantities of work performed and other supporting information into Daily Work Reports. On the appropriate day, the Engineer will direct the SiteManager™ system to generate the pay estimate based on the quantities of work accumulated in the Daily Work Reports.

In conjunction with the use of this system, the Department will verify the reported quantities of work with the Contractor in lieu of completing a full set of Final Plans to document the final quantities. The Contractor's participation in this method is described in this specification.

**Monthly Construction Estimates:**

For monthly or progress estimates, the contractor will be provided a **Summary to Contractor** report that shows the active items and quantities of work resulting from the SiteManager™ estimate generation. As a requirement of this contract, the contractor shall maintain sufficient records of work performed in order to verify the quantities reported in the estimate. The contractor will verify the reported quantities by signing the Summary to Contractor report and returning the report to the Engineer.

**Final Construction Estimate:**

For the Final Construction Estimate, the Department will provide the Contractor the **Summary to Contractor** and the **Item Quantity** reports. The Item Quantity reports varies from the Summary to Contractor report, in that it shows every item included in the contract with original quantities and any change order quantities, quantities installed, quantities paid to date, and the final quantitiy.

As stated above for monthly or progress estimates, the Contractor is required to maintain sufficient records of work performed in order to review and verify the final quantities for this contract. The Contractor shall have 30 days from receipt of the above reports, to review and verify the quantities reported on the final estimate.

**MEASUREMENT AND PAYMENT:**

There shall be no separate measurement and payment for the above work. The costs for this work are considered incidental to the overall work on this contract and shall be included in the bids for other items of work.

March 2, 2009

## FUEL ADJUSTMENT INDEXES

General: The Bidder is advised that the Department will apply Fuel Adjustments *for specified items of work* when the Indexes for Diesel and Unleaded fuels vary more than 10% from Base Indexes established for the contract.

Indexes: The Department maintains Indexes for Diesel and Unleaded fuel based on fuel prices from the South Carolina Budget and Control Board – Materials Management Office, which negotiates fuel contracts for the state. The Department averages Zone 1 (upper state) and Zone 2 (lower state) prices for Diesel and Unleaded fuel to calculate the Indexes for the 1st and 17th of each month. The resulting indexes are posted in spreadsheet form on the Department's Internet site at http://www.scdot.org/doing/monthlyindexes.asp.

Base Index: The Department sets a Base Index date for each contract subject to fuel adjustments with the date set prior to the highway letting. The Indexes for Diesel and Unleaded fuel on that Base Index date sets the framework of the 10% adjustment increments to be used for the contract. Tables showing the adjustment increments are displayed in the above noted spreadsheet (Fuel Charts tab).

Fuel Usage Factors: The following table shows the Fuel Usage factor (gallons of fuel per unit of work) for SCDOT work items that are subject to this specification. In order for contract work items to be eligible for index adjustments, the work item(s) must be specifically indicated in the Special Provisions of the Contract.

| Items of Work Eligible for Fuel Adjustments | Units of Measure | Diesel Fuel | Unleaded Fuel |
|---|---|---|---|
| Excavation (Unclassified, Borrow, etc.) | Gallons/CY | 0.29 | 0.15 |
| Embankment in Place | Gallons/CY | 0.29 | 0.15 |
| Sand Clay Base Course 6" Uniform | Gallons/SY | 0.05 | 0.02 |
| Sand Clay Base Course 8" Uniform | Gallons/SY | 0.06 | 0.03 |
| Graded Aggregate Base Course 6" Uniform | Gallons/SY | 0.10 | 0.06 |
| Graded Aggregate Base Course 8" Uniform | Gallons/SY | 0.13 | 0.06 |
| Hot Mix Asphalt (Base, Binder, Surface Courses) | Gallons/Ton | 2.90 | 0.71 |
| Full Depth Patching - 4" (Fuel) | Gallons/SY | 0.64 | 0.16 |
| Full Depth Patching - 6" (Fuel) | Gallons/SY | 0.96 | 0.23 |
| Full Depth Patching - 8" (Fuel) | Gallons/SY | 1.28 | 0.31 |
| Full Depth Patching - 10" (Fuel) | Gallons/SY | 1.60 | 0.39 |
| Full Depth Patching - 12" (Fuel) | Gallons/SY | 1.91 | 0.47 |
| Portland Cement Concrete Pavements | Gallons/SY | 0.25 | 0.20 |
| Structural Concrete | Gallons/CY | 1.00 | 0.20 |
| Reinforced Concrete Pipe (24" or less) | Gallons/LF | 0.50 | 0.15 |
| Reinforced Concrete Pipe (greater than 24") | Gallons/LF | 0.75 | 0.15 |

Per unit index adjustments are determined by multiplying the Fuel Usage factor by the Fuel Index Change (minimum of incremented range) for each type of fuel. The total of these two results is then applied to the construction estimate as a line item adjustment. If only one type of fuel changes in excess of 10%, then the adjustment will be based on that figure alone.



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Additional Provisions:

A. The Department will calculate and apply fuel adjustments to estimates based on index values set at the beginning of the estimate period.

   - Districts 2, 3, and 5 - Estimate period begins on the 1st of the month and ends on the last day of the month. The 1st of the month Index will be compared to the contract Base Index to determine index adjustments for the estimate period.

   - Districts 1, 4, 6, and 7 - Estimate period begins on the 17th of the month and ends on the 16th day of the following month. The 17th of the month Index will be compared to the contract Base Index to determine index adjustments for the estimate period.

B. In the event the work (on a contract item subject to fuel adjustments) continues after expiration of the contract completion date, the fuel indexes in effect on the contract completion date will become the ceiling (or maximum) of indexes to be applied for the work. Lower indexes will be applied, while higher indexes will be limited to the ceiling noted.

C. This provision shall apply to supplemental agreements, overruns and extensions to this project for the specified item(s) to be adjusted.

D. The Base Index, Current Index and Adjustments may be referenced directly on the Department's Index spreadsheet at http://www.scdot.org/doing/monthlyindexes.asp.

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## Asphalt Binder and Additives

**Delete Subsection 401.2.1.1, Binder and Additives, General of the Standard Specification in its entirety and replace it with the following:**

**401.2.1.1 Performance Graded (PG) Binder**

Use PG 64-22 or PG 76-22 binder as required by the contract that conforms to all of the requirements of AASHTO M 320. Do not use any combination of "air blown" asphalt binders. Ensure that the asphalt binder supplier lists all types of modifiers and additives used in the production of their PG binders including source of Re-Refined Engine Oil Bottoms (REOB), polymers, ground tire rubber (GTR), polyphosphoric acid (PPA), silicone, and liquid anti-stripping agent (LASA) in their Quality Control Plans. Ensure that additives used for compaction aides or anti-strips such as silicones, WMA additives, and LASA products are listed on the Bill of Lading (BOL). Use PG asphalt binders and modifiers that are heat and storage stable. Thoroughly blend the composite materials at the asphalt terminal before being loaded into the transport vehicle. Asphalt terminals that either supply or produce PG binders must be able to store multiple tanker loads of PG and certify that their products meet AASHTO M 320 prior to transferring or shipping on the BOL and that all modifiers and additives are compatible. Ensure that all PG binders adhere to *SCDOT Qualified Products Policy No. 37-38*. Only use PG 64-22 and PG 76-22 binder from sources listed on the most recent edition of *SCDOT Qualified Product List 37*.

**401.2.1.1.1 Modified Performance Graded Binder**

When specified, use modified binder consisting of a neat binder modified with a polymer or other modifier producing a binder complying with the requirements of a PG 76-22 as specified in AASHTO M 320 with the addition of the Multiple Stress Creep Recovery (MSCR) test using AASHTO T 350. Ensure acceptable elastomeric polymer is used by using Non-recoverable Creep Compliance values plotted against Percent Recovery based on figure X1.1 found in AASHTO M 332 using RTFO aged material. Ensure that the MSCR test is performed at 64°C using the Very Heavy Traffic "V" Grade requirement in AASHTO M 332. Use elastomer polymer or modifier consisting of a styrene-butadiene (SB), styrene-butadiene-styrene (SBS), styrene-butadiene-rubber (SBR), or ground tire rubber (GTR). Polyphosphoric Acid (PPA) may also be added to the binder, but must not exceed 0.5% by weight of the asphalt binder. Varying blends of SB, SBS, SBR, GTR (7% min.), and PPA (0.5% max.) may be used, at the discretion of the AME, provided the end product meets all specified requirements for the PG 76-22. Perform the storage stability separation test ASTM D7173 to ensure the asphalt binder is homogenous. Ensure that all storage tanks on the asphalt plant site are clearly marked to prevent cross contamination of different PG binders.

**401.2.1.1.1.1 Ground Tire Rubber (GTR) in Performance Graded Binder**

Ensure that the Ground Tire Rubber (GTR) is terminally (no exceptions) blended with the neat asphalt to create a homogenous and storage stable PG 76-22 that meets all criteria as stated in 401.2.1.1.1, with the exception of Solubility requirement (AASHTO T 44). Blending the GTR modified binder at the asphalt plant during asphalt mixture production will not be permitted. Use a 2.0mm gap setting when using the DSR in accordance to AASHTO T 315 and AASHTO T 350. GTR materials must be free from excessive moisture when received from the tire recycling facility and stored in a dry location at the terminal to prevent blending issues with the binder modification process. A letter of compliance from the tire recycling facility will be required by the AME and the asphalt terminal stating that the GTR blend will meet this specification. The GTR must be free of loose metal particles, other foreign contaminating materials, with exception of embedded metal particles in the rubber. Mineral powder may be added to reduce sticking and caking of the GTR particles. Stabilizing or compatibility additive(s) can be used to achieve better particle distribution. Any additives used for this purpose must not be detrimental to the performance of the asphalt binder or mixture performance and must be accepted by the AME in the supplier's QC plan. Ensure that the GTR supplier provides certificates of compliance with each shipment certifying that all requirements of this specification are complied with for each production lot number and the end product is homogenous and shows no signs of separation or coagulation. In the event that the terminal changes supply sources of GTR type of grind (ambient or cryogenic), or particle size, the asphalt terminal must perform a complete binder analysis on their revised product, and also provide a split sample to the SCDOT to ensure specification compliance.

Provide all sources of GTR and grind type in the asphalt terminal's QC plan. SCDOT may obtain samples of the GTR particles, base binder, or the finished GTR modified asphalt binder to ensure specification compliance at any time.

| Physical Test | Test Procedure | Specification |
|---|---|---|
| Sampling of the GTR | ASTM E105<br>ASTM E122 | In accordance to random sampling procedures |
| GTR Supply | ASTM D5603 | Ambient or Cryogenic Grind |
| Dosage of GTR | Per COA<br>& Supplier's QC Plan | Minimum of 7.0% by weight of the PG 64-22 base asphalt binder |
| GTR Specific Gravity | ASTM D5603 | 1.06 – 1.20 |
| GTR Particle Distribution | ASTM D5644 | 30 Mesh<br>Maximum of 2.0% Retained |
| GTR Metal Content | ASTM D5603 | Maximum 0.01% |
| GTR Fiber Content | ASTM D5603 | Maximum 0.50% |
| GTR Moisture Content | ASTM D1509 | Maximum 0.75% |
| Mineral Filler –Talcum Powder (Optional) | ASTM M17 | Maximum of 4.0% |
| Stabilizing Additives (Optional) | - | Maximum of 4.5% by wt. of GTR |

| Chemical Test | Test Procedure | Specification |
|---|---|---|
| Acetone Extract | ASTM D297 | Maximum 25.0% |
| Rubber Hydrocarbon Content | | 40.0 – 60.0 % |
| Ash Content | | Maximum 8.0 % |
| Carbon Black Content | | 20.0 – 40.0 % |
| Natural Rubber | | 16.0 – 45.0 % |

**401.2.1.1.1.2 Ground Tire Rubber in Open Graded Friction Course Mixtures**

Stabilizing fibers and fiber supply systems at the asphalt plant may not be necessary when the GTR binder is used as required by section 409.2.3 and 409.4.3 of the Standard Specifications. Perform the SC-T-90 drain-down procedure at 350°F when conducting the asphalt mix design, or otherwise directed by the AME. In the event that drain-down values are found to be excessive, then stabilizing fibers may be necessary as directed by the AME. No additional compensation will be paid for the fibers in the OGFC mixture.

**401.2.1.1.1.3 Asphalt Plant Storage Requirements When Using Ground Tire Rubber**

Use a dedicated storage tank for "terminal blended GTR asphalt binder" at the asphalt plant. This tank must be capable of providing continuous mixing, as well as recirculation of the GTR asphalt binder as needed. Ensure that this tank is heated and capable of maintaining the temperature of the homogeneous blend of asphalt binder and GTR at 300°F to 350°F. Ensure that GTR modified binders are not mixed with other modified PG 76-22 binder without permission of the AME.



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## ASPHALT BINDER ADJUSTMENT INDEX

General: The Bidder is advised that the Department will apply Asphalt Binder Adjustments *for specified items of work* when the Index for Asphalt Binder (PG64-22) varies more than 5% from the Base Index price established for the contract.

Index: The Department maintains an Index for Asphalt Binder, which is an average of quotations from current asphalt binder suppliers, effective on the 1st and 17th of each month. The resulting Index is posted in spreadsheet form on the Department's Internet at http://www.scdot.org/doing/monthlyindexes.asp.

Base Index: The Department sets a Base Index date for each contract subject to Asphalt Binder adjustments with the date set prior to the highway letting. The Index for Asphalt Binder on that Base Index date sets the framework of the 5% adjustment increments to be used for the contract. Tables showing the adjustment increments are displayed in the above noted spreadsheet (AC Binder Chart tab).

Asphalt Binder Content Factors: The following table shows the Asphalt Binder Content factor (tons of Asphalt Binder per unit of work) for SCDOT work items that are subject to this specification. In order to be eligible for index adjustments, the work item(s) must be specifically indicated in the Special Provisions of the Contract.

| **Items of Work Eligible for A.C. Binder Adjustments** | Unit | AC Binder Tons |
|---|---|---|
| Liquid Asphalt Binder (PG64-22) | TON | 1.0000 |
| Liquid Asphalt Binder (PG76-22) | TON | 1.0000 |
| Full Depth Patching - 4" (AC Binder) | SY | 0.0110 |
| Full Depth Patching - 6" (AC Binder) | SY | 0.0165 |
| Full Depth Patching - 8" (AC Binder) | SY | 0.0220 |
| Full Depth Patching - 10" (AC Binder) | SY | 0.0275 |
| Full Depth Patching - 12" (AC Binder) | SY | 0.0330 |
| Single Treatment Type-1 (0.38 gal/sy AC) | SY | 0.0016 |
| Single Treatment Type-2 (0.38 gal/sy emulsion) | SY | 0.0011 |
| Single Treatment Type-3 (0.25 gal/sy emulsion) | SY | 0.0007 |
| Single Treatment Class-A (0.30 gal/sy emulsion) | SY | 0.0008 |
| Double Treatment Type-1 (0.82 gal/sy emulsion) | SY | 0.0023 |
| Double Treatment Type-2 (0.97 gal/sy emulsion) | SY | 0.0027 |
| Double Treatment Type-3 (0.55 gal/sy emulsion) | SY | 0.0015 |
| Double Treatment-Class A Special (0.66 gal/sy emulsion) | SY | 0.0018 |
| Triple Treatment-Type 1 (0.85 gal/sy emulsion) | SY | 0.0024 |
| Triple Treatment-Type 2 (0.71 gal/sy emulsion) | SY | 0.0020 |
| Triple Treatment-Type 4 (0.82 gal/sy emulsion) | SY | 0.0023 |
| Asph Surf Trmt - Single Treatment (0.28 gal/sy mod. Emulsion) | SY | 0.0008 |
| Asph Surf Trmt - Double Treatment (0.48 gal/sy mod. Emulsion) | SY | 0.0013 |
| Microsurfacing, Type II | SY | 0.0007 |
| Microsurfacing, Type II - Leveling | TON | 0.0800 |
| Emulsion for High Performance Chip Seal (Macrosurfacing) | Gal | 0.0028 |



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Per unit index adjustments are determined by multiplying the Asphalt Binder Content factor by the Asphalt Binder Index Change (minimum of incremented range). The resulting per unit amount is then applied to the construction estimate as a line item adjustment.

Additional Provisions:

A. The Department will calculate and apply Asphalt Binder Index Adjustments to estimates based on Index values set at the beginning of the estimate period.

   - Districts 2, 3, and 5 - Estimate period begins on the 1st of the month and ends on the last day of the month. The 1st of the month Index will be compared to the contract Base Index to determine Index adjustments for the estimate period.

   - Districts 1, 4, 6, and 7 - Estimate period begins on the 17th of the month and ends on the 16th day of the following month. The 17th of the month Index will be compared to the contract Base Index to determine Index adjustments for the estimate period.

B. In the event the work (on a contract item subject to asphalt binder adjustment) continues after expiration of the contract completion date, the asphalt binder index in effect on the contract completion date will become the ceiling (or maximum) of indexes to be applied for the work. Lower indexes will be applied, while higher indexes will be limited to the ceiling noted.

C. This provision shall apply to supplemental agreements, overruns and extensions to this project for the specified item(s) to be adjusted.

D. The Base Index, Current Index and Adjustments may be referenced directly on the Department's Index spreadsheet at http://www.scdot.org/doing/monthlyindexes.asp.



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## TRANSPORTATION AND DELIVERY OF MIXES

**Subsection 401.4.17, Transportation and Delivery of Mixes, of the Standard Specification will be deleted in its entirety and replaced with the following**:

Transport the HMA from the plant to the point of use in vehicles meeting the requirements of Subsection 401.3.7. Do not permit any load of HMA to leave the plant so late in the day that it cannot be spread, finished, and compacted during daylight of that same day unless an approved artificial lighting system is provided. Ensure that HMA mixtures containing the asphalt binder grades below are produced and delivered to the jobsite within the acceptance range listed in the table below with exception that Base C and D mixtures will be produced and delivered at a temperature range of 240º-275º F. The mix temperatures will be checked using SC-T-84. Ensure the HMA mixtures are held within the acceptance range based on Binder Performance Grade in the Job Mix Formula. Deliver mixture within the acceptance range for temperature to assist in obtaining density requirements which provide smooth riding pavements with uniform texture.

| Binder Performance Grade | Acceptance Range (ºF) |
|---|---|
| PG 64-22 | 265º-325º |
| PG 70-22 | 285º-335º |
| PG 76-22 | 300º-350º |

Note: This temperature specification does not apply to WMA (SC-M-408). Refer to the HMA Contractor's QC Plan for mix acceptance range based on selected asphalt plant WMA technologies.

**December 2, 2010**

## Sloped Edge Longitudinal Shoulder Joints

**Add the following to Subsection 401.4.23 of the Standard Specifications:**

Use a sloped edge longitudinal shoulder joint device attachment that is attached to the asphalt paver in order to create a sloped edge profile onto an existing roadway shoulder. A sloped edge is constructed onto the longitudinal shoulder joint to promote a safe transition between the newly placed asphalt mixture and the existing shoulder using an approved device. Approved devices are listed on Qualified Product Listing No. 75. These devices must meet the requirements of this specification and Qualified Product Policy No 75 to be included on QPL 75. The sloped edge device will be designed to be attached to the paver so that it confines the material at the end gate and extrudes the asphalt material in such a way that is capable of consistently producing a consolidated wedge shape pavement edge of between 25-35 degrees. The device will contact the surface of the shoulder of the road and allow for automatic transition to cross roads, driveways and obstructions. The device must be designed to constrain the asphalt material and reduce the area by 10 to 15% thereby increasing the consolidation of the extruded profile. The device must be removable or be able to be lifted when not in use for projects that do not require a sloped edge profile. The use of a conventional single plate strike off is not permitted.



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## MATERIAL FOR FULL DEPTH PATCHING

Delete the following sentence located in subsection 401.2.5 – Material for Full Depth Patching

"~~Use an approved SCDOT Intermediate Type C mix for all Full Depth Patching~~."

Insert the following sentence:
“Use an approved SCDOT mix as described in the Supplemental Specification “Removal of Existing Asphalt Pavement before Patching” dated January 1, 2018.”

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January 1, 2018

## Removal of Existing Asphalt Pavement before Patching

Delete Subsection 401.4.14 Removal of Existing Asphalt Pavement before Patching, of the Standard Specifications in its entirety and replace with the following:

The **RCE** will determine the limits of distressed pavement and will mark width and length of patches. **RCE / RME** will inspect the road and ensures that drainage is adequate and no additional work needs to be done to the ditches and shoulders to promote proper drainage. The **RCE** may elect to obtain random cores if needed to determine proper depth of distressed area to be patched. Construct patches with a minimum size of 6.5 feet x 6.5 feet with at least 25 feet between patches. Care should be taken to ensure that longitudinal joints do not end up in the wheel paths. In the event that considerable quantities of full depth patching (FDP) are encountered, the RCE will consult with the State Pavement Design Engineer to consider other rehabilitation methods.

Remove the pavement to the depth indicated in the Plans, ensuring that the face of the cut is straight and vertical, with the exception of tapers needed to get equipment in and out of the patched area. If unstable material is encountered, remove additional material as directed by the **RCE**. Backfill the volume of the material removed below the patch with material meeting the requirements of **Section 305**, Graded Aggregate Base, and thoroughly compact in layers not exceeding 4 inches with a vibratory compactor. Thoroughly tack the sides of the existing pavement before placing the asphalt patch material in the hole.

Place the patch material in relatively uniform layers not to exceed the number of lifts in the table below. Ensure that the patch material is selected from the table below. Compact each layer with a vibratory compactor and a pneumatic roller. Whenever practical, allow lifts to cool down prior to placing the next lift, especially when doing multiple patches in the same area. The 175° F requirement between lifts does not apply to FDP. Conduct the work so that patches are opened and filled each day, with the roadway being opened to traffic by the end of each days operation.. Ensure that the finished patch is smooth riding by using a straight edge. Temperature and calendar restrictions found in **Section 401.4.4** do not apply, however no FDP will be permitted if the area is wet or frozen prior to removing the old pavement.

| **Full Depth Patching Materials** | | |
|---|---|---|
| **Depth of FDP** | **Select mixture type below based on Depth of FDP** | |
| | **Alternate Mixture Options** | **Typical Mixture** |
| 4″ or Less | Surface Type B / C<br>2 Lifts | Intermediate C<br>2 Lifts |
| 6″ | Surface Type B / C<br>2 Lifts | Intermediate C<br>2 Lifts |
| 8″ | Intermediate B Special<br>2 lifts | Intermediate C<br>3 lifts |
| 10″ | Intermediate B Special<br>2 lifts | Intermediate C<br>3 lifts |
| 12″ or More | Consult with the State Pavement Design Engineer | |





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**September 1, 2015**

## Traffic Control

Delete Subsection 601.1.3 of the Standard Specifications in their entirety and replace them with the following:

### 601.1.3 Restrictions

1 **The Department prohibits lane closures on interstate highways during holiday weekends, extended holiday periods or special events as defined below unless otherwise directed by the Engineer.** The Department's holiday lane closure restrictions for holidays that are observed on a Monday will include the weekend and are considered a holiday weekend unless otherwise established by these specifications. The Department defines the typical Monday holiday weekend as from 6:00 am of the Friday before the weekend until 6:00 a.m. of the Tuesday after the holiday. Lane closures, road closures, shoulder closures, pacing operations or any operations that will impact the efficient flow of traffic or hinder normal traffic operations during these Monday holiday weekends as defined above are prohibited unless otherwise directed by the Engineer.

2 Easter and Thanksgiving holidays are varied and extended holiday periods of a holiday weekend. Easter holidays are defined as from 12:00 noon of the Thursday before Easter until 6:00 p.m. of the Monday after Easter. Thanksgiving holidays are defined as from 12:00 noon of the Wednesday before Thanksgiving Day until 6:00 a.m. of the Monday after Thanksgiving Day. Lane closures, road closures, shoulder closures, pacing operations or any operations that will impact the efficient flow of traffic or hinder normal traffic operations during the Easter and Thanksgiving holidays as defined above are prohibited unless otherwise directed by the Engineer.

3 The 4th of July holiday is considered an extended holiday period. Considering the progressive nature of the calendar, this extended holiday period will vary from year to year depending upon the day of the week the holiday occurs. See the table below. Lane closures, road closures, shoulder closures, pacing operations or any operations that will impact the efficient flow of traffic or hinder normal traffic operations during the 4th of July holiday as defined below are prohibited unless otherwise directed by the Engineer.

| 4th of JULY HOLIDAY | |
|---|---|
| **DAY OF WEEK** | **DURATION** |
| **MONDAY** | 6:00 AM FRIDAY, JULY 1ST through 10:00 PM SUNDAY JULY 10TH |
| **TUESDAY** | 6:00 AM FRIDAY, JUNE 30TH through 10:00 PM SUNDAY JULY 9TH |
| **WEDNESDAY** | 6:00 AM FRIDAY, JUNE 29TH through 10:00 PM SUNDAY JULY 8TH |
| **THURSDAY** | 6:00 AM FRIDAY, JUNE 28TH through 10:00 PM SUNDAY JULY 7TH |
| **FRIDAY** | 6:00 AM FRIDAY, JUNE 27TH through 10:00 PM SUNDAY JULY 13TH |
| **SATURDAY** | 6:00 AM FRIDAY, JUNE 26TH through 10:00 PM SUNDAY JULY 12TH |
| **SUNDAY** | 6:00 AM FRIDAY, JUNE 25TH through 10:00 PM SUNDAY JULY 11TH |



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4 The Christmas holidays are considered an extended holiday period. Considering the progressive nature of the calendar, this extended holiday period will vary from year to year depending upon the day of the week the holiday occurs. See the table below. Lane closures, road closures, shoulder closures, pacing operations or any operations that will impact the efficient flow of traffic or hinder normal traffic operations during the Christmas holidays as defined below are prohibited unless otherwise directed by the Engineer.

| CHRISTMAS HOLIDAYS | |
|---|---|
| **DAY OF WEEK** | **DURATION** |
| **MONDAY** | 6:00 AM FRIDAY, DECEMBER 22ND through 10:00 PM WEDNESDAY JANUARY 3RD |
| **TUESDAY** | 6:00 AM FRIDAY, DECEMBER 21ST through 10:00 PM THURSDAY JANUARY 3RD |
| **WEDNESDAY** | 6:00 AM FRIDAY, DECEMBER 20TH through 10:00 PM FRIDAY JANUARY 3RD |
| **THURSDAY** | 6:00 AM TUESDAY, DECEMBER 23RD through 10:00 PM SUNDAY JANUARY 4TH |
| **FRIDAY** | 6:00 AM WEDNESDAY, DECEMBER 23RD through 10:00 PM SUNDAY JANUARY 3RD |
| **SATURDAY** | 6:00 AM THURSDAY, DECEMBER 23RD through 10:00 PM MONDAY JANUARY 3RD |
| **SUNDAY** | 6:00 AM FRIDAY, DECEMBER 23RD through 10:00 PM TUESDAY JANUARY 3RD |

5 Special events are events generating excessive traffic as determined by the Department. Lane closures, road closures, shoulder closures, pacing operations or any operation that would impact the efficient flow of traffic or hinder normal traffic operations during special events are prohibited unless otherwise directed by the Engineer.

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# TRAILER MOUNTED
# AUTOMATED FLAGGER ASSISTANCE DEVICE SYSTEM
# (AFAD)

## 1. Description:

This specification details the minimum requirements of all Automated Flagger Assistance Device Systems (AFAD) utilized and placed into operation on the roadways of the state of South Carolina.

An automated flagger assistance device system is a temporary traffic control device system for controlling the flow of traffic through temporary traffic control areas, typically work zones, that generate the requirement for two-way traffic to share a single travel lane. An automated flagger assistance device system shall consist of no less than 2 individual AFAD units linked and remotely controlled by wireless communications. A flagger(s), who has successfully completed a flagger training course sponsored by a South Carolina Department of Transportation approved work zone traffic control training provider, shall operate the system. Install, operate and maintain each AFAD unit as designated by these Supplemental Specifications, the manufacturer's specifications, the Standard Drawings for Road Construction, the Plans and the Engineer.

An automated flagger assistance device system acceptable for use on the roadways of the state of South Carolina shall be either a Type I "RED / YELLOW" Lens system or a Type II "STOP / SLOW" Sign system.

The automated flagger assistance device system shall comply with all requirements for Automated Flagger Assistance Devices as specified and directed by the MUTCD, latest edition, and this supplemental specification. An automated flagger assistance device system shall operate and comply with all requirements for flagging operations as specified and directed by the latest editions of the MUTCD, the South Carolina Flagger's Handbook and the Standard Specifications for Highway Construction. Also, an automated flagger assistance device system shall operate and comply with all requirements for flagging operations as specified and directed by the Standard Drawings for Road Construction, the special provisions, the plans and the Engineer.

## 2. Operations Requirements:

**A. General:** Automated flagger assistance device systems are only permitted for use on two-lane two-way roadways where each single travel lane of opposing traffic is required to utilize and share one travel lane. An AFAD system is PROHIBITED for use on multilane roadways with reduced numbers of travel lanes. An AFAD is not a traffic control signal and shall not be used as a temporary traffic control signal or to control traffic at any location with more than 2 opposing single travel lanes seeking to share one travel lane.

**B. Documentation:** Provide documentation to the SCDOT to verify that each operator of an automated flagger assistance device system has successfully completed instruction in the operation of a system by the manufacturer of that system. Also, provide documentation to verify that each operator has successfully completed a flagger training course sponsored by a South Carolina Department of Transportation approved work zone traffic control training provider.

1. **Work Conducted under Contract to SCDOT** - Provide documentation of proof of successful completion of training in the proper operation of the AFAD system by the manufacturer of the system and successful completion of training as a flagger by a South Carolina Department of Transportation approved work zone traffic control training provider to the Resident Engineer no less than 7 days prior to placing an automated flagger assistance device into operation.

2. **Work Conducted under Encroachment Permit** - Provide documentation of proof of successful completion of training in the proper operation of the AFAD system by the manufacturer of the system and successful completion of training as a flagger by a South Carolina Department of Transportation approved work zone traffic control training provider along with submittal of the encroachment permit to the SCDOT.

**C. Operator:** The operator of the an automated flagger assistance device system shall be a recipient of and have successfully completed instruction in the operation of the system by the manufacturer of that system. The operator shall have successfully completed a flagger training course sponsored by a South Carolina Department of Transportation approved work zone traffic control training provider.

The South Carolina Department of Transportation only recognizes the following entities as acceptable providers of work zone traffic control training for organizations outside of the SCDOT who perform work activities within the highway rights-of-way in South Carolina under either contract to SCDOT or encroachment permit:

American Traffic Safety Services Association (ATSSA)
Institute for Transportation Research and Education at North Carolina State University (ITRE)
Carolinas Association of General Contractors (AGC)
National Safety Council South Carolina Chapter

The operator shall control the automated flagger assistance device system from a location with an unobstructed view of the AFAD unit as well as an unobstructed view of the approaching traffic. If a single operator is controlling more than one unit, the operator shall have an unobstructed view of traffic from both directions. At no time is the operator permitted to leave the AFAD unattended when the AFAD is operating.

**D. Site Location:** When sufficient shoulder space is available, place and position the AFAD unit on the shoulder of the roadway no closer than 1 foot from either the near edge line or the near edge of pavement when an edge line is absent to the near edge of the trailer when the gate arm is in the upright position. When sufficient shoulder space to attain the minimum 1 foot requirement is unavailable, minimal encroachment of the unit upon the adjacent travel lane is permitted.

Place and position the AFAD unit to allow the end of the gate arm, when in the down position, to reach the center of the adjacent travel lane being controlled by the unit. Encroachment by the gate arm when in the down position to a point less than to the center of the adjacent travel lane or into the opposing travel lane beyond the center of the roadway is PROHIBITED.

Install the advance warning signs required for typical flagging operations on each approach. In addition to the typical flagging operations sign array, also include and install a “Be Prepared To Stop” sign (W3-4-48) between the “Flagger” symbol sign (W20-7-48) and the AFAD unit on each approach. Therefore, the required advance warning signs for each approach are, “Be Prepared To Stop” (W3-4-48), “Flagger” symbol (W20-7-48), “One Lane Road Ahead” (W20-4-48-A) and “Road Work Ahead” (W20-1-48-A).

**E. Nighttime AFAD Flagging Operations:** During nighttime operations, illuminate each AFAD unit station with any combination of portable lights, standard electric lights, existing street lights, etc., that will provide a minimum illumination level of 108 Lx or 10 fc.

During nighttime operations, operators shall wear a safety vest and safety pants that comply with the requirements of ANSI / ISEA 107 standard performance for Class 3 risk exposure, latest revision, and a fluorescent hard hat. The safety vest and the safety pants shall be retroreflectorized and the color of the background material of the safety vest and safety pants shall be fluorescent orange-red or fluorescent yellow-green.

Supplement the array of advance warning signs with a changeable message sign for each approach during nighttime AFAD flagging operations. These changeable message signs are not required during daytime operations. Install the changeable message signs 500’ in advance of the advance warning sign arrays. Messages should be “Flagger Ahead” and “Prepare To Stop”.



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**3. System Requirements:**

**A. General:** An automated flagger assistance device system shall consist of a Main AFAD unit and a Remote AFAD unit, linked and remotely controlled by wireless communications. The individual trailer-mounted units shall have nesting capabilities to permit towing of both units in a single trailer configuration. When nested, all lights including stop, tail and turn signal lights of both units shall operate uniformly.

**B. Power Source:** The electrical power for operation of the sign shall be supplied by a 12 VDC power source or a 110 VAC or a 120 VAC power source. Provide and mount a D/C power source for the unit on the trailer. An adaptable 110 VAC or 120 VAC power source may be used when available and selected for use.

1. **D/C Powered:** Power the unit by means of a battery bank charged by photovoltaic solar panels and/or a built-in 110 VAC 10 amp battery charger. House the battery bank in a lockable heavy duty weatherproof box or cabinet. The battery bank shall have the capability to provide sufficient operating power to the unit for no less than 7 continuous days.

2. **A/C Powered:** Power the unit by means of a 110 VAC or 120 VAC power source. Equip the unit with ground fault circuit interrupter circuit breakers. Conduct all A/C power adaptations with UL approved equipment and methods.

**C. Remote Control:** Equip each AFAD unit with a controller capable of receiving and implementing instructions through wireless communications from a handheld transceiver. Also, equip each AFAD unit with a handheld transceiver that provides wireless communication with the unit controller to permit operation of the individual unit or the system by an operator or operators from remote locations. The system shall provide the capability for total system operation and control of both units by one operator from a primary handheld transceiver as well as allow independent unit operation by one operator per unit from unit specific handheld transceivers.

Monitor and verify data transmissions utilized to control the AFAD units. Digitally encode signal transmissions to minimize interference. Comply with all applicable requirements of the Federal Communications Commission. In the event communications are disrupted or lost, the system shall go into a “fail safe” mode and display the “Circular Red” / “STOP” indications and lower the gate arms.

**D. Gate Arm:** Equip each AFAD unit with an automated gate arm that descends to a down position across the travel lane that approaching traffic is operating in when the AFAD unit displays the condition for approaching traffic to stop. The automated gate arm shall ascend to an upright position when the AFAD unit displays the condition to allow stopped traffic to proceed past the location of the AFAD unit.

Acceptable operation of the gate arm shall require the gate arm to begin descent to the down position no less than 2 seconds or more than 4 seconds after the AFAD unit displays the condition for approaching traffic to stop. The gate arm shall begin ascent to the upright position not less than 1 second or more than 2 seconds prior to display of the condition to allow stopped traffic to proceed.

The gate arm shall measure no less than 8 feet in length and shall have a minimum vertical height of 4 inches when placed in the down position. Reflectorize both sides of the gate arm with a Type III Microprismatic retroreflective sheeting with vertical alternating red and white stripes at 16 inch intervals.

The gate arm shall deflect in the event an errant vehicle drives through and strikes the gate arm and then return to a functional position after the errant vehicle clears the gate arm.

**E. Trailer:** Fabricate and equip each trailer with a single axle, springs, support assembly and four (4) leveling or stabilizer jacks. Properly equip the trailer to comply with South Carolina Law governing motor vehicles. The minimum requirement for lights and reflectors shall include turn signals, dual tail lights, and brake lights. Equip each trailer with Safety chains meeting SAE J-697 standards and paint each trailer with Federal Standard No. 595, Orange No. 12246.

Each trailer mounted AFAD unit shall have the capability to withstand winds up to 80 MPH without overturning when in the operating configuration or position.

**4. Type I "RED / YELLOW" Lens System:**

A Type I "RED / YELLOW" Lens AFAD system shall alternately display a steadily illuminated Circular RED lens and a flashing Circular YELLOW lens to control traffic without the need for a "human flagger" in the immediate vicinity of the AFAD unit. The steadily illuminated Circular RED lens shall illuminate when approaching traffic is required to stop and the flashing Circular YELLOW lens shall illuminate when stopped or approaching traffic is permitted to proceed pass the location of the AFAD unit.

A RED / YELLOW Lens AFAD unit shall have no less than one set of Circular RED and Circular YELLOW lenses in a vertical configuration that have diameters of no less than 12 inches. Arrange the lenses to place the Circular RED above the Circular YELLOW and provide a minimum height of no less than 7 feet from the bottom of the apparatus housing the Circular YELLOW lens to the grade elevation of the travel lane under control of the AFAD unit. However, if the lenses are located over any portion of a travel lane in which traffic is operating and may pass underneath the lenses, the minimum mounting height shall be no less than 15 feet from the bottom of the apparatus housing the YELLOW lens to the grade elevation of the travel lane under control of the AFAD unit in which traffic is operating.

The gate arm shall begin its descent to the down position not less than 2 seconds or more than 4 seconds after the Circular RED lens is illuminated. The automated gate arm shall begin its ascent to the upright position not less than 1 second or more than 2 seconds prior to illumination of the flashing Circular YELLOW lens.

Install a "Stop Here On Red" sign (R10-6-36) or (R10-6a-30) on the right side of the approach at the point at which motorists are expected to stop when the Circular RED lens is illuminated.

**Transition Between RED and YELLOW Conditions -**

**Transition to Circular RED condition -** The flashing Circular YELLOW lens shall enter into a minimum 5 second steady illumination phase prior to transitioning to the steadily illuminated Circular RED condition. The gate arm shall begin its descent not less than 2 seconds or more than 4 seconds after the Circular RED lens is illuminated.

**Transition to Circular YELLOW condition -** The gate arm shall complete its ascent to the upright position not less than 1 second or more than 2 seconds prior to illumination of the flashing Circular YELLOW lens. The steadily illuminated Circular RED lens shall transition to the flashing Circular YELLOW lens.

The Type I "RED / YELLOW" Lens AFAD system shall include a fail-safe system with a conflict monitor or similar device to prevent display of conflicting indications between units. Also, the system shall provide indicators to notify the operators of power loss that may impede proper operation of the system.

**5. Type II "STOP / SLOW" Sign System:**

A Type II "STOP / SLOW" Sign AFAD system shall have a STOP / SLOW sign that alternately displays the STOP (R1-1-36) face and the SLOW (W20-8-36) face of a STOP / SLOW paddle to control traffic without the need for a "human flagger" in the immediate vicinity of the AFAD unit. The STOP sign face shall display when approaching traffic is required to stop and the SLOW sign face shall display when stopped or approaching traffic is permitted to proceed pass the location of the AFAD unit.

The STOP / SLOW sign, fabricated from a rigid material, shall have an octagonal shape with a minimum face size of 36 inches by 36 inches. Reflectorize each face of the sign with a Type VII, Type VIII or Type IX Prismatic Retroreflective sheeting included on the latest edition of the *SCDOT Qualified Products List 20*. The STOP sign face shall have a red background with white letters and border and the SLOW sign face shall have a diamond shaped orange background with black letters and border. The letters shall have a minimum height of 8 inches. The sign faces shall have a minimum mounting height of 7 feet from the bottom of the sign to the grade elevation of the travel lane under control of the AFAD unit.



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Supplement the Type II "STOP / SLOW" Sign AFAD unit with active conspicuity devices. Include a steadily illuminated RED lens beacon to illuminate when the STOP sign face is displayed and a flashing YELLOW lens beacon to illuminate when the SLOW sign face is displayed. Each beacon shall have a 12 inch signal lens. Mount the RED lens beacon no more than 24 inches above the top of the STOP sign face and YELLOW lens beacon no more than 24 inches above the top or to the side of the SLOW sign face.

Type B warning lights are PROHIBITED as alternatives to the 12 inch signal lens beacons.

The gate arm shall begin its descent to the down position 2 seconds or more than 4 seconds after the transition to a complete display of the STOP sign face is accomplished and the illumination of the steadily illuminated RED lens beacon. The automated gate arm shall begin its ascent to the upright position not less than 1 second or more than 2 seconds prior to the initiation of the transition from the STOP sign face to the SLOW sign face.

Install a "Wait On Stop" sign (R1-7-30) and a "Go On Slow" sign (R1-8-30) either on the same support structure as the AFAD unit or immediately adjacent to the AFAD unit.

**Transition Between STOP and SLOW Conditions -**

**Transition to STOP condition -** The RED lens beacon shall enter into a "flashing mode" no less than 5 seconds prior to transitioning from the SLOW sign face to the STOP sign face. Immediately upon completion of the transition to complete display of the STOP sign face, the "flashing mode" of the RED lens beacon shall transition to a steadily illuminated condition. The gate arm shall begin its descent in not less than 2 seconds or more than 4 seconds after completion of the transition to a complete display of the STOP sign face and illumination of the steadily illuminated RED lens beacon.

**Transition to SLOW condition -** The STOP sign face shall begin the transition to the SLOW sign face. The gate arm shall begin its ascent to the upright position not less than 1 second prior to the initiation of the transition from the STOP sign face to the SLOW sign face. The RED lens beacon shall cease to illuminate and the flashing YELLOW lens beacon shall begin to illuminate immediately upon completion of the transition of the STOP sign face to the SLOW sign face and the ascent of the gate arm to its completed upright position.

The Type II "STOP / SLOW" Sign AFAD system shall include a fail-safe system with a conflict monitor or similar device to prevent display of conflicting indications between units. Also, the system shall provide indicators to notify the operators of power loss that may impede proper operation of the system.

**3. Method of Measurement:** Unless otherwise specified, Automated Flagger Assistance Device Systems (AFAD's) are not measured for separate payment but are included in the contract lump sum bid price item Traffic Control as specified in Subsections 107.12 and 601.5 of the *2007 Standard Specifications for Highway Construction*.

**4. Basis of Payment:** Unless otherwise specified, payment for an Automated Flagger Assistance Device System (AFAD) is included in the contract lump sum bid price item Traffic Control as specified in Subsections 107.12 and 601.5 of the *2007 Standard Specifications for Highway Construction*. The payment shall be full compensation for providing, installing, removing, and relocating as necessary, operating, and maintaining an Automated Flagger Assistance Device System (AFAD). Payment shall include furnishing all labor, hardware, equipment, tools, incidentals, and any miscellaneous items necessary for installing, operating, and maintaining the system.



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September 1, 2013

# WORK ZONE TRAFFIC CONTROL TRAINING REQUIREMENTS FOR CONTRACTORS / SUBCONTRACTORS

## 1. Description:

This specification details the work zone traffic control training requirements for employees and representatives of a contractor or subcontractor under contract to the South Carolina Department of Transportation (SCDOT) whose job duties include responsibilities relative to implementation and maintenance of the Transportation Management Plan (TMP). "Employees and representatives of a contractor or subcontractor" will henceforth be referred to as "employee" or "employees" and "contractor or subcontractor" will henceforth be referred to as "contractor".

The SCDOT requires the contractor to provide documentation to substantiate successful completion and attainment of a passing score of a prescribed training course conducted by an SCDOT approved provider by those employees whose job duties categorize them as "designated trainees" as defined hereinafter.

## 2. Implementation:

These requirements for work zone traffic control training for employees of those entities under contract to the SCDOT whose job duties include responsibilities relative to implementation and maintenance of a TMP shall become effective on all projects let to contract after September 1, 2013.

## 3. Designated Trainees:

An employee whose job duty responsibilities, as designated hereto, impact or involve any of or all of the components of a TMP must successfully complete an advanced work zone traffic control training program. These components include the primary component, the "Temporary Traffic Control" plan, and the secondary components, the "Transportation Operations" plan and the "Public Information" plan.

An employee whose job duties include any of the following responsibilities regarding the TMP shall successfully complete an advanced work zone traffic control training program conducted by an SCDOT approved work zone traffic control training provider:

Supervision of the field installation of any or all components of the TMP
Supervision of the maintenance of any or all components of the TMP
Supervision of the removal of any or all components of the TMP
Design and development of revisions to an existing TMP
Design and development of a new or alternate TMP
Any decision-making responsibilities regarding the TMP

Those employees whose job duties do not include responsibilities relative to the TMP as stated above are not required to attend an advanced work zone traffic control training program. However, it is recommended that all employees whose job duties place them on the job site within the highway rights-of-way within 30 feet or less of a travel lane open to traffic should attend a basic work zone traffic control training course.

Also, an employee whose job duties include "flagger" shall successfully complete a "Flagger Training" course. However, regarding an employee whose job duties include "flagger" but does not involve any of the responsibilities listed above, successful completion of a "Flagger Training" course is the only mandatory work zone traffic control training course required for this employee; other work zone traffic control training courses are elective.



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**4. Approved Work Zone Traffic Control Training Providers:**

The SCDOT recognizes the following organizations as acceptable providers of an advanced work zone traffic control training program, a “Flagger Training” course or the optional basic work zone traffic control training course:

American Traffic Safety Services Association (ATSSA)
Institute for Transportation Research and Education at North Carolina State University (ITRE)
Carolinas Association of General Contractors (AGC)
National Safety Council South Carolina Chapter

These organizations provide work zone traffic control training in compliance with the MUTCD and reference requirements specific to SCDOT. Therefore, work zone traffic control training provided by entities other than those listed above are not considered comparable and shall be unacceptable.

Specific course material for work zone traffic control training courses designated as “Basic”, “Advanced”, “Supervisor” or “Flagger” and any additional training courses not specified here is determined by the work zone traffic control training course provider and has undergone review and received acceptance by SCDOT. Also, the passing score for each training course is determined by the work zone traffic control provider.

**5. Training Requirements / Qualifications:**

Successful completion of an advanced work zone traffic control training program is defined as achieving a passing score in all courses, including any prerequisite courses, to attain a level considered “advanced”, “supervisor” or any other relative term as designated by the provider to imply the trainee has an understanding of the course material inclusive of design, implementation and maintenance of work zone traffic control scenarios. Upon successful completion of the program, the trainee should also possess an understanding for determining the need for and developing and implementing adjustments as necessary when applying typical work zone traffic control applications to non-typical work site conditions and scenarios.

The employee whose job duty responsibilities mandate successful completion of an advanced work zone traffic control training program shall do so prior to performing any job duties with responsibilities relative to design and development of a TMP or revisions of an existing TMP or any decision-making responsibilities regarding the TMP or supervision of the field installation and maintenance of any and all components of the TMP.

Also, an employee whose job duties mandate successful completion of a “Flagger” training course shall do so prior to performing any job duties relative to flagging traffic.

Each employee who has successfully completed an approved advanced work zone traffic control training program or a “Flagger” training course shall attend and complete a refresher course relative to the employee’s job duties on a 5-year incremental time frame.

**6. Documentation:**

The contractor shall provide proof of successful completion of an acceptable advanced work zone traffic control training class by those employees whose job duty responsibilities mandate successful completion of approved work zone traffic control training to the Resident Engineer prior to the employee performing the job duties that incorporate responsibilities which necessitate approved work zone traffic control training. For proof of successful completion of an approved work zone traffic control training class, provide a copy of the certificate of training from the organization who conducted the training to the Resident Engineer. Failure to provide the required documentation as specified shall prevent SCDOT acceptance of the employee as properly trained and acceptable for conducting those job duties that necessitate the prescribed work zone traffic control training.

The contractor shall provide proof of successful completion of an acceptable “Flagger Training” course by all employees whose job duties require them to be the “Flagger” within a flagging operation to the Resident Engineer prior to the employee performing any “Flagger” job duties.

The contractor shall provide proof of successful completion of an acceptable advanced work zone traffic control refresher course for those employees no later than 60 days beyond the 5 year anniversary date of the employee’s certificate date of completion of a previous advanced work zone traffic control training program.

Documentation of proof of completion of a basic work zone traffic control training course by employees whose job duties require their presence on the job site within the highway rights-of-way but exclude any responsibilities relative to the TMP is not required.

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May 15, 1996
Revised March 12, 2003
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## FURNISH AND INSTALL DETECTOR LOOPS

**DESCRIPTION -** This work consists of furnishing and installing Detector Loops within and alongside the roadway, at the locations shown on the Plans, and in accordance with these Specifications. A Detector Loop installation shall consist of: installing the required conduit runs; making the pavement saw cut; placing the required number of turns of loop wire in the saw cut; creating a twisted pigtail; splicing the pigtail to the shielded, twisted pair lead-in cable; connecting the lead-in cable to the back-panel terminals at the controller cabinet; verifying proper detection of traffic; and sealing the saw cut. Several items used to create a complete detector installation are specified elsewhere. They are: FURNISH AND INSTALL ELECTRICAL CONDUIT; and FURNISH AND INSTALL SPLICE BOXES/ JUNCTION BOXES. The "junction point" referred to in the specifications below, is defined to be a splice box, or a conduit junction box as specified on the Plans.

**1. MATERIALS -**

Materials used in the fabrication of a Detector Loop shall meet the Specifications below:

1.1 Loop Wire -

Shall be splice-free lengths of: No. 14 AWG, 19 Strands, single-conductor bare copper wire. The conductor insulation **(BLACK)** shall be high density polyethylene and shall be both ultraviolent and weather resistant. The wall thickness shall be 0.030 in. minimum point thickness. Cable shall be manufacturer in accordance with the requirements of Underwriter's Laboratories, Federal specifications, and the National Electric Code.

1.2 Lead-in Cable -

SEE 'FURNISH AND INSTALL ELECTRICAL CABLE'

1.3 Sealant -

The loop sealant used to fill the saw cuts and other gaps, shall be of a type intended for traffic loop embedding. The cured sealant shall be semi-flexible, and be capable of adhering securely to concrete, asphalt, wood, metal, etc. It shall be unaffected by freeze-thaw cycling, salts, gasoline, oil, sewerage and corrosive chemicals. It shall be proportioned and mixed per the manufacturer's specifications. Acceptable suppliers are:

3-M Detector Loop Sealant;
Preco Gold-Label Flex;
CraftCo MSI Hot Flow;
Bondo P-6061;
Pro-Seal 6006 or Pro-Seal 6006EX;
(--OR APPROVED EQUAL--)

1.4 Waterproofing Splice Materials -

The splice at the "junction point", shall be made waterproof using the materials listed below:

1.4.1 Cable Splice Kit -

Commercially available, Low-Voltage, water-proof Splice-kit; to be Plymouth "PLYFLEX"; or 3M "SCOTCH-LOK", Unipak #3570, Resin 400, (or approved equal). To be installed per manufacturers instructions.

1.4.2 Vinyl plastic electrical tape (use where required)- Cold and weather resistant, 19 mm (3/4 inch) wide, 1.8 mm (7 mil) thickness, (Scotch 33+ or approved equal).

1.4.3 Liquid electrical coating (use where required)-

Fast-drying sealant compatible with vinyl tape, brush-applied (3M, Scotchkote or approved equal).



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1.4.4 Underwater Splicing Kit -

Where shown on the Plans, in very wet areas an Underwater Splice Kit may be required at the "junction point". This splicing kit shall consist of a two-piece mold-body, with pourable resin sealing compound, funnels, and end sealing strips (3M, Scotchcast 82-A1 or approved equal).

1.5 Wire Crimps -

The PREFERRED splicing method at the "junction point", shall use a commercial/industrial grade, copper-alloy CRIMP-ON, with one end closed, of a size proper for the gauge of wires to be spliced, and the number of conductors. It shall be installed with the proper CALIBRATED, RATCHET-TYPE, CRIMPING TOOL, intended for the purpose (NOT regular pliers). (Note: wire-nuts are not acceptable.)

1.6 Solder -

The alternate method of splicing at the "junction point" is to use SOLDER, which shall be electronic-grade, rosin-core, 60 lead/40 tin. Acid-core solder is not acceptable, nor are acid-type soldering pastes.

1.7 Splice Box and Junction Box -

Specified elsewhere as separate items. The references to "junction point" in this specification will usually imply such a splice box, or conduit junction box. However, some Plans may require direct installation to a signal pole base, where the splice between the loop wire and the lead-in cable will be made in the hollow pole.

1.8 Electrical Conduit -

Specified elsewhere as a separate item.

## 2. CERTIFICATION -

2.1 The CONTRACTOR SHALL PROVIDE details for the proposed loop sealant, loop wire, and lead-in wire proposed.

**NOTE: CATALOG CUTS ARE REQUIRED.**

**SAMPLE REQUIRED.**

## 3. CONSTRUCTION METHODS -

3.1 Saw Cuts -

3.1.1 The LOCATION and SIZE of each loop shall conform to the Plans and to the Standards. In general, the front of each loop shall be located 0.3 to 0.45 metres (12 to 18 inches) behind the Stop Line, or as shown on the Plans.

3.1.2 Loops shall be centered in the traffic lane to be detected or as shown on the Plans.

3.1.3 Prior to cutting, the intended saw cut shall be carefully (using paint or chalk) marked on the pavement and approved by the Engineer.

3.1.4 The Contractor shall slot the roadway using a diamond or abrasive rotary power-saw with a blade approximately 9.5 MM (3/8 INCH) IN WIDTH. The saw shall a power-driven walk-along model, not a hand-tool.

3.1.5 The MINIMUM DEPTH of each Saw cut shall be:
50 MM (2 INCHES) DEEP in CONCRETE; and
65 MM (2-1/2 INCHES) DEEP in BITUMINOUS pavement.

3.1.6 The corner treatment of the saw cut shall prevent sharp edges. Saw cuts shall be extended to provide full-depth. All corners, where loop wires turn, shall be diagonal cut.

3.1.7 Saw cuts shall be washed out, blown dry, and shall be free from dust, grit, oil and moisture before the placement of wire. Compressed air shall be used to blow dry.



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3.1.8 Saw cutting of curb and gutter shall not be permitted. Rather, a 38 mm (1-1/2 inch) hole shall be drilled under the curb at a 45 angle.

3.1.9 Pavement seams or cracks should be avoided. However, when it is necessary to traverse a crack, a 50 mm (2 inch) diameter hole at least 76 mm (3 inches) deep should be drilled, and slack provided in the loop wire to allow for expansion and contraction.

3.1.10 Loop installation shall be staged so that each entire loop installation (from saw cut to sealing) is completed within the same working day with minimum blockage of traffic.

3.2 Loop Wire -

3.2.1 Each loop wire shall be continuous and splice-free. Further, any wire with cuts, breaks, or nicks in the insulation shall not be accepted. All loops shall be wired in one direction, this will be a counter-clock-wise direction.

3.2.2 Each loop shall have the number of Turns shown in the table below, or as shown on the Plans.

| SIZE | NUMBER OF TURNS |
|---|---|
| 1.8 x 1.8 m (6 x 6 ft) | 4 |
| 1.8 x 3.0 m (6 x 10 ft) | 4 |
| 1.8 x 4.6 m (6 x 15 ft) | 3 |
| 1.8 x 6.0 m (6 x 20 ft) | 3 |
| 1.8 x 9.2 m (6 x 30 ft) | 3 |
| 1.8 x 12.2 m (6 x 40 ft) | 2 |
| 1.8 x 15.2 m (6 x 50 ft) | 2 |
| 3.0 x 6.0 m (10 x 20 ft) | 3 |
| 3.0 x 9.2 m (10 x 30 ft) | 3 |
| 3.0 x 12.2 m (10 x 40 ft) | 2 |
| OTHER SIZE'S | AS PER PLANS |

3.2.3 Each Detector Loop shall be formed by installing in a separate saw cut, one (1) continuous length of single conductor wire, from the nearest approved "junction point", around the loop the specified number of turns, then back to the "junction point".

3.2.4 The "pigtail" from the corner of the loop, formed by the two ends of the loop wire, shall be twisted together with a pitch of 15 TURNS PER METRE (YARD), between the "junction point" and the loop itself.

3.2.5 The wire shall be pressed to the bottom of the saw cut slot. A roller or a blunt-stick (similar to a paint stirrer), shall be used to seat the loop wire at the bottom of the slot or channel. In no case shall a screw driver or similar sharp tool be used for this purpose.

3.2.6 The wire shall be laid in the slot so that there are no kinks or curls, and no straining or stretching of the insulation around the corner of the slot, or at the junction.

3.2.7 After placing the wire in the slot, it shall be rechecked for slack, raised portions, and tightness.

3.2.8 2.5 CM (1 INCH) LENGTHS of 13 mm (1/2 inch) closed-cell foam-plastic (BACKER-ROD) shall be used at 0.6 metre (2 foot) spacings, to hold the wire at the bottom of the slot.
DO NOT use backer-rod around the entire perimeter!

3.2.9 The loop wire pigtail should be enclosed in conduit from the roadway edge to the "junction point".



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3.2.10 Each loop shall be TESTED BEFORE SEALING. the inductance shall be in the range of 50 to 2500 micro-Henrys. The insulation resistance measured to earth ground shall be greater than 100 megohms at 500 volts DC.

Note: MEGGER TEST and INDUCTANCE TEST REQUIRED before and after sealing. A written record of the test shall be submitted to the Engineer on an approved form.

3.3 Lead-In Cable -

3.3.1 The lead-in cable shall be continuous, splice-free, and free from cuts or nicks in the insulation.

3.3.2 At the specified "junction point", the twisted "pigtail" from the loop wire shall be spliced to the shielded, (twisted-pair) lead-in cable that runs from the "junction point" to the controller cabinet (terminal).

3.3.3 The "junction point" splice shall be electrically permanent and sealed waterproof. Forty (40) mm (1-1/2 inches) of insulation shall be removed from each wire. The splice shall be either crimped-on, -or- twisted and soldered. the entire splice shall then be sealed waterproof using a method described below. The Engineer must be present to witness these acts. Any splices made without the presence of the Engineer are unacceptable, and shall be re-spliced. The methods of waterproof sealing are:

A. Normal Splice -
Each individual splice (pair of twisted loop wires meeting pair of loop lead-in wires), shall be performed by using either crimp-on's, or a soldered joint. The junctions shall then be sealed in a low-voltage, waterproof splice kit. The splice kit shall be installed per the manufacturers instructions.

B. Underwater Splice -
Where required on the Plans an underwater splice kit shall be installed according to the manufacturers instructions.

3.3.4 Sufficient slack shall be left in both the lead-in cable and the loop wire, so that the splice may be moved 1.0 metre (3 feet) from the front of the "junction point". The slack shall be neatly coiled and nylon-tied after completion of the splice.

3.3.5 In the controller cabinet, the lead-in cable shall be uniquely identified by an insulated, preprinted-sleeve, slipped over the wire before attachment of a spade-lug connector. A spade-lug connector shall be crimped onto each loop lead-in wire.

3.3.6 In the controller cabinet, the ground (drain) wire from each lead-in cable shall not be connected. Rather it shall be cut-off at the cable sheath, and left floating.

3.3.7 Unless otherwise specified, the lead-in cable shall be enclosed in conduit from the "junction point" to the nearest signal pole, or directly to the controller if it is on the same corner. The cable shall then run: up inside a conduit or metal pole, across span wires, and then down inside a conduit or metal pole, to the controller.

3.4 Sealant -

3.4.1 The Department approved Loop Sealant shall be mixed and applied according to the manufacturer's directions.

3.4.2 The sealant shall not be poured into saw cuts during weather conditions of precipitation of any kind, or at temperatures below 10° C (50° F).

3.4.3 The saw cut and drilled holes shall be completely filled with sealant, allowing no bubbles below the surface and only a minimum spill-over along the joint. Duct-Seal shall be used to prevent sealant from flowing into conduit ends.



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3.4.4 When the sealant hardens, there shall be neither a bulge or depression, but rather a smooth road surface. The sealant shall not be over-poured so there is a bulge or bump higher than the surrounding surface of the roadway. It shall be wiped smooth with a squeegee.

3.4.5 The Contractor should make sure that the sealant has hardened before allowing traffic to move over the area.

## 4. METHOD OF MEASUREMENT -

4.1 Detector loops shall be measured by LINEAR FEET (METRE) of: loop wire, lead-in cable, and saw cut as actually placed, including sealant, electrical connections, testing, and incidental hardware. Note that conduit and vehicle detector amplifiers are measured elsewhere as separate items.

## 5. BASIS OF PAYMENT -

5.1 Detector loops, measured as provided above, shall be paid for at the contract unit price bid for:

Loop Wire: **6060413**
NO. 14 COPPER WIRE 1-CONDUCTOR, 19 STRANDS, BARE COPPER WIRE-- LINEAR FEET (METRE)

PVC: **6060275**
1.0" Schedule 80 PVC Conduit (Trenched or Riser) (IF NEEDED)

SAWCUT: **6060495**
SAW CUT -- LINEAR FEET (METRE)

and such payment shall be full compensation for furnishing all materials, equipment, labor, and for all testing, details and incidentals necessary to provide proper vehicle detection, complete in place as specified.



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**LOOP DETECTOR INSPECTION REPORT**

**LOCATION:** **DATE:**

**DESCRIPTION:** **BY:**

| LOOP POSITION | | BEFORE SEALING | | | AFTER SEALING | | |
|---|---|---|---|---|---|---|---|
| | | f | L | R | f | L | R |
| APPROACH | LANE | kHz | µh | MΩ | kHz | µh | MΩ |
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**COMMENTS**

**NOTE: L SHALL BE 50 -2500 µh; R SHALL BE >100 MΩ @ 500 VDC**

| | | | | | |
|---|---|---|---|---|---|
| **SUBMITTED BY** | **DATE** | **CHECKED BY** | **DATE** | **APPROVED BY** | **DATE** |
| **IN SERVICE BY** | **DATE** | **TIME** | **CHECKED BY** | **DATE** | **TIME** |

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# ADHESIVELY BONDED ANCHORS AND DOWELS

## 1.0 Adhesively Bonded Anchors and Dowels

## 1.1 Scope

Furnish all required labor, equipment, and materials and perform all operations necessary for installing anchors and dowels in concrete using an adhesive bonding system in accordance with the details shown on the Plans and with the requirements of this Specification. Provide a material system specifically intended for use in structural applications for bonding anchors and dowels to hardened concrete. Limit applications to anchors and dowels installed in horizontal, vertical, and downwardly inclined positions. Do not use adhesive anchors in overhead or upwardly inclined installations. See Figure 1.1.

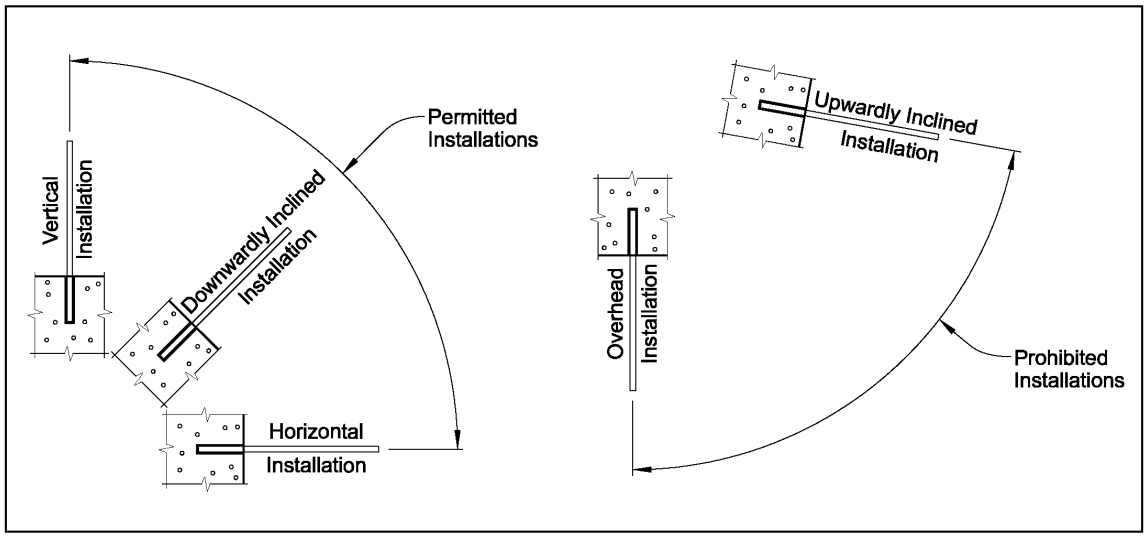


**Figure 1.1**

Submit a description of the proposed adhesive bonding system to the RCE for review, comments, and acceptance. Include in the description the anchor type, equipment, Manufacturer's recommended hole diameter, material specifications, and any other material, equipment or procedure not covered by the contract documents. List the properties of the adhesive, including density, minimum and maximum temperature application, setting time, shelf life, pot life, shear strength, bond strength, and compressive strength. If anchors or dowels containing a corrosion protective coating are required, provide an adhesive that does not contain any chemical elements that are detrimental to the coating and include a statement to this effect in the submittal concerning the contents as required by State or Federal Laws and Regulations.

Submit to the RCE Manufacturer's certification that the adhesive bonding system, when tested for tension pull-out according to ASTM E 488 utilizing identical anchorages, embedment depths, and concrete strengths as those specified on the Plans, does not fail by any mode listed in Section 12 of ASTM E 488 when loaded to the lesser of 85 percent of the specified bond strength (based on the nominal anchorage diameter and embedment depth) or 90 percent of the yield strength of the anchor. Also, submit to the RCE long term load (creep) test results performed in accordance with ASTM E 1512, ICC–ES AC 58, or ICC–ES AC 308. When specified on the Plans, field testing will also be required for adhesive anchorages.

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## 1.2 Materials

Provide adhesive bonding material systems for structural applications that meet the requirements of ASTM C 881, Type IV, Grade 3, Class B or C (depending on site conditions). Do not use "Fast Set epoxy." Package components of the adhesive in containers of such size that one whole container of each component is used in mixing one batch of adhesive. Use containers of such design that all of the contents may be readily removed, and are well sealed to prevent leakage. Do not use material from containers which are damaged or have been previously opened. Use only full packages of components. Furnish adhesive material that requires hand mixing in two separate containers designated as Component A and Component B or in a self contained cartridge or capsule that consists of two components which will be automatically mixed as they are dispensed, as in the case of a cartridge, or drilled into, as in the case of a capsule.

Provide packages clearly marked by the Manufacturer with the following information:

- Manufacturer's name and address
- Product Name
- Date of Manufacture
- Expiration Date
- LOT Identification Number
- Storage and Handling Requirements

With each package include the Manufacturer's instructions for anchor and dowel installation. Include the following information with the instructions:

- Diameters of drilled holes for applicable anchor and dowel sizes.
- Cleaning procedure for drilled holes, including a description of permitted and prohibited equipment and techniques.
- Allowable temperature ranges for storage, installation and curing.
- Identification of acceptable mixing/dispensing nozzles.
- Fabrication requirements for anchors and dowels.
- Description of tools permitted or required for installation.
- Method of identifying properly proportioned and mixed adhesive materials.
- Time and temperature schedule for initial set ('gel time') and full-strength cure.
- Requirements for special installation conditions such as horizontal or near horizontal orientation of the anchor or dowel.

## 1.3 Construction Requirements

### 1.3.1 Storage

Deliver the adhesive bonding material system to the job-site in original unopened containers with the Manufacturer's label identifying the product. Store materials delivered to the job-site in the original unopened containers within an appropriate facility capable of maintaining storage conditions consistent with the Manufacturer's recommendations.

### 1.3.2 Installation

Install the adhesive anchors and dowels perpendicular to the plane surface of the structural member, in accordance with Manufacturer's recommendations, and when the concrete is above 40 degrees Fahrenheit and has reached its 28 day strength. Install the anchorages before the adhesive's initial set ('gel time').

#### 1.3.2.1 Drilling of Holes into Concrete

Ensure that concrete members receiving adhesive-bonded anchors or dowels are structurally sound and free of cracks in the vicinity of the anchor or dowel to be installed. When directed by the RCE, use a jig or fixture to ensure the holes are positioned and aligned correctly during the drilling process.

Use a metal detector specifically designed for locating steel in concrete to avoid conflicts with existing steel reinforcement whenever placement tolerances and edge clearances permit. Unless other equipment is recommended by the Manufacturer, drill holes to the diameter required by the Manufacturer using a rotary hammer drill and bit. Perform core drilling to clear existing steel reinforcement only when approved by the RCE. Dry the drilled holes completely prior to cleaning and installing the anchors or dowels. Clean and prepare drilled holes in accordance with the Manufacturer's recommendations, but as a minimum, use oil-free compressed air to remove loose particles from drilling, brush inside surface to free loose particles trapped in pores, then use compressed air again to remove the remaining loose particles. Use a non-metallic bristle brush and avoid over-brushing to prevent polishing the inside surface of the drilled hole. Check each hole with a depth gauge to ensure proper embedment depth. Repair spalled or otherwise damaged concrete using methods approved by the RCE.

#### 1.3.2.2 Inspection of Holes

Inspect each hole immediately prior to placing the adhesive and the anchors/dowels. Ensure all holes are dry and free of dust, dirt, oil, and grease.

#### 1.3.2.3 Mixing of Adhesive

Mix the adhesive in strict conformance with the Manufacturer's instructions.

#### 1.3.2.4 Embedment of Anchors and Dowels

Remove all debris, oils, and any other deleterious material from the anchors and dowels to avoid contamination of the adhesive bonding material. Insert the anchor or dowel the specified depth into the hole and slightly agitate it to ensure wetting and complete encapsulation. After insertion of the anchor or dowel, strike off any excessive adhesive flush with the concrete face. Should the adhesive fail to fill the hole, add additional adhesive to the hole to allow a flush strike-off. Do not disturb the anchors and dowels while adhesive is hardening. For horizontal and inclined installations, provide temporary supports to maintain the alignment of the anchors or dowels until the adhesive bonding material has cured.

### 1.3.3 Field Testing

When specified on the Plans, field test the installed anchors and dowels. Perform field testing of the installed anchors and dowels in accordance with the applicable sections of ASTM E 488. Inform the RCE and the Manufacturer when the tests will be performed at least 2 days prior to testing. For testing, use a calibrated hydraulic centerhole jack system that will not damage the anchor or dowel. Place the jack on a plate washer that has a hole at least 1/4" larger than the hole drilled into the concrete. Position the plate washer on center to allow an unobstructed pull. Position the anchors/dowels and the jack on the same axis. Have an approved testing agency calibrate the jack within 6 months prior to testing. Supply the RCE with a certificate of calibration.

Divide the anchors and dowels into LOTs for field testing and acceptance. A LOT consists of anchors or dowels of the same type, diameter, strength, embedment length, and adhesive bonding system. Prior to performing field tests, submit proposed testing locations to the RCE for review, comments, and acceptance. In the presence of the RCE, field test the anchors or dowels for each LOT in accordance with the following:

Test a minimum of 1 anchorage but not less than 10% of all anchors in the LOT to the test load shown on the Plans.

If less than 60 anchorages are to be installed: Install and test the minimum required number of anchorages prior to installing the remaining anchorages. After installing the remaining anchorages, test a minimum of 2 of these anchorages at random locations selected by the RCE.



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If more than 60 anchorages are to be installed: Test the first 6 anchorages prior to installing the remaining anchorages. Then test, at random locations selected by the RCE, 10% of the number in excess of 60 anchorages.

For every failed field test, perform two additional field tests on adjacent untested anchors or dowels within the LOT. Continue additional field tests until no more test failures occur, or until all anchors and dowels within the LOT are tested.

Begin testing after the Manufacturer's recommended cure time has been reached. For testing, apply and hold the test load for three minutes. If the jack experiences any drop in gage reading, restart the test. For the anchorage to be deemed satisfactory, hold the test load for three minutes with no movement or drop in gage reading.

Remove all anchors and dowels that fail the field test, without damage to the surrounding concrete. Re-drill holes to remove adhesive bonding material residue and clean the hole in accordance with Subsection 1.3.2.1. For reinstalling replacement anchors or dowels, follow the same procedures as new installations. Do not reuse failed anchors or dowels unless approved by the RCE.

Determine failure of the field test in accordance with ASTM E 488. Submit certified test reports to the RCE. Final acceptance of the adhesively anchored system is based on the conformance of the pull test to the requirements of this Specification. Failure to meet the criteria of this Specification is grounds for rejection.

## 1.4 Measurement

No separate measurement for payment will be made for furnishing, installing, and testing of adhesively bonded anchors and dowels.

## 1.5 Payment

Include all costs of adhesively bonded anchors and dowels in the contract unit price bid for the items to be anchored.



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## LIQUID CURING COMPOUNDS

**Subsection 702.2.2.11 Liquid Curing Compounds**, of the Standard Specifications: Delete the entire subsection and replace it with the following:

Unless otherwise specified, use Type 2, white pigmented, liquid curing compounds conforming to ASTM C309 either Class A all resin or all wax based, or Class B all resin based. Ensure that all products are VOC compliant (water based or solvent-emulsion). Do not use total solvent-based products. Determine water retention of the compound in accordance with AASHTO T155.

Use materials from sources appearing on the most recent edition of the *SCDOT Qualified Product List 33*.

For each project, provide the RCE with the following documents:

- Certificate of analysis and performance test results for each lot/batch number furnished, verifying that it meets ASTM C309 for the type and class furnished,
- Materials Safety Data,
- Application instructions.

The submittals only need to be furnished to the RCE once provided that there are no manufacturing changes to the material.

Ensure that the shipping containers are plainly marked with the manufacturer's name and trademark, batch number, type and class of cure, and date of manufacture. With each load of material shipped in bulk tankers, provide a label and place it on the project storage tank for identification purposes.

The RCE will accept the material based on the product being listed on the QPL, all required documents are properly submitted, and the product being delivered in properly labeled containers.

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ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

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# TRAFFIC SIGNAL SPECIFICATIONS

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# SCDOT TRAFFIC SIGNAL SPECIAL PROVISIONS FOR RESURFACING PROJECTS

1. LIST OF TRAFFIC SIGNALS WITHIN PROJECT- All signals within limits of resurfacing project are included.
2. PROJECT DESCRIPTION
    a. This Project involves installation / repair / replacement of signal detection devices, including but not limited to inductive loops, video detection systems or wireless loops. The intersections involved are within the limits of the resurfacing project.
    b. In accordance with the Traffic Signal Supplemental Technical Specifications, installation of signal detection is vital to the effective operation of the traffic signal and detection shall be maintained during the life of the resurfacing project.
        i. All detection shall be installed in accordance with the Traffic Signal Supplemental Technical Specifications and Standard Drawings.
        ii. Contractor shall coordinate with Engineer to determine what type detection and signal timings are in place, as system timings and operations rely on an operational detection system.
        iii. The Engineer may revise the final detection placement and detection type.
        iv. Side street detection and detection for left turn phases shall be maintained during the life of the project, either through repair/replacement of inductive loops, installation of video detection or other approved detection method. Video detection shall be installed prior to the milling of existing loops.
        v. Contractor shall maintain all detection for an adaptive or traffic responsive signal system, for the life of the project.
        vi. If wireless detection is in place, the contractor shall remove the sensors and replace them when the project is completed. Temporary detection, such as video detection, shall be used until the wireless detection is replaced.and operational. Wireless detection sensors are coded to a specific lane and location. Contractor shall ensure they are replaced back in the lane they were removed from.
        vii. Contractor may propose other detection systems for temporary detection for approval by the Engineer.
3. QUANTITY LISTS – Quantities are provided in contract documents.

3948130



Rept: 4-A-E

# South Carolina
## Department Of Transportation
## Road Summary Report By Contract

2/16/2018 8:10:17 AM

ContractNbr: 20183001 ProposalId: 3948130 Sub Ind: S Exp Ind: E

FileNbr: 39.P037242 County: Pickens

| Miles | Route | From | To |
|---|---|---|---|
| 2.24 | S-0171 | ( 0.00)Peachtree Street (S-39-64) | ( 2.24)Old Greenville Hwy (SC 93) |
| 2.24 | <----------Total Mileage for FileNbr---------- | | 39.P037242 |

FileNbr: 39.P037243 County: Pickens

| Miles | Route | From | To |
|---|---|---|---|
| 1.86 | SC0008 | ( 6.55)Rice Rd (S-90) | ( 8.41)Old Bethlehem School Rd (S-300) |
| 1.86 | <----------Total Mileage for FileNbr---------- | | 39.P037243 |

4.10 <----------Total Mileage for ContractNbr---------- 20183001

I certify this package was compiled under my supervision. However, quantities are estimates only and are subject to change based on field conditions. No certification is given for any existing conditions.

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER
2/20/18
No. 19825
STEPHANIE A. JACKSON-AMELL

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

ELECTRONICALLY FILED - 2025-Jan-27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

Rept: 4-8-E

# South Carolina
## Department Of Transportation
## Item Quantities Summary By Contract

2/16/2018 8:11:40 AM

Contract Nbr: 20183001 ProposalId: 3948130

Submit Indicator: S

Export Indicator: E

| Item# | Item Description | Unit | Pickens 39.P037242 Mi=2.24 Qty | Pickens 39.P037243 Mi=1.86 Qty | Contract Total Mi=4.10 Qty |
|---|---|---|---|---|---|
| 1031000 | MOBILIZATION | LS | 1.000 | 1.000 | 1.000 |
| 1032010 | BONDS AND INSURANCE | LS | 1.000 | 1.000 | 1.000 |
| 1071000 | TRAFFIC CONTROL | LS | 1.000 | 1.000 | 1.000 |
| 2031000 | UNCLASSIFIED EXCAVATION | CY | 438.000 | 0.000 | 438.000 |
| 2033000 | BORROW EXCAVATION | CY | 448.000 | 0.000 | 448.000 |
| 3063312 | CEM. MOD. RECYC. BASE (12" UNI | SY | 31,229.000 | 0.000 | 31,229.000 |
| 3064000 | PORT.CEM.FOR CEM.MOD.REC.BASE | TON | 1,499.000 | 0.000 | 1,499.000 |
| 3069900 | MAINTENANCE STONE | TON | 50.000 | 140.000 | 190.000 |
| 4011004 | LIQUID ASPHALT BINDER PG64-22 | TON | 212.450 | 370.158 | 582.608 |
| 4012080 | FULL DEP.ASPH.PAV.PATCH-8"UNIF | SY | 0.000 | 14,000.000 | 14,000.000 |
| 4013200 | MILL. EXIST. ASPH. PVMT. 2.0" | SY | 0.000 | 60,575.000 | 60,575.000 |
| 4013990 | MILL.EXIST.ASPH.PVMT.-VARIABLE | SY | 0.000 | 750.000 | 750.000 |
| 4019000 | MILLED-IN RUMBLE STRIP | MILE | 2.560 | 0.000 | 2.560 |
| 4030320 | H/M ASPH.SURF.CR. TYPE B | TON | 0.000 | 6,663.728 | 6,663.728 |
| 4030340 | H/M ASPH.SURF.CR. TYPE C | TON | 3,407.826 | 283.000 | 3,690.826 |
| 4037220 | DRIVEWAY PAVING-SURFACE TYPE C | TON | 133.000 | 0.000 | 133.000 |
| 6021120 | PERM.CONST.SIGNS(GRND.MNTD) | SF | 472.000 | 824.000 | 1,296.000 |
| 6250005 | 4"WH.BRKN.LINE-GAP EX-F.D.PNT. | LF | 320.000 | 21,840.000 | 22,160.000 |
| 6250010 | 4"WH.SLD.LINE-PVT.EDGE-F.D.PNT | LF | 47,308.000 | 0.000 | 47,308.000 |
| 6250015 | 8"WH.SLD(CRSSWLK&CHANN)F.D.PNT | LF | 0.000 | 552.000 | 552.000 |
| 6250025 | 24"WH.SLD.LNE-STOP/DIA-F.D.PNT | LF | 326.000 | 330.000 | 656.000 |
| 6250030 | WH.SING.ARRW-LT, STR, RT-F.D.P | EA | 8.000 | 30.000 | 38.000 |
| 6250035 | WH.WORD MESSAGE-"ONLY"-F.D.PNT | EA | 0.000 | 2.000 | 2.000 |
| 6250105 | 4"YEL.BRKN.LNE-GAP EXC-F.D.PNT | LF | 3,120.000 | 0.000 | 3,120.000 |
| 6250110 | 4"YEL.SLD.LNE-PVT EDGE-F.D.PNT | LF | 80,016.000 | 146,880.000 | 226,896.000 |
| 6250112 | 6"YEL.SOL.ON CURB/MED-F.D.PNT. | LF | 0.000 | 370.000 | 370.000 |
| 6271005 | 4" WH.BRKNLINE THERMO -90 MIL. | LF | 80.000 | 5,460.000 | 5,540.000 |
| 6271010 | 4" WH SLD LNE PVT EL TH-90 ML | LF | 23,654.000 | 0.000 | 23,654.000 |
| 6271015 | 8" WH. SLDLNES THERMO.-125 MIL | LF | 0.000 | 276.000 | 276.000 |
| 6271025 | 24" WH SLDLNES THERMO-125 MIL. | LF | 163.000 | 165.000 | 328.000 |
| 6271030 | WHITE SGL ARROWS THERMO-125MIL | EA | 4.000 | 15.000 | 19.000 |
| 6271035 | WH.WORD MESS"ONLY"-THERMO-125M | EA | 0.000 | 1.000 | 1.000 |
| 6271064 | 4" YEL.BRKN.LINES.THERMO.90MIL | LF | 780.000 | 0.000 | 780.000 |
| 6271074 | 4"YEL.SLD.LNES.- THERMO. 90MIL | LF | 20,004.000 | 36,720.000 | 56,724.000 |
| 6300005 | PERM.CLR PAV.MARK MONO. 4"X 4" | EA | 8.000 | 279.000 | 287.000 |
| 6301100 | PERM.YEL.PAV.MARK BI-DIR 4"X4" | EA | 211.000 | 491.000 | 702.000 |

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| | | | | | |
|---|---|---|---|---|---|
| 6750275 | 1.0" SCHEDULE 80 PVC CONDUIT | LF | 0.000 | 420.000 | 420.000 |
| 6770413 | NO. 14 COPPER WIRE, 1-COND. | LF | 0.000 | 7,540.000 | 7,540.000 |
| 6780495 | SAWCUT FOR LOOP DETECTOR | LF | 0.000 | 2,740.000 | 2,740.000 |
| 6800518 | 13X24X18D.ELEC.UNGRD.ENCLOS/HD | EA | 0.000 | 6.000 | 6.000 |
| 6886042 | F&I VIDEO DETECTION CAMERA W/H | EA | 0.000 | 2.000 | 2.000 |
| 7209100 | SUR.APPLIED DETECTABLE WARNING | SF | 0.000 | 10.000 | 10.000 |
| 8100101 | PERM. GRASSING FOR SMALL PROJ. | ACRE | 2.172 | 0.000 | 2.172 |

Rept: 4-8-E

# South Carolina
## Department Of Transportation
## Item Quantities Summary By File

2/16/2018 8:17:16 AM

FileNbr: 39.P037242 | Total Length(Mi): 2.24 | Submit Indicator: S
Cnty: Pickens | ProjectId: P037242 | Export Indicator: E
Contract: 20183001 | ProposalId: 3948130

| Item # | Item Description | Unit | Qty |
|---|---|---|---|
| 1031000 | MOBILIZATION | LS | 1.000 |
| 1032010 | BONDS AND INSURANCE | LS | 1.000 |
| 1071000 | TRAFFIC CONTROL | LS | 1.000 |
| 2031000 | UNCLASSIFIED EXCAVATION | CY | 438.000 |
| 2033000 | BORROW EXCAVATION | CY | 448.000 |
| 3063312 | CEM. MOD. RECYC. BASE (12" UNIF. | SY | 31,229.000 |
| 3064000 | PORT.CEM.FOR CEM.MOD.REC.BASE | TON | 1,499.000 |
| 3069900 | MAINTENANCE STONE | TON | 50.000 |
| 4011004 | LIQUID ASPHALT BINDER PG64-22 | TON | 212.450 |
| 4019000 | MILLED-IN RUMBLE STRIP | MILE | 2.560 |
| 4030340 | H/M ASPH.SURF.CR. TYPE C | TON | 3,407.826 |
| 4037220 | DRIVEWAY PAVING-SURFACE TYPE C | TON | 133.000 |
| 6021120 | PERM.CONST.SIGNS(GRND.MNTD) | SF | 472.000 |
| 6250005 | 4"WH.BRKN.LINE-GAP EX-F.D.PNT. | LF | 320.000 |
| 6250010 | 4"WH.SLD.LINE-PVT.EDGE-F.D.PNT | LF | 47,308.000 |
| 6250025 | 24"WH.SLD.LNE-STOP/DIA-F.D.PNT | LF | 326.000 |
| 6250030 | WH.SING.ARRW-LT, STR, RT-F.D.PNT | EA | 8.000 |
| 6250105 | 4"YEL.BRKN.LNE-GAP EXC-F.D.PNT | LF | 3,120.000 |
| 6250110 | 4"YEL.SLD.LNE-PVT EDGE-F.D.PNT | LF | 80,016.000 |
| 6271005 | 4" WH.BRKNLINE THERMO -90 MIL. | LF | 80.000 |
| 6271010 | 4" WH SLD LNE PVT EL TH-90 ML | LF | 23,654.000 |
| 6271025 | 24" WH SLDLNES THERMO-125 MIL. | LF | 163.000 |
| 6271030 | WHITE SGL ARROWS THERMO-125MIL | EA | 4.000 |
| 6271064 | 4" YEL.BRKN.LINES.THERMO.90MIL | LF | 780.000 |
| 6271074 | 4"YEL.SLD.LNES.- THERMO. 90MIL | LF | 20,004.000 |
| 6300005 | PERM.CLR PAV.MARK MONO. 4"X 4" | EA | 8.000 |
| 6301100 | PERM.YEL.PAV.MARK BI-DIR 4"X4" | EA | 211.000 |
| 8100101 | PERM. GRASSING FOR SMALL PROJ. | ACRE | 2.172 |

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Rept: 4-7-E1

# South Carolina
## Department Of Transportation
## Individual Section Summary

2/16/2018 8:01:31 AM

**Road:** S-171 **Road Name:** Old Norris Road **FileNbr:** 39.P037242
**County:** Pickens **Total Length(Mi):** 2.24 **ProjectId:** P037242
**Submit Indicator:** S **Export Indicator:** E **ContractId:** 20183001
**ProposalId:** 3948130

**SectionKey:** 39S-01710004 **ADT:** 1679

**From Route:** Peachtree Street (S-39-64) **To Route:** Norman Drive (County Road)
**BMP:** 0.00 **EMP:** 0.67 **Miles:** 0.67

**OrigWidth:** 20 **WidenLeft:** 2 **WidenRight:** 2 **Final Width:** 24
**Intersections:** 9 **CommDrwy:** 4 **ResDrwy:** 12 **PQI:** 1.61

| | Surface | Inter | Drvwys | Intermed | Level | Widen |
|---|---|---|---|---|---|---|
| Rate: | --- | --- | --- | --- | --- | --- |
| Type: | 4011004 | 4011004 | 4011004 | --- | 4011004 | --- |
| Qty: | 56.602 | 5.400 | 3.960 | 0.000 | 2.820 | 0.000 |
| Rate: | 200 | 200 | 200 | --- | --- | --- |
| Type: | 4030340 | 4030340 | 4037220 | --- | 4030340 | --- |
| Qty: | 943.360 | 90.000 | 66.000 | 0.000 | 47.000 | 0.000 |

| Item # | Item Description | Quantity | Unit |
|---|---|---|---|
| 1031000 | MOBILIZATION | 1.000 | LS |
| 1032010 | BONDS AND INSURANCE | 1.000 | LS |
| 1071000 | TRAFFIC CONTROL | 1.000 | LS |
| 2031000 | UNCLASSIFIED EXCAVATION | 131.000 | CY |
| 2033000 | BORROW EXCAVATION | 134.000 | CY |
| 3063312 | CEM. MOD. RECYC. BASE (12" UNI | 9,434.000 | SY |
| 3064000 | PORT.CEM.FOR CEM.MOD.REC.BASE | 453.000 | TON |
| 3069900 | MAINTENANCE STONE | 50.000 | TON |
| 4011004 | LIQUID ASPHALT BINDER PG64-22 | 68.782 | TON |
| 4030340 | H/M ASPH.SURF.CR. TYPE C | 1,080.360 | TON |
| 4037220 | DRIVEWAY PAVING-SURFACE TYPE C | 66.000 | TON |
| 6021120 | PERM.CONST.SIGNS(GRND.MNTD) | 272.000 | SF |
| 6250010 | 4"WH.SLD.LINE-PVT.EDGE-F.D.PNT | 14,150.000 | LF |
| 6250025 | 24"WH.SLD.LNE-STOP/DIA-F.D.PNT | 80.000 | LF |
| 6250110 | 4"YEL.SLD.LNE-PVT EDGE-F.D.PNT | 28,300.000 | LF |
| 6271010 | 4" WH SLD LNE PVT EL TH-90 ML | 7,075.000 | LF |
| 6271025 | 24" WH SLDLNES THERMO-125 MIL. | 40.000 | LF |
| 6271074 | 4"YEL.SLD.LNES.- THERMO. 90MIL | 7,075.000 | LF |
| 6301100 | PERM.YEL.PAV.MARK BI-DIR 4"X4" | 59.000 | EA |
| 8100101 | PERM. GRASSING FOR SMALL PROJ. | 0.650 | ACRE |

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER
STEPHANIE A. JACKSON-AMELL
No. 19825
2/20/18

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

Special Provisions:

| Seq | Details |
|---|---|
| 0001 | Pavement Design: 12" CMRB Curing Method B, 200 psy Surface C |
| 0002 | Travel lanes shall be painted to allow for a 2 foot paved shoulder. There may be isolated areas in which 2 foot widening will not be achievable. In these situations the contractor will widen the shoulder as much as possible as directed by the RCE. |
| 0003 | Mailboxes – Maintenance stone and asphalt surface quantities (leveling) have been increased for use in front of mailboxes. The maintenance stone will be used in front of mailboxes as a base material that will be covered with asphalt during the resurfacing of the road, as directed by the RCE. |
| 0004 | Leveling quantities are included and intended to be used for paving in front of mailboxes and isolated areas for improving rideability as agreed upon by the RCE. |

**SectionKey:** 39S-01710005 **ADT:** 1679

**From Route:** Norman Drive (County Road) **To Route:** Champion Aviation (S-39-414)

**BMP:** 0.67 **EMP:** 1.95 **Miles:** 1.28

**OrigWidth:** 18 **WidenLeft:** 2 **WidenRight:** 2 **Final Width:** 22

**Intersections:** 4 **CommDrwy:** 3 **ResDrwy:** 16 **PQI:** 1.61

| | Surface | Inter | Drvwys | Intermed | Level | Widen |
|---|---|---|---|---|---|---|
| Rate: | --- | --- | --- | --- | --- | --- |
| Type: | 4011004 | 4011004 | 4011004 | --- | 4011004 | --- |
| Qty: | 99.123 | 2.400 | 4.020 | 0.000 | 4.920 | 0.000 |
| Rate: | 200 | 200 | 200 | --- | --- | --- |
| Type: | 4030340 | 4030340 | 4037220 | --- | 4030340 | --- |
| Qty: | 1,652.053 | 40.000 | 67.000 | 0.000 | 82.000 | 0.000 |

| Item # | Item Description | Quantity | Unit |
|---|---|---|---|
| 1031000 | MOBILIZATION | 1.000 | LS |
| 1071000 | TRAFFIC CONTROL | 1.000 | LS |
| 2031000 | UNCLASSIFIED EXCAVATION | 250.000 | CY |
| 2033000 | BORROW EXCAVATION | 256.000 | CY |
| 3063312 | CEM. MOD. RECYC. BASE (12" UNI | 16,521.000 | SY |
| 3064000 | PORT.CEM.FOR CEM.MOD.REC.BASE | 793.000 | TON |
| 4011004 | LIQUID ASPHALT BINDER PG64-22 | 110.463 | TON |
| 4019000 | MILLED-IN RUMBLE STRIP | 2.560 | MILE |
| 4030340 | H/M ASPH.SURF.CR. TYPE C | 1,774.053 | TON |
| 4037220 | DRIVEWAY PAVING-SURFACE TYPE C | 67.000 | TON |
| 6021120 | PERM.CONST.SIGNS(GRND.MNTD) | 48.000 | SF |
| 6250010 | 4"WH.SLD.LINE-PVT.EDGE-F.D.PNT | 27,034.000 | LF |
| 6250025 | 24"WH.SLD.LNE-STOP/DIA-F.D.PNT | 150.000 | LF |
| 6250105 | 4"YEL.BRKN.LNE-GAP EXC-F.D.PNT | 3,120.000 | LF |
| 6250110 | 4"YEL.SLD.LNE-PVT EDGE-F.D.PNT | 39,468.000 | LF |
| 6271010 | 4" WH SLD LNE PVT EL TH-90 ML | 13,517.000 | LF |
| 6271025 | 24" WH SLDLNES THERMO-125 MIL. | 75.000 | LF |
| 6271064 | 4" YEL.BRKN.LINES.THERMO.90MIL | 780.000 | LF |
| 6271074 | 4"YEL.SLD.LNES.- THERMO. 90MIL | 9,867.000 | LF |
| 6301100 | PERM.YEL.PAV.MARK BI-DIR 4"X4" | 113.000 | EA |
| 8100101 | PERM. GRASSING FOR SMALL PROJ. | 1.241 | ACRE |

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

**Special Provisions:**

| Seq | Details |
|---|---|
| 0001 | Pavement Design: 12" CMRB Curing Method B, 200 psy Surface C |
| 0002 | See section one for additional provisions. |

**SectionKey:** 39S-01710006 **ADT:** 1679

**From Route:** Champion Aviation (S-39-414) **To Route:** Old Greenville Hwy (SC 93)

**BMP:** 1.95 **EMP:** 2.24 **Miles:** 0.29

**OrigWidth:** 31 **WidenLeft:** 0 **WidenRight:** 0 **Final Width:** 31

**Intersections:** 0 **CommDrwy:** 0 **ResDrwy:** 0 **PQI:** 1.61

| | Surface | Inter | Drvwys | Intermed | Level | Widen |
|---|---|---|---|---|---|---|
| Rate: | --- | --- | --- | --- | --- | --- |
| Type: | 4011004 | --- | --- | --- | 4011004 | --- |
| Qty: | 31.645 | 0.000 | 0.000 | 0.000 | 1.560 | 0.000 |
| Rate: | 200 | --- | --- | --- | --- | --- |
| Type: | 4030340 | --- | --- | --- | 4030340 | --- |
| Qty: | 527.413 | 0.000 | 0.000 | 0.000 | 26.000 | 0.000 |

| Item # | Item Description | Quantity | Unit |
|---|---|---|---|
| 1031000 | MOBILIZATION | 1.000 | LS |
| 1071000 | TRAFFIC CONTROL | 1.000 | LS |
| 2031000 | UNCLASSIFIED EXCAVATION | 57.000 | CY |
| 2033000 | BORROW EXCAVATION | 58.000 | CY |
| 3063312 | CEM. MOD. RECYC. BASE (12" UNI | 5,274.000 | SY |
| 3064000 | PORT.CEM.FOR CEM.MOD.REC.BASE | 253.000 | TON |
| 4011004 | LIQUID ASPHALT BINDER PG64-22 | 33.205 | TON |
| 4030340 | H/M ASPH.SURF.CR. TYPE C | 553.413 | TON |
| 6021120 | PERM.CONST.SIGNS(GRND.MNTD) | 152.000 | SF |
| 6250005 | 4"WH.BRKN.LINE-GAP EX-F.D.PNT. | 320.000 | LF |
| 6250010 | 4"WH.SLD.LINE-PVT.EDGE-F.D.PNT | 6,124.000 | LF |
| 6250025 | 24"WH.SLD.LNE-STOP/DIA-F.D.PNT | 96.000 | LF |
| 6250030 | WH.SING.ARRW-LT, STR, RT-F.D.P | 8.000 | EA |
| 6250110 | 4"YEL.SLD.LNE-PVT EDGE-F.D.PNT | 12,248.000 | LF |
| 6271005 | 4" WH.BRKNLINE THERMO -90 MIL. | 80.000 | LF |
| 6271010 | 4" WH SLD LNE PVT EL TH-90 ML | 3,062.000 | LF |
| 6271025 | 24" WH SLDLNES THERMO-125 MIL. | 48.000 | LF |
| 6271030 | WHITE SGL ARROWS THERMO-125MIL | 4.000 | EA |
| 6271074 | 4"YEL.SLD.LNES.- THERMO. 90MIL | 3,062.000 | LF |
| 6300005 | PERM.CLR PAV.MARK MONO. 4"X 4" | 8.000 | EA |
| 6301100 | PERM.YEL.PAV.MARK BI-DIR 4"X4" | 39.000 | EA |
| 8100101 | PERM. GRASSING FOR SMALL PROJ. | 0.281 | ACRE |

**Special Provisions:**

| Seq | Details |
|---|---|
| 0001 | Pavement Design: 12" CMRB Curing Method B, 200 psy Surface C |
| 0002 | Re-establishing the valley gutter grade shall be included in the cost of CMRB. |
| 0003 | See section one for additional provisions. |

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER STEPHANIE A. JACKSON-AMELL No. 19825 2/20/18

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

County: PICKENS
Project ID: P037242
Route: S- 171 N
Road Name: OLD NORRIS RD
Length: 2.24 Miles
Congressional District: 3

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER
STEPHANIE A. JACKSON-AMELL
No. 19825
2/2018

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

Rept: 4-8-E

# South Carolina
## Department Of Transportation
## Item Quantities Summary By File

2/16/2018 8:18:16 AM

FileNbr: 39.P037243 | Total Length(Mi): 1.86 | Submit Indicator: S
Cnty: Pickens | ProjectId: P037243 | Export Indicator: E
Contract: 20183001 | ProposalId: 3948130

| Item # | Item Description | Unit | Qty |
|---|---|---|---|
| 1031000 | MOBILIZATION | LS | 1.000 |
| 1032010 | BONDS AND INSURANCE | LS | 1.000 |
| 1071000 | TRAFFIC CONTROL | LS | 1.000 |
| 3069900 | MAINTENANCE STONE | TON | 140.000 |
| 4011004 | LIQUID ASPHALT BINDER PG64-22 | TON | 370.158 |
| 4012080 | FULL DEP.ASPH.PAV.PATCH-8"UNIF | SY | 14,000.000 |
| 4013200 | MILL. EXIST. ASPH. PVMT. 2.0" | SY | 60,575.000 |
| 4013990 | MILL.EXIST.ASPH.PVMT.-VARIABLE | SY | 750.000 |
| 4030320 | H/M ASPH.SURF.CR. TYPE B | TON | 6,663.728 |
| 4030340 | H/M ASPH.SURF.CR. TYPE C | TON | 283.000 |
| 6021120 | PERM.CONST.SIGNS(GRND.MNTD) | SF | 824.000 |
| 6250005 | 4"WH.BRKN.LINE-GAP EX-F.D.PNT. | LF | 21,840.000 |
| 6250015 | 8"WH.SLD(CRSSWLK&CHANN)F.D.PNT | LF | 552.000 |
| 6250025 | 24"WH.SLD.LNE-STOP/DIA-F.D.PNT | LF | 330.000 |
| 6250030 | WH.SING.ARRW-LT, STR, RT-F.D.PNT | EA | 30.000 |
| 6250035 | WH.WORD MESSAGE-"ONLY"-F.D.PNT | EA | 2.000 |
| 6250110 | 4"YEL.SLD.LNE-PVT EDGE-F.D.PNT | LF | 146,880.000 |
| 6250112 | 6"YEL.SOL.ON CURB/MED-F.D.PNT. | LF | 370.000 |
| 6271005 | 4" WH.BRKNLINE THERMO -90 MIL. | LF | 5,460.000 |
| 6271015 | 8" WH. SLDLNES THERMO.-125 MIL | LF | 276.000 |
| 6271025 | 24" WH SLDLNES THERMO-125 MIL. | LF | 165.000 |
| 6271030 | WHITE SGL ARROWS THERMO-125MIL | EA | 15.000 |
| 6271035 | WH.WORD MESS"ONLY"-THERMO-125M | EA | 1.000 |
| 6271074 | 4"YEL.SLD.LNES.- THERMO. 90MIL | LF | 36,720.000 |
| 6300005 | PERM.CLR PAV.MARK MONO. 4"X 4" | EA | 279.000 |
| 6301100 | PERM.YEL.PAV.MARK BI-DIR 4"X4" | EA | 491.000 |
| 6750275 | 1.0" SCHEDULE 80 PVC CONDUIT | LF | 420.000 |
| 6770413 | NO. 14 COPPER WIRE, 1-COND. | LF | 7,540.000 |
| 6780495 | SAWCUT FOR LOOP DETECTOR | LF | 2,740.000 |
| 6800518 | 13X24X18D.ELEC.UNGRD.ENCLOS/HD | EA | 6.000 |
| 6886042 | F&I VIDEO DETECTION CAMERA W/HW& | EA | 2.000 |
| 7209100 | SUR.APPLIED DETECTABLE WARNING | SF | 10.000 |

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

Rept: 4-7-E1

# South Carolina
## Department Of Transportation
## Individual Section Summary

2/16/2018 8:14:49 AM

| | | | | | |
|---|---|---|---|---|---|
| **Road:** | SC8 | **Road Name:** | Gentry Memorial Hwy | **FileNbr:** | 39.P037243 |
| **County:** | Pickens | **Total Length(Mi):** | 1.86 | **ProjectId:** | P037243 |
| **Submit Indicator:** | S | **Export Indicator:** | E | **ContractId:** | 20183001 |
| | | | | **ProposalId:** | 3948130 |

| | | | | | |
|---|---|---|---|---|---|
| **SectionKey:** | 39SC00080004 | | | **ADT:** | 14200 |
| **From Route:** | Rice Rd (S-90) | | | **To Route:** | Old Bethlehem School Rd (S-300) |
| **BMP:** | 6.55 | **EMP:** | 8.41 | **Miles:** | 1.86 |
| **OrigWidth:** | 54 | **WidenLeft:** | 0 | **WidenRight:** | 0 |
| **Intersections:** | 12 | **CommDrwy:** | 0 | **ResDrwy:** | 0 |

**Final Width:** 54 **PQI:** 1.57

| | Surface | Inter | Drvwys | Intermed | Level | Widen |
|---|---|---|---|---|---|---|
| Rate: | --- | --- | --- | --- | --- | --- |
| Type: | 4011004 | 4011004 | --- | --- | 4011004 | --- |
| Qty: | 343.532 | 7.920 | 0.000 | 0.000 | 18.706 | 0.000 |
| Rate: | 220 | 220 | --- | --- | --- | --- |
| Type: | 4030320 | 4030340 | --- | --- | 4030320 | --- |
| Qty: | 6,481.728 | 132.000 | 0.000 | 0.000 | 182.000 | 0.000 |
| Rate: | --- | --- | --- | --- | --- | --- |
| Type: | --- | --- | --- | --- | 4030340 | --- |
| Qty: | 0.000 | 0.000 | 0.000 | 0.000 | 151.000 | 0.000 |

| Item # | Item Description | Quantity | Unit |
|---|---|---|---|
| 1031000 | MOBILIZATION | 1.000 | LS |
| 1032010 | BONDS AND INSURANCE | 1.000 | LS |
| 1071000 | TRAFFIC CONTROL | 1.000 | LS |
| 3069900 | MAINTENANCE STONE | 140.000 | TON |
| 4011004 | LIQUID ASPHALT BINDER PG64-22 | 370.158 | TON |
| 4012080 | FULL DEP.ASPH.PAV.PATCH-8"UNIF | 14,000.000 | SY |
| 4013200 | MILL. EXIST. ASPH. PVMT. 2.0" | 60,575.000 | SY |
| 4013990 | MILL.EXIST.ASPH.PVMT.-VARIABLE | 750.000 | SY |
| 4030320 | H/M ASPH.SURF.CR. TYPE B | 6,663.728 | TON |
| 4030340 | H/M ASPH.SURF.CR. TYPE C | 283.000 | TON |
| 6021120 | PERM.CONST.SIGNS(GRND.MNTD) | 824.000 | SF |
| 6250005 | 4"WH.BRKN.LINE-GAP EX-F.D.PNT. | 21,840.000 | LF |
| 6250015 | 8"WH.SLD(CRSSWLK&CHANN)F.D.PNT | 552.000 | LF |
| 6250025 | 24"WH.SLD.LNE-STOP/DIA-F.D.PNT | 330.000 | LF |
| 6250030 | WH.SING.ARRW-LT, STR, RT-F.D.P | 30.000 | EA |
| 6250035 | WH.WORD MESSAGE-"ONLY"-F.D.PNT | 2.000 | EA |
| 6250110 | 4"YEL.SLD.LNE-PVT EDGE-F.D.PNT | 146,880.000 | LF |
| 6250112 | 6"YEL.SOL.ON CURB/MED-F.D.PNT. | 370.000 | LF |
| 6271005 | 4" WH.BRKNLINE THERMO -90 MIL. | 5,460.000 | LF |
| 6271015 | 8" WH. SLDLNES THERMO.-125 MIL | 276.000 | LF |

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

| | | | |
|---|---|---|---|
| 6271025 | 24" WH SLDLNES THERMO-125 MIL. | 165.000 | LF |
| 6271030 | WHITE SGL ARROWS THERMO-125MIL | 15.000 | EA |
| 6271035 | WH.WORD MESS"ONLY"-THERMO-125M | 1.000 | EA |
| 6271074 | 4"YEL.SLD.LNES.- THERMO. 90MIL | 36,720.000 | LF |
| 6300005 | PERM.CLR PAV.MARK MONO. 4"X 4" | 279.000 | EA |
| 6301100 | PERM.YEL.PAV.MARK BI-DIR 4"X4" | 491.000 | EA |
| 6750275 | 1.0" SCHEDULE 80 PVC CONDUIT | 420.000 | LF |
| 6770413 | NO. 14 COPPER WIRE, 1-COND. | 7,540.000 | LF |
| 6780495 | SAWCUT FOR LOOP DETECTOR | 2,740.000 | LF |
| 6800518 | 13X24X18D.ELEC.UNGRD.ENCLOS/HD | 6.000 | EA |
| 6886042 | F&I VIDEO DETECTION CAMERA W/H | 2.000 | EA |
| 7209100 | SUR.APPLIED DETECTABLE WARNING | 10.000 | SF |

**Special Provisions:**

| Seq | Details |
|---|---|
| 0001 | Pavement Design: 8" FDP, 2" Mill, 220 PSY Surface B |
| 0002 | Asphalt quantities are included in the leveling for turn lanes. |
| 0003 | Variable milling is included for the bridge tie. |
| 0004 | Milled surfaces shall not be left unpaved for more than 10 consecutive calendar days. |

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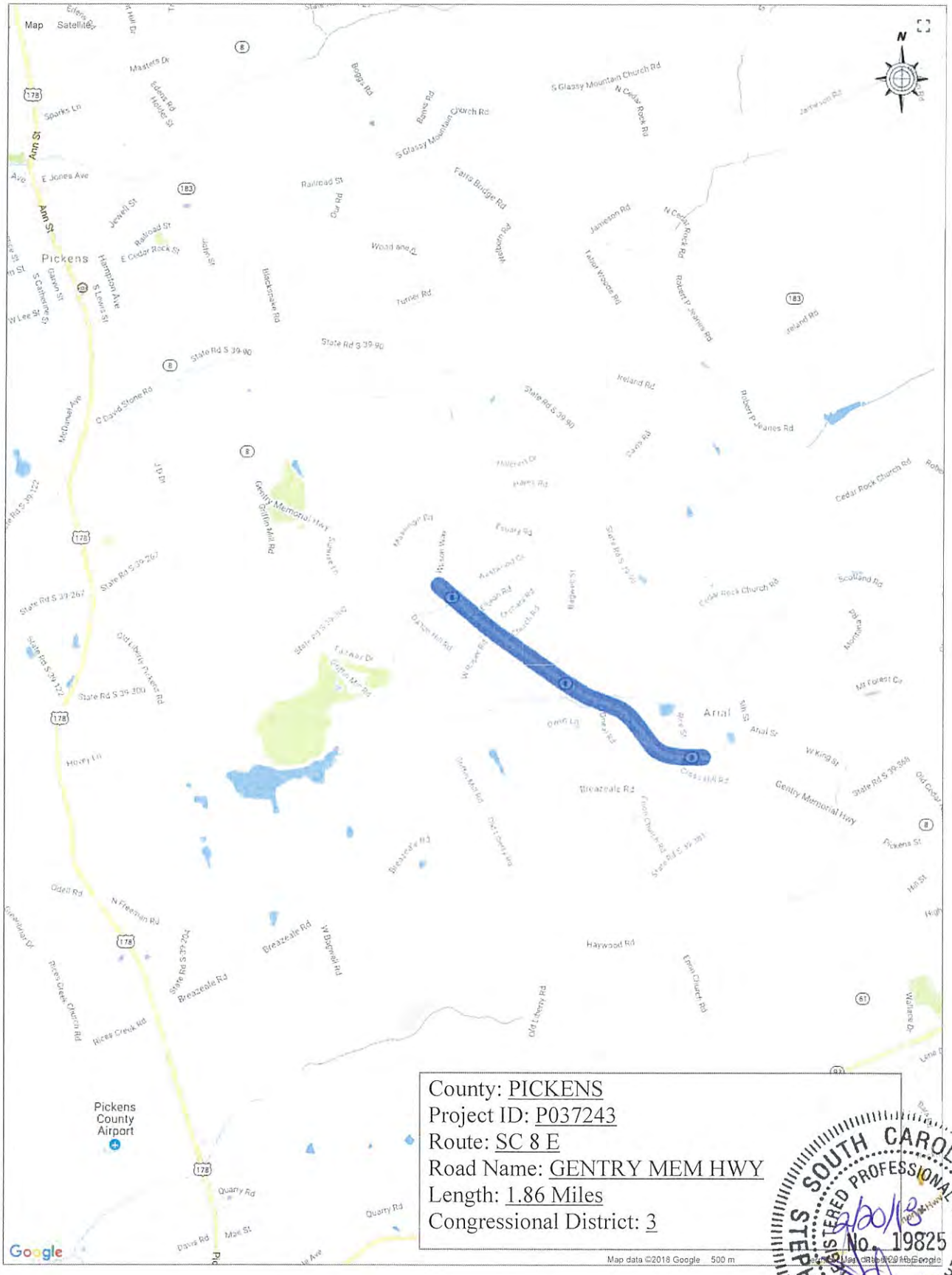


County: PICKENS
Project ID: P037243
Route: SC 8 E
Road Name: GENTRY MEM HWY
Length: 1.86 Miles
Congressional District: 3

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER
STEPHANIE A. JACKSON-AMELL
No. 19825
12/20/18

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329



Contract ID: 3948130 Project(s): P037242, P037243

Apparent Low Bidder: 1KI001 KING ASPHALT, INC.

SECTION 1 PayItems For ProjectId: P037242 $2,290,905.14

Alt Set ID: Alt Mbr ID:

| Proposal Line Number | Item ID / Description | Approximate Quantity and Units | Unit Price Dollars | Unit Price Cents | Bid Amount Dollars | Bid Amount Cents |
|---|---|---|---|---|---|---|
| 0010 | 1031000<br>MOBILIZATION | LUMP SUM | | | 50,000.00 | |
| 0020 | 1032010<br>BONDS AND INSURANCE | LUMP SUM | | | 22,000.00 | |
| 0030 | 1071000<br>TRAFFIC CONTROL | LUMP SUM | | | 130,000.00 | |
| 0040 | 2031000<br>UNCLASSIFIED EXCAVATION | 438.000<br>CY | 25 | | 10,950.00 | |
| 0050 | 2033000<br>BORROW EXCAVATION | 448.000<br>CY | 34 | | 15,232.00 | |
| 0060 | 3063312<br>CEMENT MODIFIED RECYCLED BASE (12" UNIFORM) | 31,229.000<br>SY | 6.25 | | 195,181.25 | |
| 0070 | 3064000<br>PORTLAND CEMENT FOR CEMENT MODIFIED RECYCLED BASE COURSE | 1,499.000<br>TON | 165 | | 247,335.00 | |
| 0080 | 3069900<br>MAINTENANCE STONE | 190.000<br>TON | 50 | | 9,500.00 | |
| 0090 | 4011004<br>LIQUID ASPHALT BINDER PG64-22 | 582.608<br>TON | 575 | | 334,999.60 | |
| 0100 | 4012080<br>FULL DEPTH ASPH. PAV. PATCHING 8" UNIF | 14,000.000<br>SY | 38 | | 532,000.00 | |
| 0110 | 4013200<br>MILLING EXISTING ASPHALT PAVEMENT 2.0" | 60,575.000<br>SY | 1.50 | | 90,862.50 | |
| 0120 | 4013990<br>MILLING EXISTING ASPHALT PAVEMENT (VARIABLE) | 750.000<br>SY | 3.75 | | 2,812.50 | |

Contract ID: 3948130 Project(s): P037242, P037243

Apparent Low Bidder: 1KI001 KING ASPHALT, INC.

SECTION 1 PayItems For ProjectId: P037242 $2,290,905.14

Alt Set ID: Alt Mbr ID:

| Proposal Line Number | Item ID<br>Description | Approximate Quantity and Units | Unit Price<br>Dollars | <br>Cents | Bid Amount<br>Dollars | <br>Cents |
|---|---|---|---|---|---|---|
| 0130 | 4019000<br>MILLED-IN RUMBLE STRIP | 2.560<br>MI | 2600 | | | 6,656.00 |
| 0140 | 4030320<br>HOT MIX ASPHALT SURFACE COURSE TYPE B | 6,663.728<br>TON | 46 | | | 306,531.49 |
| 0150 | 4030340<br>HOT MIX ASPHALT SURFACE COURSE TYPE C | 3,690.826<br>TON | 48 | | | 177,159.65 |
| 0160 | 4037220<br>DRIVEWAY PAVING-SURFACE TYPE C | 133.000<br>TON | 100 | | | 13,300.00 |
| 0170 | 6021120<br>PERMANENT CONSTRUCTION SIGNS (GROUND MOUNTED) | 1,296.000<br>SF | 5.50 | | | 7,128.00 |
| 0180 | 6250005<br>4" WHITE BROKEN LINES -(GAPS EXCLUDED)-FAST DRY PAINT | 22,160.000<br>LF | 0.11 | | | 2,437.60 |
| 0190 | 6250010<br>4" WHITE SOLID LINES (PVT. EDGE LINES)-FAST DRY PAINT | 47,308.000<br>LF | 0.11 | | | 5,203.88 |
| 0200 | 6250015<br>8"WHITE SOLID LINES (CROSSWALK& CHANNELIZATION)FAST DRY PAINT | 552.000<br>LF | 2.20 | | | 1,214.40 |
| 0210 | 6250025<br>24" WHITE SOLID LINES (STOP/DIAGONAL LINES)-FAST DRY PAINT | 656.000<br>LF | 1.65 | | | 1,082.40 |
| 0220 | 6250030<br>WHITE SINGLE ARROW (LEFT, STRAIGHT, RIGHT)-FAST DRY PAINT | 38.000<br>EA | 38 | | | 1,444.00 |

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

Contract ID: 3948130 Project(s): P037242, P037243

Apparent Low Bidder: 1KI001 KING ASPHALT, INC.

SECTION 1 PayItems For ProjectId: P037242 $2,290,905.14

Alt Set ID: Alt Mbr ID:

| Proposal Line Number | Item ID / Description | Approximate Quantity and Units | Unit Price Dollars | Unit Price Cents | Bid Amount Dollars | Bid Amount Cents |
|---|---|---|---|---|---|---|
| 0230 | 6250035<br>WHITE WORD MESSAGE "ONLY"-FAST DRY PAINT | 2.000<br>EA | 49 | | | 98.00 |
| 0240 | 6250105<br>4" YELLOW BROKEN LINES(GAPS EXC) - FAST DRY PAINT | 3,120.000<br>LF | 0.11 | | | 343.20 |
| 0250 | 6250110<br>4"YELLOW SOLID LINE(PVT.EDGE&NO PASSING ZONE)-FAST DRY PAINT | 226,896.000<br>LF | 0.11 | | | 24,958.56 |
| 0260 | 6250112<br>6" YELLOW SOLID LINE ON CURB/MEDIAN - FAST DRY PAINT | 370.000<br>LF | 0.30 | | | 111.00 |
| 0270 | 6271005<br>4" WHITE BROKEN LINES(GAPS EXCL.)THERMOPLASTIC- 90 MIL. | 5,540.000<br>LF | 0.77 | | | 4,265.80 |
| 0280 | 6271010<br>4" WHITE SOLID LINES (PVT. EDGE LINES) THERMO.- 90 MIL. | 23,654.000<br>LF | 0.44 | | | 10,407.76 |
| 0290 | 6271015<br>8" WHITE SOLID LINES THERMOPLASTIC - 125 MIL. | 276.000<br>LF | 4.05 | | | 1,117.80 |
| 0300 | 6271025<br>24" WHITE SOLID LINES (STOP/DIAG LINES)-THERMO.-125 MIL | 328.000<br>LF | 12.25 | | | 4,018.00 |
| 0310 | 6271030<br>WHITE SINGLE ARROWS (LT, STRGHT, RT) THERMO.-125 MIL. | 19.000<br>EA | 75 | | | 1,425.00 |
| 0320 | 6271035<br>WHITE WORD MESSAGE "ONLY" -THERMOPLASTIC - 125 MIL. | 1.000<br>EA | 220 | | | 220.00 |

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

Contract ID: 3948130 Project(s): P037242, P037243

Apparent Low Bidder: 1KI001 KING ASPHALT, INC.

SECTION 1 PayItems For ProjectId: P037242 $2,290,905.14

Alt Set ID: Alt Mbr ID:

| Proposal Line Number | Item ID<br>Description | Approximate Quantity and Units | Unit Price | | Bid Amount | |
|---|---|---|---|---|---|---|
| | | | Dollars | Cents | Dollars | Cents |
| 0330 | 6271064<br>4" YELLOW BROKEN LINES(GAPS EXC)THERMOPLASTIC - 90 MIL. | 780.000<br>LF | 0.77 | | | 600.60 |
| 0340 | 6271074<br>4" YELLOW SOLID LINES(PVT.EDGE LINES) THERMO-90 MIL. | 56,724.000<br>LF | 0.45 | | | 25,525.80 |
| 0350 | 6300005<br>PERMANENT CLEAR PAVEMENT MARKERS- MONO-DIR.- 4"X4" | 287.000<br>EA | 6.75 | | | 1,937.25 |
| 0360 | 6301100<br>PERMANENT YELLOW PAVEMENT MARKERS BI-DIR.- 4"X4" | 702.000<br>EA | 6.75 | | | 4,738.50 |
| 0370 | 6750275<br>FURNISH & INSTALL 1.0" SCHEDULE 80 PVC CONDUIT | 420.000<br>LF | 7 | | | 2,940.00 |
| 0380 | 6770413<br>FURNISH & INSTL NO. 14 COPPER WIRE,1-CONDUCTOR FOR LOOP WIRE | 7,540.000<br>LF | 0.35 | | | 2,639.00 |
| 0390 | 6780495<br>SAWCUT FOR LOOP DETECTOR | 2,740.000<br>LF | 6.25 | | | 17,125.00 |
| 0400 | 6800518<br>F&I-13"X24"X18"D.ELEC.FLUSH UNDGRD.ENCLOS-(STR.POLY.CONC. )HD | 6.000<br>EA | 400 | | | 2,400.00 |
| 0410 | 6886042<br>FURNISH & INSTALL VIDEO DETECTION CAMERA W/ HARDWARE & LEAD-IN | 2.000<br>EA | 7000 | | | 14,000.00 |
| 0420 | 7209100<br>SURFACE APPLIED DETECTABLE WARNING | 10.000<br>SF | 75 | | | 750.00 |

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

Contract ID: 3948130 Project(s): P037242, P037243

Apparent Low Bidder: 1KI001 KING ASPHALT, INC.

SECTION 1 PayItems For ProjectId: P037242 $2,290,905.14

Alt Set ID: Alt Mbr ID:

| Proposal Line Number | Item ID / Description | Approximate Quantity and Units | Unit Price Dollars | Unit Price Cents | Bid Amount Dollars | Bid Amount Cents |
|---|---|---|---|---|---|---|
| 0430 | 8100101 | 2.172 | | | | |
| | PERMANENT GRASSING FOR SMALL PROJECTS | ACRE | 3800 | | 8,253.60 | |
| | | | Total Bid: | | $2,290,905.14 | |

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ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

SCDOT
South Carolina
Department of Transportation

July 3, 2018

KING ASPHALT, INC.
PO BOX 179
LIBERTY, SC 29657

**NOTIFICATION OF AWARD**

S.C. File No.: 3948130
Contract No.: 17352
Proj. No.: P037242 & P037243
Work Type: ASPHALT

Dear Contractor:

This letter serves as the official notification of award for the above referenced project based upon the bid submitted by your company in the amount of **$2,290,905.14** in the **June 12, 2018** Highway Letting.

Contracts and bond forms will be forwarded under separate cover. Subcontractor Request forms can be found on the SCDOT Extranet website under the Miscellaneous Construction tab. If required, please submit Sub1, Sub2 and Subreq3 to the appropriate Road or Bridge Construction Engineer.

Please contact the District Construction Engineer of **District # 3** at **PHONE # 864-241-1010** in order to schedule the preconstruction conference as set forth in Section 108.2 of the 2007 Standard Specifications for Highway Construction.

Yours very truly,

[redacted]

Claude R. Ipock, P.E.
Director of Construction

CRI/JBP/mad
File:CCA/JBP

Post Office Box 191
955 Park Street
Columbia, SC 29202-0191

www.scdot.org
An Equal Opportunity
Affirmative Action Employer
855-GO-SCDOT (855-467-2368)

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

Form No. 671
Rev. 12/05/13

# CONTRACT
# STATE OF SOUTH CAROLINA

County of Pickens

This Contract made this _____ day of JUL 23 2018, 20____, by and between the South Carolina Department of Transportation, by its Director of Construction, hereinafter called the party of the First Part, and _____
KING ASPHALT, INC., LIBERTY, SC
Contractor, hereinafter called the Party of the Second Part.

WHEREAS, The proposal for the _____
**(SEE COVER SHEET)**
in the above named county has been accepted by the Party of the First Part.

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

The work to be done under this Contract is as follows: _____
**(SEE COVER SHEET)**
in accordance with the approved Plans and Specifications for
S.C. File No. 3948130, Proj. No(s). P037242 & P037243.

The work to be done under this Contract is to be begun on or before 7/31/2019 and is to be pushed with proper dispatch, to the satisfaction of the Director of Construction, toward completion and is to be fully completed within _____
See Special Provisions

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

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

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

IN WITNESS WHEREOF, the parties hereto have set their hands, the party of the First Part on the date first above named and the Party of the Second Part this_____ _____ day of JUL 23 2018, 20_____.

SOUTH CAROLINA DEPARTMENT
OF TRANSPORTATION
(Party of the First Part)

Witness:

[redacted]

By [redacted]

Director of Construction

Recommended [redacted]

KING ASPHALT, INC.
Contractor
(Party of the Second Part)

Witness:

[redacted]

By [redacted]

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

| South Carolina Department of Transportation Rev. 03-01-2016<br>Form No. 672A **PERFORMANCE AND INDEMNITY BOND** | Date Bond Executed:<br>07/09/18 |
|---|---|
| Principal:<br>KING ASPHALT, INC., LIBERTY, SC | Bond Number:<br>MAIFSU0719768 |
| Surety:<br>International Fidelity Insurance Company | |
| Penal Sum of Bond. $2,290,905.14 | Date of Contract:<br>JUL 23 2018 |
| Project S.C. File No.: 3948130, Proj. No(s). P037242 & P037243 | Contract Number:<br>17352 |

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

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

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

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

| | |
|---|---|
| A[redacted]<br>In Presence of:<br>1. [redacted]<br>2. | FOR CORPORATE PRINCIPAL<br>KING ASPHALT, INC.<br>Corporation Name<br>[redacted] LIBERTY, SC<br>Business Address<br>B[redacted]<br>Title: [redacted]<br>Affix Corporate Seal |
| In Presence of:<br>Witness (2 required)<br>1 [redacted]<br>2 | SURETY/INSURER<br>Internati[redacted]<br>One Nev[redacted]<br>By: [redacted]<br>Title: Atto[redacted]<br>Affix Corporate Seal |

ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

| South Carolina Department of Transportation Rev. 03-01-2016<br>Form No. 673 **PAYMENT BOND** | Date Bond Executed:<br>07/09/18 |
|---|---|
| Principal:<br>KING ASPHALT, INC., LIBERTY, SC | Bond Number:<br>MAIFSU0719768 |
| Surety International Fidelity Insurance Company | |
| Penal Sum of Bond. $2,290,905.14 | Date of Contract:<br>JUL 23 2018 |
| Project S.C. File No.: 3948130, Proj. No(s). P037242 & P037243 | Contract Number:<br>17352 |

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

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

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

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

| | |
|---|---|
| At [redacted]<br>In Presence of:<br>[redacted] | FOR CORPORATE PRINCIPAL<br>KING ASPHALT, INC.<br>Corporation Name<br>[redacted]<br>LIBERTY, SC<br>Business Address<br>By: [redacted]<br>Title: [redacted]<br>Affix Corporate Seal |
| In Presence of:<br>1. [redacted]<br>2. | SURETY/INSURER<br>International Fidelity Insurance Company<br>One Nev [redacted]<br>By:<br>Title: At<br>Affix Corporate Seal |

Tel (973) 624-7200

# POWER OF ATTORNEY

## INTERNATIONAL FIDELITY INSURANCE COMPANY
## ALLEGHENY CASUALTY COMPANY

ONE NEWARK CENTER, 20TH FLOOR NEWARK, NEW JERSEY 07102-5207

**KNOW ALL MEN BY THESE PRESENTS:** That **INTERNATIONAL FIDELITY INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of New Jersey, and **ALLEGHENY CASUALTY COMPANY** a corporation organized and existing under the laws of the State of New Jersey, having their principal office in the City of Newark, New Jersey, do hereby constitute and appoint

[redacted]

Greenville, SC.

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 20th day of July, 2010 and by the Board of Directors of ALLEGHENY CASUALTY COMPANY at a meeting duly held on the 10th day of July, 2015:

"RESOLVED, that (1) the Chief Executive Officer, President, Executive Vice President, Vice President or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto; such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY have each executed and attested these presents on this 31st day of December, 2016.

INTERNATIONAL FIDELITY INSURANCE COMPANY CORPORATE SEAL 1904 NEW JERSEY

STATE OF NEW JERSEY
County of Essex

[redacted]

Executive Vice President (International Fidelity Insurance Company) and Vice President (Allegheny Casualty Company)

ALLEGHENY CASUALTY COMPANY 1936 NEW JERSEY

On this 31st day of December 2016, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.

[redacted] NOTARY PUBLIC STATE OF NEW JERSEY MY COMMISSION EXPIRES 04-16-2019

[redacted]

A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 16, 2019

### CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 9 day of July 2018

[redacted]

Assistant Secretary

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Client#: 1078090 67KINGASP

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/09/2018

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

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

PRODUCER
McGriff Insurance Services
417 East First Avenue
PO Box 1327
Easley, SC 29641

CONTACT NAME: [redacted]
PHONE (A/C, No, E [redacted] FAX (A/C, No): 8887513016
E-MAIL ADDRESS: [redacted]

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A : Pennsylvania National Mutual Cas Ins Co | 14990 |
| INSURER B : Great American Insurance Company | 16691 |
| INSURER C : Bridgefield Casualty Insurance Company | 10335 |
| INSURER D : Penn National Security Insurance Co | 32441 |
| INSURER E : | |
| INSURER F : | |

INSURED
King Asphalt Inc.
P.O. Box 179
Liberty, SC 29657

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | X COMMERCIAL GENERAL LIABILITY | X | X | [redacted] | 07/01/2018 | 07/01/2019 | EACH OCCURRENCE | $1,000,000 |
| | CLAIMS-MADE X OCCUR | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $100,000 |
| | X PD Ded:3,000 | | | | | | MED EXP (Any one person) | $5,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | PERSONAL & ADV INJURY | $1,000,000 |
| | POLICY X PRO-JECT LOC | | | | | | GENERAL AGGREGATE | $2,000,000 |
| | OTHER: | | | | | | PRODUCTS - COMP/OP AGG | $2,000,000 |
| | | | | | | | | $ |
| D | AUTOMOBILE LIABILITY | X | X | | 07/01/2018 | 07/01/2019 | COMBINED SINGLE LIMIT (Ea accident) | $1,000,000 |
| | X ANY AUTO | | | | | | BODILY INJURY (Per person) | $ |
| | OWNED AUTOS ONLY / SCHEDULED AUTOS | | | | | | BODILY INJURY (Per accident) | $ |
| | X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | X Drive Oth Car | | | | | | | $ |
| A | X UMBRELLA LIAB X OCCUR | X | X | | 07/01/2018 | 07/01/2019 | EACH OCCURRENCE | $1,000,000 |
| | EXCESS LIAB CLAIMS-MADE | | | | | | AGGREGATE | $1,000,000 |
| | DED X RETENTION $0 | | | | | | | $ |
| C | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N | | X | | 07/01/2018 | 07/01/2019 | X PER STATUTE OTH-ER | |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N / N/A | | | | | | E.L. EACH ACCIDENT | $1,000,000 |
| | (Mandatory in NH) | | | | | | E.L. DISEASE - EA EMPLOYEE | $1,000,000 |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE - POLICY LIMIT | $1,000,000 |
| B | EXCESS LIABILITY | X | X | | 07/01/2018 | 07/01/2019 | 5,000,000 | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
It is agreed that SCDOT and/or Owners ATIMA are named as additional insured's under Auto Liability and General Liability, including completed operations, as evidenced under endorsement CG2010 and CG2037 or their equivalent, per written contract. General liability policy is primary and non contributory as respect to work performed on this project. A waiver of subrogation applies in favor of SCDOT and/or Owner ATIMA as respect general liability, auto liability, umbrella and workers compensation policies per written contract.
(See Attached Descriptions)

CERTIFICATE HOLDER

South Carolina Department of Transportation
ATTN: Director of Construction
PO Box 191
Columbia, SC 29203

CANCELLATION

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

AUTHORIZED REPRESENTATIVE [redacted]

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## DESCRIPTIONS (Continued from Page 1)

**A 30 day notice of cancellation and a 10 day notice for non payment of premiums endorsement is provided on general liability, auto and umbrella policy.**

**SCDOT 3948130 Pickens County**

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South Carolina
Department of Transportation

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October 31, 2018

King Asphalt, Inc.
2127 Greenville Highway
Liberty, South Carolina 29657

Re: File No. 3948130

Dear Contractor:

In accordance with your understanding with District Engineering Administrator Jackson-Amell, the above subject project is extended to include repair work on SC 8 from MP 6.11 to MP 6.55 for approximately 0.44 mile in Pickens County.

The approximate quantities involved in this additional work are as follows:

SC 8

| | | | | | | |
|---|---|---|---|---|---|---|
| Mobilization | LS | 1 | $ | 7,750.00 | $ | 7,750.00 |
| Bonds and Insurance | LS | 1 | $ | 3,750.00 | $ | 3,750.00 |
| Traffic Control | LS | 1 | $ | 20,000.00 | $ | 20,000.00 |
| Liquid Asphalt Binder PG 64-22 | TON | 96 | $ | 575.00 | $ | 55,200.00 |
| Full Depth Asphalt Patch – 8" Uniform | SY | 2,300 | $ | 38.00 | $ | 87,400.00 |
| Mill Existing Asphalt Pavement 2.0" | SY | 15,000 | $ | 1.50 | $ | 22,500.00 |
| H/M Asphalt Surface Type B | TON | 1,600 | $ | 46.00 | $ | 73,600.00 |
| H/M Asphalt Surface Type C | TON | 60 | $ | 48.00 | $ | 2,880.00 |
| Permanent Construction Signs (Grnd. Mntd) | SF | 224 | $ | 5.50 | $ | 1,232.00 |
| 4" White Broken Line – Fast Dry Paint | LF | 5,000 | $ | 0.11 | $ | 550.00 |
| 8" White Solid (Crosswalk) – FD Paint | LF | 250 | $ | 2.20 | $ | 550.00 |
| 24" White Solid Line – Fast Dry Paint | LF | 130 | $ | 1.65 | $ | 214.50 |
| White Single Arrow – Fast Dry Paint | EA | 3 | $ | 38.00 | $ | 114.00 |
| 4" Yellow Solid Line – Fast Dry Paint | LF | 10,000 | $ | 0.11 | $ | 1,100.00 |
| 4" White Broken Line – Thermo | LF | 1,500 | $ | 0.77 | $ | 1,155.00 |
| 8" White Solid (Crosswalk) – Thermo | LF | 250 | $ | 4.05 | $ | 1,012.50 |
| 24" White Solid Line – Thermo | LF | 130 | $ | 12.25 | $ | 1,592.50 |
| White Single Arrow – Thermo | EA | 3 | $ | 75.00 | $ | 225.00 |
| 4" Yellow Solid Line – Thermo | LF | 10,000 | $ | 0.45 | $ | 4,500.00 |
| Permanent Clear Pvmt. Mark. Mono 4"X4" | EA | 65 | $ | 6.75 | $ | 438.75 |
| Perm. Yellow Pvmt. Mark. Bi-Dir 4"X4" | EA | 65 | $ | 6.75 | $ | 438.75 |
| 1.0" Schedule 80 PVC Conduit | LF | 50 | $ | 7.00 | $ | 350.00 |

Post Office Box 191
Columbia, South Carolina 29202-0191

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

AN EQUAL OPPORTUNITY/
AFFIRMATIVE ACTION EMPLOYER

| | | | | | | |
|---|---|---|---|---|---|---|
| No. 14 Copper Wire – 1-Cond | LF | 500 | $ | 0.35 | $ | 175.00 |
| Sawcut for Loop Detector | LF | 500 | $ | 6.25 | $ | 3,125.00 |
| F & I Video Detection Camera W/H | EA | 1 | $ | 7,000.00 | $ | 7,000.00 |
| | | | | Total | $ | 296,853.00 |

This extension will be funded by Pickens County CTC funds. Due to the fact that the contractor is actively working on the project, it would be in the best interest of the public and the department to take advantage of the competitively bid unit prices and extend this work to the contract.

The work on this extension is to be done at the same unit prices and is subject to the same provisions as in the contract covering the subject file. The completion date will not change.

[redacted]

Randall L. Young, P. E. [redacted]
Chief Engineer for Project Delivery

RLY:trj
cc: International Fidelity Insurance Company
One Newark Center, 20th Floor
Newark, New Jersey 07102

ec:
S. Amell-Jackson, Distr. Three Engr. Admin.
J. Laws, Resident Constr. Engr.
D. Cook, Director of Maintenance
D. Timmons, Rights of Way
A. Rish, Budget
L. Gibson, Director of Program Controls
M. Guffee, Financial Controller
C. Keitt, Utility Project Engineer
J. Locklair, Utility Project Engineer
M. Zwanka, Materials & Research Engr.
A. Hance, Traffic Engineer
C. Lucas, Program Manager

Charge Code
Cost Center: U120000C39
Fund: 49369000
Functional Area: U200_2228_0030
WBS: 39P037242C.00C.5
File: Con/NTW

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SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
COLUMBIA, SC

# PROPOSAL

**FOR**

**RECONSTRUCTION**

**PICKENS COUNTY**

**Letting Date**: June 12, 2018

**Proposal ID**: 3948130

**Project ID**: P037242, P037243

**Project Number**: P037242, P037243

**Length**: 4.10 MILES

**Type**: CEMENT MODIFIED RECYCLED BASE, HOT MIX ASPHALT, PAVEMENT MARKINGS, BORROW

**NOTICE...NOTICE...NOTICE...NOTICE...NOTICE...NOTICE...NOTICE**

**ONLY ELECTRONIC BIDS FROM PREQUALIFIED PRIME CONTRACTORS SUBMITTED THROUGH BID EXPRESS (www.bidx.com) WILL BE ACCEPTED FOR THIS CONTRACT.**

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Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 21

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Appellants' Response to Defendant's Memorandum, filed January 30, 2025, with Exhibits A-R and Certificate of Service filed January 30, 2025. (App. 9) Exhibit I, as filed, is the Transcript of Deposition of Michael Laginestra (Resp., second item numbered 18), and Exhibit H, as filed, is page 62 of the Transcript of Deposition of Zachary Shane Michael (Resp. 22).

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF PICKENS<br><br>Michael and Mary Smith,<br><br>Plaintiffs,<br><br>vs.<br><br>Themistoklis Economou and King Asphalt Inc.,<br><br>Defendants. | IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT<br><br>CASE NO.: 2021-CP-39-00329<br><br>**PLAINTIFFS' RESPONSE TO DEFENDANT'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT AND ARGUMENTS AT THE HEARING** |

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT AND ARGUMENTS AT THE HEARING**

**Introduction**

On January 27, 2025, at 11:30 AM, a hearing was conducted in Courtroom 4 of the Pickens County Courthouse before the Honorable Jessica A. Salvini. Defendant, King Asphalt, Inc., seeks summary judgment, arguing that Plaintiffs' claims fail for lack of expert testimony. However, Defendants' own filings and admissions establish indisputable proof of negligence per se, relieving Plaintiffs of any burden to further prove liability.

Because Defendants have conceded to multiple statutory and regulatory violations under South Carolina law and SCDOT regulations, no genuine dispute of material fact remains, and summary judgment must be granted in favor of Plaintiffs as a matter of law for negligence *per se*.

In the alternative, should the Court decline to grant summary judgment for Plaintiffs, Defendants' motion must still be denied. Their arguments rest on a misapplication of the summary judgment standard by using Federal Rules of Civil Procedure instead of the SC Rules of Civil Procedure in a South Carolina Court.

> "Fed.R.Civ.P. 56(c). Rule 56(c) mandates entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). (Page 8 of Memorandum)

Does not exist in the South Carolina Rules of Civil Procedure and is accompanied with an improper conflation of factual disputes with legal insufficiency, and a reliance on an alleged lack of expert testimony—none of which overcome the dispositive weight of their own admissions.

Opposing counsel's reliance on Federal Rule of Civil Procedure 56(c) and federal case law in this South Carolina state court proceeding is misplaced and should be disregarded. The Federal Rules of Civil Procedure do not govern proceedings in South Carolina state courts. Instead, the South Carolina Rules of Civil Procedure (SCRCP) apply, specifically SCRCP Rule 56 for summary judgment motions.

While the federal Celotex standard may be persuasive, it is not binding on South Carolina courts. The South Carolina Supreme Court has recently clarified the state's summary judgment standard in The Kitchen Planners, LLC v. Samuel E. Friedman (August 23, 2023). The court emphasized the "genuine issue of material fact" standard and rejected the "mere scintilla" approach. Under South Carolina law, the non-moving party must show that a reasonable inference can be drawn from the evidence to defeat a summary judgment motion.

Furthermore, South Carolina courts have developed their own body of case law interpreting SCRCP Rule 56. The state standard, while similar in some respects to the federal standard, may be interpreted and applied differently in South Carolina courts. Therefore, opposing counsel's reliance on FRCP 56(c) and federal case law is inappropriate and potentially misleading in this state court proceeding. This Court should apply the summary judgment standard as articulated by the South Carolina Supreme Court and interpreted through South Carolina case law, rather than federal standards that do not directly apply in this forum.

Since negligence per se is established through statutory violations, no expert testimony is required to prove liability.

Accordingly, Plaintiffs request that the Court grant their motion for summary judgment based on Defendants' admissions as no further proof is needed. In the alternative, the Court should find that genuine issues of material fact remain, Defendants' motion must be denied, and this case should be scheduled for trial.

**The Plaintiff further requests the Court to take judicial notice of all Codes, regulations, depositions and other supporting evidence submitted by Plaintiff or provided by King Asphalt, Inc. and SCDOT.**

## I. DEFENDANT'S ADMISSIONS IN IT'S MEMORANDUM TO SUPPORT IT'S MOTION FOR SUMMARY JUDGMENT INDISPUTABLY PROVES PLAINTIFF'S CASE

Defendant King Asphalt, Inc. has, through its own admissions, documentary evidence, and contractual obligations, conclusively established liability under South Carolina law and SCDOT regulations. Their memorandum, admissions, filings, depositions, and contract provisions confirm multiple violations of statutory and regulatory safety standards, including the failure to mitigate a prohibited lane height differential exceeding one inch and the unlawful removal of a traffic control safety scheme. These violations constitute **negligence per se**, as they breach clearly defined duties imposed by SCDOT Division 600 regulations and South Carolina law, which are designed to protect the public from precisely this type of harm.

Defendants' own admissions, evidence and concessions demonstrate that their actions directly caused the accident, leaving no room for dispute as to their liability. By violating these mandatory safety standards, King Asphalt, Inc. is liable as a matter of law, and no genuine issue of material fact remains for trial.

As such, the Court is compelled to grant summary judgment in favor of the Plaintiffs. Defendants' memorandum, admissions, filings, depositions, and contract provisions (preclude Plaintiffs providing further proof), coupled with their violations of law, demand nothing less than a ruling in Plaintiffs' favor as a matter of law.

**1. Defendants Have Admitted the Accident Occurred in an SCDOT Work Zone**

For six years, King Asphalt falsely denied that the accident occurred within an SCDOT work zone. However, in their Memorandum in Support of Summary Judgment, Defendants have now conceded that the accident occurred in an active work zone:

> "The SCDOT, through its contract, provided permanent signs designating the area as a construction zone for the duration of the project."
> *(Defendants' Memorandum, Page 3, Last Paragraph)*

South Carolina Code § 56-5-1535(F)(1) defines a work zone by the presence of "Road Work Ahead" and "End Road Work" signs. The presence of these signs (within which the accident site resided) means the entire highway section remained a work zone throughout the life of the project, regardless of the movement/ebb and flow of various temporary traffic control devices within the zone.

> "SECTION 3. Section 56-5-1535(F)(1) of the 1976 Code is amended to read:
>
> (1) 'Highway work zone' means an area of a roadway, bridge, shoulder, median, or associated right of way, where construction, maintenance, utility work, accident response, towing, or other incident response is being performed. The work zone must be marked by signs, channeling devices, barriers, pavement markings, or work vehicles, and extends from the first traffic control device erected for purposes of controlling the flow of motor vehicles through the work zone, including signs reducing the normal speed limit, to the 'END ROAD WORK' sign or the last temporary traffic control device. The signs, channeling devices, barriers, pavement markings, or work vehicles must meet state Department of Transportation standards, the provisions of Section 56-5-4700, or National Fire Protection (NFPA) standards, and must be installed properly."

Note the differentiation between small road repairs with temporary signage and major projects (with miles of all five lanes being milled and paved) with permanent signage. By conceding this fact, Defendants have admitted that all SCDOT safety and traffic control requirements (Division 600) applied at the time of the accident, which they indisputably violated.

This admission destroys their prior argument that work zone safety standards were irrelevant and confirms that they were subject to strict safety and traffic control requirements, which they systematically ignored.

**2. Defendants Have Admitted to a Lane Height Differential That Violates SCDOT Regulations**

King Asphalt's own filings confirm that at the time of the accident, there was a lane height differential of 2 inches between the newly paved outside lane (LOSL) and the milled inside lane (LISL):

> "With respect to the area where the plaintiffs claim the accident occurred, Limbaugh, the vice-president of Milling and Reclamation Services at King Asphalt testified that "everything was started and finished in that area. Everything was tacked and paved. Everything that was paved was compacted." (Dep. of Limbaugh p 32-33). All the road work done on March 22, 2019 was accepted by the S.C. DOT. (Dep. of Limbaugh p. 32-33). Limbaugh also testified that S.C. DOT documented on a daily basis both the quality and the thickness of the asphalt and the compaction of the asphalt. (Dep. of Limbaugh, p. 42-43). Limbaugh further testified that the grade elevation difference between the paved lane and non-paved lane was either two inches or less which is the DOT requirement. (Dep. of Limbaugh p. 44). S.C. DOT engineer, Laws, also confirmed that the DOT regulation was that the lane differential not exceed two inches. (Dep. of Laws, p.19) S.C. DOT had their own inspector on site for every project and the inspector would have inspected the lane differential to make sure that the measurement was two inches. (Dep. of Limbaugh, p. 44). Zachary Michael, King Asphalt's Director of Personnel and Safety, also testified that the asphalt was installed according to SCDOT specifications in the outside lane, allowing for a two-inch differential between the milled lane and the newly asphalted right lane. (Dep. of Michael, p. 36). Michael testified that King Asphalt did "exactly as S.C. DOT contracted us to do." (Dep. of Michael, p. 37). He specifically stated that the contract required that they remove two inches of the asphalt and install two inches which is what they did. (Dep. of Michael, p. 38)."(Defendants' Memorandum, Page 5)
>
> "The King Asphalt road construction crew then installed new asphalt in the outside lane on March 22, 2019. To place the new asphalt in the designated outside lane and allow the traffic to flow unimpeded in the inside lane, King Asphalt, according to the specifications of S.C. DOT, implemented a temporary lane closure of the lane in which they were performing paving operations. To close a lane, King Asphalt would have placed delineation devices or cones at the beginning of the lane closure, tapering the closing of the lane to direct the live traffic to the left lane while construction was being done in the right lane. (Dep. of Laws, pp. 27-29). Beyond the taper closing the lane, King Asphalt would have placed cones every 50 feet in the work zone to protect the ongoing construction activities of their employees from the danger of the traffic. (Dep. of Michael, p. 46). The standard established by the S.C. DOT and within the road construction industry allows for temporary lane closures so that work can safely proceed in one lane while traffic proceeded in the adjacent lane. "*(Defendants' Memorandum, Page 5,)*

Defense counsel is adamant, SCDOT inspectors checked it, King Asphalt, Inc. personnel made sure it was two inches, Daily Inspection Reports (Form 400.04) said it was 2.16 inches, RCE Joe Laws said it was two inches. Everybody is 1000% sure it was two inches. In fact swore, under oath in depositions that it was 220 lbs/sq (two inches). **[see attached EXHIBIT F]**

Defendants admitted the condition of the highway at the accident site on March 22, 2019 as:

> "It is not disputed that at the time of the collision between the moped operated by Smith and the car operated by Economou that the inside left lane had been milled and was in that condition and the outside lane had been paved with new asphalt." (Page Four of Defendant's Memorandum **[attached Exhibit E]**)

Defendant's and SCDOT provided a paving record for March 22, 2019 and every portion of highway paved that day (including the accident site) exceeded 220lb/Sq YD **[see attached EXHIBIT K].** Michaels explanation of the conversion of lb/sq yd is 220lb/sq yd = 2 inches. (see page 62 **[see attached EXHIBIT H]** SCDOT formula for converting lb/sq yd is 105 lbs = 1 inch **[see attached EXHIBIT Q]**

**Only one problem, two inches is 100% greater than what Division 600 regulations and King Asphalt, Inc.'s contract permitted it to be. Creating a hazardous condition PROHIBITED by regulation.**

**Fortunately, all of the regulatory language we need is found on Pages 22 and 23 of the rather voluminous document filed by Defendants. [see attached EXHIBIT G]**

First, we should address the standard, mentioned by Defense counsel during the hearing, as related to "grade elevations and drop-offs" and show it's irrelevant application to the instant case. King Asphalt Proposal/Contract Page 22, third paragraph from bottom declares a standard for "grade elevations and drop-offs".

> "During paving operations, the Department requires lane closures at all times where grade elevation differences and drop-offs greater than 2" exist adjacent to or between the travel lanes of a roadway opened to traffic, unless otherwise specified by these special provisions. Maintain lane closure restrictions at all times unless otherwise directed by these special provisions." (King Asphalt Proposal/Contract Page 22, third paragraph from bottom **[see attached EXHIBIT G]**)

This two-inch standard is possibly the standard Defense counsel is mistakenly attempting to apply to the instant case. "Grade elevations and drop-offs" have to do with the shoulders and outside edges of the roadway. Not between adjacent lanes of travel, which is explicitly addressed in the next paragraph.

SCDOT regulatory/contract provisions in the Proposal/Contract Document and SCDOT Division 600 regulations filed by Defendants (Page 22, Next to Last Paragraph) explicitly PROHIBITS lane height differentials greater than 1 inch during surface planing and milling operations, with

adjacent travel lanes pavements composed of hot mixed asphalt (HMA) base courses and a planed surface:

> "During surface planing and milling operations, grade elevation differences greater than 1 inch in areas with pavements composed of hot mixed asphalt (HMA) base courses, intermediate courses or surface courses and Portland cement concrete are PROHIBITED between adjacent travel lanes open to traffic unless otherwise directed by the Department." (King Asphalt Proposal/Contract Page 22, next to last paragraph **[see attached EXHIBIT G]**)

Defendants' own work reports confirm that the height differential remained for five full days (March 22, 2019 - March 27,2019) before being corrected, violating their contractual obligation to keep the lane closed until the differential was mitigated. The regulations only have one acceptable method of mitigation:

> "If a grade elevation difference in excess of the specified acceptable ranges exist, either mill the adjacent travel lane or pave the milled travel lane as necessary to eliminate the grade elevation difference prior to opening the travel lane to traffic at these locations. Maintain the lane closure restrictions at all times unless otherwise directed by these special provisions." (King Asphalt Proposal/Contract Page 23, first paragraph **[see attached EXHIBIT G]**)

Note the directive's instructions that the lane will remain closed until one of these two mitigation methods are utilized to remove the safety violation.

The primary function of "shall" in legal drafting is to impose a mandatory obligation or duty on the subject of the sentence;

> "The Contractor shall install all lane closures as directed by the Standard Specifications For Highway Construction (latest edition), the Standard Drawings For Road Construction, these special provisions, the MUTCD, and the Engineer. The Contractor shall close the travel lanes of two-lane two-way roadways by installing flagging operations. The Contractor shall close the travel lanes of multilane roadways as directed by the typical traffic control standard drawings designated for lane closures on primary routes." (King Asphalt Proposal/Contract Page 23, sixth paragraph **[see attached EXHIBIT G]**)

Not adhering to these guidelines is a direct regulatory violation, making negligence per se undeniable. There is no material dispute remaining—the only question left is whether the Court will enforce the law.

### 3. Defendants Have Falsely Claimed That Milling and Paving Were Performed "Consecutively"

Defendants falsely claim that milling and paving were performed consecutively, implying there was no period where a hazardous height differential existed. However, their own Daily Work Report/Inspections records covering the accident site prove this claim is false:

| Date | Operation | Result |
|---|---|---|
| March 6, 2019 | Inside lane (LISL) milled to -2 inches | Left a height differential with the paved outside lane. |
| March 12, 2019 | Outside lane (LOSL) milled | Both lanes were milled evenly for a brief period. |
| March 22, 2019 | Outside lane (LOSL) paved with 2+ inches | Created a 2-inch differential with the still-milled inside lane (LISL). |
| March 27, 2019 | Inside lane (LISL) paved | Finally eliminated the height differential, five days after the accident. |

For at least five days (March 22-27 - beginning at 5PM March 22, 2019), the lane height differential exceeded the legal 1-inch limit for two lanes with a milled lane and paved lane adjacent to each other, was unmitigated as directed by regulation, and exposed the Plaintiffs and the public to hazardous road conditions.

Defendants' claim that paving and milling occurred "consecutively" is demonstrably false, and their misrepresentation of these facts is further evidence of their bad faith litigation tactics.

**4. Defendants Have Admitted to Removing Traffic Control Devices Before Law Enforcement Arrived**

Defendants admit they initially placed cones between the milled and paved lanes but later removed them (after the accident and before law enforcement arrived to investigate), exposing motorists to a PROHIBITED hazard:

> "To place the new asphalt in the designated outside lane and allow the traffic to flow unimpeded in the inside lane, King Asphalt, according to the specifications of S.C. DOT, implemented a temporary lane closure of the lane in which they were performing paving operations. To close a lane, King Asphalt would have placed delineation devices or cones at the beginning of the lane closure, tapering the closing of the lane to direct the live traffic to the left lane while construction was being done in the right lane."
> *(Defendants' Memorandum, Page 5, Paragraph 2)*

> "When the work was finished for the day, the temporary signs and cones which had been placed for the safety of the King Asphalt employees and the motoring public would be removed. King Asphalt would open the closed lane by picking up the delineation devices, the cones, in reverse order from how the lane was closed. (Dep. of Michael, p. 54). As each cone was removed from the highway, it would be considered to be the end of the lane closure, thus allowing the traffic to proceed in that lane. (Dep. of Michael, p. 54). Once each cone for the lane closure was picked up, then the closed lane was completely reopened for traffic to flow. (Dep. of Michael, p. 55). The motoring public would know

that the lane was open for use because there would be no cones in the area which had previously indicated that the lane was closed. (Dep. of Michael, p. 55).

Joseph Laws, the resident construction engineer for S.C. DOT, testified that the removal of the traffic cones falls under the 2007 SCDOT Standards and Specifications Manual and the traffic control plan of the contractor. (Dep. of Joseph Laws, p. 25). Laws testified that cones are typically removed from the back taper to the front taper against the traffic to open the lane. (Dep. of Laws, pp. 9 and 28- 29).(Defendants' Memorandum, Page 6, Paragraph 2)

SCDOT regulations make deployment of a full traffic control scheme mandatory:

"Supplement and delineate the shoulder edges of travel lanes through work zones with traffic control devices to provide motorists with a clear and positive travel path. Utilize portable plastic drums unless otherwise directed by the Department. Vertical panels may be used where specified by the plans and directed by the RCE. The installation of traffic control devices are required in all areas where those areas immediately adjacent to a travel lane open to traffic have been altered in any manner by work activities, including but not limited to activities such as grading, milling, etc" (Proposal page 23. paragraph 4 **[see attached EXHIBIT G]**)

However:

- **SCHP dashcam footage** confirms that no cones, barrels, vertical panels, or other required traffic control devices (from either the general traffic control plan for work zones or the lane delineation) were present at the time of the accident.
- **GPS data from King Asphalt's cone truck** shows it was actively removing traffic control devices just minutes before the accident.
- **Witnesses confirm** that King Asphalt's crew removed the cones, reopening the hazardous lane prematurely.
- **Defendants by counsel admitted to removal of SCDOT work zone traffic control devices prior to law enforcement arrival.**

**The Only Possible Conclusions:**

- King Asphalt never set up the required safety devices of the general traffic control scheme, violating contract requirements.
- King Asphalt installed them but removed them before law enforcement arrived, suggesting a deliberate cover-up. SCHP dashcam verified no traffic control of any kind was visible for a half mile approaching the accident scene and a half mile down the road past the accident scene. Division 600 and King Asphalt, Inc.'s proposal/contract state:

Either scenario constitutes reckless disregard for safety, justifying punitive damages.

**5. Defendants' Violations Were Financially Motivated—Justifying Uncapped Punitive Damages**

Under **S.C. Code Ann. § 15-32-530(C)**, punitive damages caps are removed when:

- A violation was motivated by financial gain.
- The defendant knowingly failed to comply with laws protecting public safety.

King Asphalt:

- Was paid $150,000 for traffic control but failed to implement a compliant safety plan.
- Cut costs by minimizing traffic control deployment, or not deploying the full scheme.
- Removed cones (or never placed them) and safety devices, prioritizing profit over public safety.
- Denying safety incidents to maintain a sufficiently high CPS (Contractor performance Score) permitting King Asphalt, Inc. to bid on future contracts
- Knowingly misrepresented facts to evade liability.

This meets the statutory threshold for **uncapped punitive damages**, meaning there is no legal basis for limiting the damages awarded against them.

**Conclusion: No Genuine Issues of Material Fact Remain**

In plain English, King Asphalt, Inc. has admitted—and thereby stipulated—that it was operating an SCDOT work zone on March 22, 2019, governed by SCDOT regulations and South Carolina law. King Asphalt, Inc. admitted to active work at the accident site in the eastbound lanes of Highway 8 (Gentry Memorial Highway) between Owen Lane and Old Easley Pickens Highway. **[see attached EXHIBIT G page 53 at line 11] [see attached EXHIBIT H]** Specifically, the fast lane was milled two inches as per the contract, and the slow lane was freshly paved with Hot Mixed Asphalt (HMA) with a mat of two inches or greater, creating a lane height differential of more than two inches. **[see attached EXHIBIT E,F] [see attached EXHIBIT L,M,N,O,P,R]**

King Asphalt, Inc., through its counsel, admits it deployed a traffic control delineation scheme (traffic cones) to isolate the slow lane for paving operations. Critically, King Asphalt, Inc. also admits to retrieving that lane isolation scheme by driving a company vehicle against traffic—westbound in the eastbound slow lane—opening the slow lane to traffic. This action permitted a driver traveling through the zone in the fast lane, single-file behind Plaintiff’s moped, to take the slow (right) lane and strike Plaintiff’s moped as it lawfully attempted to cross that lane to exit the highway.

Notably, King Asphalt, Inc. removed the SCDOT mandated traffic control safety scheme without first mitigating the prohibited safety hazard of a lane height differential greater than one inch—a violation of its contract, SCDOT Division 600 regulations, and South Carolina law.

**But for King Asphalt, Inc.'s unlawful and premature removal of the safety scheme (prior to mitigating the known safety hazard of a lane height differential exceeding one inch between a milled and HMA 'Hot Mixed Asphalt' paved lane) before opening the lane to traffic—permitting a driver to emerge from the single file line of vehicles traversing the work zone in the fast lane and taking the unlawfully opened lane, striking the Plaintiff's moped lawfully crossing the lane to exit the highway to the right, this accident would not have occurred.**

King Asphalt, Inc.'s admissions establish every fact necessary to prove negligence per se. Their own statements, combined with the clear mandates of SCDOT regulations and South Carolina statutory law, leave no genuine issue of material fact for trial. The Court must grant summary judgment for Plaintiffs as a matter of law.

WHEREFORE, Plaintiffs respectfully request that the Court grant their Motion for Summary Judgment and enter judgment in their favor.

**IN THE ALTERNATIVE PLAINTIFF REQUSETS DISMISSAL OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND THIS CASE TO BE SCHEDULED FOR TRIAL FOR THE FOREGOING REASONS**

## II. STANDARD OF REVIEW ARGUMENT

Defendant King Asphalt, Inc. has misapplied the standard for summary judgment in South Carolina courts. Their reliance on federal case law, particularly *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and Federal Rule of Civil Procedure 56, is misplaced, as this case is governed by South Carolina law. Under South Carolina law, summary judgment is only appropriate where no genuine issues of material fact exist, and the movant carries the burden of proving that they are entitled to judgment as a matter of law. See *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). The South Carolina Supreme Court has repeatedly emphasized that summary judgment should be granted cautiously, particularly in negligence cases where factual disputes must be resolved by a jury. See *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

### A. South Carolina's Stricter Summary Judgment Standard

Unlike the federal standard, South Carolina law disfavors summary judgment, particularly in cases involving negligence. In *Baughman v. AT&T*, the South Carolina Supreme Court made it clear that the moving party bears the burden of eliminating any genuine issue of material fact. Here, Defendant has not met this burden. In fact, their memorandum concedes material factual disputes by emphasizing the alleged complexity of lane height differentials, traffic control protocols, and SCDOT regulatory compliance. Their own argument contradicts their assertion that no material facts are in dispute.

Moreover, *Hancock v. Mid-South Mgmt. Co.* reiterates that courts must view the evidence in the light most favorable to the non-moving party. Given the documented violations of SCDOT regulations and the contract's explicit lane height differential limits, summary judgment is improper in this case.

**B. Expert Testimony is Not a Legal Requirement**

Defendant falsely claims that expert testimony is a prerequisite for proving their liability. However, South Carolina courts have repeatedly held that expert testimony is not required when the subject matter is within common knowledge or when statutory violations constitute negligence per se. See *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010). The factual issues in this case—whether King Asphalt's lane height differential exceeded SCDOT limits and whether traffic control devices were improperly removed—are straightforward and do not require expert interpretation. *Rayfield v. South Carolina Dep't of Corr.*, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988), establishes that statutory violations may constitute negligence per se, further negating the need for expert testimony.

**C. Genuine Issues of Material Fact Exist**

Summary judgment is inappropriate where genuine factual disputes remain. Plaintiffs have provided substantial evidence demonstrating that:

1. **King Asphalt exceeded the 1-inch lane height differential limit** (documented at 2.16 inches in the work logs and daily reports).
2. **Traffic control devices were prematurely removed**, creating an unmarked hazardous condition (corroborated by SCHP dashcam footage).
3. **Depositions contradict Defendant's assertions**, as none of King Asphalt's deponents or SCDOT employee deposition references had direct knowledge of site conditions or factual details at the time of the accident. Their testimony merely stated they were certain King Asphalt, Inc. had complied with SCDOT guidelines in their application of their paving contract.

These facts, which are supported by objective evidence, must be evaluated by a jury. *Hancock v. Mid-South Mgmt. Co.* and *Baughman v. AT&T* confirm that summary judgment is improper when such disputes exist.

**D. Granting Summary Judgment Would Be Reversible Error**

South Carolina appellate courts have consistently reversed summary judgments where factual disputes exist. Dismissing this case based solely on the absence of an expert witness would be an improper application of Rule 56(c), as South Carolina courts have ruled that expert testimony is not required in all negligence cases. Given the clear statutory and regulatory violations in this case, an appellate court would likely find such a ruling premature and improper.

**E. Summation**

In this case, Defendant's own memorandum and hearing arguments create more questions than answers regarding material facts, thereby precluding summary judgment. See **Hancock v. Mid-South Mgmt. Co.**, 381 S.C. 326, 673 S.E.2d 801 (2009) (viewing all evidence in the light most favorable to the non-moving party).

Summary judgment is appropriate only where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. The burden rests on the movant to establish the absence of any genuine dispute of material fact. See **David v. McLeod Reg'l Med. Ctr.**, 367 S.C. 242, 626 S.E.2d 1 (2006).

The defendant has failed to meet their burden under South Carolina's strict summary judgment standard. Their motion relies on an improper application of federal law, a flawed argument regarding expert testimony, and an attempt to bypass genuine issues of material fact. South Carolina law is clear: negligence cases involving factual disputes belong before a jury. Plaintiffs respectfully request that this Court deny Defendant's motion for summary judgment.

**III. Defendant's Argument Relating to Expert Testimony**

Defendant's primary argument—that expert testimony is required pretrial to explain their liability—is legally and factually incorrect. Negligence per se arises when a party violates a statute or regulation designed to protect the public, and such violations serve as proof of duty and breach. See **Whitlaw v. Kroger Co.**, 306 S.C. 51, 410 S.E.2d 251 (1991). Plaintiffs' case rests on three core violations:

1. **Lane height differentials exceeding SCDOT limits**:
    - Defendant's own contract specifies that lane height differentials during milling/paving operations must not exceed 1 inch for adjacent HMA lanes (Division 600, SCDOT regulations). The documented height differential of 2.16 inches at the accident scene is clear, objective evidence of a violation.
2. **Removal of traffic control devices and premature lane reopening**:
    - Evidence shows that King Asphalt removed work zone signs and prematurely reopened a hazardous lane to traffic, violating their contractual obligations and endangering the public.
3. **Obstruction of the post-accident investigation**:
    - Defendant's removal of traffic control devices post-accident hampered the investigation, as corroborated by the amended TR-310 accident report. This further underscores their negligence and bad faith.

These violations are factual matters supported by documentary evidence, depositions, and photographic proof. Contrary to Defendant's claims, these facts do not require expert testimony to be understood by a jury. See **Watson v. Ford Motor Co.**, 389 S.C. 434, 699 S.E.2d 169 (2010) (expert testimony is unnecessary where the subject matter is within common knowledge).

Defense counsel's repeated references to Economou, the driver of the car involved in the accident, are irrelevant and misleading. Plaintiffs have settled with Economou, and his actions came after the fact of King Asphalt's premature reopening of the unsafe lane. Had the lane not been opened in violation of safety standards, the accident would not have occurred. Defense counsel's reliance on this irrelevant point is an improper attempt to distract from King Asphalt's direct negligence.

## IV. Defendant's Concession of Material Issues of Fact

Defendant's argument that expert testimony is required inadvertently concedes the existence of material issues of fact. By emphasizing the complexity of lane height differentials, traffic control protocols, and compliance with SCDOT standards, Defendant implicitly acknowledges that these issues are factual and contested. Summary judgment is inappropriate where material factual disputes exist, as recognized in **Baughman v. American Tel. & Tel. Co.**, 306 S.C. 101, 410 S.E.2d 537 (1991).

## V. Plaintiffs' Evidence Supports Negligence Per Se

1. **Lane Height Differential Evidence**:
    - The documented 2.16-inch height difference exceeds the 1-inch limit set forth in SCDOT's Division 600 standards. This evidence is objective, measurable, and undisputed by Defendant's deponents, none of whom conducted specific measurements at the scene.
    - **Distinction Between Contract Provisions**: Defense counsel's oral argument wrongly asserted that the 2-inch drop-off rule applies as the prevailing standard in this case. This is incorrect. The **2-inch limit** pertains to general shoulder drop-offs or transitions where construction has been completed, and traffic is stabilized. In contrast, the **1-inch limit** explicitly applies to **milling operations** involving adjacent lanes open to traffic, as is the situation here. The stricter 1-inch standard governs this case due to the ongoing milling and paving work at the time of the incident, and Defendant's failure to adhere to this standard directly caused the unsafe conditions.
2. **Photographic and Video Evidence**:
    - Dashcam footage and still images from the accident scene visually depict the hazardous height variance (berm) that caused the moped's loss of control. These visuals are comprehensible to a lay jury and do not require expert interpretation. Additionally, the Plaintiffs have submitted a still image captured from the SCHP dashcam video, which clearly shows the exact position of the car and moped immediately after the accident in relation to Owen Lane and the associated bridge. This photographic evidence definitively establishes the location of the incident and refutes the defense counsel's unfounded claim during the hearing that the Plaintiffs have not proven where the accident occurred. Furthermore, deposition testimony from Limbaugh, the Defendant's 30(b)(6) witness, reinforces the unreliability of the defense's assertions. Limbaugh admitted he was in charge of milling operations but lacked direct knowledge of the specific incident, testifying instead about general practices and "how it is supposed to be done," rather than

facts specific to this case. This testimony demonstrates the speculative nature of Defendant's claims regarding compliance in this instance. Moreover, Zachary Michael confirmed on page 62 of his deposition that a 220 lbs/sq yard application corresponds to a two-inch finished mat, further supporting the evidence of the lane height differential exceeding regulatory limits at the accident site.

3. **Contractual Violations**:
    - Defendant's contract prohibits opening lanes with unsafe conditions. Their removal of traffic control devices and premature lane reopening breached these provisions and directly contributed to the accident. See **Koontz v. Thomas**, 333 S.C. 702, 511 S.E.2d 407 (Ct. App. 1999) (contractual violations as evidence of negligence).
4. **Selective and Misleading Use of Depositions**:

Defendant has relied on deposition testimony selectively, omitting key admissions that negate their claims. Defense counsel has quoted excerpts from the depositions of Limbaugh, Laws, Michael, and Makison, but none of them claimed direct knowledge of any details of the accident. Instead, they referred to general practices or what "should have been" done. Michael and Limbaugh are employees of King Asphalt and suffer a distinct conflict of interest in their testimony. For example:

- **Douglas Limbaugh**, the Defendant's 30(b)(6) witness, admitted on page 6 of his deposition that he had no direct knowledge of the investigation into the incident and spoke only to general practices. **[attached Exhibit B]**
- **Joe Daniel Laws III** admitted on page 9 of his deposition that he was off on annual leave on the day of the accident. Furthermore, he confirmed on page 16 that the first time he heard about the accident was in 2021 (two years after the fact). This demonstrates his lack of direct knowledge and undermines the credibility of his testimony as evidence of compliance. **[attached Exhibit D]**
- **Zachary Michael** acknowledged that the Defendant's office did not have established protocols to ensure notification of incidents unless someone else reported them. On page 7, lines 17-20 of his deposition, Michael explicitly stated that he would not be able to answer anything about this specific accident, further underscoring the speculative and irrelevant nature of his testimony in relation to the incident. He also claimed they were unaware of the accident until contacted via email months after the fact. **[attached Exhibit A]**
- **Joshua Frazier Makison** admitted on page 9 of his deposition that he had no involvement with the 3948130 contract and that his only connection to this matter was assisting in answering the FOIA request. This admission highlights the irrelevance of his testimony to the substantive issues in this case and further exposes defense counsel's misrepresentation of deposition content. **[attached Exhibit C]**

These omissions by defense counsel mischaracterize the facts and attempt to create a misleading narrative. The full depositions reveal that none of the witnesses had specific knowledge of the conditions at the accident site or compliance with safety standards during the relevant time.

Such selective and incomplete reliance on deposition testimony demonstrates a disingenuous attempt by defense counsel to obscure the facts of the case and mislead the Court.

## VI. Defendant's Procedural Tactics

Defendant's last-minute submission of a 15-page memorandum, seven depositions excerpts, and a 127-page contract proposal at the hearing is a transparent attempt to disadvantage the pro se Plaintiffs. This includes misleading reliance on deposition testimony, such as Joe Laws stating he was off the day of the incident, undermining the credibility of the defense's factual assertions. Additionally, defense counsel only included select pages of the depositions, making a disingenuous attempt to falsely mislead the Court by omitting portions of those same depositions that negate their claims. By cherry-picking deposition excerpts, defense counsel leaves a mischaracterization of the facts and presents an incomplete and misleading narrative.

Additionally, the Court's decision to interrupt and prematurely cut off Plaintiffs' response during the hearing further hindered their ability to fully articulate their position. Instead the entire focus became the Defense counsels expert witness issue. Plaintiffs respectfully note that this procedural imbalance has prejudiced their ability to address the baseless arguments advanced by defense counsel, many of which serve only to obfuscate and distract from the central issues of negligence per se and bad faith conduct. Courts have long recognized that pro se litigants must be given leeway to present their case without being overwhelmed by such tactics. See **Sundown Operating Co. v. Intedge Indus., Inc.**, 383 S.C. 601, 681 S.E.2d 885 (2009) (liberal construction of pro se pleadings).

## VII. Defense Counsel's Inflammatory Reference to UPL

In Defendant's memorandum, counsel included a note at the bottom of page 11, that raises the specter of Unauthorized Practice of Law (UPL), in a transparent attempt to prejudice the Court against the Plaintiffs. Defense counsel is well aware of the inflammatory effect of the "buzzword" UPL has on members of the legal profession. However, Judge Gravely has already ruled that the subject of UPL is not within the jurisdiction of this Court, explicitly directing defense counsel to take the matter up with the South Carolina Supreme Court if they wish to pursue it. Defense counsel has had 11 months to pursue these allegations; but, Plaintiffs speculate defense counsel does not want to answer Mr. Pressly's affirmative defense of emergency due to defense counsel's well-documented misconduct or being scrutinized for her litigations tactics towards a *pro se* litigant forestalled that pursuit.

For defense counsel to continue referencing UPL in an attempt to influence this Court is not only irrelevant but constitutes misconduct. Such behavior is a clear attempt to distract from the substantive issues of this case, and it raises the question of whether such actions amount to contempt of court. Plaintiffs respectfully request that the Court admonish defense counsel for continuing to raise this matter improperly and disregard these inflammatory references entirely. Defense counsel's prior conduct, including inappropriate communications and attempts to influence the Court, was a contributing factor in the recusal of the Honorable G.D. Morgan, Jr.

This pattern of behavior underscores the importance of maintaining procedural fairness in the current proceedings.

## VIII. Interference with Plaintiffs' Efforts to Secure Substitute Counsel

Defense counsel's conduct—including the submission of inflammatory and irrelevant filings, as well as engaging in negative commentary about Plaintiffs in the public record—has directly interfered with Plaintiffs' ability to secure substitute counsel. Rather than allowing defense counsel to unfairly assail a pro se litigant, the Court, in the interest of fairness and justice, should address and remedy this interference. Such tactics reflect a pattern of obstruction and bad faith designed to deny Plaintiffs a fair opportunity to litigate their claims on the merits. This behavior undermines the judicial process and should not be rewarded with a grant of summary judgment.

## IX. No Pretrial Requirement for Expert Testimony

During the hearing, the Court inquired whether the Plaintiffs planned to hire an expert witness, to which the Plaintiff responded in the negative. However, it is important to emphasize that this decision is not final and is not one that the pro se Plaintiff can or should make at this juncture. Such a determination would typically be made by an attorney representing the Plaintiff, once substitute counsel is secured. The Plaintiff's current status as a pro se litigant should not be unfairly used to draw adverse inferences or make premature decisions regarding the need for expert testimony.

South Carolina courts have held that expert testimony is not required where statutory or regulatory violations serve as the basis for negligence. See **Rayfield v. South Carolina Dep't of Corr.**, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988) (violation of a statute constitutes negligence per se as a matter of law when facts are undisputed). Plaintiffs' evidence—dashcam footage, measurements, and contractual provisions—establishes clear statutory violations without the need for expert analysis. Thus, any decision about hiring an expert should not prejudice the Plaintiff's ability to proceed, especially given the straightforward nature of the evidence supporting their claims. Here, the factual evidence is straightforward and within the comprehension of a lay jury.

## X. Conclusion

Granting summary judgment solely based on the absence of an expert witness prior to trial is likely to be considered reversible error on appeal in South Carolina. This conclusion is supported by several key points:

1. The summary judgment standard in South Carolina requires that there be no genuine issue of material fact. The mere absence of an expert witness does not necessarily mean there are no factual disputes to be resolved at trial.
2. Expert testimony is not always required to establish negligence, especially in cases involving negligence per se due to statutory or regulatory violations. The South Carolina

Court of Appeals has held that expert testimony is not required where such violations serve as the basis for negligence.

3. The decision to require expert testimony is typically made based on the complexity of the issues involved, not as a blanket requirement for all cases. In situations where the facts are within the common knowledge and experience of lay jurors, expert testimony may not be necessary.
4. Granting summary judgment based solely on the lack of an expert witness before trial could be seen as prematurely deciding the case without allowing the plaintiffs the opportunity to present their evidence fully.
5. South Carolina courts have recognized that pro se litigants should be given some leeway in presenting their cases. Dismissing a case at the summary judgment stage due to lack of expert testimony, especially for pro se plaintiffs, could be viewed as overly harsh and potentially reversible.

Given these factors, an appellate court would likely view such a summary judgment decision as premature and an improper application of the summary judgment standard, making it subject to reversal on appeal. This conclusion is further supported by case law:

- **Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010)**: This case affirms that expert testimony is not required when the subject matter is within common knowledge or experience, such as the issues in this case involving lane height differentials and contractual violations.
- **Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 673 S.E.2d 801 (2009)**: This case emphasizes that summary judgment is inappropriate when there are genuine issues of material fact, and evidence must be viewed in the light most favorable to the non-moving party.
- **Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 681 S.E.2d 885 (2009)**: This case highlights that courts should liberally construe pro se pleadings, underscoring the importance of ensuring fairness for self-represented litigants.

These cases collectively reinforce the principle that granting summary judgment based solely on the absence of an expert witness prior to trial would be improper and subject to reversal.

The defendant has failed to meet their burden under SCRCP Rule 56(c). Their arguments not only fail to eliminate material issues of fact but also introduce new ones, highlighting the necessity of a trial. Plaintiffs have presented ample evidence of statutory and contractual violations, which form the backbone of their negligence per se claim. Expert testimony is not required at this stage, and Defendant's procedural tactics should not be rewarded with dismissal.

**IN THE ABSENCE of the Court ruling in Plaintiff's favor and granting summary judgment, based on admissions by Defendants in their Memorandum in Support of Summary Judgment (with attached exhibits) and Defense counsel's arguments at the hearing.**

Plaintiffs respectfully request that this Court deny Defendant's motion for summary judgment and allow this case to proceed to trial. Furthermore, the Plaintiffs respectfully ask the Court to

take steps to facilitate a fair and level playing field by curbing Defense counsel's efforts to obstruct the Plaintiffs' attempts to secure substitute counsel. Proceeding to trial without an attorney would not only prejudice the Plaintiffs but also result in inefficiencies and waste the Court's and all parties' time. Ensuring Plaintiffs have the opportunity to obtain adequate representation is as critical to the integrity of these proceedings as any other consideration at this stage.

**Respectfully submitted,**

_____ January 30, 2025
Michael Smith Date

_____ January 30, 2025
MaryAnn Smith Date
Pro Se Plaintiffs
220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF PICKENS<br><br>Michael and Mary Smith,<br><br>Plaintiffs,<br><br>vs.<br><br>Themistoklis Economou and King Asphalt Inc.,<br><br>Defendants. | IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT<br><br>CASE NO.: 2021-CP-39-00329<br><br>**CERTIFICATE OF SERVICE** |

## CERTIFICATE OF SERVICE

I hereby certify that a copy of this **PLAINTIFFS' RESPONSE TO DEFENDANT'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT AND ARGUMENTS AT THE HEARING** (and Exhibits) were served upon the following counsel of record:

**Catharine Garbee Griffin, Esq.**
Baker, Ravenel & Bender, LLP
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The documents were served via the following methods:

By Email to: CGriffin@brblegal.com
Date of email service: January 30, 2025

To the above address by U.S. Mail via certified mail (return receipt requested),
Certified Mail Number: USPS 70210950000135867934
Date of Mailing: January 30, 2025

**Respectfully submitted,**

_____ January 30, 2025
Michael Smith Date
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220 Stancil Street
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# EXHIBITS

## A - R

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT AND ARGUMENTS AT THE HEARING**

CA# 2021-CP-39-00329

Garber
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Columbia, South Carolina 29201
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**ZACHARY SHANE MICHAEL**

*May 24, 2022*

**Michael and Mary Smith**

VS

**Themistoklis Economou, et. al.**

**2021-CP-39-00329**

REPORTER: Marcie L. Smith

A. We have one main office headquarters. We're in Liberty, South Carolina at 107 Tech Lane. Liberty, 29657. We have a plant about three miles away from there in Liberty as well. And two other asphalt plants. One in Pacolet, South Carolina, and one in Simpsonville, South Carolina. Those are not -- those are plant locations. Our only main office is in Liberty.

**Q. So Pacolet, Simpsonville, Liberty all have the actual plants to make the asphalt?**

A. Correct.

**Q. Have you attended any classes or received any certificates, licenses or anything of that sort for your position?**

A. I have an OSHA 30. I've done traffic control supervisory training compliant with the SCDOT. I've had asphalt roadway technician certification for roadway compaction on the road. I don't believe there's anything further.

**Q. What topics will you be speaking on today, do you know?**

A. Anything safety related.

BY MS. GRIFFIN:

Can you show him the notice. Or do you have the notice? I think I have a copy of it.

EXAMINATION RESUMED BY MR. SMITH:

**Q. I could ask him. Would you be able to respond to questions concerning policies, procedures, protocols, methods, manuals, instructions, things of that nature?**

A. For the most part. When it becomes job site specific for specifications and operations from a milling standpoint, I believe Doug can answer those questions. Doug Limbaugh.

**Q. What did you say about your work with compaction?**

A. When we apply asphalt pavement, we actually have to do compaction testing. And we have to try to achieve the desired compaction numbers the DOT requires us to.

**Q. And that is something that you are certified in?**

A. No longer. It's expired.

**Q. Will you be able to discuss the accident site itself?**

A. The site in general, yes. Specific to the accident, no.

**Q. Would you be able to describe where you were in the process of the road?**

A. I'd probably let Doug for the specific operations and where we were.

BY THE COURT REPORTER:

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**DOUGLAS EUGENE LIMBAUGH, JR.**

*May 24, 2022*

**Michael and Mary Smith**

VS

**Themistoklis Economou, et. al.**

**2021-CP-39-00329**

REPORTER: Marcie L. Smith

Like what?
BY MS. GRIFFIN:
Whatever else is left.
BY MS. HERBKERSMAN:
Policies and procedures.
BY MS. GRIFFIN:
But go ahead. He doesn't know anything about the investigation into the incident to the extent there was any. The communication with Mr. Presley, he doesn't know about that.
EXAMINATION RESUMED BY MR. SMITH:
**Q. What's your date of birth?**
A. 03-16-1978.
**Q. Can you tell me about your education.**
A. Yeah. I have a Bachelor of Science from Clemson. Graduated in 2001.
**Q. Where did you go to high school?**
A. Easley High School.
**Q. What county do you live in now?**
A. I live in Anderson County. Powdersville, specifically.
**Q. Do you have any family in Pickens County? On either side.**
A. Direct family? No, sir.
**Q. What is direct family?**

A. To what -- like anything?
**Q. Anything.**
A. I mean, I was -- did a little stint in life insurance and health insurance. So I was certified in that. Asphalt roadway certification in this industry.
**Q. When did you get that?**
A. 2000 -- and I'm sorry, it's been a long time. But 2007 or '8. It expired in '12, I believe. It's a four year -- four to five year if you don't -- you have to re-cert as you go because of, you know, updated policies and stuff like that.
**Q. Certainly. And so you were done in 2012?**
A. In that time frame, yes.
**Q. Did you ---**
A. I mean, I don't remember the specific year, but it's somewhere in that range.
**Q. Did you recertify?**
A. No, sir.
**Q. Isn't that imperative for your job?**
A. For my job tasks? No.
**Q. No? What is your ---**
A. It's actually about testing of asphalt and, you know, the day-to-day function of asphalt. If

that makes sense.
**Q. All right, so you were talking about the actual asphalt that's placed on the road. That you have to know the ingredients, the temperature and that sort of thing?**
A. Yes.
**Q. That's what you were certified for?**
A. The quality control of it. Yes, sir. Which it's just roadway certification is just the ability to be able to test behind a paving crew to certify compactions, certify acceptance with the DOT. That sort of thing. We have one -- this job, for example, on every site. Part of the reason that I took that was more or less to understand and know that information. Not to actually go out and perform that. We have a quality control lab and department that does that routinely for us.
**Q. Right. So the people that are out on the job are below you in the scheme of things and, therefore, you want to be able to talk to them and tell them ---**
A. On an org chart. Yes. Not below us. But yes, they work for us.
**Q. Yes, sir. The position you were hired for was what?**

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**JOSHUA FRAZIER MAKISON**

*May 24, 2022*

**Michael and Mary Smith**

VS

**Themistoklis Economou, et. al.**

**2021-CP-39-00329**

REPORTER: Marcie L. Smith

A. Greenville has got the most growth as a county. Spartanburg right now has the largest projects as far as the scope and scale of them.

**Q. Your involvement with the 8130 contract. How would you characterize that?**

A. I had no involvement. At the time this one was done I was still the RCE, I believe it was, over the special projects in that period. So I didn't have any knowledge of it.

**Q. All right, but you were asked to help out with this due to some number issues or typographical errors?**

A. I helped with the FOIA request that came through for some documents, and I helped make sure those documents were gathered and provided.

**Q. The only contract relating to the Route 8 project was the 3948130 contract?**

A. Yes.

**Q. Would that be right?**

A. Yes, that's correct.

**Q. Because there was a 3949130, and then there was a 3984130. And those were merely typographical errors, is that right?**

A. I cannot remember the exact number, but I do know that there was a misunderstanding in how our

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**JOE DANIEL LAWS, III**

*May 24, 2022*

**Michael and Mary Smith**

VS

**Themistoklis Economou, et. al.**

**2021-CP-39-00329**

REPORTER: Marcie L. Smith

whose name is Joshua Makison. And we oversee all construction operations for the SCDOT. Over Greenville, Pickens, Spartanburg and Oconee. We oversee the resident construction engineers and they administer the construction projects for our agency.

**Q. All right, so for a jury or for myself, what exactly do you do? You oversee projects or ---**

A. So I manage -- I assist the DCE in managing the resident construction engineers in any question they may have in regards to a construction project. I take care of the preconstruction activities leading up to the construction office. I coordinate with our headquarters office in Columbia in regards to pre construction tasks that lead up to these construction projects. We try to minimize risk for our agency.

**Q. What were you doing March 22nd, 2019?**

A. I was -- I took a look back, and I was actually off work that day. I was on annual leave. But as far as work goes, I was a resident construction engineer for Pickens County.

**Q. And what were your responsibilities there?**

A. I oversaw a construction office of 13 at the time. And we managed construction projects for

going to work in.
**Q. And the last one?**
A. So I would interpret that statement that King Asphalt was in the process of milling out the road prior to the traffic control being properly installed.
**Q. How deep was the asphalt?**
A. This project had eight inch full depth patching.
**Q. Eight inch what?**
A. Full depth patching.
**Q. Is there a measurement done on the difference between the two lanes after a day of work?**
A. Yes, sir.
**Q. Who is responsible for the measurement?**
A. The contractor is responsible.
**Q. The contractor is King Asphalt?**
A. Yes, sir.
**Q. Were you made aware of the wreck that occurred on March 22nd, 2019?**
A. The first I heard of it was July of 2021.
**Q. And what did you understand?**
A. Our legal inspector, Mr. Alexander, contacted me via e-mail and informed me that there had been an accident on that particular date.
**Q. So you learned that in 2021?**

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Michael, p. 19-20.) Mr. Michael identified the signs required for the temporary lane closure as fourteen temporary warning signs, an arrow board, barricades transitioning traffic to the open lane, a sign in the middle of the barricades and a second arrow board. (Exhibit 2, S.C. DOT Standard Drawing 610-025-00, Lane Closure Daytime Multilane Primary Routes; Dep. of Michael, pp 5, 19-20).

The Highway 8 project had been ongoing for some time before March 22, 2019. On the day that the plaintiffs had their accident with Mr. Economou, King Asphalt had previously milled both eastbound lanes of Highway 8. (Dep. of Zachary Michael, p. 29). After the milling had been completed, King Asphalt commenced the paving work in the milled lanes which was to be done in one lane until that lane was completed which could take more than one day depending on the length of the lane being paved. (Dep. of Doug Limbaugh, p. 24). It is not disputed that at the time of the collision between the moped operated by Smith and the car operated by Economou that the inside left lane had been milled and was in that condition and the outside lane had been paved with new asphalt.

With respect to the area where the plaintiffs claim the accident occurred, Limbaugh, the vice-president of Milling and Reclamation Services at King Asphalt testified that "everything was started and finished in that area. Everything was tacked and paved. Everything that was paved was compacted." (Dep. of Limbaugh p 32-33). All the road work done on March 22, 2019 was accepted by the S.C. DOT. (Dep. of Limbaugh p. 32-33). Limbaugh also testified that S.C. DOT documented on a daily basis both the quality and the thickness of the asphalt and the compaction of the asphalt. (Dep. of Limbaugh, p. 42-43). Limbaugh further testified that the grade elevation difference between the paved lane and non-paved lane was either two inches or less which is the DOT requirement. (Dep. of Limbaugh p. 44). S.C. DOT engineer, Laws, also confirmed that the

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DOT regulation was that the lane differential not exceed two inches. (Dep. of Laws, p.19) S.C. DOT had their own inspector on site for every project and the inspector would have inspected the lane differential to make sure that the measurement was two inches. (Dep. of Limbaugh, p. 44). Zachary Michael, King Asphalt's Director of Personnel and Safety, also testified that the asphalt was installed according to SCDOT specifications in the outside lane, allowing for a two-inch differential between the milled lane and the newly asphalted right lane. (Dep. of Michael, p. 36). Michael testified that King Asphalt did "exactly as S.C. DOT contracted us to do." (Dep. of Michael, p. 37). He specifically stated that the contract required that they remove two inches of the asphalt and install two inches which is what they did. (Dep. of Michael, p. 38).

On March 22, 2019, King Asphalt was performing road construction on Highway 8 in the vicinity of Old Easley Pickens Highway. King Asphalt had previously milled two of the lanes on Highway 8, removing the asphalt, according to the S.C. DOT contract, to a depth of approximately two inches. (Dep. of Limbaugh, pp 22-23.) The King Asphalt road construction crew then installed new asphalt in the outside lane on March 22, 2019. To place the new asphalt in the designated outside lane and allow the traffic to flow unimpeded in the inside lane, King Asphalt, according to the specifications of S.C. DOT, implemented a temporary lane closure of the lane in which they were performing paving operations. To close a lane, King Asphalt would have placed delineation devices or cones at the beginning of the lane closure, tapering the closing of the lane to direct the live traffic to the left lane while construction was being done in the right lane. (Dep. of Laws, pp. 27-29). Beyond the taper closing the lane, King Asphalt would have placed cones every 50 feet in the work zone to protect the ongoing construction activities of their employees from the danger of the traffic. (Dep. of Michael, p. 46). The standard established by the S.C. DOT and within the

Install these signs immediately upon creation of this pavement condition and maintain these signs until this pavement condition is eliminated.

Install “Steel Plate Ahead” signs (W8-24-48) in advance of an area of roadway where temporary steel plates are present. Install these signs no further than 300 feet in advance of locations where steel plates are present. On multilane roadways, comply with the same guidelines as applied to all other advance warning signs and install two sign assemblies at each sign location, one on each side of the roadway, when roadway conditions warrant. Install these signs immediately upon installation of a temporary steel plate and maintain the signs until the temporary steel plates are removed.

Install and maintain any necessary detour signing as specified by the typical traffic control standard drawings designated for detour signing, Part VI of the MUTCD, these Special Provisions, and the Engineer. The lump sum price bid item for “Traffic Control” includes payment for installation and maintenance of the detour signing.

The Contractor shall maintain the travel patterns as directed by the traffic control plans and shall execute construction schedules expeditiously. The Contractor shall provide the Resident Engineer with no less than a two-week prior notification of changes in traffic patterns.

During nighttime flagging operations, flaggers shall wear a safety vest and safety pants that comply with the requirements of ANSI / ISEA 107 standard performance for Class 3 risk exposure, latest revision, and a fluorescent hard hat. The safety vest and the safety pants shall be retroreflectorized and the color of the background material of the safety vest and safety pants shall be fluorescent orange-red or fluorescent yellow-green.

During nighttime flagging operations, the contractor shall illuminate each flagger station with any combination of portable lights, standard electric lights, existing street lights, etc., that will provide a minimum illumination level of 108 Lx or 10 fc.

During nighttime flagging operations, supplement the array of advance warning signs with a changeable message sign for each approach. These changeable message signs are not required during daytime flagging operations. Install the changeable message signs 500’ in advance of the advance warning sign arrays. Messages should be “Flagger Ahead” and “Prepare To Stop”.

Upon completion of the final riding surface on each road, the Contractor will be allowed up to 3 working days to begin eliminating shoulder drop-offs greater than 2” and continue the work until these drop-offs are eliminated.

During paving operations, the Department requires lane closures at all times where grade elevation differences and drop-offs greater than 2" exist adjacent to or between the travel lanes of a roadway opened to traffic, unless otherwise specified by these special provisions. Maintain lane closure restrictions at all times unless otherwise directed by these special provisions.

During surface planing and milling operations, grade elevation differences greater than 1 inch in areas with pavements composed of hot mixed asphalt (HMA) base courses, intermediate courses or surface courses and Portland cement concrete are PROHIBITED between adjacent travel lanes open to traffic unless otherwise directed by the Department. However, during surface planing and milling operations for removal of Open-Graded Friction courses ONLY, a grade elevation difference of 1½ inches between adjacent travel lanes opened to traffic may exist unless otherwise directed by the Department.

During any surface planing and milling operations, lane closures are required at all times where grade elevation differences and drop-offs greater than the acceptable measurements specified heretofore exist adjacent to or between travel lanes open to traffic unless otherwise specified by the department.





ELECTRONICALLY FILED - 2025 Jan 27 11:11 AM - PICKENS - COMMON PLEAS - CASE#2021CP3900329

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If a grade elevation difference in excess of the specified acceptable ranges exist, either mill the adjacent travel lane or pave the milled travel lane as necessary to eliminate the grade elevation difference prior to opening the travel lane to traffic at these locations. Maintain the lane closure restrictions at all times unless otherwise directed by these special provisions.

During the paving operations, the length of roadway with an acceptable grade elevation difference less than or equal to 2" shall not exceed 2 miles.

During surface planing and milling operations, the length of roadway with an acceptable grade elevation difference less than or equal to 1" shall not exceed 2 miles.

Supplement and delineate the shoulder edges of travel lanes through work zones with traffic control devices to provide motorists with a clear and positive travel path. Utilize portable plastic drums unless otherwise directed by the Department. Vertical panels may be used where specified by the plans and directed by the RCE. The installation of traffic control devices are required in all areas where those areas immediately adjacent to a travel lane open to traffic have been altered in any manner by work activities, including but not limited to activities such as grading, milling, etc.
Install the traffic control devices immediately upon initiating any alterations to the areas immediately adjacent to or within 15 feet of the near edge line of the adjacent travel lane. When sufficient space is available, place the traffic control devices no closer than 3 feet from the near edge of the traffic control device to the near edge line on the adjacent travel lane. When sufficient space is unavailable, place the traffic control device at the maximum distance from the near edge of the adjacent travel lane available.

**LANE CLOSURE RESTRICTIONS -**

The lane closure restrictions stated below are project specific, for all other restrictions, see supplemental specification, “Restrictions”, dated September 1, 2015.

The Contractor shall install all lane closures as directed by the Standard Specifications For Highway Construction (latest edition), the Standard Drawings For Road Construction, these special provisions, the MUTCD, and the Engineer. The Contractor shall close the travel lanes of two-lane two-way roadways by installing flagging operations. The Contractor shall close the travel lanes of multilane roadways as directed by the typical traffic control standard drawings designated for lane closures on primary routes.

**The Department prohibits lane closures on multilane primary and secondary routes during any time of the day that traffic volumes exceed 800 vehicles per hour per lane per direction.**

**The Department prohibits flagging operations on two-lane two-way primary and secondary routes during any time of the day that traffic volumes exceed 800 vehicles per hour.**

**The Department reserves the right to suspend a lane closure or flagging operation if any resulting traffic backups are deemed excessive by the Engineer. Maintain all lane closure restrictions as directed by the plans, these special provisions and the Engineer.**

**Lane closures, including flagging operations, are restricted to maximum distances of 2 miles. Install all lane closures according to the typical traffic control standard drawings. On occasions when daytime lane closures must be extended into the nighttime hours, substitute the nighttime lane closure standards for the daytime lane closure standards.**

**The Department reserves the right to suspend a lane closure if any resulting traffic backups are deemed excessive by the Engineer. Maintain all lane closure restrictions as directed by the Standard Specifications, these special provisions, and the Engineer.**

A. It's two inches compacted. Yes.
**Q. Before you do that process, how many inches is it?**
A. I cannot confirm.
**Q. How much do you think it would be?**
BY MS. GRIFFIN:
Excuse me?
BY MR. SMITH:
How much do you think it would be?
BY MS. GRIFFIN:
I'm sorry. Object to the form.
BY THE WITNESS:
A. I ---
EXAMINATION RESUMED BY MR. SMITH:
**Q. You can't start at two inches, can you?**
A. Yes.
**Q. Well, if it's at two inches to begin with. And you roll it and everything, it's going to ---**
A. Are you talking about start the thickness of the lift at two inches?
**Q. Yes, sir.**
A. We try to achieve 220 pounds.
**Q. Which would be?**
A. Two inches.
**Q. That's your ultimate goal?**

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF PICKENS C.A. No.: 2021-CP-39-00329

Michael Smith and Mary Smith,
Plaintiffs,
v.
Themistoklis Economou, King Asphalt, Inc. and South Carolina Department of Transportation (SCDOT),
Defendants.

---

DEPOSITION OF
MICHAEL LAGINESTRA

---

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, a deposition was taken on the 18th day of October 2021, beginning at approximately 2:12 p.m. attended by counsel as follows:



Appearances:

DONALD L. SMITH, Esquire
Attorney Office of Donald Smith
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King Asphalt, Inc.

Deposition Reported by: VIRGINIA H. CAMPBELL, CR
Depositions And..., Inc.
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| 1 | SC Traffic Collison Report (2 pages) | 4 |
| 2 | Officer Michael Laginestra's File of Accident (17 pages) | 4 |
| 3 | DVD of body cam (not attached Retained by Mr. Still) | 16 |
| 4 | Aerial Photograph of Accident Scene (1 page - color) | 53 |
| **Plaintiff's Exhibit No.** | | |
| 1 | Aerial Photograph of Work Zone (1 page - color) | 41 |




Pursuant to Notice and/or agreement to take depositions, the within deposition was taken by the above reporter, a Notary Public, as required under the South Carolina Rules of Civil Procedure, Rule 30, et al., by consent of all parties at the Attorney Office of Donald Smith, 122 North Main Street, Anderson, South Carolina.

** ** **

The deponent and counsel agreed that both the reading over and signing of the deposition are hereby NOT WAIVED.

** ** **

The deponent was duly sworn to tell the truth, the whole truth, and nothing but the truth concerning the matter herein.

(DEFENDANT'S EXHIBITS "1" & "2" MARKED)

DIRECT EXAMINATION BY MR. STILL:

Q. Good afternoon. We met briefly before going on record. Just so you know, I'm Trey Still and I represent the driver that was involved in this accident. We're here today to take your deposition. I assume you've given a deposition before, correct?

A. Yes.

Q. Do you need me to go over the rules or are you familiar with them?

Q. If all the traffic is one lane, wouldn't it be perceived that that's what everybody thought?
BY MS. GRIFFIN:
Object to the form.
A. The collision took place outside the work zone where two, both lanes were open.
Q. How long had they been opened?
A. I don't know.
Q. I don't have anything further at this point.
(DEFENDANT'S EXHIBIT "4" MARKED)
REDIRECT EXAMINATION BY MR. STILL:
Q. Just real quick. I apologize, I tried to do these photographs in a hurry so it's a little far back. But I'll show you what I've marked as Exhibit 4 to your deposition, and again I apologize for it not being close enough but if you'll indulge me on my points to a few things? You see here you have Owen Street here, and then you have Easley Pickens Highway?
A. Yes, sir.
Q. And my understanding is that your vehicle would have been parked around here; is that correct?
A. When I got, when I got ---
Q. I've got a red one if you want to use it?
A. I'm just going to point. When I got to the scene, when I got to the scene my vehicle, I parked here at the corner



of Owen Lane on SC 8.
Q. Can you circle that and put a 1 beside it?
A. On top?
Q. That's fine. Okay. And then can you mark where you saw the moped at rest?
A. In general?
Q. Yes.
A. I don't want to say I'm testifying this is that moped's location.
Q. Based on your recollection?
A. Based on what I remember, so the deputy would have been there, the corporal would have been there. Do you want me to number that?
Q. Yeah, circle that and mark that as 2 if you don't mind? And then can you just go ahead and put a red dot and mark the one where you were parked? Go back and make that a little more legible where you can see it.
A. Oh, I'm sorry.
Q. Do what you did with the other one. Thank you. Nothing further.
RECROSS EXAMINATION BY MR. SMITH:
Q. So you're certain that it was Owen and it wasn't at the road just beyond that?
A. At Old Easley Pickens?
Q. Yes.



A. Yes, sir.
Q. All right. And your video will show the road across the street I guess at some point?
A. Which one?
Q. This one right here.
A. I didn't go back that far. I came, I came from this direction, I turned around over here, the location was some kind of bridge or concrete rail where I turned and parked there. I don't recall going past that road. I don't, I don't remember.
Q. Okay.
BY MR. STILL:
We're done.

. . . THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION CONCLUDED @ APPROXIMATELY 3:34 P.M.

CERTIFICATE

This is to certify that the foregoing deposition of MICHAEL LAGINESTRA was taken by the within court reporter, a Notary Public for the State of South Carolina, duly commissioned and qualified as such, on the 18th day of October, 2021 at the Attorney Office of Donald Smith, 122 North Main Street, Anderson, South Carolina.



That said court reporter is not a relative or employee of any of the parties or the attorneys, and further is not of-counsel or attorney for any of the parties to said action and is not in any manner interested in the cause, financial or otherwise.

That the oral deposition was duly taken and transcribed; that the foregoing 55 pages is a true, accurate and correct record of the testimony given together with such changes as said deponent may have made, if any, during the reading over and signing procedure.

That the court reporter has retained the original deposition transcript in her possession for the purpose of sealing and filing same with the proper official.

That all offered exhibits, stipulations and objections, if any, involved in this cause are duly attached or included herein.

In witness whereof, I have set my hand and official seal:
Date: 10/21/2021

Virginia H. Campbell, Court Reporter
Notary Public for South Carolina
My Commission Expires: 4/22/2031

Owen Ln

Imagery ©2021 Maxar Technologies, U.S. Geological Survey, Map data ©2021 50 ft

DEFENDANT'S EXHIBIT 11/4/11

South Carolina Department of Transportation

# DAILY REPORT OF ASPHALT ROADWAY INSPECTION

Form 400.04
Rev. 06/2016


Date: 3/22/19 Contract #: 3984130 Project #: PO37242 County: 39- Pickens

**Plant Name & Location:**

| Plant Name: | King Asphalt Inc. | County: | 39- Pickens | City: | Liberty |
|---|---|---|---|---|---|

Type Mix: Surface BR Job Mix #: D0510 Lot #: -- 5

Weather: Clear Low: 35 °F High: 68 °F Wind: Light

Prime Contractor: King Asphalt Asphalt Contractor: King Asphalt

## Rate of Quantities on the Road

*(Ditch and Leveling to be completed on separate Form 400.04)*
*(rate frequency = 200 ton maximum)*

| Load # | Road # | Lane | From Station | To Station | Avg. Width (feet) | Linear Feet | Total SY | Total Tons | Actual lbs / SY | Spec lbs/ SY or Leveling |
|---|---|---|---|---|---|---|---|---|---|---|
| 1-9 | SC-8 | LOSL | 100+60 | 87+36 | 11 | 1,324 | 1,618.222 | 187.11 | 231.254 | 220 |
| 10-18 | SC-8 | LOSL | 87+36 | 73+65 | 11 | 1,371 | 1,675.667 | 189.73 | 226.453 | 220 |
| 19-27 | SC-8 | LOSL | 73+65 | 59+67 | 11 | 1,398 | 1,708.667 | 190.34 | 222.794 | 220 |
| 28-36 | SC-8 | LOSL | 59+67 | 43+98 | 11 | 1,569 | 1,917.667 | 211.87 | 220.966 | 220 |
| 37-44 | SC-8 | LOSL | 43+98 | 33+31 | 11 | 1,067 | 1,304.111 | 147.65 | 226.438 | 220 |
| | | | | | | | 0.000 | | 0.000 | |
| | | | | | | | 0.000 | | 0.000 | |
| | | | | | | | 0.000 | | 0.000 | |
| | | | | | | | 0.000 | | 0.000 | |
| | | | | | | | 0.000 | | 0.000 | |
| | | | | | | | 0.000 | | 0.000 | |
| | | | | | | | 0.000 | | 0.000 | |
| | | | | | | Total Asphalt Tons: | | 926.7 | | |

SCDOT
South Carolina Department of Transportation

# DAILY REPORT OF ASPHALT ROADWAY INSPECTION

Form 400.04
Rev. 06/2016


| Rate of Tack | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Type of Tack: | Emulsified | | | Dilution Rate (gal/ SY): | --- | | | |
| Rate # 1: | .06 | Rate # 2: | .06 | Rate # 3: | .07 | Rate # 4: | .06 | Rate # 5: | .07 |

| Temperature | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Ambient Air Temperature: | Time | 10:20 | AM | 11:23 | AM | 12:38 | PM | 12:54 | PM |
| | Temp | 48 | °F | 52 | °F | 57 | °F | 68 | °F |
| Mat Temperature | Time | 10:20 | AM | 11:23 | AM | 12:38 | PM | 2:54 | PM |
| | Temp | 280 | °F | 298 | °F | 293 | °F | 287 | °F |
| Temp. of Mix at Arrival | Time | 10:20 | AM | 11:23 | AM | 12:38 | PM | 2:54 | PM |
| | Temp | 315 | °F | 319 | °F | 320 | °F | 310 | °F |

| Equipment: | | | |
|---|---|---|---|
| Paver Make: | VOGELE | Paver Type: | TRACK |

Laying Quality: Good

| Roller Stage | Roller Mode | # of Passes |
|---|---|---|
| Breakdown | Steel-Wheel (vibratory) | 3 |
| Intermediate | Pneumatic-Tire | 3 |
| Finish | Steel-Wheel | 3 |

**Additional Info:** (Use this section to describe anything out of the normal asphalt placing procedures.)

Contractor Rep: Brandon Whitmire

Signature: _____ Date: _____

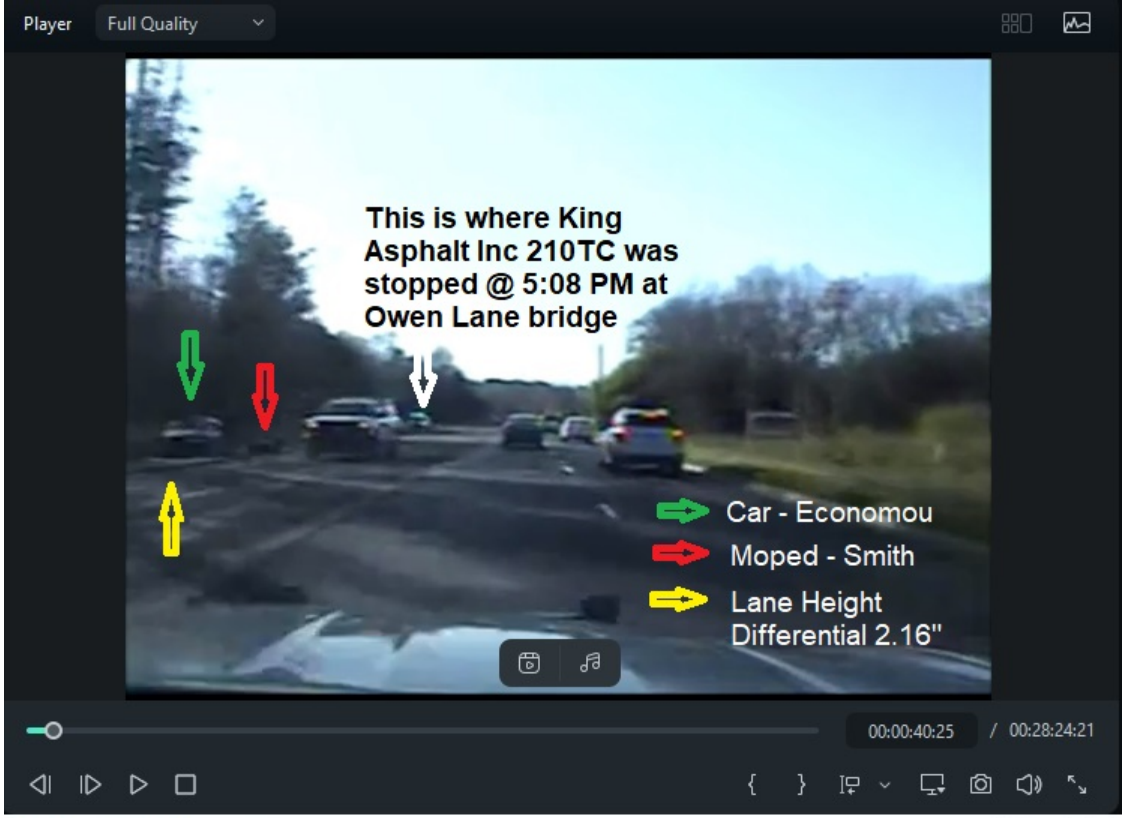
SCDOT Rd. Inspec: Addison Chandler

Signature: _____ Date: 3/22/19

RCE: JOE LAWS

Signature: _____ Date: 3/29/19

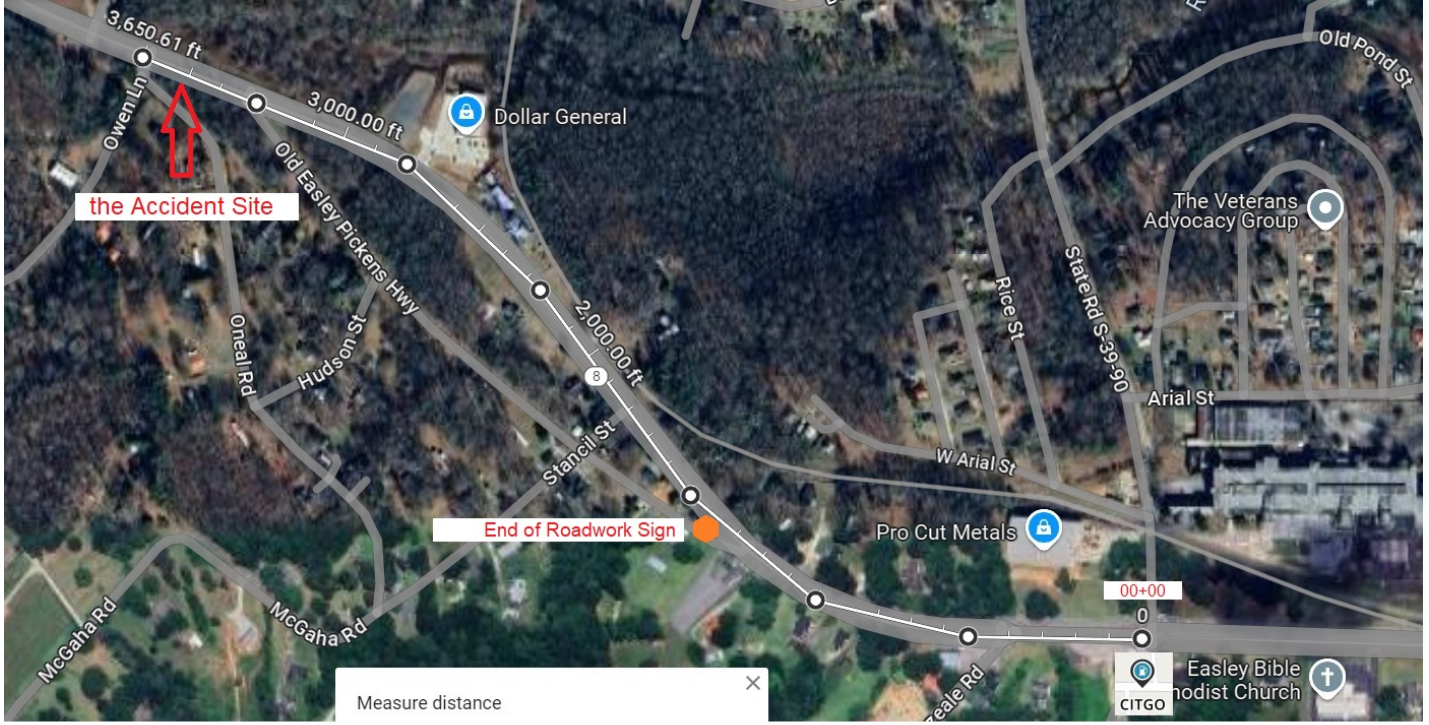
EXHIBIT L - Smith v. King Asphalt Inc. 2021-CP-39-00329



Player
Full Quality
00:00:40:25
/ 00:28:24:21

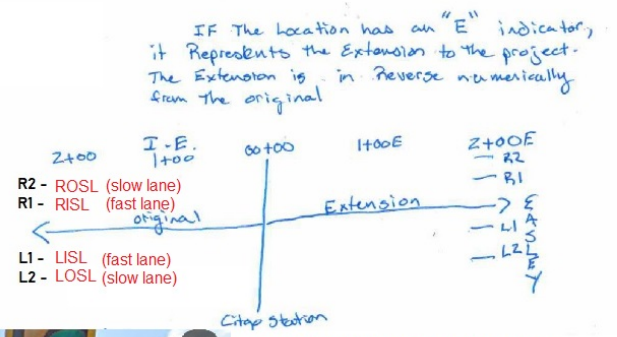
Owen Ln
Gentry Memorial Hwy
Easley, South Carolina
Google Street View
Aug 2016
See latest date
Highway 8 Eastbound
Old Easley Pickens Highway
Old Easley Pickens Hwy to Owen Lane is the Accident Site
Accident occurred here
OWEN Lane
Gentry Memorial Hwy
Highway 8 Westbound
This is Hwy 8 - Gentry Memorial Highway, Easley SC
GPS data provided by King Asphalt Inc. has their vehicle 210TC stopped here (at the Owen Lane bridge rail) at 5:08 PM March 22, 2019 traveling West against Eastbound traffic in the LOSL (the slow lane).
The Eastbound lanes the fast lane was milled 2" deep and the slow lane freshly paved with a 2+" mat.
210TC had left Old Easley Pickens Hwy entrance where it had been parked since 4:45 PM March 22, 2019.
The only way this movement could have been possible, moving aginst oncoming traffic, was the center line between the fast and slow lane was blocked by traffic control cones, isolating that lane from oncoming traffic. Permitting 210TC to roll against traffic picking up traffic control cones as it progressed West up the Eastbound lane.
This premature removal of cones from the centerline of two adjacent lanes (one milled, one paved with a lane height differential of 2.16") allowed a vehicle following the Plaintiff's moped in the LISL (fast lane) to enter that lane and strike the Plaintiff's moped as it crossed the slow lane to take their exit onto Old Easley Pickens Hwy. But for the premature removal of those traffic control cones by King Asphalt Inc.'s 210TC, the accident could not have occurred.

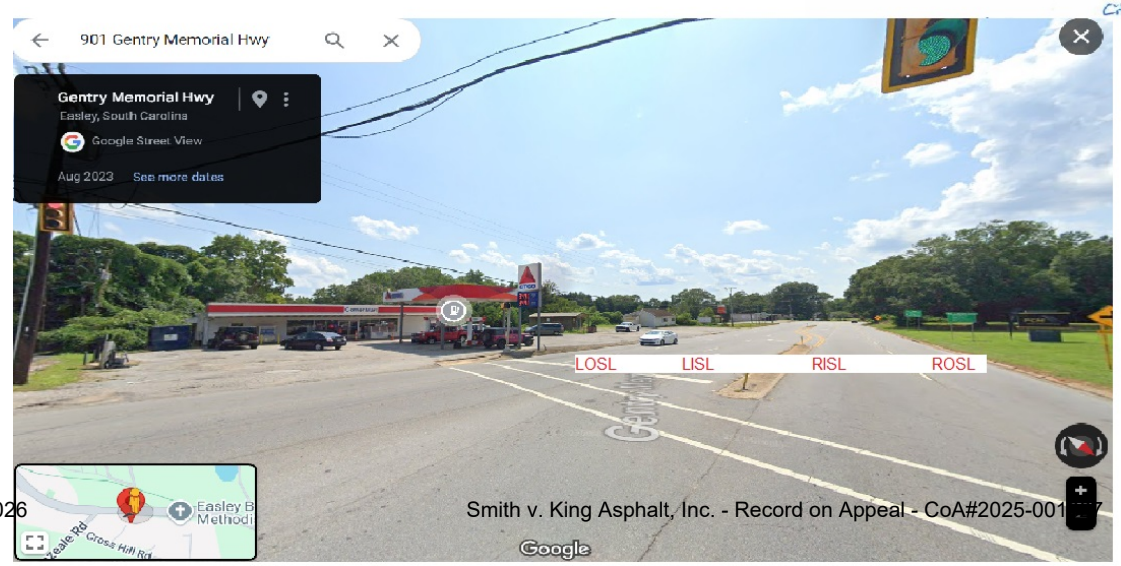
EXHIBIT O - Smith v. King Asphalt Inc. 2021-CP-39-00329




Layman's explanation of topography:

This project consisted of two parts. The first running WEST of the Citgo station at 901 Hwy 8 Gentry Memorial Highway and the extension project running EAST. The demarcation point (00+00) is the Citgo Station. Lane descriptions and distances are all relative to the Citgo station. This can lead to confusion as the flow of traffic is in reverse in the Eastbound LISL (left inside shoulder lane - fast lane) and LOSL (left outside shoulder lane - slow lane). The accident occurred in L2 - LOSL (the slow lane of Eastbound traffic towards Easley). In the SCHP Troopers dashcam video he is leaving the Citgo station going West in the RISL (fast lane). His camera is showing the entire roadway with the road condition of the LISL and LOSL on the left of the screen as he approaches the accident. The dashcam video clearly shows the absence of any traffic control devices or road paint, despite the ongoing milling/paving roadwork described in the Daily Work and Inspection Reports. His dashcam shows the entire roadway between the Citgo and the accident and pans the entire highway beyond - showing NO TRAFFIC CONTROL DEVICES WHATSOEVER.




Layman's Explanation of distance notations:

Throughout various reports by King Asphalt to SCDOT there are distance notations descrbing how far a point is from 00+00. These notations take the form

00+00
hundred/ft+ increment of hundred
so
2+32 =232 feet
5+86 =586 feet
10+29=1029 feet
101+18= 10118 feet

to calculate the distance between any two points you subtract the larger from the smaller 5+86 - 2+32= 3+54
586 - 232 = 354 feet

In this instance the numbers grow larger as you progress EAST and WEST from 00+00. Everything is relative to 00+00 (the crosswalk at CITGO).

Slow Lane
Fast Lane
Median
This was the berm between slow and fast lane
This is where accident occurred

# Plan Preparation Guide

# Chapter 2

# Typical Sections - Pavement Design


| Section | Description | Page |
|---|---|---|
| 1 | Typical Sections | 2-1 |
| 2 | Secondary (“C” projects) Typical Sections | 2-3 |
| 3 | Base Course | 2-4 |
| 4 | Full Depth Asphalt Patching | 2-5 |
| 5 | Maintenance of Roadway and Drives | 2-5 |
| 6 | Curb Ramps | 2-5 |
| 7 | Mill-in Rumble Strip | 2-5 |
| 8 | Asphalt Weight and Thickness | 2-5 |
| 9 | Pavement Designs | 2-6 |
| 10 | Detectable Warnings | 2-7 |
| 11 | Guidelines for Hot Mix Asphalt Selection | 2-15 |

## 4. Full Depth Asphalt Patching

Full Depth Asphalt Pavement Patching has been revised to limit the depth of patching to 4", 6", and 8" Uniform. Problems have been incurred in the curing and compaction of the asphalt mix in the deeper patches.

## 5. Maintenance of Roadway and Drives During Construction

When material is needed to maintain traffic on the roadway or on driveways during construction, the bid item "Maintenance Stone" given in tons will be used. The selection of a specific aggregate for maintenance stone will not be made by the Department. Also, when full depth patching is required, quantity for maintenance stone (25 Tons per 100 S.Y.)

## 6. Curb Ramps

Curb Ramp notes, where applicable, shall be shown on the curb and gutter typical sections. The note shall read "Curb ramps are to be constructed in accordance with Standard Drawing 720-6". See Figure 2-E for a typical curb and gutter section. Also see page 2-7 for information about detectable warnings applicable to curb ramps.

## 7. Mill-in Rumble Strips

Mill-in Rumble Strips shall be used on all projects where there is a paved four foot or wider shoulder. This will include both the inside and outside shoulder where a paved four to ten foot shoulder is used. Mill-in Rumble Strips will not be used on a ramp, acceleration or deceleration lanes. A note will be placed on the plan sheet showing "Begin Mill-in Rumble Strip" and "End Mill-in Rumble Strip" with an arrow to the appropriate location. (See Special Drawing No. 100-4A).

## 8. Asphalt Weight and Thickness

Below is a table of conversion factors for the weight and thickness of asphalt base and surface courses.

Table of Conversion Factors from Lbs/SY to Equivalent Inches

| TYPE OF MATERIAL | APPROX. LBS/SY 1" THICK | EQUIV. INCHES PER 100 LBS/SY |
|---|---|---|
| Asphalt Concrete Surface Course | 105.0 | 0.95 |
| Asphalt Concrete Binder Course | 105.0 | 0.95 |
| Bit. Stabilized Macadam Base Cr. | 105.0 | 0.95 |
| Asphalt Aggregate Base Course | 105.0 | 0.95 |

Gentry Memorial Hwy
Easley, South Carolina
Google Street View
Feb 2023 See more dates
Accident site
Where King Asphalt truck
Was stopped at 5:08 PM 03/22/2019

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

# ROA - 22

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Appellants' Motion to Reconsider Pursuant to Rule 59(e), SCRCP, filed February 28, 2025. (App. 11)

Clerk of Court Pickens County, SC
FEB 28 '25 AM 10:51

| | |
|---|---|
| STATE OF South Carolina<br><br>COUNTY OF Pickens<br><br>Michael and Mary Ann Smith,<br><br>Plaintiffs,<br><br>vs.<br><br>Themistoklis Economou and King Asphalt Inc.,<br><br>Defendants. | IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT<br><br>CASE NO.: 2021-CP-39-00329<br><br>**PLAINTIFFS' MOTION TO RECONSIDER PURSUANT TO RULE 59(e)** |

## PLAINTIFFS' MOTION TO RECONSIDER PURSUANT TO RULE 59(e)

**TO THE HONORABLE COURT:**
Plaintiffs Michael and Mary Ann Smith respectfully move this Court to reconsider its ruling granting Defendant King Asphalt, Inc.'s Motion for Summary Judgment. The Court's decision overlooked critical evidence, misapplied South Carolina law, and failed to account for procedural misconduct by defense counsel. This motion is brought under Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP) to correct manifest errors of law and fact.

Plaintiffs Michael and Mary Ann Smith will respectfully demonstrate to this Court that a 2-inch lane height differential exceeds the 1-inch regulatory limit ($2 > 1$), thereby constituting a clear violation of SCDOT Division 600 regulations and South Carolina Code § 56-5-1535(F)(1), which expressly prohibit reopening a lane to traffic without mitigation when a milled lane is adjacent to a paved lane and must meet state Department of Transportation standards, the provisions of Section 56-5-4700... and must be installed properly.

Plaintiffs submit the attached Exhibits A-Z and AA -DD in support of this Motion, incorporating them by reference herein, and respectfully request that the Court take judicial notice of each exhibit individually and supporting GPS data/information, regardless of whether explicitly cited in this motion (due to oversight), to ensure a complete and accurate review of the record.

All references/citations to "Memorandum" or "hearing" are contained on the record in Defendant's Memorandum in Support of Motion for Summary Judgment and the attached transcript of that hearing January 27, 2025 before the Honorable Jessica A. Salvini.

**Legal Standard for Reconsideration**
Under SCRCP 59(e) and *Town of Meggett v. Fid. & Deposit Co.*, 409 S.C. 171 (2023), reconsideration is warranted to correct:

1. **Manifest errors of law or fact** (misapplication of SCRCP 56 and negligence per se doctrine);

2. **Newly discovered evidence** (Defendants' admissions in their 212-page memorandum); (any notation of Defendant's "admissions" throughout this document refers to points they have conceded or stated in their Memorandum or made in oral arguments before the Court – NOT admissions as in discovery admissions)
3. **Changes in controlling law** (*The Kitchen Planners, LLC v. Friedman*, S.C. Sup. Ct. Op. 28173 (2023)).

**PRELIMINARY STATEMENT**

This case involves a motor vehicle collision on March 22, 2019, caused by hazardous conditions created by King Asphalt, Inc. in an active South Carolina Department of Transportation (SCDOT) work zone. Plaintiffs have presented irrefutable evidence of negligence per se through Defendants' own admissions, documentary records, and violations of SCDOT regulations. Despite this, the Court granted summary judgment based on defense counsel's procedural ambush, misrepresentation of federal standards, and improper reliance on the absence of expert testimony.

For nearly six years, Defendants have engaged in obstructionist tactics to avoid liability, including:

1. Premature Removal of Traffic Control Devices: Violating SCDOT Division 600 by prematurely reopening a lane, with a hazardous height differential exceeding regulatory limits, without mitigating the hazard. Denying accident occurred in a work zone. Denied King Asphalt, Inc. had workers present and removed evidence of the work zone prior to arrival of law enforcement.
2. Last-Minute Ambush Tactics: Serving a 212-page memorandum at the January 27, 2025 hearing, depriving Plaintiffs of meaningful review.
3. False Claims of Compliance: Admitting to a lane height differential of 2 inches while falsely asserting adherence to SCDOT standards.
4. Misrepresentation of Federal Legal Standards: Citing inapplicable federal summary judgment rules (*Celotex Corp. v. Catrett*) to exploit Plaintiffs' pro se status.

This Motion demonstrates that Defendants' actions constitute negligence per se, rendering expert testimony unnecessary. The Court's ruling contravenes South Carolina law and principles of fairness.

In plain English, Plaintiffs respond with simple terms to explain Defendant's claims (with plaintiff's explanation and proof of how they are false).

1. Defendants claim plaintiffs can't prove, without an expert explaining, where the accident occurred and if it was in a SCDOT work zone.
2. Defendants claim plaintiffs can't prove, without an expert explaining/interpreting, the Daily Work Reports and Daily Inspection Reports by SCDOT and King Asphalt, Inc. as to the condition of the highway at the accident site, that arises to the claim they violated a regulation and statute in the context of negligence per se.
3. Defendants claim plaintiffs can't prove, without an expert explaining, the lane height differential at the accident site between the LISL and LOSL lane, causing the regulation

of PROHIBITING the opening of a lane of travel due to hazardous conditions, to come into effect.

4. Defendants claim plaintiffs can't prove, without an expert explaining, the plain language of the regulations King Asphalt, Inc. violated that make them liable under South Carolina law.
5. Defendants claim plaintiffs can't prove, without an expert explaining, how King Asphalt, Inc. by violating those regulations and statute are liable under negligence per se.

Defendants, in their Memorandum in Support of Summary Judgment and oral arguments at the January 27, 2025 hearing, have reduced this six-year legal battle to the following issues of dispute:

1. Defendants argue that Plaintiffs cannot prove the exact location of the accident within the work zone without employing an expert to interpret SCDOT Daily Work Reports and Daily Inspection Reports (Form 400.04), specifically the "station markings" used for distance measurements.

Defendants insist that Plaintiffs cannot establish the accident location without an expert to interpret SCDOT station markings. This argument is a red herring designed to manufacture an issue where none exists. The precise station marking is irrelevant because the accident's location is already established through multiple independent sources:

- SCHP accident report TR-310 **GPS coordinates** [see attached Exhibit EE] precisely place the accident in the LOSL, eastbound between Owen Lane and Old Easley Pickens Hwy 8. [(SCHP TR-310 Report , GPS Data)]

  **The GPS coordinates recorded in the TR-310 accident report, entered by SCHP Trooper Laginestra, place the accident precisely at:**

  **Latitude:** 34° 50' 48.8" N
  **Longitude:** 82° 39' 12.64" W

  **These coordinates confirm that the accident occurred in the LOSL, between Owen Lane and Old Easley Pickens Hwy, within the active SCDOT work zone where King Asphalt was conducting paving operations.**

  This independently recorded law enforcement data eliminates the need for expert testimony regarding station markings, as it provides a definitive and verifiable location of the crash.

- Trooper Laginestra, in his deposition, marked the accident location on a map provided by Defendants. [(Laginestra Deposition, Exhibit #4)] [see attached Exhibit DD]
- King Asphalt's own Fleetwatcher GPS data confirms their cone truck was actively removing traffic control devices at the accident site at the time of the crash. [(Fleetwatcher GPS Data, Exhibit R and Exhibit W)]
- Dashcam video from Trooper Laginestra's vehicle shows the exact scene of the accident and corroborates all other evidence. [(Exhibit L)]

When GPS data, law enforcement confirmation, dashcam footage, and Defendants' admissions all establish the accident location, expert testimony regarding station markings is unnecessary. The Defendants' argument is not a genuine factual dispute but an attempt to create an artificial requirement to obstruct Plaintiffs' ability to proceed.

Rebuttal:

- The SCHP accident report contains GPS coordinates of the accident location [see attached Exhibit EE], which eliminates any need for expert interpretation of station numbers.
- Trooper Laginestra's deposition confirms that he marked the accident location on a photograph (Defense Exhibit #4 of Laginestra deposition), which aligns with known GPS data.
- SCDOT's own responses to FOIA acknowledge the location as part of an active work zone.
- The Defendants themselves have admitted in their memorandum that the accident occurred in an SCDOT work zone.
- Defendants provided GPS data from Fleetwatcher, of their vehicle traversing a map showing the accident site at the time and place of the accident.
- The station markings argument is a red herring, as Plaintiffs have direct evidence (GPS, SCHP report, and deposition testimony) that establishes the precise location of the accident without a need for "station markings".

2. Defendants contend that because Plaintiffs cannot pinpoint the precise accident location, they also cannot establish the condition or status of that segment of the highway at the time of the accident without expert testimony.

Rebuttal:

- The Defendants' own documents and admissions confirm the highway conditions—the fast lane was milled, and the slow lane had a new mat, creating a height differential between the two lanes. Defendants admitted the condition of the highway at the accident site on March 22, 2019 as: "*It is not disputed that at the time of the collision between the moped operated by Smith and the car operated by Economou that the inside left lane had been milled and was in that condition and the outside lane had been paved with new asphalt.*" (Page Four of Defendant's Memorandum [attached Exhibit E])
- The Daily Work Reports and Inspection Sheets (Form 400.04) provided by SCDOT explicitly describe the milled condition of the fast lane and the paved condition of the slow lane at the time of the accident.
- Photographic evidence from the SCHP accident scene report shows the height differential clearly visible where the accident occurred.

- Defendants' own witness depositions confirm the sequence of paving and removal of cones, proving the unsafe conditions at the time of the accident.

3. Defendants assert that Plaintiffs are incapable of proving the lane height differential at the location of the accident without expert testimony explaining SCDOT and industry standards for calculating the thickness of the finished paving mat in the LOSL.
Rebuttal:

- SCDOT contract specifications (Division 600) explicitly require that lanes with a height difference exceeding 1 inch must either be ramped or closed to traffic.
- Defendants' own documentation (Daily Reports and Inspection Sheets) confirms that the slow lane was freshly paved with a 2" mat and the adjacent fast lane still milled to a depth of 2", which necessarily creates a height differential exceeding 1 inch.
- Multiple photographic exhibits from the accident scene, combined with Plaintiffs' firsthand testimony, visually demonstrate the height differential and the resulting instability for the moped.
- The Defendants' own admissions acknowledge that the milled lane was open to traffic while adjacent lanes were being paved and that cones delineated the two while paving the LOSL. Defendants admit to removing the protection of those delineating cones without first mitigating the safety hazard, violating contract provisions and creating the unsafe condition.

4. Defendants claim that four witnesses, through their depositions, affirm that the King Asphalt, Inc. paving crew complied with South Carolina state law, Division 600 regulations, MUTCD guidelines, and contract requirements at all times.

Defendants claim that four depositions confirm King Asphalt followed all regulations and safety protocols. However, their own documents and admissions contradict this claim.

- None of the four deponents had firsthand knowledge of the accident.
    - Two deponents were King Asphalt employees, presenting a clear conflict of interest.
    - Two deponents were SCDOT employees, meaning they have a vested interest in protecting the agency overseeing the project.
    - All four admitted they were not present at the accident scene when it happened. [(Deposition excerpts Exhibits A, B, C, D) of Limbaugh, Laws, Michael, Makison)]
- Deposition testimony does not outweigh objective documentary evidence. The following evidence contradicts their claims:
    - SCHP Dashcam Video: Shows no traffic control devices in place at the accident scene, contradicting their statements that proper safety measures were maintained. [(Exhibit L)]
    - Fleetwatcher GPS Data: Proves that King Asphalt's truck was removing cones moments before the crash. [(Exhibit R and Exhibit W)]
    - Daily Work Reports & Inspection Reports: Confirm that the LOSL was paved while the LISL remained milled, leaving a 2-inch height differential that was not mitigated before the lane was reopened. [(Exhibit K)]

    - Witness Testimony from Olivia Paige Bryan: Confirms that cones between the lanes "ended about ten seconds before the accident." [(Bryan Deposition, p.14)] [see attached Exhibit AA]
- Defendants' Own Admissions Contradict Their "Everything Was Done Correctly" Claim:
    - Defendants admit the LISL was milled and the LOSL was paved, creating a 2-inch height differential. [(Memorandum, p.5; Depositions: Michael, p.36; Limbaugh, p.44)]
    - Defendants admit King Asphalt removed cones before law enforcement arrived. [(Hearing Transcript, p.6-7)]
    - Defendants made no mention or acknowledgment of SCDOT regulations prohibiting opening a lane with a height differential exceeding 1 inch. Even after admitting the condition of the highway as being a milled lane adjacent to a freshly paved lane with a 2" height differential [(Exhibit G, Division 600, Page 22-23)]

If everything was done correctly, then why do multiple independent sources—including Defendants' own admissions—prove the opposite? Their argument is contradicted by their own documents, GPS records, eyewitness accounts, and law enforcement reports.

Rebuttal:

- None of the four witnesses had firsthand knowledge of the accident itself.
    - All four stated specifically that they had no direct firsthand knowledge of the accident or the circumstances surrounding the condition of the highway; but were testifying to what they "thought" (based on records) versus what they "knew" by personal observation.
    - One admitted learning about the accident two years later. Another "months" later. Another testified there was no mechanism to report such things within the organization and would only arise if reported by an external source.
    - Another had no involvement in the 3948130 contract and only assisted with FOIA responses.
- SCDOT contract violations are already established through official documents, regardless of what these four witnesses claim:
    - Daily Work Reports show that the milled lane was open for 16 days—6 days beyond 10 day contract limits.
    - Lane height differentials exceeding 1 inch were not mitigated before reopening lanes to traffic, violating safety regulations. None of the four affiants acknowledge or address this regulation.
    - Based on the hazard presented by the lane height differential, traffic cones were unlawfully removed, allowing premature access to the newly paved lane.
- Photographic and SCHP dashcam evidence contradicts the claim that work zone regulations were followed, as they show a complete absence of proper traffic control at the time of the accident.
- SCDOT's own guidelines and training materials contradict defense claims, establishing that King Asphalt did not comply with work zone safety protocols.

5. Defendants argue that Plaintiffs are unable to identify, without expert testimony, the specific regulations King Asphalt, Inc. violated or to explain these violations in layman's terms.

Defendants' own admissions establish every necessary fact to prove negligence per se, eliminating the need for expert testimony.

- Defendants admitted the accident occurred within an SCDOT work zone. [(Memorandum, p.2)]
- Defendants admitted the LISL was milled and the LOSL was paved, creating a 2-inch height differential. [(Memorandum, p.5; Depositions: Michael, p.36; Limbaugh, p.44)]
- Defendants admitted King Asphalt removed the traffic control cones before law enforcement arrived. [(Hearing Transcript, p.6-7)]
- Defendants admitted that SCDOT regulations prohibit opening a lane with a height differential exceeding 1 inch. [(Exhibit G, Division 600, Page 22-23)]

Negligence per se is established once a statutory or regulatory violation is proven. Under South Carolina law, expert testimony is unnecessary when a regulation has been violated, and harm resulted. [(Rayfield v. S.C. Dept. of Corrections, 297 S.C. 95, 374 S.E.2d 910 (1988))].

The doctrine of negligence per se dictates that when a party violates a statute or safety regulation designed to protect the public, negligence is presumed, and expert testimony is not required. **[(Steinke v. S.C. Dept. of Labor, Licensing & Regulation,** 336 S.C. 373, 520 S.E.2d 142 (1999))]. The violations here—removing safety cones without mitigating the hazardous lane height differential—are clear and require no expert explanation.

**Defendants cannot argue that expert testimony is required to prove facts they have already admitted.** If Defendants themselves confirm the road conditions, the work zone status, the lane height differential, and their removal of safety measures, then no expert is needed to establish what is already undisputed.

Rebuttal:

- The specific regulations violated have already been documented through:
  - SCDOT Division 600 (Standard Specifications) and Page 22 of the defendants filed Exhibit– requiring ramping or closure of lane if differential exceeds 1 inch (when milling and paving are in adjacent lanes).
  - SCDOT Division 600 (Standard Specifications) and Page 23 of defendants filed Exhibit – requiring mitigation of safety hazard prior to opening of lane to traffic.
  - SCDOT Special Provisions – prohibiting keeping a milled lane open for more than 10 days (violated by King Asphalt keeping it open for 16 days).
  - MUTCD (Manual on Uniform Traffic Control Devices) – requiring proper work zone signage and tapering, which were missing according to SCHP dashcam footage.
  - SC Code § 56-5-1535(F)(1) – prohibiting opening a work zone lane without proper markings and safety measures.
- Plaintiffs do not need an expert to explain these violations because:
  - The contract itself defines the required safety standards.
  - The violations are factual and documented through SCDOT's own reports and SCHP's investigation.

- Defendants already admitted in their memorandum that the road was in an active work zone and that the paving process followed a timeline consistent with Plaintiffs' claims.

Defendants have taken a shotgun approach to their claims and demands for proof. The fact is, Defendant's have admitted to multiple elements of the plaintiffs' negligence per se claim and due to these admissions Plaintiffs have to prove only the remaining elements of the negligence per se claim. In support of this Plaintiffs propound the following;

1. **The accident occurred in the work zone.**
   - King Asphalt was performing SCDOT Contract 3948130 on Highway 8 at the time of the accident. [(Memorandum, p.2; Hearing Transcript, p.5)]

> *"On March 22, 2019, King Asphalt was performing road construction on Highway 8 in the vicinity of Old Easley Pickens Highway. King Asphalt had previously milled two of the lanes on Highway 8, removing the asphalt, according to the SCDOT contract, to a depth of approximately two inches."* [(Memorandum, p.2)]

2. **The inside left lane (LISL) was milled, and the outside left lane (LOSL) was freshly paved, creating a lane height differential.**
   - King Asphalt confirms the LISL was milled, and the LOSL had new asphalt at the time of the crash. [(Memorandum, p.5; Depositions: Michael, p.36; Limbaugh, p.44)]

> *"It is not disputed that at the time of the collision between the moped operated by Smith and the car operated by Economou that the inside left lane had been milled and was in that condition and the outside lane had been paved with new asphalt."* [(Memorandum, p.5)]

> *"The asphalt was installed according to SCDOT specifications in the outside lane, allowing for a two-inch differential between the milled lane and the newly asphalted right lane."* [(Deposition of Michael, p.36)]

3. **King Asphalt removed the cones, reopening the lane to traffic.**
   - The company admits its workers removed cones, allowing vehicles to enter the LOSL. [(Hearing Transcript, p.6-7)]

> *"So when you take the taper off of a lane what you do is you start at the backside and you go from, in reverse, so King Asphalt's truck was heading against the traffic in the right lane picking up the cones. As they were picking up the cones, then the testimony is that the cars could move over to the right lane which had previously been closed."* [(Hearing Transcript, p.6-7)]

4. **The lane height differential at the time of reopening was 2 inches.**
   - Depositions confirm the grade elevation difference was 2 inches. [(Limbaugh, p.44; Michael, p.36)]
   - Defense counsel does not dispute this. [(Hearing Transcript, p.9)]

*"The grade elevation difference between the paved lane and non-paved lane was either two inches or less which is the DOT requirement."* [(Deposition of Limbaugh, p.44)]

**5. SCDOT regulations prohibit opening a lane with more than a 1-inch height differential without mitigation.**

- SCDOT generally allows a 2-inch differential for construction work. However, the acceptable differential drops to 1 inch when the adjacent lane is opened to traffic due to the safety risk.
- SCDOT Contract 3948130, Division 600, Page 22 explicitly states:

> *"Grade elevation differences greater than 1 inch... are PROHIBITED between adjacent travel lanes open to traffic unless otherwise directed by the Department."* [(Exhibit G, Division 600, Page 22)]
>
> *"During any surface planing and milling operations, lane closures are required at all times where grade elevation differences and drop-offs greater than the acceptable measurements specified heretofore exist adjacent to or between travel lanes open to traffic unless otherwise specified by the department."* [(Exhibit G, Division 600, Page 22)]
>
> *"If a grade elevation difference in excess of the specified acceptable ranges exist, either mill the adjacent travel lane or pave the milled travel lane as necessary to eliminate the grade elevation difference prior to opening the travel lane to traffic at these locations."* [(Exhibit G, Division 600, Page 23)]

**6. King Asphalt reopened the lane despite knowing the height differential exceeded 1 inch.**

- No mitigation measures were taken before reopening the lane. [(Memorandum, p.5; Hearing Transcript, p.8)]

> *"Defendants argue that plaintiffs cannot prove, without an expert, the lane height difference between the milled and paved lanes at the accident site, or that this difference triggered regulations prohibiting the opening of the lane, without an expert."* [(Memorandum, p.5)]
>
> *"There is absolutely no testimony that they have provided that supports any of those theories for the plaintiff, so their arguments fail and should be rejected."* [(Hearing Transcript, p.8)]

**7. Required Warning Signage Was Not in Place**

- King Asphalt claims permanent construction signs were present, but MUTCD and SCDOT Division 600 require hazard signs within 500 feet of the hazard. [(Hearing Transcript, p.9)]
- Trooper Laginestra's dashcam video shows no signage before or after the accident site. [(Exhibit L)]

> *"The only testimony with respect to any of those issues which are now raised by the plaintiff comes from the King Asphalt witnesses and the South Carolina DOT witnesses, and what they all say is that they had properly installed all the permanent construction signs. So they would have been put in at the beginning of the project notifying the public, hey, there's a construction zone here, be careful in this construction zone, uneven pavement, the speed limit may or may not have been reduced."* [(Hearing Transcript, p.9)]

Rebuttal: MUTCD and SCDOT Division 600 require hazard signs to be placed no more than 500 feet from the hazard. The paving on March 22, 2019, started 1.5 miles from the accident site, yet Trooper Laginestra's dashcam shows no signage before or after the crash location. [(Exhibit L)]

**Supplemental Evidence Completing the Negligence Per Se Claim**

Since King Asphalt has conceded to the existence of a hazardous condition and their decision to reopen the lane despite it, the following evidence completes the negligence per se claim:

1. SCDOT Contract (Division 600, pp.22-23) – Exhibit G
    - Clearly states lanes with height differentials exceeding 1 inch must remain closed until mitigated.
2. March 22, 2019 Paving Record – Exhibit K
    - Confirms paving occurred that day, solidifying the timing of the hazard.
3. SCHP Dashcam & Accident Scene Photos – Exhibits L & M
    - Show the lack of traffic control devices at the time of the accident, contradicting any claim that safety measures were in place.
4. Accident Site vs. King Asphalt Cone Truck Position – Exhibit R
    - Establishes that cone removal directly allowed the vehicle that struck Plaintiffs to enter the lane.
5. Trooper Laginestra Deposition – Exhibit I
    - Describes the hazardous condition of the roadway at the scene.

At trial plaintiffs will call SCDOT Joe Laws RCE, Trooper Michael Laginestra, eyewitness Olivia Paige Bryan [see attached Exhibit AA], defendant Themistoklis Economou, attending physician Dr. Michael Sridhar and clearly establish all elements of negligence per se.

In support of the above Plaintiff fully restates the following:

**On January 27, 2025, at 11:30 AM, a hearing was conducted in Courtroom 4 of the Pickens County Courthouse before the Honorable Jessica A. Salvini.** Defendant, King Asphalt, Inc., seeks summary judgment, arguing that Plaintiffs' claims fail for lack of expert testimony. However, Defendants' own filings and admissions establish indisputable proof of negligence per se, relieving Plaintiffs of any burden to further prove liability.

Because Defendants have conceded to multiple statutory and regulatory violations under South Carolina law and SCDOT regulations, no genuine dispute of material fact remains, and summary judgment must be granted in favor of Plaintiffs as a matter of law for negligence *per se*.

In the alternative, should the Court decline to grant summary judgment for Plaintiffs, Defendants' motion must still be denied. Their arguments rest on a misapplication of the summary judgment standard by using Federal Rules of Civil Procedure instead of the SC Rules of Civil Procedure in a South Carolina Court.

> "**Fed.R.Civ.P. 56(c). Rule 56(c)** mandates entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case." **Celotex Corp. v. Catrett**, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). (Page 8 of Memorandum)

Does not exist in the South Carolina Rules of Civil Procedure and is accompanied with an improper conflation of factual disputes with legal insufficiency, and a reliance on an alleged lack of expert testimony—none of which overcome the dispositive weight of their own admissions.

Opposing counsel's reliance on Federal Rule of Civil Procedure 56(c) and federal case law in this South Carolina state court proceeding is misplaced and should be disregarded. The Federal Rules of Civil Procedure do not govern proceedings in South Carolina state courts. Instead, the South Carolina Rules of Civil Procedure (SCRCP) apply, specifically SCRCP Rule 56 for summary judgment motions.

While the federal Celotex standard may be persuasive, it is not binding on South Carolina courts. The South Carolina Supreme Court has recently clarified the state's summary judgment standard in **The Kitchen Planners, LLC v. Samuel E. Friedman** (August 23, 2023). The court emphasized the "genuine issue of material fact" standard and rejected the "mere scintilla" approach. Under South Carolina law, the non-moving party must show that a reasonable inference can be drawn from the evidence to defeat a summary judgment motion.

Furthermore, South Carolina courts have developed their own body of case law interpreting SCRCP Rule 56. The state standard, while similar in some respects to the federal standard, may be interpreted and applied differently in South Carolina courts. Therefore, opposing counsel's reliance on FRCP 56(c) and federal case law is inappropriate and potentially misleading in this state court proceeding. This Court should apply the summary judgment standard as articulated by the South Carolina Supreme Court and interpreted through South Carolina case law, rather than federal standards that do not directly apply in this forum.

Since negligence per se is established through statutory violations, no expert testimony is required to prove liability.

Accordingly, Plaintiffs request that the Court grant their motion for summary judgment based on Defendants' admissions as no further proof is needed. In the alternative, the Court should find that genuine issues of material fact remain, Defendants' motion must be denied, and this case should be scheduled for trial.

The Plaintiff further requests the Court to take judicial notice of all Codes, regulations, depositions and other supporting evidence submitted by Plaintiff or provided by King Asphalt, Inc. and SCDOT.

## I. DEFENDANT'S ADMISSIONS IN IT'S MEMORANDUM TO SUPPORT IT'S MOTION FOR SUMMARY JUDGMENT INDISPUTABLY PROVES PLAINTIFF'S CASE

Defendant King Asphalt, Inc. has, through its own admissions, documentary evidence, and contractual obligations, conclusively established liability under South Carolina law and SCDOT regulations. Their memorandum, admissions, filings, depositions, and contract provisions confirm multiple violations of statutory and regulatory safety standards, including the failure to mitigate a prohibited lane height differential exceeding one inch and the unlawful removal of a traffic control safety scheme. These violations constitute negligence per se, as they breach clearly defined duties imposed by SCDOT Division 600 regulations and South Carolina law, which are designed to protect the public from precisely this type of harm.

Defendants' own admissions, evidence and concessions demonstrate that their actions directly caused the accident, leaving no room for dispute as to their liability. By violating these mandatory safety standards, King Asphalt, Inc. is liable as a matter of law, and no genuine issue of material fact remains for trial.

As such, the Court is compelled to grant summary judgment in favor of the Plaintiffs. Defendants' memorandum, admissions, filings, depositions, and contract provisions (preclude Plaintiffs providing further proof), coupled with their violations of law, demand nothing less than a ruling in Plaintiffs' favor as a matter of law.

### 1. Defendants Have Admitted the Accident Occurred in an SCDOT Work Zone

For six years, King Asphalt falsely denied that the accident occurred within an SCDOT work zone. However, in their Memorandum in Support of Summary Judgment, Defendants have now conceded that the accident occurred in an active work zone:

> "*The SCDOT, through its contract, provided permanent signs designating the area as a construction zone for the duration of the project.*"
> *(Defendants' Memorandum, Page 3, Last Paragraph)*

**South Carolina Code § 56-5-1535(F)(1)** defines a work zone by the presence of "Road Work Ahead" and "End Road Work" signs. The presence of these signs (within which the accident site resided) means the entire highway section remained a work zone throughout the life of the project, regardless of the movement/ebb and flow of various temporary traffic control devices within the zone.

> "**SECTION 3. Section 56-5-1535(F)(1) of the 1976 Code** is amended to read:

*(1) 'Highway work zone' means an area of a roadway, bridge, shoulder, median, or associated right of way, where construction, maintenance, utility work, accident response, towing, or other incident response is being performed. The work zone must be marked by signs, channeling devices, barriers, pavement markings, or work vehicles, and extends from the first traffic control device erected for purposes of controlling the flow of motor vehicles through the work zone, including signs reducing the normal speed limit, to the 'END ROAD WORK' sign or the last temporary traffic control device. The signs, channeling devices, barriers, pavement markings, or work vehicles must meet state Department of Transportation standards, the provisions of Section 56-5-4700, or National Fire Protection (NFPA) standards, and must be installed properly."*

Note the differentiation between small road repairs with temporary signage and major projects (with miles of all five lanes being milled and paved) with permanent signage. By conceding this fact, Defendants have admitted that all SCDOT safety and traffic control requirements (Division 600) applied at the time of the accident, which they indisputably violated.

This admission destroys their prior argument that work zone safety standards were irrelevant and confirms that they were subject to strict safety and traffic control requirements, which they systematically ignored.

2. **Defendants Have Admitted to a Lane Height Differential That Violates SCDOT Regulations**

King Asphalt's own filings confirm that at the time of the accident, there was a lane height differential of 2 inches between the newly paved outside lane (LOSL) and the milled inside lane (LISL):

"*With respect to the area where the plaintiffs claim the accident occurred, Limbaugh, the vice-president of Milling and Reclamation Services at King Asphalt testified that "everything was started and finished in that area. Everything was tacked and paved. Everything that was paved was compacted." (Dep. of Limbaugh p 32-33). All the road work done on March 22, 2019 was accepted by the S.C. DOT. (Dep. of Limbaugh p. 32-33). Limbaugh also testified that S.C. DOT documented on a daily basis both the quality and the thickness of the asphalt and the compaction of the asphalt.* (Dep. of Limbaugh, p. *42-43). Limbaugh further testified that the grade elevation difference between the paved lane and non-paved lane was either two inches or less which is the DOT requirement. (Dep. of Limbaugh p. 44). S.C. DOT engineer, Laws, also confirmed that the DOT regulation was that the lane differential not exceed two inches. (Dep. of Laws, p.19) S.C. DOT had their own inspector on site for every project and the inspector would have inspected the lane differential to make sure that the measurement was two inches. (Dep. of Limbaugh, p. 44). Zachary Michael, King Asphalt's Director of Personnel and Safety, also testified that the asphalt was installed according to SCDOT specifications in the outside lane, allowing for a two-inch differential between the milled lane and the newly asphalted right lane. (Dep. of Michael, p. 36). Michael testified that King Asphalt did "exactly as S.C. DOT contracted us to do." (Dep. of Michael, p. 37). He specifically stated that the contract required that they remove two inches of the asphalt and install*

*two inches which is what they did. (Dep. of Michael, p. 38)."(Defendants' Memorandum, Page 5)*

*"The King Asphalt road construction crew then installed new asphalt in the outside lane on March 22, 2019. To place the new asphalt in the designated outside lane and allow the traffic to flow unimpeded in the inside lane, King Asphalt, according to the specifications of S.C. DOT, implemented a temporary lane closure of the lane in which they were performing paving operations. To close a lane, King Asphalt would have placed delineation devices or cones at the beginning of the lane closure, tapering the closing of the lane to direct the live traffic to the left lane while construction was being done in the right lane. (Dep. of Laws, pp. 27-29). Beyond the taper closing the lane, King Asphalt would have placed cones every 50 feet in the work zone to protect the ongoing construction activities of their employees from the danger of the traffic. (Dep. of Michael, p. 46). The standard established by the S.C. DOT and within the road construction industry allows for temporary lane closures so that work can safely proceed in one lane while traffic proceeded in the adjacent lane. "(Defendants' Memorandum, Page 5,)*

Defense counsel is adamant, SCDOT inspectors checked it, King Asphalt, Inc. personnel made sure it was two inches, Daily Inspection Reports (Form 400.04) said it was 2.16 inches, RCE Joe Laws said it was two inches. Everybody is 1000% sure it was two inches. In fact swore, under oath in depositions that it was 220 lbs/sq (two inches). [see attached EXHIBIT F]

Defendants admitted the condition of the highway at the accident site on March 22, 2019 as:

"*It is not disputed that at the time of the collision between the moped operated by Smith and the car operated by Economou that the inside left lane had been milled and was in that condition and the outside lane had been paved with new asphalt.*" (Page Four of Defendant's Memorandum [attached Exhibit E])

Defendant's and SCDOT provided a paving record for March 22, 2019 and every portion of the highway paved that day (including the accident site) exceeded 220lb/Sq YD [see attached EXHIBIT K]. Michaels explanation of the conversion of lb/sq yd is 220lb/sq yd = 2 inches. (see page 62 [see attached EXHIBIT H] SCDOT formula for converting lb/sq yd is 105 lbs = 1 inch [see attached EXHIBIT Q]

Only one problem, two inches is 100% greater than what Division 600 regulations and King Asphalt, Inc.'s contract permitted it to be. 2">1" Creating a hazardous condition PROHIBITED by regulation, without proper mitigation, to opening of the lane to traffic.

Fortunately, all of the regulatory language we need is found on Pages 22 and 23 of the rather voluminous document filed by Defendants. [see attached EXHIBIT G]

First, we should address the standard, mentioned by Defense counsel during the hearing, as related to "grade elevations and drop-offs" and show it's irrelevant application to the instant case. King Asphalt Proposal/Contract Page 22, third paragraph from bottom declares a standard for "grade elevations and drop-offs".

> "*During paving operations, the Department requires lane closures at all times where grade elevation differences and drop-offs greater than 2" exist adjacent to or between the travel lanes of a roadway opened to traffic, unless otherwise specified by these special provisions. Maintain lane closure restrictions at all times unless otherwise directed by these special provisions.*" (King Asphalt Proposal/Contract Page 22, third paragraph from bottom [see attached EXHIBIT G])

This two-inch standard is possibly the standard Defense counsel is mistakenly attempting to apply to the instant case. "Grade elevations and drop-offs" have to do with the shoulders and outside edges of the roadway. Not between adjacent lanes of travel, which is explicitly addressed in the next paragraph.

SCDOT regulatory/contract provisions in the Proposal/Contract Document and SCDOT Division 600 regulations filed by Defendants (Page 22, Next to Last Paragraph) explicitly PROHIBITS lane height differentials greater than 1 inch during surface planing and milling operations, with adjacent travel lanes pavements composed of hot mixed asphalt (HMA) base courses and a planed surface:

> "***During surface planing and milling operations, grade elevation differences greater than 1 inch in areas with pavements composed of hot mixed asphalt (HMA) base courses, intermediate courses or surface courses and Portland cement concrete are PROHIBITED between adjacent travel lanes open to traffic unless otherwise directed by the Department.***" [emphasis added] (King Asphalt Proposal/Contract Page 22, next to last paragraph [see attached EXHIBIT G])

Defendants' own work reports confirm that the height differential remained for five full days (March 22, 2019 - March 27,2019) [see attached Exhibit Y] before being corrected, violating their contractual obligation to keep the lane closed until the differential was mitigated. The regulations only have one acceptable method of mitigation:

> ***"If a grade elevation difference in excess of the specified acceptable ranges exist, either mill the adjacent travel lane or pave the milled travel lane as necessary to eliminate the grade elevation difference prior to opening the travel lane to traffic at these locations. Maintain the lane closure restrictions at all times unless otherwise directed by these special provisions."*** [emphasis added] (King Asphalt Proposal/Contract Page 23, first paragraph [see attached EXHIBIT G])

Note the directive's instructions that the lane will remain closed until one of these two mitigation methods are utilized to remove the safety violation.

The primary function of "shall" in legal drafting is to impose a mandatory obligation or duty on the subject of the sentence;

> ***"The Contractor shall install all lane closures as directed by the Standard Specifications For Highway Construction (latest edition), the Standard Drawings For Road Construction, these special provisions, the MUTCD, and the Engineer. The***

> ***Contractor shall close the travel lanes of two-lane two-way roadways by installing flagging operations. The Contractor shall close the travel lanes of multilane roadways as directed by the typical traffic control standard drawings designated for lane closures on primary routes.***" [emphasis added] (King Asphalt Proposal/Contract Page 23, sixth paragraph [see attached EXHIBIT G])

Not adhering to these guidelines is a direct regulatory violation, making negligence per se undeniable. There is no material dispute remaining—the only question left is whether the Court will enforce the law.

3. Defendants Have Falsely Claimed That Milling and Paving Were Performed "Consecutively"

Defendants falsely claim that milling and paving were performed consecutively, implying there was no period where a hazardous height differential existed. However, their own Daily Work Report/Inspections records covering the accident site prove this claim is false:

| Date | Operation | Result |
|---|---|---|
| March 6, 2019 | Inside lane (LISL) milled to -2 inches | Left a height differential with the paved outside lane. |
| March 12, 2019 | Outside lane (LOSL) milled | Both lanes were milled evenly for a brief period. |
| March 22, 2019 | Outside lane (LOSL) paved with 2+ inches | Created a 2-inch differential with the still-milled inside lane (LISL). |
| March 27, 2019 | Inside lane (LISL) paved | Finally eliminated the height differential, five days after the accident. |

For at least five days (March 22-27 - beginning at 5PM March 22, 2019), the lane height differential exceeded the legal 1-inch limit for two lanes with a milled lane and paved lane adjacent to each other, was unmitigated as directed by regulation, and exposed the Plaintiffs and the public to hazardous road conditions. [see attached Exhibit Y]

Defendants' claim that paving and milling occurred "consecutively" is demonstrably false, and their misrepresentation of these facts is further evidence of their bad faith litigation tactics.

4. Defendants Have Admitted to Removing Traffic Control Devices Before Law Enforcement Arrived

Defendants admit they initially placed cones between the milled and paved lanes but later removed them (after the accident and before law enforcement arrived to investigate), exposing motorists to a PROHIBITED hazard:

> *"To place the new asphalt in the designated outside lane and allow the traffic to flow unimpeded in the inside lane,* ***King Asphalt, according to the specifications of S.C.***

***DOT, implemented a temporary lane closure of the lane in which they were performing paving operations.*** [emphasis added] *To close a lane, King Asphalt would have placed delineation devices or cones at the beginning of the lane closure, tapering the closing of the lane to direct the live traffic to the left lane while construction was being done in the right lane."*
*(Defendants' Memorandum, Page 5, Paragraph 2)*

*"When the work was finished for the day, the temporary signs and cones which had been placed for the safety of the King Asphalt employees and the motoring public would be removed.* ***King Asphalt would open the closed lane by picking up the delineation devices, the cones, in reverse order from how the lane was closed.*** [emphasis added] *(Dep. of Michael, p. 54). As each cone was removed from the highway, it would be considered to be the end of the lane closure, thus allowing the traffic to proceed in that lane. (Dep. of Michael, p. 54). Once each cone for the lane closure was picked up, then the closed lane was completely reopened for traffic to flow. (Dep. of Michael, p. 55). The motoring public would know that the lane was open for use because there would be no cones in the area which had previously indicated that the lane was closed.* (Dep. of Michael, p. 55).

Joe Laws, the resident construction engineer for S.C. DOT, testified that the removal of the traffic cones falls under the 2007 SCDOT Standards and Specifications Manual and the traffic control plan of the contractor. (Dep. of Joe Laws, p. 25). **Laws testified that cones are typically removed from the back taper to the front taper against the traffic to open the lane.** [emphasis added] (Dep. of Laws, pp. 9 and 28- 29).(Defendants' Memorandum, Page 6, Paragraph 2)

SCDOT regulations make deployment of a full traffic control scheme mandatory:

"***Supplement and delineate the shoulder edges of travel lanes through work zones with traffic control devices to provide motorists with a clear and positive travel path.*** [emphasis added] *Utilize portable plastic drums unless otherwise directed by the Department. Vertical panels may be used where specified by the plans and directed by the RCE. The installation of traffic control devices are required in all areas where those areas immediately adjacent to a travel lane open to traffic have been altered in any manner by work activities, including but not limited to activities such as grading, milling, etc*" (Proposal page 23. paragraph 4 [see attached EXHIBIT G])

However:

- SCHP dashcam footage confirms that no cones, barrels, vertical panels, or other required traffic control devices (from either the general traffic control plan for work zones or the lane delineation) were present at the time of the accident.
- GPS data from King Asphalt's cone truck shows it was actively removing traffic control devices just minutes before the accident.

- Witnesses confirm that King Asphalt's crew removed the cones, reopening the hazardous lane prematurely.
- Defendants by counsel admitted to removal of SCDOT work zone traffic control devices prior to law enforcement arrival.

The Only Possible Conclusions:

- King Asphalt never set up the required safety devices of the general traffic control scheme, violating contract requirements.
- King Asphalt installed them but removed them before law enforcement arrived, suggesting a deliberate cover-up. SCHP dashcam verified no traffic control of any kind was visible for a half mile approaching the accident scene and a half mile down the road past the accident scene. Division 600 and King Asphalt, Inc.'s proposal/contract state:

Either scenario constitutes reckless disregard for safety, justifying punitive damages.

5. Defendants' Violations Were Financially Motivated—Justifying Uncapped Punitive Damages

Under S.C. Code Ann. § 15-32-530(C), punitive damages caps are removed when:

- A violation was motivated by financial gain.
- The defendant knowingly failed to comply with laws protecting public safety.

King Asphalt:

- Was paid $150,000 for traffic control but failed to implement a compliant safety plan.
- Cut costs by minimizing traffic control deployment, or not deploying the full scheme.
- Removed cones (or never placed them) and safety devices, prioritizing profit over public safety.
- Denying safety incidents to maintain a sufficiently high CPS (Contractor performance Score) permitting King Asphalt, Inc. to bid on future contracts
- Knowingly misrepresented facts to evade liability.

This meets the statutory threshold for uncapped punitive damages, meaning there is no legal basis for limiting the damages awarded against them.

Conclusion: No Genuine Issues of Material Fact Remain

In plain English, King Asphalt, Inc. has admitted—and thereby stipulated—that it was operating an SCDOT work zone on March 22, 2019, governed by SCDOT regulations and South Carolina law. King Asphalt, Inc. admitted to active work at the accident site in the eastbound lanes of Highway 8 (Gentry Memorial Highway) between Owen Lane and Old Easley Pickens Highway. [see attached EXHIBIT G page 53 at line 11] [see attached EXHIBIT H] Specifically, the fast lane was milled two inches as per the contract, and the slow lane was freshly paved with Hot Mixed Asphalt (HMA) with a mat of two inches or greater, creating a lane height differential of more than two inches. [see attached EXHIBIT E,F] [see attached EXHIBIT L,M,N,O,P,R]

King Asphalt, Inc., through its counsel, admits it deployed a traffic control delineation scheme (traffic cones) to isolate the slow lane for paving operations. Critically, King Asphalt, Inc. also admits to retrieving that lane isolation scheme by driving a company vehicle against traffic—westbound in the eastbound slow lane—opening the slow lane to traffic. This action permitted a driver traveling through the zone in the fast lane, single-file behind Plaintiff's moped, to take the slow (right) lane and strike Plaintiff's moped as it lawfully attempted to cross that lane to exit the highway.

Notably, King Asphalt, Inc. removed the SCDOT mandated traffic control safety scheme without first mitigating the prohibited safety hazard of a lane height differential greater than one inch—a violation of its contract, SCDOT Division 600 regulations, and South Carolina law.

But for King Asphalt, Inc.'s unlawful and premature removal of the safety scheme (prior to mitigating the known safety hazard of a lane height differential exceeding one inch between a milled and HMA 'Hot Mixed Asphalt' paved lane) before opening the lane to traffic—permitting a driver to emerge from the single file line of vehicles traversing the work zone in the fast lane and taking the unlawfully opened lane, striking the Plaintiff's moped lawfully crossing the lane to exit the highway to the right, this accident would not have occurred.

King Asphalt, Inc.'s admissions establish every fact necessary to prove negligence per se. Their own statements, combined with the clear mandates of SCDOT regulations and South Carolina statutory law, leave no genuine issue of material fact for trial. The Court must grant summary judgment for Plaintiffs as a matter of law.

WHEREFORE, Plaintiffs respectfully request that the Court grant their Motion for Summary Judgment and enter judgment in their favor.

IN THE ALTERNATIVE PLAINTIFF REQUESTS DISMISSAL OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND THIS CASE TO BE SCHEDULED FOR TRIAL FOR THE FOREGOING REASONS

## II. STANDARD OF REVIEW ARGUMENT

Defendant King Asphalt, Inc. has misapplied the standard for summary judgment in South Carolina courts. Their reliance on federal case law, particularly ***Celotex Corp. v. Catrett***, 477 U.S. 317 (1986), and Federal Rule of Civil Procedure 56, is misplaced, as this case is governed by South Carolina law. Under South Carolina law, summary judgment is only appropriate where no genuine issues of material fact exist, and the movant carries the burden of proving that they are entitled to judgment as a matter of law. See ***Baughman v. Am. Tel. & Tel. Co.***, 306 S.C. 101, 410 S.E.2d 537 (1991). The South Carolina Supreme Court has repeatedly emphasized that summary judgment should be granted cautiously, particularly in negligence cases where factual disputes must be resolved by a jury. See ***Hancock v. Mid-South Mgmt. Co.***, 381 S.C. 326, 673 S.E.2d 801 (2009).

### A. South Carolina's Stricter Summary Judgment Standard

Unlike the federal standard, South Carolina law disfavors summary judgment, particularly in cases involving negligence. In ***Baughman v. AT&T***, the South Carolina Supreme Court made it clear that the moving party bears the burden of eliminating any genuine issue of material fact. Here, Defendant has not met this burden. In fact, their memorandum concedes material factual disputes by emphasizing the alleged complexity of lane height differentials, traffic control protocols, and SCDOT regulatory compliance. Their own argument contradicts their assertion that no material facts are in dispute.

Moreover, ***Hancock v. Mid-South Mgmt. Co.*** reiterates that courts must view the evidence in the light most favorable to the non-moving party. Given the documented violations of SCDOT regulations and the contract's explicit lane height differential limits, summary judgment is improper in this case.

**B. Expert Testimony is Not a Legal Requirement**

Defendant falsely claims that expert testimony is a prerequisite for proving their liability. However, South Carolina courts have repeatedly held that expert testimony is not required when the subject matter is within common knowledge or when statutory violations constitute negligence per se. See ***Watson v. Ford Motor Co.***, 389 S.C. 434, 699 S.E.2d 169 (2010). The factual issues in this case—whether King Asphalt's lane height differential exceeded SCDOT limits and whether traffic control devices were improperly removed—are straightforward and do not require expert interpretation. ***Rayfield v. South Carolina Dep't of Corr.***, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988), establishes that statutory violations may constitute negligence per se, further negating the need for expert testimony.

**C. Genuine Issues of Material Fact Exist**

Summary judgment is inappropriate where genuine factual disputes remain. Plaintiffs have provided substantial evidence demonstrating that:

1. King Asphalt exceeded the 1-inch lane height differential limit (documented at 2.16 inches in the work logs and daily reports).
2. Traffic control devices were prematurely removed, creating an unmarked hazardous condition (corroborated by SCHP dashcam footage).
3. Depositions contradict Defendant's assertions, as none of King Asphalt's deponents or SCDOT employee deposition references had direct knowledge of site conditions or factual details at the time of the accident. Their testimony merely stated they were certain King Asphalt, Inc. had complied with SCDOT guidelines in their application of their paving contract.

These facts, which are supported by objective evidence, must be evaluated by a jury. *Hancock v. Mid-South Mgmt. Co.* and *Baughman v. AT&T* confirm that summary judgment is improper when such disputes exist.

**D. Granting Summary Judgment Would Be Reversible Error**

South Carolina appellate courts have consistently reversed summary judgments where factual disputes exist. Dismissing this case based solely on the absence of an expert witness would be an improper application of Rule 56(c), as South Carolina courts have ruled that expert testimony is not required in all negligence cases. Given the clear statutory and regulatory violations in this case, an appellate court would likely find such a ruling premature and improper.

**E. Summation**

In this case, Defendant's own memorandum and hearing arguments create more questions than answers regarding material facts, thereby precluding summary judgment. See Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 673 S.E.2d 801 (2009) (viewing all evidence in the light most favorable to the non-moving party).

Summary judgment is appropriate only where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. The burden rests on the movant to establish the absence of any genuine dispute of material fact. See David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1 (2006).

The defendant has failed to meet their burden under South Carolina's strict summary judgment standard. Their motion relies on an improper application of federal law, a flawed argument regarding expert testimony, and an attempt to bypass genuine issues of material fact. South Carolina law is clear: negligence cases involving factual disputes belong before a jury. Plaintiffs respectfully request that this Court deny Defendant's motion for summary judgment.

**III. Defendant's Argument Relating to Expert Testimony**

Defendant's primary argument—that expert testimony is required pretrial to explain their liability—is legally and factually incorrect. Negligence per se arises when a party violates a statute or regulation designed to protect the public, and such violations serve as proof of duty and breach. See Whitlaw v. Kroger Co., 306 S.C. 51, 410 S.E.2d 251 (1991). Plaintiffs' case rests on three core violations:

1. **Lane height differentials exceeding SCDOT limits:**
    - Defendant's own contract specifies that lane height differentials during milling/paving operations must not exceed 1 inch for adjacent HMA lanes (Division 600, SCDOT regulations). The documented height differential of 2.16 inches at the accident scene is clear, objective evidence of a violation.
2. **Removal of traffic control devices and premature lane reopening:**
    - Evidence shows that King Asphalt removed work zone signs and prematurely reopened a hazardous lane to traffic, violating their contractual obligations and endangering the public.
3. **Obstruction of the post-accident investigation:**

- Defendant's removal of traffic control devices post-accident hampered the investigation, as corroborated by the amended TR-310 accident report. This further underscores their negligence and bad faith.

These violations are factual matters supported by documentary evidence, depositions, and photographic proof. Contrary to Defendant's claims, these facts do not require expert testimony to be understood by a jury. See Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010) (expert testimony is unnecessary where the subject matter is within common knowledge).

Defense counsel's repeated references to Economou, the driver of the car involved in the accident, are irrelevant and misleading. Plaintiffs have settled with Economou, and his actions came after the fact of King Asphalt's premature reopening of the unsafe lane. Had the lane not been opened in violation of safety standards, the accident would not have occurred. Defense counsel's reliance on this irrelevant point is an improper attempt to distract from King Asphalt's direct negligence.

**IV. Defendant's Concession of Material Issues of Fact**

Defendant's argument that expert testimony is required inadvertently concedes the existence of material issues of fact. By emphasizing the complexity of lane height differentials, traffic control protocols, and compliance with SCDOT standards, Defendant implicitly acknowledges that these issues are factual and contested. Summary judgment is inappropriate where material factual disputes exist, as recognized in **Baughman v. American Tel. & Tel. Co.**, 306 S.C. 101, 410 S.E.2d 537 (1991).

**V. Plaintiffs' Evidence Supports Negligence Per Se**

1. **Lane Height Differential Evidence**:
   - The documented 2.16-inch height difference exceeds the 1-inch limit set forth in SCDOT's Division 600 standards. This evidence is objective, measurable, and undisputed by Defendant's deponents, none of whom conducted specific measurements at the scene.
   - Distinction Between Contract Provisions: Defense counsel's oral argument wrongly asserted that the 2-inch drop-off rule applies as the prevailing standard in this case. This is incorrect. The 2-inch limit pertains to general shoulder drop-offs or transitions where construction has been completed, and traffic is stabilized. In contrast, the 1-inch limit explicitly applies to milling operations involving adjacent lanes open to traffic, as is the situation here. The stricter 1-inch standard governs this case due to the ongoing milling and paving work at the time of the incident, and Defendant's failure to adhere to this standard directly caused the unsafe conditions.
2. **Photographic and Video Evidence**:
   - Dashcam footage and still images from the accident scene visually depict the hazardous height variance (berm) that caused the moped's loss of control. These visuals are comprehensible to a lay jury and do not require expert interpretation. Additionally, the Plaintiffs have submitted a still image captured from the SCHP

dashcam video, which clearly shows the exact position of the car and moped immediately after the accident in relation to Owen Lane and the associated bridge. This photographic evidence definitively establishes the location of the incident and refutes the defense counsel's unfounded claim during the hearing that the Plaintiffs have not proven where the accident occurred. Furthermore, deposition testimony from Limbaugh, the Defendant's 30(b)(6) witness, reinforces the unreliability of the defense's assertions. Limbaugh admitted he was in charge of milling operations but lacked direct knowledge of the specific incident, testifying instead about general practices and "how it is supposed to be done," rather than facts specific to this case. This testimony demonstrates the speculative nature of Defendant's claims regarding compliance in this instance. Moreover, Zachary Michael confirmed on page 62 of his deposition that a 220 lbs/sq yard application corresponds to a two-inch finished mat, further supporting the evidence of the lane height differential exceeding regulatory limits at the accident site.

3. **Contractual Violations:**
    - Defendant's contract prohibits opening lanes with unsafe conditions. Their removal of traffic control devices and premature lane reopening breached these provisions and directly contributed to the accident. See **Koontz v. Thomas**, 333 S.C. 702, 511 S.E.2d 407 (Ct. App. 1999) (contractual violations as evidence of negligence).
4. **Selective and Misleading Use of Depositions:**

Defendant has relied on deposition testimony selectively, omitting key admissions that negate their claims. Defense counsel has quoted excerpts from the depositions of Limbaugh, Laws, Michael, and Makison, but none of them claimed direct knowledge of any details of the accident. Instead, they referred to general practices or what "should have been" done. Michael and Limbaugh are employees of King Asphalt and suffer a distinct conflict of interest in their testimony. For example:

- **Douglas Limbaugh**, the Defendant's 30(b)(6) witness, admitted on page 6 of his deposition that he had no direct knowledge of the investigation into the incident and spoke only to general practices. [attached Exhibit B]
- **Joe Daniel Laws III** admitted on page 9 of his deposition that he was off on annual leave on the day of the accident. Furthermore, he confirmed on page 16 that the first time he heard about the accident was in 2021 (two years after the fact). This demonstrates his lack of direct knowledge and undermines the credibility of his testimony as evidence of compliance. [attached Exhibit D]
- **Zachary Michael** acknowledged that the Defendant's office did not have established protocols to ensure notification of incidents unless someone else reported them. On page 7, lines 17-20 of his deposition, Michael explicitly stated that he would not be able to answer anything about this specific accident, further underscoring the speculative and irrelevant nature of his testimony in relation to the incident. He also claimed they were unaware of the accident until contacted via email months after the fact. [attached Exhibit A]
- **Joshua Frazier Makison** admitted on page 9 of his deposition that he had no involvement with the 3948130 contract and that his only connection to this matter

was assisting in answering the FOIA request. This admission highlights the irrelevance of his testimony to the substantive issues in this case and further exposes defense counsel's misrepresentation of deposition content. [attached Exhibit C]

These omissions by defense counsel mischaracterize the facts and attempt to create a misleading narrative. The full depositions reveal that none of the witnesses had specific knowledge of the conditions at the accident site or compliance with safety standards during the relevant time.

Such selective and incomplete reliance on deposition testimony demonstrates a disingenuous attempt by defense counsel to obscure the facts of the case and mislead the Court.

## VI. Defendant's Procedural Tactics

Defendant's last-minute submission of a 15-page memorandum, seven depositions excerpts, and a 127-page contract proposal at the hearing is a transparent attempt to disadvantage the pro se Plaintiffs. This includes misleading reliance on deposition testimony, such as Joe Laws stating he was off the day of the incident, undermining the credibility of the defense's factual assertions. Additionally, defense counsel only included select pages of the depositions, making a disingenuous attempt to falsely mislead the Court by omitting portions of those same depositions that negate their claims. By cherry-picking deposition excerpts, defense counsel leaves a mischaracterization of the facts and presents an incomplete and misleading narrative.

Additionally, the Court's decision to interrupt and prematurely cut off Plaintiffs' response during the hearing further hindered their ability to fully articulate their position. As is described in the transcript [see attached Exhibit Z], the Court responded to Plaintiff stating he couldn't hear what the Court said, the Court proceeded to shout from the bench in a very animated and aggressive manner at the plaintiff. Intimidating plaintiff from completing the making of plaintiff's record by reading a statement he had prepared and brought to present to the Court. Instead the entire focus became the Defense counsels expert witness issue. Plaintiffs respectfully note that this procedural imbalance has prejudiced their ability to address the baseless arguments advanced by defense counsel, many of which serve only to obfuscate and distract from the central issues of negligence per se and bad faith conduct. Courts have long recognized that pro se litigants must be given leeway to present their case without being overwhelmed by such tactics. See Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 681 S.E.2d 885 (2009) (liberal construction of pro se pleadings).

## VII. Defense Counsel's Inflammatory Reference to UPL

In Defendant's memorandum, counsel included a note at the bottom of page 11, that raises the specter of Unauthorized Practice of Law (UPL), in a transparent attempt to prejudice the Court against the Plaintiffs. Defense counsel is well aware of the inflammatory effect of the "buzzword" UPL has on members of the legal profession. However, Judge Gravely has already ruled that the subject of UPL is not within the jurisdiction of this Court, explicitly directing

defense counsel to take the matter up with the South Carolina Supreme Court if they wish to pursue it. Defense counsel has had 11 months to pursue these allegations; but, Plaintiffs speculate defense counsel does not want to answer Mr. Pressly's affirmative defense of emergency due to defense counsel's well-documented misconduct or being scrutinized for her litigations tactics towards a *pro se* litigant forestalled that pursuit.

For defense counsel to continue referencing UPL in an attempt to influence this Court is not only irrelevant but constitutes misconduct. Such behavior is a clear attempt to distract from the substantive issues of this case, and it raises the question of whether such actions amount to contempt of court. Plaintiffs respectfully request that the Court admonish defense counsel for continuing to raise this matter improperly and disregard these inflammatory references entirely. Defense counsel's prior conduct, including inappropriate communications and attempts to influence the Court, was a contributing factor in the recusal of the Honorable G.D. Morgan, Jr. This pattern of behavior underscores the importance of maintaining procedural fairness in the current proceedings.

**VIII. Interference with Plaintiffs' Efforts to Secure Substitute Counsel**

Defense counsel's conduct—including the submission of inflammatory and irrelevant filings, as well as engaging in negative commentary about Plaintiffs in the public record—has directly interfered with Plaintiffs' ability to secure substitute counsel. Rather than allowing defense counsel to unfairly assail a pro se litigant, the Court, in the interest of fairness and justice, should address and remedy this interference. Such tactics reflect a pattern of obstruction and bad faith designed to deny Plaintiffs a fair opportunity to litigate their claims on the merits. This behavior undermines the judicial process and should not be rewarded with a grant of summary judgment.

**IX. No Pretrial Requirement for Expert Testimony**

During the hearing, the Court inquired whether the Plaintiffs planned to hire an expert witness, to which the Plaintiff responded in the negative. However, it is important to emphasize that this decision is not final and is not one that the pro se Plaintiff can or should make at this juncture. Such a determination would typically be made by an attorney representing the Plaintiff, once substitute counsel is secured. The Plaintiff's current status as a pro se litigant should not be unfairly used to draw adverse inferences or make premature decisions regarding the need for expert testimony.

South Carolina courts have held that expert testimony is not required where statutory or regulatory violations serve as the basis for negligence. See **Rayfield v. South Carolina Dep't of Corr.**, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988) (violation of a statute constitutes negligence per se as a matter of law when facts are undisputed). Plaintiffs' evidence—dashcam footage, measurements, and contractual provisions—establishes clear statutory violations without the need for expert analysis. Thus, any decision about hiring an expert should not prejudice the Plaintiff's ability to proceed, especially given the straightforward nature of the evidence supporting their claims. Here, the factual evidence is straightforward and within the comprehension of a lay jury.

## X. Conclusion

Granting summary judgment solely based on the absence of an expert witness prior to trial is likely to be considered reversible error on appeal in South Carolina. This conclusion is supported by several key points:

1. The summary judgment standard in South Carolina requires that there be no genuine issue of material fact. The mere absence of an expert witness does not necessarily mean there are no factual disputes to be resolved at trial.
2. Expert testimony is not always required to establish negligence, especially in cases involving negligence per se due to statutory or regulatory violations. The South Carolina Court of Appeals has held that expert testimony is not required where such violations serve as the basis for negligence.
3. The decision to require expert testimony is typically made based on the complexity of the issues involved, not as a blanket requirement for all cases. In situations where the facts are within the common knowledge and experience of lay jurors, expert testimony may not be necessary.
4. Granting summary judgment based solely on the lack of an expert witness before trial could be seen as prematurely deciding the case without allowing the plaintiffs the opportunity to present their evidence fully.
5. South Carolina courts have recognized that pro se litigants should be given some leeway in presenting their cases. Dismissing a case at the summary judgment stage due to lack of expert testimony, especially for pro se plaintiffs, could be viewed as overly harsh and potentially reversible.

Given these factors, an appellate court would likely view such a summary judgment decision as premature and an improper application of the summary judgment standard, making it subject to reversal on appeal. This conclusion is further supported by case law:

- **Watson v. Ford Motor Co.**, 389 S.C. 434, 699 S.E.2d 169 (2010): This case affirms that expert testimony is not required when the subject matter is within common knowledge or experience, such as the issues in this case involving lane height differentials and contractual violations.
- **Hancock v. Mid-South Mgmt. Co.**, 381 S.C. 326, 673 S.E.2d 801 (2009): This case emphasizes that summary judgment is inappropriate when there are genuine issues of material fact, and evidence must be viewed in the light most favorable to the non-moving party.
- **Sundown Operating Co. v. Intedge Indus., Inc.**, 383 S.C. 601, 681 S.E.2d 885 (2009): This case highlights that courts should liberally construe pro se pleadings, underscoring the importance of ensuring fairness for self-represented litigants.

These cases collectively reinforce the principle that granting summary judgment based solely on the absence of an expert witness prior to trial would be improper and subject to reversal.

The defendant has failed to meet their burden under SCRCP Rule 56(c). Their arguments not only fail to eliminate material issues of fact but also introduce new ones, highlighting the

necessity of a trial. Plaintiffs have presented ample evidence of statutory and contractual violations, which form the backbone of their negligence per se claim. Expert testimony is not required at this stage, and Defendant's procedural tactics should not be rewarded with dismissal.

IN THE ABSENCE of the Court ruling in Plaintiff's favor and granting summary judgment, based on admissions by Defendants in their Memorandum in Support of Summary Judgment (with attached exhibits) and Defense counsel's arguments at the hearing.

Plaintiffs respectfully request that this Court deny Defendant's motion for summary judgment and allow this case to proceed to trial. Furthermore, the Plaintiffs respectfully ask the Court to take steps to facilitate a fair and level playing field by curbing Defense counsel's efforts to obstruct the Plaintiffs' attempts to secure substitute counsel. Proceeding to trial without an attorney would not only prejudice the Plaintiffs but also result in inefficiencies and waste the Court's and all parties' time. Ensuring Plaintiffs have the opportunity to obtain adequate representation is as critical to the integrity of these proceedings as any other consideration at this stage.

## GROUNDS FOR RECONSIDERATION

### I. Defendants' Admissions Establish Negligence Per Se

**A. Work Zone Status and Regulatory Violations**
Defendants admitted the accident occurred within an active SCDOT work zone governed by Division 600 regulations. Permanent signage, contractual obligations, SCHP investigation and SCDOT FOIA confirm this designation (Defendants' Contract, p. 22; Daily Work Reports). SCDOT regulations explicitly prohibit lane height differentials, exceeding 1 inch, between adjacent travel lanes where a milled lane is adjacent to a paved lane, being opened to traffic:

> ***"During surface planing and milling operations, grade elevation differences greater than 1 inch... are PROHIBITED between adjacent travel lanes open to traffic."*** [emphasis added] SCDOT Division 600, § 611.4.1.2

**Judicial Notice Under SCRE 201(b)(2):**

Plaintiffs request judicial notice of SCDOT records under ***State v. Chavis***, 412 S.C. 101 (2015), which holds agency records are self-authenticating.

South Carolina courts have repeatedly held that violations of SCDOT safety regulations create an automatic presumption of negligence per se. The 1-inch limit is not a mere recommendation—it is a statutory safety measure. In ***Steinke v. South Carolina Dept. of Labor, Licensing, & Regulation***, 336 S.C. 373, 520 S.E.2d 142 (1999), the Court held that when a government regulation is designed to protect public safety, violations establish prima facie negligence.

Defendants' own records confirm a 2.16-inch differential at the accident site (Daily Inspection Report, (Form 400.04) March 22, 2019). Plaintiffs will agree to stipulate and allow Defendant's insistence that it was 2 inches to prevail. 2" or 2.16" are equally in violation of the regulation

(2>1). This safety issue triggered a mandatory duty to keep the lane closed until mitigated by only one of two methods, as described in the first paragraph of page 23 (pave the milled lane or mill the paved lane). Instead, Defendants removed traffic control devices prematurely, exposing Plaintiffs to unmarked hazards and allowing access to a vehicle that should not have been allowed in that lane.

Key Admissions from Defendants' Filings:

- Deposition of Doug Limbaugh (King Asphalt VP): *"The grade elevation difference between the paved lane and non-paved lane was either two inches or less, which is the DOT requirement"* (Dep. Limbaugh, p. 44).
- SCDOT Engineer Joseph Laws: Confirmed a 2-inch differential (Dep. Laws, p. 19).
- Daily Work Reports (Exhibit K): Documented a 2.16-inch differential at the accident site, exceeding regulatory limits.

**Contractual Breaches:**
Defendants' contract with SCDOT required:

1. Lane closures for differentials exceeding 1 inch (when milled lane adjacent to paved lane).
2. Mitigation via milling or paving before reopening.
3. Compliance with SCDOT's Standard Specifications and MUTCD.

By admitting to a 2-inch differential and reopening the lane without mitigation, Defendants breached their contractual, regulatory and statutory duties.

**II. Expert Testimony Is Not Required**

Under South Carolina law, violations of statutory safety standards constitute negligence per se, eliminating the need to prove duty, breach, or expert testimony (***Rayfield v. S.C. Dept. of Corrections***, 297 S.C. 95, 374 S.E.2d 910 (1988)). Defendants' admissions satisfy all elements:

1. Duty: SCDOT regulations imposed a statutory duty to maintain safe conditions in compliance with state Department of Transportation standards.
2. Breach: 2-inch lane height differential and premature cone removal prior to mitigation of safety hazard violated regulations.
3. Causation: Hazardous conditions and unlawful opening of a closed lane directly caused Plaintiffs' injuries (SCHP dashcam footage).
4. Damages: Severe physical and financial harm.

**Common Knowledge Exception:**
The hazardous conditions—a lane height differential exceeding 1 inch (2>1) and absence of traffic control devices (photographic proof)—are within layperson understanding (***Wise v. Broadway***, 315 S.C. 273, 433 S.E.2d 857 (1993)).

The SCDOT-mandated 1-inch rule exists specifically to prevent lane instability for two-wheeled vehicles. The South Carolina Supreme Court has recognized that statutory violations causing direct physical instability constitute a per se proximate cause of harm (***Davis v. Tripp***, 338 S.C. 226, 525 S.E.2d 528 (2000)). Here, Defendants ignored SCDOT's lane height rule, creating a

known hazard that directly destabilized Plaintiffs' moped causing them to fall into the path of a vehicle permitted into their lane by a premature, unlawful removal of traffic control devices (placed to protect against unlawful incursion into that lane), leading to their injuries.

## III. Procedural Misconduct Prejudiced Plaintiffs

### A. Trial-by-Ambush Tactics

Defense counsel's 212-page memorandum, served at the hearing after a year of delay, violating SCRCP 56(c) and SCRCP Rules 5(b) and 6(d), which require service at least 10 days before a hearing. This ambush deprived Plaintiffs—elderly, functionally illiterate, and pro se—of any opportunity to respond. Courts have consistently condemned such tactics as prejudicial and violative of due process (Richardson v. White; Samples v. Mitchell). Plaintiffs respectfully request sanctions and exclusion of the memorandum.

**Pro Se Prejudice Under *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601 (2009):**
The Court must liberally construe pleadings for pro se litigants disproportionately harmed by procedural ambush.

### B. Improper Reliance on Federal Standards

Defense counsel cited ***Celotex Corp. v. Catrett*** and Federal Rule 56, which are inapplicable in South Carolina courts. SCRCP Rule 56(c) requires courts to view evidence in the light most favorable to the nonmoving party and rejects the *"mere scintilla"* rule (***The Kitchen Planners, LLC v. Friedman***, S.C. Sup. Ct. Op. No. 28173 (2023)).

### C. Bad-Faith Litigation Tactics

Defense counsel:

1. Published confidential communications to deter representation (Exhibit C).
2. Misrepresented milling/paving timelines (Daily Work Reports prove a 5-day gap).
3. Falsely denied work zone status despite SCHP and SCDOT records.

## IV. Genuine Issues of Material Fact Remain

**Punitive Damages Under *Austin v. Specialty Transp. Servs.*, 358 S.C. 298 (2004):**
Defendants' profit-driven disregard for safety meets §15-32-530(C)'s "willful/wanton" standard.

Even if negligence per se is not dispositive, material disputes preclude summary judgment:

1. Lane Height Differential: Exceeded 1 inch (Defendants' admissions).
2. Premature Removal of Traffic Control Devices: SCHP dashcam footage confirms no safety measures at the scene.
3. Financial Motivation: Defendants prioritized cost-cutting over safety, justifying uncapped punitive damages under **S.C. Code § 15-32-530(C).**

Under S.C. Code § 15-32-530(C), punitive damages are appropriate where a defendant's conduct is willful, wanton, or in reckless disregard for safety. Courts have held that recklessly ignoring known safety standards to cut costs meets this threshold (***Austin v. Specialty Transp. Servs.***, 358 S.C. 298, 594 S.E.2d 867 (2004)). King Asphalt's decision to prematurely remove safety cones

and reopen a lane with an unlawful height differential was profit-driven, not accidental. Their lack of deploying a full traffic control scheme, after charging SCDOT $150,000 for same was an act of greed and self enrichment at the expense of public safety.

**V. Judicial Notice of SCDOT Records**

**SCRE 201(b)(2) & *State v. Whaley*, 305 S.C. 138 (1991):**
Courts routinely take judicial notice government records like SCDOT's Daily Inspection Reports (Exhibit K).

Plaintiffs request judicial notice of SCDOT public records under Rule 201(b) and Rule 202(a), South Carolina Rules of Evidence. Courts routinely take judicial notice of government reports, regulatory compliance records, and official agency findings (***State v. Whaley***, 305 S.C. 138, 406 S.E.2d 369 (1991)*).

Plaintiffs request judicial notice of SCDOT's public records confirming:

1. Highway 8 between Owen Lane and Old Easley Pickens Highway 8 was an active work zone on March 22, 2019.
2. Defendants violated Division 600 regulations (Exhibit G).
3. Daily Inspection Reports documenting 2.16-inch differential (Exhibit K).

**VI. ISSUES TO PRESERVE FOR APPEAL**

***Appellate Preservation Under I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406 (2000):***
Each preserved issue meets *I'On*'s requirement that objections be "sufficiently specific."

To ensure a complete record, Plaintiffs respectfully request the Court explicitly acknowledge the following issues in its order:

**A. Procedural and Legal Errors**

1. **Misapplication of Summary Judgment Standards**
   - The Court improperly applied federal summary judgment standards (***Celotex Corp. v. Catrett***) instead of SCRCP Rule 56, which requires courts to view evidence in the light most favorable to the non-moving party and rejects the federal *"mere scintilla"* rule (***The Kitchen Planners, LLC v. Friedman***, S.C. Sup. Ct. Op. 28173 (2023)).
2. **Failure to Consider Negligence Per Se**
   - The Court disregarded Defendants' admissions of statutory/regulatory violations (2-inch lane differential exceeding SCDOT Division 600's 1-inch limit and premature removal of traffic control devices prior to mitigating the hazardous condition), which establish negligence per se under ***Rayfield v. S.C. Dept. of Corrections***, 297 S.C. 95 (1988).
3. **Ignoring Common Knowledge Exception**

- The Court erred in requiring expert testimony for hazards (e.g., lane height differentials, missing traffic controls) that are within layperson understanding (***Wise v. Broadway***, 315 S.C. 273 (1993)).

4. **Procedural Ambush**
   - The Court allowed defense counsel to serve a 212-page memorandum at the January 27, 2025 hearing, violating SCRCP Rules 5(b) and 6(d) and depriving Plaintiffs of due process.

**B. Factual Disputes Overlooked by the Court**

5. **Work Zone Status**
   - Defendants admitted the accident occurred within an SCDOT work zone governed by strict safety regulations, yet the Court failed to address this admission.
6. **Violation of SCDOT Contractual Obligations**
   - Defendants' own records confirm they left a 2-inch lane differential for five days (March 22–27, 2019), violating their contract's requirement to keep lanes closed until hazards were mitigated.
7. **Premature Removal of Traffic Control Devices**
   - Defendants own deposition testimony supported by SCHP dashcam footage/pictures, deposition testimony of Olivia Paige Bryan and GPS data prove Defendants removed cones before law enforcement arrived, exposing Plaintiffs to unmarked hazards.
8. **Financial Motivation for Violations**
   - Defendants prioritized cost-cutting and preserving future bidding on SCDOT projects based on CPS score, over safety, justifying uncapped punitive damages under S.C. Code § 15-32-530(C).

**C. Defense Counsel's Misconduct**

9. **Ethical Violations**
   - Defense counsel published confidential fiduciary-client communications and Plaintiffs' attorney contact list to deter representation, violating Rule 4.4(b), SCACR (*In re Amendments to the Rules of Professional Conduct*, 435 S.C. 67 (2021)).
10. **Bad-Faith Litigation Tactics**
    - Defense counsel obstructed Plaintiffs' ability to secure counsel by disparaging Plaintiffs to potential attorneys and filing frivolous motions. A bad faith strategy to win by gamesmanship rather than on the merits.

**D. Request for Judicial Notice**

11. **SCDOT Records and Contract**
    - The Court failed to take judicial notice of SCDOT daily inspection reports, GPS data, and Defendants' contract, which confirm statutory violations.
12. **SCHP Dashcam Footage**
    - The Court ignored visual evidence showing hazardous conditions and absence of traffic control devices at the accident site.

**E. Judicial Bias & Procedural Irregularities**

- The Court permitted defense counsel's procedural violations without sanction while imposing heightened burdens on pro se plaintiffs, creating an appearance of bias that warrants appellate review.

**F. Relief Requested**

Plaintiffs respectfully request that the Court include these issues in its final order to ensure a complete record for appellate review. If the Court denies reconsideration, Plaintiffs reserve the right to appeal based on:

- Procedural irregularities.
- Misapplication of negligence per se doctrine.
- Defense counsel's unethical conduct.
- Factual disputes precluding summary judgment.

**CONCLUSION**

Defendants' admissions, regulatory violations, and procedural misconduct mandate reconsideration. The Court's ruling rewards gamesmanship over justice and undermines public safety. Plaintiffs demand their day in court to hold Defendants accountable.

**WHEREFORE, Plaintiffs respectfully request this Court to:**

1. Reverse its Order granting Summary Judgment to Defendants.
2. Grant Summary Judgment to Plaintiffs on the basis of negligence per se.
3. In the alternative, set this case for trial on damages.
4. Strike Defendants' 212-page memorandum for procedural violations.
5. Sanction defense counsel under SCRCP Rule 11 for bad-faith litigation tactics.
6. Plaintiffs request that this Court take notice of Defense Counsel's potential Rule 4.4(b) violation and recommend appropriate action to the South Carolina Office of Disciplinary Counsel.

It does not require experts to explain to a layman that two is greater than one (2>1).
And whatever else the Court deems just and proper.

Respectfully submitted,

Michael Smith — Date: 2/28/25

Mary Ann Smith — Date: 2/28/2025

Pro Se Plaintiffs
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Clerk of Court Pickens County, SC
FEB 28 '25 AM 10:51

| | |
|---|---|
| STATE OF South Carolina<br><br>COUNTY OF Pickens<br><br>Michael and Mary Smith,<br><br>Plaintiffs,<br><br>vs.<br><br>Themistoklis Economou and King Asphalt Inc.,<br><br>Defendants. | IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT<br><br>CASE NO.: 2021-CP-39-00329<br><br>**CERTIFICATE OF SERVICE** |

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the **PLAINTIFFS' MOTION TO RECONSIDER PURSUANT TO RULE 59(e)** in **Smith v. King Asphalt, Inc., Case No. 2021-CP-39-00329** was served upon the following counsel of record:

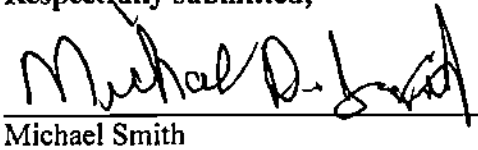
**Catharine Garbee Griffin, Esq.**
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

The document was served via the following methods:

By Email to: CGriffin@brblegal.com
Date of email service: February 28, 2025

To the above address by U.S. Mail via certified mail (return receipt requested),
Certified Mail Number: USPS 70210950000135867804
Date of Mailing: February 28, 2025

**Respectfully submitted,**



February 28, 2025
Date

Michael Smith
Pro Se Plaintiff
220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com

Clerk of Court Pickens County, SC
FEB 28 '25 AM10:55

**Michael D. Smith & Mary Ann Smith**
220 Stancil Street
Easley, SC 29640
February 7, 2025

**The Honorable Jessica A. Salvini**
Thirteenth Judicial Circuit
305 E. North Street
Greenville, SC 29601

**Re: Official Designation of Email Address for Plaintiffs' Communications**
**Case No.: Smith v. King Asphalt, Inc. 2021-CP-39-00329**

**Delivered by US Mail Certified (return receipt) USPS 70210950000135867781**

Dear Judge Salvini,

We, the Plaintiffs in the above-referenced matter, respectfully submit this letter to formally affirm and notify the Court that our official and designated email address for all case-related communications is:

**MichaelDSmith@housemail.com**

This email address has been included in all prior communications, pleadings, and filings. However, defense counsel, Ms. Catharine Garbee Griffin of Baker, Ravenel & Bender LLP, has objected to our use of this email address and has actively discouraged its recognition by both the Court and herself as a valid means of communication.

We wish to clarify that this is our **official and preferred** method of receiving correspondence from both the Court and defense counsel. We respectfully request that all future Court communications be directed to this email, in addition to any standard mailing procedures.

Furthermore, we respectfully object to any effort by defense counsel to dictate or limit our chosen method of communication, as doing so serves no legitimate legal purpose and only obstructs the efficient administration of this case. We request that this matter be noted in the Court record to prevent any future disputes regarding communication channels.

Please confirm receipt of this letter at your earliest convenience. Thank you for your time and consideration.

Respectfully,

Michael D. Smith — February 7, 2025
Michael D. Smith — Date

Mary Ann Smith

February 7, 2025
Date

**STATE OF SOUTH CAROLINA**
**COUNTY OF PICKENS**

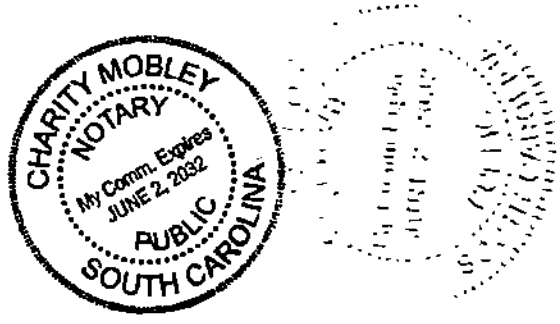
**NOTARY ACKNOWLEDGMENT**

On this **7 day of February, 2025**, before me, the undersigned Notary Public, personally appeared Michael and Mary Ann Smith, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal.

February 7, 2025
**Notary Public Signature**

Charity Mobley
**Notary Public, State of South Carolina**
**My Commission Expires:** 6-2-2032



09/12/2026

Smith v. King Asphalt, Inc. - Record on Appeal - CoA#2025-001327

Bates Page 861 of 1535

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FEB 28 '25 AM 10:55

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Michael and Mary Smith,

Plaintiffs,

vs.

Themistoklis Economou and King Asphalt Inc.,

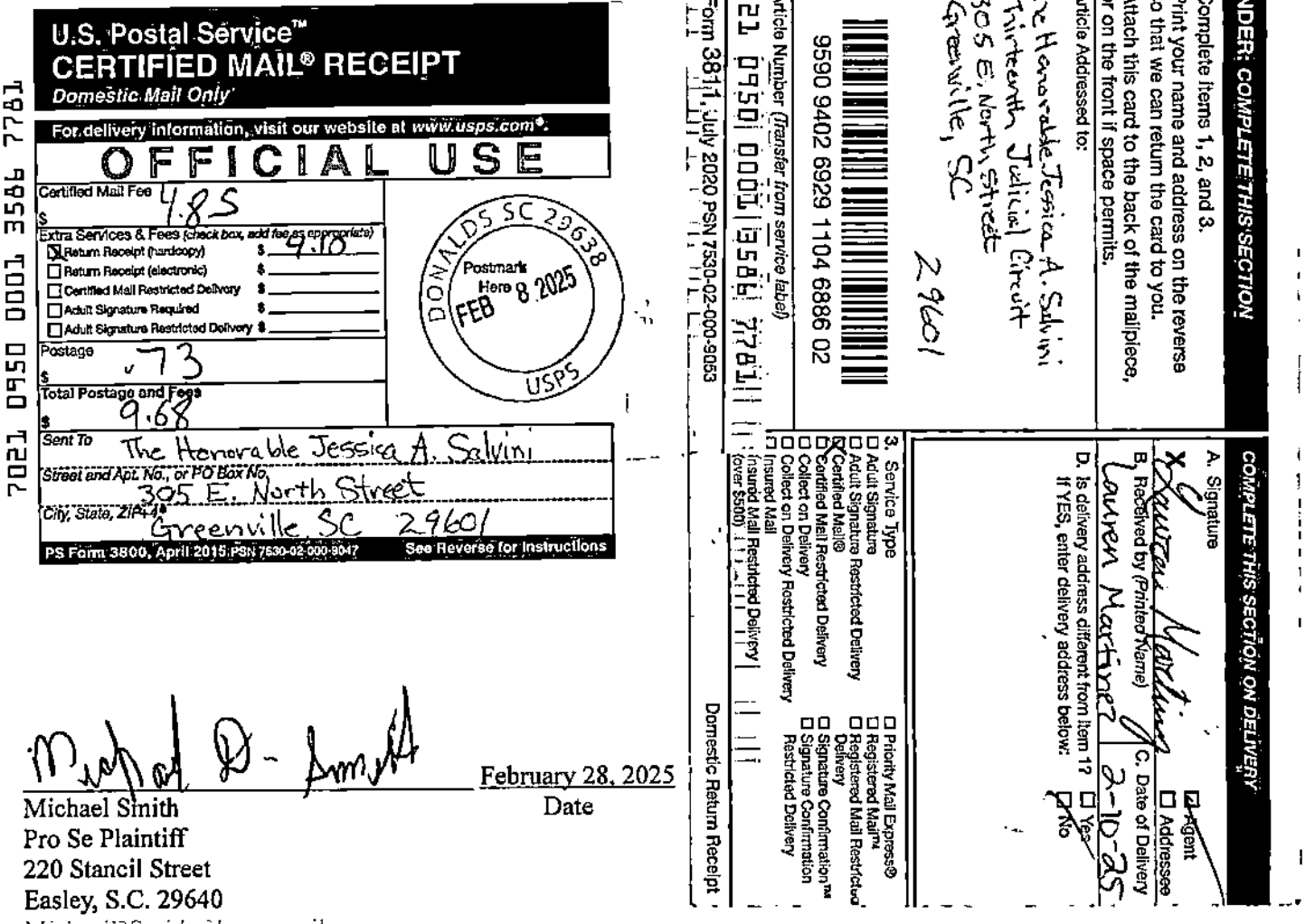
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-39-00329

**PROOF OF SERVICE**

**PROOF OF SERVICE**




Michael D. Smith

February 28, 2025
Date

Michael Smith
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Clerk of Court Pickens County, SC
FEB 28 '25 AM10:55

**Michael D. Smith & Mary Ann Smith**
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Easley, SC 29640
February 7, 2025

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3710 Landmark Drive, Suite 400
Columbia, SC 29204

**Re: Official Designation of Plaintiffs' Email Address for Case Communications**
**Case No.: Smith v. King Asphalt, Inc. 2021-CP-39-00329**

**Certified Mail Number: USPS 70210950000135867798**

Dear Ms. Griffin,

We are writing to formally notify you that our official and designated email address for all case-related communications is:

**MichaelDSmith@housemail.com**

This email address has been included in all prior case filings and correspondence. Despite this, you have repeatedly expressed opposition to communicating with us via this email and have attempted to instruct the Court not to recognize it as a valid point of contact.

To be clear, we have the absolute right to designate our preferred communication method. Your refusal to acknowledge this email, or to use it as a means of communication with us, serves no lawful or procedural purpose and appears to be an attempt to create unnecessary barriers in this litigation.

Furthermore, we remind you of your obligations under the **South Carolina Rules of Professional Conduct**, specifically **Rule 4.4 (Respect for Rights of Third Persons)**, which states:

*A lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person.*

Your refusal to communicate through our designated email address, without any legitimate basis, serves no purpose other than to **burden and delay** our ability to effectively participate in this litigation. This conduct is not only obstructive but also inconsistent with the ethical obligations imposed upon attorneys practicing in South Carolina.

We hereby demand that you cease any further efforts to interfere with our chosen method of communication and that you direct all future case-related correspondence to this email address, as well as our mailing address listed above.

This letter serves as formal documentation of our position on this matter. If you continue to refuse communication through our designated email, we will seek appropriate relief from the Court.

Respectfully,

Michael D. Smith — February 7, 2025
Date

Mary Ann Smith — February 7, 2025
Date

**STATE OF SOUTH CAROLINA**
**COUNTY OF PICKENS**

**NOTARY ACKNOWLEDGMENT**

On this **7 day of February, 2025,** before me, the undersigned Notary Public, personally appeared Michael and Mary Ann Smith, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

**IN WITNESS WHEREOF,** I have hereunto set my hand and official seal.

Charity Mobley — February 7, 2025
**Notary Public Signature**

CHARITY MOBLEY NOTARY PUBLIC SOUTH CAROLINA My Comm. Expires JUNE 2, 2032

Charity Mobley
**Notary Public, State of South Carolina**
**My Commission Expires:** 6-2-2032

/

**Michael D. Smith & Mary Ann Smith**
220 Stancil Street
Easley, SC 29640
February 7, 2025

**The Honorable Jessica A. Salvini**
Thirteenth Judicial Circuit
305 E. North Street
Greenville, SC 29601

**Re: Informational Submission Regarding Plaintiffs' Designated Email Address**
**Case No.: Smith v. King Asphalt, Inc. 2021-CP-39-00329**

Dear Judge Salvini,

We are submitting this letter for the Court's awareness regarding an ongoing issue with defense counsel's refusal to communicate with us via our designated email address. We have formally notified defense counsel, Ms. Catharine Garbee Griffin of Baker, Ravenel & Bender LLP, that our **official email address for case-related communications is:**

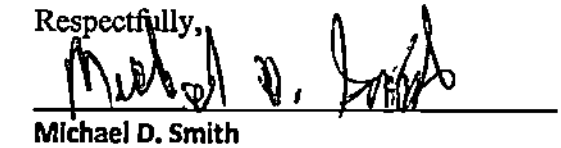
**MichaelDSmith@housemail.com.**

A copy of our letter to her, dated **February 7, 2025**, is attached hereto.

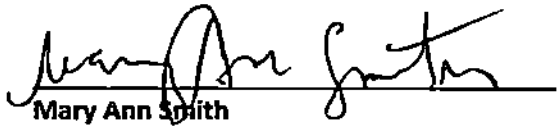
We are providing this to the Court **for informational purposes only** to ensure there is no question regarding our efforts to resolve this issue and to avoid any concern of ex parte communication. We are simultaneously serving defense counsel with a copy of this submission.

Please note that we are not requesting a ruling or action from the Court at this time. However, we respectfully want to ensure that the Court is aware of this matter in case it becomes relevant to future proceedings.

Respectfully,



**Michael D. Smith** — February 7, 2025 **Date**



**Mary Ann Smith** — February 7, 2025 **Date**

**CC:**
Catharine Garbee Griffin
Baker, Ravenel & Bender LLP

09/12/2026

Clerk of Court Pickens County, SC
FEB 28 '25 AM 10:56

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Michael and Mary Smith,

Plaintiffs,

vs.

Themistoklis Economou and King Asphalt Inc.,

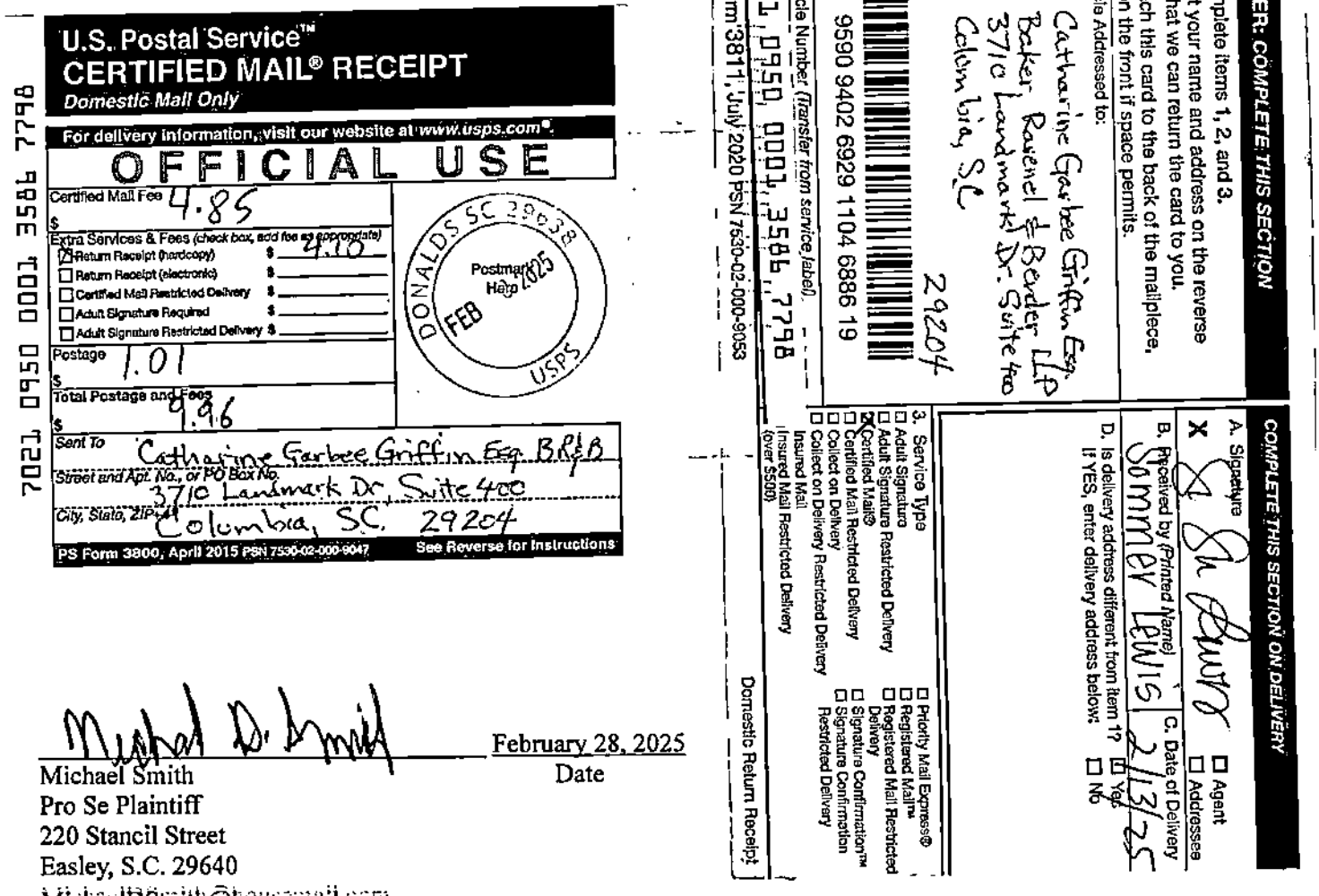
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2021-CP-39-00329

**PROOF OF SERVICE**

**PROOF OF SERVICE**




Michael D. Smith

Michael Smith
Pro Se Plaintiff
220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com

February 28, 2025
Date

Smith v. King Asphalt, Inc. - Record on Appeal - CoA#2025-001327

Bates Page 865 of 1535

Clerk of Court Pickens County, SC
FEB 28 '25 AM 10:56

STATE OF SOUTH CAROLINA

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IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-39-00329

**CERTIFICATE OF SERVICE**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Notarized Official Designation of Plaintiffs' Email Address for Case Communications** in **Smith v. King Asphalt, Inc., Case No. 2021-CP-39-00329** was served upon the following counsel of record:

**Catharine Garbee Griffin, Esq.**
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

The document was served via the following methods:

By Email to: CGriffin@brblegal.com
Date of email service: February 7, 2025

To the above address by U.S. Mail via certified mail (return receipt requested),
Certified Mail Number: USPS 70210950000135867798
Date of Mailing: February 7, 2025

**Respectfully submitted,**

February 7, 2025
Date

Michael Smith
Pro Se Plaintiff
220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com