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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

FEB 24 2014

The Honorable J.C. Nicholson, Jr., Circuit Court Judge **SC Court of Appeals**

Case No. 2013-001623

South Carolina Electric & Gas, Co.,.....Respondent

v.

Anson Construction Company,.....Appellant

RESPONDENT'S MOTION TO DISMISS

NOW COMES counsel for Respondent, and moves this Honorable Court to dismiss the Respondent's appeal pursuant to Rule 240 of the South Carolina Appellate Court Rules and S.C. Code Annotated Section 14-3-330. This motion is based upon the grounds that the Order appealed from is interlocutory and not subject to immediate appeal under S.C. Code Annotated Sec. 14-3-330.

BACKGROUND

In June of 2007, the City of Charleston ("the City") closed the Dock Street Theater ("the Theater") to begin an extensive renovation. At that time, an electric transformer owned by SCE&G served the Theater and several homes in the immediate area. That transformer was located inside the Theater. The City and SCE&G had a number of discussions and meetings about relocating the transformer outside of the Theater, and the decision was ultimately made to relocate the transformer to an underground vault in the sidewalk adjacent to the French Huguenot

Church (“the Church”), which is located directly across the street from the Theater.

In the fall of 2007, SCE&G contacted Anson Construction Co., Inc. (“Anson”) to install a concrete vault in the sidewalk adjacent to the Church so that SCE&G could then install its transformer in that location. On or about December 11, 2007, Anson faxed SCE&G a quotation to do this work. The quotation stated in part that “[t]his proposal is subject to execution of a non-modified AIA form or subcontractor approved equal.” On or about January 4, 2008, SCE&G sent Anson a purchase order contract as contemplated in Anson’s proposal. The purchase order specifically provided that “by accepting this Order, [Anson] acknowledges that it has read and accepted SCANA Corp. General Terms and Conditions.” The January 4th documents contained an indemnification clause as well as a clause that stated the Parties were bound by its terms upon either execution or performance. (See Paragraphs 1:26 and 1:33 of the General Terms and Conditions attached to the Complaint. The Complaint is attached as Exhibit 1).

Anson’s owner testified during its 30(b)(6) deposition that the process described in the prior paragraph was consistent with every single one of the contracts Anson has ever entered into with SCE&G except for one detail. On this occasion, Anson failed to sign SCE&G’s January 4, 2008 purchase order prior to starting work. Nonetheless, Anson began performing work as set forth in SCE&G’s purchase order, and it also later accepted SCE&G’s payment in accordance with the purchase order even identifying and referencing SCE&G’s purchase order in its own invoice.

On or about January 7, 2008, Anson began the work. Pursuant to the agreement between Anson and SCE&G, Anson controlled the means and methods necessary to accomplish the work. The work was planned in three stages; first, Anson had to remove the existing sidewalk; second, a hole had to be excavated; and finally, Anson planned to install a trench box in the hole to keep the surrounding soil from shifting while the underground vault was being installed.

Area residents testified that Anson broke the sidewalk into pieces with the bucket of its

trackhoe by pounding the bucket on the ground and then used the trackhoe bucket to pound the trench box into place. The resulting noise and vibration alarmed everyone in the immediate area including several neighbors on both sides of the Theater. Immediately thereafter, the City issued a stop work order, and the Church and some adjacent property owners claimed that the vibration caused substantial property damage to the Church and surrounding homes.

At that point, SCE&G stepped in to resolve the problem. Unfortunately, Anson stepped back despite being asked to participate in the remediation process and put its insurance carrier on notice of the issue. At the City's and the Church's urging, SCE&G hired a soil engineer to evaluate the situation and recommend a procedure for remedying the problem. SCE&G followed the experts' opinions. Ultimately, the trench box was abandoned, the hole was filled in, and the transformer was returned to its original location inside of the Theater.

In July of 2009, the Church filed suit to collect money from SCE&G and Anson to repair its building. The Church's claims were based entirely on the means and methods used by Anson when installing the trenchbox, of which Anson testified SCE&G had no control. SCE&G tendered the defense of that case to Anson and also made a claim against Anson for indemnity. Anson refused to accept SCE&G's defense and Anson denied the indemnity claim. SCE&G subsequently hired the undersigned to represent it and paid the Church to settle its claim.

On July 15, 2011, SCE&G filed this action to recover against Anson for the costs SCE&G incurred in defending the lawsuit filed by the Church as well as the amount that SCE&G contributed to the settlement of that lawsuit. The Complaint included claims for breach of contract, unjust enrichment, quasi contract /quantum meruit, contractual indemnity and equitable indemnity. Anson denied the material allegations of the Complaint and alleged various affirmative defenses including comparative negligence, unclean hands and waiver. (A copy of the Answer is attached hereto as Exhibit 2). Prior to trial SCE&G moved for partial summary

judgment on its claim for contractual indemnity. The case was scheduled for trial before the Honorable J.C. Nicholson, Jr., on July 22, 2013. On that date, Judge Nicholson granted the motion for partial summary judgment and his ruling was memorialized in an order dated July 22, 2013. (A copy of the Order Granting Plaintiff's Motion for Partial Summary Judgment is attached hereto as Exhibit 3). Anson filed a Notice of Appeal immediately after the Order granting partial summary judgment was filed. For the reasons discussed below, the appeal should be dismissed and the case remanded to the Charleston County Court of Common Pleas for trial.

CITATION OF AUTHORITIES

The statutory basis for appellate jurisdiction is found in S.C. Code Annotated Section 14-3-330. That statute provides in pertinent part that the "Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions . . .". The question therefore is whether Judge Nicholson's Order granting partial summary judgment is a final judgment for purposes of Section 14-3-330. A review of the cases interpreting that statute clearly demonstrates that the Order is not final, and thus, this appeal is interlocutory and should be dismissed.

In the case of Mid-State Distributors v. Century Imports, 310 S.C. 330, 426 S.E.2d 777 (1993), the South Carolina Supreme Court articulated the definition of an interlocutory appeal. "If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory." Id. 301 S.C. at 335, 426 S.E. 2d at 780. Furthermore, the Court in Mid-State stated that "[i]f a judgment determines the applicable law

while leaving open questions of fact, it is not a final judgment.” *Id. citing, Good v. Hartford Accident and Indemnity Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942).” Based upon that reasoning the Court in Mid-State dismissed the appeal from an order denying a motion to dismiss for lack of personal jurisdiction on the grounds that the appeal was interlocutory.

The Supreme Court has long held that an order granting partial summary judgment is not a final order as contemplated by Section 14-3-330. In *Link v. School District of Pickens County*, 302 S.C. 1, 393 S.E. 2d 176 (1990), the Plaintiff filed suit against the School District for breach of contract, promissory estoppel, outrage and invasion of privacy. *Id.* 302 S.C. at 1, 393 S.E.2d at 177. After the School District moved for summary judgment on all claims, Link abandoned his cause of action for invasion of privacy and the trial court granted summary judgment against Link on the breach of contract claim. *Id.* Link did not attempt to appeal the summary judgment order, but instead proceeded to trial on the remaining claims. *Id.* The trial judge granted a directed verdict against Link on the outrage claim and the final claim for promissory estoppel was submitted to a jury. *Id.* Following a jury verdict for the School District, Link filed an appeal from the summary judgment order disposing of the breach of contract claim. The School District argued that the appeal was untimely because the summary judgment order was a final order under Section 14-3-330 and Link failed to take an immediate appeal from that order. *Id.* 302 S.C. at 6, 393 S.E.2d at 178. The Court rejected that argument and held that the appeal was timely because Section 14-3-330 expressly contemplates that intermediate judgments can be considered during the appeal from a final judgment. *Id.*

The case of *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.* 351 S.C. 459, 570 S.E. 2d 197 (Ct. App. 2002) is even more factually similar to issues before the Court. In that case, Griffin sued Jordan, Jones for professional negligence and breach of warranty. *Id.* 351 S.C. at 464, 570 S.E. 2d at 199. Prior to trial, the Circuit Court Judge granted

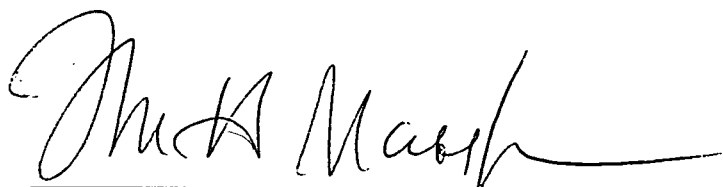
partial summary judgment as to seven of the nine claims alleged in the complaint. Id. After the motion for reconsideration was denied, the Plaintiff did not take an immediate appeal. Id. 351 S.C. at 465, 570 S.E. 2d at 200. Instead, Plaintiff appealed the partial summary judgment order after the two remaining claims were dismissed several months later. Id. On appeal, the Defendant argued that the appeal was untimely because the partial summary judgment order was final and subject to immediate appeal. Citing both Mid-State and Link, the Court of Appeals held that to the extent that the partial summary judgment order was certified under Rule 54 the certification was improper and the appeal was timely. Id. 351 S.C. at 469, 570 S.E. 2d at 202.

This case presents precisely the same issue that was addressed in each the cases cited above. Here the Complaint alleges various causes of action including a cause of action for contractual indemnity. Anson not only denied the allegations of the Complaint but also alleged several affirmative defenses. The Order granting partial summary judgment only decided the issue of which documents constitute the contract between Anson and SCE&G and that the contract includes a provision in which Anson agreed to indemnify SCE&G for the damages claimed by the Church. The Order did not specify any amount owned by Anson to SCE&G. In fact, the Order specifically stated that the amount of any damages owed by Anson to SCE&G will be “determined at the trial of this matter.” (Exhibit 3 at paragraph 58). Just as in the Mid-State case, there is work left to be done in this case before the rights of the parties are finally determined and issues are ripe for appeal. Judge Nicholson decided questions of law, i.e. which documents memorialize the agreement and that the contract includes an indemnity clause. However, important questions of fact remain to be resolved by the jury, most importantly the damages due under the indemnity agreement. Therefore, Anson’s appeal is interlocutory and should be dismissed pursuant to

CONCLUSION

Accordingly, pursuant to Rule 240 of the South Carolina Appellate Court Rules and S.C. Code Annotated Section 14-3-330, Respondent prays for an order dismissing this appeal as premature and remanding the case to the Charleston County Court of Common Pleas for a trial on the remaining issues.

February 21, 2014

A handwritten signature in black ink, appearing to read "John A. Massalon", with a long horizontal flourish extending to the right.

John A. Massalon, Esquire SC Bar #010279
I. Ryan Neville, Esquire SC Bar # 76513
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

South Carolina Electric & Gas Co.,)
)
Plaintiff,)
)
v.)
)
Anson Construction Company, Inc.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO.: 11-CP-10 5009

SUMMONS
(Jury Trial Demanded)

FILED
2011 JUL 15 11:10:38
JULIE STANFORD
CLERK OF COURT

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the below subscribed attorney at his office at 97 Broad Street, Charleston, South Carolina 29401 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to Answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and will seek a default judgment against you.



John A. Massalon
I. Ryan Neville
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144

ATTORNEYS FOR PLAINTIFF
SOUTH CAROLINA ELECTRIC & GAS CO.

CHARLESTON, SC
July 15, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

South Carolina Electric & Gas Co.,)
)
Plaintiff,)
)
v.)
)
Anson Construction Company, Inc.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO.: 11-CP-10-5009

COMPLAINT
(Jury Trial Demanded)

FILED
2011 JUL 15 AM 10:30
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff, South Carolina Electric and Gas Company ("SCE&G"), complaining of Defendant, Anson Construction Company, Inc. ("Anson") alleges and says as follows:

JURISDICTION & VENUE

1. SCE&G is a South Carolina Corporation organized and existing under the laws of the State of South Carolina.
2. Upon information and belief, Anson is a South Carolina Corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County.
3. The above-captioned matter arises from a contract that was made in Charleston County and events that took place in Charleston County.
4. This Court has personal jurisdiction over these parties, subject matter jurisdiction over this action, and venue is proper in Charleston County.

FACTUAL ALLEGATIONS

5. The allegations contained in the foregoing paragraphs are realleged and restated as if repeated herein verbatim.

6. On or about December 13, 2007, Anson sent SCE&G a proposal to install a trenchbox in the ground adjacent to the French Huguenot Church of Charleston ("the Church") as more particularly described in said proposal, which is hereby incorporated by reference herein verbatim and is attached hereto as Exhibit A ("the Proposal").
7. In part the Proposal stated that it was subject to SCE&G and Anson entering into a contract.
8. On or about January 4, 2008, SCE&G sent Anson a Purchase Order contract as contemplated in the Proposal whereby Anson agreed to install a trenchbox in the ground adjacent to the Church as more specifically described said contract in return for payment by SCE&G. Said contract is hereby incorporated by reference herein verbatim and is attached hereto as Exhibit B ("the Contract").
9. The Contract specifically provided that the work would be performed "in accordance with applicable SCE&G drawings, SCE&G Distribution Construction Standards, requirements of any permitting authorities and the attached General Terms and Conditions dated 02/28/2006 ...".
10. According to paragraph 1:09 of the General Terms and Conditions Anson agreed to protect the property of third parties from damage during its performance of the work contemplated by the Contract.
11. Pursuant to paragraph 1:26 of the General Terms and Conditions, Anson agreed to "save, defend, indemnify, and hold harmless [SCE&G] from any and all liabilities, claims, suits, actions, proceedings, fines, penalties, forfeitures, losses, damages, and the cost and expenses incident thereto (including but not limited to costs of investigation, defense,

settlement, and attorney's fees) arising directly or indirectly out of any act or failure to act on [Anson]'s part, or the part of any agent, servant, or subcontractor, of [Anson], whether independent or otherwise, in connection with the work undertaken under the Contract."

12. Upon information and belief, Anson began installing the trenchbox on or about January 7, 2008.

13. Upon information and belief, during the installation of the trenchbox Anson used the arm of a trackhoe to strike the edge of the trenchbox in an effort to force the trenchbox completely into a hole that Anson has previously excavated in the sidewalk adjacent to the Church.

14. Upon information and belief, representatives of the Church complained that the construction methods used by Anson caused damage to the Church building and the City of Charleston issued a stop work order.

15. Thereafter, SCE&G was required to incur significant expenses to study the soil in the area of the excavation, assess the purported damage to the Church, stabilize the excavation, abandon the trenchbox, remediate the site where Anson attempted the installation, and install its equipment in an alternate location.

16. On or about July 15, 2009, the Church filed a lawsuit against SCE&G and Anson captioned "French Protestant Huguenot Church of Charleston v. South Carolina Electric & Gas Co. and Anson Construction Co., Inc." bearing case number 09-CP-10-4358 ("the Lawsuit").

17. The Church requested a verdict in the Lawsuit against SCE&G and Anson for property damage to the Church building due to the work performed by Anson.

18. On or about March 11, 2010, SCE&G and Anson entered into a Tolling Agreement whereby they agreed to refrain from alleging claims against each other during the Lawsuit and that no statutory time limitations would expire while the Tolling Agreement was in effect.
19. As a direct and proximate result of the negligence and breach of contract by Anson, SCE&G was forced to expend additional sums to defend the Lawsuit and to settle the claims alleged against SCE&G.
20. On or about June 17, 2011, Anson provided notice to SCE&G of its intent to terminate the Tolling Agreement.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

21. The allegations contained in the foregoing paragraphs are realleged and restated as if repeated herein verbatim.
22. On or about January 7, 2008, Anson began performing the excavation work adjacent to the Church.
23. Pursuant to paragraph 1:09 of the Terms and Conditions which were a part of the Contract, Anson was required to "protect all WORK and property from damage or loss that may result from the performance of the CONTRACT."
24. Further, paragraph 1:09 states that if any property of third parties required replacement or repair due to damage caused by Anson, and Anson failed or refused to make the repair, then SCE&G could reimburse the third party and either deduct it from the funds due to Anson or obtain reimbursement from Anson.
25. SCE&G paid Anson as described in the Contract.

26. Anson accepted payment from SCE&G as described in the Contract.
27. Anson had sole control of the means and methods used to accomplish the work contemplated by the Contract.
28. The work performed by Anson damaged the property of the Church.
29. SCE&G incurred substantial costs and expenses to compensate the Church for the damage to its property.
30. SCE&G demanded that Anson reimburse SCE&G for amounts paid by SCE&G to compensate the Church, but Anson denied that request in breach of its obligations under the Contract.
31. SCE&G did not cause Anson to breach the Contract or interfere in any way with Anson's ability to perform its obligations under said Contract.
32. At all times SCE&G fully performed all of its obligations under the Contract.
33. As a direct and proximate result of Anson's breach of Contract, SCE&G has been injured and damaged in an amount to be proven during the trial of this action.
34. SCE&G is entitled to a judgment against the Anson in an amount to be proven during the trial plus pre-judgment interest and post-judgment interest at the rate provided by law and the costs of this action.

FOR A SECOND CAUSE OF ACTION
(Contractual Indemnity)

35. The allegations contained in the foregoing paragraphs are realleged and restated as if repeated herein verbatim.

36. Upon information and belief, as a direct and proximate result of Anson's negligence and breach of contract by Anson during the installation of the trenchbox, the City of Charleston issued an administrative order which stopped Anson's work.
37. Thereafter, due to the negligence and breach of contract by Anson the trenchbox had to be abandoned, and SCE&G incurred expenses to remediate the site.
38. Additionally, as a direct and proximate result of Anson's construction methods, the Church filed the Lawsuit described above and SCE&G incurred more expenses in defending against the Church's claims and settling those claims.
39. The Contract required Anson to "save, defend, indemnify, and hold harmless [SCE&G] from any and all liabilities, claims, suits, actions, proceedings, fines, penalties, forfeitures, losses, damages, and the cost and expenses incident thereto (including but not limited to costs of investigation, defense, settlement, and attorney's fees) arising directly or indirectly out of any act or failure to act on [Anson]'s part, or the part of any agent, servant, or subcontractor, of [Anson], whether independent or otherwise, in connection with the work undertaken under the Contract."
40. SCE&G served a timely request for Anson to defend and indemnify SCE&G for the claims alleged in the Lawsuit, but Anson refused that demand.
41. As a direct and proximate result of Anson's negligence and breach of contract, SCE&G incurred damages to remediate the site adjacent to the Church, to relocate its equipment to an alternate location and to defend and settle the claims alleged in the Lawsuit.

42. Accordingly, SCE&G is entitled to a judgment against Anson for contractual indemnity, plus pre-judgment interest and post-judgment interest at the rate provided by law and the costs of this action.

FOR A THIRD CAUSE OF ACTION
(Equitable Indemnity)

43. The allegations contained in the foregoing paragraphs are realleged and restated as if repeated herein verbatim.

44. SCE&G was not responsible for Anson's actions and inactions during the installation of the trenchbox.

45. Anson controlled the means and construction methods used to install the trenchbox.

46. Upon information and belief, as a direct and proximate result of Anson's negligence and breach of contract, the Church alleged that its property was damaged and the Church filed the Lawsuit.

47. As a direct and proximate result of Anson's negligence and breach of contract during the installation of the trenchbox, SCE&G incurred damages to remediate the site adjacent to the Church, to relocate its equipment to an alternate location and to defend and settle the Lawsuit.

48. The settlement was bona fide, with no fraud or collusion on the part of SCE&G or the Church.

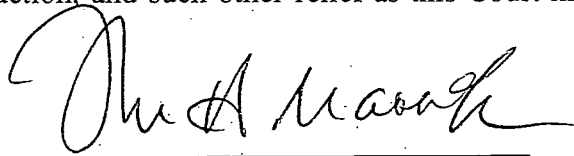
49. Given the circumstances, the decision to settle was a reasonable means of protecting the SCE&G's interest.

50. The amount of the settlement was reasonable in light of SCE&G's estimated damages and the risk and extent of its exposure if the case is tried.

51. SCE&G was without fault in causing the damages to the Church's property at issue in the Lawsuit.

52. Accordingly, SCE&G is entitled to a judgment against Anson for equitable indemnity plus the costs of this action.

WHEREFORE, SCE&G prays for judgment against Anson for actual damages, interest as allowed by law, the costs of this action, and such other relief as this Court may deem just and proper.



John A. Massalon
I. Ryan Neville
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144

ATTORNEYS FOR PLAINTIFF
SOUTH CAROLINA ELECTRIC & GAS CO.

CHARLESTON, SC
July 15, 2011

Tuesday, December 11, 2007



FAXED
DEC 13 2007
BY: _____

2:40 PM

Anson Construction Company, Inc.

Post Office Box 31979
Telephone (843) 556-4411

ansonconstruction.com

Charleston, South Carolina 29417-1979
Facsimile (843) 889-3178

TELECOPIER TRANSMITTAL COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

TO: South Carolina Electric & Gas Company (SCE&G) Danny Hyland

FROM: P. F. Stutsman

RE: Church Street Conduit Duct System and Pre-cast Vault

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 2

TELEPHONE FACSIMILE E-MAIL: 576-8490

SHOULD YOU NOT RECEIVE THE TOTAL TRANSMISSION, PLEASE CONTACT US IMMEDIATELY

Quotation

Please accept our lump sum utility construction quotation for work per supplied South Carolina Electric & Gas Company plan sheets as listed. A quantity sheet is attached.

Conduit Duct System and Pre-Cast Concrete Vault \$ 36,200.00

Conditions:

1. Permits, fees, meters, etc. as required by any public service agency are the responsibility of others.
2. This proposal is subject to execution of a non-modified AIA form or subcontractor approved equal.
3. This proposal confines insurance coverage(s) to Anson Construction Co., Inc. and its employees.
4. This proposal includes no waiver of insurance subrogation rights to any party.
5. Payment terms include all retainage release within 30 days of above utility construction completion.
6. Construction staking is excluded. "As Built" documents limited to marked/returned plan sheets.
7. Native trenched earth bid as non-contaminated and suitable for all backfill requirements.
8. SCE&G to provide concrete vault.
9. Church Street to be closed to through traffic for two month time duration.
10. All work bid to be performed from 7:30 am to 4:30 pm weekdays.
11. All bonds are excluded. Performance and Payment bonds are available 2% separate invoice.

Please feel free to call should you have any questions.

January 3, 2008

Contractor Labor	\$	12,000.00
Contractor Equipment		15,200.00
Contractor Supplied Materials		5,000.00
Subcontractors		4,000.00
Total	\$	36,200.00

Gene A. Stutsman, Jr.

1/4/08

Plaintiff's
Exhibit "A"

SCE&G/ 066

Purchase Order



SCANA Services, Inc.
as buying and paying
agent for:
SC ELECTRIC & GAS CO
1426 Main Street
MC 198
Columbia SC 29201

Dispatch via Print

Purchase Order RE-0400018212	Date 01/04/2008	Revision 1	Page 1
Payment Terms NET 30	Freight Terms DEST-NO FREIGHT	Ship Via See Detail	
Buyer Morris, Randy M	Phone 803/217-9659	Fax 803/933-8129	

Vendor: Fax: 843/889-3178 Phone: 843/556-4411
0000003884
ANSON CONSTRUCTION COMPANY INC
4879 SAVANNAH HWY
RAVENEL SC 29470-5452

Ship To: SC ELECTRIC & GAS CO
3691 LEEDS AVENUE
Charleston SC 29405

Bill To: SCANA SERVICES INC.
P.O. BOX 11849
COLUMBIA SC 29211

Tax Exempt? Y Tax Certificate No. 1440572-000

Line-Sch	Item Id	Description/Comments	Quantity	UOM	Unit Price	Extended Amt	Due Date
----------	---------	----------------------	----------	-----	------------	--------------	----------

Anson Construction Company, Inc. ("Contractor") shall provide all labor, supervision, equipment and materials required to complete the installation of concrete vault for the Dock Street Theater project (herein after "Work") for South Carolina Electric & Gas Company ("SCE&G"). The Work shall be performed in accordance with applicable SCE&G drawings, SCE&G Distribution Construction Standards, requirements of any permitting authorities and the attached General Terms & Conditions, dated 02/28/2006 (herein after "Requirements"). It shall be the Contractor's responsibility to make itself aware of all Requirements of the Work.

The Work shall be performed at the Contractor's quoted Price indicated below and in Contractor's quotation dated December 11, 2007.

SCE&G shall provide concrete vault. All other materials required to complete the Work are to be provided by the Contractor.

1- 1		Labor and Equipment	31,200.00	DO	1.00000	31,200.00	01/11/2008
2- 1		Material provided by Contractor	5,000.00	DO	1.00000	5,000.00	01/11/2008

IN ORDER TO EXPEDITE PAYMENT,
VENDOR INVOICES MUST BE ITEMIZED TO
CORRESPOND WITH THE APPROPRIATE
PURCHASE ORDER LINE ITEMS. INVOICES
NOT PROPERLY ITEMIZED MAY BE
RETURNED TO THE VENDOR FOR
CORRECTION.

VENDOR IS REQUIRED TO ACKNOWLEDGE
ITS ACCEPTANCE OF THE PURCHASE
ORDER/CONTRACT BY HAVING ITS
AUTHORIZED REPRESENTATIVE SIGN IN
THE SPACE BELOW AND RETURN THE
SIGNED COPY TO THE BUYER.

VENDOR REPRESENTATIVE SIGNATURE

DATE

VENDOR REPRESENTATIVE NAME
(PRINTED)

Authorized Signature

OMISSION OF PURCHASE ORDER NUMBER FROM THE INVOICE MAY
RESULT IN DELAY OF PAYMENT. ALSO FOR INVOICES TO BE PAID
THEY MUST BE ITEMIZED TO CORRESPOND WITH THE PO LINE ITEMS.

By accepting this Order, Vendor acknowledges that it has read and accepted SCANA Corp. General Terms and Conditions (last revised 6/27/01) available at "<http://www.scana.com/en/vendors-and-suppliers/process-and-policies/terms-and-conditions/default.htm>" or by calling the number listed above. If this is a Change Order, the Terms and Conditions in effect when the original Order was issued will apply, unless otherwise stated.

**Plaintiff's
Exhibit "B"**

SCE&G/ 058

Purchase Order

Dispatch via Print



SCANA Services, Inc.
 as buying and paying
 agent for:
SC ELECTRIC & GAS CO
 1426 Main Street
 MC 198
 Columbia SC 29201

Purchase Order	Date	Revision	Page
RE-0400018212	01/04/2008		2
Payment Terms	Freight Terms	Ship Via	
NET 30	DEST-NO FREIGHT	See Detail	
Buyer	Phone	Fax	
Morris, Randy M	803/217-9659	803/933-8129	

Vendor: Fax: 843/889-3178 Phone: 843/556-4411
 0000003884
 ANSON CONSTRUCTION COMPANY INC
 4879 SAVANNAH HWY
 RAVENEL SC 29470-5452

Ship To: SC ELECTRIC & GAS CO
 3691 LEEDS AVENUE
 Charleston SC 29405

Bill To: SCANA SERVICES INC.
 P.O. BOX 11849
 COLUMBIA SC 29211

Tax Exempt? Y Tax Certificate No. 1440572-000

Line-Sch	Item Id	Description/Comments	Quantity	UOM	Unit Price	Extended Amt	Due Date
Total PO Amount						36,200.00	

Authorized Signature

OMISSION OF PURCHASE ORDER NUMBER FROM THE INVOICE MAY
 RESULT IN DELAY OF PAYMENT. ALSO FOR INVOICES TO BE PAID
 THEY MUST BE ITEMIZED TO CORRESPOND WITH THE PO LINE ITEMS.

By accepting this Order, Vendor acknowledges that it has read and accepted SCANA Corp. General Terms and Conditions (last revised 6/27/01)
 available at "http://www.scana.com/en/vendors-and-suppliers/process-and-policies/terms-and-conditions/default.htm" or by calling the number listed
 above. If this is a Change Order, the Terms and Conditions in effect when the original Order was issued will apply unless of

SCE&G/059

GENERAL TERMS AND CONDITIONS

1:01

Definitions

As used throughout the CONTRACT, the following terms shall have the meanings set forth hereinafter:

1. COMPANY shall mean South Carolina Electric & Gas Company, Inc., a subsidiary of SCANA Corporation, for itself and as agent for its affiliated SCANA Corporation companies.
2. CONTRACTOR shall mean the successful bidder awarded the CONTRACT for the performance of the WORK.
3. WORK shall mean the material, equipment, labor, supervision and all other requirements necessary to complete the CONTRACT.
4. CONTRACT shall mean the agreement between COMPANY and CONTRACTOR as set forth in the Purchase Order, the General Terms and Conditions and Attachments, and any Drawings, Procedures or Specifications contained or referenced herein and all modifications to any of the foregoing mutually agreed upon in writing. This CONTRACT shall constitute the entire agreement between the parties unless modified in writing by the parties. These General Terms and Conditions shall supersede the preprinted "Conditions Under Which Order Is Given..." on the back of the Purchase Order and conflicting terms in any other CONTRACT document.
5. PROCUREMENT AGENT shall mean COMPANY'S representative or his/her designee through whom commercial matters shall be channeled and who shall have sole authority to approve modifications of the CONTRACT.

1:02

Laws and Regulations

1:02.1

The CONTRACT shall be governed by the laws of the State of South Carolina.

1:02.2

CONTRACTOR shall comply with all laws, ordinances, codes and regulations applicable to its responsibilities under this CONTRACT. Should CONTRACTOR become aware of any violations of any laws, ordinances, codes or regulations, it shall promptly notify COMPANY in writing. If CONTRACTOR, or any of its employees, agents, subcontractors or suppliers of any tier, violates any of such laws, ordinances, codes and regulations, it shall save, defend, indemnify and hold harmless COMPANY from any and all liabilities, claims, fines, penalties,

forfeitures, suits, losses, damages and the costs and expenses incident thereto (including, but not limited to, costs of defense, settlement and attorneys' fees) arising from any such violation.

1:02.3 CONTRACTOR represents and warrants that all articles and services covered by the CONTRACT meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public 91-956) and its regulations in effect or proposed as of the date of the CONTRACT. CONTRACTOR shall be solely responsible for supervision of its employees and their compliance with OSHA regulations, whether or not on premises owned or controlled by COMPANY. CONTRACTOR shall indemnify COMPANY for any fine, penalty, loss or damages (including, but not limited to, costs and attorney's fees associated therewith) incurred by or assessed against COMPANY because CONTRACTOR's WORK is in violation of the aforesaid Act.

1:02.4 CONTRACTOR represents and warrants that all articles and services furnished by it under the CONTRACT meet or exceed any applicable standards established and promulgated under the Federal Consumer Safety Products Act.

1:02.5 CONTRACTOR shall comply with the requirements of all Federal and State Worker's Compensation, Unemployment, Wage and Hour, and Social Security Regulations pertaining to the WORK involved in this CONTRACT and any special state or municipal licenses or permits required for the specified operations. It shall file the necessary reports and pay the required taxes thereunder.

1:02.6 CONTRACTOR shall obtain, and at all times during the term of this CONTRACT maintain as current, any and all licenses or permits required by the South Carolina Licensing Board for Contractors, as required by Sections 40-11-10, et seq., South Carolina Code of Laws, 1976, and regulations promulgated thereunder by said Board, which are on file with the Office of the Secretary of State. Such licenses shall apply to the proper classifications required for undertaking the scope of work defined herein. CONTRACTOR shall, upon request by COMPANY, furnish satisfactory evidence of being so licensed.

1:02.7 CONTRACTOR shall comply with the Immigration Reform and Control Act of 1986.

1:02.8 Pursuant to Section 12-9-310 of the Code of Laws of South Carolina (1976), as amended, on contracts of \$10,000 or more which involve labor, any nonresident contractor must register with the South Carolina Department of Revenue or Secretary of State or have 2% of each payment made to the nonresident contractor withheld, unless the nonresident contractor is considered by the S. C. Department of Revenue to be exempt from this requirement. If CONTRACTOR is a nonresident contractor, in lieu of having the 2% withheld COMPANY requires CONTRACTOR to register with the S. C. Department of Revenues or Secretary of State and furnish

COMPANY a properly completed Nonresident Taxpayer Registration Affidavit Form I-312 (6/94), signed by CONTRACTOR's officer, or provide to COMPANY a letter from the S. C. Department of Revenue certifying that CONTRACTOR is exempt. This Affidavit will remain in effect for three years from receipt of the copy.

1:02.9 For any substance which is or contains a hazardous chemical as defined in 29CFR §1910.1200, as amended from time to time, or any successor regulation thereto, CONTRACTOR shall furnish to COMPANY at no extra cost at the time of delivery or prior to delivery, a Material Safety Data Sheet stating, in English, the information described in 29CFR §1910.1200(g)(2) in the form of OSHA Form 20, pertaining to such chemical.

1:02.10 It shall be the obligation of CONTRACTOR to inform itself of the requirements of the law.

1:03 Permits and Licenses

CONTRACTOR shall acquire and comply with and maintain in good standing all contractor's registrations, licenses, or permits required to be held by it by federal, state and local laws, regulatory authorities, or commissions. CONTRACTOR shall be responsible for any costs incurred for the aforesaid. COMPANY may require further proof of proper licensing. It shall be the obligation of CONTRACTOR to inform itself of the requirements of the law.

1:04 Taxes

COMPANY shall have no liability for any payroll or employment compensation tax, Social Security tax, excise tax, ad valorem tax or any income or revenue based tax or any similar tax, local, state or Federal, for CONTRACTOR or any employee of CONTRACTOR; and CONTRACTOR agrees that it shall pay, as required by law, all such taxes as are applicable to it and its employees and to save, defend, indemnify and hold harmless COMPANY against any claim or liability therefor. Unless otherwise agreed by the parties in writing, CONTRACTOR shall **exclude** any South Carolina sales and use tax in any submitted CONTRACT price and on any resulting invoices to the COMPANY. COMPANY shall be responsible for the payment to the South Carolina Department of Revenue of any sales and use taxes applicable to equipment and material furnished by CONTRACTOR and shall have furnished CONTRACTOR a copy of COMPANY's Direct Pay Certificate hereunder. When required by the COMPANY, CONTRACTOR shall itemize each invoice to show as separate items, labor, material and equipment, freight, and other separable charges for the WORK hereunder.

1:05 Employment Policies

CONTRACTOR shall comply (unless exempted) with the provisions attached hereto in Attachment I with respect to equal employment opportunity, affirmative action, and the utilization of small and small disadvantaged businesses. The provisions in Attachment I are made a part of the CONTRACT by reference. CONTRACTOR agrees to save, defend, indemnify and hold harmless COMPANY from any fine, penalty, claim, suit, loss or damages (including, but not limited to, costs and attorneys' fees associated therewith) arising from any violation of the employment laws referred to herein by CONTRACTOR or its subcontractors or agents.

1:06 Worker's Compensation

CONTRACTOR shall accept, in connection with the CONTRACT, the provisions of the Worker's Compensation Act and any re-enactments and supplements thereto; and CONTRACTOR shall insure its liability thereunder including an "all-states" endorsement.

1:07 Safety

1:07.1 CONTRACTOR shall take all necessary or advisable precautions for the safety of all persons and property at, on, or near its WORK. CONTRACTOR shall comply with all applicable provisions of federal, state, and local safety laws and building codes and any safety regulations of COMPANY. CONTRACTOR shall erect and maintain all necessary or advisable safeguards, as required by the conditions and progress of its WORK, for the protection of workers and the public and shall post danger signs warning against the hazards created by its WORK. In the event any situation arises which may involve danger to persons or property, CONTRACTOR shall act with good judgment to prevent or minimize injury to persons and damage to property.

1:07.2 In the event CONTRACTOR encounters in the performance of the WORK materials or substances which CONTRACTOR recognizes or suspects may be hazardous or toxic, including, but not limited to, asbestos, and the presence of which was not specifically contemplated by CONTRACTOR and recognized in the scope of WORK herein, CONTRACTOR will immediately cease that part of the WORK which is affected and give notice to COMPANY so that COMPANY can give CONTRACTOR further direction.

1:07.3 CONTRACTOR shall not permit or suffer the introduction of alcoholic beverages or liquors nor any narcotics upon the WORK embraced in the CONTRACT nor upon any grounds owned or controlled by COMPANY. CONTRACTOR shall not permit entry to the WORK areas or to COMPANY's grounds of any employee of CONTRACTOR or of any subcontractor of CONTRACTOR who is under the

influence of any alcoholic beverage or liquor or any narcotic (whether or not medically prescribed) or any non-narcotic drug or medication where the fact of such influence may be dangerous to the employee, to the public, to the WORK or to COMPANY's grounds, facilities, or personnel.

1:07.4

COMPANY shall have the right to require CONTRACTOR employees on premises owned or controlled by COMPANY to undergo substance abuse testing and shall also have the right to search CONTRACTOR employees' persons and personal property with regard to controlled substances and alcohol at all times and without prior notice. CONTRACTOR personnel testing positive for controlled substances or alcohol shall not be used in performance of the WORK. All WORK performed by the rejected personnel shall be subject to inspection and rejection by COMPANY and rejected WORK shall be re-performed by CONTRACTOR at no additional charge to COMPANY. CONTRACTOR shall inform all of its employees of their being subject to testing and/or search and shall require each employee performing WORK on COMPANY's premises to sign a form, prior to being engaged in the WORK, acknowledging COMPANY's policies with regard to substance abuse and consenting to testing and/or search at any time as allowed herein.

1:08

Operation of Equipment

The CONTRACTOR's employees shall not operate or attempt to operate any valve, switch, or other control device on any portion of the existing facilities or utilities owned or controlled by COMPANY unless expressly made a part of the WORK as defined in the CONTRACT or as directed by the COMPANY. Failure to abide by this requirement shall be considered sufficient cause for the immediate removal of the employee or employees involved.

1:09

Protection of WORK and Property

CONTRACTOR shall protect all WORK and property from damage or loss that may result from the performance of the CONTRACT. Should its WORK be suspended temporarily, CONTRACTOR shall take such steps as may be necessary or advisable to protect it against damage or loss. WORK or property destroyed, damaged, or lost by act or omission of CONTRACTOR shall be replaced or repaired to COMPANY's satisfaction at CONTRACTOR's expense. Should any WORK or property require such replacement or repair prior to final payment, and CONTRACTOR fails or refuses to replace or repair it in accordance with the CONTRACT, COMPANY may replace or repair such WORK or property, or in case of damage to the property of a third party reimburse the owner thereof, and deduct the cost of such replacement, repair or reimbursement from any funds due or to become due to CONTRACTOR under the CONTRACT; or, if final payment has been made, CONTRACTOR shall reimburse COMPANY such amounts.

1:10 Signs

The premises shall be maintained free from any and all advertising and CONTRACTOR's signboards of every kind, except those approved by COMPANY. CONTRACTOR shall place no temporary sign, except those qualified under "Safety", or other advertising pertaining to the WORK on any part of the premises of COMPANY without permission of COMPANY.

1:11 Publications

Publications and advertisements concerning the subject matter of the CONTRACT shall not at any time be made by or on behalf of CONTRACTOR, its subcontractors, or suppliers, unless prior written authorization therefor is obtained from COMPANY. Cameras or picture taking shall not be allowed on the site except with written permission of COMPANY.

1:12 Reports

CONTRACTOR shall furnish COMPANY periodic reports of WORK progress, if required by COMPANY. Such reports shall be made as frequently as required and in the form prescribed by COMPANY.

1:13 Records and Retentions

CONTRACTOR shall comply with COMPANY's requirements for records, documentation, and retentions thereof in connection with the WORK.

1:14 Audits

1:14.1 CONTRACTOR's and subcontractors' books, records, correspondence, bids, purchase orders, invoices, accounting procedures and practices and any other supporting evidence relating to this CONTRACT (all the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by COMPANY to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims based on CONTRACTOR's or subcontractor's actual costs incurred directly in the performance of WORK under this CONTRACT for the purpose of evaluating or verifying actual costs expended. COMPANY shall have access to said Records from the effective date of this CONTRACT, for the duration of the WORK, and until three (3) years after the date of final payment by COMPANY to CONTRACTOR pursuant to this CONTRACT. COMPANY shall have access, during normal working hours, to all necessary CONTRACTOR and subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this Article. COMPANY shall

give CONTRACTOR or subcontractor reasonable advance notice of intended audits.

1:14.2 CONTRACTOR shall require subcontractors to comply with the provisions of this Article by insertion of the requirements hereof in any subcontract pursuant to this CONTRACT.

1:14.3 CONTRACTOR shall cooperate fully with COMPANY in any such inspection or audit, as well as in any inspection, audit or investigation conducted by governmental authority or conducted by COMPANY at the direction of any governmental authority.

1:15 Scheduling of WORK

All WORK shall be scheduled by CONTRACTOR subject to the approval of COMPANY and within the completion date(s) required by COMPANY, if any. Any WORK performed without COMPANY's authorization will be done at CONTRACTOR's risk and expense and shall be subject to rejection.

1:16 Inspection of WORK

All WORK shall be subject to inspection by COMPANY. COMPANY's authorized personnel shall have reasonable access to the WORK at all times for the purpose of inspection. CONTRACTOR shall provide proper facilities for such access and inspection. The presence of COMPANY's personnel shall not in any way alter, modify, or lessen the obligation of CONTRACTOR to comply with the requirements of the CONTRACT. Any inspection by COMPANY's personnel shall not be considered as an acceptance or waiver of warranty or other rights of the WORK inspected. If the inspection results in a determination of unsatisfactory performance on the part of CONTRACTOR, the nonconforming WORK shall be corrected in accordance with "Warranty" below.

1:17 Approval of WORK

All WORK shall be subject to the approval of COMPANY. CONTRACTOR shall perform all WORK in such a manner as to comply with the CONTRACT. COMPANY shall have the authority to stop the WORK without cost or liability whenever such stoppage is necessary to ensure proper compliance with the CONTRACT.

1:18 Independent Contractor Status

It is the intention of the parties to create between themselves the relationship of owner and independent contractor. CONTRACTOR shall control the manner and details of performance of the WORK hereunder, subject to compliance with

specifications, drawings, plans, and the reasonable rules, regulations and procedures of COMPANY governing the operation of COMPANY's facilities, COMPANY's interest being in the result. No employees, contractors, subcontractors, or agents of CONTRACTOR shall at any time be deemed or have the rights of employees of COMPANY, and neither CONTRACTOR nor any of the employees, contractors, subcontractors, or agents of CONTRACTOR, shall be eligible to participate in any employee benefit plan sponsored by or participated in by COMPANY. CONTRACTOR shall require any employee, contractor, subcontractor or agent of CONTRACTOR (CONTRACTOR's personnel) performing any portion of the WORK on premises owned or controlled by COMPANY to comply with COMPANY's Corporate Security procedures and to execute the Form IC-1, Attachment II hereof, in all circumstances where an individual badge of CONTRACTOR's personnel is required under COMPANY's Corporate Security procedures. The executed Form IC-1 shall be provided to COMPANY's Corporate Security prior to start of any WORK. CONTRACTOR shall notify COMPANY's Corporate Security when each of CONTRACTOR's personnel, previously approved by COMPANY's Corporate Security for admittance to perform WORK at a specified COMPANY premises, is no longer performing WORK for CONTRACTOR at such premises.

1:19

Retirees

The CONTRACTOR specifically agrees that in furtherance of the WORK contemplated by this CONTRACT neither it, nor any of its subcontractors, will employ, hire, contract with, or utilize the services (consulting, managerial or otherwise) of a retiree of SCANA Corporation or any of its subsidiaries ("SCANA Retiree") where CONTRACTOR's retaining of the SCANA Retiree is predominantly motivated by, and the services performed and to be performed by the SCANA Retiree are predominantly limited to, the performance of WORK for COMPANY under this CONTRACT. Without limiting the foregoing, the terms of the "Independent Contractor Status" provision contained in this CONTRACT shall apply for any SCANA Retiree utilized for any portion of the WORK.

1:20

Security

CONTRACTOR shall comply with all of COMPANY's security programs and requirements.

1:21

Subcontractors

No portion of the WORK shall be subcontracted without first securing the prior written consent of COMPANY. CONTRACTOR shall disclose any intent to subcontract any part of the WORK, prior to the execution of the CONTRACT. Requests for consent shall include the names and addresses of all subcontractors and nature and extent of the WORK to be performed. When required by COMPANY,

CONTRACTOR shall provide COMPANY a copy of the agreement with each subcontractor which shall be complete in every detail, including prices. CONTRACTOR agrees to bind every subcontractor and every subcontractor shall be bound by terms essentially the same as the terms of the CONTRACT so far as they apply to the work to be performed by the subcontractor, unless specifically noted to the contrary in a subcontract approved by COMPANY. Consent by COMPANY to any such subcontracting shall not relieve CONTRACTOR of full responsibility for the WORK to be performed by the subcontractor.

1:22

Cooperation with other Contractors

COMPANY may employ other firms or individuals for those portions of related work which are not included as a part of the WORK herein. CONTRACTOR shall cooperate with other firms or individuals working at or near the site of CONTRACTOR's operations and shall afford them reasonable opportunity for the delivery and storage of their materials in the execution of their work, shall coordinate its WORK with theirs, and shall follow any directions given by COMPANY in that regard. Where CONTRACTOR's WORK depends on proper execution or the completion of a job or jobs by other firms or individuals, CONTRACTOR shall promptly report to COMPANY any defects or deficiencies in such other work that renders it unsuitable for proper execution of the WORK included in the CONTRACT.

1:23

Demurrage

Demurrage on material furnished by COMPANY caused by CONTRACTOR's acts or omissions shall be paid by CONTRACTOR.

1:24

Force Majeure

Neither party shall be liable to the other for any loss or damage due to any failure or delay in performance hereunder resulting from any cause beyond such party's reasonable control, including, but not limited to, acts of God; acts or omissions of civil or military authority; acts or omissions of the other party hereto; fires; floods; epidemic; quarantine restrictions; strikes or other labor disputes; wars or warlike circumstances; or compliance with changes in applicable regulations or directives of national, state or local governments or any department thereof effective after the date of the CONTRACT. The party asserting the force majeure as an excuse from performance shall give the other party notice verbally within twenty-four hours of the occurrence of a force majeure event, confirmed in writing within ten days thereafter, such notice to state the nature of the event and the anticipated length of delay. Such party shall take all reasonable steps to mitigate the effects of any force majeure event (provided, however, that this shall not require settlement of labor disputes negotiated in good faith).

1:25 Insurance by CONTRACTOR

1:25.1 Without limiting any of the other obligations or liabilities of CONTRACTOR and until the WORK is completed and accepted by COMPANY, CONTRACTOR agrees to furnish and maintain for itself and to require any approved subcontractor to furnish and maintain at all times during the course of the WORK to be performed hereunder policies of insurance, including Worker's Compensation, liability insurance, and other minimum insurance coverages in accordance with the requirements established in the "Insurance Requirements", Attachment III hereof. None of the liability policies shall have any "other insurance" clause or language which would jeopardize the primacy of CONTRACTOR's insurance with respect to COMPANY's self-insured retention or excess insurance policies. Before any WORK is started under the CONTRACT, CONTRACTOR shall provide COMPANY an insurance certificate evidencing coverages as required herein and in a form satisfactory to COMPANY. Such certificate shall provide that at least ten (10) days written notice be given to COMPANY prior to any material change or cancellation of the insurance. Copies of the insurance policies signed by the insurance companies or other authorized representatives shall be provided upon request. All insurance shall be with sound insurance companies, satisfactory to COMPANY, and authorized to do business in the state where the WORK is performed. Neither a failure of CONTRACTOR to provide the required certificate of insurance nor CONTRACTOR's submission of a certificate of insurance not in conformance with the insurance requirements stated herein shall relieve CONTRACTOR from the obligation to have in force the required insurance coverages. The insurance requirements stated herein may be changed only by specific written agreement by COMPANY.

1:25.2 None of CONTRACTOR's personnel shall be deemed for any purpose to be solely or dually employed by COMPANY. If any employee of CONTRACTOR shall recover benefits under COMPANY's Worker's Compensation as a result of injury or disease sustained in, or Unemployment Insurance coverage resulting from, performing WORK under the CONTRACT while on CONTRACTOR's payroll, CONTRACTOR shall reimburse COMPANY for the full amount of such benefits and any cost or expenses incurred by COMPANY related thereto.

1:26 Indemnification

CONTRACTOR hereby agrees to save, defend, indemnify and hold harmless COMPANY from any and all liabilities, claims, suits, actions, proceedings, fines, penalties, forfeitures, losses, damages and the costs and expenses incident thereto (including, but not limited to, costs of investigation, defense, settlement and attorney's fees) arising directly or indirectly out of any act or failure to act on CONTRACTOR's part, or the part of any agent, servant, or subcontractor of CONTRACTOR, whether independent or otherwise, in connection with the WORK undertaken under the CONTRACT.

1:27 Performance and Payment Bond

If required by COMPANY, prior to undertaking any WORK hereunder, CONTRACTOR shall secure and maintain while the WORK is being performed a performance and payment bond, in a form and with sureties acceptable to COMPANY, insuring the full, proper performance of the CONTRACT and the completion of the WORK in a skillful and professional manner, and the payment of all obligations arising thereunder. Such bond shall be in an amount equal to one hundred percent (100%) of the total price of the WORK. The determination of whether CONTRACTOR has failed to perform the CONTRACT shall be made solely by COMPANY. COMPANY reserves the right to terminate the CONTRACT in the event such a bond is not procured or is not maintained in effect until final acceptance of the WORK.

1:28 Liens

1:28.1 CONTRACTOR shall, whenever requested to do so, furnish COMPANY, in such detail as may be required by COMPANY, statements in writing of all sums owed by CONTRACTOR or subcontractors for services rendered, labor performed or materials, supplies, tools or equipment furnished or used or to be used, or services rendered, in the performance of the CONTRACT.

1:28.2 CONTRACTOR shall neither file nor cause to be filed any lien with respect to the WORK to be performed or materials furnished hereunder and hereby waives any right to file or cause such a lien to be filed.

1:28.3 In the event any claim has been asserted against CONTRACTOR or COMPANY or any lien has been filed with respect to the WORK, further payment under the CONTRACT shall not become due until all such claims or liens have been satisfied, released and/or discharged of record without cost or expense to COMPANY. If any lien is filed or remains unsatisfied after all payments are made, CONTRACTOR shall refund to COMPANY all monies that the latter may be compelled to pay in discharging such a lien, including, but not limited to, all costs and attorney's fees associated therewith. At COMPANY's option and upon request by COMPANY, CONTRACTOR shall discharge any lien filed with respect to the WORK by posting a bond as provided in Section 29-5-110 of the South Carolina Code of Laws, 1976, as amended, at CONTRACTOR's expense. If CONTRACTOR fails to do so, COMPANY may procure the release, satisfaction and/or discharge of any such claim or lien and deduct all costs and expense of COMPANY associated therewith from any money due or to become due to CONTRACTOR on any account.

1:28.4 The final payment shall not become due until CONTRACTOR delivers to COMPANY a complete release of all liens arising out of its WORK, or receipts in

full in lieu thereof, and an affidavit showing that, so far as it has knowledge or information, the releases and receipts include all labor, materials, supplies and services for which a lien can be filed. CONTRACTOR may, where a complete release of liens is impracticable or receipts in full cannot be furnished, provide a bond satisfactory to COMPANY to indemnify it against any lien or claim.

1:29

Patent, Trademark and Copyright Rights

CONTRACTOR shall assume at its sole expense the defense of and shall save, indemnify and hold harmless COMPANY from any and all claims, demands, costs, suits, actions, proceedings, fines and penalties (and interest thereon) resulting from the infringement, or claim of infringement by CONTRACTOR of any patent, trademark, copyright or any other similar intellectual property protection in connection with any WORK or equipment furnished by CONTRACTOR hereunder, except where the same resulted from following directions, specifications, drawings, plans or procedures prepared by COMPANY or by third parties for COMPANY and selected by COMPANY. In the event WORK or equipment so defended is held to constitute infringement or its use is enjoined, CONTRACTOR shall, at its own expense, either: (a) procure for COMPANY the right to continue to use such WORK and/or equipment; (b) reperform the WORK or replace the equipment with substantially equivalent noninfringing WORK or equipment; or (c) modify the WORK and/or equipment so that it becomes noninfringing; provided, however, that such WORK reperformed and equipment replaced or modified conforms to the requirements of this CONTRACT.

1:30

Proprietary Interests

All originals of engineering and related data, plans, maps, drawings, computer programs and specifications furnished by COMPANY or produced by the CONTRACTOR specifically for COMPANY in connection with the WORK shall remain COMPANY's property. The CONTRACTOR agrees not to use or release to others any of such property for purposes other than the WORK performed hereunder unless prior written consent to the contrary is given by COMPANY. The CONTRACTOR shall give COMPANY a receipt for property furnished by COMPANY and shall be responsible for safekeeping and return to COMPANY upon request, upon termination of the CONTRACT or upon termination of the WORK to which such property applies. All originals of data, plans, specifications, computer programs, maps and drawings prepared and furnished by the CONTRACTOR which are not specifically prepared for use in the WORK shall remain the property of the CONTRACTOR, but COMPANY shall be provided copies of same without exception. COMPANY agrees not to use said copies for purposes other than the WORK to which such property relates; licensing, construction, maintenance or operation of COMPANY's plant or facilities; internal procedures and controls; and compliance with governmental laws, orders, regulations and rules; and the CONTRACTOR grants to COMPANY the right to

disclose such property to a third party on a proprietary basis for such purposes provided, however, that COMPANY enters into a written agreement with such party to hold such property in confidence, the terms of which are consistent with those set forth in this Article. The provisions of this Article shall not apply to property, notwithstanding any confidential designation thereof, which is known to COMPANY without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any agreement, or which is received from a third person without limitation or restriction on said third party or COMPANY at the time of disclosure.

1:31

Warranty

By accepting this CONTRACT, CONTRACTOR hereby expressly warrants that all WORK performed pursuant to this CONTRACT for a period of one (1) year from the date of acceptance shall be in full conformity with the CONTRACT; shall comply with all applicable codes, standards, laws, rules and regulations including, but not limited to, those required by or pertaining to OSHA, Equal Employment Opportunity, and EPA/SCDHEC at the time of performance; shall be performed with the ordinary skill and care which would be exercised by those who perform this type of WORK at the time the WORK is performed and in accordance with accepted industry practice; shall be free from defects in design, material and workmanship; shall conform to the applicable specifications, instructions, drawings, data, and samples; shall be fit and sufficient for the purposes intended by COMPANY; and shall be free from all liens and encumbrances. Said warranties shall be in addition to all other warranties, express, implied or statutory. Warranties shall survive acceptance of payment for any and all WORK required pursuant hereto and shall run to COMPANY. Every claim by COMPANY that CONTRACTOR's WORK is defective shall be presented in writing to CONTRACTOR within one (1) year of the expiration of the warranty period or the same shall be deemed waived by COMPANY. However, if the defect complained of is latent and not reasonably discoverable during such period, the claim shall be presented in writing within one (1) year of the date of discovery, or the time when it might reasonably have been discovered, if earlier. If CONTRACTOR's WORK is defective and COMPANY presents a claim as required above, CONTRACTOR shall, at no cost to COMPANY, reperform the defective WORK to the extent necessary to correct the deficiency therein and any resulting deficiencies in other WORK of CONTRACTOR and CONTRACTOR shall, at COMPANY's option, either repair, restore or replace, F.O.B. the WORK site, any equipment or structure damaged as a result of such defective WORK or shall reimburse COMPANY for such damage. In addition CONTRACTOR shall reimburse COMPANY for any and all other damages and costs arising from CONTRACTOR's failure to perform in accordance with the standard set forth herein. In the event of a remedial action to correct defective WORK as provided herein, the warranty period for that portion of the WORK affected by such remedial action shall be one (1) year after completion of the remedial work.

1:32 Payment

Unless otherwise mutually agreed in writing, payment of the undisputed amount of the invoice, shall be made within thirty (30) days after date of invoice. When required by COMPANY, invoices shall be itemized to show separate charges for material and equipment supplied to COMPANY, and labor, freight and/or other services not subject to sales and use taxes.

1:33 Formation of CONTRACT

CONTRACTOR and COMPANY shall be bound by this CONTRACT and its terms and conditions when CONTRACTOR executes and returns the unaltered, purchase order acknowledgement or when CONTRACTOR renders for COMPANY any of the services or delivers to COMPANY any of the items required herein.

1:34 Assignment

CONTRACTOR shall not assign the CONTRACT without written consent of COMPANY; nor shall CONTRACTOR assign any monies due or to become due to him hereunder without the previous written consent of COMPANY.

1:35 Termination

1:35.1 COMPANY may terminate this CONTRACT for its own convenience, in whole or in part, at any time by written notice to CONTRACTOR. In the event of termination by COMPANY for convenience, COMPANY shall pay CONTRACTOR for costs incurred under this CONTRACT up to the date of termination.

1:35.2 COMPANY may, by written notice to CONTRACTOR terminate this CONTRACT for default if CONTRACTOR voluntarily files a petition in bankruptcy, is adjudicated as bankrupt in an involuntary bankruptcy proceeding, makes an assignment for the benefit of creditors, or has a receiver appointed for some or all of CONTRACTOR's property; or if CONTRACTOR fails to take action to cure a default within the time specified in such notice or a reasonable amount of time if not specified; or if CONTRACTOR refuses or fails to prosecute the WORK or any part thereof with such diligence as will ensure its completion within the time specified or any extension thereof or fails to complete said WORK within such time. In such event, COMPANY may take over the WORK and prosecute the same to completion by contract or otherwise, and CONTRACTOR and its sureties shall be liable to COMPANY for any excess cost occasioned COMPANY thereby; and COMPANY may take possession of and utilize in completing the WORK such materials, appliances and plant as may be on the site of the WORK and necessary therefor. In

the event of default by CONTRACTOR, COMPANY shall retain any and all rights available to it under the law.

1:36 Waiver

The failure of COMPANY to pursue any rights open to it by virtue of any breach of the CONTRACT terms by CONTRACTOR shall not be construed as a waiver of any right by COMPANY to exercise such rights at a later date for the same or any other breach of the CONTRACT.

1:37 Changes, Alterations and Modifications

1:37.1 COMPANY may, at any time, by written order to CONTRACTOR and without notice to CONTRACTOR's sureties or assigns make changes in the WORK covered by this CONTRACT, the drawings, the specifications or other descriptions herein, or the time of completion. The written order authorized by this article shall be effective notwithstanding the absence of CONTRACTOR's formal written acceptance thereof. Promptly upon the receipt of the details of any such changes, CONTRACTOR shall either advise that the change will not affect its costs, or furnish: (1) a detailed breakdown of estimated cost and changes in the CONTRACT price attributable to the change in the WORK, and (2) a statement of any necessary changes in the schedule for performance of the WORK. CONTRACTOR's failure to advise COMPANY within ten (10) days of the effect of any change hereunder shall constitute CONTRACTOR's consent to conform to the change without increase in the CONTRACT price and without change in the other terms and conditions of the CONTRACT.

1:37.2 In addition to COMPANY required changes as described in the preceding paragraph, CONTRACTOR shall notify COMPANY in writing as soon as possible after determination of any changes in the scope of WORK necessary or advisable to properly or more effectively perform the WORK. COMPANY shall advise CONTRACTOR if it agrees that any such changes were outside of the agreed upon scope of WORK and should be incorporated in the scope of WORK; in which case such changes would be handled as an COMPANY required change as provided herein.

1:37.3 If the change causes a material increase or decrease in costs, then an equitable adjustment of the CONTRACT price herein to be paid to CONTRACTOR shall promptly be negotiated by CONTRACTOR and the PROCUREMENT AGENT and incorporated in a revision to this CONTRACT. Such adjustments in price shall be determined based on changes in costs to CONTRACTOR directly related to the change in the scope of the WORK. CONTRACTOR shall furnish the PROCUREMENT AGENT a detailed breakdown of the changes in cost accompanied by sufficient supporting documentation. All costs, compilations and proposals concerning changes submitted by CONTRACTOR to COMPANY shall

be based upon prices, units of costs and/or cost estimates that formed the basis of CONTRACTOR's initial, approved proposal. COMPANY shall have access to and the right to audit CONTRACTOR's records for the purpose of verifying to COMPANY's reasonable satisfaction the accuracy of CONTRACTOR's assessment of changes in cost.

1:37.4 Except in situations where life or property may be endangered, no additional work or change involving time or cost not provided for in the CONTRACT shall be performed unless in pursuance to a CONTRACT revision which will state the location and character of the WORK, the amount and method of compensation, and changes in any of the other CONTRACT terms and conditions which may be affected. No claim for an addition to the CONTRACT price or an extension of the time of completion will be valid unless so ordered.

1:38 Kickbacks

1:38.1 Definitions - "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to CONTRACTOR, CONTRACTOR employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or subcontract. "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

1:38.2 CONTRACTOR and all subcontractors are prohibited from:

- (1) providing or attempting to provide or offering to provide any kickback;
- (2) soliciting, accepting or attempting to accept any kickback; or
- (3) including, directly or indirectly, the amount of any kickback in the CONTRACT price charged by CONTRACTOR to COMPANY or in the contract price charged by a subcontractor to CONTRACTOR or higher tier subcontractor.

1:38.3 CONTRACTOR shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph 1:38.2 above in its own operations and direct business relationships.

1:38.4 When CONTRACTOR has reasonable grounds to believe that a violation described in paragraph 1:38.2 above may have occurred, CONTRACTOR shall promptly report in writing to the COMPANY the possible violation. Such reports shall be made to COMPANY's General Manager, Strategic Sourcing and Manager, Security.

1:38.5 Regardless of the contract tier at which a kickback was provided, accepted or charged under the CONTRACT in violation of paragraph 1:38.2 above, the COMPANY may:

- (1) offset the amount of the kickback against any monies owed by the COMPANY under the contract; and/or
- (2) direct that CONTRACTOR withhold from sums owed the subcontractor, the amount of the kickback. The COMPANY may order that monies withheld under this subparagraph be paid over to the COMPANY.

1:38.6 CONTRACTOR agrees to incorporate the substance of this clause, including this paragraph 1:38.6, in all subcontracts.

1:39 Gratuities

1:39.1 The right of CONTRACTOR to proceed may be terminated by the COMPANY if CONTRACTOR, its agent, or another representative:

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the COMPANY; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

1:39.2 If this CONTRACT is terminated under paragraph 1:39.1 above, the COMPANY is entitled:

- (1) To pursue the same remedies as in a breach of the contract; and
- (2) In addition to any other damages provided by law, to exemplary damages.

1:39.3 The rights and remedies of the COMPANY provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT.

1:40 Creditworthiness

This CONTRACT is conditioned upon and subject to COMPANY and CONTRACTOR maintaining the financial creditworthiness required to perform their responsibilities according to the CONTRACT. At any time during this CONTRACT, either party may request financial information to support their financial due diligence procedures. The COMPANY and CONTRACTOR agree to assist each other in this reasonable financial review. If reasonable grounds for insecurity of payment and/or performance arises that affect the creditworthiness of

the COMPANY or CONTRACTOR, either COMPANY or CONTRACTOR may demand satisfactory adequate assurance of payment and/or performance from the other.

1:41

Right of Off-set

As a condition precedent to COMPANY's contracting with CONTRACTOR for WORK performed in accordance with this CONTRACT, CONTRACTOR acknowledges and agrees that COMPANY has and reserves the right to off-set any amount(s) owed by COMPANY to CONTRACTOR for WORK performed in accordance with this CONTRACT by any amount(s) which COMPANY otherwise regards as payable by CONTRACTOR to COMPANY for which COMPANY has legal and/or equitable grounds for recovery against CONTRACTOR and as to which demand therefor has previously been made by COMPANY. This right to off-set includes any amounts owed by COMPANY to CONTRACTOR under this CONTRACT, any other agreements with CONTRACTOR, and any agreements with any affiliates of CONTRACTOR which likewise include this Right Of Off-Set provision.

1:42

The Contractor shall be responsible for all property damage, including any damage resulting from environmental contamination and/or herbicide application, caused by Contractor's operations and shall resolve, in an expeditious manner, all complaints and claims arising from his Work without cost to SCE&G. Should it be necessary for SCE&G to handle or resolve such complaints or claims, then the Contractor shall be billed, in addition to any and all other amounts they may be liable for because of the complaints or claims, an administrative fee in a minimum amount of \$150.00 per case by SCE&G. Should the extent of involvement by SCE&G in resolving the complaint or claim result in administrative costs in excess of \$150.00, then the actual administrative costs shall be charged. The Contractor shall inform the local SCE&G representative within twenty-four (24) hours of all complaints, claims, property damage, personal injuries, accidents, and line outages and follow up with a written report to the local SCE&G representative within five (5) business days.

ATTACHMENT I

All applicable government regulations concerning equal employment, affirmative action and the utilization of small, small disadvantaged and women-owned businesses are incorporated into this CONTRACT by reference, including but not limited to, the following federal regulations, executive orders, and the statutory authority for these regulations as referenced in the regulations:

If this CONTRACT is in the amount of \$10,000.00 or more and not otherwise exempt:

1. 41 CFR 60-1.4, Equal Opportunity Clause.
2. 41 CFR 60-250-5, Vietnam Era Veterans' Readjustment Act of 1974, Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Veterans of the Vietnam Era.
3. 41 CFR 60-741.4, Section 503 of the Rehabilitation Act of 1973 and 41 CFR 60-741.5, Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities.
4. 15 USC 631 et seq., Small Business Act, Executive Orders 11458 and 11625, Public Law 95-507, and 15 USC 637 et seq., Small Business Investment Act of 1958, as amended.

If this CONTRACT is in an amount which may exceed \$500,000.00 and is not otherwise exempt:

1. 13 CFR 125, Government Contracting Programs, 48 CFR 52.219-8, Utilization of Small Business Concerns.
2. 48 CFR 52.219-9, Small Business and Small Disadvantaged and Women-Owned Small Business Subcontracting Plan Clause.

To the extent required by law, executive order or regulation:

1. 29 CFR Part 1625, Executive Order 11141 (Discrimination on the Basis of Age), Public Law 90-202 (Age Discrimination in Employment Act of 1967) and the Age Discrimination in Employment Act.

CONTRACTOR and its subcontractors hereunder by virtue of any or all of the above-referenced statutory, regulatory, or executive order requirement, or other requirements, may be required to comply with certain record keeping, reporting or affirmative action requirements, and those requirements are incorporated herein by reference. It shall be the obligation of CONTRACTOR and its subcontractors to make themselves aware of and to understand the legislative, executive, and regulatory requirements that apply to their performance of obligations under this CONTRACT. Failure to do so shall not excuse their application to this CONTRACT.

**ATTACHMENT II
ACKNOWLEDGMENT AND AFFIRMATION BY EMPLOYEE
OR CONTRACTOR OF INDEPENDENT CONTRACTOR**

FORM IC-1

(SSN# _____)
(Contractor Employee SSN)

I, _____, hereby acknowledge and agree that,
(Contractor Employee Name)

with respect to my provision of services to _____
(SCANA Company)

of the SCANA affiliated group of companies, which services are performed
pursuant to the contract between _____ and
(SCANA Company)

_____, an independent contractor
(Contractor Company)

retained by _____, I am either an
(SCANA Company)

employee or contractor of _____ and am
(Contractor Company)

not eligible to participate in any employee benefit plan sponsored by or
participated in by _____
(SCANA Company)

_____/_____/_____
Contractor Employee Date of Birth

Contractor Employee Signature

Date

Witness

Date

ATTACHMENT III

INSURANCE REQUIREMENTS

If the WORK is performed on the property of COMPANY and/or its affiliates, or the property of any of their customers, please submit copies of all applicable insurance certificates on Acord forms showing the certificate holder as:

**SCANA Corporation and/or its subsidiaries
c/o Supplier Strategy - MC 43G
Columbia, SC 29218.**

If the certificate of insurance is not on the Acord 25s form, the certificate **MUST** show Contractual Liability spelled out. In addition, it must name "SCANA Corporation and its subsidiaries" as an additional insured.

CONTRACTOR must provide and maintain, until the WORK is completed and accepted, minimum insurance coverage as follows:

1. Commercial General Liability Coverage

- (a) \$1,000,000 Bodily Injury and Property Damage
- (b) Contractual Liability
- (c) Including the following coverages:
 - Products and Completed Operations
 - Explosion, Collapse and Underground Hazard (ECU)
 - Independent Contractors
 - Broad Form Property Damage

2. Automobile Liability Coverage - \$500,000

All owned, hired, & non-owned automotive equipment used in connection with the insured operation.

3. Workers' Compensation – Statutory

Employers' Liability - \$500,000

Including coverage under U.S. Longshoremen's and Harbor Workers Act where applicable.

4. Environmental Impairment Liability - \$1,000,000 Each Occurrence & Aggregate

Neither a failure to provide the required certificate of insurance nor submission of a certificate of insurance not in conformance with the insurance requirements stated herein shall relieve CONTRACTOR from the obligation to have in force the required insurance coverage. The insurance requirements stated herein may be changed only by specific written agreement by COMPANY. Coverage provided by CONTRACTOR shall be primary and non-contributory.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

South Carolina Electric & Gas Co.,)
Plaintiff(s))
vs.)
Anson Construction Company,)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET
11-CP-10- 5009

(Please Print) Submitted by: John A. Massalon I. Ryan Neville Address: Wills Massalon & Allen, LLC PO Box 859 Charleston, SC 29401	SC Bar # 010279 Telephone # (843) 727-1144 Fax # (843) 727-7696 Other: E-mail: <u>jmassalon@wmalawfirm.net;</u> <u>rneville@wmalawfirm.net</u>
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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
 This case is subject to ARBITRATION pursuant to the Court Alternative Dispute Resolution Rules.
 This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
 This case is exempt from ADR (Proof of ADR/Exemption Attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
<input type="checkbox"/> Construction (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input checked="" type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | Torts-Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
<input type="checkbox"/> Notice/File Med Mal (230)
<input type="checkbox"/> Other (299) | Torts-Personal Injury
<input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
|--|--|---|---|


- Inmate Petitions**
 PCR (500)
 Mandamus (520)
 Habeas Corpus (530)
 Other (599)

- Judgments/Settlements**
 Death Settlement (700)
 Foreign Judgment (710)
 Magistrate's Judgment (720)
 Minor Settlement (730)
 Transcript Judgment (740)
 Lis Pendens (750)
 Transfer of Structures
Settlement payment Rights
Application (760)
 Other (799)

- Administrative Law/Relief**
 Reinstate Driver's License (800)
 Judicial Review (810)
 Relief (820)
 Permanent Injunction (830)
 Forfeiture-Petition (840)
 Forfeiture-Consent Order (850)
 Other (899)

- Appeals**
 Arbitration (900)
 Magistrate-Civil (910)
 Magistrate-Criminal (920)
 Municipal (930)
 Probate Court (940)
 SCDOT (590)
 Worker's Comp (960)
 Zoning Board (970)
 Admin Law Judge (980)
 Public Service Comm (990)
 Employ Security Comm (991)
 Other (999)

- Special/Complex/Other**
 Environmental (600) Pharmaceuticals (630)
 Automobile Arb. (610) Unfair Trade Practices (640)
 Medical (620) Out-of-State Deposition (650)
 Other (699) Sexual Predator (510)

Submitting Party Signature: 

Date: July 15, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT

South Carolina Electric & Gas Co.) Civil Action No.: 2011-CP-10-5009

Plaintiff,)

v.)

ANSWER
(Jury Trial Demanded)

Anson Construction Company, Inc.)

Defendant.)

COMES NOW, the Defendant, Anson Construction Company, by and through its undersigned attorneys, answering the Complaint of the Plaintiff, would allege and show unto the Court:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is denied.
2. Upon information and belief, Paragraph 1 is admitted.
3. Paragraph 2 is admitted.
4. Answering Paragraph 3, Anson denies so much of the allegations of Paragraph 3 as may be construed to suggest a written contract. The remaining allegations of Paragraph 3 are admitted.
5. Paragraph 4 is admitted.
6. Answering Paragraph 5, Defendant Anson incorporates all allegations and defenses set forth herein to the extent not inconsistent herewith.

RECEIVED
SEP 16 2011
Wills & Massalon

7. Paragraph 6 is denied as stated. Anson admits that it submitted a proposal to SCE&G on or about December 13, 2007. The terms and scope of that proposal are set forth in the referenced exhibit.
8. Paragraph 7 is denied. The terms and scope of the proposal speak for themselves.
9. Paragraph 8 is denied. Anson admits only that it received the document attached to the Complaint as Exhibit B on or about January 4, 2008.
10. Paragraph 9 is denied. The terms of Exhibit B speaks for themselves.
11. Paragraph 10 is denied.
12. Paragraph 11 is denied.
13. Answering Paragraph 12, Anson admits that it began excavation work for the installation of a utility vault on Queen Street on or about January 7, 2008 pursuant to the instruction and direction of SCE&G. Any allegation contained in Paragraph 12 beyond that or inconsistent herewith is specifically denied.
14. Paragraph 13 is denied.
15. Answering Paragraph 14, Anson admits that representatives of the church complained about the work methods used by Anson. Anson admits that representatives of the church alleged that these work methods caused damage to the church building. Anson admits that the City of Charleston issued a Stop Work Order. The remaining allegations of Paragraph 14, specifically, the implication that Anson actually caused damage to the church, are denied.
16. Paragraph 15 is admitted insomuch as it alleges that SCE&G was required to incur expenses to remediate the site where Anson attempted installation of the utility vault. The remaining allegations of Paragraph 15, and any inferences drawn therefrom, are specifically denied.

17. Paragraph 16 is admitted.
18. Paragraph 17 is denied. Anson craves reference to the Complaint for the specific allegations and prayers for relief contained therein.
19. Paragraph 18 is admitted.
20. Paragraph 19 is denied.
21. Paragraph 20 is admitted.
22. Answering Paragraph 21, all allegations and defenses set forth herein are incorporated to the extent not inconsistent herewith.
23. Paragraph 22 is admitted.
24. Paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 are denied.
25. Answering Paragraph 35, all allegations and defenses set forth herein are incorporated to extent not inconsistent herewith.
26. Paragraphs 36, 37, 38, 39, 40, 41 and 42 are denied.
27. Answering Paragraph 43, all allegations and defenses contained herein are incorporated to extent not inconsistent herewith.
28. Paragraphs 44, 45, 46, 47, 48, 49, 50, 51 and 52 are denied.

FOR A SECOND DEFENSE

29. The allegations contained in paragraphs 1 through 28 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.
30. The Defendant would show that such injuries or losses that Plaintiff sustained, if any, was due to and caused by the sole negligence, gross negligence, willfulness, wantonness, carelessness and recklessness of the Plaintiff, combining, concurring and contributing with the

negligence, if any, which is expressly denied, on the part of this Defendant, to such a degree that Plaintiff's recovery is barred by the doctrine of comparative negligence in South Carolina.

FOR A THIRD DEFENSE

31. The allegations contained in paragraphs 1 through 30 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

32. The Defendant would show that Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A FOURTH DEFENSE

33. The allegations contained in paragraphs 1 through 32 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

34. The Defendant would show that Plaintiff's Complaint is barred by the doctrine of waiver.

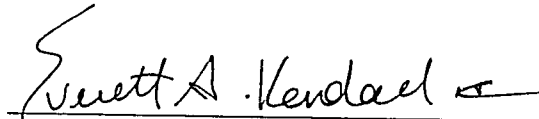
WHEREFORE, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed with costs, for attorney's fees and such other and further relief this Court deems just and proper.

The Defendant demands a jury trial.

SIGNATURE PAGE IMMEDIATELY FOLLOWS

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink that reads "Everett A. Kendall, II". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANT

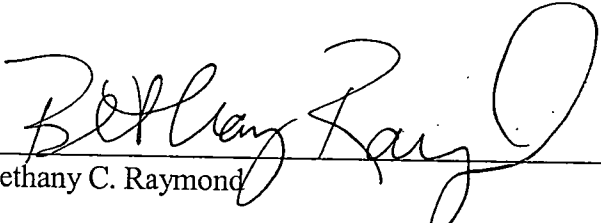
Columbia, South Carolina
September 12, 2011

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for the Defendant, Anson Construction, do hereby certify that I have served a copy of the foregoing Answer to Plaintiff's Complaint in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

John A. Massalon, Esquire
Wills Massalon & Allen, LLC
97 Broad Street
Post Office Box 859
Charleston, SC 29402

Attorneys for Plaintiff


Bethany C. Raymond

Columbia, South Carolina
September 12, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 South Carolina Electric & Gas Co.,)
)
 Plaintiff,)
)
 v.)
)
 Anson Construction Company, Inc.,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 11-CP-10-5009

**ORDER GRANTING
 PLAINTIFF'S MOTION FOR
 PARTIAL SUMMARY JUDGMENT**

FILED
 2013 JUL 23 AM 11:48
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

On July 18, 2013, the parties to the above-captioned matter appeared before undersigned for a hearing on the Motion for Partial Summary Judgment Motion of Plaintiff South Carolina Electric & Gas Co. ("SCE&G"). John Massalon and Ryan Neville appeared on behalf of SCE&G. Everett A. Kendall, II and J. Eric Cavanaugh appeared on behalf of Defendant Anson Construction Company, Inc. ("Anson"). Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure the Motion for Partial Summary Judgment is granted for the reasons set forth herein.

JCH

FACTS

Having reviewed the deposition transcripts and documents provided by the parties, all of which have been placed into the record, the Court finds that there is not issue of material fact as the following:

1. SCE&G is a South Carolina Corporation organized and existing under the laws of the State of South Carolina.
2. Anson is a South Carolina Corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County.
3. In June of 2007, the City of Charleston ("the City") closed the Dock Street Theater ("the Theater") to begin an extensive renovation.
4. At that time, an electric transformer owned by SCE&G that served the Theater and several homes in the immediate area was located inside the Theater.
5. In the fall of 2007, SCE&G contacted Anson Construction Co., Inc. ("Anson") and requested a proposal to install a pre-cast concrete underground vault across the street from the Theater in

the sidewalk adjacent to French Huguenot Church ("the Church") so that SCE&G could relocate its transformer to that location.

6. On or about December 13, 2007, Anson sent SCE&G a Quotation to install the vault as more particularly described in said Quotation, which is hereby incorporated by reference herein verbatim and marked as Court's Exhibit 1.
7. Mr. Stuttzman testified in his deposition that he prepared the Quotation and that no one at SCE&G helped him prepare the Quotation. (Stuttzman Deposition July 18, 2012, p. 58, l. 25 - p. 59, l. 4.)
8. Paragraph 2 of the Quotation, stated "[t]his proposal is subject to execution of a non-modified AIA form or subcontractor approved equal."
9. On January 3, 2008, an itemized cost breakdown was added to the bottom of the Quotation.
10. On January 4, 2008, SCE&G signed the Quotation to agree as to the price set forth therein and that other documents would be forthcoming that would also govern the Parties' relationship.
11. Also on January 4, 2008, Anson received a Purchase Order from SCE&G. Said Purchase Order is hereby incorporated by reference herein verbatim and marked as Court's Exhibit 2.
12. The Purchase Order stated in pertinent part that "Anson Construction Company, Inc. ("Contractor") shall provide all labor, supervision, equipment and materials required to complete the installation of the concrete vault for the Dock Street Theater project (herein after "Work") for South Carolina Electric and Gas Company."
13. The Purchase Order further specifically provided that the work would be performed "in accordance with ...[SCE&G 's] General Terms and Conditions dated 02/28/2006...". Said General Terms and Conditions are hereby incorporated by reference herein verbatim and marked as Court's Exhibit 3.
14. Additionally, the Purchase Order stated that "The Work shall be performed at the Contractor's quoted Price indicated below and in Contractor's quotation dated December 11, 2007."
15. According to paragraph 1:09 of the General Terms and Conditions Anson agreed to protect the property of third parties from damage during its performance of the work contemplated by the Contract.
16. Pursuant to paragraph 1:26 of the General Terms and Conditions, Anson agreed to "save, defend, indemnify, and hold harmless [SCE&G] from any and all liabilities, claims, suits,

actions, proceedings, fines, penalties, forfeitures, losses, damages, and the cost and expenses incident thereto (including but not limited to costs of investigation, defense, settlement, and attorney's fees) arising directly or indirectly out of any act or failure to act on [Anson]'s part, or the part of any agent, servant, or subcontractor, of [Anson], whether independent or otherwise, in connection with the work undertaken under the Contract."

17. Paragraph 1:30 provides that "[SCE&G] and [Anson] shall be bound by this contract and its terms and conditions when Anson executes and returns the unaltered, purchase order acknowledgement or when [Anson] renders for [SCE&G] any of the services or delivers to [SCE&G] and of the items required herein."
18. Anson began work on the project on or about January 7, 2008 as contemplated in Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions.
19. The City of Charleston issued a stop work order on or about January 9, 2008.
20. Anson later submitted Invoices to SCE&G for the work it performed. Said Invoices reference the Purchase Order and are hereby incorporated by reference herein verbatim and marked as Court's Exhibit 4.
21. SCE&G paid Anson for the work it was able to perform as contemplated in Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions, and Anson accepted said payment without reservation of right.
22. Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions were all entered into about the same time.
23. Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions all relate to the same subject matter.
24. The provisions of Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions limit, explain, and/or otherwise affect the provisions of said documents.
25. When read together, Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions are unambiguous.
26. Mr. Stuttsman conceded in his deposition that the Purchase Order was generally part of the contract with SCE&G. (Stuttsman Deposition July 18, 2012, p. 75, ll. 19-25.).
27. Mr. Stuttsman conceded in his deposition and acknowledges that he received the Purchase Order and General Terms and Conditions as part of the package of documents for the subject

job. (Stuttsman Deposition July 18, 2012, p. 75 ll. 19-25c.).

28. The Anson Quotation was a bid for the work at the Theater, but it could not be the "subcontractor approved equal" described in Paragraph 2 of the same document.
29. Anson did not sign the Quotation, the Purchase Order, or the General Terms and Conditions.
30. The pleadings, depositions, answers to interrogatories, and admissions on file, Court Exhibits to this Order, together with any affidavits, show that there is no genuine issue as to any material fact with regards to the contractual terms between the parties.
31. Defendant did not come forward with specific facts showing that evidence exists to support its position, and that there is a genuine issue for trial with regard to the contractual terms between the parties.
32. The material facts as to the contractual terms are not in dispute.

CONCLUSIONS OF LAW

33. This Court has personal jurisdiction over the Parties, subject matter jurisdiction over this action, and venue is proper in Charleston County, South Carolina.
34. This Court viewed all evidence in the light most favorable to Anson.
35. The construction of an unambiguous written contract is a question of law for the court. *J.T.M. Co. v. Vane*, 323 S.E.2d 794 (S.C. Ct. App.1984).
36. Where one construction makes the provision unusual or extraordinary and another construction which is equally consistent with the language employed would make it reasonable, fair and just, the latter construction must prevail. *Farr v. Duke Power*, 218 S.E.2d 431 (1975).
37. The intent and purport of a written contract must be gathered from the contents of the entire agreement and not from any particular clause or portion of the contract. *Bruce v. Blalock*, 127 S.E.2d 439 (1962)
38. In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties. *Superior Automobile Insurance Co. v. Maners*, 199 S.E.2d 719 (1973); *Farr v. Duke Power*, 218 S.E.2d 431 (1975).
39. When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense. *Warner v. Weader*, 311 S.E.2d 78, 79 (1983).

40. Extrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible. *Superior Automobile Insurance Co. v. Maners*, 199 S.E.2d 719 (1973).
41. It is not necessary, in order to give validity to a contract, that it should be signed because it is sufficient if it is accepted, held, and acted upon by the Parties. *Peddler, Inc. v. Rikard*, 221 S.E.2d 115 (S.C. 1975).
42. The fact that one of the parties has signed the contract does not require that the other party should do likewise. *Gladden v. Keistler*, 140 S.E. 161 (S.C. 1927); *Bulwinkle v. Cramer*, 3 S.E. 776 (S.C. 1887).
43. A written contract, which is not required to be in writing, is valid upon acquiescence to it. *Id.*
44. Acceptance of a contract by assenting to its terms, holding it and acting upon it, is the equivalent to a formal execution. *Id.*
45. When a party accepts and adopts a written contract, even though it is not signed, it is deemed to have assented to the contract's terms and conditions and to be bound by them. *Id.*
46. Where instruments entered into by the same parties at different times relate to the same subject matter, the instruments will be construed together to determine the entire agreement between the parties. *Wilbur Smith & Associates v. National Bank of South Carolina*, 263 S.E.2d 643 (S.C. 1980).
47. If the provisions of one instrument limit, explain, or otherwise affect the provisions of the other, they will be given effect to accomplish the entire agreement between the parties. *Id.*
48. Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. *Southern Ry. Co. v. Springs Mills, Inc.*, 625 F. 2d 496 (4th Cir. 1980) (applying South Carolina law); *Costas v. First Fed. Sav. & Loan Ass'n*, 321 S. E. 2d 51 (S.C. 1984). *Toomer v. Norfolk Southern Ry. Co.*, 544 S.E.2d 634 (S.C. Ct. App. 2001)..
49. Contractual indemnity involves a transfer of risk for consideration, and the contract itself establishes the relationship between the parties. *Rock Hill Telephone Co., Inc. v. Globe Communications, Inc.*, 611 S.E.2d 235 (S.C. 2005).
50. Even in the light most favorable to Anson, there is no genuine material issue of fact as to what documents make up the contract between SCE&G and Anson.
51. Although Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and

Conditions were entered into at different times, these documents relate to the same subject matter, and as such, these documents should be construed together to determine the entire agreement between the parties.

52. The Parties performed obligations under Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions.
53. Anson requested and accepted payment pursuant to Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions.
54. Anson has argued that the sum and substance of its agreement with SCE&G is contained in the Quotation, but such an interpretation is extraordinary and not supported by a plain reading of the terms of the Quotation
55. If the Court were to adopt Anson's reading of the Quotation, the Court would be required to give no effect to paragraph 2 of that document.
56. The only reasonable interpretation of the Quotation which takes into account all of the terms of that document is that paragraph 2 of the Quotation referred to the Purchase Order which clearly and unequivocally incorporates the Terms and Conditions, which in turn clearly provides for indemnity from Anson in favor of SCE&G.
57. The terms and provisions of these documents, which include a valid indemnification clause, bind Anson to indemnify SCE&G an amount of money to be determined at the trial of this matter including, but not limited to, what SCE&G spent remediating damages Anson caused, defending the prior lawsuit, settling the prior lawsuit, and pursuing its claims against Anson in this lawsuit because although Anson did not sign the Purchase Order, it assented to its terms, held it, and acted upon it thereby binding it as if it was formally executed.
58. Therefore, SCE&G is entitled to an Order of Partial Summary Judgment in its favor that Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions make up the Parties' contract, and that Anson is liable to SCE&G in an amount to be determined at the trial of this matter.

Accordingly, based on the foregoing it is:

ORDERED, that the Plaintiff's Motion for Partial Summary Judgment is granted in so much as this Court has concluded as a matter of fact and a matter of law that Defendant is contractually obligated to indemnify Plaintiff for damages to be determined at a trial of this matter.

AND IT IS SO ORDERED.

J. C. Nicholson, Jr.
The Honorable J. C. Nicholson, Jr.
Presiding Judge

23 day of JULY, 2013
Charleston, South Carolina

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & C.S.
By *[Signature]*
DEPUTY CLERK

11-181

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org



59



IRISH RYAN NEVILLE
PO BOX 859
CHARLESTON SC 29402-0859

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/granting plntff's mot for partial sum judg

CASE NO: 2011CP1005009

South Carolina Electric & Gas Co VS Anson Construction Company Inc

This judgment was entered on the 23rd day of July, 2013, and a copy mailed first class on Wednesday, July 24, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

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JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
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17-161
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51



JOHN A. MASSALON
PO BOX 859
CHARLESTON SC 29402-0859

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Wills & Massalon

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2013-001623

RECEIVED
FEB 24 2014
SC Court of Appeals

South Carolina Electric & Gas, Co,.....Respondent

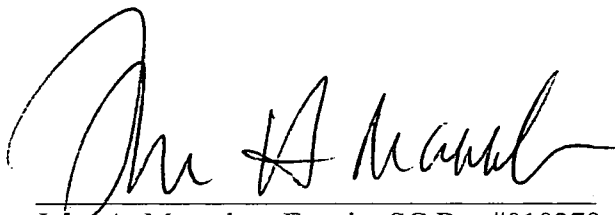
v.

Anson Construction Company,.....Appellant

PROOF OF SERVICE

I certify that I served Respondent's Motion to Dismiss by depositing a copy of it in the United States Mail, postage prepaid, on February 21, 2014, addressed to Appellant's attorneys of record, Everett A. Kendall, II, Esquire & J. Eric Cavanaugh, Esquire, 1515 Lady Street, Columbia, South Carolina 29211.

February 21, 2014



John A. Massalon, Esquire SC Bar #010279

I. Ryan Neville, Esquire SC Bar # 76513

WILLS MASSALON & ALLEN LLC

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Charleston, South Carolina 29402

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ATTORNEYS FOR RESPONDENT



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February 21, 2014

Direct Dial: 843-793-6039

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: South Carolina Electric & Gas Co. vs. Anson Construction Co., Inc.
Case No.: 2011-CP-10-5099
Appellate Case No.: 2013-001623
Our File No.: 1900-187

RECEIVED

FEB 24 2014

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent's Motion to Dismiss and Proof of Service in regard to the above-referenced matter. In addition, enclosed please find Wills Massalon & Allen LLC's check #4826, dated February 21, 2014, in the amount of \$25.00 representing the filing fee.

Please file the original and copies, returning a filed copy to me in the enclosed self-addressed, stamped envelope. If you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

WILLS MASSALON & ALLEN LLC

John A. Massalon

jmasssalon@wmalawfirm.net

Enclosures

cc: Everett A. Kendall II, Esquire/J. Eric Cavanaugh, Esquire
John M. Mahon, Jr., Esquire (via email)
Ms. Sandy Kammer (via email)