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In The Court of Appeals

MAY 19 2017

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2017-000134

Lower Court Case No. 2016-CP-40-07353

Richardson Construction Company, Inc. Appellant,

v.

Richland County, a political subdivision, and
McClam & Associates, Inc., ... Respondents.

**RESPONDENT RICHLAND COUNTY'S FILINGS IN SUPPORT OF ITS MOTION TO
DISMISS
AND
IN OPPOSITION TO APPELLANT'S MOTION FOR EXPEDITED TEMPORARY
INJUNCTION PENDING APPEAL**

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May 19, 2017
Columbia, South Carolina

ATTORNEYS FOR RESPONDENT
RICHLAND COUNTY

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Respectfully Submitted,



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ATTORNEYS FOR RESPONDENT
RICHLAND COUNTY

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Richardson Construction Company, Inc.)

Plaintiff,)

vs.)

Richland County, a political subdivision, and)
McClam & Associates, Inc.)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-07353

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

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- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

RICHLAND COUNTY
FILED

2016 DEC 19 PM 1:13
JEANNETTE W. MORRIS
C.C.P. & G.S.

SECTION I: Hearing Information	
Nature of Motion: <u>Motion for Temporary Injunction</u>	
Estimated Time Needed: <u>30</u>	Court Reporter Needed: ☒ YES / ☐ NO
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order	
I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant	December 19, 2016 Date submitted
SECTION III: Motion Fee	
☒ PAID – AMOUNT: \$ <u>\$25.00</u> ☐ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A NO.: 2016-CP-40-07353
	)	
Richardson Construction Company, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Richland County, a political subdivision,	)	
and McClam & Associates, Inc.	)	
	)	
Defendants.	)	

**MOTION FOR TEMPORARY
INJUNCTION**

2016 DEC 19 PM 1:13
JEANETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

On December 15, 2016, Plaintiff Richardson Construction Company, Inc. ("RCC"), complaining of Defendants Richland County and McClam & Associates, Inc. ("McClam"), filed a Complaint in the above-referenced matter seeking a Temporary Restraining Order ("TRO"), temporary injunction, and writ of mandamus. A hearing on RCC's request for TRO was scheduled for December 16, 2016. Prior to the hearing, RCC and Richland County reached an agreement regarding the TRO, which agreement was memorialized in an Order of this Court filed on December 16, 2016. As part of that agreement, RCC and Richland County agreed to cooperate to set a hearing the week of December 19, 2016, on RCC's request for a temporary injunction. A full explanation of the background of this matter is set forth in the Complaint, filed on December 15, 2016, and is incorporated herein by reference. Only an abbreviated statement of the facts supporting this request for temporary injunction will be set forth herein.

In order to avoid any question as to whether the matter of the temporary injunction that is requested by RCC is properly before this Court, RCC hereby moves this Court pursuant to Rule 65, SCRCP, for a temporary injunction on the following grounds.

1. On July 20, 2016, Richland County advertised for bid a contract for the construction of the Phase 1 extension of Shop Road ("Shop Road Project").
2. Funding for the Shop Road Project comes from the Richland County Transportation Penny Tax program ("Penny Tax program").

3. The solicitation, bid submission, and bid selection processes were to be managed by the Penny Tax Project Development Team ("PDT").

4. Only three bidders—RCC, McClam, and C.R. Jackson, Inc. ("Jackson")—submitted bids on September 14, 2016.

5. Notably, RCC's bid was **\$3 MILLION LESS** than McClam's bid while at the same time directing **\$1.1 MILLION MORE** to the disadvantaged and small local business community.

6. The PDT initially reviewed the bids and made a recommendation to Richland County Council to award the contract to Jackson.

7. A vote by Richland County Council on awarding the Shop Road Project contract was scheduled for October 18, 2016.

8. The October 18, 2016 vote was deferred to December 6, 2016.

9. Prior to the December 6, 2016 Richland County Council meeting, the matter was taken out of the PDT's hands and taken under consideration by the Richland County Interim Administrator and other Richland County staff members.

10. On December 2, 2016, the Richland County Interim Administrator, Gerald Seals, issued a letter recommending that Richland County Council award the contract to McClam.

11. The upshot of Seals' recommendation was that RCC, or any bidder on future contracts with Richland County, should not be permitted to correct what RCC explained was a clerical/scrivener's error in identifying its small local business subcontractor.

12. On December 5, 2016, RCC filed an appeal with the Richland County Procurement Review Panel pursuant to Richland County Code Section 2-621.4(a) appealing the determinations in Seals' letter.

13. Representatives of RCC attended the December 6, 2016 meeting of the Richland County Council and requested that Richland County Council either defer a vote on the award of the Shop Road Project contract until the Richland County Procurement Review Panel could

hear and decide RCC's appeal or, in the alternative, award the Shop Road Project contract to RCC instead of McClam, as would be in the best economic interest of Richland County.

14. On December 16, 2016, RCC filed an award protest with the Richland County Director of Procurement protesting the vote to award the contract.

15. RCC is informed and believes that once McClam meets Richland County's requirements, including posting a bond and confirming insurance coverage, Richland County intends to execute a contract with McClam for the Shop Road Project.

16. RCC requests that this Court issue a temporary injunction staying execution of the contract between Richland County and McClam pending a determination by the Richland County Procurement Review Panel on RCC's appeal and protest.

17. RCC will suffer irreparable harm if Richland County is not enjoined to stay issuance of the contract award until after the Richland County Procurement Review Panel issues a decision on RCC's appeal and award protest.

18. This is because once the contract is awarded to McClam, even if it is determined that the Shop Road Project contract should have been awarded to RCC, there is no clear procedure in the Richland County Code for cancelling the contract with McClam and awarding it to RCC.

19. RCC and Richland County would then be put into a situation where there is no mechanism to effectuate a determination of the Richland County Procurement Review Panel in favor of RCC.

20. The issue will be further complicated if McClam begins construction work before the Richland County Procurement Review Panel issues its determination.

21. Richland County will not suffer any harm if award of the contract is stayed until after the Richland County Procurement Review Panel has issued its decision on RCC's appeal and award protest.

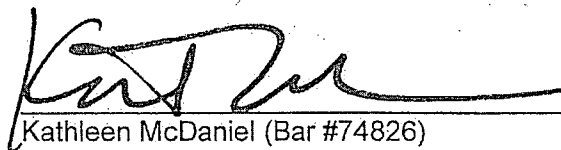
22. In fact, if the Richland County Procurement Review Panel determines that RCC should have been awarded the contract, Richland County will save almost \$3 million in public funds that could be put toward other worthy Penny Tax projects.

23. The harm that would be suffered by RCC if Richland County is not so enjoined outweighs any harm that would be suffered by the Richland County as a result of any such injunction.

24. RCC is likely to prevail on its underlying claim for award of the contract to RCC because its bid was the lowest and materially complied with the project specifications.

25. Pursuant to Rule 65, SCRCP, RCC requests that this Court issue a temporary injunction staying execution of the Shop Road Project contract until the Richland County Procurement Review Panel can hear and decide RCC's pending appeal and award protest.

26. Counsel for RCC consulted with counsel for Richland County and counsel McClam regarding this motion; nevertheless, it appears necessary for this motion to be heard by this Court for resolution.



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ATTORNEY FOR PLAINTIFF

December 19, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

C/A NO.: 2016-CP-40-07353

Richardson Construction Company, Inc.,)

Plaintiff,)

Certificate of Service

v.)

Richland County, a political subdivision,)
and McClam & Associates, Inc.)

Defendants.)

I do hereby certify that I have served a copy of the following as indicated herein below by mailing a copy of same on the date below by First Class United States Mail, postage prepaid addressed to the following:

DOCUMENT SERVED:

PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION

PARTIES SERVED:

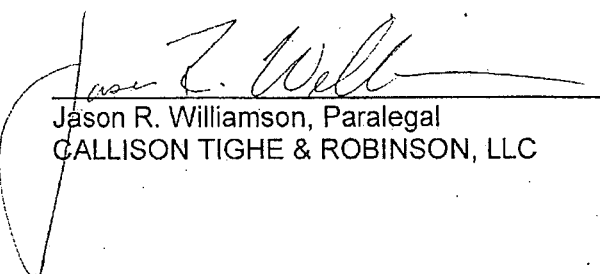
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December 19, 2016


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CALLISON TIGHE & ROBINSON, LLC

RICHLAND COUNTY
FILED
2016 DEC 19 PM 4:19
JEANNETTE W. MOORE
C.C.P. & C.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
RICHARDSON CONSTR. CO. INC.,)
)
Plaintiff,)
)
v.)
)
RICHLAND COUNTY, AND)
)
MCCLAM & ASSOCIATES, INC.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

Docket No.: 2016-CP-40-7353

**RICHLAND COUNTY'S
MEMORANDUM
IN OPPOSITION TO
MOTION FOR
TEMPORARY INJUNCTION**

2016 DEC 21 AM 9:20
FILED
RICHLAND COUNTY
CLERK OF COURT
C.C.P. & G.S.

Defendant, Richland County ("the County"), hereby submits its Memorandum in Opposition to the Motion for a Temporary Injunction of Plaintiff, Richardson Construction Co. Inc., as follows:

I. INTRODUCTION

This matter is the rare attempt by an unsuccessful bidder to enjoin a governmental entity's execution of a contract with the responsive bidder. The contract as issue is for a \$24,000,000 extension of Shop Road using Penny Tax Revenues that is critical to one of Richland County's largest economic development coups in years, the construction and operation of a fiberglass manufacturing facility by China Jushi Co., Ltd. ("Jushi"). The construction of the Jushi plant will result in a \$400,000,000 investment in the County and create 800 jobs. (See Affidavit of Jeffrey G. Ruble, ¶4.)

The County has promised Jushi that the first 1000 feet of the Shop Road Extension will be completed by December 31, 2017. (Ruble Affidavit, ¶5.) Any failure of the County to execute a contract for construction and be able to complete this portion of the Shop Road Extension could be catastrophic to the relationship between the County and Jushi; indeed, Jushi could choose to forego

the project. (Ruble Affidavit, ¶6.) This would create the loss of economic benefits in Richland County of \$785,000,000 and a total loss of revenue of \$175,000,000 over time, with a net present value of that amount of \$40,822,24. (Ruble Affidavit, ¶6.) The Plaintiff with an injunction of the execution of the contract as issue could irreparably harm the public interest, as demonstrated below.

The Plaintiff's bid on this project was declared nonresponsive by the County and the contract awarded to co-defendant McClam & Associates, Inc. ("McClam.") The Plaintiff has filed a protest with the County but now seeks the extraordinary remedy of a temporary injunction to prohibit the County from executing the contract with the successful bidder, McClam. As explained *infra*, the Plaintiff's Motion for Temporary Injunction must be denied because:

1. The decision by the County that Plaintiff's bid was non-responsive because it misrepresented *under oath* in its bid the name of a SLBE subcontractor is a discretionary decision by a governmental entity that has a rational basis and may not be disturbed by the courts;
2. The Richland County Procurement Ordinance enacted under the Count's South Carolina Constitution's Home Rule powers provides that protests do not stay award or execution of a County contract;
3. The Plaintiff will not suffer irreparable harm and has an adequate remedy at law because the County appeal process allows the Plaintiff to recover its bid preparation costs should Plaintiff's protest of the award of the contract to McClam be successful; and
4. Conversely, the public interest would not be served and the County would suffer great harm if the execution of the contract with McClam and the Shop Road Extension Project is delayed; and

The undisputed facts and legal arguments follow below.

II. UNDISPUTED FACTS

The Plaintiff seeks a temporary injunction prohibiting the County from executing a \$24,000,000 road construction contract with the responsive bidder selected by Richland County Council for the extension of Shop Road, a project with a tight timeline and of great economic

importance to the citizens of Richland County as explained *infra*. The Plaintiff's relief sought, however, is based on a misreading of the Richland County Procurement Code and is not legally permissible under well-established procurement law principles.

Plaintiff's Verified Complaint and the affidavits submitted herewith provide the following undisputed facts:

- The Plaintiff was one of three bidders to Richland County on Phase I of the Shop Road Extension construction project ("Shop Road Project.") (Complaint, ¶¶6 & 11).
- The Invitation for Bids for the Shop Road Project contained, among others, the following instructions:
 - "The SLBE goal for this Project is 4.37%. Accordingly, the Contractor will complete the SLBE Participation Sheet included in this document and accompany it with his Application for Payment Each month." (p. 6)
 - "INSTRUCTIONS TO BIDDERS. ... 7. CORRECTION OF ERRORS ON THE BID FORM: No bid shall be altered or amended after specified time for opening." (p. 8)
 - "SMALL LOCAL BUSINESS ENTERPRISE (SLBE) PARTICIPATION SHEET...BIDDER is required to complete the SLBE Identification Forms and submit it with the Proposal. Any SLBE company identified must be certified in accordance with the certification program of the Richland County Government."

(Affidavit of Christy Swofford, ¶7, Ex. A.)

- The other two bidders besides Plaintiff were C.R. Jackson, Inc. and McClam & Associates, Inc. (Complaint, ¶11).
- In the Shop Road Project bid package, Richland County's goal for bidder was that that Disadvantaged Business Enterprise ("DBE") participation be Seven (7%) Percent of the amount of the bid and Small Local Business Enterprise ("SLBE") participation be Four (4.37%) and Three Seventh Percent. (Complaint, ¶14).
- The PDT, a contractor hired by the County to manage parts of the procurement of Penny Sales Tax roadway construction projects, recommended that bidder C.R. Jackson, Inc. be awarded the Shop Road Project. (Complaint, ¶¶19-20; 34).
- However, the County disagreed with the PDT's recommendation that C.R. Jackson, Inc. be awarded the Shop Road Project and the County Procurement Office, County Transportation Director, and County Administrator recommended to County Council that the Shop Road Project be awarded to McClam and Associates. (Complaint, ¶41, Exhibit 3).

- The County determined that C.R. Jackson, Inc.'s bid was no-responsive. (Complaint, ¶41, Exhibit 3).
- C.R. Jackson has not protested the County's determination, and therefore any action taken by the PDT or by the County with respect to C.R. Jackson, Inc. has no bearing on this matter.
- The Plaintiff in its bid "inadvertently" submitted as its SLBE subcontractor LAD, Inc., which was not a certified SLBE contractor. (Complaint, ¶¶23-25).
- Plaintiff admits in its legal counsel's letter of October 31, 2016 what it did wrong: "After the bid opening, the PDT informed Richardson that LAD, Inc. was not on the SLBE certified directory. Richardson then realized it had inadvertently submitted an earlier internal draft of the SLBE with LAD, Inc.'s name and address for a different subcontractor, Herndon." (Complaint, ¶41, Page 2 of Exhibit 1 [10/31/16 Letter] to Exhibit 4)
- Notwithstanding its post-bid opening explanation, the Plaintiff in its bid swore under oath that LAD, Inc. was its SLBE. (Affidavit of Christy Swofford, ¶4, Ex. B.)
- Thus, the Plaintiff's bid was deemed non-responsive by the County because it failed to list a certified SLBE at bid opening. (Complaint, ¶41, Exhibit 3);¹ (Affidavit of Christy Swofford, ¶¶8-12.)
- Plaintiff appeared before the Richland County Council at its meeting on December , 2016 and argued the merits of awarding the contract to Plaintiff. (Complaint, ¶47).
- Richland County Council at its December 6, 2016 meeting voted 9-2 to award the Shop Road Project to co-defendant McClam & Associates, Inc. (Complaint, ¶48).
- The McClam bid for the Shop Road Project accepted by the County was for \$24,539,282.95. (Complaint, ¶11.)
- The McClam bid met all of the bid requirements and was responsive to the bid solicitation. (Complaint, Exhibit 3 (Council Memo 11-3), p. 86)

¹ The Complaint makes several factual allegations unsupported by Exhibit 3, the Memorandum of County Administrator Gerald Seals to Richland County Council. The Complaint claims that Mr Seals made unilateral policy determinations that the Plaintiff's bid was nonresponsive. (Complaint, ¶¶42-44). However, as paragraph 3 of Mr. Seals Council Memorandum 11-3 attached as Exhibit 3 to the Complaint states, "Therefore, the County Transportation Director, the County Procurement Office, and I are in agreement that the Richardson bid is non-responsive under the County Procurement Ordinance and County SLBE Ordinance." (*Emphasis added.*) Thus, there was not some individual policy mandate by the County Administrator; all three interested County offices, including Procurement, agreed that the Richardson bid was non-responsive.

III. APPLICABLE RICHLAND COUNTY ORDINANCES

Richland County's Procurement Ordinance is codified at Richland County Ordinances, Chapter 2, Article X, Division 2. The Procurement Ordinance is exempt from the South Carolina Consolidated Procurement Code and is a proper exercise of the County's home rule authority. Glasscock Co. v. Sumter County, 361 S.C. 483, 604 S.E.2d 718 (Ct. App. 2004).

RC Ord. Section 2-593 entitled "Contract Authority" provides in pertinent part that "[p]urchases in excess of thirty thousand dollars (\$30,000.00) shall be reviewed and approved by the county council prior to acceptance..." and "[p]rovided, however that the county administrator shall have the authority to approve contracts in any amount up to and including one hundred thousand dollars (\$100,000.00) when said contract is for a road-related construction project."

RC Ord. Section 2-608 applies to projects that are bid: "[w]hen this procedure is utilized and the estimated cost exceeds fifteen thousand dollars (\$15,000.00), an award based upon an invitation to bid shall be made according to prescribed procedures from the lowest responsive and responsible vendor after due notice inviting bids." Pertinent subsections of RC Ord. 2-608 are:

(b) *Submission of bids.* All bids shall be on an official bid form provided by the office of procurement and shall be sealed and mailed or otherwise delivered to the director of procurement by the time specified in the invitation to bid. Late bids shall not be considered unless the delay was caused by improper handling by county employees. All bids shall be accompanied by a statement of noncollusion from the vendor.

....

(e) *Award of contract.* Subject to any exceptions found elsewhere in this article, all contracts shall be awarded to the lowest responsive and responsible vendor whose bid complies materially with the specifications publicized. The director of procurement may, however, refuse all bids and readvertise for bids, if the public interest would be served thereby; provided, however, that, if the

director of procurement shall refuse all bids, he shall submit to the county administrator a written explanation of the reasons therefor.

(Emphasis added.)

The Richland County Ordinance also provides for certain types of appeals in procurement matters as well. Section 2-621.1, entitled "Authority to resolve protested solicitations and awards," provides as follows:

(a) *Right to protest.* Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest to the director of the office of procurement. The protest, setting forth the grievance, shall be submitted in writing within ten (10) days after such aggrieved person knows or should have known of the facts giving rise thereto. No protest shall be considered if filed more than thirty (30) days after award of a contract. A vendor/contractor who initiates a protest may be required to reimburse the county for its legal and administrative costs if the procurement review panel determined that the protest was frivolous or without merit.

.....

(c) *Administrative decision.* If settlement of a protest shall not be accomplished within a reasonable time, the director of the office of procurement shall issue a written decision within ten (10) days following the determination that settlement is not possible. The decision shall state the reasons for the action taken.

(d) *Notice of decision.* A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(e) *Appeal to Richland County procurement review panel.* A decision under subsection (c) of this section shall be final and conclusive, unless within ten (10) days following its issuance, the person aggrieved thereby shall file written appeal to Richland County procurement review panel, setting forth the grounds for same. The protestant may also request an interview with the panel. Appeal to the procurement review panel shall not stay issuance or execution of a contract.

(f) *Review.* No later than thirty (30) days from receipt of an appeal, the review panel shall consider and determine the matter and shall file its written decision, including findings of fact and conclusions of law. Upon a finding that the appeal is meritorious, the review panel may direct an award of contract to the protestant, may require that a contract be re-bid, and may award reimbursement to the protestant of reasonable bid preparation costs.

(g) *Judicial review.* The review panel decision shall constitute final administrative review and exhaustion of administrative remedies for purposes of

judicial review in "contested cases" as defined by the South Carolina Administrative Procedures Act, section 1-23-380 S.C. Code of Laws (1976).

(Emphasis added.)

Another pertinent section of the Richland County Ordinances is the Small Local Business Enterprise ("SLBE") Ordinance at Chapter 2, Article XI, Division 7. RC Ord. 2-639 *et seq.* As noted in Section 2-639(a):

Purpose. The purpose of this division is to provide a race- and gender-neutral procurement tool for the county to use in its efforts to ensure that all segments of its local business community have a reasonable and significant opportunity to participate in county contracts for construction, architectural and engineering services, professional services, non-professional services, and commodities. The small local business enterprise ("SLBE") Program also furthers the county's public interest to foster effective broad-based competition from all segments of the vendor community, including, but not limited to, minority business enterprises, small business enterprises, and local business enterprises. This policy is, in part, intended to further the county's compelling interest in ensuring that it is neither an active nor passive participant in private sector marketplace discrimination, and in promoting equal opportunity for all segments of the contracting community to participate in county contracts. Moreover, the SLBE program provides additional avenues for the development of new capacity and new sources of competition for county contracts from the growing pool of small and locally based businesses.

RC Ord. Section 2-644 entitled "Affirmative procurement initiatives for enhancing SLBE and emerging SLBE contract participation," provides at Subsection (a): "The county in conjunction with the appropriate contract officer and the director of procurement may utilize the following affirmative procurement initiatives in promoting the award of county contracts to SLBEs or emerging SLBEs." Thereafter, RC Ord. 2-644(a) at sub-subsection (4) provides for the mandatory SLBE subcontracting requirements.

(4) *Mandatory subcontracting.*

a. The goal selection committee may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific contract, up to forty percent (40%), be subcontracted to eligible SLBEs or to eligible emerging SLBEs, provided however, that if the prime contractor is a certified SLBE or

emerging SLBE, then the prime contractor shall be able to count the dollar value of the work performed by its own forces towards satisfaction of the mandatory subcontracting goal for that contract.

....

c. A prospective bidder on a county contract shall submit at the time of bid SLBE - Form S providing the name of the SLBE or emerging SLBE subcontractor or subcontractors and describing both the percentage of subcontracting by the SLBE or emerging SLBE, and the work to be performed by the SLBE or emerging SLBE. A bidder may request a full or partial waiver of this mandatory subcontracting requirement from the director of procurement for good cause by submitting the SLBE unavailability certification form to the director of procurement at the time of bid.

....

d. In the absence of a waiver granted by the director of procurement, failure of a prime contractor to commit in its bid or proposal to satisfying the mandatory SLBE subcontracting goal shall render its bid or proposal non-responsive.

(Emphasis added.) The determination that the Plaintiff's bid was non-responsive, the consequences of that determination, and the Plaintiff's remedy are provided in the above Ordinances and the Shop Road Project Invitation to Bid.

IV. LEGAL ARGUMENTS

A. The Higher Standard for a Temporary Injunction Against a Public Body.

The South Carolina Supreme Court, in considering a request for a preliminary injunction, opined that a preliminary injunction "should issue only if necessary to preserve the *status quo ante*, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. County of Richland v. Simpkins, 348 S.C. 664, 669,

560 S.E.2d 902, 904 (Ct. App. 2002). Accordingly, the applicant must establish three elements to receive this relief: (1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law. Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). (Emphasis added)

Compton v. S.C. Dep't of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

Rule 65 further requires that “no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” Rule 65(c), SCRCF.

However, when a party attempts to enjoin the acts of a governmental entity or its agency, as is the case here, the public interest is obviously one of the *primary* factors to be considered. “For the standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief in these cases.” Hecht Co. v. Bowles, 321 U.S. 321, 331, 64 S. Ct. 587, 592, 88 L.Ed. 754 (1944). Even if other factors weigh heavily in favor of the plaintiff, public interest may control. “Since the public interest is involved, a showing of irreparable injury does not necessarily entitle the [plaintiff] to relief.” National Dairy Products Corp. v. Greene, 210 F. Supp. 798, 800 (D. Md. 1962). Accord, 43A C.J.S. Injunctions, § 114. “Where an important public interest would be prejudiced, the reasons for denying the injunction may be compelling.” City of Harrisonville, Mo. v. W. S. Dickey Clay Mfg. Co., 289 U.S. 334, 338, 53 S. Ct. 602, 603-4, 77 L.Ed. 1208 (1933).

This is the rule long followed by South Carolina courts: “[I]t is a serious matter to enjoin the construction of great public works without a strong showing by the complainant, establishing, *prima facie*, a clear right to such injunction; and the burden is upon the plaintiff to make such a showing.” Moss v. South Carolina State Highway Department, 223 S.C. 282, 75 S.E.2d 462, 464

(1953). For example, the South Carolina Supreme Court refused to enjoin a bond issue under a public interest analysis:

In a case involving the exercise by public authorities of powers expressly conferred upon them, where there is no clear showing of threatened injury of a material character to the complaining party, and where the granting of interlocutory relief would involve considerable loss to the county by reason of the work already done on the project and serious inconvenience to that section of the public for whose benefit the project was undertaken, a court of equity will not interpose an extraordinary remedy of injunction.

Tallevast v. Kaminski, 146 S.C. 225, 143 S.E. 796, 800 (1928) (Supreme Court refused to issue an injunction pending a decision in the case on its merits.) See also, Furr v. The Town of Swansea, 594 F. Supp. 1543 (D.S.C. 1984).

Thus, the public interest is an important factor where injunctive relief was sought against a public entity. The determination of the appropriateness of an injunction must consider those basic elements of proof required to sustain the interference by a court of equity in ongoing governmental activities: possible irreparable harm to the plaintiff if the injunction is not granted, possible irreparable harm to the defendant if the injunction is granted, and which action would be in the best interest of the public. However, due to the nature of the public works contract at issue, the public interest factor must be given substantial weight.

B. There is No Likelihood of Success on the Merits as Plaintiff's Bid was Non-Responsive.

The Plaintiff cannot satisfy the element that it has a likelihood of success on the merits. Compton v. S.C. Dep't of Corr., 709 S.E.2d at 642. There is no dispute that the Richardson bid incorrectly listed a non-SLBE certified subcontractor as its designated SLBE subcontractor. The Invitation for Bids required a listing of the SLBE-certified subcontractor in the bid as does RC Ord. 2-644(a)(4)c. It is irrelevant that Richardson's intent was to list a properly certified SLBE certified subcontractor. Cf., William C. Logan & Associates v. Leatherman, 290 S.C. 400, 351 S.E.2d 146

(S.C. 1986)(Supreme Court upheld determination that bid was non-responsive even if subcontractor negligently or intentionally failed to list a subcontractor.)

As noted, the SLBE Ordinance requires that an SLBE certified subcontractor be included in the bid. RC Ord. 2-644(a)(4)c ("A prospective bidder on a county contract shall submit at the time of bid SLBE - Form S providing the name of the SLBE or emerging SLBE subcontractor or subcontractors...)(Emphasis added.) The SLBE Ordinance only allows a waiver of this requirement if the bidder seeks a waiver at the time of the bid. RC Ord. 2-644(a)(4)c. It is undisputed that Plaintiff failed to comply with this technical requirement.

It is in the County's discretion to determine what is or is not "material" for purposes of determining whether or not a bid is responsive. "The governmental agency has the right to determine whether a variance from bid specifications is material or whether to waive it as a mere irregularity, and that determination must be upheld by the courts if supported by any rational basis." Varsity Transit, Inc. v. Bd. of Educ., 130 A.D.2d 581, 582, 515 N.Y.S.2d 520, 521 (App. Div. 1987). And see Acme of Precision Surgical Co., Inc. v. Weinberger, 580 F. Supp. 490 (E.D. Pa. 1984) (If a court determines that an agency procurement decision was rational, inquiry is at an end and preliminary injunction will be rejected.) As noted by the Wyoming Supreme Court:

It is a general rule that bids for public contracts must substantially comply with the requirements of the specifications for bidding and the directions to prospective bidders. The determination as to whether these requirements are satisfied and the awarding of a contract are acts of discretion which will be enjoined only if done illegally, arbitrarily, capriciously, or unreasonably. Gridley v. Engelhart, S.D., 322 N.W.2d 3 (1982); Conduit and Foundation Corporation v. City of Philadelphia, 41 Pa.Cmwlth. 641, 401 A.2d 376 (1979); Bud Johnson Construction Co., Inc. v. Metropolitan Transit Commission, Minn., 272 N.W.2d 31 (1978); LeCesse Bros. Contracting, Inc. v. Town Board of Town of Williamson, 62 App.Div.2d 28, 403 N.Y.S.2d 950 (1978); Kelly v. Zamarello, Alaska, 486 P.2d 906 (1971); Wester v. Belote, 103 Fla. 976, 138 So. 721 (1931); Maryland Pavement Co. of Baltimore City v. Mahool, 110 Md. 397, 72 A. 833 (1909).

State v. Weisz & Sons, 713 P.2d 176, 186 (Wyo. 1986)

That the Plaintiff did not follow the requirements of the SLBE Ordinance or Invitation to Bid and submitted *under oath* a non-SLBE certified subcontractor is a rational basis for the County to determine that the bid was non-responsive. (Affidavit of Christy Swofford, ¶¶8-12.) Presumably, before signing a statement made under oath, a bidding contractor would have carefully reviewed its bid to make sure what it is stating is accurate. The failure by Plaintiff to abide by the simple process of making sure what it swore to be true was indeed true is a rational basis the County to determine that the mistake was not a minor one. (Affidavit of Christy Swofford, ¶11.) If the Plaintiff has made such a mistake under oath, the County can legitimately question whether or not the rest of the Plaintiff's bid, including those portions that were not under oath, is trustworthy and accurate. (Affidavit of Christy Swofford, ¶12.)²

The conclusion of the County that the Plaintiff's bid was non-responsive is consistent with well-established case law. The failure to list a minority owned enterprise or other goal-oriented program that is a required submittal of the bid is not a minor mistake and makes the bid nonresponsive. Carol Bolander & Sons Co. v. Minneapolis, 438 N.W.2d 735, 738 (Minn. Ct. App. 1989)(“Although arguably not a matter affecting the factors determining the amount of the bid, the omission of listing a [minority owned enterprise] is taken out of the minor defect category by the plans and specifications which deem the failure to comply with [minority owned enterprise] participation requirements as grounds for nonresponsiveness.”)

Assuming of purposes of argument that everything the Plaintiff alleges is true that the listing of Lad, Inc. as the certified SLBE was a “scrivener's error” and/or a clerical mistake, the failure to comply with the strict requirement in the Procurement Ordinance, the SLBE Ordinance, and the Bid Instructions does not mean that the Plaintiff is entitled to have its bid accepted. See Kinsey

² RC Ord. Section 2-621.1 requires that the Plaintiff protest first to the County Procurement Office; the aggrieved person “may protest to the director of the office of procurement...” RC Ord. Section 2-621.1(a). That appeal was

Contracting Co. v. Fayetteville, 106 N.C. App. 383, 416 S.E.2d 07 (N.C. App. 1992)(Court in denying motion for temporary injunction found that failure of bidder to include audited financial statement with bid, even though a mistake, did not mean that the governmental agency's rejection of that bid as non-responsive was improper.)

As noted in a Florida case under similar circumstances:

The unfair bidding advantage one contractor derives from the failure to list required subcontractors is generally threefold: (1) it provides the precious few minutes which may be saved by failing to provide a name for the appropriate blank on form D-1 and matching the name with the price used in the bid computation, (2) it allows the potential for speculation, by use of a phantom price and efforts to shop that item or trade until a subcontractor can be found at the speculative contract price, and (3) it permits a successful bidder to accept additional subcontractor bids after the bid opening, giving the opportunity for undercutting the low subcontractor on whom he relied in formulating his bid. These policy reasons ... thus prevent competitive advantage, insure the quality of the subcontractors, insure public confidence in the bidding process, and encourage future competition

E. M. Watkins & Co. v. Bd. of Regents, 414 So. 2d 583, 587 (Fla. Dist. Ct. App. 1982).

That the public may pay a higher price on a particular project is not a basis upon which to disrupt the bidding requirements; as noted by one court, while "the public may be occasionally harmed by the failure to waive a bid requirement, ... 'the overriding interest in insuring the integrity of the bidding process is more important than the isolated savings at stake.'" Gaglioti Contracting, Inc. v. City of Hoboken, 307 N.J. Super 421, 704 A. 2d 1301, 1306 (Sup. Ct. 1997), quoting Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 325, 650 A.2d 748 (1994).

As noted *supra*, there are important policy considerations that support the determination by the County that a bid is non-responsive and those policy considerations. Thus, the County certainly had a rational basis in determining that Plaintiff's bid was non-responsive and that the bid did not comply materially with the bidding specifications and Richland County Ordinances. In these circumstances, an injunction is not appropriate. See e.g. Bean Dredging Corp. v. United States, 22

Cl. Ct. 519 (1991) (Fact that plaintiff would be irreparably harmed if injunction not granted did not outweigh the fact that disappointed bidder was unlikely to succeed on the merits.)

C. There is No Right to An Injunction In the Richland County Procurement Ordinance.

"A bidder on a government contract has no legally enforceable rights against the award of the contract to a competitor other than those the government has seen fit to confer." Coyne-Delany Co. v. Capital Dev. Bd., 616 F.2d 341, 342-43 (7th Cir. 1980)(Overruling District Court's issuance of preliminary injunction against Illinois on procurement dispute.)

The Plaintiff has no legal right to an injunction interfering in the execution of the Shop Road Project contract under the Richland County Procurement Code. RC Ord. 2-621.1(e) provides in pertinent part: "[a]ppeal to the procurement review panel shall not stay issuance or execution of a contract." (Emphasis added.) Therefore, the Richland County Procurement Code specifically provides that an appeal by a bidder does not stay the execution of a contract. This is the law of Richland County and the law that Plaintiff knew when it submitted its bid.³

The determination that there is no right to a stay of execution of a contract with Richland County is an exercise of the constitutional right of Richland County to set its own procurement laws under the principles of home rule. As stated by the South Carolina Court of Appeals:

That local governments should be afforded a reasonable degree of latitude in devising their own individual procurement ordinances and procedures is entirely consistent with our state's now firmly rooted constitutional principle of "home rule." By the ratification of Article VIII of our state constitution in 1973, substantial responsibility for city and county affairs devolved from the General Assembly to the individual local governments. "Implicit in Article VIII is the realization that different local governments have different problems that require

³ This distinguishes this situation from the Circuit Court Order attached to Plaintiff's Complaint at Exhibit 8, a TRO and Temporary Injunction issued in 2000 by Judge Larry R. Patterson in *Jacobs/Beers York v. The School District of Greenville County*, C/A No. 2000-CP-23-5375. In that order, there was no evidence that the School District's procurement code allowed for a protest to stop the execution of a contract, the ultimate relief sought by the Plaintiff here. However, unlike school districts, a county is allowed to formulate its own procurement laws pursuant to Home Rule. Glasscock Co. v. Sumter County, *supra*. Since Richland County's Procurement Ordinance does not allow a protest to stop the award of the contract, the right and need for a temporary injunction that existed in *Jacobs/Beers York v. The School District of Greenville County* simply does not exist here.

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different solutions." Hospitality Ass'n of South Carolina v. County of Charleston, 320 S.C. 219, 230, 464 S.E.2d 113, 120 (1995); see also Knight v. Salisbury, 262 S.C. 565, 571, 206 S.E.2d 875, 877 (1974) (opining that the constitutional amendment providing for home rule was "prompted by the feeling that Columbia should not be the seat of county government, and that the General Assembly should devote its full attention to problems at the state level"). In addition, Article VIII mandates that "all laws concerning local government shall be liberally construed in their favor." S.C. Const. art. VIII, § 17. Coordinate with the principle of home rule, South Carolina Code section 4-9-25 empowers counties to enact regulations, ordinances, and other laws provided they are consistent with the general laws of our state. S.C. Code Ann. § 4-9-25 (Supp. 2003).

Glasscock Co. v. Sumter County, 604 S.E.2d at 721-22. Richland County consistent with home rule enacted the Procurement Ordinance and made the policy decision that an unsuccessful bidder's remedy in the event that the County determined it would execute a contract was the recovery of bid preparation costs. The Plaintiff may not like that policy decision, but that is the law under which the Plaintiff submitted its bid and it is so bound.

Further, in this case, the Richland County Council itself awarded the contract to McClam upon recommendation of County staff. As noted, RC Ord. 2-593 gives only County Council the authority to approve a contract over \$100,000. Courts do not disturb such decisions by public bodies:

In reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives. Such decisions 'should not be upset on appeal unless [they are] arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power.'

Sloan v. Greenville County, 356 S.C. 531, 555-56, 590 S.E.2d 338, 351 (Ct. App. 2003) (quoting Smith v. Georgetown County Council, 292 S.C. 235, 238-39, 355 S.E.2d 864, 866 (Ct. App. 1987)).

"To plunge the courts into the evaluation process of bidding and awarding of contracts will lead to interminable delays. The judicial process does not lend itself to the solution of such problems. State v. Weisz & Sons, 713 P.2d 176, 187 (Wyo. 1986).

There is no argument or evidence submitted by Plaintiff here that the decision of County Council was arbitrary, unreasonable, an obvious abuse of discretion, or in excess of lawfully delegated power. Therefore, the Plaintiff has not met its high burden to establish that it is entitled to a right to an injunction.

D. An Injunction is Not Appropriate Because the Plaintiff Has An Adequate Remedy at Law.

One of the requirements for a party seeking an injunction is that the party show the Court that it would have no adequate remedy at law. Xepapas v. Richardson, 149 S.C. 52, 146 S.E. 686, 692 (1929). The only irreparable harm cited by Plaintiff is that once the Shop Road Project contract is executed by the County and McClam, then “there is not a clear procedure in the Richland County Code for canceling the contract with McClam and awarding it to RCC.” (Complaint, ¶99.) While Plaintiff claims that the irreparable harm is that Richland County can’t cancel the contract with McClam,⁴ and thus award a contract to Plaintiff, this is not the ultimate harm Plaintiff actually claims. Logically, because Plaintiff seeks to force the County to accept Plaintiff’s bid, the Plaintiff actually claims irreparable harm due to its lost income and profits that it would have made *had it been awarded the Shop Road Project contract*.

However, loss of income alone does not constitute irreparable harm sufficient to support injunctive relief. See Morton v. Beyer, 822 F.2d. 364, 372 (3rd Cir. 1987) and Philips Petroleum Co. v. U. S. Steel Corp., 616 F. Supp. 335, 338 (D. Del. 1985) (“Nevertheless, even an irrevocable monetary loss, barring some special or onerous hardship, presents insufficient justification for a

⁴ This is an incorrect statement by Plaintiff. The County could terminate the Shop Road Extension contract with no penalty. The standard form construction contract that the winning bidder must execute is part of the County’s bid package. Section 23.A of the construction contract that the County would execute with McClam (or any other winning bidder on this project), provides that the County can terminate the Shop Road Project contract for convenience with the only payments owed being for the work performed; no future lost profits are allowed. (See Project Manual, PDF p. 717 at: <https://ftp.richlandpenny.com/public/folder/QG0C6JUVx0O89jqCVzR9Tw/Shop%20Road%20Extension%20Phase%201>.)

preliminary injunction.”) “Moreover, mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay do not constitute irreparable harm.” Fairplain Development Co. v. Freeman, 512 F. Supp. 201, 203 (N.D. Ill. 1981). In order for there to be injunctive relief, there must be something more than just economic harm to constitute irreparable harm. Peek v. Spartanburg Reg'l Healthcare Sys., 367 S.C. 450, 626 S.E.2d 34, 37 (Ct. App. 2005). Further, if the likelihood of success on the merits is remote, there must be a correspondingly stronger showing of probability of irreparable injury to recover. Furr v. Town of Swansea, 594 F. Supp. at 1552. Thus, Plaintiff has not stated any actual harm that is a legal basis for injunctive relief against a public entity.⁵

Regardless, in this case, Plaintiff has an adequate remedy at law and therefore is not entitled to injunctive relief. As noted supra, RC Ord. 2-621.1(f) provides that if the Procurement Review Panel finds that the protest is meritorious, the Panel “**may award reimbursement to the protestant of reasonable bid preparation costs.**” (Emphasis added.) This provision for monetary relief is an adequate remedy at law for Plaintiff should it eventually prevail. This is similar to the well-established framework under the South Carolina Procurement Code. See Paddock Equipment Co. v. University of S. C., 289 S.C. 219, 345 S.E.2d 749 (Ct. App. 1986)(citing S.C. Code Section 11-35-4210.⁶) Also see S.C. Code Section 11-35-4310(4)(providing for the recovery of reasonable

⁵ Indeed, there is no stated amount of any financial loss by Plaintiff or explanation of the amount of that loss in its pleadings. The lack of evidence of any actual harm is fatal to Plaintiff's claim of irreparable harm. Smith & Wesson v. United States, 782 F.2d 1074, 1082 (1st Cir. 1986). Cf. eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 392-93, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006) (Irreparable harm may not be presumed but must be proven.) Finally, there is no evidence that Plaintiff would have even made a profit and thus suffered a loss. “Perhaps more importantly, it is not clear that missing out on the contract actually damaged [plaintiff] at all - that it would have profited on the contract is unsupported in the record and inherently conjectural.” C.S. McCrossan Constr., Inc. v. Minn. DOT, 946 F. Supp. 2d 851, 859 (D. Minn. 2013).

⁶ The remedies cited in § 11-35-4310 are the exclusive remedies available in a protest under the South Carolina Procurement Code. Unisys Corp. v. S.C. Budget and Control Bd., Div. of General Services Information Technology Management Office, 346 S.C. 158, 551 S.E.2d 263 (2001). As the Supreme Court held in Unisys, “because a statute waiving the State's immunity must be strictly construed, the State can be sued only in the manner and upon the

bid preparation costs to a bidder who successfully protests a procurement decision by a state agency after the contract being protested is already awarded.)

It is well settled that where under a government procurement system a party has the statutory remedy of being reimbursed its bid preparation costs, that party has an adequate remedy at law so that there can be no injunction. Fairplain Development Co. v. Freeman, 512 F. Supp. 201, 203-4 (N.D. Ill. 1981)(Where the court stated in denying a temporary injunction: "If Fairplain prevails on the merits of the present case, Fairplain should be able to recover its costs incurred in the preparation of the bid despite the fact that Fairplain was not permitted to submit the bid to the GSA. Recovery of these damages is considered to be an adequate remedy at law where the court is asked to enjoin the federal procurement process.") See also Cincinnati Electronic Corp. v. Kleppe, 509 F.2d 1080, 1089 (6th Cir. 1975). The Court in Lametti & Sons, Inc. v. City of Davenport, Iowa, 432 F. Supp. 713, 715 (S.D. Iowa 1975) stated:

The plaintiff has an adequate remedy at law. ... While bid preparation costs may not be an adequate remedy in light of loss of profits on this project, the fact that plaintiff would not be completely without a remedy is an important consideration. A mere bidder acquires no legally enforceable contract rights; the City could have rejected all of the bids.

And see Delta Data Systems Corp. v. Webster, 755 F.2d 938, 940 (D.C. Cir. 1985) (Even where unsuccessful bidder had a great likelihood of success of prevailing in its arguments that other party was wrongfully awarded contract, no injunction would be granted because unsuccessful bidder limited to its statutory remedy of bid preparation costs).

This rule applies in disputes under the South Carolina Procurement Code as well. The South Carolina Procurement Review Panel, in In Re: Protest by Gregory Electric Company, Inc., Case No. 1989-17, 1990 WL 10008052 (S.C. Procure. Rev. Panel Jan. 26, 1990)(attached), denied

terms and conditions prescribed by Statute." Id., 364 S.C. 172, 551 S.E.2d 270. The same applies to the Richland County Procurement Ordinance at RC Ord. 2-621.1(f). The Plaintiff is limited to its remedy stated in the Ordinance.

injunctive relief under the same reasoning where only bid preparation costs were the remedy: "It has been repeatedly held, however, that injunctive relief is not the appropriate remedy for a disappointed bidder when public interest considerations are present and when a claim for damages is available." The Panel also stated:

It has been repeatedly held, however, that injunctive relief is not the appropriate remedy for a disappointed bidder when public interest considerations are present and when a claim for damages is available. This is true even though the bidder is limited to recovery of bid preparation costs. ...

In this case Gregory does have an adequate remedy at law. The Procurement Code in § 11-35-4210 provides that a bidder who claims it should have been awarded a contract but is not may be awarded a "reasonable reimbursement amount, including reimbursement of bid preparation costs, and ... such other and further relief as justice dictates"⁷

Id. Thus, the arbitral authority in South Carolina that deals most often with procurement disputes follows this well-established law.

Therefore, Plaintiff has an adequate remedy at law even if it ultimately prevails on the merits of this controversy before the Procurement Review Panel, so injunctive relief is not appropriate.⁸ That the remedy may not be the remedy the Plaintiff wants does not erode the legal effect of a remedy. Indeed, in the private sector parties often contract for limited remedies; Plaintiff can hardly complain of a limited remedy in the Ordinance of Richland County of which Plaintiff had constructive notice when it submitted its bid.

E. There is a Substantial Public Interest that the Shop Road Project Not be Delayed.

Time is of the essence for this contract to be awarded without interference in the next two weeks because the County has committed to Jushi that the first 1000 feet of the Shop Road

⁷ This section has been renumbered as S.C. Code § 11-35-4310(4).

⁸ Thus, the Procurement Review Panel would have one duty in this matter should Plaintiff properly appeal to it: to determine whether or not the Plaintiff's protest was meritorious and thus whether the Plaintiff is entitled to its bid preparation costs. RC Ord. 2-621.1(f).

Extension will be completed by December 31, 2017. (Affidavit of Rob Perry, ¶4, Ex. A.) Should the County fail to honor its obligation, the County's relationship with Jushi could be significantly harmed; Jushi could choose to forgo its project entirely. This would mean a loss to the County of total economic benefits of \$785 million and a loss of total revenue of \$175 million. The net present value of that amount is \$40,822,214. (Ruble Affidavit, ¶6.)

Finally, any delay in the construction of the Shop Road Extension would result in delays in fee in lieu of tax payments being paid to the County because fee in lieu of tax payments are only due after a plant has been placed in service. (Ruble Affidavit, ¶8.) The year one payment to the County would be \$1,469,171 and the year two payment would be \$2,231,308. (Ruble Affidavit, ¶8.) Also see, Subsection F *infra*.

Preliminary injunctive relief is an extraordinary and drastic remedy. In addition to the usual caution surrounding the granting of such relief, the court is mindful of the overriding concern in cases of this type: avoidance of disruptions in the procurement process absent a clear need for judicial intervention.

Leath, McCarthy & Maynard, Inc. v. Army and Air Force Exchange Service, 604 F. Supp. 514, 518 (N.D. Tex. 1985) (Court refused to grant preliminary injunction when, although plaintiff had a substantial likelihood of success on the merits, an injunction "would disrupt the supply of hosiery to AAFES outposts world-wide.") "Moreover, a preliminary injunction which would enjoin the federal procurement process may disservice the public interest." Fairplain Development Co. v. Freeman, 512 F. Supp. at 204. Indeed, an unsuccessful bidder seeking an injunction of a government procurement process must demonstrate that its interests in obtaining an injunction coincide with the public interest. Atlas Mach. & Iron Works, Inc. v. Secretary of Air Force, 429 F. Supp. 11 (D.D.C. 1977).

The County is operating under a very strict time deadline due to the necessity of starting this project on a timely basis due to the timeline for the opening of the Jushi manufacturing facility. The

United States Claims Court in a more compelling situation for a plaintiff refused to grant such a preliminary injunction. In Rockwell International Corp. v. United States, 4 Cl. Ct. 1 (1983), the Federal Emergency Management Agency (FEMA) was interested in obtaining a state-of-the-art communications system. The plaintiff bidder in that case was disqualified from the procurement based on a FEMA decision which the court felt lacked a rational or reasonable basis. However, the \$40 million in funds set aside by FEMA to finance the contract for that communications system had to be obligated by an award of the contract prior to October 1, 1983, or it would be lost. Id. at 3.

The Court refused to enjoin the awarding of the contract to another bidder, even though the plaintiff was correct that it should have been allowed a chance to bid, because it would have been difficult to rebid or reaward contracts prior to the expiration of the funding deadline. Id. at 6. While the plaintiff might suffer harm in not being awarded the contract, the federal interest in utilizing the funds while available far outweighed any harm to the plaintiff and therefore an injunction had to be denied. Id.

A preliminary injunction was denied for the same time deadline requirements in Heli-Jet Corp. v. United States, 2 Cl. Ct. 613 (1983) where the successful bidder had to begin aerial spraying of insecticide at a certain point in the summer that year to control a spruce bud worm infestation. The Court, in refusing to enjoin the awarding of the contract, stated:

Although not unmindful of the importance of preserving a procurement system with full and fair consideration of all bidders, the court is persuaded that, even if plaintiff were likely to prevail on the merits, here 'time is of the essence' in the award of this contract, and that the 'public interest' mandates that there be no delay in that process.

Id. at 619.

Here, just as in the two cases cited, "time is of the essence" since this contract must be executed in the next few weeks. Case law is replete with examples where courts refused to enjoin the award of a contract, even if the plaintiff showed it likely would succeed on the merits, where the

public interest demanded a speedy procurement process. See e.g.: Design Pak, Inc. v. Sec. of Treasury, 801 F. 2d 525, 527 (1st Cir. 1985) (No injunction for unsuccessful bidder on container for commemorative coins where "production was imminent" and an injunction would "seriously handicap the Secretary's efforts to market the coins in a timely manner.") Also see:

Glacier Park Foundation v. Watt, 663 F.2d 882, 884 (9th Cir. 1981) (No injunction where safety improvements had to be completed by summer tourist season, even where plaintiff stood a good chance of success on the merits.);

Compu Serve Data Systems, Inc. v. Freeman, 498 F. Supp. 1316, 1322 (D.D.C. 1980) (Disappointed bidder for government computer system not entitled to injunction where injunction would "disrupt generally the procurement process, as well as possibly affect the implementation of the draft registration programs.");

M. C. Thomas Const. Co. v. City of St. Louis, Mo., 679 F. Supp. 908, 909 (E.D. Mo. 1988) (Where the tax exempt status of bonds financing construction project would expire prior to rebidding of contract, court would not grant injunction since this "would threaten the entire renovation project.");

Dickey-John Corp. v. Bergland, 444 F. Supp. 451 (D.D.C. 1978) (No injunction where substantial harm would result to third parties because if plaintiff did not ultimately prevail, bidder who was awarded contract would have substantial difficulty in meeting a timely delivery deadline.); and

Lametti & Sons, Inc. v. City of Davenport, Iowa, 432 F. Supp. at 715 (Injunction would harm public interest in both monetary costs for delay and social costs and environmental costs by preventing sewer project from being quickly implemented.)

Clearly, the great potential harm to the public compels that the equities strongly weigh against the granting of injunctive relief.⁹

⁹ McClam would also be prejudiced by injunctive relief. Injunctive relief would require McClam to expend more money, suffer delay costs, and experience general difficulty with obtaining the start-up time of the project as required by the State. Further, McClam would be prejudiced since bids are now open and Plaintiff has had the opportunity to review the bids of its competitors. This harm to McClam counterbalances any harm to Plaintiff in failing to grant an injunction. See Caddell Construction Co. v. United States, 7 Cl. Ct. 236 (1985).

F. If Injunctive Relief is Granted, a Substantial Bond Protecting the County Should be Required.

Rule 65 and South Carolina law requires that a bond be issued by a plaintiff seeking an injunction to protect the rights of the enjoined party. In this case, as noted above, the financial loss to the County and to the public would be substantial if award of the Shop Road Project contract is delayed. The County will suffer at least \$8,856 damages per day, or \$797,040 per quarter, that the Shop Road Project is delayed. (Perry Affidavit, ¶6). The increased construction costs to the County if the Shop Road Extension Project is delayed by an injunction could at least \$3,250,000. (Perry Affidavit, ¶7.) An entire industrial project that is a key cog to \$785,000,000 of economic growth and future prosperity of Richland County is depending on the timely award and completion of this project. (Ruble Affidavit, ¶6.)

While Richardson claims in its Affidavit that it could complete the Shop Road Project two months ahead of schedule, that assumes that Plaintiff is awarded that contract and work promptly begins. However, if a temporary injunction is granted, the Shop Road Project could end up being rebid or being tied up in court and the appeals process for months. (Perry Affidavit, ¶9). Thus, Plaintiff's claim that it could complete the Shop Road Project on a timely basis is speculation and based on assumptions that are not based on reality.

Therefore, should the Court grant a temporary injunction, the County requests that the Court Order that as a condition of the temporary injunction being granted, the Plaintiff post a bond of at least \$10,000,000. Richland County believes that this amount would represent a fraction of the possible loss to the County and its citizens assuming a six month delay in constructing the project. Even then, however, there could be permanent harm as the manufacturer for which this construction timeframe has been created could determine that this sort of delay is not what it bargained for when it came to Richland County, and may have second thoughts about locating here.

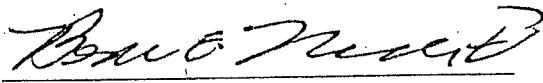
Regardless, the core of this issue is that a bond cannot adequately protect the County and its citizens from the harm that a temporary injunction could create. However, given the great public interest at issue, a substantial bond should be required to protect the public as best it can should the Court grant Plaintiff's Motion.

V. CONCLUSION

The Court should deny the Plaintiff's Motion seeking a temporary injunction for the reasons above stated.

Respectfully submitted,

McNAIR LAW FIRM, P.A.
Benjamin E. Nicholson, V
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
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By: 

Of Counsel:

Larry C. Smith, Esquire
Richland County Attorney
P.O. Box 192
Columbia, SC 29202

Attorneys for the Defendant Richland County

December 20, 2016
Columbia, South Carolina

SCPD 1989-17(III) (S.C.Procure.Rev.Panel), 1990 WL 10008052

In Re: Protest by Gregory Electric Company, Inc.

South Carolina Procurement Decisions

In Re: Protest by Gregory Electric Company, Inc.

CASE NO. 1989-17

January 26, 1990

*1 This case originally came before the South Carolina Procurement Review Panel (the "Panel") on Gregory Electric Company's ("Gregory") appeal of a decision by the Chief Procurement Officer ("CPO") to award to Brock Electric Technology, Inc. ("Brock") a contract for the installation of an uninterruptible power supply system for the Department of Health and Environmental Control ("DHEC").¹ Gregory contended that Brock should not receive the contract even though it was the low bidder because Brock failed to comply with the requirement of the bid solicitation that bidders submit a list of references and qualifications with their bid package. The CPO found that, although Brock did not submit its qualifications with its bid as required,² the omission was a minor irregularity which could be cured pursuant to procurement Reg. 19-445.2080. That regulation provides:

A minor informality or irregularity is one which is merely a matter of form or some immaterial variation from exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to bidders. The procurement officer shall either give the bidder the opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency where it is to the advantage of the State.

On January 2, 1990, the Panel issued its order affirming the decision of the CPO and dismissing the protest of Gregory.

On January 19, Gregory filed its appeal of the January 2 order of the Panel to the circuit court pursuant to the Administrative Procedures Act, S.C. Code Ann. §§1-23-310 *et seq.* (1976). That case is currently pending as Case No. 90-CP-40-0348. As provided in §1-23-380(c), Gregory now petitions the Panel to grant a stay of its order until such time as the circuit court rules on Gregory's appeal.

A request for a stay pursuant to §1-23-380(c) is the same as a request for a temporary injunction. Parker v. South Carolina Dairy Commission, 274 S.C. 209, 262 S.E.2d 38 (1980). That is, the petitioner must make a *prima facie* showing that it has no adequate remedy at law, that it has a likelihood of success on the merits, and that the conduct sought to be restrained will cause irreparable harm. Greenwood County v. Shap, 202 S.C. 16, 23 S.E.2d 825 (1943). Further, in administrative cases, it is proper to take into consideration as a fourth factor the effect of the requested stay on public interests. M. Steinthal & Co. v. Seamans, 455 F.2d 1289, 1303 (D.D.C. 1971) ("There is discretion under doctrines of public interest to withhold relief even assuming the private bidder cannot be made completely whole in damages.")

*2 Gregory alleges in support of its motion to stay that it has no adequate remedy at law because the funds for the contract will be spent before it can receive an order from the circuit court. It has been repeatedly held, however, that injunctive relief is not the appropriate remedy for a disappointed bidder when public interest considerations are present and when a claim for damages is available. This is true even though the bidder is limited to recovery of bid preparation costs. M. Steinthal & Co., cited above. See also Cincinnati Electronics Corp. v. Kleppe, 509 F.2d 1080 (6th Cir. 1975); William F. Wilke, Inc. v. Dept. of the Army, 485 F.2d 180 (4th Cir. 1973); Aqua-Tech, Inc. v. U.S. Army Corps of Engineers, 564 F. Supp. 773 (D.D.C. 1983); Fairplain

Development Co. v. Freeman, 512 F. Supp. 201 (N.D. Ill. 1981); General Electric Co. v. Kreps, 456 F. Supp. 468 (D.D.C. 1978); Acta-Fax Business Machines v. S.C. Procurement Review Panel, November 15, 1984 Order of Judge Richter, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 156; Paddock Equipment Co., Inc. v. U.S.C., June 14, 1984 Order of Judge Cox, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 131; Martin Engineering, Inc. v. S.C. Procurement Review Panel, November 4, 1983 Order of Judge Craine, Decisions of the South Carolina Procurement Review Panel 1982-1988, p. 91.

In this case Gregory does have an adequate remedy at law. The Procurement Code in §11-35-4210 provides that a bidder who claims it should have been awarded a contract but is not may be awarded a "reasonable reimbursement amount, including reimbursement of bid preparation costs, and . . . such other and further relief as justice dictates . . ." Because it has an adequate remedy at law, Gregory cannot show that it will be irreparably harmed if the stay is not issued.

Finally, the Panel believes that the public has a strong interest in having procurements of vital goods and services by the State proceed without disruption and delay. As stated by the Steinthal court, "It would be intolerable for any frustrated bidder 'to render uncertain for a prolonged period of time government contracts which are vital to the functions performed by the sovereign.'"D' 455 F. Supp., at 1303. The Panel is confident that in this case the corresponding public interest in having its procurement laws followed can be delved into and ultimately served by a damages action without the necessity of staying the performance of Brock's contract.

Because of its findings above, the Panel need not address whether Gregory has a likelihood of success on the merits of its appeal.

For the reasons stated, the request of Gregory Electric Company for a stay of the Panel's January 2, 1990 order is denied.

Hugh K. Leatherman, Sr.
Chairman

Footnotes

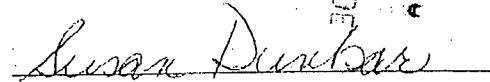
- 1 The uninterruptible power supply system is to insure that DHEC's laboratories and other offices are not affected in the event of power failures.
- 2 Brock submitted its qualifications several hours later.

SCPD 1989-17(III) (S.C.Procure.Rev.Panel), 1990 WL 10008052

CERTIFICATE OF SERVICE

I, Susan Dunbar, an employee with the McNair Law Firm, P.A., do hereby certify that copies of the foregoing **Memorandum in Opposition to Plaintiff's Motion for Temporary Injunction; Affidavit of Christy Swofford In Opposition to Motion for Temporary Injunction; Affidavit of Rob Perry In Opposition to Motion for Temporary Injunction; and Affidavit of Jeffrey G. Ruble In Opposition to Motion for Temporary Injunction** were served by US Mail, this 21st day of December, 2016 addressed as follows:

Kathleen McDaniel, Esq. Callison, Tighe & Robinson, LLC 1812 Lincoln Street, First Floor Columbia, SC 29201 <i>Counsel for Plaintiff</i>	Alan Peace, Esq. Tyler, Jackson, Peace & Silver, LLC 1331 Elmwood Ave, Suite 300 Columbia, SC 29201 <i>Counsel for Defendant McClam & Associates, Inc.</i>
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2016 DEC 21 AM 9:29
JEANNETTE M. MCBRIDE
C.P. & S.
FILED
RICHLAND COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
RICHARDSON CONSTR. CO. INC.,)
)
Plaintiff,)
)
v.)
)
RICHLAND COUNTY, AND)
)
MCCLAM & ASSOCIATES, INC.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
Docket No.: 2016-CP-40-7353

**AFFIDAVIT OF
ROB PERRY
IN OPPOSITION TO
MOTION FOR
TEMPORARY INJUNCTION**

2016 DEC 21 PM 12:55
JEANNETTE W. NOBLOE
C.C.P. & C.S.
RICHLAND COUNTY
FILED

PERSONALLY APPEARED before me, Rob Perry, who being duly sworn deposes and says as follows:

1. I am 39 years old, competent to make the statements herein, and have personal knowledge of the statements herein.
2. I am employed by Richland County and hold the position of Transportation Director. In addition, I am a registered engineer in the State of South Carolina and I previously worked for the South Carolina Department of Transportation ("SCDOT").
3. As the Director of Transportation for Richland County, I manage all items related to the Richland County Transportation Improvement Program ("CTIP") and all matters involving roads in Richland County. As such, I administer road construction contracts and provide in-house project management from design to completion, and I supervise design work as necessary. I plan, organize and implement road construction within major organizational policies, reporting progress to executive-level administration and Council through reports and conferences. I report to the County Administrator.

4. Richland County entered into a Memorandum of Understanding ("MOU") with China Jushi on May 28, 2016 to locate a fiberglass manufacturing plant in Richland County off of Shop Road. (See a true and correct copy of the MOU attached at Exhibit A hereto.) The terms of the MOU require that Richland County extend Shop Road across Pineview Road for approximately 1,000 feet. Pursuant to the MOU, the first 1,000 feet of the Shop Road Extension road construction project must be completed by December 31, 2017.

5. Richland County issued an Invitation For Bids for the Shop Road Extension Phase 1 on July 20, 2016. Sealed bids were required to be returned to 2020 Hampton Street, Suite 3064, Columbia, South Carolina by 2:00 PM on Wednesday, September 14, 2016. The controversy now before this court arose as a result of the bids received for this solicitation.

6. It is my understanding that the December 31, 2017 time deadline for completion of the Shop Road Extension project is necessary to meet the schedule for China Jushi's plant construction. If Richland County is unable to enter into a contract for the construction of Shop Road Extension and the project is therefore, not able to be completed by December 31, 2017, the user impact fee to Richland County Citizens that could utilize this new road will be \$8,856 daily. This equates to \$797,040 per quarter in cumulative impacts to these citizens. It is my understanding that a delay in the opening of this necessary addition to Shop Road beyond December 31, 2017 could cause a harmful effect on the relationship between Richland County and China Jushi, as the interference with China Jushi's plans could cause it additional costs as well, costs that it may not have counted on when picking Richland County as a project site.

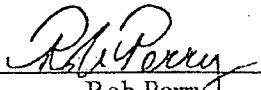
7. In addition, any delay in the ability to contract for the construction of the Shop Road Extension will result in increased costs to Richland County in that the time period to complete the construction will have decreased causing contractors to dedicate more labor to the

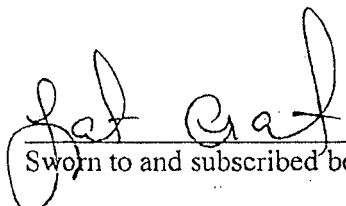
job. I estimate that any such delay will increase costs by at least 15% which equates to approximately \$3,250,000.

8. Finally, any delay in the ability to contract will force construction into the coldest months of the year for Columbia, South Carolina. The Shop Road Extension is being constructed of high strength concrete pavement. Placement of this product requires that outside temperatures be at least 35 degrees and rising. Accordingly, these delays translate into higher costs for the County and the danger of being unable to meet the December 31, 2017 deadline.

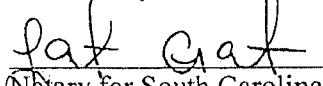
9. Any claim by a contractor that they can build the Shop Road Project in a time period outside of that provided for in the Invitation for Bids is speculative if this Project is delayed, because of the weather issues and unknown delays that could be caused in the court system.

FURTHER AFFIANT SAYETH NOT!


Rob Perry


Sworn to and subscribed before me

this 20th day of December, 2016


Notary for South Carolina
My Commission Expires:

MY COMMISSION EXPIRES
FEBRUARY 17, 2019

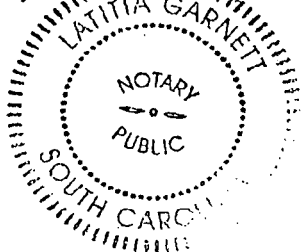


EXHIBIT A

MEMORANDUM OF UNDERSTANDING

谅解备忘录

THIS AGREEMENT AND MEMORANDUM OF UNDERSTANDING (this "MOU") is hereby dated as of this 28th day of May, 2016, by and among China Jushi Co., Ltd. (the "Company"), Richland County, South Carolina (the "County"), the South Carolina Department of Commerce ("DOC"), and the South Carolina Coordinating Council for Economic Development (the "Coordinating Council") (the County, DOC, and the Coordinating Council shall be collectively referred to herein as the "Public Parties").

本协议和谅解备忘录（简称本“备忘录”）由“中国巨石有限公司”（简称“公司”）与南卡罗莱纳州里奇兰县（以下简称“县郡”）、南卡商务厅（简称“商务厅”）和南卡经济发展协调委员会（简称“协调委员会”）（县郡、商务厅和协调委员会统称“政府方”）共同于 2016年5月28日签定。

WITNESSETH: 序言

WHEREAS, the Company contemplates the establishment of a manufacturing facility (the "Project," often identified as "Project Giant" in other documents, including some of the Exhibits to this MOU) in the County; and

鉴于公司考虑在里县郡建一座制造工厂（简称“项目”，在本备忘录的附件及其它文件中经常也称为“巨人项目”）；

WHEREAS, the Company anticipates that the Project will result in an investment of approximately \$400 million and the creation of approximately 800 new, full-time jobs in the County before the end of December 31, 2024;

鉴于公司预计项目2024年12月31日之前投资总额达到约4亿美元并在县郡新增大约800个全职工作岗位；

WHEREAS, the Public Parties have committed to provide certain funds and other incentives as an inducement for the Company to locate the Project in the County; and

鉴于政府方承诺提供某些资金和其它方面的优惠政策，以吸引公司将项目投资在县郡；

WHEREAS, the purpose of this MOU is to set forth the various commitments of the parties hereto to induce the Company to locate the Project in the County.

鉴于本备忘录的目的是阐述各方所做承诺，以吸引公司将项目投资在县郡。

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

因此，双方本着相互承诺和已承认获得且充分的其它等价有偿，双方一致同意以下条款：

ARTICLE 1 第一条 PUBLIC PARTIES COMMITMENTS 政府方承诺

1.1. Land; Access. The County will (i) transfer or cause to be transferred to the Company (or to Third Parties (as defined in Section 2.1) or Affiliate (as defined in Section 2.1), as determined by the Company), at no cost to the Company (or Third Parties or Affiliate), fee simple absolute title to 197 acres of land located in the County on Pineview Road (the "Transfer"), as more particularly described in Exhibit A attached hereto (the "Land"), and Richland County will help coordinate with SCE&G to relocate the existing transmission line and make sure that the land is free and clear of liens and encumbrances other than a private, non-exclusive access easement across land now owned by the South Carolina Department of Transportation ("SCDOT") extending from the junction of Shop Road and Pineview Road to the northern property line of the Land as depicted on the February 27, 2012 Conceptual Plan attached hereto as Exhibit B (the "Conceptual Plan").

土地：道路 县郡将(i)无偿地转让位于县郡PINEVIEW路的197英亩土地的绝对所有权-或促使该所有权转让-给公司（或由公司确定的第三方（在2.1节中定义）或附属公司（2.1节中定义），该土地具体如附件A中所描述。里奇兰县将帮助协调南卡电力燃气公司迁移现有输送线路并且确保该土地无留置权和产权负担，但一条跨过该土地的私有的、非独占的通行用地除外，该通行用地为南卡交通厅所拥有；从SHOP路和PINEVIEW路交叉口延伸至地块北部边界，如附件B的2012年2月27日概念图中所示。

The County will make the Transfer upon receiving a written request for same from the Company, which request shall be provided by the Company to the County at least 30 days before the date on which the Transfer is to occur; provided, however, that the Company shall not be entitled to make such request until it has made a public announcement of its decision to locate the Project on the Land.

县郡在收到公司的土地转让书面要求后将进行转让，公司应在比土地实际转让日提前至少30天向县郡提交要求，但在公司公开宣布在该土地上进行项目投资的决定以前，无权提出土地转让要求。

The Transfer deed (the "Transfer Deed") will include a reverter provision (the "Reverter") as described below in this Section and as set forth in the form attached to this MOU as Exhibit C, or in such alternative form as may be mutually agreeable to the County and the Company. If the Company does not provide to the County documentation of a Reverter Cancellation Event (as defined below) by December 31, 2017, then fee simple absolute title to the Land shall, pursuant to the Reverter, transfer back to the County (the "Reversionary Transfer") on January 31, 2018 without requirement of further consent or conveyance from the Company. In the event of the Reversionary Transfer, the Company also agrees to deliver to the County an executed, recordable deed (the "Reversionary Deed") in the form attached to this MOU as Exhibit D, or in such alternative form as may be mutually agreeable to the County and the Company, on or before January 31, 2018. Should the Company communicate to the County a decision, prior to December 31, 2017, not to proceed with the Project, the Company shall deliver the Reversionary Deed to the County promptly after such final decision.

产权转让契据中将包括一个归还条款，如下文说明并按照附件C中的格式载明，或者按照县郡和公司双方商定的其它格式。若公司不能在2017年12月31日前提供“归还取消事件”（定义如下文）的文件，则根据归还条款，土地的绝对所有权应在2018年1月31日归还给县郡（简称“归还转让”），此“归还转让”无需公司的进一步同意或者让与。如果发生“归还转让”，公司同意在2018年1月31日之前按附件D中的格式或者以公司与县郡商定的其它格式，向县郡递交一份已签字并可记录的契据-（“归还契据”）。如公司在2017年12月31日前告知不实施本项目的决定，公司应在作出该最终决定后立即将“归还契约”递交给县郡。

If, by December 31, 2017, the Company delivers to the County documentation of a Reverter Cancellation Event, then the County shall, within five business days of the Company delivering such documentation to the County, deliver to the Company an executed, recordable Termination of Reverter and Quit-Claim Deed (the "Termination") in the form attached to this MOU as Exhibit E, or in such alternative form as the County and the Company may agree. The delivery by the Company to the County of documentation of a Reverter Cancellation Event and written acknowledgement by the County of the occurrence of a Reverter Cancellation Event shall automatically cause the Reverter to terminate on the date of such delivery, whether or not the County delivers the Termination to the Company, and whether or not the Termination is recorded.

如果公司在2017年12月31日前向县郡提供了“归还取消事件”的文件，县郡应在5个工作日内递交给公司一份已签字并可记录的“归还条款终止书”和“放弃主张契据”，具体格式按照附件E或按照公司与县郡商定的其它格式。公司向县郡递交“归还取消事件”的文件和政府书面确认“归还取消事件”已发生将自动导致“归还条款”在文件递交当天终止，不论县郡是否将终止书提供给公司或终止书是否被记录。

Each of the following shall constitute a "Reverter Cancellation Event":

- 1) Executed document(s) providing for financing from a party other than Affiliate (as defined in Section 2.1) to the Company or Affiliate of at least \$80 million in connection with the Project; or
- 2) Construction and Equipment Purchase and Installation Contract(s) having a total dollar value of at least \$80 million for one or more buildings to be located on, or other work to be done on, the Land, or machinery and equipment to be installed in the Facility (as defined herein).

以下情况应构成“归还取消事件”

- 1) 规定由非附属公司的一方向公司或其附属公司提供与项目有关的至少八千万美元资金的已签字文件。或
- 2) 位于项目土地上的栋或多栋建筑或其它工程，或安装在工厂的机器或设备的建筑合同和设备采购及安装合同，总金额不少于八千万美元。

The County recognizes that the Company plans to finance certain Project costs and that the Company's lender(s) may require a mortgage on the Land and the termination of the Reverter as conditions precedent to closing and/or funding such financing. The County agrees to cooperate with the Company and its lender(s) so as to facilitate the Company's Project financing; provided however, in no event will the County be required to deliver the Termination prior to receipt of documentation of a Reverter Cancellation Event.

县郡认识到公司计划为项目融资，而贷方可能会要求以土地作抵押并以“归还条款”的终止作为融资的前提条件。县郡同意配合公司和贷方，为项目融资提供便利，但前提是不要求县郡在收到“归还取消事件”的文件前递交“归还条款终止书”。

Should the County determine that, notwithstanding the failure of the Company to deliver to the County documentation of a Reverter Cancellation Event, the actions by the Company to proceed with the Project so warrant, the County may, at any time and in its sole discretion, deliver the Termination to the Company.

如果县郡认为即使公司未能递交“归还取消事件”的文件，公司继续开展项目的行动构成正当的理由，则县郡可在任何时间自主决定向公司递交“归还条款终止书”。

If the Company's failure to achieve one of the Reverter Cancellation Events is based upon a delay in the Company's ability to move forward as a result of permitting delays or other reasonable Project-related issues, and the Company informs the County

that the Company is still planning to move forward with the Project, then the Company may request one or more three-month to six-month extensions from the County. The County agrees to reasonably cooperate with the Company in deciding whether to grant one or more of such extensions, which shall not be unreasonably withheld by the County.

如果公司未能提交“归还取消事件”的文件是由于许可申请或其它合理的与项目有关的原因导致项目进展延迟,并且公司通知县郡公司仍然计划推进项目,则公司可向县郡要求一次或多次3-6个月的延长期。县郡同意在决定是否给与延期时,合理配合公司,县郡不应无理拒绝。

In the event of a Reversionary Transfer, the Land shall be free and clear of liens and encumbrances other than those existing at the time when the County conveyed the Land to the Company and any other easements created with the consent of the County. The Company shall be liable for the cost of removing any such lien, encumbrance, or easement, and shall indemnify the County for any liability it incurs in connection with any such lien, encumbrance or easement. To the extent any easement is reasonably required or desired by the Company in order to develop the Project, the County's consent to such easement(s) shall not be unreasonably delayed, conditioned or withheld.

如果进行“归还转让”,土地应无任何留置权和产权负担,但县郡最初转让土地时已经存在的留置权和产权负担和经县郡同意后建设的附属建筑物除外。公司应承担移除留置权、产权负担和附属建筑物的费用并赔偿县郡由此而承担的任何费用。若建筑附属物是因项目开发需要而由公司提出的合理要求,县郡对附属物的审批同意不应无理延迟、附加条件或拒绝。

The County will, by December 31, 2017, at no cost to the Company, extend Shop Road across Pineview Road in a southerly direction for approximately 1,000 feet to high ground on the Land, bridging existing wetlands. The extension of Shop Road will be built to SCDOT industrial highway standards at no cost to the Company, and the Company shall have no obligation for wetlands mitigation. DOC and/or the County will also extend at its or their expense Shop Road in a southerly direction to a point at least 100 feet past the turn off to the Company's proposed manufacturing facility (the "Facility") as depicted on the Conceptual Plan and place a cul-de-sac at the end of the Shop Road extension. The State and the County shall have the right to further extend Shop Road an additional 2,000± feet to the Land's southern property line to provide access to adjacent properties not currently owned by the County or the Company; provided, however, that any such further extension of Shop Road by the State or the County shall be at the location indicated on the Conceptual Plan or at such other location as may be mutually agreeable to the Company and the County. The County warrants that the extension of Shop Road will not materially affect the layout of the Facility and subsequent expansion as shown on in Exhibit F attached hereto.

县郡将会对SHOP路进行延长, 跨过PINEVIEW路向南方向延长约1000英尺至地块的高地, 跨过现有湿地。此项工作将在2017年12月31日前完成, 公司不承担修路费用。SHOP路延伸部分将按南卡交通厅工业公路标准修建。公司没有减少湿地的义务。商务厅和县郡将SHOP路向南延伸, 至少超过通向“概念图”中显示的制造工厂(简称“工厂”)道路转角处100英尺, SHOP路延伸断的尽头会被封死。州和县郡应有权继续延伸SHOP路约2000英尺至地块的南边地界, 为目前仍不属于县郡或公司的邻近土地提供通道入口。但是, SHOP路的进一步延伸应按照“概念性图”中显示的位置或其它经公司和县郡双方同意位置。县郡担保SHOP路的延伸不会严重影响工厂和后续扩张的规划布局, 如附件图表F所示。

The County will, prior to the commencement of construction of the Project, at no cost to the Company, provide a temporary construction/access roadway extending from the southern right-of-way margin of Pineview Road over and/or along the Norfolk Southern Railroad right of way to the Facility site depicted on the Conceptual Plan; provided that Norfolk Southern Railroad consents.

在项目建设开始之前, 县郡将提供施工/进出的临时道路, 并承担费用。临时道路将从PINEVIEW路通行用地南端延伸, 跨过诺福克铁路公司铁路通向工厂的通行用地或沿该通行用地修建, 但前提是取得诺福克铁路公司的同意。

The County will reserve an easement through the Land for the above-described Shop Road extension, and upon completion of said roadway, the Company will join the County in the dedication of said roadway, and the Company will provide for \$1.00 title to only the strip of land constituting the right of way on said Shop Road extension within the Land to the County or SCDOT as and if required to include said Shop Road extension into the SCDOT or County road system for maintenance purposes, said obligation being contingent upon the Company being the fee simple owner of the Land at the time of such dedication.

县郡将保留上述SHOP路延伸段在土地上的通行权, 在完成上述道路延伸段修建以后, 公司将县郡一起参与上述道路的奉送, 公司向县郡或南卡交通厅提供SHOP路在地块上构成通行权的地带的1美元产权, 以使SHOP路延伸段纳入南卡州交通厅或县郡的公路维护系统。公司上述义务的前提是在道路奉送时公司已成为土地的绝对所有者。

The County will provide a current Phase I Environmental Site Assessment that complies with EPA's requirements for "all appropriate inquiry" and any other studies related to the Land that the County has had conducted to the Company. As detailed in the studies, there are wetlands and a small area of cultural resources included in the Land. The Company reserves the right to reject the Land in the event that the Company, in its sole discretion, determines, based on the Phase I Environmental Site Assessment or on the presence of wetlands and cultural resources on the Land, that the Company's ability to develop the Land for the Company's planned use may be limited, or that the Land may present unacceptable liability risks.

县郡将提供符合美国环保署要求的一期场地环境评估和县郡对土地进行的其它相关研究资料。研究资料中显示该地块包括湿地和小面积的文化资源。如果公司根据一期环境评估报告，或因湿地和该土地上的文化资源等因素，认为该土地按原计划用途的开发能力受到限制或土地拥有不可接受的责任风险，则公司保留拒绝接受该土地的权利。

1.2. Utilities. The County will use its best efforts to ensure that utilities (including but not limited to electricity, gas, water and sewer) connections will be provided, at no cost to the Company, to the Land at a location or locations reasonably acceptable to the Company, with capacities needed for the Company's manufacturing operations as described in Exhibit G (the "Operations"). Water and sewer service to the Land shall be provided by the City of Columbia (the "City"), and it is the intent of the Parties hereto that City policies relating to automatic annexation shall not apply to the Land or the Project. The State and/or the County will facilitate and support the Company's negotiations with SCE&G for dual feed electric service (two separate 115 KV transmission lines) into an SCE&G owned and operated electric substation and for a natural gas line connection, at a location or locations on the Land reasonably acceptable to the Company, all at no cost to the Company, provided that SCE&G agrees to provide such services at no cost to the Company.

公用设施：县郡将尽全力确保公用设施（包括但不限于电、气、水和污水）免费接通至土地的某一个位置或者公司能接受的位置，接入容量满足附件G所述的公司正常生产运营的需要。供水和污水服务由哥伦比亚市（“市”）负责提供，双方的意图均为哥伦比亚市关于自动合并的政策不应适用于本项目或土地。州和/或县郡将协助并支持公司与南卡电力燃气公司谈判：免费将双回路供电（二条单独的115KV供电线路）接入南卡电力燃气公司自有并运营的变电站和天然气管道接入，接口在地块上一个公司可接受的位置，但前提是南卡电力燃气公司同意免费提供上述服务。

Rail. The State and the County will facilitate and support negotiations with Railroad Company for a spur track to the Facility as depicted on the Conceptual Plan and the construction of a branch line and future extension of the branch line by 15 meters.

铁路 州和县郡将协助和支持公司与铁路公司进行谈判：修建支线轨道至工厂并修建支线及将来支线延伸15米。

1.3. Zoning. The Land is located in a County M-1 zoning district, which will allow for the Company's planned manufacturing use as described in Exhibit F and for the related warehousing, distribution and office uses as described in Exhibit F or as otherwise required in connection with the Company's operations. See August 15, 2012 and August 22, 2012 zoning letters from the County and the September 28, 2012 response on behalf of the Company, collectively attached hereto as Exhibit H.

区域划分： 该土地位于县郡M1区，允许附件F中所述的公司规划生产用途，以及相关的仓储、配送和办公室用途等或者公司运行要求的其它用途。请见附件H中2012年8月15日以及2012年8月22日由县郡签发的区域划分信函，以及2012年9月28日中代表公司所作的回复。

1.4. Permitting. Subject to available resources and to the extent permitted by law, both DOC and the County will assist with the identification, coordination, and timely issuance of all State of South Carolina (the "State"), County and local construction, zoning, environmental, stormwater, and other permits, approvals and consents that may be necessary or reasonably desirable in connection with the construction of the Project and the operation thereof by the Company. Based upon the information provided to DOC and the County by the Company concerning the Project, including but not limited to Exhibit F, DOC and the County presently foresee no problem with respect to the timely permitting, construction and operation of the Project.

许可： 根据可用的资源和在法律所允许的范围内，商务厅和县郡将协助明确、协调和及时颁发项目建设和公司运营所需的州、县郡和当地的建设、区域划分、环保、雨水等方面的许可和批文。基于公司向商务厅和县郡提供的项目信息，包括但不限于附件F，商务厅和县郡目前认为项目在及时取得许可、建设与运营上没有问题。

1.5. County Business License Tax. Under the County's existing Business License Fee Ordinance, the County business license tax shall apply only to Company revenues generated by sales to physical locations inside the State.

县营业执照税： 按照当前的营业执照费用条例，县营业执照税仅适用于在南卡罗来纳州内实际产生的销售收入。

1.6. Multi-County Industrial Park. The County warrants that the Land has been placed in the I-77 Corridor Regional Industrial park between the County and Fairfield County, South Carolina pursuant to the Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated as of April 15, 2003, as amended effective April 3, 2012 to include the Land (the "Park Agreement"), and the County will cause the Project to continue to be located in the Park or such other multi-county industrial and business park so as to afford the Company the benefits of Title 4, Chapter 1, and Title 4, Chapter 29, of the Code of Laws of South Carolina 1976, as amended.

多县工业园: 县郡保证本地块位于县郡与南卡Fairfield县之间的“I-77区域走廊工业园区”之内, 该园区根据2003年4月15日主协议(简称“园区协议”)设立, 并于2012年4月3日修改协议, 已将本地块包括在内。县郡将促使本项目继续位于园区或其他多县工业园和商业园区之内, 以使公司享受南卡州1976年修订版法典第4章第1节以及第4章第29节规定的优惠。

1.7. Fees-in-lieu of Taxes. The County, upon request by the Company, and only after the adoption of an authorizing ordinance by the County Council, shall enter into a fee-in-lieu of taxes ("FILOT") agreement under Chapter 44 of Title 12 of the South Carolina Code, as amended (the "FILOT Statute"), the terms of which agreement shall be mutually agreeable to the Company and the County (the "FILOT Agreement"). The FILOT Agreement will provide the Company with the specified FILOT benefits for thirty years for each component of the Project placed in service during the "Investment Period" (as defined in the FILOT Statute) applicable to an "Enhanced Investment" (as defined in the FILOT Statute). The annual FILOT payment shall be calculated based on an assessment ratio of 4% and a millage rate of 453.1, which is the millage rate as of June 30, 2015. The County Administrator and the County Economic Developer are hereby directed to negotiate the remaining terms of the FILOT Agreement and to provide the Company with the most favorable provisions allowable under the FILOT Statute with respect to the disposal and replacement of personal property. This MOU shall constitute action reflecting and identifying the Project for purposes of the FILOT Statute with respect to the Company. The County and the Company agree that (i) this MOU shall constitute a millage rate agreement for purposes of S.C. Code § 4-12-30(G) thereby freezing the millage rate at 453.1 for the duration of the FILOT Agreement to be entered into; and (ii) the County and the Company shall elect, pursuant to S.C. Code § 12-44-170, to enter into the FILOT Agreement under Chapter 44 of Title 12 of the South Carolina Code, as amended.

财产税减免计划 (FILOT) 在公司向县郡提出申请后, 并只有经县议会通过授权法令以后, 县郡将按南卡州法典第44章12节规定签定财产税减免协议, 此协议条款由公司县郡双方商定。根据财产税减免协议, 对于在“投资期间”(FILOT法案定义)投入运行的项目各个部分, 将给与公司30年特定的财产税减免优惠, 也适用于增加投资(FILOT法案定义)。每年财产税的计算应采用4%的评估比率和2015年6

月30日的厘计税率453.1。县郡行政官和县经济开发专员负责与公司谈判财产税减免协议的其它条款，提供给公司FILOT法案允许的有关动产处置和复置方面最优惠的条款。本备忘录应构成了按FILOT法案而言反映和明确公司项目的行为。县郡与公司同意：(i) 本备忘录包括南卡法典§ 4-12-30(G)中规定的一个厘计税率协定，在财产税减免协议有效期内，将厘计税率锁定为453.1。(ii) 县郡和公司应根据南卡法典§ 12-44-170，选择依据修订后的第44章12节签署财产税减免协议。

1.8. Special Source Revenue Credit. The County agrees to provide a Special Source Revenue Credit (the "SSRC") to help offset the cost to the Company of certain Project-related expenditures. The SSRC shall be comprised of (i) a 63% SSRC to be applied against the Company's FILOT payments on the Project for the first two years of the FILOT Agreement referenced in Section 1.8 of this MOU, and (ii) a 53% SSRC to be applied against the Company's FILOT payments on the Project for the third, fourth and fifth years of the FILOT Agreement referenced in Section 1.8 of this MOU, and (iii) a 43% SSRC to be applied against the Company's FILOT payments on the Project for the sixth and seventh year of the FILOT Agreement referenced in Section 1.8 of this MOU; (iv) a 33% SSRC to be applied against the Company's FILOT payments on the Project for the eighth, ninth and tenth year of the FILOT Agreement referenced in Section 1.8 of this MOU; a 25% SSRC to be applied against the Company's FILOT payments on the Project for the eleventh, twelfth, thirteenth, fourteenth, and fifteenth year of the FILOT Agreement referenced in Section 1.8 of this MOU; provided, however that the Company can, by providing written notice to the County, delay for up to two years the year in which the SSRC shall begin to apply. The total amount of the SSRC shall not exceed the total amount of eligible expenditures (as set forth in S.C. Code § 4-29-68(A)(2)) made by the Company.

特别税收抵扣优惠 (SSRC) 县郡同意提供一项特别税收抵扣优惠政策（以下简称SSRC）来帮助抵销公司在项目方面的相关支出。SSRC优惠政策包括 (i) 在财产税减免协议的前2年对财产税给与63%的SSRC税收减免，(ii) 在财产税减免协议的第3年至第5年，对财产税给与53%的SSRC税收减免，(iii) 在财产税减免协议的第6年和第7年，对财产税给与43%的SSRC税收减免，(iv) 在财产税减免协议的第8年至第10年，对财产税给与33%的SSRC税收减免；在财产税减免协议的第11年至第15年，对财产税给与25%的SSRC税收减免。公司可以向县郡提供书面通知，将SSRC开始生效的日期向后推迟不超过2年。SSRC政策的总优惠金额不得超过公司的可减免总费用（根据南卡法典§ 4-29-68(A)(2) 的规定）。

1.9. State Grant. The Secretary of Commerce, as Chairman of the Coordinating Council, will recommend, subject to approval by the Coordinating Council, that the Coordinating Council approve a grant of seven million dollars for the Project (the "State Grant"). Of the total State Grant, five million dollars shall be used to offset the Company's on-site Project costs relating to site preparation, on-site infrastructure, and

real property improvements to the Land. It is further agreed that an amount not to exceed two million dollars of the State Grant shall be used to offset the costs of the extension of Shop Road as described in Section 1.1 of this MOU and costs associated with the extension of water and sewer service to the Project. The Company will be required to enter into a Performance Agreement (the "Performance Agreement") with the Coordinating Council and the County and to satisfy the 800 new job creation requirements, including Badge Personnel as set forth in Section 2.5(d), and the \$400 million capital investment (including Affiliate and Third Parties investment as set forth in Section 2.1) to be set forth therein within the Investment Period (as defined in the FILOT Statute for "Enhanced Investments"). At the election of the Company, the proceeds of the portion of the State Grant to be used to offset the Company's Project costs will be provided through the County to the Company as reimbursement for qualifying expenditures made by the Company under the State Grant, or as direct payments through the County to the suppliers of goods and services under the State Grant. If the Company decides to select a private contractor to undertake any or all of the work to be funded by the State Grant, then the Company must select such contractor by a competitive bidding process as approved by the Coordinating Council staff.

州补助金: 在协调理事批准的前提下, 州商务部秘书长兼州协调理事会主席将推荐为本项目提供700万美元的补助金(州补助金)。其中, 500万美元补助金将用于抵免该项目在现场准备、现场基础设施和土地的不动产改造。同时双方进一步约定不超过200万美元补助金可以用于SHOP路延伸(如备忘录1.1所述)和项目供水和污水管道延伸相关的费用。要求公司与州协调理事会和县郡签定“执行协议”, 并满足创造800个新工作岗位要求(包括的2.5(d)中规定的“挂牌人员”)和在投资期内投资4亿美元。公司可以选择部分州补助金可由县郡为公司报销其规定范围内的费用支出, 或者也可直接由县郡支付给补助规定范围内的货物或服务供应商。若公司决定选择一家私营承包商来负责补助金资助的部分或全部工程, 则公司必须通过协调理事会批准的公开招标程序来选定承包商。

1.10. State Job Development Credits. Upon application by the Company, the Secretary of Commerce, as Chairman of the Coordinating Council, will recommend that the Coordinating Council approve the Company's eligibility to collect Job Development Credits as set forth herein. The Company may, at its discretion, file up to four separate Job Development Credit Applications in connection with the Project. If approved, the Company and the Coordinating Council will enter into a revitalization agreement (the "Revitalization Agreement") for each application to allow the Company to claim job development credits ("Job Development Credits") pursuant to the terms of the Revitalization Agreement and in accordance with S.C. Code § 12-10-80. Such credits shall be in the form of a refund of a portion of the withholding tax liability owed by the Company on behalf of its employees to the State.

州就业发展抵扣优惠: 在由公司提交申请后, 商务部秘书长兼州协调理事会主席将推荐理事会批准公司获得就业发展抵扣优惠的资格。公司自主决定最多提交4

主席将推荐理事会批准公司获得就业发展抵扣优惠的资格。公司自主决定最多提交4份与项目相关的就业发展抵扣优惠申请。所有申请将会在企业委员会大会上一次性同时提交审批。如果得到批准，公司与协调理事会将会针对每份抵扣优惠申请签定一份“振兴协议”，按“振兴协议”规定并根据南卡法典§ 12-10-80要求，允许公司领取就业发展抵扣优惠。抵扣优惠的方式是返还公司为员工代扣的部分州所得税。

The Company may use Job Development Credits refunded to the Company to reimburse the Company for eligible project costs incurred in connection with acquisition of real property, construction of and improvements to real property, pollution control equipment, build to suit lease costs for the Facility, and such other items as may be permitted by law and as approved by the Coordinating Council and set forth in the Revitalization Agreement. Only jobs paying cash compensation at or above \$15.00 per hour will be eligible for Job Development Credits, and such minimum wage requirement will be adjusted every five years to equal an increase of 3% per year. Job Development Credits will be limited to \$3,250 per employee, per year. The Company may not claim Job Development Credits on Badge Personnel as defined in Section 2.5(d).

公司可将返回给公司的就业发展抵扣优惠用于报销可支付的项目费用，如购置不动产、不动产建造或改造、污染控制设备、厂房租赁费以及其它由相关法规和州协调理事会批准可许和“振兴协议”中明确规定的费用支出项目。就业抵扣优惠仅限于以现金支付薪酬时薪超过15美元/小时的就业岗位有资格申请就业发展抵扣优惠，而且此时薪标准每5年会调整一次，调整幅度相当于每年上涨3%。就业发展抵扣优惠仅限于3250美元/岗位/年。公司不可以为2.5(d)定义的“挂牌人员”申请就业发展抵扣优惠。

The Company may claim the Job Development Credits for a period of 10 years beginning once the Company certifies that it has met the minimum job requirement and minimum investment requirement as set forth in the Revitalization Agreement and begins claiming Job Development Credits. Badge Personnel may not be included when calculating such minimum job requirement. If the Company later certifies to a total investment of \$200 million and total job creation of 500 new full-time jobs at the Project, including Badge Personnel pursuant to Section 2.5(d) by the end of December, 2022, the period for each Revitalization Agreement shall be extended to 15 years. The Company may not begin claiming Job Development Credits later than the first quarter following December 31, 2022.

公司一旦证明满足在“振兴协议”中规定的最低新增就业人数和最低投资额要求，便可以开始领取就业发展抵扣优惠，期限为10年。计算最低就业人数时挂牌人员数不应包括在内。公司如果能在2022年12月底之前证明完成2亿美元总投资和500个新增全职就业岗位（包括挂牌人员），每份“振兴协议”的有效期限可将延长至15年。公司开始申请就业抵扣优惠不得晚于2022年12月31日以后第一个季度。

In addition, subject to the approval of the Coordinating Council, the Revitalization Agreement shall provide for the 95% waiver as authorized under S.C. Code § 12-10-80(D)(2) in order to maximize the amount of Job Development Credits that may be claimed by the Company. However, if the Company does not certify to a total investment of \$400 million and total job creation of 800 new full-time jobs, including Badge Personnel pursuant to Section 2.5(d), by December 31, 2024, the applicable percentage under each Revitalization Agreement shall be automatically decreased, prospectively but not retroactively, to 55%.

此外，在州协调理事会审批同意的前提下，依照南卡法典§ 12-10-80(D)(2) 授权，“振兴协议”可规定95%弃权条款，以使公司可领取的就业发展抵扣优惠最大化。但是，若公司未能在2024年12月31日前证明完成4亿美元总投资和800个新增全职就业岗位（包含第2.5d定义的挂牌人员），“振兴协议”规定的适用百分比自动不可追溯地降低到55%。

1.11. State Training. Subject to available resources and to the extent permitted by law, DOC agrees to use its best efforts to assist the Company in implementing the commitment from readySC™, subject to the approval by the State Board for Technical and Comprehensive Education, to allow readySC™ to work closely with the Company through a comprehensive and customized process that includes recruiting, screening, and training workers to meet the Company's specifications. See July 19, 2012 letter from State Board for Technical and Comprehensive Education, attached hereto as Exhibit I.

州培训：根据可用的资源和在法律允许的范围内，州商务厅同意尽力协助公司实施承诺的培训项目，在州技术与综合教育委员会批准的前提下，允许readySC™与公司紧密合作，提供一套全方位的定制方案，包括招聘、筛选和员工培训，满足公司的具体要求。详见州技术与教育委员会于2012年7月19日发出的函，已经附上作为附件I。

1.12. State Income Tax Credits and Exemptions. 州所得税抵扣优惠和减免

- a. Statutory Tax Credits. Subject to available resources and to the extent permitted by law, DOC agrees to use its best efforts to assist the Company with its attempts to qualify for statutory tax credits for which the Company may qualify.

法定税收抵扣优惠。根据可用的资源和在法律所允许的范围内，商务厅同意尽最大努力帮助公司获得享受法定所得税抵扣优惠的资格。

- b. Sales Tax Exemptions. Subject to available resources and to the extent permitted by law, DOC agrees to use its best efforts to assist the Company with its attempts to qualify for the sales tax exemptions for which the Company may qualify.

销售税减免。根据可用的资源和在法律所允许的范围内，商务厅同意尽最大努力帮助公司获得享受销售税减免的资格。

1.13. Enhanced Incentives. In the event the Company substantially exceeds the projected investment and/or job creation levels set forth in this MOU, the Public Parties agree to give appropriate consideration to enhanced incentives that are at least commensurate with incentives provided to projects of a comparable scope.

增加的优惠政策：如果公司大幅超过本解备忘录中规定的预测投资金额和创造就业人数，政府方同意将给予适当考虑增加优惠政策，至少与给予其它同等规模项目的优惠幅度相匹配。

1.14. Affiliates and Suppliers. The County and Company agree that the FILOT Agreement shall contain a provision allowing for the addition to that Agreement as a party for any person or entity which (a) meets the definition of "Sponsor-Affiliate" set out in the FILOT Statute and (b) executes and delivers to the County a Joinder Agreement, the form of which shall be attached to the FILOT Agreement as an Exhibit. The County agrees that companies affiliated with the Company and qualifying as Sponsor Affiliates under the state statute will be aggregated into a single incentive agreement with the County and entitled to the same incentives and their investment and job creation will go towards fulfilling the Company's achievement goals as described in the MOU.

附属公司和供应商 县郡和公司同意财产税减免协议将包含一项条款，允许增加满足以下条件的任何个人或实体成为协议一方：（a）符合FILOT法令中规定的“发起人-附属公司”的定义（b）签署并提供给县郡一份合并协议，合并协议应作为附件附在财产税减免协议后。县郡同意：附属公司并且根据州法令具有的“发起人-附属公司”资格的其它公司有权享受同样的优惠政策，他们的投资以及创造就业也将计入本备忘录提到的公司目标。

The County will consider providing incentives to induce Suppliers to establish operations on the Land. Any offer of incentives shall be at the sole discretion of Richland County and based on a Supplier's binding commitment to locate in the County and other factors, including the amount of taxable capital investment, job creation, and wage levels. In general, Suppliers committing to invest at least \$10 million in taxable assets within a 5-year period, without regard to the number of jobs created, may be offered a fee in lieu of tax agreement and a special source revenue credit agreement. The specific terms of any fee in lieu of tax agreement or special source credit agreement will be negotiated on a case by case basis.

县郡将考虑提供优惠政策以吸引供应商在本土地上建立运行设施。任何优惠政策都应由里奇兰县自行决定，并取决于供应商在县郡落户的有约束力的承诺和其他因素，包括应税资本投资、创造的就业机会和工资水平。通常，承诺在5年内投资应税资产至少1000万美元的供应商，不考虑创造就业机会的数量，可能会签署财产税减免协议以及SSRC协议。财产税减免协议或SSRC协议的具体条款将按照一事一议原则通过谈判商定。

1.15. Public Parties' Liaison. 政府方联络人

- a. Designation of Liaison. DOC agrees to use its best efforts to facilitate and coordinate the activities and communications by and between the Company and the various State and local public and private entities that will be involved in the implementation of the Project. DOC hereby designates Daniel Young (the "Liaison") to be a liaison with the Company to assist the Company in making contacts with these various public and private entities as requested by the Company and generally in providing assistance and information to the Company to facilitate the location and startup of the Project in the State and the facilitation of the incentives referenced in this MOU.

指定联络人：商务厅同意尽最大努力来促进并协调公司与州政府、县郡及其它参与此项目的当地公共或私营实体间的沟通和活动。商务厅将指派Daniel Young先生为公司的联络人，帮助公司与公共和私营实体间联络，并在公司项目落户和启动和此备忘录所提到的相关优惠政策方面予以协助。

b. Substitutions. DOC shall have the right to name a successor or substitute Liaison by providing written notice of the same to the Company. 替换：商务厅有权以书面形式通知公司的方式任命继任的指定联络人或更换当前联络人。

c. Availability. The Liaison will be available for assistance with his or her responsibilities set forth above and subject to the stated limitations through the completion and startup of the Project and will assist the Company following the completion and startup of the Project with respect to any of the matters addressed in this MOU.

协助时间：联络人在项目完成和启动过程中按如上工作职责范围提供协助，并在项目完成和启动之后，在本备忘录中所提到的任何事项上协助公司。

ARTICLE 2 第二条 COMPANY COMMITMENTS 公司承诺

2.1. Project. The Project is comprised of the Land, the Facility, and certain personal property for use in the Facility (the "Equipment"). The Public Parties acknowledge and agree that the Company may, at its option, cause all or a part of the Project to be constructed and/or acquired by a third party in a build to suit arrangement, and/or by one or more Equipment lessors (the "Third Parties"). In addition, the Company may include one or more entities, now existing or to be formed in the future, which control, are controlled by, or are under common control with, the Company, each of which must qualify as a "Sponsor Affiliate" under the FILOT Act (the "Affiliate") and the companies of the shareholder of the Company or the suppliers who made the investment because of Project Giant (the "Suppliers")

项目：本项目由土地、工厂及工厂内使用的某些动产组成。政府方知晓并同意，公司可以选择，将此所有或者部分项目以承建方式交由第三方进行建设或者购置，或由一个或多个设备出租人进行出租（简称“第三方”）。此外，公司可包括一个或多个当前已经存在或准备将来成立的实体，这些实体可能控制公司或被公司控制或由公司参与控制，并且必须具有按FILOT法案规定的“发起人附属公司”的资格（简称“附属公司”），公司还包括因为本项目而投资的公司股东的公司或供应商（简称“供应商”）

2.2. Construction of the Facility. Subject to the receipt by the Company of the incentives described in this MOU and the conditions contained in this MOU, the Facility will be constructed by the Company on the Land. In this regard, the Company shall select the contractors or subcontractors and the architects and gain all approvals for the construction of the Facility.

工厂建设：根据公司实际获得的备忘录中的优惠政策及包含的前提条件，公司将在此地块上建设工厂。对此，公司需选择有资质的承包商或分包商，并办理所有工厂建设所需要的所有批文。

2.3. Jobs and Investments. The Company intends, by December 31, 2024, to create 800 or more new, full-time jobs and to invest \$400 million or more in real and tangible personal property that will be subject to property taxes, or in property tax-exempt pollution control property, in the County in connection with the Project. The Company shall be subject to potential reimbursement payment obligations, as set forth in Section 2.5 of this MOU. All job maintenance obligations imposed by the Performance Agreement relating to the State grants shall also be set forth in the FILOT Agreement.

就业岗位与投资额：公司意向在2024年12月31日以前在县郡通过本项目创造不少于800个新的全职就业岗位和投资不少于4亿美元购置投需交纳财产税的不动产和有形动产，或购置可免交财产税污染控制设备。公司应承担潜在的偿还支付义务，如备忘录中2.5节所述。在执行协议中规定的与州补助金有关的所有工作岗位维持义务也应在财产税减免协议中规定。

2.4. Local Hiring. Subject to applicable laws and regulations, the Company agrees to use a good faith effort to fill its employment needs for the operation of the Project, to the extent practicable, by employing residents of the County and of the State. However, it is expressly agreed that there may be transfers by the Company of employees to the Facility from outside the State.

当地招聘：在遵守适用法律法规的前提下，公司同意尽力雇佣里奇兰县和南卡州的居民以满足公司运营的用工需求。但是，明确同意公司可能有从南卡州以外招聘员工调至工厂。

2.5. Contingencies and Reimbursement. 前提条件与偿还

a. Company Contingencies. The Company plans to proceed with the Project in reliance upon the fulfillment of all the commitments of the Public Parties as referenced herein and on environmental, wetlands, and cultural resources conditions of the Land being acceptable to the Company as provided in Section 1.1 of this MOU. The Company's commitment to go forward with the Project is also contingent upon fulfillment of the commitments made by other public and private entities.

公司的前提条件：公司计划推进本项目的前提条件是政府方履行其在本备忘录的各项承诺以及第1.1节中所指的土地在环保、湿地和文化资源各方面的状况可被公司接受。公司推进本项目的承诺也取决于其它政府实体和私人实体履行承诺。

b. Public Parties' Contingencies. The Public Parties' commitments

are contingent upon the Company's commitment to invest or cause to be invested in the Project \$400 million or more and upon the Company's commitment to create 800 or more new jobs at the Land, by December 31, 2024.

政府方前提条件: 政府方的承诺取决于公司承诺在2024年12月31日以前在土地上投资或促成投资不少于4亿美元和创造不少于800个新增就业岗位。

c. Land Value. The Company understands and agrees that the County's transfer of title to the Land to the Company is based upon and dependent on the Company's commitment to make the investment and create the jobs as set forth in this MOU. For purposes of this Section, the value of the Land is set at \$25,000 per acre for a total value, based on a total of approximately 197 acres, of \$4,925,000 ("Land Value").

土地价值: 公司理解并且同意: 县郡转让土地是以在备忘录中公司所承诺的投资额与创造就业人数为前提。就本条而言, 土地的价值定为每英亩25,000美元, 共计197英亩, 一共价值4,925,000美元 ("土地价值")

d. Company Reimbursement Obligation. If by December 31, 2024, the Company has not (i) invested or caused to be invested \$400 million in the Project and (ii) created at least 800 new jobs at the Project, then the Company may be required to reimburse the County for a percentage of the Land Value based on the following formula:

<u>Actual Investment</u>				<u>Investment Achievement Percentage</u>
\$400 Million	x	100	=	
<u>Actual Job Creation</u>				<u>Job Achievement Percentage</u>
800 Jobs	x	100	=	
(Investment Achievement Percentage)				
+ (Job Achievement Percentage)				
2			=	Overall Achievement Percentage
100% - (Overall Achievement Percentage)			=	Reimbursement Factor

For example:

<u>\$288 Million Actual Investment</u>				
\$400 Million	x	100	=	72%
<u>835 Actual Job Creation</u>				
800 Jobs	x	100	=	104%
72 + 104				

2

88%

$$100\% - 88\% = 12\% \text{ (Reimbursement Factor)}$$

$$\$4,925,000 \text{ (Land Value)} \times 12\% = \$591,000 \text{ Reimbursement Payment}$$

公司偿还义务: 如果在2024年12月31日以前, 公司未能 (i)为本项目投资或促成投资4亿美元 (ii)创造至少800个项目相关的新增就业岗位; 则公司须按照以下计算公式向县郡偿还部分土地价值:

$$\frac{\text{实际投资额}}{4 \text{ 亿美元}} \times 100 = \text{投资额完成比率}$$

$$\frac{\text{实际创造就业岗位数}}{800} \times 100 = \text{就业岗位完成比率}$$

$$\frac{(\text{投资额完成比率}) + (\text{就业岗位完成比率})}{2} = \text{整体完成比率}$$

$$100\% - (\text{整体完成比率}) = \text{偿还比率}$$

举例:

$$\frac{2.8 \text{ 亿美元实际投资}}{4 \text{ 亿美元}} \times 100 = 72\%$$

$$\frac{835 \text{ 实际就业人数}}{800 \text{ 个工作岗位}} \times 100 = 104\%$$

$$\frac{72\% + 104\%}{2} = 88\%$$

$$100\% - 88\% = 12\% \text{ (偿还比率)}$$

$$\$4,925,000 \text{ (土地价值)} \times 12\% = \$591,000 \text{ 偿还支付金额}$$

Up to \$20 million of the Company's investment in the Project can be comprised of property tax-exempt pollution control equipment for purposes of the reimbursement formula set forth in this subsection. If and to the extent that the Company invests more than \$20 million in such property tax-exempt pollution control equipment, such additional investment shall not be counted as part of the Company's investment for purposes of such reimbursement formula.

在公司的总投资中，价值不超过2000万美元免征财产税的污染控制设备可用于此计算公式。但如果公司投资多于2000万美元在免征财产税的污染控制设备上，在进行赔偿计算时，超出部分的投资额将不能算作公司的投资额。

The parties acknowledge that there may be personnel located at the Project who will not be direct employees of the Company. These personnel may include full-time employees of suppliers or employees of various companies providing services to the Project (e.g., security personnel, maintenance personnel) ("Badge Personnel"). The Badge Personnel shall be deemed Company employees and shall count towards any minimum job requirements for purposes of this Agreement, the FILOT Agreement (including the SSRC component thereof), and the Performance Agreement; provided, however, that for such counting purposes, Badge Personnel shall not exceed 12% of the total number of employees.

各方承认可能会有一些项目现场人员并非是公司雇员，包括供应商的员工或者各种为该项目提供服务的各种公司的员工（如安保、维护人员等）（统称“挂牌人员”）；挂牌人员在本协议，“财产税减免协议”（其中包括SSRC特殊税收减免协议部分）和“执行协议”中仍将算做投资项目所创造的新就业岗位，但此类挂牌人员人数不应超过总员工的12%。

The Company shall make any reimbursement payment to become owing under this subsection to the County at the time the Company makes its FILOT payment to the County for the next occurring property tax year.

对于按本节规定产生的偿还支付，公司应在下一个财产税年支付财产税时进行支付。

If the Company does not locate in South Carolina or otherwise fails to invest or cause to be invested at least \$250 million and to create at least 250 new jobs at the Project by December 31, 2024, then the Company shall be required to pay to the County an amount equal to the Land Value:

如果公司没有落户在南卡或未能在2024年12月31日以前完成2.5亿美元投资和创造250个新的就业机会，公司将须偿还县郡与土地价值相同的金额。

e. Project Cancellation. Notwithstanding anything in this MOU to the contrary, if the Company for any reason chooses to cancel the Project prior to the County's title transfer of the Land to the Company, then none of the Public Parties shall

have any claim against the Company in connection with the Land Value or otherwise, except that the Company will be liable to repay any funds of the State Grant that have been disbursed, so long as the Company has been notified of and consented in writing to such disbursements.

项目取消：尽管本备忘录有任何相反的规定，无论因任何原因，若公司决定在县郡将土地转让给公司以前取消本项目，任何政府方不应向公司就土地价值或其它事项向公司提起索赔，但公司有义务偿还通过报销形式已经支出的州补助金，前提是这种报销已通知公司并且公司以书面形式同意。

f. Other Reimbursements. The Company shall also have proportional reimbursement obligations with respect to the SSRC, which obligations shall be set forth in the FILOT Agreement. In addition, if the Company fails to invest or cause to be invested at least \$250 million and to create at least 250 new jobs at the Project by December 31, 2024, then the applicable assessment ratio shall be increased from 4% to 6%. The provisions of this subsection relating to the SSRC and the FILOT shall be set forth in the FILOT Agreement. The Company acknowledges and agrees that proportional reimbursement payment obligations will also be set forth in the Performance Agreement.

其它偿还：公司也应针对SSRC按比例偿还义务，此义务应写入财产税减免协议中。此外，如果公司在2024年12月31日前未能达到2.5亿投资并创造250个就业岗位，评估比率将从4%增长至6%。有关SSRC和财产税减免的此条款应写入财产税减免协议中。公司承认并同意将按比例偿还支付义务也将写入“执行协议”中。

g. Administrative Expenses. Each party shall be required to pay its own respective costs and expenses of the outside legal counsel engaged to advise in conjunction with the Project.

行政费用：各方应自行支付项目相关外部法律咨询费用。

ARTICLE 3 第三条 DEFAULT 违约

3.1 Company Default. The Public Parties acknowledge and agree that the remedies of the Public Parties for any default by the Company under this MOU are limited to (i) the proportional repayment mechanism provision set forth in Section 2.5 of this MOU; (ii) the obligation to provide a proportional repayment of the State Grant as will be provided in the Performance Agreement; and (iii) the suspension or termination of any benefits under the Revitalization Agreement as will be provided therein.

公司违约： 政府方承认并同意：在本备忘录中，因公司违约对政府方的补救仅限于(i)在2.5节规定的按比例偿还机制条款；(ii)按执行协议中的规定，按比例偿还州补助金的义务；(iii)暂停或终止“振兴协议”中规定的任何优惠。

3.2 Public Parties Default. In the event of a breach of this MOU or failure of the Public Parties to meet the commitments set forth herein, the Company shall have the right to pursue such remedies and damages as may be available at law or in equity.

政府方违约：如政府方违约或未能履行备忘录中的承诺，公司有权依法或依衡平法寻求补救和损失赔偿。

ARTICLE 4 第四条 **MISCELLANEOUS 其它**

4.1 Startup and Cessation of Company Operations. The Public Parties recognize and agree that the Company may, at its sole discretion, choose not to proceed with the Project or, at any time, reduce or cease Operations and vacate the Facility and the Land, and the Public Parties hereby waive any legal claims or actions they may have against the Company based on same, except as set forth in Section 2.5 of this MOU or as may be separately set forth in other agreements, including the Performance Agreement. It is expressly agreed that nothing contained in this MOU shall be construed to contain a covenant, express or implied, to either commence or continue Operations on the Land or otherwise. The Parties intend that each agreement contemplated by this MOU shall be assignable by the Company with the consent of the County or other Public Parties, such consent not to be unreasonably withheld.

公司运营的开始与停止： 政府方承认并同意：公司可自主决定选择不推进本项目或在任何时间减少或停止运营并清空工厂和土地，而政府方放弃据此对公司采取任何法律索赔或诉讼，但不包括本备忘录2.5节规定的偿还责任和其它单独协议（包括执行协议）中规定的偿还责任。双方明确同意：本备忘录中不包含在土地上开始、继续运营或其它情况的任何明示或暗示的承诺。双方的意向是本备忘录中考虑的各协议在县郡或其它政府方同意的情况下可以转让，此同意不得被无理拒绝。

4.2 The governing law of this MOU shall be the laws of the State without giving effect to any choice of law provision or rule (whether of the State or any other jurisdiction).

此备忘录的适用法律为南卡州法律，且任何法律条款或规则（不论是本州还是其它辖区的）的选择都是无效的。

4.3 The Company understands and agrees that the grants, awards, and inducements to be made by the Public Parties under the terms and conditions of this MOU are based and conditioned solely upon and made expressly contingent upon and

subject to the Company's commitment to the job creation and capital investment set forth in Section 2.3 of this MOU. The Company further acknowledges that, as set forth above, some of the commitments by the Public Parties herein are subject to approvals by governing councils or as required by statute and, therefore, do not create binding commitments absent any such required approvals. The County hereby represents and confirms that the County Council has authorized and approved the County's execution and delivery of this MOU and the performance by the County of its obligations hereunder.

公司理解并同意：政府方根据本备忘录条款给予的所有补助、奖励和其它优惠完全取决于本备忘录2.3节所描述的公司对创造就业岗位和投资额的承诺。公司进一步承认：如上所述，政府方以上部分承诺仍服从于理事会的审批结果或者法律条款要求，所以若未能获得批准，则政府方所作承诺不构成具有约束力的承诺。县郡确认：县理事会已经授权并批准县郡签署和递交本备忘录和由县郡履行本备忘录规定的义务。

4.4 This MOU and each document contemplated hereby or related hereto shall, except as otherwise stated herein, be binding upon and inure to the benefit of the parties hereto and to their respective successors and assigns.

本备忘录和其中涉及的或与此相关的每份文件，均应对各方及其继承人和受让方有约束力和适用。

4.5 This MOU contemplates the preparation and execution of a number of subsequent agreements. The parties hereto agree to work in good faith and diligently to pursue the consummation of such agreements. In the event of any inconsistencies between the provisions of this MOU and the terms of any subsequent agreement relating to an incentive, the terms of such subsequent agreement shall prevail.

本备忘录涉及到多个后续协议的制订和签署。各方同意以良好诚意和勤奋的完成这些协议。若本备忘录中的条款和后续协议中的条款在优惠政府上有任何不一致，将以后续协议中的条款为准。

4.6 The Company acknowledges and agrees that this MOU will be subject to disclosure pursuant to the South Carolina Freedom of Information Act, Chapter 4 of Title 30 of the South Carolina Code ("FOIA"); provided, however, that the Public Parties agree to utilize applicable exemptions of FOIA located in S.C. Code § 30-4-40 to the maximum extent authorized by law to protect confidential information related to this MOU and the Project. Each of the Public Parties further agrees that, if it is required to respond to a request for information pursuant to FOIA, it will notify the Company of such request for information and its intended response prior to sending the response.

公司承认并同意：备忘录的公开将依照南卡法典第4章第30条下的“南卡信息

自由法案”规定，但是，所有政府方同意以法律允许的最大程度利用南卡法典中适用的“信息自由法案”豁免条款来保护本备忘录和项目的保密信息。各个政府方同意：若被要求对根据信息自由法案提出的信息要求进行回复，则在回复之前先通知公司这种信息要求及其拟定的回复。

4.7 In case any one or more of the provisions contained in this MOU should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In the event any such provision is held to be invalid, illegal or unenforceable, the parties hereto shall make their best efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

如果本备忘录中包含的一项或多项条款在任何方面或因任何原因无效、非法或不可执行，则其它剩余条款的有效性、合法性和可执行性不应以任何方式受到影响或损害。如果任何条款被认为是无效、非法或不可执行，各方应尽最大努力就替换条款达成一致意见，替换条款在经济利益上尽可能与原无效、非法或不可执行条款接近。

4.8 All of the commitments, inducements and incentives contained or referenced in this MOU are made for the benefit of the Company and its Affiliate. This MOU is not assignable by the Company without prior written consent of the Public Parties, which consent shall not be unreasonably withheld, except that the Company may assign this MOU to Affiliate without the prior written consent of the Public Parties provided that the Company notifies the Public Parties within thirty days following such assignment. However, the Public Parties recognize and agree that Project ownership may be split between two or more entities in a build to suit or equipment lease arrangement, and all such entities shall be entitled to the full benefits of this MOU.

本备忘录包含或提及的所有承诺和优惠措施是针对公司及其附属公司制定的。未经政府方书面同意不得转让备忘录，但政府方不应无理地不予同意。如果公司将备忘录转让附属公司并在转让后30天内通知政府方，则无需取得政府方的事先书面同意。政府方承认并同意：采用承建或者设备租赁的方式时，项目的所有权可能为两家或多家实体分开所有，所有这些实体都有权享受本备忘录的全部优惠政策。

4.9 Any notice, request, demand, claim or other communication under this MOU shall be in writing and shall be duly given or made (a) when personally delivered to the intended recipient; (b) five days after it is sent by certified, first class mail, return receipt requested, postage prepaid; or (c) three days after it is sent by any recognized courier service to the following addresses of the recipients:

有关本备忘录的任何通知、要求、需求、投诉或其它沟通均需以书面形式，并且在如下情况下视为送达 (a)派人亲自送给收件人 (b)通过已认证的一类邮政服务发送而且邮费预付并要求收件人提供回执，则五天后 (c)通过公认的快递服务公司发送，则三天后。收件人地址如下：

IF TO THE COMPANY: 至公司

China Jushi Co.,Ltd
Wenhua Rd.(S.),Tongxiang Economic Development Zone
Zhejiang Province 314500,China
Attention: Eason Shen

WITH A COPY TO: 抄送至:

Haynsworth Sinkler Boyd, PA
ONE North Main
Greenville, SC 29602
Attention: Frank T. Davis III

IF TO THE COUNTY: 至县郡

Richland County, South Carolina
2020 Hampton Street
Columbia, SC 29204
Attention: County Economic Developer

WITH A COPY TO: 抄送至

Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450
Columbia, SC 29201
Attention: Ray E. Jones, Esq.

IF TO DOC: 至商务厅

South Carolina Department of Commerce
Attn: Alan D. Young
1201 Main Street, Suite 1600
Columbia, SC 29201

IF TO COORDINATING COUNCIL: 至协调理事会

South Carolina Coordinating Council for Economic Development
Attn: Alan D. Young
1201 Main Street, Suite 1600
Columbia, SC 29201

4.10 Waiver. Any party may waive compliance by any of the other parties with any term or condition of this MOU only in a writing signed by the waiving party.

弃权: 只有通过书面签字任何一方才可以放弃要求其他方遵守本备忘录的任何条款

4.11 Entire Agreement; Amendment. Except as stated to the contrary herein, or except as may be stated in future agreements executed by and binding upon the applicable parties to this MOU, this MOU constitutes the entire understanding among the parties with respect to the subject matter hereof. None of the parties shall be bound by any terms, conditions, statements or representations (oral or written) not herein contained. No modification of this MOU shall be valid or binding unless such modification is in writing, duly dated, and signed by all parties to this MOU.

完整协议; 修订 除非本文件中有相反规定, 或除非在后续协议中有另行规定, 本备忘录构成了各方对本主题的全部理解。各方不应受到未包含在本备忘录中的任何(口头或书面的)条款、条件或陈述的约束。对本备忘录的修订必须以书面形式作出, 注明日期、并由各方共同签署才能正式生效。

4.12 Time of Essence. Time is expressly declared to be of the essence with respect to the matters addressed in this MOU.

时间要素: 时间已经明确成为此项目中相关事项的重要要素。

4.13 Further Action. The Public Parties shall promptly take whatever actions are necessary or appropriate in order to confirm and ratify, and to comply with, its undertakings in this MOU.

未来行动: 政府方应该采取所有必要或适当的行动来确认、批准并遵守本备忘录中所做出的承诺。

4.14 Incorporation by reference. All Exhibits referred to in this MOU are to be considered as if they are attached to and completely incorporated in this MOU by reference.

文件引用 本备忘录中所提到的所有附件均应视为附后并经引用而成为备忘录的一部分。

4.15 Headings. The headings contained in this MOU are for convenience only,

and shall in no way affect the meaning of the provisions contained herein.

标题: 在本备忘录中包含的标题仅以方便使用为目的, 不应以任何方式影响条款的含义。

4.16 Counterparts. This MOU may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures hereto and thereto were upon the same instrument.

副本 本备忘录可签署任何份数, 每份都应是原件, 在签署完成后每份应具有同等样法律效力。

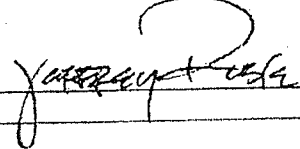
4.17 Languages. This MOU is written in both English and Chinese. In the event of any conflict between the English and Chinese versions, the English version shall prevail.

语言: 本备忘录用英文和中文写成。如中文版文件的含义与英文版有所出入, 概以英文版为准。

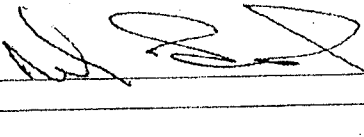
[Signature pages follow. 以下为签字页]

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the date first written above.
本备忘录由各方于前文所述日期签字，特此证明。

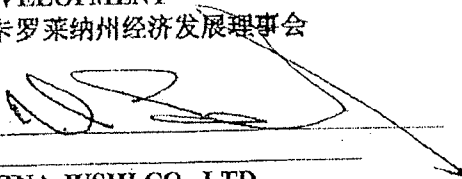
RICHLAND COUNTY, 里奇兰县
SOUTH CAROLINA 南卡罗莱纳州

By: 
Its: _____

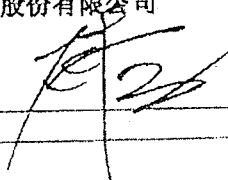
SOUTH CAROLINA 南卡罗莱纳州
DEPARTMENT OF COMMERCE 商务厅

By: 
Its: _____

SOUTH CAROLINA COORDINATING
COUNCIL FOR ECONOMIC
DEVELOPMENT
南卡罗莱纳州经济发展理事会

By: 
Its: _____

CHINA JUSHI CO., LTD
中国巨石股份有限公司

By: 
Its: _____

List of Exhibits

- A Land Description
- B February 27, 2012 Conceptual Plan
- C Form of Transfer Deed
- D Form of Reversionary Deed
- E Form of Termination of Reverter and Quit-Claim Deed
- F August 8, 2012 Description of Project Giant Manufacturing Operations
- G September 28, 2012, letter to Geonard Price, Deputy County Planning Director/Zoning Administrator from George Wolfe, legal counsel to Project Giant, enclosing August 15 and August 22 County zoning letters
- H July 18, 2012 Letter to Wayne Fritz, Senior Project Manager, South Carolina Department of Commerce from Susan E. Pretulak, Vice President, Economic & Workforce Competitiveness, South Carolina Technical College System

EXHIBIT A
to October 2012 Project Giant MOU

Land Description

ALL those certain pieces, parcels or tracts of land lying in the State of South Carolina, County of Richland, shown as Parcel A, containing 109.004 acres, Parcel B, containing 37.005 acres, and Parcel C, containing 50.502 acres all as shown on a plat of survey entitled "BOUNDARY SURVEY" prepared by Henry B. Dingle, SCPS No. 10289 of B.P. Barber & Associates, Inc. dated July 31, 2009, and recorded in the Office of the Register of Mesne Conveyances for Richland County, South Carolina in Book 1543 at Page 3669 a copy of which is attached hereto as Exhibit A-1 and having such metes and bounds as more particularly described on said plat.

TMS #: 16200-03-01, 16209-01-01, and 16200-03-20

EXHIBIT A-1
to October 2012 Project Giant MOU

EXHIBIT B
to October 2012 Project Giant MOU

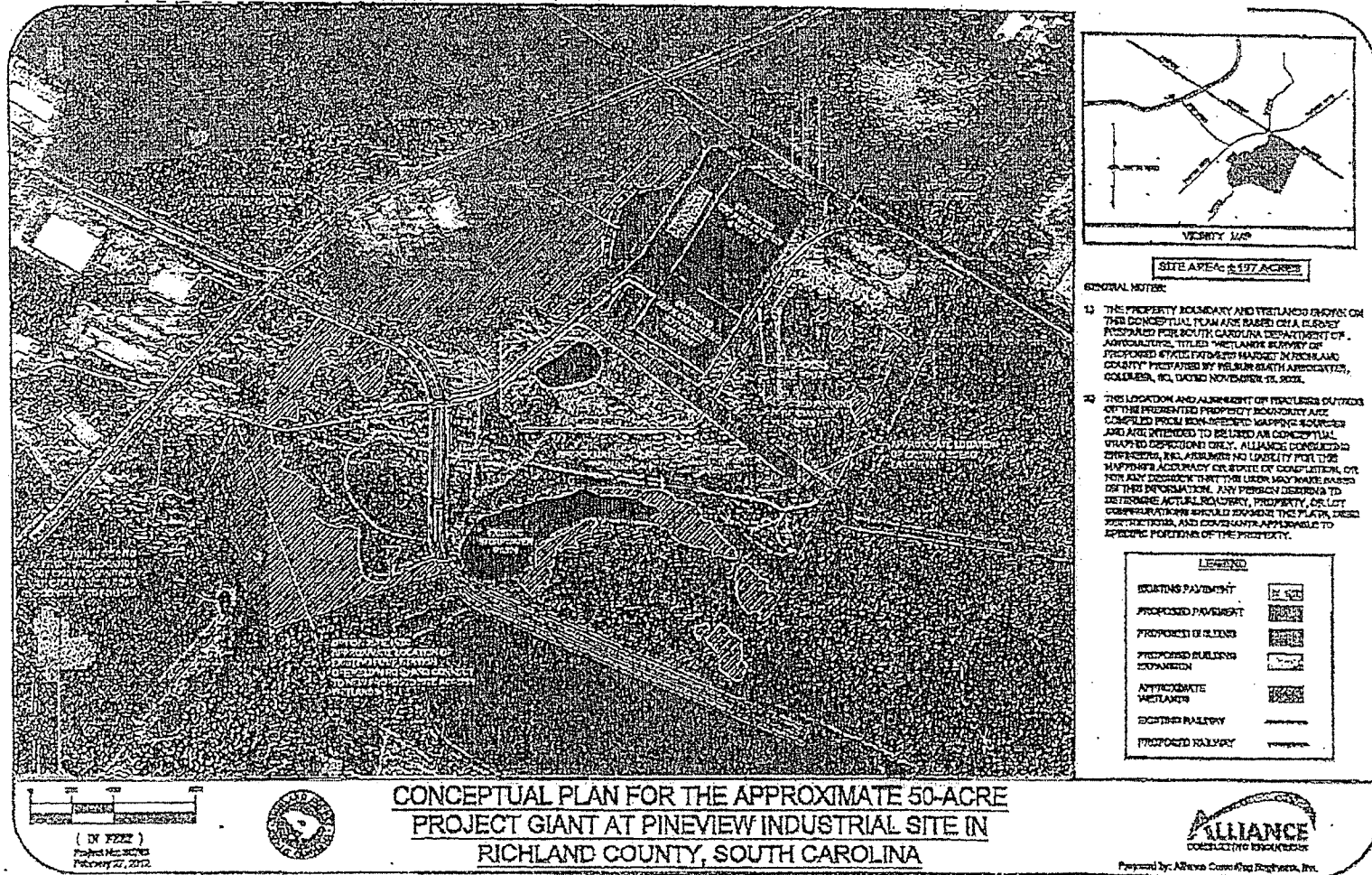


EXHIBIT C
to October 2012 Project Grant MOU

Form of Transfer Deed

Space above this line for recording information

STATE OF SOUTH CAROLINA	)	
	)	TITLE TO REAL ESTATE
COUNTY OF RICHLAND	)	WITH REVERTER

KNOW ALL MEN BY THESE PRESENTS, that Richland County, South Carolina (hereinafter termed "Grantor"), for and in consideration of various agreements by and between Grantor and _____ (hereinafter "Grantee") as set forth in the October ____, 2012 Agreement and Memorandum of Understanding between the Grantor and the Grantee (the "MOU"), made at and before the sealing of these presents and, subject to reversionary rights set forth hereinbelow, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, Grantee's successors and assigns, subject to existing easements and restrictions of record, including matters shown on recorded plats, the property described in Exhibit A attached hereto and incorporated herein (the "Land").

☒ This being the identical property conveyed to Grantor herein by deeds of

dated _____, 20____, recorded in the _____
ROD office in Record Book _____, page _____ and

dated _____, 20____, recorded in the _____
ROD office in Record Book _____, page _____.

Grantee's Address: _____

Tax Map Numbers: _____

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

PROVIDED, HOWEVER, if the Grantee does not provide to the Grantor documentation of a Reverter Cancellation Event (as defined in the MOU) by June 30, 2014, then fee simple absolute title to the Land shall transfer back to the Grantor on July 30, 2014 without requirement of further consent by or conveyance from the Grantee.

Upon the occurrence of a Reverter Cancellation Event, the reverter set forth herein shall immediately terminate and be null and void.

TO HAVE AND HOLD, all and singular the premises before mentioned unto the Grantee forever.

AND, Grantor, for itself, its successors and assigns, does covenant with the Grantee, its successors and assigns, that Grantor will forever defend the title to the above described property against the lawful claims and demands of persons lawfully claiming the same or to claim any part thereof from, through or under Grantor.

WITNESS the Grantor's Hand and Seal this _____ day of _____, 2012.

Signed, Sealed and Delivered
in the presence of:

RICHLAND COUNTY, SOUTH CAROLINA

first witness

By: _____
Print Name: _____
Title: _____

second witness/notary

STATE OF _____)
COUNTY OF _____)

ACKNOWLEDGMENT

I, _____, a
Notary Public for the State of _____, do hereby certify that
_____, serving in the capacity set forth above, personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this _____ day of _____, 2012.

Notary Public for _____
My commission expires: _____
(NOTARY SEAL)

EXHIBIT D
to October 2012 Project Giant MOU

Form of Reversionary Deed

-----Space above this line for recording information-----

STATE OF SOUTH CAROLINA)	
)	REVERSIONARY DEED
COUNTY OF RICHLAND)	

WHEREAS, pursuant to that certain Title to Real Estate With Reverter dated _____, 2012, and recorded in the Office of the Register of Deeds for Richland County, South Carolina in Book _____ at page _____ (the "*Deed*"), Richland County, South Carolina (the "*County*"), as grantor, conveyed the Property (as defined below) to _____ (the "*Company*"), as grantee;

WHEREAS, the transfer made pursuant to the Deed was made subject to a right of reversion in favor of the County, with such right of reversion incorporated into the Deed and more particularly described in that certain Agreement and Memorandum of Understanding between the County and the Company dated October _____, 2012 (the "*MOU*"), which provided that all right, title and interest in the Property would revert to the County on July 30, 2014 unless a "Reverter Cancellation Event" (as defined in the MOU) occurred prior to June 30, 2014;

WHEREAS, a Reverter Cancellation Event did not occur prior to June 30, 2014, all right, title and interest of the Company in the title to the Property has reverted to the County, and the Company desires to deliver this reversionary deed to the County.

KNOW ALL MEN BY THESE PRESENTS, that the Company, for and in consideration of various agreements by and between the Company and the County, as set forth in the MOU, made at and before the sealing of these presents has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the County, the County's successors and assigns, subject to existing easements and restrictions of record, including matters shown on recorded plats, the property described in Exhibit A attached hereto and incorporated herein, together with all improvements thereon (the "*Property*").

This being the identical property conveyed to the Company by deed of the County dated _____, 2012 and recorded in the Office of the Register of Deeds for Richland County, South Carolina in Record Book _____ at page _____.

Grantee's Address: _____

Tax Map Numbers: _____

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the County, its successors and assigns forever so that neither the Company, nor its successors or assigns, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

Signature page to follow.

WITNESS the Grantor's Hand and Seal made effective the 30th day of July, 2014.

Signed, Sealed and Delivered
in the presence of:

[COMPANY]

first witness

By: _____
Print Name: _____
Title: _____

second witness/notary

STATE OF _____)
COUNTY OF _____) ACKNOWLEDGMENT

I, _____, a
Notary Public for the State of _____, do hereby certify that
_____ serving in the capacity set forth above, personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this _____ day of _____, 2014.

Notary Public for _____
My commission expires: _____

(NOTARY SEAL)

~#823-9337-2945 v.1~

to October 2012 Project Giant MOU

Form of Termination of Reverter and Quit-Claim Deed

STATE OF SOUTH CAROLINA) TERMINATION OF REVERTER
) AND
COUNTY OF RICHLAND) QUIT-CLAIM DEED

THIS TERMINATION OF REVERTER AND QUIT-CLAIM DEED (this "Termination") is executed by Richland County, South Carolina (the "County") effective as of _____, 201__.

RECITALS

WHEREAS, _____ (the "Company") entered into a Memorandum of Understanding ("MOU") as PROJECT GIANT with the County on _____, 2012; and

WHEREAS, under the terms of the MOU, the County caused to be delivered to the Company that certain _____ ("Deed") which contained various terms including reversionary language (the "Reverter"); and

WHEREAS, pursuant to the MOU, the County agreed that, upon the occurrence of certain conditions, the County would release and terminate the Reverter, which conditions have been satisfied;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the agreements set forth herein, the performance by the Company of the conditions mentioned hereinabove and the premises, the receipt and adequacy of which consideration is hereby acknowledged, the County hereby terminates the Reverter and has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell, release and quit-claim unto the Company, all of its right, title and interest in and to the following:

SEE EXHIBIT "A" ATTACHED HERETO
AND INCORPORATED HEREIN BY REFERENCE.

Company Address: _____

Tax Map Number: _____

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances including specifically any and all rights in and to the Reverter not previously terminated by this Termination (it being the express intent of the County of terminate same) to the said premises belonging or in anywise incident or appertaining.

EXHIBIT "A"

~F4811-5325-0209 v.2~

EXHIBIT F
to October 2012 Project Giant MOU

August 8, 2012 Description of Project Giant Manufacturing Operations

The raw materials of fiberglass are simply mineral stones, namely kaolin, quartz sand, limestone, fluorite, salt cake and soda ash. The minerals shall be evenly smashed into powders and fed into the furnace for melting. The furnace is normally heated up by electric boosting at the bottom and the natural gas flame at the top, the inside temperature of the furnace will be heated up to around 1200 - 1300 Celsius degree, and all the minerals will be melted into glass liquid at this stage.

The melted glass liquid will then flow along the channels to the fiber forming area. Glass liquid will flow through bushings' holes (a metal panel made of platinum and rhodium with thousands of small holes on it, normally between 1600 - 4000 depending on customers' demands), and the hot glass liquid will be cooled down at this stage and form the initial glass fiber. After flowing through the bushing, a graphite roller is installed to apply sizing on the glass filaments. Sizing is made by many different types of chemical materials which can substantially change and optimize the physical properties of the glass fiber, and sizing also determines the products' resin capacities. After sizing application, the initial glass fiber will be wound into "cakes," each cake is about 22 - 25 kgs, and will be shipped to the drying area by automatic transport system. The ovens are all automatically controlled and set the temperature at a level that strikes the balance of time saving and product quality control. After drying, the product will normally be put into a tri-dimensional temporary storage to hold for a couple of hours to allow the sizing to be cured. Then the cakes will be transferred to the Packaging area for packaging and the product completes its manufacturing process.

Fiberglass is not an end product that can be directly used by consumers, instead, it is a type of very important reinforced composites material for buildings, cars, boats, pipes, and airplanes and it is usually used with resin, which can significantly increase the fiberglass' strength.

to October 2012 Project Giant MOU

Zoning letters

**Nelson
Mullins**

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1920 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5598
www.nelsonmullins.com

George R. Wolfe
Tel: 803.255.5900
Fax: 803.255.5598
george.wolfe@nelsonmullins.com

September 28, 2012

Mr. Geonard Price
Richland County Planning
& Development Services Dept.
PO Box 192
Columbia, SC 29202-0192

RE: Project Giant

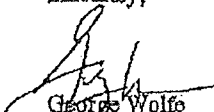
Dear Mr. Price:

Project Giant has reviewed your August 15 and August 22, 2012 letters, copies of which are enclosed. Also enclosed is a copy of the description of the Project Giant manufacturing operations that was referenced by you in your August 15th letter as the subject of your review.

Project Giant appreciates your determination that the proposed Richland County site is zoned M-1, and will make a decision concerning whether to proceed with this project at the proposed site in reliance thereon.

Thank you for your assistance in this matter.

Sincerely,


George Wolfe
Enclosures

cc: Mr. Nelson Lindsay (w/ encls.)

~#447-3419-776 v2~

With offices in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, Tennessee and West Virginia

August 8, 2012 Description of Project Giant Manufacturing Operations

The raw materials of fiberglass are simply mineral stones, namely kaolin, quartz sand, limestone, fluorite, salt cake and soda ash. The minerals shall be evenly smashed into powders and fed into the furnace for melting. The furnace is normally heated up by electric boosting at the bottom and the natural gas flame at the top, the inside temperature of the furnace will be heated up to around 1200 - 1300 Celsius degree, and all the minerals will be melted into glass liquid at this stage.

The melted glass liquid will then flow along the channels to the fiber forming area. Glass liquid will flow through bushings' holes (a metal panel made of platinum and rhodium with thousands of small holes on it, normally between 1600 - 4000 depending on customers' demands), and the hot glass liquid will be cooled down at this stage and form the initial glass fiber. After flowing through the bushing, a graphite roller is installed to apply sizing on the glass filaments. Sizing is made by many different types of chemical materials which can substantially change and optimize the physical properties of the glass fiber, and sizing also determines the products' resin capacities. After sizing application, the initial glass fiber will be wound into "cakes," each cake is about 22 - 25 kgs, and will be shipped to the drying area by automatic transport system. The ovens are all automatically controlled and set the temperature at a level that strikes the balance of time saving and product quality control. After drying, the product will normally be put into a 3d-dimensional temporary storage to hold for a couple of hours to allow the sizing to be cured. Then the cakes will be transferred to the Packaging area for packaging and the product completes its manufacturing process.

Fiberglass is not an end product that can be directly used by consumers, instead, it is a type of very important reinforced composites material for buildings, cars, boats, pipes, and airplanes and it is usually used with resin, which can significantly increase the fiberglass' strength.



Planning & Development Services Department

2020 Hampton Street, 1st Floor • Columbia, South Carolina 29204-1002
Post Office Box 192 • Columbia, South Carolina 29202-0192

15 August 2012

Nelson Lindsay
Director of Economic Development
Richland County, SC
2020 Hampton Street
Columbia, South Carolina 29204

Re: Project Giant

Dear Mr. Lindsay:

I have reviewed the description of the manufacturing process for the above referenced project. Upon review of Table 20-V.2 of the Richland County Land Development Code (LDC), it is my determination that fiberglass manufacturing will fall under the use type category of "Glass and Glass Products". The LDC permits this use type as a by right use in the M-1 (Light Industrial) and HI (Heavy Industrial) districts and by special exception in the LI (Light Industrial) district.

Please call me if you have any questions or need additional information at 576-2174.

Sincerely,

A handwritten signature in dark ink, appearing to read "Leonard H. Price".

Leonard H. Price
Deputy Planning Director/Zoning Administrator

Planning Services: (803) 576-2160 • Zoning & Development Services: (803) 576-2180 • Addressing: (803) 576-2147
Flood: (803) 576-2160 • Facsimile: (803) 576-2182



Planning & Development Services Department

2020 Hampton Street, 1st Floor • Columbia, South Carolina 29204-1002
Post Office Box 192 • Columbia, South Carolina 29202-0192

22 August 2012

Nelson Lindsay
Director of Economic Development
Richland County, SC
2020 Hampton Street
Columbia, South Carolina 29204

Re: TMS: 16200-03-20
TMS: 16209-01-01
TMS: 16200-03-01

Dear Mr. Lindsay:

Records indicate that the above captioned parcels are zoned M-1 (Light Industrial).

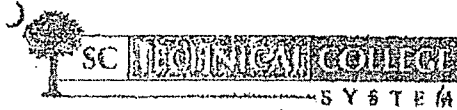
Please call me if you have any questions or need additional information at 576-2174.

Sincerely,

Geonard H. Price

Geonard H. Price
Deputy Planning Director/Zoning Administrator

EXHIBIT E
to October 2012 Project Giant MOU



July 18, 2012

Dr. Darcel W. Stant
System President

~~Wayne Fritz~~

Ralph A. Odum, Jr.
Chairman
17th Congressional District

Don P. Gray
15th Congressional District

Wm. Brantley Harvey, Jr.
Second Congressional District

Bertie C. Rainford
Third Congressional District

Vacant
Fourth Congressional District

Joe W. Pearce, Jr.
Sixth Congressional District

Owendolyn A. Bright
At Large

Brice Herbert Ellis
At Large

Montez C. Minby, Jr.
At Large

Vacant
At Large

Dr. Mitchell M. Zaks
Executive

Robert M. Hill III
Executive

Wayne Fritz
Senior Project Manager
Global Business Development
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, SC 29201

Dear Mr. Fritz:

readySC™ is pleased that *Project Giant* is considering locating a facility in Richland County, South Carolina. The addition of 800 jobs as an original projection for the project is important for the area. This letter will confirm our commitment to provide readySC™ services to assist the company in recruiting and training for permanent full-time positions, offering competitive wages and providing health care benefits. Following is an overview of our process.

Project Management. readySC™ will provide an experienced project manager who will work as a liaison between the company, the staffing organizations and the college assisting with the scheduling and logistics associated with the training. The project manager will also leverage relationships with local partners to facilitate a successful start-up for *Project Giant*.

Discovery. readySC™ will assign a project team composed of various experts to generate an understanding of your company's specific needs and to work with them to develop a project plan to meet those needs. An output from the discovery phase will document the work processes and the skills, knowledge, and abilities needed by the local work force. It will also capture the organization's critical business drivers, workplace culture, and timing requirements.

Design. Based on the information gleaned during the discovery process and *Project Giant's* critical feedback, readySC™ will partner with the organization to develop the training curriculum. Training can be designed to occur in a pre-employment setting, post-employment setting or a combination of the two. This could include, but would not be limited to online and blended instruction, standard classroom, lab, vendor and workstation training. The training plan will also address instructor qualification, tools, equipment, training space, laboratories, travel and other support needed to successfully execute the training plan.



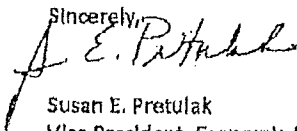
Delivery. The project team will develop the resources needed to execute the training plan and deliver all aspects of the training defined in the project plan. This plan will also include all activities required to recruit and assess potential job candidates.

Value. readySC™ services are provided through state funding usually at little to no cost to companies producing new jobs. The value of our programs and services is measured by offset market costs for your company. This figure varies depending on skill levels, numbers of persons to be hired/trained, the complexity of the project, etc. The actual means used to reach your desired end goals and their associated value is best determined in partnership with you in the discovery phase of the project.

Ultimately, readySC's agreement with *Project Grant* will be to provide the right number of employees at the right time with the right knowledge, skills and abilities to meet the requirements determined in the discovery stage of the project.

I hope this letter provides you with the information you need to successfully complete the business model for your company. If you have any additional questions or concerns, please do not hesitate to contact us.

Sincerely,



Susan E. Pretulak
Vice President, Economic & Workforce Competitiveness
South Carolina Technical College System

cc: Dr. Darrel Staat, President, SC Technical College System
Ed Richardson, Associate Vice President, readySC™
Kent Bedenbaugh, Area Director, readySC™
Bob Jay, Senior Director, readySC™

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
RICHARDSON CONSTR. CO. INC.,)
)
Plaintiff,)
)
v.)
)
RICHLAND COUNTY, AND)
)
MCCLAM & ASSOCIATES, INC.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

Docket No.: 2016-CP-40-7353

**AFFIDAVIT OF
JEFFREY G. RUBLE
IN OPPOSITION TO
MOTION FOR
TEMPORARY INJUNCTION**

RICHLAND COUNTY
FILED
2016 DEC 21 PM 12:58
JEANETTE W. MOORE
C.C.P. & G.S.

PERSONALLY APPEARED before me, Jeffrey G. Ruble, who being duly sworn,
deposes and says as follows:

1. I am 53 years old, competent to make the statements herein, and have personal knowledge of the statements herein.
2. I am employed by Richland County and hold the position of Director of Economic Development.
3. As the Director of Economic Development for Richland County, I recruit businesses for Richland County and negotiate the terms of their location in this County.
4. Richland County entered into a Memorandum of Understanding (MOU) with China Jushi on May 28, 2016 to locate a fiberglass manufacturing plant in Richland County off of Shop Road. Pursuant to this agreement, China Jushi will invest over \$400,000,000 in Richland County and will create 800 jobs. The MOU also provides for a fee in lieu of tax agreement to be executed between the County and China Jushi.

5. The terms of the MOU also require that Richland County extend Shop Road across Pineview Road for approximately 1,000 feet. Pursuant to the MOU, this road construction project must be completed by December 31, 2017.

6. The December 31, 2017 time deadline for completion of the Shop Road Extension project is necessary to China Jushi's plant construction. If Richland County is unable to enter into a contract for the construction of the Shop Road Extension and the project is therefore, not able to be completed by December 31, 2017, China Jushi may opt to forego the project. This would mean a loss to the County of total economic benefits of \$785 million and a loss of total revenue of \$175 million. The net present value of that amount is \$40,822,214.

7. In addition, China Jushi could also sue the county because of a loss of revenue. Data for this calculation is not currently available because China Jushi is not in operation.

8. Finally, any delay in the construction of the Shop Road Extension would result in delays in fee in lieu of tax payments being paid to the County. Fee in lieu of tax payments are only due after a plant has been placed in service. The Year One payment to the county is \$1,469,171. The Year Two payment is \$2,231,308.

FURTHER AFFIANT SAYETH NOT!

Julia Dake
Sworn to and subscribed before me
this 20th day of December, 2016

Julia Dake
Notary for South Carolina
My Commission Expires: 6/12/19

Jeffrey G. Ruble
Jeffrey G. Ruble

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
RICHARDSON CONSTR. CO. INC.,)
)
Plaintiff,)
)
v,)
)
RICHLAND COUNTY, AND)
)
MCCLAM & ASSOCIATES, INC.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

Docket No.: 2016-CP-40-7353

**ORDER DENYING
PLAINTIFF'S
REQUEST FOR
TEMPORARY
RESTRAINING
ORDER**

RICHLAND COUNTY
FILED
2016 DEC 22 PM 3:55
JEANNETTE W. HOBBS
C.C.P. & C.S.

INTRODUCTION

This matter came before this Court for a hearing on December 16, 2016 at the request for a Temporary Restraining Order by Plaintiff Richardson Construction Company, Inc. Prior to the hearing, Plaintiff and Defendant Richland County reached an agreement regarding the Temporary Restraining Order, which was memorialized in an Order issued by the Honorable Jean H. Toal, part of which states the parties were to set a hearing on Plaintiff's request for a Temporary Restraining Order for the week of December 19, 2016. Plaintiff's request for a Temporary Restraining Order was heard by the Honorable DeAndrea Gist Benjamin on December 21, 2016.

FACTS

The Plaintiff seeks a temporary injunction prohibiting Defendants' from executing a \$24,000,000 road construction contract with the responsive bidder, selected by Richland County Council for the extension of Shop Road. The Plaintiff was one of three bidders to Richland County on Phase I of the Shop Road Extension construction project, and the other two bidders were C.R. Jackson, Inc. and McClam & Associates, Inc. (Complaint, ¶6 & 11). The Invitation for Bids for the Shop Road Project contained, in pertinent part, the following instructions:

Handwritten signature

- “The [Small and Local Business Enterprise “SLBE] goal for this Project is 4.37%. Accordingly, the Contractor will complete the SLBE Participation Sheet included in this document and accompany it with his Application for Payment Each month.” (p. 6).
- “INSTRUCTIONS TO BIDDERS. ... 7. CORRECTION OF ERRORS ON THE BID FORM: No bid shall be altered or amended after specified time for opening.” (p. 8)
- “SMALL LOCAL BUSINESS ENTERPRISE (SLBE) PARTICIPATION SHEET...BIDDER is required to complete the SLBE Identification Forms and submit it with the Proposal. Any SLBE company identified must be certified in accordance with the certification program of the Richland County Government.” (Affidavit of Christy Swofford, ¶7, Ex. A.)

In the Shop Road Project bid package, Richland County’s goal for bidder was that that Disadvantaged Business Enterprise (“DBE”) participation be Seven (7%) Percent of the amount of the bid and SLBE participation be Four (4.37%) and Three Seventh Percent. (Complaint, ¶14). The County determined that C.R. Jackson, Inc.’s bid was non-responsive. (Complaint, ¶41, Exhibit 3). The Plaintiff in its bid “inadvertently” submitted as its SLBE subcontractor LAD, Inc., which was not a certified SLBE contractor. (Complaint, ¶¶23-25). Plaintiff admits it inadvertently submitted an earlier internal draft of the SLBE with LAD, Inc.’s name and address for a different contractor, Herndon. (Complaint, ¶41, Page 2 of Exhibit 1 [10/31/16 Letter] to Exhibit 4). The Plaintiff in its bid, swore under oath that LAD, Inc. was its SLBE. (Affidavit of Christy Swofford, ¶4, Ex. B.). Thus, the Plaintiff’s bid was deemed non-responsive by the County because it failed to list a certified SLBE at bid opening. (Complaint, ¶41, Exhibit 3); (Affidavit of Christy Swofford, ¶¶8-12.) Plaintiff appeared before the Richland County Council at its meeting on December 6, 2016 and argued the merits of awarding the contract to Plaintiff. (Complaint, ¶47). Richland County Council at its December 6,

2016 meeting voted 9-2 to award the Shop Road Project to co-defendant McClam & Associates, Inc. (Complaint, ¶48). The McClam bid for the Shop Road Project accepted by the County was for \$24,539,282.95. (Complaint, ¶11.) On December 6, 2016 Plaintiff filed a Procurement Protest with the Richland County Procurement Review Panel. On December 15, 2016 Plaintiff filed a Verified Complaint for Temporary Restraining Order in Richland County. On December 16, 2016 Plaintiff filed a Procurement Protest with the Richland County Procurement Director.

DISCUSSION

Plaintiff requests the Court to issue a Temporary Injunction to stay execution of the bid contract between Defendants'. A preliminary injunction is a measure that is taken to preserve the status to prevent irreparable harm to the party requesting it. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002). A preliminary injunction may only be issued upon a showing by the moving party that "[1] without such relief it will suffer irreparable harm, [2] that it has a likelihood of success on the merits, and [3] that there is no adequate remedy at law." *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

However, when a party attempts to enjoin the acts of a governmental entity or its agency, as is the case here, the public interest is an important factor to be considered. "For the standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief in these cases." *Hecht Co. v. Bowles*, 321 U.S. 321, 331, 64 S. Ct. 587, 592, 88 L.Ed. 754 (1944). Even if other factors weigh heavily in favor of the plaintiff, public interest may control.

"Since the public interest is involved, a showing of irreparable injury does not necessarily entitle the [plaintiff] to relief." *National Dairy Products Corp. v. Greene*, 210 F. Supp. 798, 800 (D. Md. 1962). Accord, 43A C.J.S. *Injunctions*, § 114. "Where an important public interest would be prejudiced, the reasons for denying the injunction may be compelling." *City of Harrisonville, Mo. v. W. S. Dickey Clay Mfg. Co.*, 289 U.S. 334, 338, 53 S. Ct. 602, 603-4, 77 L.Ed. 1208 (1933). South Carolina Courts set forth the following rule: "[I]t is a serious matter to enjoin the construction of great public works without a strong showing by the complainant, establishing, *prima facie*, a clear right to such injunction; and the burden is upon the plaintiff to make such a showing." *Moss v. South Carolina State Highway Department*, 223 S.C. 282, 75 S.E.2d 462, 464 (1953).

I. Demonstrate Likelihood of Success on the Merits.

Plaintiff argues that its likelihood of success on the merits hinges on the interpretation of the word "material," as listed by the Richland County Code Section 2-608(e). According to this provision, a contract shall be awarded to the "lowest responsive and responsible vendor whose bid complies materially with the specifications publicized." Plaintiff argues that by correcting only the name of the subcontractor, LAR, Inc., this correction had no effect on the amount of Plaintiff's bid or its performance of the contract. Plaintiff argues that because it was the lowest bidder, its corrections do not prejudice the other bidders and are to the advantage of Richland County. Further, Plaintiff argues exact compliance to the bid is not required.

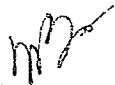
Defendants' argue that Plaintiff's claim will likely not succeed on the merits. Defendants' contend that there is no dispute that Plaintiff's bid incorrectly listed, LAR, Inc., a non-SLBE certified subcontractor as its designated SLBE subcontractor. The Invitation for Bids required a listing of the SLBE-certified subcontractor in the bid as does Richland County Code Section 2-644(a)(4)c. Defendants' argue that the conclusion of the County that the Plaintiff's bid was non-responsive, is

consistent with well-established case law. *See Carol Bolander & Sons Co. v. Minneapolis*, 438 N.W.2d 735, 738 (Minn. Ct. App. 1989) ("Although arguably not a matter affecting the factors determining the amount of the bid, the omission of listing a [minority owned enterprise] is taken out of the minor defect category by the plans and specifications which deem the failure to comply with [minority owned enterprise] participation requirements as grounds for nonresponsiveness.").

a. Plaintiff Fails to Demonstrate Likelihood of Success on the Merits

First, this Court emphasizes that Plaintiff admits that it submitted a non-responsive bid by submitting a bid that identified LAD, Inc. as its certified SLBE vendor. The Richland County Code states in relevant part: "[a] prospective bidder on a county contract shall submit at the time of bid SLBE - Form S providing the name of the SLBE or emerging SLBE subcontractor or subcontractors." *See Richland County Code* Section 2-644(a)(4)(c). The Code allows a waiver of this requirement, *only if* the bidder seeks a waiver at the time of the bid. *See id.* at 2-644(a)(4)(d). Plaintiff has not submitted any evidence of its request for a waiver at the time it submitted its bid on July 20, 2016. Rather, Defendants' Affidavit of Christy Swofford, the Acting Richland County Procurement Director, states, "[a]t bid opening, Plaintiff identified LAD, Inc. as its certified SLBE vendor. Five days after bid opening, Plaintiff stated that its SLBE submission was in error and submitted documentation for a Certified SLBE vendor." *See Affidavit of Christy Swofford* ¶8-9.

Further, this Court finds that the determination of the Richland County Procurement Director not to waive Plaintiff's bid error as rationally based. A governmental agency holds the right to "determine whether a variance from bid specifications is material or whether to waive it as a mere irregularity, and that determination must be upheld by the courts if supported by any rational basis." *Varsity Transit, Inc. v. Bd. of Educ.*, 130 A.D.2d 581, 582, 515 N.Y.S.2d 520, 521 (App. Div. 1987). *See also Acme of Precision Surgical Co., Inc. v. Weinberger*, 580 F. Supp. 490 (E.D. Pa. 1984)

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(If a court determines that an agency procurement decision was rational, inquiry is at an end and preliminary injunction will be rejected.); *And see, Sloan v. Greenville Cty.*, 356 S.C. 531, 555–56, 590 S.E.2d 338, 351 (Ct. App. 2003) (reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives. Such decisions “should not be upset on appeal unless [they are] arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power.”

In this case, the acting Procurement Director, determined that Plaintiff's error was not non-material. In her Affidavit, Ms. Swofford states "the acting Procurement Director, . . . pursuant to the Richland County Code of Ordinances, . . . ha[s] the discretion to waive non-material errors in a bid submission; however . . . the failure to meet an important bid requirement and making a false statement under oath . . . [is] a material failure, and any waiver would be contrary to the ordinance of Richland County, the spirit of those ordinances, and prejudicial to the other bidders." In its bid submitted on July 20, 2016, Plaintiff listed LAD, Inc. as its SLBE certified vendor, but LAD, Inc. is not a Certified SLBE vendor. The determination that such an error does not constitute a non-material error, is reasonable, in light of the SLBE requirements as stated under the Shop Road Project Invitation to Bid, where a prospective bidder is required to complete SLBE Identification Forms with the bid proposal, where any SLBE company identified *must be certified* by Richland County Government. Further, Richland County Code states that a prospective bidder on a county contract shall provide the name of the SLBE contractor at the time of bidding. *See Richland County Code Section 2-644(a)(4)(c).*

II. Adequate Remedy At Law

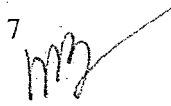
Plaintiff argues there is no adequate remedy at law in this bid dispute. Plaintiff argues that the Richland County Procurement Review Panel may choose to award relief to Plaintiff. One

measure of relief may consist of terminating the contract between the Defendants, and awarding a contract between Defendant Richland County and Plaintiff. Plaintiff's primary support for the contention that there is no adequate remedy at law is that, if the contract is executed between Defendants, then it will become increasingly difficult for Defendant, Richland County to terminate the contract with Defendant McClam & Associates, Inc., and award the contract to Plaintiff. Plaintiff concludes that a failure to stay the execution of the contract between the Defendants results in a divestment of the Procurement Review Panel's ability to order a re-bid on the project, or to award a reimbursement of bid preparation costs.

Defendants' argue that there is an adequate remedy at law for Plaintiffs. Defendants assert that if Plaintiff prevails on the merits of its protest with the Procurement Review Panel, injunctive relief is not appropriate. At the TRO hearing on December 21, 2016, Attorney Smith summarized the procedure for submitting a Bid Protest to the Richland County Procurement Review Panel. According to Mr. Smith a protestant must submit a protest to the Director of the Procurement office, and if no settlement is reached by the Director of the Procurement office, the aggrieved protestant may file a written appeal to the Richland County Procurement Review Panel.

a. Plaintiff Has an Adequate Remedy at Law

First, there is an adequate remedy at law for the Plaintiff in this dispute pursuant to Richland County Code Article X, Section 2-621.1 (a)-(f). The Code grants the Procurement Director the authority to review procurement protests prior to the commencement of formal review, and additionally, "the director of the office of procurement or designated representative may administratively settle the protest of an aggrieved bidder. *See* Richland County Code Article X, Section 2-621.1 (b). In this dispute, the Plaintiff filed a Procurement Protest with the Richland Count Review Panel on December 6, 2016 appealing the determination of Richland County to

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recommend awarding the bid contract to Defendant McClam & Associates, Inc. Plaintiff initially sent its procurement protest letter to the Procurement Review Panel, but not to the Procurement Director. On December 16, 2016 Plaintiff filed a Protest to the Procurement Director. To present date, Plaintiff submitted no evidence to demonstrate that the Procurement Director has released a determination of its protest.

After the Procurement Director issues a finding on the protestant's protest, within ten days following its issuance, the protestant shall file a written appeal to the Richland County Procurement Review panel, setting forth the grounds for appeal. *See Richland County Code Article X, Section 2-621.1(e)*. If the Procurement Review Panel finds that the appeal is meritorious, there are clear remedies for the aggrieved party. No more than "thirty days from receipt of an appeal, the review panel shall consider and determine the matter and shall file its written decision . . . Upon a finding that the appeal is meritorious, the review panel may direct an award of contract to the protestant, may require that a contract be re-bid, and may award reimbursement to the protestant of reasonable bid preparation costs." *See Richland County Code Article X, Section 2-621.1(f)*.

It is well settled that where under a government procurement system a party has the statutory remedy of being reimbursed its bid preparation costs, that party has an adequate remedy at law so that there can be no injunction. Fairplain Development Co. v. Freeman, 512 F. Supp. 201, 203-4 (N.D. Ill. 1981). This rule applies under the South Carolina Procurement Review Panel, in In Re: Protest by Gregory Electric Company, Inc., Case No. 1989-17, 1990 WL 10008052 (S.C. Procure. Rev. Panel Jan. 26, 1990) (denied injunctive relief under the same reasoning where only bid preparation costs were the remedy: "It has been repeatedly held, however, that injunctive relief is not the appropriate remedy for a disappointed bidder when public interest considerations are present and when a claim for damages is available." The Panel also stated:

It has been repeatedly held, however, that injunctive relief is not the appropriate remedy for a disappointed bidder when public interest considerations are present and when a claim for damages is available. This is true even though the bidder is limited to recovery of bid preparation costs. ...

In this case Gregory does have an adequate remedy at law. The Procurement Code in § 11-35-4210 provides that a bidder who claims it should have been awarded a contract but is not may be awarded a "reasonable reimbursement amount, including reimbursement of bid preparation costs, and ... such other and further relief as justice dictates ...".¹

Id. Thus, the arbitral authority in South Carolina that deals most often with procurement disputes follows this well-established law. The procedural process outlined in the Code demonstrates that there is an adequate remedy for Plaintiff to receive reasonable reimbursement for bid costs if the Procurement Review Board were to find that Plaintiffs' appeal is meritorious. Consistent with current case law a temporary injunction is not an appropriate action when a party has the statutory right of being reimbursed bid costs and the public interest is at play.

III. Enjoining a Public Entity

Plaintiff has not met the heightened burden for Plaintiff's attempting to enjoin a public entity. In such cases, the Plaintiff must establish a *prima facie* case, a clear right to such injunction." *Moss v. South Carolina State Highway Department*, 223 S.C. 282, 75 S.E.2d 462, 464 (1953). As discussed by the Court in Sections I and II in this Order, Plaintiff has not established a likelihood of success on the merits, or demonstrated no adequate remedy at law, thus Plaintiff cannot establish a *prima facie* case for the Court to issue a Temporary Restraining Order. Further, Defendants' present a compelling argument that a loss of the bid contract would result in harm to the public of Richland County with a total economic loss of \$785,000,000. Any delay on the bid contract could affect the timely completion of the bid project, which could lead to a in a total loss of the project. Considering the consequences

¹ This section has been renumbered as S.C. Code § 11-35-4310(4).

of any delay to beginning completion of the project presents a strong disfavor of issuing a Temporary Restraining Order to stay the execution of the contract between Defendants.

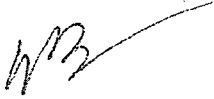
Pursuant to the reasons set forth in this Order, Plaintiff's request for Temporary Restraining Order pursuant to Rule 65 of the South Carolina Rules of Civil Procedure is hereby **DENIED**.



The Honorable DeAndrea G. Benjamin
Presiding Judge
Fifth Judicial Circuit

December 22, 2016 at 3:42 o'clock pm
Richland County, South Carolina

Columbia



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2017-000134

Lower Court Case No. 2016-CP-40-07353

Richardson Construction Company, Inc. Appellant,

v.

Richland County, a political subdivision, and
McClam & Associates, Inc., ... Respondents.

SECOND AFFIDAVIT OF ROB PERRY

STATE OF SOUTH CAROLINA)
) SS
COUNTY OF RICHLAND)

AFFIDAVIT OF ROB PERRY

PERSONALLY APPEARED before me, Rob Perry, who being duly sworn, deposes and
says as follows:

1. I am 40 years old, competent to make the statements herein, and have personal
knowledge of the statements herein.

2. I am currently the Director of Transportation for Richland County. I am a registered engineer in the State of South Carolina and I previously worked for the South Carolina Department of Transportation ("SCDOT.")

3. As the Director of Transportation for Richland County, I manage all items related to the Richland County Transportation Improvement Program ("CTIP"), including the management and oversight of program management firms. For the CTIP, I administer contracts and provide in-house project management from design to completion, and I supervise design work as necessary. I plan, organize and implement the program within major organizational policies, reporting program progress to executive-level administration and Council through reports and conferences.

4. I am very familiar with the Shop Road Extension road construction project ("the Shop Road Project") that is the subject of the above captioned lawsuit by Richardson Construction Company, Inc. ("RCC.") I previously submitted an Affidavit in this matter dated December 20, 2016 in Opposition to RCC's Motion for Temporary Injunction.

5. After the trial court judge denied RCC's Motion for Temporary Injunction, Richland County and McClam & Associates, Inc. ("McClam") executed the contract for construction of the Shop Road Project on January 11, 2017 ("the Shop Road Contract.") A true and correct copy of the main contract document of the Shop Road Contract is attached at Exhibit A hereto. (I have not attached exhibits to the Shop Road Contract at Exhibit A as they are voluminous.)

6. McClam per its CPM Schedule began work on the Shop Road Project on February 13, 2017. Per McClam's CPM Schedule, McClam is scheduled for completion activities on or before October 9, 2018, although the Shop Road Contract states a date of

September 16, 2018. (It is possible McClam could finish before the date indicated in the CPM Schedule.) Based on time expended in the CPM Schedule, McClam is approximately 16.5% complete with the Shop Road Project. Based on expenditures to date by the County to McClam (that should include any held retainage), McClam is approximately 15.5% complete with the Shop Road Project. Richland County thus far has paid McClam \$3,428,604.95 through the end of April, 2017. So far on the Shop Road Project, McClam has performed generally the following items of work under the Shop Road Contract: mobilization, construction stakes lines & grades, traffic control, CPM progress schedule, clearing and grubbing, unclassified excavation, muck excavation, permanent construction signage; design, detail of PC floorless culvert, silt fence, and silt basins, among other things.

7. While the County can terminate the Shop Road Contract with McClam for convenience, the County would be exposed to paying McClam possibly substantial incurred costs and termination costs as provided in the Shop Road Contract. Further, the County has already paid McClam \$335,078.38 in mobilization costs of a total estimate by McClam of \$670,156.75 total mobilization costs. RCC's bid contained approximately \$500,000 in mobilization costs in its original bid for the Shop Road Project. Termination by the County of the Shop Road Contract with McClam and then entering into a contract with RCC would require the County to pay significant mobilization costs twice. Also, based on my experience working for SCDOT and the County, I believe the termination of McClam and the necessary mobilization of another contractor to finish the Shop Road Project could delay the Shop Road Project by as long as two months (it typically takes contractors weeks to set up bonding, subcontractor agreements, and pre-construction meetings with utilities and stakeholders, for example.) As

explained in my prior affidavit filed in this matter, such a delay could be a significant detriment to the County.

8. Also, since McClam has performed significant work under the Shop Road Contract already, any original contract bid by another bidder on the Shop Road Project, such as RCC's, would no longer be accurate as the scope of work on the original contract would be changed since McClam has already completed a significant portion of the work under the Shop Road Contract. Thus, there is no way of knowing the exact pricing of the remainder of the work under the existing Shop Road Contract should McClam be terminated by the County and a new contractor, specifically RCC, was inserted to perform the rest of the work.

9. Further, if a new contractor, such as RCC, was brought in to finish the Shop Road Project, it is unknown what the schedule for completion of the Shop Road Project would be with the new contractor. These are some of the reasons why governmental entities do not often terminate road construction contractors, and if such a termination is warranted for cause, then the governmental entity can call on the terminated contractor's bonding company to finish the project on the same time and budget. However, if the County terminates McClam for convenience, then the certainties of a pre-contracted for schedule and amount of compensation are no longer backed by a bonding company, which is not responsible unless the contractor defaults.

10. I understand that RCC claims that the County could be ordered to re-bid the Shop Road Contract by the County's Procurement Review Panel. However, the County cannot re-bid the Shop Road Contract as McClam has completed part of the Shop Road Contract's scope of work. The Shop Road Contract's scope of work is what the bidders, including McClam and Richardson, responded to in the initial bid offering by Richland County. Since a significant part

of that scope of work has already been performed, the same bid package as a practical matter could not be awarded to another contractor. A new bid package with new and more limited scope of work than the original Shop Road bid package would have to be developed for a replacement contractor for McClam. While much of this would be taking out scope of work items already performed by McClam in the new contract to finish the Shop Road Project, there would be no award of the old contract bid package to the new contractor. Thus, there could not be a rebid of the Shop Road Contract as it existed before. Further, there cannot be an award of the Shop Road Contract to a replacement contractor as it existed before since the scope of work on that project has changed.

11. I also understand that RCC has accused McClam of the improper use of the same subcontractor as both a SLBE and a DBE. RCC calls this "stacking." RCC refers to some emails it says it received in response to FOIA requests to the County. However, notwithstanding what some employee of the County may have stated in an email, on all Penny Transportation Program contracts that have been bid, the County has allowed a bidding contractor to use the same subcontractor to fulfill all or part of a bidding contractor's SLBE and DBE requirements that the County may impose in the bid package. The "stacking" argument made by RCC does not exist in practice by the County and I am unaware of any part of the County's Ordinances that prohibits the use of the same subcontractor(s) by a bidding contractor to qualify towards both SLBE and DBE goals. Therefore, the use by McClam on the Shop Road Contract of the same subcontractor for SLBE and DBE work is consistent with prior and subsequent County practice on such projects.

12. Attached at Exhibit B to this Affidavit is a true and correct copy of Addendum 1 to the Shop Road Project's bid package. It is common practice in highway and road construction

contracts for the owner after issuing a Request for Bids to have a pre-bid meeting where comments and questions are taken by potential contractors on that project and many such questions are answered by the owner. That occurred in the Shop Road Project, as there was a Pre-Bid Meeting on August 16, 2016. The records of that meeting (see Section E of Addendum 1) show that Joseph Richardson of RCC attended that this Pre-Bid Meeting.

13. Further, some questions at the Pre-Bid Meeting were transcribed into written form and added to Addendum 1. Addendum 1 is part of the Shop Road Project's bid package and was issued after the Pre-Bid Meeting but before bids were due. Addendum 1, Section D, contains the following Question and Answer:

Q: Can subcontractors be included on both SLBE and DBE Participation Forms and be credited toward both percentages?

A: Yes

Therefore, RCC was on notice at least two times that for the Shop Road Project, the same subcontractor could be used to meet the SLBE and DBE goals in the bid package. RCC to my knowledge never made a complaint to the County about the County's position on use of SLBE and DBE subcontractors before the Shop Road Project bid opening.

FURTHER AFFIANT SAYETH NOT!

Latitia Garnett

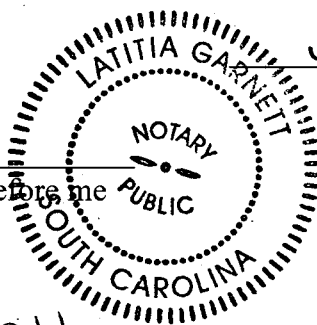
Sworn to and subscribed before me

this 18th day of May, 2017

Latitia Garnett

Notary for South Carolina

My Commission Expires:



Rob Perry

Rob Perry

MY COMMISSION EXPIRES
FEBRUARY 17, 2019

FEBRUARY 11, 2010
MY COMMISSION EXPIRES

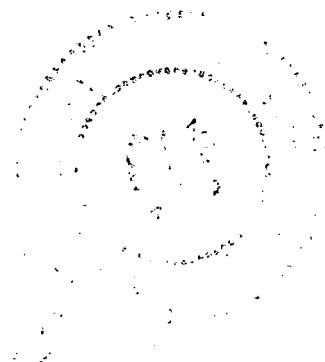


EXHIBIT A

**CONTRACT AGREEMENT
PDT-290-CN-2016**

THIS CONTRACT AGREEMENT is dated as of the 19th day of December in the year 2016 by and between **RICHLAND COUNTY, SOUTH CAROLINA**, (hereinafter called "Owner" or "County") and **McClam & Associates, Inc.** (hereinafter called "Contractor") for all work necessary to complete that project as described in the Richland County, South Carolina Office of Procurement's Invitation to Bid No. PDT-290-IFB-2016 (hereinafter called the "Project"), for which the Work under the Contract Documents may be the whole or only a part.

WITNESSETH:

WHEREAS, the County has sought to contract with an independent contractor for the furnishing of all labor, supervision, materials and equipment required to perform and complete the Project as detailed in the Contract Documents; and

WHEREAS, the County solicited bids for the aforesaid Project that is needed; and

WHEREAS, the Contractor has represented to the County that its staff is qualified to provide the Project work required in this Contract in a professional and timely manner; and

WHEREAS, the County has relied upon the above representations by the Contractor; and

WHEREAS, the County's Transportation Director has recommended that a Contract for aforesaid Project be entered into with the Contractor; and

WHEREAS, the Contractor desires to provide the aforesaid Project work pursuant to the terms and conditions contained below;

NOW, THEREFORE, in consideration of these promises and of the mutual covenants herein set forth, it is agreed by and between the Parties hereto as follows:

I. Definitions

Unless the context clearly requires otherwise, all capitalized terms used in this Contract shall have the meanings set forth in this Section One or elsewhere in the body of this Contract Form.

A. "Change Directive" means a written method for directing the Contractor to perform additional Work to the Contract when time and/or cost of the Work is not in agreement between the Owner and Contractor performing the Work.

B. "Change Order" means a mutually agreed upon written change in the Contract Time or Contract Scope of Work between the Contractor and the County which is presumed to include all time and compensation to which the Contractor may be entitled for any change in the Work.

C. "Claim" is defined in Section VIII of this Contract Document.

- D. "Commencement Date" means the date specified in the Notice to Proceed as the date on which the Contractor shall begin providing the Work.
- E. "Contract" or "Agreement" are used interchangeably and each mean this Contract and include all Contract Documents.
- F. "Contract Documents" means all exhibits, attachments, specifications, and any addenda to this Contract that are incorporated by reference into this Contract and which are referenced at Exhibit A, the County's "Invitation for Bids," and all other exhibits listed in Section XIII of this Contract Form.
- G. "Contract Form" shall mean this written agreement document executed by the County and by the Contractor and shall not include exhibits and other Contract Documents.
- H. "Contract Price" means the price listed in the Contract for service to be received in return.
- I. "Contract Time" means the time for the Contractor to achieve Final Completion as provided in the Schedule.
- J. "Contractor" has the meaning assigned above to that term, and includes that company's agents, Employees and representatives.
- K. "Contract Quantities" means the estimated quantities listed on the bid form.
- L. "County" means County of Richland, a public body politic and corporate and political subdivision of the State of South Carolina, or the Richland PDT.
- M. "Day" means "calendar day." The term "calendar day" shall mean every day shown on the calendar. Calendar days will be consecutively counted regardless of weather, weekends, holidays, suspensions of Contractor's operations, delays or other events as described herein.
- N. The "Engineer" is Richland PDT.
- O. "Final Completion" is the date when the Project is fully completed, including all punch-list items, and the Engineer certifies that the Contractor has earned Final Payment. Final Completion may be used interchangeably with "Full Contract Term."
- P. "Final Payment" means the last payment from the County to the Contractor of the entire unpaid balance of the Contract sum as adjusted by any approved Change Orders or Change Directives.
- Q. "Notice to Proceed" means the written notice to be given by the County to the Contractor to commence Work under this Contract.
- R. "Parties" shall mean Contractor and Owner.

- S. "Plans and Specifications" shall together mean the plans, drawings, and specifications for the Work found in Exhibit A. "Plans" shall mean the plans for the Work found in Exhibit A. "Specifications" shall mean the specifications for the Work found in Exhibit A. "Drawings" shall mean the drawings for the Work found in Exhibit A.
- T. "PDT Procurement Manager" means the Procurement & Contracting Manager of the Richland PDT.
- U. "Procurement Director" means the Director for Richland County Procurement Office.
- V. "Project" means the project for which the Contractor has agreed to perform the "Work."
- W. "Project Manager" shall be the representative designated by the Richland PDT to serve as Project Manager for the Work.
- X. "Project Site" means the site or sites where the Work is performed. This term is used interchangeably with "Work Site."
- Y. "Richland PDT" means Richland PDT, A Joint Venture, which has contracted with the County to perform certain duties for the County in association with the Richland County Penny Transportation Program.
- Z. "SCDOT" or "the Department" shall mean the South Carolina Department of Transportation.
- AA. "Schedule" means the time for the Contractor to achieve Final Completion as provided in the schedule agreed to between the Parties as provided in Section VI.A.
- BB. "Standard Specifications" shall mean the latest edition of the SCDOT Standard Specifications for Road and Highway Construction published as of the Effective Date of this Agreement, including any additions, addendums, and County supplemental specifications.
- CC. "Substantial Completion" or "Substantially Complete" shall mean that date when the Engineer certifies that the Work is substantially complete as defined in the Contract Documents.
- DD. "Unit Price Work" is work performed or to be performed by the Contractor based initially on estimated quantities listed by item (or Construction Item) in the Contract Documents.
- EE. "Work" or "Scope of Work" means the work specified and described in Exhibit A, the County's Invitation for Bids on this Project and includes, but is not limited to, materials, workmanship, manufacture and fabrication of components, all labor, supervision, materials, equipment, tools, machinery, transportation, and supplies necessary

for the completion of the work as described in the Plans and Specifications for the Project and required under this Agreement to complete the Project.

FF. "Work Site" means the "Project Site" and is used interchangeably with that term.

II. The Project

A. Scope of the Work

1. The Contractor agrees to perform the Work required under this Agreement to complete the Project.
2. The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work and the general and local conditions which can affect the Work or the cost thereof. Any failure by the Contractor to do so will not relieve it from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understandings or representations concerning conditions or anything related to this Contract, made by any of its officers or agents prior to the execution of this Contract, unless such understandings or representations by the County are expressly stated in this Contract.
3. The Contractor has visited and inspected the Work Site and accepts the conditions at the Work Site as they eventually may be found to exist and warrants and represents that this Contract can and will be performed under such conditions, and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the Contractor's own cost and expense, anything in this Contract to the contrary notwithstanding.
4. The Contractor shall and will, in good workmanlike manner, do and perform all Work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the Work required by this Contract, within the time herein specified, in accordance with the Plans and Plan Drawings covered by the Contract and any and all supplemental Plans and Drawings, and in accordance with the directions of the Engineer as given from time to time during the progress of the Work. It shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract Documents, and shall do, carry on, and complete the entire Work to the satisfaction of the Engineer and the County.
5. Work shall begin as indicated in the Notice to Proceed and be completed as indicated in Section III after the issuance of the Notice to Proceed, absent any extensions as allowed under this Agreement.

B. Contractor's Relationship with County.

1. The Contractor shall perform the Work in a competent and timely manner, and with respect to each type of work performed by Contractor as part of the Work, the Contractor shall use the highest degree of reasonable care and skill ordinarily exercised by other similar contractors performing services and obligations of a similar nature, and in accord with all applicable laws, rules, and regulations.

2. The Contractor in its performance of the Work is an independent contractor and shall not be deemed an employee of the County for any purpose whatsoever. The Contractor shall not hold itself or any of its subcontractors out as an employee of the County and shall have no power or authority to bind or obligate the County. The Contractor shall obtain and maintain all licenses and permits required by law for performance of this Agreement by it or its employees, agents, and servants and shall be responsible for the Contractor's subcontractors doing the same. The Contractor shall be liable for and pay all taxes required by local, State, or Federal governments, including but not limited to Social Security, workers' compensation, Employment Security, and any other taxes and licenses or insurance premiums required by law. No employee benefits of any kind shall be paid by the County to or for the benefit of the Contractor or its employees, agents, or servants by reason of this Agreement.

C. Engineer's Authority.

1. The Engineer shall give all orders and directions contemplated under the Contract Documents relative to the execution of the Work. The Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under the construction thereof. The Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any questions shall arise between the parties hereto relative to said Contract Documents, the determination or decision of the Engineer shall be a condition precedent to the right of the Contractor to receive any money or for Work under this Agreement affected in any manner or to any extent by such question.

2. The Engineer shall decide the meaning and intent of any portion of the Specifications and any Plan or Drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to the Work which may arise between the Contractor under this Contract and other contractors performing work for the County shall be adjusted and determined by the Engineer.

3. Inspectors, employed by the Engineer or by the County, shall be authorized to inspect all work done and materials furnished. Such inspection may extend to all or part of the Work and to the preparation or manufacture of the materials to be used. An inspector or inspectors will be stationed on site and will report to the Engineer as to the progress of the Work and the manner in which it is

being performed; also to report whenever it appears that the materials furnished and Work performed by the Contractor fail to fulfill the requirements of the Specifications and Contract Documents; and to call to the attention of the Contractor any such failure and other default; but no inspection nor any failure to inspect, at any time or place, however, shall relieve the Contractor from any obligation to perform all of the Work strictly in accordance with the requirements of the Contract Documents. In case of dispute arising between the Contractor and any inspector as to the materials furnished or the manner of performing the Work, the inspector shall have the authority to reject materials or suspend the Work until the question at issue can be referred to and decided by the Engineer.

4. The inspectors shall perform such other duties as are assigned to them. They shall not be authorized to revoke, alter, enlarge, or release any requirements of these Specifications, nor to approve or accept any portion of the Work, nor to issue instructions contrary to the Plans and Specifications. Inspectors shall in no case act as foremen to perform other duties for the Contractor, nor interfere with the management of the Work by the latter. Any instructions which the inspectors may give the Contractor shall in no way be construed as binding the Engineer or the County in any way, nor releasing the Contractor from fulfillment of the terms of the Agreement.

5. The County at any time and in its sole discretion may name a different Engineer than the one stated herein by providing notice of same in writing to the Contractor.

III. Term

- A. The Contractor shall not commence Work prior to the issuance of a Notice to Proceed, nor later than ten (10) Days after issuance of the Notice to Proceed.
- B. The Contractor shall achieve Substantial Completion of the Project by **September 16, 2018**, absent any extensions as provided for herein ("the Substantial Completion).
- C. The Contractor shall achieve Final Completion of the Project within thirty (30) Days after the Work is Substantially Complete.

IV. Contract Price

A. Contract Price.

1. The Contractor shall perform the Work, beginning on the Commencement Date, and shall be paid for Work performed, including all labor and items necessary to accomplish and complete the Work, in accordance with all terms and conditions as stated in the Contract Documents, for the total all inclusive price of Twenty Four Million Five Hundred Thirty Nine Thousand two Hundred eighty two Dollars and ninety five cents (\$24,539,282.95) ("the Contract

Price.") Actual payments will be based on verified quantities actually incorporated in the Work as priced in Contractor's Bid or as lump sum items.

2. The amount as specified may be increased or decreased by the County through the issuance of a Change Order, Change Directive, or Additional Work. Any prices specified in Contractor's Bid or any such Change Order will remain firm for the term of this Contract and any Amendment thereto.

B. Payments.

1. Invoicing.

a) The Contractor shall submit its monthly invoices itemizing all labor and materials for which payment is requested such that they are received by the Project Manager for the County no later than 5:00 PM on the last business day of each month. Assuming the Project Manager and the County accept an invoice and the invoice does not require correction, the invoice shall be paid no later than thirty (30) Days after its approval by the County.

b) The County shall retain ten (10%) percent from each payment as retainage. Such retainage is due and payable to the Contractor upon Final Completion and Acceptance of the Project by the County. When the Work reaches fifty (50%) percent complete, the Contractor may request, in writing, that no further retainage be withheld on future payments from the County for the remainder of the Project, provided that the Contractor is on schedule and there are no known unpaid bills for Work incorporated into the Project. The County in its sole discretion may determine whether or not to freeze or otherwise reduce retainage if so requested by the Contractor.

c) An invoice improperly not paid by the County shall earn interest at the rate of one (1%) percent per annum from the due date of the invoice.

d) The Contractor shall submit invoices in original form complete with all supporting documentation, as necessary, summarized in a format directed by the County, and shall reference the Project number.

e) The Contractor's invoices shall be clearly marked with Project number.

f) The Contractor's invoices shall indicate the time period during which the Work was performed for which the invoice is submitted.

g) The Contractor shall sign each invoice summary certifying that all Work covered by the invoice is complete and that the invoice is correct and authentic.

h) The Contractor shall prepare all invoices in a form satisfactory to and approved by the County.

i) At the County's request, the Contractor shall furnish evidence that all labor and materials furnished and equipment used during the period covered by any invoice have been paid for in full and that the Work is not subject to liens or claims on account thereof.

2. County Right to Decline Invoice Approval.

a) The County may decline to approve the Contractor's invoices, in whole or in part, to the extent necessary to protect the County from loss because of:

b) defective Work not remedied,

c) third party claims filed or reasonable evidence indicating probable filing of such claims (including claims of lien),

d) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment,

e) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price,

f) damage to the County, or another contractor performing work for the County,

g) failure to carry out the Work in accordance with the Contract Documents,

h) the withdrawal or suspension, or threatened withdrawal or suspension of governmental permits or approvals due to the negligent actions or default of the Contractor,

i) failure to comply with the Contract Documents, or

j) any breach by Contractor of the terms and conditions of the Agreement.

3. Payment Deductions and Withholding.

a) When any payment is withheld pursuant to this Section, the grounds for such withholding shall be provided to the Contractor. When the grounds for nonpayment are removed, payment shall be made for amounts withheld because of them, within thirty (30) Days after the last ground for nonpayment is removed, provided all other conditions precedent to payment have been satisfied.

b) The County shall not be deemed to be in breach of this Agreement by reason of the withholding of any payment pursuant to any provision of the Contract Documents.

C. Final Payment

1. Application for Payment:

a) After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections and Punch List Items identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents, and other documents, Contractor may make application for Final Payment following the procedure for progress payments.

b) This "Final Application for Payment" shall be accompanied (except as previously delivered) by:

- (1) all documentation called for in the Contract Documents;
- (2) consent of Contractor's surety to Final Payment;
- (3) a list of all Claims that Contractor believes are unsettled; and
- (4) complete and legally effective releases or waivers (satisfactory to the County) of all claims of Contractor's subcontractors and others in the chain of privity below Contractor (a "Subcontractor") noticed or filed in connection with the Work.

c) In lieu of the releases or waivers of Subcontractor's claims and if allowed and approved by the County, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a lien or claim by a Subcontractor could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which County might in any way be responsible, or which might in any way result in liens or other burdens on County's property, have been paid or otherwise satisfied. If any Subcontractor or supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to County to indemnify County against any damages or claim against the County arising out of the Work of the Contractor's Subcontractors.

2. Engineer's Review of Application and Acceptance:

a) If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the Final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten (10) Days after receipt of the Final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Final Application for Payment to County for payment. At the same time Engineer will also give written notice to County and Contractor that the Work is acceptable. Otherwise, Engineer will return the Final Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend Final Payment, in which case Contractor shall make the necessary corrections and resubmit the Final Application for Payment.

3. Payment Becomes Due:

a) Thirty (30) Days after the presentation to County of the Final Application for Payment and accompanying documentation, the amount recommended by Engineer, including retainage held back by the County, but less any sum County is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by County to Contractor.

b) Contractor's acceptance of Final Payment under this Contract from the County is a waiver by Contractor of any and all Claims against the County.

D. Estimated Quantities.

1. The County has endeavored to estimate the proposed quantities as accurately as possible using the latest information available for the Project. Within fifteen (15) Days after the issuance of the Notice to Proceed, the Contractor shall provide written verification of the quantities. Failure to do so shall mean the Contractor's acceptance of the quantities.

2. In addition, it will be the Contractor's responsibility to inform the Engineer/Inspector in writing when any Unit Price Work item (excluding lump sum items) is within ninety (90%) percent of the proposed quantity.

3. To affect the increase, deletion, and/or substitution, a "no cost" or "cost" Change Order signed by the Contractor must be submitted to the Procurement Director by the Engineer. No work shall be performed prior to approval of such Change Order.

E. Contingent Items.

1. "Construction Item(s)" in the Invitation to Bid that may be identified as being contingent on the "Summary of Quantities" sheets in the Plans, in the column headed "Contingent" and/or listed herein are provided in the Contract for use as directed by the Engineer and are included as part of Contractor's Bid unless otherwise specified. The quantities for these Contingent Items may be increased or decreased by the County without any adjustment to the Contract unit price bid or the Contingent Items may be deleted entirely from the Contract by the County through the Engineer at the County's sole discretion and at any time. The Contractor shall not submit a Claim against the County for any adjustment to the Contract unit price bid should the Contingent Items be increased, decreased or eliminated entirely.

2. Payment for any Contingent Items used will be made on the basis of the quantities as actually measured as specified in the Specifications, Supplement to the Specifications, Interim Specifications or Addenda, Plans or Special Provisions that are part of the Invitation to Bid.

F. Adjustment of Quantities.

1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

2. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer.

3. Each unit price for a Unit Price Item will be deemed to include not only all direct labor and material cost for such item, but also an amount considered by Contractor to be adequate to cover all of Contractor's other direct and indirect costs, including but not limited to overhead and profit for each separately identified item.

4. With regard to Unit Price Work items in the Contract Price, the County reserves the right, at any time, to make increases or decreases in quantities and alterations to the Plans or character of the Work, including, but not limited to, alterations in the grade or alignment of the roadway or structure(s) or both, as may be found necessary or desirable by the County. Such alterations are neither a waiver of any conditions of the Contract, nor a release of the Surety. The Contractor shall treat altered Work as if it were part of the original Contract Documents.

5. The County has the unilateral right to increase or decrease the quantity of any contract item. If the quantity increase or decrease with respect to a Unit Price Item is less than twenty-five (25%) percent of the original quantity estimated for such item by the County in Exhibit A, there will be no change in the item's unit price stated by the Contractor in Exhibit B. If the quantity of a unit increases twenty-five (25%) percent or more from the estimated amount for that item in Exhibit A, then the County shall determine if there should be a unit price adjustment because of the increases or decreases, provided that the Contractor makes a proper Claim.

6. If the altered or added Unit Price Work is of sufficient magnitude as to require additional time in which to complete the Project, the Contractor shall make a Claim for such additional time, and such time adjustment will be made at the determination of the County, if demonstrated by the Contractor that an extension in Contract Time is appropriate as provided for such a Claim.

7. An increase or decrease in the quantities of Unit Price Work in no way invalidates the Contractor's unit bid price in Exhibit B or Contract Price except as stated in this Section IV, Subsection F. The Contractor shall make no Claim for any loss of anticipated profits or for any other type of damages because of any such alteration or because of any variation between the approximate quantities in Exhibit A and the actual quantities of Work performed. Contractor's sole remedy for an increase in quantities is provided in this Section IV, Subsection F.

8. Contractor may make a Claim for an adjustment in the Contract Price associated with a change in quantities only if:

a) the quantity of any item (including sub-items of a respective item) of Unit Price Work actually performed by Contractor is more than twenty-five (25%) percent higher from the estimated quantity of such item (including its respective sub-items) indicated in Exhibit A; and

b) there is no corresponding adjustment with respect to any other item of Work that would offset the monetary amount of such increase; and

c) Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense and the Parties are unable to agree as to the amount of any such increase; and

d) Contractor timely makes a Claim for such adjustment and documents the same in accordance with the provisions for making a Claim in this Agreement.

9. County may seek an adjustment in the Contract Price for any unit item if:

a) the quantity of any item (including sub-items) of Unit Price Work actually performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

b) County believes that it is entitled to an increase or decrease in Contract Price as a result of the changed quantities and the Parties are unable to agree as to the amount of any such increase or decrease.

10. The County incorporates herein by reference thereto SCDOT Standard Specification 104.2 only to the extent Contractor's entitlement to compensation for any change in quantity of Unit Price Work, any alteration of Plans, or changes in the character of the Work is not expressly stated in this Contract Form.

G. Out of Scope "Additional" Work.

1. At the request of County, Contractor shall provide other work related to the Project that is not within the scope of the Work provided for in this Agreement ("Additional Work"). No existing Unit Price Work item may be considered to be Additional Work.

2. Scope, costs and fees for Additional Work shall be determined prior to the Contractor starting such Additional Work by either: (1) mutually agreed to in writing as an Addendum or Change Order to this Agreement; (2) or by Change Directive by the County using the formula for compensation allowed for a Claim by the Contractor.

3. The County also may order Additional Work from the Contractor that is not directly specified within the scope of this Agreement or any Exhibit thereto.

4. The County agrees to pay the Contractor for the performance of the Additional Work pursuant to this Agreement in accordance with all terms and conditions as stated herein. If the compensation for the Additional Work is not agreed to by the County and the Contractor, compensation for the Additional Work shall be determined as would be compensation for a Claim by the Contractor as defined in this Agreement.

5. All Additional Work shall be documented by Contractor in a form with sufficient information suitable to the County. The Contractor should be prepared to provide evidence of all charges for Additional Work commensurate with the standard American Institute of Architects Cost-Plus Contract forms.

6. If the Additional Work is not calculated as a Claim at the County's option, invoices for Rate Schedule Work shall be prepared and submitted as follows: Invoices for labor shall indicate the employee's name, classification, and straight time and approved overtime hours.

7. Compensation for Additional Work that is established as an "hourly" "not-to-exceed" amount" will be paid at the billed or "not-to-exceed" amount, whichever is less. If fees and costs do not reach the limit of the "not-to-exceed" amount, the Contractor will not be entitled to receive the remainder of the "not-to-exceed" amount except as otherwise stated herein.

8. The Contractor shall be limited to the lesser of compensation as an Additional Work or compensation as a Claim in the event of a dispute between the Contractor and the County as to the amount of compensation due for any Work performed by the Contractor under this Agreement, and as to the amount of compensation due to Contractor for any work, labor, or equipment provided by the Contractor that conferred a benefit to the County in some way outside of any provision of this Agreement.

V. Inspection and Acceptance

A. All Work (which term includes, but is not restricted to materials, workmanship, manufacture and fabrication of components) shall be subject to inspection and test by the County and/or the SCDOT at all reasonable times and places prior to acceptance. Any such inspection and test is for the sole benefit of the County and/or the SCDOT and shall not relieve the Contractor of the responsibility of providing quality supplies to comply with the Contract requirements. No inspection or test by the County and/or the SCDOT shall be construed as constituting or implying acceptance of Work. Inspection or test shall not relieve the Contractor of the responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights (including warranty rights) of the County and/or the SCDOT after acceptance of the completed Work. The Contractor shall be responsible for his own Quality Control of the Work. The County will be responsible for payment of Independent Testing Laboratories Quality Control required in the Scope of Work.

B. No review by the County shall be construed as constituting or implying acceptance. Such review shall not relieve the Contractor of the responsibility to correctly perform the Work, nor shall it in any way affect the continuing rights (including warranty rights) of the County after acceptance of the completed Work.

C. The Contractor shall, without charge, correct or re-perform any Work found by the County not to conform to this Agreement's requirements, unless the County consents in writing to accept such Work with an appropriate adjustment in the Contract Price. The Contractor shall promptly remove rejected material from the Work Site.

D. If the Contractor fails to correct or re-perform any Work not found to conform to the Contract requirements within a reasonable period of time after written notice to the Contractor, the County shall have the right to self-perform that Work and charge back the cost to correct or re-perform that Work to the Contractor.

E. Final acceptance of the completed Project will be upon Final Payment to the Contractor and final written acceptance by the County. The workmanship and material warranty period will begin upon this final written acceptance.

VI. Contract Schedule and Time

A. Time for Completion.

1. Time is of the essence for the Contractor's performance of the Work.
2. It is hereby understood and mutually agreed, by and between the Contractor and County, that the date of beginning and the time for completion as specified in the Contract of work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work embraced in this Contract shall be commenced on a date to be specified in the Notice to Proceed and shall proceed based on the Schedule assigned to the Work in the Contract Documents.
3. The proposed Schedule shall be provided by the Contractor at the Pre-Construction Meeting, or at such earlier time as requested by the County or Engineer, and the County and the Contractor shall agree upon the Schedule. Upon the agreement by the County and the Contractor on the Schedule, the County and the Contractor shall each through their designated representatives sign a printed version of the Schedule and that Schedule shall be considered to be a part of the Contract Documents at Exhibit E. Any change to the Schedule thereafter that affects the Date of Substantial Completion and/or date of Final Completion shall be made by a Change Order and a written copy of the amended Schedule shall be attached to the fully executed Change Order.
4. The Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at a rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the County, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climate range and usual industrial conditions prevailing in this locality.
5. The Contractor agrees to punctually and diligently perform all parts of the Work at the time scheduled by the Contractor which shall be subject to change by the County as deemed necessary or convenient to the overall progress of the Project. In furtherance of the Schedule, the Contractor agrees that the Contractor will keep itself continually informed of the progress of the job and will, upon its own initiative, confer with the County and the Project Manager so as to plan its Work in coordinated sequence with the Work of the County and of others and so as to be able to expeditiously undertake and perform the Work at the time most beneficial to the entire Project.
6. The Contractor will be liable for any loss, costs, or damages sustained by the County for delays in performing the Work hereunder, other than delays for which the Contractor may be granted an extension of time pursuant to the provisions of the Agreement.

7. If, in the reasonable opinion of the County, the Contractor is not complying with the Schedule or will not meet the date of Final Completion, the County may require the Contractor to provide additional manpower, or work overtime, or expedite materials, and the Contractor shall take the necessary steps to comply, all without increase in Contract Price.

B. Liquidated Damages.

1. If the Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the County, then the Contractor does hereby agree, as part consideration for the awarding of this Contract, to pay the County the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every Day that Contractor shall be in default after the time stipulated in the Contract for completing the Work.

2. The said amount is fixed and agreed upon by and between the Contractor and the County because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the County would in such event sustain, and said amount is agreed to be the amount of damages which the County would sustain and said amount shall be retained from time to time by the County from payments of Contractor's invoices.

3. Any adjustment of the Contract time for completion of the Work granted in accordance with the provisions of this Contract will be considered in the assessment of liquidated damages.

4. Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the County of any of its rights under this Contract.

5. County and Contractor agree to liquidated damages for each Day of delay (but not as a penalty) beyond the Substantial Completion Date as follows:

Schedule of Liquidated Damages for Each Day of Overrun in Substantial Completion Date		
Original Contract Price		Daily Charge per Calendar Day at Fixed Rate
From More Than	To and Including	
\$0	\$50,000	\$100.00
\$50,000	\$100,000	\$200.00
\$100,000	\$500,000	\$400.00
\$500,000	\$1,000,000	\$600.00
\$1,000,000	\$2,000,000	\$800.00
\$2,000,000	\$5,000,000	\$1,200.00
\$5,000,000	\$10,000,000	\$1,400.00
\$10,000,000	and greater	\$1,800.00

Additional provisions concerning the Contractor's liability in certain specific events or circumstances are set forth throughout the Scope of Work. By signing this Contract, the Contractor expressly agrees to the terms thereof.

6. **Final Completion Liquidated Damages.** After the Contractor has achieved Substantial Completion, the Contractor shall achieve Final Completion in the time stated in the Contract Documents for Final Completion after Substantial Completion. Should the Contractor fail to achieve Final Completion within the time stated in the Contract Documents for Final Completion after Substantial Completion, the County shall be entitled to liquidated damages for every Day of delay after Contractor's failure to achieve Final Completion. The amount of liquidated damages for each Day after the period by which the Contract Documents require Final Completion to occur after Substantial Completion is ten (10%) percent of the daily liquidated damages amounts provided for in the above Schedule of Liquidated Damages for each Day of overrun in Substantial Completion, but shall in no case be less than One Hundred (\$100.00) Dollars and no/cents per Day.

C. **Substantial Completion.** When Contractor considers the entire Work ready for its intended use Contractor shall notify County and Engineer in writing that the entire Work is Substantially Complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

1. Substantial Completion shall be no sooner than:

- a) All construction activities for the Project are complete;
- b) No Unit Price Work items that would require a lane closure are unfinished; and
- c) All safety features are installed, function and are maintained properly; or
- d) The date as determined by the Engineer using the criteria in the Standard Specifications, whichever is more onerous on the Contractor in the sole opinion of the Engineer.

2. The Contractor shall provide the Engineer and Project Manager with written notice at least seven (7) Days prior to reaching Substantial Completion that the Contractor expects to be Substantially Complete in seven (7) Days.

3. Promptly after Contractor's notification, County, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

4. If Engineer considers the Work Substantially Complete, Engineer will deliver to County a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of punch-list items (the "Punch List Items") to be completed or corrected before Final Completion. County shall have seven (7) Days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list of Punch List Items. If, after considering such objections, Engineer concludes that the Work is not Substantially Complete, Engineer will, within seven (7) Days after submission of the tentative certificate to County, notify Contractor in writing, stating the reasons therefor. If, after consideration of County's objections, Engineer considers the Work Substantially Complete, Engineer will, within said seven (7) Days, execute and deliver to County and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of Punch List Items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from County.

5. After receipt of the Punch List Items, the Contractor shall have thirty (30) Days to complete the Punch List Items and achieve Final Completion.

6. Upon Contractor's completion of the Punch List Items and the Engineer's approval of such Work, the Engineer shall certify Final Completion.

D. Claims for Additional Time and Related Compensation by Contractor.

1. The Contractor may make a Claim for extensions of time and compensation for the Work only under the following circumstances: if the progress of the Contractor's Work in the critical path of the Schedule is delayed at any time in the commencement or progress of the Work by any event constituting an intentional act or neglect of the County; or by other causes that the County and Contractor may subsequently agree in writing may justify delay ("Excused Delay"), then the Contractor shall be entitled to additional compensation for its actual costs incurred as provided in this Agreement because of the Excused Delay, provided that the Contractor provided written notice of such Excused Delay and the circumstances surrounding it within seven (7) Days after Contractor knows or should know that any event or condition will adversely impact its Work in the critical path, as a condition precedent for any such event being an Excused Delay. The Contractor shall follow the procedures in this Agreement for making a Claim.

2. Weather Delays. "Weather Delays" are generally referred to as "rain days," and shall apply to Days when the Work cannot be undertaken due to adverse weather conditions. Time for hot, cold, and/or windy conditions have been allowed for in the allocated date of Substantial Completion. An average number of rain days are included in the Substantial Completion date determination. This was determined by the following method: Using the National Oceanic and Atmospheric Administration (NOAA) monthly reports, all days in

each month in which rainfall in any part of the day exceeded .10 inch has been calculated and averaged. These averages are as follows: January 8; February 6; March 7; April 5; May 6; June 7; July 8; August 7; September 5; October 4; November 4; December 6. Rain delays, therefore, will only be considered when the number of days in any month in which rainfall, as recorded by the weather bureau as .10 inch or greater, exceeds the number of days shown. Notwithstanding the days shown on the monthly report, time extensions for rain days will only be considered based upon actual conditions at the Project Site. If, in the opinion of the Contractor, adverse weather causes unsuitable conditions that prevent the Contractor from proceeding with the Work at any time during the term of this Contract, the Contractor shall submit written notification to the County within twenty-four (24) hours of the onset of said conditions. Notwithstanding the requirements of Section VIII, the Contractor shall make a Claim for time extension due to rain delays within seven (7) Days of issuance of the NOAA monthly report for the month in which the delay is claimed.

3. Force Majeure. It is further understood that the Contractor shall not be entitled to any damages or compensation from the County or be reimbursed for any losses on account of any delays resulting from any of the foregoing reasons or, without limitation, any reason for delay not under the direct or indirect control of the County, unless agreed to in writing by the County.

a) If the Contractor is delayed at any time in the progress of the Work by causes beyond the control and without the fault or negligence of the Contractor, the Contractor will bear its own additional costs and seek no additional compensation from the County for the Work. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the governmental entities other than the County, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) Weather Delays (any of which are a "Force Majeure Event").

b) Therefore, extensions of time shall be the Contractor's sole remedy for any and all Force Majeure Events. No payment or compensation of any kind shall be made to the Contractor for damages because of a Force Majeure Event, whether such Force Majeure Event be avoidable or unavoidable. The Contractor expressly agrees not to make, and hereby waives any Claim for damages on account of any Force Majeure Event for any cause whatsoever, including but not limited to the aforesaid causes and agrees that the Contractor's sole right and remedy in the case of any delay, obstruction, or hindrance, shall be an extension of the time fixed for completion of the Contract.

c) Without limitation, the County's exercise of its rights under the Section VII, regardless of the extent or number of such changes, shall not under any circumstances be construed as compensable, other than through an extension of time, it being acknowledged that the Contract amount

includes and anticipates any and all delays, hindrances, or obstructions whatsoever from any cause, whether such be avoidable or unavoidable.

4. If Contractor fails to comply with this Section, Contractor shall be deemed to have waived any Claim arising out of or resulting from any such delay, without relieving Contractor of its obligations hereunder.

5. In the event of any Force Majeure Event, the Contractor and the County shall coordinate and cooperate to exchange any information and/or documentation related to any such Force Majeure Event in a manner that minimizes any adverse effect on the Work.

E. "No Excuse Incentive" Completion Date and Waiver of Contractor Claims.

1. This Section VI, Subsection E "No Excuse Incentive" Clause Does _____ Does Not X apply to this Agreement. (Check and Initial Applicable Box.)

2. The County will pay the Contractor a "No Excuse Incentive" if the Work in the Contract is Substantially Complete prior to the "No Excuse Incentive Completion Date," which is the last Day of the Full Contract Term as defined in Section III, and in compliance with the conditions set forth below.

3. As a condition precedent to the Contractor's right to request the No Excuse Incentive, the Contractor may not have made a Claim for an extension of the Schedule or requested an extension of the Schedule for any reason after the Schedule has become part of the Contract Documents.

4. The below paragraphs in this "No Excuse Incentive" Section of this Agreement apply only to the Contractor's eligibility for the No Excuse Incentive and DO NOT APPLY TO ANY OTHER SECTION OF THIS AGREEMENT REGARDING TIME EXTENSIONS, DELAYS, CHANGE ORDERS, OR CLAIMS.

5. When work is deemed Substantially Complete by the Engineer, the Contractor will be paid an incentive based on the values shown in the table below, provided that the Contractor meets the criteria for the incentive:

No Excuse Daily Incentive	Maximum payout of:
\$1,500.00 for each Day Substantial Completion achieved prior to Full Contract Term	\$45,000.00

6. The incentive will be accounted for as a lump sum addition on the Final Payment.

7. The County's intent in including this incentive is to ensure Substantial Completion of the Project by the "No Excuse Incentive Completion Date."

8. The Parties anticipate that delays may be caused by or arise from any number of events during the course of the Contract, including, but not limited to, Work performed, Work deleted, Change Orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the Project to make it functional, weather, weekends, holidays, suspensions of Contractor's operations, or other such events, forces or factors sometimes experienced in highway construction work. SUCH DELAYS OR EVENTS AND THEIR POTENTIAL IMPACTS ON PERFORMANCE BY THE CONTRACTOR ARE SPECIFICALLY CONTEMPLATED AND ACKNOWLEDGED BY THE PARTIES IN ENTERING INTO THIS CONTRACT, AND SHALL NOT EXTEND THE "NO EXCUSE INCENTIVE" COMPLETION DATE SET FORTH ABOVE. Further, any and all costs or impacts whatsoever incurred by the Contractor in accelerating the Contractor's Work to overcome or absorb such delays or events in an effort to complete the Contract by the "No Excuse Incentive" Completion Date, regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance and no Claims can be filed by the Contractor for such costs or impacts if the Contractor intends to request payment of the incentive.

9. In the event of a catastrophic event (i.e., hurricane or a declared state of emergency) directly and substantially affecting the Contractor's operations on the Contract, the Contractor and the County shall agree as to the number of Days to extend the "No Excuse Incentive" Completion Date.

10. In the event the Contractor and County are unable to agree to the number of Days to extend the "No Excuse Incentive" Completion Date, the County shall unilaterally determine the number of Days to extend the "No Excuse Incentive" Completion Date reasonably necessary and due solely to such catastrophic event and the Contractor shall have no right whatsoever to contest such determination.

11. The Contractor shall have no rights under the Contract to make any Claim arising out of this "No Excuse Incentive" provision except as is expressly set forth in this Section.

12. As conditions precedent to the Contractor's entitlement to any "No Excuse Incentive" the Contractor must:

- a) Obtain Substantial Completion acceptance by the County, as determined by the Engineer on or before the "No Excuse Incentive" Completion Date.

b) Notify the County in writing, within thirty (30) Days of the final acceptance of the Work by the County, that the Contractor elects to be paid the "No Excuse Incentive" which the Contractor is eligible to be paid based on the actual final acceptance date. SUCH WRITTEN NOTICE SHALL CONSTITUTE A FULL AND COMPLETE WAIVER, RELEASE AND ACKNOWLEDGMENT OF SATISFACTION BY THE CONTRACTOR OF ANY AND ALL CLAIMS, CAUSES OF ACTION, ISSUES, DEMANDS, DISPUTES, MATTERS OR CONTROVERSIES, OF ANY NATURE OR KIND WHATSOEVER, KNOWN OR UNKNOWN, AGAINST THE COUNTY, ITS EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, CONSULTANTS, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS AND REPRESENTATIVES, THE CONTRACTOR HAS OR MAY HAVE AS TO WORK PERFORMED, WORK DELETED, CHANGE ORDERS, SUPPLEMENTAL AGREEMENTS, DELAYS, DISRUPTIONS, DIFFERING SITE CONDITIONS, UTILITY CONFLICTS, DESIGN CHANGES OR DEFECTS, TIME EXTENSIONS, EXTRA WORK, RIGHT OF WAY ISSUES, PERMITTING ISSUES, ACTIONS OF SUPPLIERS OR SUBCONTRACTORS OR OTHER CONTRACTORS, ACTIONS BY THIRD PARTIES, SHOP DRAWING APPROVAL PROCESS DELAYS, EXPANSION OF THE PHYSICAL LIMITS OF THE PROJECT TO MAKE IT FUNCTIONAL, WEATHER, WEEKENDS, HOLIDAYS, SUSPENSIONS OF CONTRACTOR'S OPERATIONS, EXTENDED OR UNABSORBED HOME OFFICE OR JOB SITE OVERHEAD, LUMP SUM MAINTENANCE OF TRAFFIC ADJUSTMENTS, LOST PROFITS, PRIME MARK-UP ON SUBCONTRACTOR WORK, ACCELERATION COSTS, ANY AND ALL DIRECT AND INDIRECT COSTS, ANY OTHER ADVERSE IMPACTS, EVENTS, CONDITIONS, CIRCUMSTANCES OR POTENTIAL DAMAGES, ON OR PERTAINING TO, OR AS TO OR ARISING OUT OF THE CONTRACT. THIS WAIVER, RELEASE AND ACKNOWLEDGMENT OF SATISFACTION SHALL BE ALL-INCLUSIVE AND ABSOLUTE, SAVE AND EXCEPT ANY ROUTINE COUNTY FINAL ESTIMATING QUANTITY ADJUSTMENTS.

13. Should the Contractor fail to actually complete the Contract and obtain Substantial Completion by the County as determined by the Engineer on or before the "No Excuse Incentive" Completion Date, or should the Contractor, having done so, fail to timely request the "No Excuse Incentive" for any reason, including but not limited to the Contractor choosing not to fully waive, release and acknowledge satisfaction as set forth in the immediately preceding paragraph, the Contractor shall have no right to any payment whatsoever under this Section.

VII. Changes

A. Change Orders.

1. A Change Order is a written order to the Contractor signed by the County, issued after execution of the Contract, authorizing a change in the Work or an adjustment to the compensation or Schedule for the Work. The Contract Price and the Schedule (or Contract Time) may be changed only by an executed Change Order. A Change Order signed by the Contractor conclusively indicates its agreement herewith, including that the adjustment in the compensation or the Schedule contained in the Change Order is sufficient to compensate the Contractor for all Claims that Contractor may have outstanding at the time the Change Order is signed by the Contractor.

2. Change Orders shall be submitted on the forms and pursuant to the procedures of the Richland PDF and/or the Project Manager as approved by the County.

3. The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the County, the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the County that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

B. Use of Change Order. The County, without invalidating the Agreement, may order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, including the addition or deletion of the Work or parts thereof. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

C. Change Directive. The County has the right to modify this Contract when the modification is in the best interest of the County. If the County and the Contractor cannot agree on the Change Order, the County shall issue a Change Directive directing the Contractor to either not perform Work or to perform Additional Work. In the event of no agreement on the cost of the Change Directive, the Contractor shall be compensated for such Additional Work as provided in the Contract Documents for a Claim.

D. Cost of Change. The cost or credit to the County resulting from a change in the Work or a Claim shall be determined in one or more of the following ways:

1. By mutual acceptance of a negotiated lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. By cost to be determined in a manner agreed upon by the Parties and a mutually acceptable fixed or percentage fee (as provided in the Contract Documents, if applicable);

3. By Unit Price Work item if specified in the Contract Documents; or
 4. If there is no agreement between the County and the Contractor as the method to select to determine the cost of additional compensation to the Contractor for subsections D.1 and D.2, by the method provided to calculate a Claim.
- E. Disputed Change or Claim. If none of the methods set forth in Section D. 1 or 2 above are agreed upon for Additional Work, the Contractor, provided it receives a written order signed by the County as a Change Directive, shall promptly proceed with the Additional Work involved. The cost of such Additional Work shall then be determined as provided in Sections D, F, G, H, and I. The cost of a Change Order or Change Directive shall include all costs directly related to the change, and the Contractor shall itemize these costs and provide appropriate supporting data as may be necessary to establish correctness as provided for in the Contract Documents.
- F. Restrictions on Recoverable Damages. Only the following items may be recovered by the Contractor with respect to Excused Delay Claims or other Claims. These costs are the exclusive remedy for the Contractor for a Claim. The County has no liability for damages beyond the following items:
1. Additional job site labor expenses.
 2. Documented additional costs for materials.
 3. Equipment costs, as determined in accordance with this subsection.
 4. Documented costs of extended job site overhead.
 5. An additional ten (10%) percent of the total of sub-items 1, 2, 3, and 4 above, for home office overhead and profit; however, this amount will not exceed the anticipated margin for home office overhead and profit provided for in the Contractor's original bid. Additionally, home office overhead margins paid to the Contractor included in Change Orders are considered as partial or final compensation for these costs.
 6. Bond costs.
 7. Subcontractor costs determined by and limited to those items identified as payable under sub-items 1, 2, 3, 4, 5, and 6 above.
- G. Non-Recoverable Damages. The parties agree that, in any Claim for damages by the Contractor, the County has no liability for the following items of damages or expense:
1. Profit in excess of that provided in sub-item 5 of Section F above.
 2. Loss of profit.

3. Labor inefficiencies.
4. Home office overhead in excess of that provided in sub-item 5 of Section F above.
5. Consequential damages including, but not limited to, loss of bonding capacity, loss of bidding opportunities, and insolvency.
6. Interest and any other indirect costs or expenses of any nature other than those allowable under sub-item 4 of Section F above.
7. Attorneys' fees, claims preparation expenses, or costs of litigation.
8. Prejudgment interest on any amounts the Contractor may be found to be entitled for any Claim.

H. Computation of Extra Equipment Costs. For purposes of computing extra equipment costs for any Claim by the Contractor, rates used are based on the Contractor's actual costs for each piece of equipment. These rates must be supported by equipment cost records furnished by the Contractor. Equipment rates will not be allowed in excess eighty (80%) percent of those in the *Rental Rate Blue Book* with the appropriate adjustments noted herein. The stand-by rate is twenty-five (25%) percent of the operating rate.

I. Labor Rates. Labor rates for any Change Order or Claim not otherwise agreed to by the parties shall be computed in accordance with the United States Government's General Decision Number SC140042 01/03/2014 SC42.

J. No Course of Dealing. No agreement by County to a particular Change Order submitted by Contractor shall be construed to establish a course of dealing between County and Contractor regarding labor or equipment rates, or any other costs. The failure of County to insist that Contractor satisfy any requirements for Change Order requests, including but not limited to the written notice requirements, shall in no way constitute a waiver of the County to insist that Contractor later satisfy such requirements or satisfy such requirements for subsequent Change Order requests.

VIII. Claims

A. Claim.

1. A "Claim" is a demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of the Contract Documents, Agreement terms, the payment of money, time or other relief or resolution of issues with respect to the Contract or Contract Documents. The term "Claim" also includes any other disputes or matters in question between County and Contractor arising out of or relating to the Agreement, the relationship of the County and the Contractor arising out of the Agreement, and including any Claim the Contractor may make related in any way to any act or omission of a third party. If the Contractor suffers injury or damage to person or property because of an act or

omission of the County, the Project Manager, the Engineer, or any of their respective employees or agents, or of others for whose acts such Party is legally liable, the Contractor must make a Claim for such injury and/or damages as provided in this Section.

2. Claims by the Contractor must be initiated by written notice or they are waived.

B. Notice of Claim. The Contractor acknowledges the prejudice to the County as a result of any attempted assertion by the Contractor of Claims except as specifically permitted herein in the precise manner and strictly within the time limits established herein. Claims by the Contractor must be initiated in writing (the "Initial Notice") within seven (7) Days after the occurrence of the event giving rise to such Claim or the claim is waived. Claims must be initiated by written notice as provided in this Section to the County detailing the anticipated type and amount of impact in time and/or money of the event or condition. Within seven (7) Days after the conclusion of the event giving rise to such Claim, the Contractor shall give the County a "Final Notice" of the alleged impact on the Contractor in time and money. No additional Claim by a Contractor for the same subject matter may be made after the Final Notice for the Claim has been submitted or after the time for submission of the Final Notice has expired. The notice requirement in this Section shall be an express condition precedent to the Contractor's right to recover under any Claim.

1. Claims by the Contractor must be made in writing. The Final Notice of any Claim must contain at least all of the following:

- (a) a narrative statement referencing and attaching the supporting documentation and specifically describing the legal, factual and architectural or engineering basis of the Claim;
- (b) if the Claim alleges delay to the critical path, the Claim must include the precise number of Days of delay claimed and all alleged impacts on the Work; and, after giving the County notice of intention to file a Claim for delay damages, the Contractor shall keep separate daily records of all labor, material, and equipment costs incurred for operations affected by the delay. The daily records must identify each operation affected by the delay. On a monthly basis after giving notice of intention to file a Claim for delay, the Contractor shall prepare and submit to the County's representative, written reports providing the following information: (i) Potential effect to the Schedule caused by the delay, (ii) Identification of all operations that the Contractor claims have been delayed, or will be delayed, (iii) Explanation of how the County's act or omission delayed each operation and an estimation of how much time is required to complete the project, and (iv) Itemization of all extra costs incurred, including: (1) An explanation as to how these extra costs relate to the delay and

complete details of the Contractor's method of measurements, calculations, and resultant quantifications; (2) Identification of all project employees for whom the Contractor seeks additional compensation, and (3) Identification by make, model, and manufacturer's number of all items of equipment for which the Contractor seeks additional compensation.

- (c) if the Claim alleges acceleration or constructive acceleration of the Work, the Claim must demonstrate the benefits that have been achieved by the acceleration. No Claims for acceleration for Work that is not on the critical path shall be permitted. Claims for additional compensation or time for alleged acceleration shall be limited as provided in the Contract Documents; and
- (d) if the Claim is for additional compensation, the Claim must include a detailed calculation of the precise amount claimed with all supporting documentation.

2. Within seven (7) Days after the Initial Notice, or after the conclusion of the event giving rise to the Claim, whichever is later, the Contractor shall provide the Final Notice to the County. The Contractor's failure to provide the Final Notice within seven (7) Days after the Initial Notice or after the conclusion of the event giving rise to the Claim shall constitute a waiver of the Claim against the County. Any waiver by the County of the notice requirements for the Initial Notice or the Final Notice for a Claim, event, or occurrence shall not constitute a waiver of these notice requirements for any other Claim, event, or occurrence. All information required in the Final Notice must be submitted within the time limits established herein.

C. Continued Work. Pending final resolution of a Claim, except as otherwise agreed in writing or in the Contract Documents, Contractor shall proceed diligently with performance of the Work and County shall continue to make undisputed payments in accordance with the Contract Documents. The making of any payment by County shall not constitute a waiver of any Claims by County or an acknowledgement by County that Contractor is entitled to additional time or money. The failure of Contractor to continue to proceed with the Work during the pendency of the Claim shall be a material breach of this Agreement.

D. Audit of Claims. The County may perform an audit of the Contractor's records when the Contractor makes a Claim under the same manner and terms as provided for in SCDOT Standard Specification 105.16.9.

IX. Termination and Suspension

A. Termination for Cause.

1. The County may cancel the Agreement in whole or in part for cause in the case of the Contractor's material breach of this Agreement, default of its obligations under this Agreement, negligence or other basis for termination for cause as may be stated in the Agreement.

2. In the event of a default under this Section, the County shall have the right to terminate forthwith this Contract by written notice to the Contractor. In the event of such default, the advance notice period for termination is waived and the Contractor shall not be entitled to any costs or damages resulting from a termination under this section.

3. If the Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the United States Bankruptcy Code or any similar or applicable federal or state laws; or if a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) Days from the date of said filing; or if the Contractor admits in writing its inability to pay its debts generally as they become due; or if it takes a general assignment for the benefit of his creditors; or if a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed; or if the Contractor abandons the Work; or if it repeatedly fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper material for the Work; or if it submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or if it fails without justification to make Prompt Payment to subcontractors or for material or labor or otherwise breaches its obligations under any subcontract with a subcontractor; or if a mechanic's or materialman's lien or notice of lien is filed against any part of the Work or the site of the Project and not promptly bonded or insured over by the Contractor in a manner satisfactory to the County; or if the Contractor repeatedly disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental or private jurisdiction of the Work or the site of the Project; or if it otherwise is guilty of a material breach of any provision of the Contract Documents without prejudice to any right or remedy available to the County under the Contract Documents or at law or in equity, may terminate this Agreement with cause. If requested by the County, the Contractor shall remove any part or all of its equipment, machinery and supplies for the site of any Project within seven (7) Days from the date of such request, and in the event of the Contractor's failure to do so, the County shall have the right to remove or store such equipment, machinery and supplies at the Contractor's expense.

4. Whether or not the Contractor's right to proceed with the Work is terminated, it and its sureties shall be liable for any damage to the County resulting from Contractor's default. Any wrongful termination for default shall be deemed by the Parties a termination for convenience.

5. The rights and remedies of the County in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

B. Termination Without Cause (for Convenience).

1. The County at its sole option and discretion shall have the right to terminate this Agreement in whole or in part for its convenience at any time during the course of performance by giving written notice to the Contractor.

a) If this Contract is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Work actually accomplished up to the date of termination.

b) Upon receipt of a termination for convenience notice, Contractor shall immediately discontinue Work on the date and to the extent specified in said notice.

c) There will be no additional costs to the County from the Contractor or any other party upon the County's termination for convenience, other than for Work already performed satisfactorily before the date of termination of this Agreement and accepted by the County. The Contractor will not be entitled to recover any other damages in connection with a termination for convenience, including but not limited to consequential, incidental, exemplary, special, punitive, statutory, direct, indirect, or lost profits.

2. The County, by written notice, may terminate this Contract in whole or in part in the event that sufficient appropriation of funds from any source (whether a federal, state, County or other source) are not made or sufficient funds are otherwise unavailable, in either case, to pay the charges under this Contract. If this Contract is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Work actually provided to the date of such termination. The Contractor will not be compensated for any other costs in connection with a termination for non-appropriation. The Contractor will not be entitled to recover any damages in connection with a termination for non-appropriation, including, but not limited to, lost profits.

C. Effect of Termination.

1. If this Agreement is terminated or terminates for any reason, re-producible copies of all finished or unfinished work related to any Work, including without limitation, documents, data, analysis, calculations, studies, maps, photographs,

reports, produced or prepared by Contractor, or in Contractor's possession shall be supplied to County and shall become the property of County.

2. If this Agreement is terminated or terminates for any reason, all subcontracts of the Contractor for Work rendered or to be rendered pursuant to this Agreement are deemed assigned to the County or the County's designee, except that the County or the County's designee may determine in their sole discretion not to accept assignment of any subcontract.

D. Suspension of the Work. The County may order, in writing, a suspension of the Work ("Suspension of the Work") in whole or in part for such time as it deems necessary. The County may order the Contractor to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the County. The County may suspend performance of its obligations under this Contract in good faith for the convenience of the County or to investigate matters arising in the Work.

1. In the event of an unexcused failure of the Contractor to comply with any of the requirements of this Agreement, the Agreement's completion date shall not be extended on account of any such Suspension of the Work and the Contractor shall not be entitled to any compensation or time extension for any delay while the Contractor is attempting to cure any failure to comply with the Agreement.

2. When the County orders any Suspension of the Work under the paragraph above, the Contractor shall not be entitled to any payment for Work with respect to the period during which such Work is suspended and shall not be entitled to any costs or damages resulting from such suspension.

3. The rights and remedies of the County provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

X. Insurance Requirements

A. Unless the County otherwise directs at any time during the Project, the Contractor shall be responsible for the insurance coverages below and make provisions to have similar insurance in its subcontracts.

B. Within five (5) business days of receipt of Notice to Proceed, Contractor shall provide the County a Certificate of Insurance with all insurance required by the State of South Carolina and minimally the below insurance with companies having an A.M. Best Rating of A-, VII or higher.

1. Each certificate shall state it applies to work by or on behalf of the insured. Contractor and its insurers shall provide County thirty (30) Days written notice of any cancelation, non-renewal or reduction in coverage.

C. Contractor must have comparable insurance requirements for any of its subcontractors or insure them under Contractor's policies, unless waived in writing by the County.

D. A breach of any insurance requirement shall be material.

E. All such insurance shall be at Contractor's expense and be maintained throughout the term of this Agreement. Contractor shall provide County certificates throughout the term of this Agreement. The Contractor shall procure insurance policies for the requirements herein. The policies shall name the County as an additional insured under the Commercial General Liability and Business Auto Liability policies. Any Umbrella/Excess Liability policy provided to meet the required general liability and auto liability limits must follow form with all primary policy coverages.

F. Commercial General Liability Insurance

1. Commercial General Liability policy on an occurrence basis with limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate for bodily injury, property damage and personal injury and \$2,000,000 products & completed operations aggregate. The policy shall also include:

2. Contractual liability for the tort liability of another party assumed in an "insured contract".

3. Waiver of subrogation against the County, its officials, agents, employees, leased and temporary employees and volunteers.

4. The County, its official, agents, employees, temporary and leased workers as additional insureds by the unmodified latest ISO endorsement CG 20 10.

5. A provision that it is primary coverage over all other insurance or self-insurance even if the policy asserts it is excess, secondary or contingent.

6. Severability of interest.

7. An electronic liability endorsement (CG 04 37 or similar as approved by the County).

8. Products-completed operations liability coverage extending at least two years beyond completion of each separate Project.

9. Include coverage for explosion, collapse and underground hazards.

10. Completed operations coverage extending at least two years beyond the completion date of the Work.

G. **Business Auto Coverage.** Business Auto Coverage Form with a combined single limit for bodily injury and property damage of \$1,000,000 per accident. Physical damage coverage is at the option of the Contractor. The policy shall also include:

1. Contractual liability;
2. The County, its officials, agents, employees, temporary and leased workers, and volunteers are included as additional insureds.
3. A provision the policy is primary and non-contributory to all other insurance or self-insurance maintained by any additional insured.
4. A waiver of subrogation against the County, its officials, employees, leased and temporary employees, and volunteers.

H. The Contractor shall require its employees and anyone working on its behalf to provide evidence acceptable to the County of auto liability coverage. The policy shall cover owned, hired and non-owned vehicles.

I. **Worker's Compensation and Employer's Liability Insurance.** The Contractor shall provide worker's compensation and employer's liability in accordance with the laws of the State of South Carolina (other state's coverage is not sufficient.) Employer's liability limits shall not be less than \$500,000/\$500,000/\$500,000. The policy shall contain a waiver of subrogation against the County, its officials, employees, temporary and leased workers, and volunteers.

J. **Certificate of Liability Coverage.** The certificate of liability coverage shall verify compliance with the preceding requirements.

K. **Cancellation, Non-renewal, Material Change or Reduction in Coverage.** The Contractor shall provide the County with a minimum of thirty (30) Days prior written notice, except ten (10) Days for non-payment of premium, of any cancellation, non-renewal, reduction in coverage or any other material change in the required policies. Each certificate must state that the insurance applies to work performed by or on behalf of the Contractor.

XI. Cleanup Work

A. During progress of Work, Contractor will keep the Work Site and affected adjacent areas cleaned up. The Contractor will remove all rubbish, surplus materials, surplus excavated materials, and unneeded construction equipment so that the Work Site will be inconvenienced as little as possible.

B. Where materials or debris have washed or flowed into or have been placed in existing watercourses, ditches, gutters, drains, pipes, or structures by Work done under this Contract, the Contractor will remove and dispose of such material or debris during the progress of the Work.

C. Upon completion of Work, the Contractor will leave all ditches, channels, drains, pipes, structures and work, etc. in a clean and neat condition.

D. The Contractor will remove all debris from any grounds that have been occupied by the Contractor and leave the roads and all parts of the Work Site and adjacent sites affected by the Contractor's operations in a neat and satisfactory condition.

E. The Contractor will restore or replace any public or private property damaged by the Contractor's Work, equipment or employees to a condition at least equal to that existing immediately prior to the beginning of the operations.

XII. General Provisions.

A. Indemnification.

1. The Contractor, as part of its duty of indemnification, shall defend and hold harmless the County, its agents, and representatives, including but not limited to its Project Manager and its Engineer, from any costs arising out of the prosecution or defense of any action arising out of the Contractor's performance under this Agreement, to the extent the claim was due to the negligent acts, omissions, or wrongdoing of the Contractor in administering or performing this Agreement. The Contractor shall indemnify, save harmless, and defend the County, its officers, agents, and employees against all liability, claims, fines, penalties, and costs of whatsoever kind and nature for any losses, injury, or death to any person or persons or from loss or damage to any property occurring in connection with or in any way incident to or arising out of or in any way connected with the Work and/or performance pursuant to this Agreement, to the extent resulting in whole or in part from the negligent acts or omissions of the Contractor, its officers, agents, employees, or other representatives, with respect to the administration of this Agreement.

2. The Contractor agrees to notify the County of any claims asserted or brought against the Contractor arising from this Agreement which may potentially expose the County to liability and to coordinate with the County on any issues of governmental or public interest or concern.

3. The Contractor shall notify the County and the Project Manager of the filing of any litigation or arbitration arising from this Agreement. In the event of participation by the County in the defense of any claim, which shall be solely at the discretion of the County, the County shall be responsible for its own attorney's fees, costs, and other expenses. The Contractor will not settle any claims arising hereunder without the express written prior permission of the County.

4. The Contractor may control the defense of any litigation arising under this paragraph and all related settlement negotiations, unless the County is a party.

5. The Contractor further agrees that in the event it is requested to produce in any litigation any confidential document or information referring or relating to the County, it shall not, where possible, produce the requested material before it has notified the County and the Project Manager and provided the County a reasonable opportunity to appear and object to the production of the County's confidential material.

6. Where applicable, all requirements of the Contractor regarding indemnification set forth in this section shall be imposed on all subcontractors, requiring the subcontractors to defend and indemnify the County in like fashion.

7. The limits of insurance required in this Contract shall not limit the Contractor's obligations under this Section. The terms and conditions contained in this Section shall survive the termination of the Contract or the suspension of the Work hereunder. The obligations herein shall also extend to any actions by the County to enforce this indemnity obligation. The recovery of costs and fees all extend to those incurred in the enforcement of this indemnity.

B. Applicable Laws.

1. By signing a bid, the Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of South Carolina Code of Laws (1976, as amended), and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to the Contractor and its subcontractors or sub-subcontractors; or (b) that the Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14.

a) Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the Court or imprisoned for not more than five years, or both."

b) The Contractor agrees to include in any contracts with subcontractors, language requiring subcontractors to (a) comply with applicable requirements of Title 8, Chapter 14, and (b) include in its contracts with its sub-contractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

2. The Contractor and its subcontractors will comply with all applicable federal, state, and local laws and regulations, including but not limited to:

a) Americans with Disabilities Act (ADA);

b) Anti-Kickback Act of 1986;

- c) Contract Work Hours and Safety Standards Act;
- d) Department of Health and Environmental Control (DHEC);
- e) The South Carolina Drug-free Workplace Act, Section 44-107-10 et seq., S.C. Code of Laws (1976, as amended). The County requires all Contractors executing contracts to sign a Drug-free Workplace Certification form prior to the issuance of the Notice to Proceed;
- f) Eligibility for employment under United States immigration laws;
- g) Employment Eligibility Verification: prescribes policies and procedures requiring contractors to utilize the Department of Homeland Security (DHS), United States Citizenship and Immigration Service's employment eligibility verification program (E-Verify) as the means for verifying employment eligibility of certain employees;
- h) Employment of Workers with Disabilities;
- i) Equal Employment Opportunity;
- j) Environmental Protection Agency (EPA) regulations;
- k) Fair Labor Standards Act (FLSA);
- l) Governmental price regulations/orders (as required by law, the Contractor will deliver proof that materials sold or installed and services rendered comply with price regulations) if a federal grant project;
- m) Maximum hours and minimum wages;
- n) Nondiscrimination because of age;
- o) Occupational Safety and Health Administration (OSHA) (e.g., all materials and services furnished meet or exceed OSHA safety standards);
- p) Statutes regarding qualification to do business;
- q) Statutes prohibiting employment discrimination;
- r) Walsh-Healey Public Contracts Act; and
- s) The "Prompt Payment Requirements" of the Richland County Code of Ordinances, Chapter 2, Administration; Article X, Purchasing.
- t) Contractor further represents and warrants that it will comply with the County's Commercial Nondiscrimination Ordinance, as described under Section 2-647 of the Richland County Code of Ordinances.

(1) As part of such compliance, the Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers; nor shall the Contractor retaliate against any person for reporting instances of such discrimination.

(2) The Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace.

(3) Moreover, the Contractor affirms that it will cooperate fully with any County inquiries regarding the Contractor's compliance with the Commercial Nondiscrimination Ordinance.

(4) The Contractor understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the Contractor from participating in County contracts, or other sanctions.

(5) This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. The Contractor shall include this clause in any subcontracts which it may enter in the performance of this Agreement.

The Contractor shall be responsible for compliance with any such above-stated law, ordinance, rule or regulation, and shall hold the County harmless and indemnify same in the event of non-compliance as set forth in the Contract.

C. Governing Law/Disputes.

1. Notwithstanding any other provision of this Agreement, all disputes, claims, or controversies where the County is a party arising out of or relating to this Agreement shall be resolved only in the Court of Common Pleas for Richland County, South Carolina, to the exclusion of all other courts.

2. This provision applies to the Contractor and to any dispute, claim or controversy any person or entity in the chain of privity with the Contractor for the execution of the Work.

3. The Contractor agrees that any act by the County regarding the Agreement is not a waiver of the County's right to sovereign immunity under state law, to the extent any such immunity exists.

4. The Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any dispute, claim, or controversy relating to this Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on the Contractor by certified mail (return receipt requested) addressed to the Contractor at the address provided as the notice address in this Agreement or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given on the date shown on the return receipt.

5. The Agreement shall be construed under the laws of the State of South Carolina.

D. Permits and Licenses.

1. The Contractor shall, without additional expense to the County, be responsible for obtaining and maintaining in force at all times any necessary licenses and permits required and issued by a municipality or the County for conducting business. The Contractor is responsible at all times for obtaining applicable work permits and licenses from the County's Building Inspection and Business License Departments. Contractor's license number, person's name, and business name must all be shown on all required licenses.

2. Prior to execution of a contract, the Contractor may be required to provide a copy of its current applicable Contractor's License issued by the State of South Carolina and the County. Any subcontractor must comply with the regulations promulgated in the South Carolina Contractor's Licensing Board as enforced by the South Carolina Licensing Board for Contractors. Contractor's (and or any subcontractor's) License Number, Person's Name and Business Name must all be shown on all required licenses.

E. Safety, Health, and Security Precautions. The following provisions are in addition to those pertinent sections contained in the Standard Specifications.

1. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

a) Employees on the Work Site and other persons who may be affected thereby; and

b) The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors; and

c) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

2. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

3. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting and maintaining danger signs and other warnings against hazards as long as such hazards exist. The Contractor shall also promulgate safety regulations and notify owners and users of adjacent sites and utilities of all construction and related activities.

4. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

5. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible except damage or loss attributable to acts or omissions of the County or anyone directly or indirectly employed by it, or by anyone for whose acts the County may be liable. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 24, Indemnification, herein.

6. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the County.

7. The Contractor shall not load or permit any part of the construction or Work Site to be loaded so as to endanger its safety.

8. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's best discretion, to prevent threatened damage, injury or loss.

F. Contractor's Record Keeping Duties and FOIA.

1. The Contractor shall maintain copies of all of contracts, drawings, specifications, addenda, Change Orders and other modifications arising out of the

Work, in good order and marked currently to record all field changes made during construction, and, in addition, approved shop drawings, product data, samples, and other similar required submittals must be maintained at the job site. These shall be available to the County.

2. Contractor shall keep full and detailed accounts and records and exercise such controls as may be necessary for proper financial and record management under this Agreement, and the accounting and control systems shall be satisfactory to County. County and County's accountants, lawyers and consultants shall be afforded access to and shall be permitted to audit and copy Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and Contractor shall preserve these for a period of three years after Final Payment, or for such longer period as may be required by law. County shall have the right to access all such records at any time after seven (7) Days written notice.

3. All financial records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. Subcontractors retained by Contractor shall have the same obligations to retain records and permit audits as required of Contractor.

4. If any inspection by County, or its representatives, of Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and any other data relating to the Contract Documents reveals an overcharge, County may deduct said overcharge from any payments due Contractor, or, if no funds remain due to Contractor, Contractor shall, within seven (7) calendar Days of receipt of such written demand for repayment, tender the amount of such overpayment to County or otherwise resolve the demand for repayment to County's satisfaction.

5. Contractor shall maintain an accurate record of all aspects of the Work, including all costs and expenses related to the Work. County may, at its sole discretion, from time to time (whether before or after Final Completion of the Work or termination of this Agreement) elect to have an inspection or audit conducted to verify compliance with the Agreement or to verify the cost of the Work through the date of the last Application for Payment. Any such inspection and/or audit shall be at least as comprehensive as would be allowed under the South Carolina Rules of Civil Procedure. If County so elects, it shall give notice to Contractor and such inspection or audit shall be conducted as soon as is reasonably feasible thereafter so as not to unreasonably delay further progress payments to Contractor as permitted by the Contract Documents, but in no event no later than seven (7) Days from the date of the notice. Such inspection or audit shall be conducted by the County, or by an accountant, lawyer, auditor, or other reviewer or consultant selected by the County, or any number of them in any combination, and County shall, except as hereinafter provided, pay the cost of such audit. Contractor agrees to cooperate with County, and/or its accountant,

lawyer, auditor, or other reviewer or consultant, and make available for examination at its home and/or Project office all of its books, records, correspondence, and other documents deemed necessary by such accountant, lawyer, auditor, or other reviewer or consultant to conduct such review.

6. In addition to any duties of Contractor as stated herein, the Contractor agrees to maintain for three (3) years from the date of Final Payment for all Work under this Agreement, or until all other pending matters are closed under this Agreement, whichever is later, all books, documents, papers, and records, digital or otherwise, pertinent to this Agreement. The Contractor agrees to provide to the County, any federal grantor agency, the Comptroller General of the United States, any state grantor agency, any assignee, or any of their duly authorized representative(s) reasonable access to such books, documents, papers, and records for the purpose of examining, auditing, and copying them. The Contractor further agrees to include these provisions in any subcontracts issued by it in connection with this Agreement. The Contractor shall provide a copy of all digital records within sixty (60) Days after Final Payment. The Contractor must provide for a secure back up of digital records during the course of this Agreement.

7. During the retention period, County shall be granted access to those documents upon reasonable notice. At any time during the period, County shall have the option of taking custody of the documents. Contractor shall consult with County before disposing of any documents maintained pursuant to this Section, including but not limited to documents as to which the three-year retention period has expired. In the event of termination of this Agreement for any reason, all documents required to be maintained pursuant to this Section shall be turned over to County within six months of such termination.

8. Freedom of Information Act.

a) In the event of any Freedom of Information Act ("FOIA") requests for documents or other information in Contractor's possession, Contractor shall make such documents or information available as directed by County. If the requested documents or information originated from Contractor or its subcontractors or consultants, Contractor shall advise County whether Contractor believes any such documents should be exempt from disclosure. However, subject to the provisions below, the County shall have the right to determine if any documents must be disclosed under the FOIA.

b) The County recognizes that the Contractor may consider certain documents as confidential and proprietary and not subject to FOIA. If the Contractor refuses to disclose any documents related to Contractor's Work pursuant to a FOIA request and as requested by the County, the Contractor shall defend, hold harmless and indemnify the County from and for any legal proceeding brought against the County alleging any breach of the

FOIA because of any documents the Contractor does not agree should be produced by the County pursuant to the FOIA.

G. No Gratuities or Kickbacks.

1. Contractor understands and accepts that the County prohibits its employees from using their official position for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Contractor, its employees, officers, subcontractors, and consultants shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the County.

2. Violation of this Subsection is reason for immediate termination for cause by the County as provided for herein.

H. Subcontractors.

1. The Contractor shall not contract with a proposed person or entity to whom the County has made reasonable and timely objections. Notwithstanding this, the Contractor shall not be required by the County to contract with anyone to whom the Contractor has made reasonable and timely objection.

2. The Contractor shall provide the County a list of its subcontractors and their respective anticipated portions of subcontracted Work with subcontract amounts. Should the subcontractors change, the Contractor shall provide an updated list to the County.

3. The Contractor shall enforce strict discipline and good order among its employees and other persons carrying out the performance of the Agreement. The Contractor shall employ and maintain only competent, qualified supervisory personnel for the performance of this Agreement.

4. Key supervisory personnel assigned by the Contractor to the Work are as follows:

a) Scott Nolt Proj. Mgr.

5. So long as the individual named above remains actively employed or retained by the Contractor or its subcontractors or subconsultants, they shall perform the functions indicated next to their names unless the County otherwise agrees in writing.

6. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Section as though such individuals had been listed above.

7. Notices given to the persons listed above, or their successors, will constitute sufficient notice to bind the Contractor.

8. If at any time the County reasonably determines that any employee of the Contractor is not properly performing the Work in the best interest of the Project, is hindering the progress of the Work, or is otherwise objectionable, the County shall so notify the Contractor, which shall replace the employee as soon as possible at no increased cost to the County.

I. Successors and Assigns.

1. This Agreement shall be for the benefit of, and be binding upon, the respective successors and assigns, if any, of the County and the Contractor, except that unless expressly stated in this paragraph, nothing contained herein shall be construed to permit any attempted assignment or unauthorized assignment without the express written permission of the Parties.

2. Except as expressly may otherwise be stated, this Agreement or its provisions may not be assigned, sublet, or transferred without the written consent of the Parties.

3. The Contractor shall provide written notification to the County of any contemplated sale, transfer, or any other action that would result in a transfer of this Agreement in whole or in part to another company or entity, or that could eventually result in the transfer of any duties or requirements of this Agreement to another company or entity. This notification shall be received by the County not less than forty-five (45) Days prior to any action which would result in said transfer and shall describe, in detail, the actions contemplated by the Contractor.

4. In such case, the County reserves the right to enter into direct negotiations with the party to whom Contractor's ownership interest is being transferred for purposes of clarification or renegotiation of the terms and conditions of this Agreement.

J. Notices. The primary point of contact for the County shall be the Director of Transportation. All notices pertaining to this Agreement shall be in writing and shall be sufficient when sent registered or certified mail (or email if agreed to by the Parties) and addressed as follows:

For the County:

Richland County
Attention: Rob Perry, Director of Transportation
2020 Hampton St.
Columbia, SC, 29204

For the Contractor:

McClam & Associates, Inc.
1642 Holy Trinity Church Rd.
Little Mountain, SC 29075

K. Severance/Survival. Should any part of this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or against public policy, said offending section shall be void and of no effect and shall not render any other section herein, nor this Agreement as a whole, invalid, provided the general purposes and intent of this Agreement are not materially affected. Any terms which, by their nature, should survive the suspension, termination, or expiration hereof shall be deemed to so survive.

L. Entire Agreement/Construction. This Agreement constitutes the entire understanding and agreement between the parties hereto and supersedes all prior and contemporaneous written and oral agreements between the Parties and their predecessors in interest regarding the subject matter of this Agreement. This Agreement may not be changed, altered, amended, modified, or terminated orally, and any such change, alteration, amendment, or modification must be in writing and executed by the Parties hereto. The Parties acknowledge that each has participated fully in negotiations regarding the terms and conditions of this Agreement. Therefore, should any ambiguities or differences over interpretation arise, neither Party will be deemed to be the drafting party against which any such ambiguity or difference should be construed.

M. Non-Waiver. Any waiver of any default by either party to this Agreement shall not constitute waiver of any subsequent default, nor shall it operate to require either party to waive, or entitle either party to a waiver of, any subsequent default hereunder.

N. Ownership.

1. All materials of the County, including but not limited to the County's proprietary software and materials, the proprietary system software, all original data, spatial data, spatial data plans, drawings, images, material, documentation (including electronic files or documents), and application software generated and prepared by or exclusively for the County pursuant to this Agreement shall belong to the County. The Contractor shall not sell, give, loan, or in any other way provide such to another person or organization, or otherwise utilize any commercially valuable data, images, or developments created specifically by or for the County under this Agreement, without the written consent of the Contracting Officer identified in the RFP, or the Richland County Director of Transportation.

2. Any external requests to procure these data or materials must be forwarded to the County.

O. Obligations Under Other Agreements.

1. The County shall have the right to perform or have performed similar or such other work as it may desire while the Contractor is performing Work required by this Agreement. The Contractor shall perform the Work in a manner that enables completion of other work performed by the County or on the County's behalf without hindrance or interference (or shall properly connect and coordinate the Work with the work of others when required).

2. Should the Contractor believe that its performance of the Work was interfered with, stopped, or otherwise disrupted by the acts or omissions of such other contractors, the Contractor shall notify the County immediately, and if the Contractor asserts that it has been harmed by such acts of another contractor, Contractor shall make a Claim as provided in this Agreement.

P. Warranty.

1. The Contractor represents that its staff is knowledgeable about and experienced in performing the Work required in this Contract and warrants that it will use its best skill and attention to provide the above described Work in a professional, timely manner.

2. Contractor warrants and represents that it shall be responsible for all subcontractors working directly for it, as well as for their Work product, as though Contractor had performed the Work itself.

3. All equipment, materials and articles incorporated in the Work covered by the Contract and supplied by the Contractor are to meet the Standard Specifications, unless otherwise stated herein. Unless otherwise specifically provided in this Contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall not be construed as limiting competition. When requested, the Contractor shall furnish to the Richland PDT and/or Project Manager for approval, the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment that the Contractor contemplates incorporating in the Work. When required by this Contract or when called for by the Richland PDT and/or Project Manager, the Contractor shall provide full information concerning the material or articles which he contemplates incorporating in the Work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without the required prior approval of the Richland PDT and/or Project Manager shall be at the risk of subsequent rejection by the County.

4. Any and all manufacturers' warranties on any equipment or materials will be passed on to the County and copies of said warranties will be furnished by the Contractor to the County upon completion and final acceptance of the Work.

5. The County may, in writing, require the Contractor to remove from the Work Site any employee the County deems incompetent, careless or otherwise objectionable.

6. In addition to any manufacturer's warranties, all workmanship and materials are warranted to be free from defects for a period of twelve (12) months after the date of Final Payment by the County.

Q. State and Local Taxes.

1. Except if otherwise provided, Agreement prices shall include all applicable state and local taxes. If applicable, two percent (2%) income tax withholding shall be withheld from each and every payment pursuant to S.C. Code Ann. §§ 12-8-540 and -550 for certain out-of-state contractors, and such sums will be paid over to the South Carolina Department of Revenue (the "SCDOR"). When and if the County receives an executed SCDOR Form 1-312, Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, such withholding shall cease. The Contractor shall calculate that portion of the contract which is subject to the six percent (6.0%) South Carolina sales and/or use tax plus applicable County local sales tax, which amounts shall be itemized and shown on all invoices, and shall be paid to the SCDOR by the Contractor.

2. Contractor shall indemnify and hold harmless the County for any loss, cost, or expense incurred by, levied upon, or billed to the County as a result of the Contractor's failure to pay any tax of any type due in connection with this Agreement by Contractor.

3. The Contractor shall ensure that the above sections are included in all subcontracts and sub-subcontracts and shall ensure withholding on out of state sub and sub-subcontractors to which withholding is applicable.

R. Governmental Entity Bonding Requirements

1. The Contractor shall provide and maintain, until the expiration of all warranty periods provided herein, payment and performance bonds in one hundred percent (100%) of the Contract Price, inclusive of Change Orders.

2. The Contractor's surety by issuing payment and performance bond pursuant to this Agreement agrees to the amendment of this Agreement to include other such Work, Additional Work, Change Orders, and Claims and waive prior notice of same.

3. Should at any time the State of South Carolina or the federal government require a higher or greater amount for a bond than 100% of the Contract Price

before the Effective Date of this Agreement, the Contractor shall procure such bonds as required by law.

4. The surety issuing the bonds for the Contractor is subject to the approval of the County, but the County does not undertake to assume any obligation with regard to the choice of Contractor's surety.

XIII. The Contract Documents.

A. Exhibit Numbers. The Parties agree that the Agreement shall include the following exhibits, which are incorporated herein by reference:

1. **Exhibit A** The County's Invitation for Bids: Bid No. PDT 290-IFB-2016 (Not attached but incorporated herein by reference thereto.) This Invitation for Bids No. PDT 290-IFB-2016 is called in this Agreement "the Invitation For Bids."

2. **Exhibit B** Contractor's Response to Bid No. PDT 290-IFB-2016 including its Bid Bond (Not attached but incorporated herein by reference thereto.)

3. **Exhibit C** SCDOT Standard Specifications for Highway Construction, 2007 Edition, including the all SCDOT Supplements to the Standard Specifications issued up to the date of this Agreement, and County's standard supplements to the Standard Specifications issued up to the date of this Agreement (not attached but incorporated herein by reference thereto).

4. **Exhibit D** The following, which may be delivered or issued after the effective date of the Agreement and are not attached hereto:

- a) Notice to Proceed;
- b) Performance Bond;
- c) Payment Bond;
- d) Written Amendments;
- e) Work Change Directive(s);
- f) Change Order(s); and
- g) the Schedule.

B. Order of Precedence. This Agreement, including the Exhibits listed above, are collectively called in this Agreement "the Contract Documents" and form the entire Agreement between the Parties, superseding all prior negotiations, representations, or agreements, whether written or oral. The Contract Documents are intended to supplement

and complement each other and shall, where possible, be thus interpreted. The Contract Documents are intended to be complementary, and a requirement in one document shall be deemed a requirement in all documents. If, however, any provision of the Agreement conflicts with another provision of the Agreement, or if there is a discrepancy or inconsistency among any of the Contract Documents, the following rules of interpretation shall control:

1. As between the Contract Form and any of the other Contract Documents (including the Invitation For Bids and the contract terms and conditions included therein), the Contract Form shall govern.

2. As between the Invitation For Bids and the Standards Specifications, the Invitation For Bids shall govern, including all Supplemental Specifications and Addenda issued by the County as part of the Invitation For Bids.

3. In the event of any conflict, discrepancy, or inconsistency among any of the other Contract Documents, the Contractor shall notify the County immediately upon discovery of same, and the County will notify the Contractor of the resolution.

C. Ambiguity Savings Clause. Absent a clear conflict, discrepancy, or inconsistency in the Contract Documents not governed by the Order of Precedence language above, which results in an ambiguity in the Contract Documents, in the event of a conflict, discrepancy, or inconsistency among the Contract Documents, the more onerous of such provisions to perform by the Contractor shall be deemed controlling unless the County in its sole discretion determines otherwise.

D. Degree of Application: County. Although the Standards Specifications are part of the Contract Documents, the County does not undertake any obligation of the SCDOT as stated in the Standard Specifications for any action unless the County expressly agrees to do so in writing in another Contract Document.

E. Degree of Application: Contractor. Should there be a conflict between any provision of any Contract Document that is not determined by the Order of Precedence at Section B above, the Contractor will be assumed to have agreed to the more onerous obligation or duty between or among the conflicting terms.

SIGNATURES NEXT PAGE

NOW, THEREFORE, in consideration of the foregoing, the sufficiency of which is hereby acknowledged by the parties, this Agreement is entered into Under Seal as of the Effective Date of January 11 2017.

WITNESS:

Ashley C. Myers

RICHLAND COUNTY, SOUTH CAROLINA

By: [Signature] (L.S.)

Its: County Administrator

Date: 11 January 2017

Contractor:

McClam & Associates, Inc.

WITNESS:

[Signature]

By: [Signature] (L.S.)

Its: V. Pres.

Date: 1-4-17

v 9/8/13
COLIA/CHIA (214503v5)

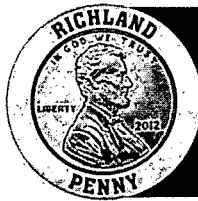
Richland County Attorney's Office

[Signature]

Approved As To LEGAL Form Only.

No Opinion Rendered As To Content.

EXHIBIT B



**PENNIES
IMPACTING PEOPLE**
RICHLAND COUNTY TRANSPORTATION PENNY PROGRAM



ADDENDUM 1

INVITATION FOR BIDS

PDT-290-IFB-2016

**SHOP ROAD EXTENSION
PHASE I**

Richland County Government will not accept liability for any incidental or consequential damages arising from or as a result of the electronic transmission of this document, acknowledgements, or other data hereunder. In the event of receipt of an electronic document that is garbled in transmission or improperly formatted the authorized representative must be notified immediately.

AUTHORIZED REPRESENTATIVE	Dale Collier	TITLE	DATE
SIGNATURE	<i>Dale Collier</i>	Procurement Manager	August 16, 2016

TABLE OF CONTENTS			
Sections	Description	No. of Pages	Return with Submittal
	COVER PAGE	1	NO
	TABLE OF CONTENTS ADDENDUM ACKNOWLEDGEMENT	1	YES
SECTION – A	CHANGES TO THE CONTRACT DOCUMENTS	2	NO
SECTION – B	PRE-BID CONFERENCE AGENDA	1	NO
SECTION – C	PRE-BID MEETING MINUTES	6	NO
SECTION – D	QUESTIONS AND ANSWERS	3	NO
SECTION – E	PRE-BID CONFERENCE SIGN IN SHEETS	4	NO
APPENDIX 1	REVISED UTILITY RELOCATION NO. 1 PLAN SHEETS	2	NO
APPENDIX 2	REVISED UTILITY RELOCATION NO. 1 WORKSHEET	1	NO
APPENDIX 3	REVISED UTILITY RELOCATION NO. 2 WORKSHEET	3	NO
APPENDIX 4	ADMINISTRATIVE SUBDIVISION DEVELOPMENT	5	NO
APPENDIX 5	SHOP ROAD EXTENSION CADD FILES	NA	NO
	<i>Returned sections will be incorporated with executed agreement</i>		

Acknowledgement of Addenda Offeror acknowledges receipt of the amendment(s) to this solicitation. (show amendment(s) sign and date of each)	Addenda #	Date	Signature	Date
	1	8/16/16		

Section – A

Changes to the Contract Documents

CHANGES TO THE CONTRACT DOCUMENTS

1. See attached signed plans for Underground Relocation #1 as provided in Appendix 1 of this Addendum.
2. See provided CADD files for the project as referenced in Appendix 2 of this Addendum. A zip file can be accessed via the link provided in the "Addendum 1" section of the Shop Road Extension Phase 1 section of the Richland Penny Website at:
<https://ftp.richlandpenny.com/public/folder/GlmC9IMpBkCo8CHErYSsGw/S hop%20Road%20Extension%20Phase%201>
3. Disclaimer

The recipient and/or user of the software and electronic files associated with this disclaimer agree that these electronic files are NOT part of the Contract for the subject project and are provided for the convenience of the recipient and/or user only. These electronic files were created by Richland County for the sole purpose of creating a set of plans for project development at the site shown. Richland County believes that the information contained herein is reliable and generally accurate for the purpose intended. However, since physical conditions may vary and can change over time, Richland County makes no performance guarantees, expressed or implied warranties and assumes no obligation or liability for the reliability or accuracy of the information contained herein; or for the accuracy of the information translated by Richland County's software for use with end users' software. The paper copy of the electronic information, if available, shall govern over the electronic stored copy. Only the paper copy of the information may be used to determine errors and omissions in the documents. The cross section reports and electronic data files are released to the recipient for informational purposes. The electronic data is for non-construction purposes only, and it is the responsibility of the recipient to validate the enclosed data with appropriate plans, specifications, and estimates for the project. The recipient and/or user accepts all responsibility and risk associated with the download and use of the associated software and electronic files and further agrees that under no circumstances will Richland County be liable for any consequential, incidental, special or exemplary damages associated with the use or reliance on the subject software and electronic files. The recipient ACCEPTS the aforementioned terms and conditions upon opening of any electronic file contained in this deliverable.

4. See attached Administrative Subdivision Development as provided in Appendix 3 of this Addendum.

5. The following pertinent information is provided for the record with regard to Richland County's SLBE program.

- A listing of Certified SLBE Firms can be found on the County's website: <http://www.rcgov.us/Government/Departments/BusinessOperations/SmallLocalBusinessEnterprises.aspx>
- Bidders should provide pricing for areas included in their SLBE Certification certificate
- SLBE firms can contact the SLBE office prior to the bid opening to secure additional NAICS Codes on their Certification Certificate if necessary for the project.
- The SLBE Office will conduct monthly audits of payments made to SLBE firms
- All SLBE Firms are encouraged to update their contact information with the SLBE Office and designate a Contract Compliance person who will coordinate with the agency.
- Firms should contact the SLBE office for assistance as needed at 803-576-2140.
- The County will be enforcing the Prompt Payment Clause included in the Project Manual.
- Richland County has entered into a relationship with McCartha Cobb & Associates of Columbia, SC to assist SLBE firms who may have bonding concerns when contracting with the County. McCartha Cobb can be reached via phone at 803-799-3474.
- All sub-contractors must be legitimate and provide a commercially useful function for the project. All contractors should be fully licensed to complete the work being performed.
- Only companies with current SLBE Certifications will be counted as Certified SLBE firms. Richland County is in the midst of re-certifying the first certified SLBE firms and have extended the re-certification dates. As a result, the certification expiration dates for all firms currently listed on the County's website have been extended to allow them to participate on this project.

Section – B

Pre-Bid Conference Agenda



PRE-BID MEETING
Shop Road Extension Phase 1
PDT-290-IFB-2016

Agenda Items

August 10, 2016 10:00 AM

1. Introductions
2. DBE/SLBE Participation
3. Project Description & Performance Period
4. Contract Requirements/Documents
 - a. IFB Documentation
 - b. No allowance
 - c. Bond requirements
5. Special Provisions
 - a. Quality Assurance Testing
6. Utility Coordination
7. Project Safety
8. Questions

Section – C

Pre-Bid Meeting Minutes



**PENNIES
IMPACTING PEOPLE**
RICHLAND COUNTY TRANSPORTATION PENNY PROGRAM



SHOP ROAD EXTENSION

PHASE I

Project Bid No. PDT-290-IFB-2016

Pre-Bid Conference Minutes

August 10, 2016 - 10:00 A.M.

THOSE IN ATTENDANCE: Sign-In Sheets are attached

1. INTRODUCTIONS

The Purpose of this meeting was to provide a general overview of the project and to allow potential bidders to ask questions prior to the bid opening. The minutes of the meeting are included herein. At the start of the meeting, Dale Collier allowed members present from the project team to introduce themselves. This included representatives of the Program Development Team, Richland County representatives, and the design team of CDM Smith.

2. DBE / SLBE PARTICIPATION

Collier directed all contractors' attention to Richland County's SLBE (Small Local Business Enterprise) Program encouraging the use of County Approved local businesses. He noted that Richland County Procurement and Office of Small Business Opportunities representatives had not yet arrived at the meeting and proceeded to give an overview of the County's SLBE Program in their absence. He highlighted the following regarding specific requirement for this project.

- The SLBE Participation Goal for the project is 4.37%. This percentage of the work must be completed by the SLBE contractors.
- A listing of Certified SLBE Firms can be found on the County's website at : <http://www.rcgov.us/Government/Departments/BusinessOperations/SmallLocalBusinessEnterprises.aspx>
- Firms should contact the SLBE office for assistance as needed at 803-576-2140.
- SLBE firms in attendance (Taylor Brothers Construction and Asktech) were allowed to introduce themselves to prospective general contractors.
- Richland County is in the midst of re-certifying the first certified SLBE firms and have extended the re-certification dates. As a result, the certification expiration dates for all firms currently listed on the County's website have been extended to allow them to participate on this project.

2. PROJECT DESCRIPTION AND PERFORMANCE PERIOD

Collier noted that the work includes the extension Shop Road in Columbia, SC and allowed Jennifer Bragg to give a general overview of the project. Bragg described Shop Road Extension Phase 1 as the extension on Shop Road from the existing Shop Road / Pineview intersection to Longwood Road in Richland County. She continued and gave the following general highlights of work required for the project.

- The new 4-lane road is approximately one mile in length
- Work includes concrete and asphalt surfacing
- A floorless culvert is included in the project as described in the documents
- Work includes modifications to an existing pond on site
- The replacement of an existing dam is part of the work
- The extension of Shop Road is to be completed as indicated
- An interim completion date is for a portion of the project is indicated in the documents

Bragg clarified that due to the scheduling of a number of collaborators for the project the Pre-Construction Conference has been set for November 8, 2016 as indicated in the documents. She further noted that due to Richland County commitments to a business entity, the contract time frame has been established to include an interim completion date for an initial section of the project as described in the documents. Bragg stated that described initial portion of the work must be completed within 1-year of the Notice to Proceed. The entire project shall be Substantially Complete by September 16, 2018, six hundred seventy one (671) calendar days from the issuance of a Notice to Proceed on November 14, 2016.

3. CONTRACT REQUIREMENTS / DOCUMENTS

Collier gave a general overview of Contract Requirements and noted the following in accordance with the provided meeting agenda.

- a. IFB Documentation: Collier gave the following update of bidding requirements
 - Bid Date: September 14, 2016. Bids will be accepted at 2:00PM.
 - Bid Location: Richland County Procurement Office, 2020 Hampton Street, Third Floor; Columbia, South Carolina 29201. Bidders should allow ample time to enter the facility as parking is metered in the area and limited.
 - All bids must be enclosed in a sealed opaque envelope, bearing the name, address of the bidder, South Carolina Contractors License number, identification of contract being bid and the name of project.
 - Along with the Bid, provide a Bid Bond or Cashier's Check for 5% of the Bid, Acknowledgement of Receipt of Addenda, DBE Participation Sheet
 - The Bid Form and worksheets should be filled out in its entirety to avoid being deemed non- responsive.
 - The Bid must be signed and comply with all South Carolina laws.
 - Bids received after the noted time will be rejected and returned to the bidder unopened.
 - Contractors will be required to hold their bid pricing for 120 days
 - All required taxes should be included in contractor bidding

- The sample contract to be executed with the low bidder is included in the project specifications.
 - Questions should be forwarded to the attention of PDT Procurement Manager, Dale Collier at dcollier@richlandpenny.com. The last day for questions will be September 7, 2016, seven (7) days prior to the bid.
 - At least one addendum will be issued to include the minutes of the current meeting and designer clarifications. Contractors should check the County and PDT websites for addenda.
 - Include all required checklists and forms with bids as required. Bidders must provide DBE Participation Sheet, SLBE Participation Form and other forms and affidavits that are included in the contract Documents
 - Insurance and Bonding requirements should be provided by contractors per specification requirements
 - Collier noted that a 7.0% DBE goal is required for this project.
 - Collier noted that a 4.37% SLBE goal is required for this project.
- b. Allowances: There are no Allowances or Alternate Pricing included in the project.
- c. Site Visit: When suggested by Collier, contractors present agreed that a formal site visit will not be necessary for this project. Collier specifically stated that the submission of a bid by a contractor will be deemed as evidence that the contractor has visited the site and is fully aware of project site conditions.
- d. Collier gave an overview of Front End Specifications included in the project manual and noted that standard Richland County requirements dictate that a number of forms and affidavits to be submitted with each contractor's bid. He suggested that bidders review the various affidavits that are required to be notarized so they can be prepared in advance of the bid date and time. During his review of this section of the project manual, Collier noted the following among the items to be submitted.

SHOP ROAD EXTENSION PHASE I FRONT END SPECIFICATIONS (PARTIAL LISTING)		
Form	Page No.	Comments
Bid Form	14-29	Required
Affidavit	30	Required
Declaration	31	Required
Non-Discrimination	32	Required
Certificate of Familiarity	34	Required
Drug Free Workplace	35	Required
NPDES Permit	36-37	Required
DBE Participation	38	Required 7.0% Participation Rate
DBE Quarterly Report	39	Not Required with Bid
SLBE Participation	40	Required 4.37% Participation Rate
Non-Collusion	41	Required
Listing of Subcontractors	43	Required
Bidders Checklist	44	Required

Collier stressed that all blanks on the Bid Form should be filled for bidders to be deemed responsive. Further, Bid Forms should not be altered in any manner. Altered Bid Forms will be deemed non-responsive. During the review of the Form, Bragg noted that additional worksheets are provided for Bid Form items Utility Relocation Number 1 and Utility Relocation Number 2. Totals for these items should be inserted into the main Bid Form.

Collier directed each bidder's attention to Bonding and Insurance Requirements included in the documents at pages 45-47 as the information included may affect a their bid.

4. SPECIAL PROVISIONS

Bragg gave an overview of Technical Specifications included in the Special Provision sections of the project manual. She stated that while standard SCDOT specifications are incorporated, contractors should pay close attention to all sections as some have been amended for project conditions. Bragg continued and noted the following sections for the benefit of interested bidders.

SHOP ROAD EXTENSION PHASE I AMENDED SPECIFICATIONS (PARTIAL LISTING)		
Spec Section	Section Title / Description	Comments
26	Examination of Proposals	Plans available at Richland Penny Office
38	Corps Permit	In Progress and a copy is provided in appendices
39	NOI / SWPPP	In Progress and a copy is provided in appendices
45	Utilities	SCE&G Transmission Line construction clearance requirements are noted
55	Borrow Excavation	Roadway requirements will follow SCDOT's specifications; Dam requirements will follow the Dam Consolidated Special Provisions
80 - 81	Smooth Wall Pipe	All storm drain piping to be RCP type
87	Right of Way Plat	This section includes Richland County's policy for separating the road R/W from the parent parcel.
97	Floorless Culvert	Revised
98	Intermediate Completion Date	Interim completion date (not including landscaping) 1-yr from NTP to accommodate County commitment
99	Project Access	Access allowed from existing Shop Road and Pineview Road; Access allowed on Longwood Road via Bluff Rd; Access denied on Longwood Road via Garners Ferry Rd and Old Garners Ferry Rd
111	As-Built Plans	Road docs per SCDOT; Utilities per City of Columbia
*172	Arched (Floorless) Culvert	Supplementary Specifications – final geotechnical report is required; only deep foundations allowed
*200	Dam Special Provisions	Contractor should pay special attention to this section for specific requirements
*260	Utility Relocation #1	Specs for water line relocation

SHOP ROAD EXTENSION PHASE I AMENDED SPECIFICATIONS (PARTIAL LISTING)		
*262	Utility Relocation #2	Specs for utility relocations in the Industrial Park area
* 730	FEMA CLOMR	Provided for Information Only
*739	Hydraulic Information	Hydrology Study
*1069	Geotech Report for Culvert	Preliminary Report for Information Only; Contractor to Provide Final Report
*1119	Final Utility Report	For Information Only
*1209	NOI / SWPPP Applications	For use by the successful contractor
*1431	Corp Permit Application	For Contractor Information
*1534	Final Geotech Report for the Road	For Contractor Information
*Appendices to the Specifications: Indicated Numbers are page numbers of the provided PDF document. Page 1618 Corp Permit Application is duplicate information.		

King of the PDT noted that PDT CEI Inspectors will be monitoring the progress of the work and will be responsible for Quality Assurance (QA) and Quality Control (QC) Testing for the project. He said that PDT Inspectors will be on site to conduct various tests as well as verify installed quantities during the work; however, asphalt testing will be the responsibility of the General Contractor. Based on quantified installations, monthly Pay Applications will be generated by the PDT for contractor review prior to formal approval.

Collier concluded discussion related to project documents directing the group's attention to the Sample Contract provided in the project manual. He noted that upon approval by County Council, the PDT will execute the included contract with the successful bidder. He suggested that all bidders review this section to determine if there are any Bid Day cost implications.

5. UTILITY COORDINATION

Roberts directed attendees' attention to the Final Utility Report as included in the contract documents. He noted that approximately eight (8) utilities to be relocated and noted that the contractor will be required to identify additional conflicts during the course of the work. He further noted that the following Utility Relocations are identified in the documents with separately bound plans provided accordingly and Bid Form worksheets provided.

- Utility Relocation #1 : 16" water line relocation
- Utility Relocation #2 : 15" Water and 30" sewer line relocations in the Industrial Park area

Roberts clarified that one (1) utility to be relocated will have to be scheduled after clearing is completed.

6. PROJECT SAFETY

All bidders are advised that a Safety Plan will be required of the low bidder for review by the Program Development Team. Collier noted that safety will be paramount on the project and that the PDT will employ a Safety Manager to monitor safety conditions at each jobsite.

7. QUESTIONS

See Questions and Answers provided during the meeting at Section D of Addendum #1

CLOSING REMARKS

Collier thanked all for their attendance and encouraged contractors to submit their questions to his attention as noted during the meeting.

Section – D

Questions and Answers

QUESTIONS AND ANSWERS

- Q: Is excavation for the dam included in UNCLASSIFIED EXCAVATION, or separate?
- A: See Dam Consolidated Special Provisions. All Unclassified and or Borrow Quantities associated with the construction of the Dam is paid for under the Lump Sum Quantity for the dam.
- Q: Is placement of fill for the new dam included in BORROW EXCAVATION, or separate?
- A: See Dam Consolidated Special Provisions. All Unclassified and or Borrow Quantities associated with the construction of the Dam is paid for under the Lump Sum Quantity for the dam.
- Q: Is the Aggregate Diaphragm listed in quantities associated with the Dam construction?
- A: No, this is for the temporary sediment basin at approximate station 131+00 Right on Sheet 8 of the Construction Plans.
- Q: Why is the 42" smooth wall pipe listed as a separate pay item?
- A: While all pipes on the project are smooth wall pipe, the permanent drainage pipes were quantified as RCP Class III (which is a type of SWP), while the 42" Smooth Wall is called out in accordance with the SCDOT sediment basin standard drawing, as this pipe is associated with the temporary sediment basin at approximate station 131+00 Right on Sheet 8 of the Construction Plans.
- Q: Why are there 120-days allotted prior to the Notice to Proceed.
- A: It is not anticipated that all 120-days will be necessary; however, ample time is included to allow for Bid Evaluations, Recommendation to County Council, Council Approval, Protest Period, Contract Preparation, Contract Legal Review, etc. as required by Richland County Government.
- Q: Is there a possibility that the interim Substantial Completion Date may be adjusted.
- A: Yes – The actual date will be finalized to reflect 1-year from the official Notice to Proceed.
- Q: Are utility relocations to be done by others?
- A: SCE&G will complete power relocations. Water and sewer relocations are by the contractor.

Q: Will CADD drawings be made available?
A: Yes – See Appendix 2 of this Addendum.

Q: Is lump sum pricing to be provide for Dam / Spillway concrete?
A: Yes – This is clarified in Dam Special Provisions on page 203 of the Project Manual.

Q: Is there a local preference stipulated for this project.
A: No – However, SLBE requirements must be met that include Richland County Certified Businesses.

Q: Can subcontractors be included on both SLBE and DBE Participation Forms and be credited toward both percentages?
A: Yes

Q: Is the project located on a State road?
A: SCDOT.

Q: Is SCDOT funding provided for this project?
A: No.

Q: Is there any SCDOT oversight for this project?
A: Yes – Per an Inter-Governmental Agreement (IGA) established between the County and the Agency.

Q: Are data communication lines to be relocated by the contractor?
A: No – These lines are being removed independently by AT&T.

Q: SCDOT Standard Specifications Division 500 allows for the use of fixed forming; due to the varying lane widths, phasing, and size of the project (too small for an onsite plant) slip forming may not be the best option for paving this project. Can fixed forming be allowed for this project in lieu of slip forming?
A: Fixed forming is allowed.

Q: Can a pay item be created for diamond grinding of the concrete pavement?
A: The contractor may choose how to finish the concrete pavement to achieve and meet the rideability requirements. A pay item will not be provided.

- Q: It was stated in the pre-bid meeting that all QA/QC is the owner's responsibility; however per the SCDOT Supplemental Technical Specification SC-M-501 Item 6 a field office and lab is required. Do we need to provide a field office/lab and if so can a pay item be created to cover these costs?
- A: A field office/lab is not required for this project.

Section – E

Pre-Bid Conference Sign-In Sheets



Pre-Bid Meeting

Project: Shop Road Extension Phase 1

Date: 08/10/2016

Meeting Time: 10: 00 AM

NAME	ORGANIZATION	EMAIL	PHONE
Reed Rogers	AOS Specialty Contractors	mike@aosscc.org reed@aosscc.org	803-730-6831
Randy Scott	P.C. CONSTRUCTION CO., INC.	RSCOTT@PCCONST.NET	662-453-2424
Heston Powers	" " "	heston.powers@pccconst.net	662-453-2424 ext. 120
Grady Wicker	Eagle Constr. Co., Inc.	gwicker@eagleconstructionco.com	803-276-5040
EVANS DAVES	C. R. JACKSON, INC.	EDAVES@CRJACKSON.COM	(803) 385-8557
Bob McClam	McClam & Assoc. Inc.	R.M@McCLAM.NET	803 345 9194
Jennifer Briggs	Richland Penny jbriggs@richlandpenny.com		803-726-4146
ROSS TILTON	RICHLAND PENNY	rtilton@richlandpenny.com	803 726 6170
Eric Moody	Cherokee Inc.	emoody@cherokee-sc.com	803-776-4870
LONNIE CARROLL	MCCARTHY IMPROVEMENT	LCARROLL@MCCARTHYIMPROVEMENT.COM	864-420-0877
Randy Roberts	Richland PDT	RROBERTS@RICHLANDPENNY.COM	803-726-465



Pre-Bid Meeting

Project: Shop Road Extension Phase 1

Date: 08/10/2016

Meeting Time: 10:00 AM

NAME	ORGANIZATION	EMAIL	PHONE
Ronald Jeffcoat	R+T Grading INC.	RTG INC @ PBT COMM	803-894-7827 AET 803-206-6942
NATE TIMM	ISCO	NATE.TIMM@ISCO-PIPE.COM	704-302-7045
A. LEE AMICK	HOLLIM	lee.amick@latanghollim.com	(704) 564-5168
DALLAS OWENS	Granite Contracting	DALLASOWENS@granitecontracting.com	704 813.7530
JAMES PENCE	G.F.F. CONSTRUCTION	JPENCE@GFFUSA.COM	(859) 620-3406
Chris Branham	J.C. Wilkie Construction, LLC	cbranham@jcwilkie.com	803-647-4004 cell
Carla Price	CDM Smith	price.cj@cdmsmith.com	803 758 4551
SAM SWANSON	CDM Smith	SWANSON SA@CDMSMITH.COM	758 4544
William Huffstetler	CDM Smith	huffstetlerw@cdmsmith.com	803.758.4506
JAMES GREGORY	Cherokee Inc	jgregory@cherokee-sc.com	803 776 9870
ANDY JOHNSON	SE Cement Assn.	ajohnson@se.cement.org	803-556-2889
Brett Murray	Lane Construction	bmurray@laneconstruct.com	803-744-4534



Pre-Bid Meeting

Project: Shop Road Extension Phase 1

Date: 08/10/2016

Meeting Time: 10:00 AM

NAME	ORGANIZATION	EMAIL	PHONE
John Cuthers	AS/CTECH	jguthers@tdcsnet.com	803-347-7197
JAMES A. GOODSON	R.E. GOODSON CON. CO.	JAMES@REGOODSON.COM	843-393-2253
JIM CAMPBELL	CONTECH ENER. SOL. (PRECAST BRIDGES)	JCAMPBELL@CONTECHES.COM	(803) 216-4274
Mike Hanley	C.R. JACKSON	mhanley@crjackson.com	600-1950
Sam Albers	BRADCO CONSTRUCTION	sam@bradcoconstruction.com	770-354-5041
Jody Gilden	WALKER BROTHERS	jody@walkersignals.com	960-7523
WENDELL POWELL	SIDAN CONSTRUCTION CO.	Powellw@sidanll.net	960-8177
GERALD WALKER	RICHLAND PD	GWALKER@RICHLAND-PENNY.COM	803-726-6151
John Jordan	Cherokee, Inc.	jjordan@cherokee-sc.com	(803) 513-7625
SALLY CRANE	L-J, INC.	hwilson@l-jinc.com	(803) 929-1181
Dale Collier	Richland Penny	dcollier@richlandpenny.com	803-917-6258



Pre-Bid Meeting

Project: Shop Road Extension Phase 1

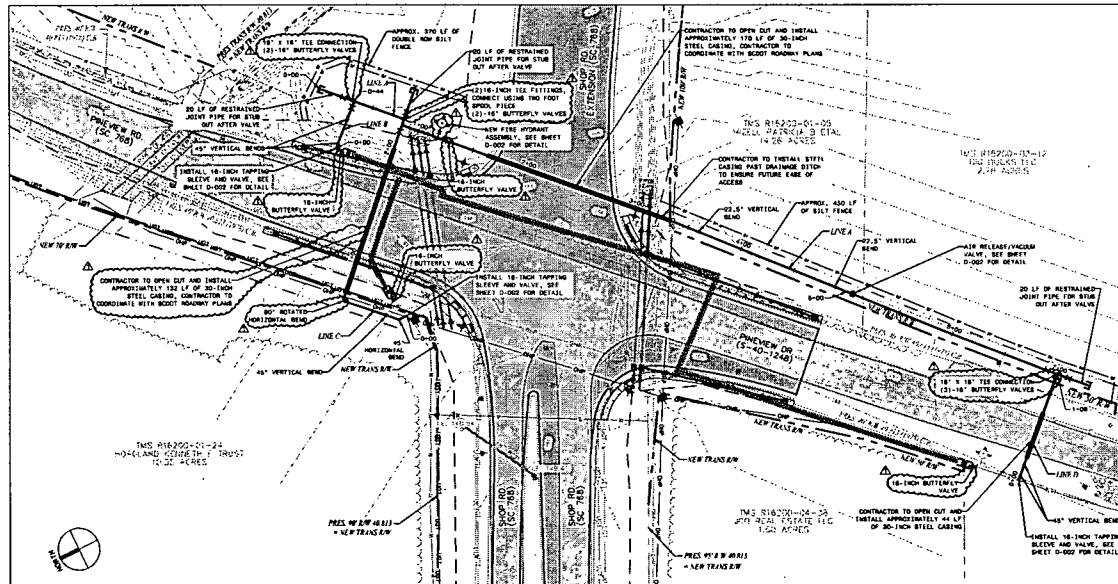
Date: 08/10/2016

Meeting Time: 10:00 AM

NAME	ORGANIZATION	EMAIL	PHONE
Michael Boyle	McCarthy Improvement	mboyle@mcCarthyimprovement.com	864-918-6126
Shaun Salley	Richland County	salleyS2@rcgov.us	803-726-6149
Brenda Parnell	RC OSBO	Parnellb@rcgov.us	803-576-1544
Joseph Richardson	Richardson Const Co	ESTIMATOR@RICHDTI.COM	803-786-9741
Kristen Hutto	RC OSBO	huttoK@rcgov.us	803-576-1545
Collier Taylor	Taylor Bros Const	collier@TaylorBrothersSC.CO	803-776-5113
Bryan Connolly	~~Archer Western~~ Walsh group	~~BW Connolly@Archer~~ Walsh group	~~919-916-7462~~
Clem Watson	Richland Penny	CWATSON@RICHLANDPENNY.COM	(803) 726-6170
Brian King	Richland Penny	bking@richlandpenny.com	(803) 351-5289
Sony Immenman	Richland PDT		
Janet Jones	Richland PDT		
Amy Craps	Dennis Corp	acraps@denniscorporation.com	803-226-1013

Appendix – 1

Utility Relocation #1
Revised Sheets



LEGEND	
EXISTING	PROPOSED
--- EXISTING CONTOUR	16-INCH DIP WATER LINE
- - - PROPERTY LINE	STORM DRAINAGE PIPE
□ PROPERTY PIN	LIMITS OF CONSTRUCTION
- - - RIGHT OF WAY MARKER	RIGHT OF WAY LINE
--- UNDERGROUND COMMUNICATION	EXCLUSIVE CITY OF COLUMBIA
--- TELEPHONE PEDESTAL	WATER LINE CASEMENT
--- TELEPHONE MANHOLE	UNDERGROUND COMMUNICATION
--- WATER LINE	OVERHEAD POWER
--- WATER VALVE	SILT FENCE
--- FIRE HYDRANT	UTILITY POLE
--- GAS LINE	DROP INLET
--- OVERHEAD POWER	STORM MANHOLE
--- UTILITY POLE	CATCH BASIN
--- GUT WIRE	TRAFFIC SIGNAL POLE
--- TRAFFIC SIGNAL POLE	16-INCH BUTTERFLY VALVE
--- TRAFFIC SIGNAL LINE	16-INCH PLUGGED END
--- TRAFFIC SIGNAL BOX	FIRE HYDRANT
--- SIGN	SIDEWALK
--- CLEAN OUT	ASPHALT PAVEMENT
--- REINFORCED CONCRETE PIPE	RIP RAP
--- STORM DROP INLET	ABANDON IN PLACE
--- TREE LINE	
--- EXISTING ASPHALT	
--- EXISTING GRAVEL DRIVE	

MAP NOTE:

1. ALL EXISTING BOUNDARY AND TOPOGRAPHIC INFORMATION TAKEN FROM A LAND SURVEY PREPARED BY: [Name]
2. TRANSFER OF SITE BENCHMARK(S) IS THE RESPONSIBILITY OF THE GENERAL CONTRACTOR AND SHALL ONLY BE COMPLETED BY A SURVEYOR LICENSED/REGISTERED IN THE STATE IN WHICH THE PROJECT IS LOCATED.
3. THE CONTRACTOR IS RESPONSIBLE FOR FIELD VERIFICATION OF EXISTING BENCHMARK PRIOR TO ANY CONSTRUCTION AND SHALL REPORT ANY DISCREPANCIES IMMEDIATELY TO THE ENGINEER. FIELD VERIFICATION CAN BE ACCOMPLISHED BY CHECKING A MINIMUM OF TWO FIELD OBJECTS DISPLAYED ON THE SURVEY (E.G., MANHOLE RIM, STONE GRADE, PIPE INVERTS, ETC.).
4. THE CONTRACTOR IS RESPONSIBLE FOR FIELD VERIFICATION OF ALL EXISTING UTILITIES. IF THERE ARE ANY MAJOR DISCREPANCIES THAT WILL AFFECT THE PROJECT DESIGN THE CONTRACTOR SHALL NOTIFY THE ENGINEER IMMEDIATELY.

GENERAL NOTES:

1. CONTRACTOR TO ABANDON EXISTING WATER LINE IN PLACE WITH FLOWABLE FILL UPON ISSUANCE OF A PERMIT TO OPERATE FOR THE PROPOSED WATER LINE.
2. CONTRACTOR TO INSTALL THURST BLOCKING AT ALL PLUGGED ENDS AND TAPPING SLEEVES. SEE SHEET D-002 FOR DETAILS.
3. CONTRACTOR TO USE RESTRAINED JOINT PIPE FOR ALL WATER LINES.
4. CONTRACTOR TO COORDINATE INSTALLATION OF WATER LINE WITH SLOOT ROADWAY PLANS.
5. CONTRACTOR TO INSTALL STEEL CASING AT DEPTHS SHOWN ON ELEVATION PROFILES. SEE SHEET C-000.

DRAWING STATUS - FOR CONSTRUCTION

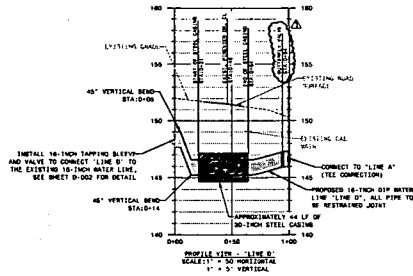
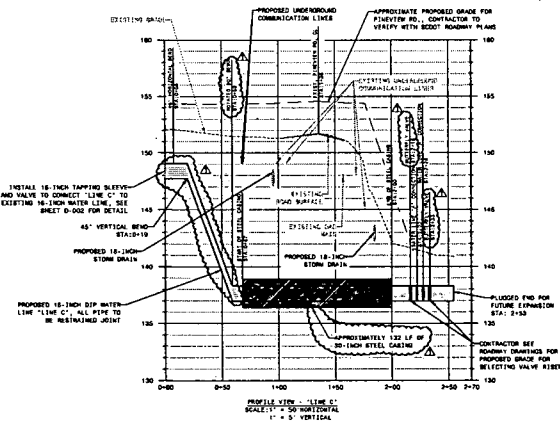
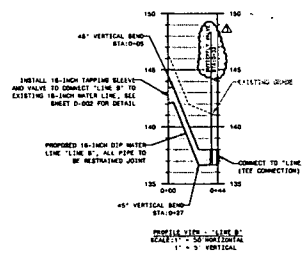
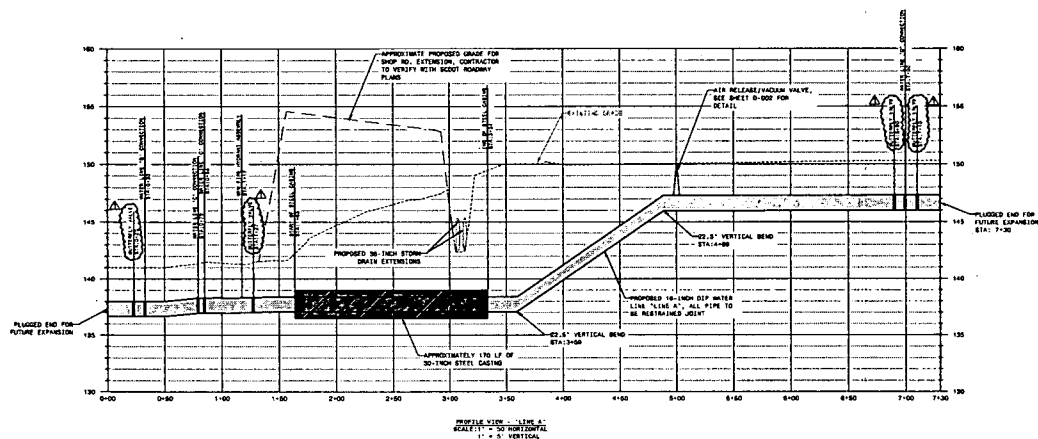
HUSSEY GAY BELL
Established 1958
1219 ASSEMBLY STREET, SUITE 300, COLUMBIA, SC 29201 / 803.799.0444

DATE: AUG 17, 2016
JOB NO. 41437900
SCALE: AS SHOWN

SHOP ROAD EXTENSION PHASE 1
16-INCH WATER LINE RELOCATION
COLUMBIA, SC
CITY OF COLUMBIA
PLAN & LEGEND
DRAWING NUMBER
C-002

GENERAL NOTES:

1. CONTRACTOR TO INSTALL THURST BLOCKING AT ALL PLOUGED ENDS AND TAPPING BLEVIES. SEE SHEET D-002 FOR DETAILS.
2. CONTRACTOR TO USE RESTRAINED JOINT PIPE FOR ALL WATER LINES.
3. CONTRACTOR TO COORDINATE INSTALLATION OF WATER LINE WITH SCOTT ROADWAY PLANS.
4. THE CONTRACTOR IS RESPONSIBLE FOR FIELD VERIFICATION OF ALL EXISTING UTILITIES, IF THERE ARE ANY MAJOR DISCREPANCIES THAT WILL AFFECT THE PROJECT DESIGN THE CONTRACTOR SHALL NOTIFY THE ENGINEER IMMEDIATELY.



DRAWING STATUS - FOR CONSTRUCTION

SHOP ROAD EXTENSION PHASE 1
18-INCH WATER LINE RELOCATION

COLUMBIA, SC

CITY OF COLUMBIA

PROFILE VIEWS

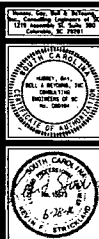
DRAWING NUMBER
C-003

REVISIONS:
1. 07/15/2018 JTF/ST/A

DATE: JUNE 27, 2018
JOB NO. 41437800
SCALE: AS SHOWN

HUSSEY GAY BELL
Established 1958

1219 ASSEMBLY STREET, SUITE 300, COLUMBIA, SC 29201 / 803.799.0444



Appendix – 2

Utility Relocation #1
Revised Worksheet

UTILITY RELOCATION ITEM NO. 001 - WORKSHEET ITEM NO. 1052000					
DESCRIPTION		UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1	RESTRAINT JOINT DIP WATER MAIN – 16-INCH CL 350	LF	1,100		
2	ABANDON EXISTING 16-INCH WATER MAINS FLOWABLE FILL, VALVES, INSTALL CAPS, ETC.	LF	815		
3	TEE - 16-INCH x 16-INCH, MJ	EA	4		
4	BEND- 22.5 DEGREE- 16-INCH, MJ	EA	2		
5	BEND- 45 DEGREE- 16-INCH, MJ	EA	6		
6	BEND- 90 DEGREE- 16-INCH, MJ	EA	1		
7	CAP/PLUG AND CONCRETE THRUST COLLAR/BLOCKING – 16-INCH, MJ	EA	3		
8	BUTTERFLY VALVES W/BOX – 16-INCH	EA	11		
9	AIR RELEASE VALVE IN CAST IRON METER BOX	EA	1		
10	TAPPING SLEEVE, VALVE, 2 MJ CAPS, AND THRUST BLOCKING- 16-INCH X 16-INCH	EA	3		
11	FIRE HYDRANT ASSEMBLY (TEE, VALVE, HYDRANT, RJ PIPING, ETC.)	EA	1		
12	OPEN CUT AND INSTALL 30" STEEL CASING	LF	170		
13	FLOWABLE FILL	CY	280		
14	FULL DEPTH ASPHALT REPAIR ABOVE STEEL CASING	SY	80		
14	FLOWABLE FILL AND FULL DEPTH ASPHALT REPAIR ABOVE STEEL CASING	LF	440		
	SUBTOTAL – CONSTRUCTION				
	ALTERNATIVE CONSTRUCTION OPTIONS				
15	BORE AND JACK WITH 30-INCH STEEL CASING	LF	180		
16	OPEN CUT AND INSTALL 30" STEEL CASING	LF	180		
	TOTAL UTILITY RELOCATION NO. 001 – WATER LINES (ITEMS 1 to 14, +16)				

Appendix – 3

Utility Relocation #2
Revised Worksheet

UTILITY RELOCATION ITEM NO. 002					
WORKSHEET ITEM NO. 1052000					
ITEM		UNIT	QUANTITY	UNIT COST	TOTAL
WATER MAIN – MISCELLANEOUS					
WS-1	MOBILIZATION/ DEMOBILIZATION	LS	1		
WS-2	TRAFFIC CONTROL (IN ACCORDANCE TO SCDOT STANDARDS AND ENCROACHMENT PERMIT)	LS	1		
WATER MAIN – DEMOLITION AND ESC					
WS-3	CLEARING/GRUBBING: INCLUDES THE ENTIRE LIMITS OF DISTURBANCE TO A MINIMUM DEPTH OF 6-INCHES OF THE TOP SOIL LAYER, AS SHOWN IN THE DRAWINGS, AND ACCORDING TO THE SPECIFICATIONS	AC	2.2		
WS-4	SILT FENCE	LF	4,575		
WS-5	CONSTRUCTION ENTRANCE(S)	EA	2		
WS-6	EROSION CONTROL BLANKET	SY	1,670		
WS-7	PERMANENT GRASSING: INCLUDES THE PREPARATION OF THE TOP SOIL LAYER WITH ALL SOIL AMENDMENTS PER SPECIFICATIONS IN ORDER TO ESTABLISH PERMANENT VEGETATION	AC	2.2		
WATER MAIN					
WS-8	HOT TAP (16-INCH STAINLESS STEEL TAPPING SLEEVE AND 16-INCH FULL BORE GATE VALVE)	EA	1		
WS-9	WATER MAIN, 16-INCH DIP (COMPLETE WITH FITTINGS AND APPURTENANCES) (OPEN CUT)	LF	2567		
WS-10	WATER MAIN, 20-INCH HDPE (DIRECTIONAL DRILL)	LF	1,570		
WS-11	RESTRAINED 16-INCH DIP (COMPLETE WITH FITTINGS AND APPURTENANCES)	LF	2,123		
WS-12	16-INCH DIP ENCASED IN FLOWABLE FILL	CY	60		

WS-13	16 X 16 X 16-INCH DIP TEE	EA	7		
WS-14	16-INCH DIP END CAP	EA	8		
WS-15	20-INCH HDPE POLY-ANCHORS	EA	6		
WS-16	20-INCH HDPE TO 16-INCH DIP TRANSITION	EA	6		
WS-17	AIR RELEASE VALVE	EA	3		
WS-18	BORE PIT EXCAVATION	CY	400		
WS-19	HYDRANT ASSEMBLY (INCLUDES HYDRANT, 16 X 16 X 6-INCH TEE, 6-INCH GATE VALVE, DIP (MIN. 4-FT), DI FITTINGS AND APPURTANENCES)	EA	7		
WS-20	DUCTILE IRON GATE ~~BUTTERFLY~~ VALVE, 16-INCH (INCLUDES VALVE BOX, CAST IRON LID, AND ALL WORK PER DETAIL IN DRAWINGS)	EA	14		
WASTEWATER MAIN - MISCELLANEOUS					
WS-21	MOBILIZATION/ DEMOBILIZATION	LS	1		
WS-22	CHAIN LINK FENCE	LF	320		
WS-23	CHAIN LINK DOUBLE SWING GATE	LF	16		
WS-24	RELOCATE EXISTING LIGHT POLE	LS	1		
WASTEWATER MAIN – DEMOLITION AND ESC					
WS-25	CLEARING/GRUBBING: INCLUDES THE ENTIRE LIMITS OF DISTURBANCE TO A MINIMUM DEPTH OF 6-INCHES OF THE TOP SOIL LAYER, AS SHOWN IN THE DRAWINGS, AND ACCORDING TO THE SPECIFICATIONS	AC	2.7		
WS-26	OPEN CUT AND REPAIR EXISTING DIRT ROAD	SY	145		
WS-27	REMOVE AND DISPOSE EXISTING CONCRETE SLAB AND WELLHOUSE, ABANDON EXISTING WATER WELL	LS	1		
WS-28	REMOVE EXISTING CHAIN LINK FENCE	LF	340		
WS-29	SILT FENCE	LF	7,500		

WS-30	PERMANENT GRASSING: INCLUDES THE PREPARATION OF THE TOP SOIL LAYER WITH ALL SOIL AMENDMENTS PER SPECIFICATIONS IN ORDER TO ESTABLISH PERMANENT VEGETATION	AC	4.1		
WASTEWATER MAIN					
WS-31	WW GRAVITY PIPE, 15-INCH PVC (AVERAGE DEPTH 8-FT)	LF	1,407		
WS-32	WW GRAVITY PIPE, 30-INCH DIP (AVERAGE DEPTH 10-FT)	LF	4,025		
WS-33	WW GRAVITY PIPE, 16-INCH DIP (AVERAGE DEPTH 13-FT)	LF	260		
WS-34	WW GRAVITY PIPE, 16-INCH DIP RESTRAINED (AVERAGE DEPTH 13-FT)	LF	499		
WS-35	30-INCH STEEL CASING, SCH 40 (JACK AND BORE)	LF	265		
WS-36	60-INCH WW MANHOLE (AVERAGE DEPTH 10-FT)	EA	14		
WS-37	48-INCH WW MANHOLE (AVERAGE DEPTH 10-FT)	EA	7		
WS-38	CONNECT PROPOSED FM TO EXISTING MILL CREEK PUMP STATION INFLUENT VAULT (INCLUDES BYPASS PUMPING AND ALL ADDITIONAL WORK, MATERIALS, AND APPURTENANCES TO MODIFY THE EXISTING VAULT FOR THE PROPOSED 30-INCH WASTEWATER PIPE CONNECTION, PER DRAWINGS DETAIL AND SPECIFICATIONS)	LS	1		
CONTINGENCY					
WS-39	UNSUITABLE SOILS REMOVAL FOR TRENCH WORK (ONLY WHEN APPROVED BY ENGINEER)	CY	5,000		
WS-40	SELECT BACKFILL MATERIAL FOR REPLACING UNSUITABLE SOILS FRO TRENCH BACKFILL (PIPES AND OR STRUCTURES) (ONLY WHEN APPROVED BY ENGINEER)	CY	5,000		
WS-41	IMPORTED SELECT FOUNDATION MATERIAL FOR TRENCH BEDDING - ADDITIONAL BEDDING MATERIAL FOR EXCAVATION OUTSIDE 12-INCHES BELOW PIPE BEDDING, PER SPECIFICATIONS AND DETAILS (PIPES AND OR STRUCTURES) (ONLY WHEN APPROVED BY ENGINEER)	CY	5,000		

Appendix – 4

Administrative Subdivision Development

ADMINISTRATIVE SUBDIVISION



Administrative Subdivision – Administrative subdivisions consist of:

1. The combination or recombination of portions of previously platted and recorded lots where the total number of lots is not increased and the resultant lots are equal to the applicable site development standards set forth in Chapter 26-54.
2. The division of land into parcels of five (5) acres or more where it does not result in the creation of a new roadway or the widening of an existing roadway.
3. The combination or recombination of entire lots of record where no new road or change in existing roads is involved.
4. The division of a parcel into two (2) lots which do not result in the construction of a new road or the improvement (including, but not limited to, paving and/or widening) of an existing road; or the construction of new water facilities, other than private on-site wells; or the construction of new sewerage facilities, other than on-site septic tanks; or the construction of new storm drainage facilities, other than roadside swales and culverts; and is not in conflict with any provision or portion of the comprehensive plan, official map, or Chapter 26-54.

Revised 08-03-2014

Richland County
Planning & Development Services

Administrative Subdivision Submittal Checklist

This checklist must be completed, signed, and submitted with application. ALL ITEMS ON CHECKLIST MUST BE ADDRESSED. PLEASE PROVIDE SUPPORTING DOCUMENTS OR NOTATIONS JUSTIFYING ITEMS THAT ARE NOT APPLICABLE.

Project Name: _____ **Applicant:** _____

- ☐ Administrative Subdivision Review Application
- ☐ \$103.63 application fee
- ☐ ^{Five} ~~Ten (10)~~ signed and sealed plats, no larger than 24" x 36"
- ☐ Two (2) 11" x 17" reduced plats
- ☐ Restricted Covenants Form signed and dated
- ☐ Digital submission on CD to include AutoCAD file in DXF format of the plans, metadata text file and elevation text file. **If no digital is submitted, \$51.82 fee per lot, up to 5 lots. (No digital is needed for lot combinations.)**

MAKE CHECKS PAYABLE TO RICHLAND COUNTY

Applicant: _____ **Date:** _____

Staff: _____ **Date:** _____

DISCLAIMER: This is not to be construed as containing all items, documents, or written information to be addressed or required by the Richland County Land Development Code (Chapter 26 of the Richland County Code of Ordinances) and/or other Richland County ordinances and laws. Project submittals that are mailed to Richland County are subject to the same review process and requirements as projects that are hand-delivered. Richland County does not assume responsibility for projects that are considered incomplete and not picked up as required.

Revised 08-05-2014



Planning & Development Services
2020 Hampton Street, 1st Floor
Columbia, SC 29204
Phone: 803-576-2180
Fax: 803-576-2182

Check Received (Date): _____
Check Number: _____
Amount: _____
Digital Submission (DXF file): ☐ Emailed
☐ Attached

ADMINISTRATIVE SUBDIVISION REVIEW APPLICATION

(Please type or write clearly – illegible applications will be returned)

Date Submitted: _____ RC Project #: _____
Property Owner's Name: _____
Property Owner's Address: _____
City, State _____ Zip Code: _____
Phone Number: _____ Fax Number: _____
Email Address: _____
Engineer / Surveyor: _____
Engineer's Mailing Address: _____
City, State _____ Zip Code: _____
Phone Number: _____ Fax Number: _____
Email Address: _____
Tax Map Sheet (TMS) Number(s): _____
Location of Proposed Development: _____
Current Zoning: _____ Size in Acres: _____ Total Number of Lots: _____
Source of Water Service: _____ Source of Sewer Service: _____

Pursuant to the criteria in Chapter 26 of the Richland County Land Development Code, the applicant requests an exception from the subdivision requirements for the reason checked below:

- ☐ The division of the subject property results in a combination or recombination, of previously platted and recorded lots where the total number of lots is NOT INCREASED AND the resultant lots are equal to the site development standards in Chapter 26 of the Land Development Code; or
- ☐ The combination or recombination of entire lots of record where no new road or a change in existing roads are involved; or
- ☐ The division of the land into parcels of five (5) acres or more where it does not result in the creation of a new roadway or the widening of any existing roadway.
- ☐ The division of a parcel into two (2) lots which do not result in the construction of a new road or the improvement including, but not limited to, paving and/or widening of an existing road; or the construction of new water facilities, other than private, on-site wells; or the construction of new sewerage facilities, other than on-site septic tanks; or the construction of new storm drainage facilities, other than roadside swales and culverts; and is not in conflict with any provision or portion of the comprehensive plan, official map or this chapter.

FEES: ☐ Administrative Subdivision Review \$103.63

☐ Digital Submission \$51.82 per lot (if no digital is submitted)

Certification

I hereby certify that I have read this application and the information supplied herein is true and correct to the best of my knowledge. I agree to comply with all applicable County Ordinances and State Laws related to land development. I am the property owner, or have received the owner's written authorization to act as his agent regarding this matter. I understand that falsifying any information herein may result in nullification of this request and/or appropriate legal remedies.

Property Owner/Agent Signature _____ Date: _____

RC-Sub-03-03-001



RESTRICTED COVENANTS AFFECTING PERMIT ACTIVITY



I, _____, am the Applicant for a _____ permit,
and I hereby truthfully disclose that the tract or parcel of land subject to said permit:

☐ is restricted by a recorded covenant that is contrary to, conflicts with, or prohibits
the activity for which this permit applies.

☐ is NOT restricted by a recorded covenant that is contrary to, conflicts with, or
prohibits the activity for which this permit applies.

I further understand and agree that unless stated above, Richland County does not have
actual notice of any recorded covenant that is contrary to, conflicts with, or prohibits the activity
for which this permit applies. Applicant therefore agrees to indemnify and hold harmless
Richland County from any Liabilities resulting from any Claims in the event that the permitted
activity is found to be in violation of a recorded covenant.

As used herein:

(1) 'actual notice' is not constructive notice of documents filed in local offices concerning the
property, and does not require Richland County to conduct searches in any records offices for
filed restrictive covenants;

(2) 'permit' does not mean an authorization to build or place a structure on a tract or parcel of
land; and

(3) 'restrictive covenant' does not mean a restriction concerning a type of structure that may be
built or placed on a tract or parcel of land."

SIGNATURE OF APPLICANT/AGENT

PRINTED NAME OF APPLICANT/AGENT

ADDRESS

CITY/STATE/ZIP

DATE

Richland County Seal

Appendix – 5

Shop Road Extension CADD Files
(See Addendum #1 at
Richland Penny Website)

<https://ftp.richlandpenny.com/public/folder/GlmC9lMpBkCo8CHErYSsGw/Shop%20Road%20Extension%20Phase%201>

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT OF JENNIFER WLADISCHKIN

PERSONALLY APPEARED before me, Jennifer Wladischkin, who being duly sworn,
deposes and says as follows:

1. I reside in Kershaw County, am over that age of 21, have personal knowledge of
and am competent to make the statements below.

2. I am an employee of Richland County and have worked in its Procurement
Department/Division for six (6) years and nine (9) months. I was promoted to the position of
Assistant Director of Procurement on April 29, 2017. As Assistant Procurement
Director/Manager, my duties include serving as Acting Procurement Director/Manager in the
absence of the Procurement Director/Manager. A true and accurate copy of my job
description, which states that in the absence of the Procurement Director, the Assistant
Procurement Director is to perform the duties of the Procurement Director, is attached hereto
as Exhibit A. On May 11, 2016, I was notified that due to my recent promotion to Assistant
Procurement Director/Manager, since the position of Director/Manager was vacant, I would be
serving as Acting Procurement Director/Manager until a Procurement Director/Manager is
hired. Exhibit B

3. On May 12, 2017, as Assistant Procurement Director/Manager and Acting
Procurement Director/Manager, I sent a letter (Letter) to Kathleen McDaniel, Esquire, counsel
for Richardson Construction Company, Inc. (Richardson). I advised Ms. McDaniel that I was
familiarizing myself with the facts of the Shop Road Extension Phase I Construction contract
award protest so that I can make the determinations required of me pursuant to Richland

County Code of Ordinances § 2-261.1(b) and (c). A true and accurate copy of my May 12, 2017 letter to Ms. McDaniel is attached hereto as Exhibit C.

4. On May 12, 2017, I received an e-mail from Ms. McDaniel acknowledging receipt of my Letter and stating that she would discuss it with her client. I have heard nothing further regarding the Letter. A true and accurate copy of Ms. McDaniel's email is attached hereto as Exhibit D.

5. On December 16, 2016, Richardson filed a protest of the Shop Road Extension Phase 1 Construction contract award (Shop Road Project). A true and accurate copy of Richardson's protest, without exhibits is attached hereto as Exhibit E.

6. On December 23, 2016, Richardson file another protest letter of the Shop Road Project. A true and accurate copy of Richardson's December 23 protest, without exhibits, is attached hereto as Exhibit F.

7. On May 18, 2017, I sent a letter to Richardson's counsel informing her of my determination, after review of the December 16 and 23, 2016 protests and the procurement file, that settlement is not possible. A true and accurate copy of my determination is attached hereto as Exhibit G. My written determination regarding the protests will be issued within the ten (10) day time period allowed by Richland County Ordinance, Article X, § 2-621.1(c).

Further the affiant saith not.

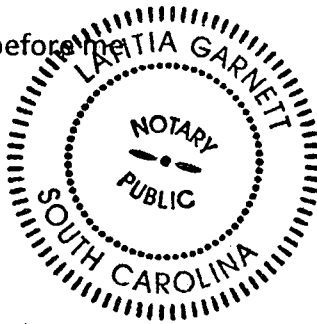
[Affiant signature on following page]

Jennifer Wladischkin
Jennifer Wladischkin

Sworn to and subscribed before me
this 18th day of May, 2017

Lat Garnett

Notary for South Carolina



Print name here: Latitia Garnett

MY COMMISSION EXPIRES
FEBRUARY 17, 2019

**RICHLAND COUNTY, SOUTH CAROLINA
CLASS DESCRIPTION
2007**

**CLASS TITLE: ASSISTANT PROCUREMENT DIRECTOR
OS704
PROCUREMENT DEPARTMENT**

GENERAL DESCRIPTION OF CLASS

The purpose of the class is to perform a variety of routine-to-complex financial and administrative duties involved in the procurement of goods and services for the County; to administer contracts for construction, maintenance, services and leases; and to perform related administrative and supervisory work as assigned. This class plans, organizes and implements programs within major organizational policies, reporting program progress to executive-level administration through reports and conferences.

ESSENTIAL TASKS

The tasks listed below are those that represent the majority of the time spent working in this class. Management may assign additional tasks related to the type of work of the class as necessary.

Assists in planning, coordinating and supervising all procurement functions for Richland County, ensuring compliance with all applicable policies, procedures, laws and regulations. Interpret and apply statutory, regulatory, and procedural guidelines for federal, state, and county laws as it relate to acquisitions and contracts.

Responsible for contract negotiations and monitoring analyzing, formulating, defending, executing, compiling contractors, formal and informal procurement to include legal correspondence.

Responsible for contract administration by selecting the type of contract, monitor performance, project schedule, price breakdown, change orders, payment requests, claims and disputes, on site visits for compliance with federal, state, and local laws.

Supervises subordinate staff as assigned; supervisory duties include instructing; assigning, reviewing and planning work of others; maintaining standards; providing training; coordinating activities; allocating personnel; acting on employee problems; recommending employee discipline as appropriate. Reviews the work of subordinates for completeness and accuracy; evaluates performance and makes recommendations as appropriate; offers advice and assistance as needed.

Performs or assists subordinates with assigned duties; investigates and corrects technical errors.

Consults with department heads and personnel concerning current and future purchasing and contract needs, concerns and problems.

Procures a vast variety of commodities, equipment, machinery and services necessary for the operation of all County departments.

Prepares and administers formal and informal bid solicitations as requested from user departments.

CLASS TITLE: ASSISTANT PROCUREMENT DIRECTOR

Reviews purchase requisitions submitted by user departments; monitors and reviews the purchasing activities of department buyers for compliance with budget allocations and purchasing guidelines.

Prepares contracts for approval; administers contracts for construction, maintenance, service and lease agreements; terminates contracts as appropriate.

Communicates with vendors as necessary to expedite deliveries and resolve shipping / invoicing discrepancies and problems with product quality.

Coordinates the disposal of obsolete, used, excess or surplus assets.
Maintains accurate and complete procurement records.

Performs duties of department Director as required in his/her absence.

Prepares a variety of studies, reports and related information for decision-making purposes; prepares periodic and special financial reports as required by the County and other agencies.

Assists in coordinating department activities and functions with those of other County divisions, departments and outside agencies as appropriate.

Interacts regularly with state and federal regulatory agencies, County Administration, and departments.

Receives and responds to inquiries, concerns, complaints and requests for assistance from County personnel, elected officials and citizens regarding areas of responsibility.

Attends staff, committee and County meetings as required.

Performs general administrative / clerical work as required, including but not limited to preparing reports and correspondence, entering and retrieving computer data, preparing spreadsheets, copying and filing documents, sending and receiving faxes, answering the telephone, etc.

Attends training, meetings, seminars and/or workshops to enhance job knowledge and skills.

INVOLVEMENT WITH DATA, PEOPLE, AND THINGS

DATA INVOLVEMENT:

Requires coordinating or determining time, place or sequence of operations or activities based on analysis of data or information and may implement and report on operations and activities.

PEOPLE INVOLVEMENT:

Requires supervising or leading others by determining work procedures, assigning duties, maintaining harmonious relations and promoting efficiency.

INVOLVEMENT WITH THINGS:

Requires handling or using machines, tools or equipment requiring brief instruction or experience, such as computers for data entry, fax machines, copiers, telephones or similar equipment; may service office machines, including adding paper and changing toner.

CLASS TITLE: ASSISTANT PROCUREMENT DIRECTOR

COGNITIVE REQUIREMENTS

REASONING REQUIREMENTS:

Requires performing supervisory work involving policy and guidelines, solving both people- and work-related problems.

MATHEMATICAL REQUIREMENTS:

Requires using basic algebra involving variables and formulas and/or basic geometry involving plane and solid figures, circumferences, areas and volumes, and/or computing discounts and interest rates.

CLASS TITLE: ASSISTANT PROCUREMENT DIRECTOR

LANGUAGE REQUIREMENTS:

Requires reading journals, manuals, and professional publications; speaking informally to groups of co-workers, staff in other organizational agencies, the general public, and people in other organizations; presenting training; composing original reports, training and other written materials, using proper language, punctuation, grammar, and style.

MENTAL REQUIREMENTS:

Requires doing specialized technical or entry-level professional work requiring general understanding of operating policies and procedures and their application to problems not previously encountered; application of specialized technical or professional principles and practices or the use of a wide range of administrative methods in the solution of problems; requires normal attention with short periods of concentration for accurate results and occasional exposure to unusual pressure.

VOCATIONAL/EDUCATIONAL AND EXPERIENCE PREPARATION

VOCATIONAL/EDUCATIONAL PREPARATION:

Requires high school diploma or GED equivalent supplemented by formal training, special courses or self-education that is equivalent to satisfactory completion of one year of college education or specialized advanced training in government procurement, business or a closely related field.

SPECIAL CERTIFICATIONS AND LICENSES:

Must possess a valid state driver's license.

Must possess or be able to obtain Certified Professional Public Buyer certification.

EXPERIENCE REQUIREMENTS:

Requires over three years and up to and including five years.

AMERICANS WITH DISABILITIES ACT REQUIREMENTS

PHYSICAL AND DEXTERITY REQUIREMENTS:

Requires sedentary work that involves walking or standing some of the time and involves exerting up to 10 pounds of force on a recurring basis or routine keyboard operations.

ENVIRONMENTAL HAZARDS:

The job risks exposure to no known environmental hazards.

SENSORY REQUIREMENTS:

The job requires normal visual acuity and field of vision, hearing and speaking abilities, color perception.

JUDGMENTS AND DECISIONS

JUDGMENTS AND DECISIONS:

Responsible for actions of others, requiring almost constant decisions affecting co-workers, customers, clients or others in the general public; works in a moderately fluid environment with guidelines and rules, but frequent variations from the routine.

ADA COMPLIANCE

Richland County is an Equal Opportunity Employer. ADA requires the County to provide reasonable accommodations to qualified individuals with disabilities. Prospective and current employees are invited to discuss accommodations.

CLASS TITLE: ASSISTANT PROCUREMENT DIRECTOR

5-2-2014 Revised – Added additional duties from older version. BPD



RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

May 11, 2017

Jennifer Wladischkin
Assistant Director/Manager
Office of Procurement and Contracting
Richland County Government
2020 Hampton Street
Columbia, SC 29204

Dear Ms. Wladischkin,

Pursuant to the Richland County Class Title and Description for Assistant Procurement Director/Manager (OS704), the Assistant Procurement Director/Manager *performs duties of department manager as required in his/her absence*. As such, and pursuant to your recent promotion to Assistant Procurement Director/Manager you will serve as the *Acting* Procurement Director/Manager until such time as a Procurement Director/Manager is hired.

I thank you for your service to Richland County, and I look forward to working with you in this new capacity. Please let me know if you have any questions or concerns.

Sincerely,

Kevin Bronson
Assistant County Administrator
Richland County Government

EXHIBIT B



Office of Procurement and Contracting
2020 Hampton Street, Suite 3064
Columbia, SC 29204
(803) 576-2130 – Phone
(803) 576-2135 – FAX

May 12, 2017

EXHIBIT C

(via email on 5/12/17 and U.S. Mail)

Kathleen McDaniel, Esq.
Callison Tighe & Robinson
1812 Lincoln Street, Suite 200
Columbia, SC 29201

Re: Shop Road Extension Phase 1 Construction contract award protest

Dear Ms. McDaniel:

I am writing, as the Assistant Procurement Director/Manager and the Acting Procurement Director/Manager, to update you on the status of the County administrative process regarding the above protest. Let me first apologize for any delays up to this point. I hope to be able to move the process along in a timely manner.

The former Assistant Procurement Director received Richardson Construction's protest on December 16, 2016, as well as additional documents labeled as supplements. As you are likely aware, the protest process is found in the Richland County Code of Ordinances §2-261.1. §2-261.1(b) states that the director of procurement or "designated representative may administratively settle the protest...consistent with this ordinance and procurement regulations promulgated by Richland County." As such, I am currently acquainting myself with the facts of the solicitation and award, including your protest and supplements, in order to be able to make an informed decision on any settlement possibilities and a subsequent decision on your client's protest.

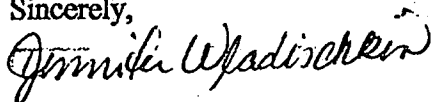
If I determine that settlement is not possible, Richland County Code of Ordinances §2-261.1(c) provides that I must provide a written Decision on the protest within ten (10) days of that determination. Should Richardson Construction, McClam or the County wish to appeal the Decision, that party shall adhere to the requirements of § 2-621.1(e) and within ten (10) days of the issuance of the Decision appeal to the Richland County Procurement Review Panel ("the Panel.") The appealing party shall in its appeal state whether or not it requests an interview with the Panel. The appeal can be provided to me at the Procurement Office and must be delivered to my office within the ten (10) day appeal period. In the event of an appeal, I will immediately contact the members of the Panel and provide them a copy of the Protest(s) being appealed, the Decision, and copies of the materials I reviewed in rendering my Decision. Any communications by a party to any appeal to the Panel must be provided by the party to the other parties by the same means and method of communication. However, should an interview be requested by an appealing party, I may contact the Panel members only for the purpose of coordinating the scheduling of such interview if granted by the Panel.

Assuming an appeal of the Decision from any party, and the Panel granting an interview, the County has been tirelessly attempting to coordinate times with the Panel members for which they are available in May and June. As soon as we have firm dates from the Panel, the County will contact all parties to provide available dates.

If you have any questions or concerns, please do not hesitate to contact me.

With kind regards, I am

Sincerely,



Jennifer Wladischkin

Acting Procurement Director/Manager

Assistant Procurement Director/Manager

Richland County

Cc: Larry Smith, Esq., Richland County Attorney
Ned Nicholson, Esq., McNair Law Firm, P.A.
Liz Crum, Esq., McNair Law Firm, P.A.
Alan Peace, Esq., Harrell & Martin, PA
(all cc's via email only)

Crum, Liz

From: Kathleen McDaniel <kathleenmcdaniel@gmail.com>
Sent: Friday, May 12, 2017 7:28 PM
To: Jennifer Wladischkin
Cc: LARRY SMITH; Nicholson, Ned; Crum, Liz; apeace@harrellmartin.com; ELIZABETH MCLEAN
Subject: Re: Shop Road Extension Phase I Construction contract award protest

Ms. Wladischkin,

I received your correspondence and will discuss with my client.

I am not sure how you have my personal email address, but please use my professional email address for future email communications. kathleenmcdaniel@callisontighe.com

Thank you,
Kathleen McDaniel

On Fri, May 12, 2017 at 5:16 PM, Jennifer Wladischkin <WladischkinJ@rcgov.us> wrote:

Good Afternoon,

Please see the attached correspondence, I look forward to working with you in the future.

Sincerely,

Jennifer Wladischkin

Acting Procurement Director/Manager

Assistant Procurement Director/Manager

Richland County Office of Procurement & Contracting

2020 Hampton Street, Suite 3064

Columbia, SC 29204

(803)576-2126 - Phone

(803)576-2135 - Fax

EXHIBIT D

This document, file, and/or communication is intended solely for the use of the individual or entity to whom it is addressed and may contain information that is privileged, proprietary and confidential and exempted from disclosure under applicable law. The recipient is not authorized to copy, print, or forward without permission of the sender. The recipient is requested to treat, secure, and guard all

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Kathleen McDaniel – Member
Ph.: 803-404-6900
Fax: 803-404-6901
kathleenmcdaniel@callisontighe.com

December 16, 2016

EXHIBIT E

(via hand-delivery)

Richland County Director of Procurement
2020 Hampton Street, Suite 4069
Columbia, South Carolina 29204

**Re: Shop Road Extension Phase I Construction contract award protest
CTR file number: 6344.012**

Dear Director of Procurement:

I represent Richardson Construction Company (Richardson) in their efforts to be awarded the contract with Richland County for the construction of the Shop Road Extension Phase I Construction (Shop Road Project). Pursuant to Richland County Code Section 2-621.1(a), Richardson submits this protest of the intended award of the Shop Road Project contract to McClam & Associates, Inc. Richardson is an actual bidder on the Shop Road Project who was aggrieved in the proposed award of the Shop Road Project contract to McClam & Associates, Inc. instead of to Richardson. This basis for this protest is as follows.

In September 2016, the bids for the Shop Road Project were opened. Richardson's bid was lower than the bid of McClam & Associates, Inc. by \$3 million. Richardson's bid directed more than \$1.1 million more to the disadvantaged and small local business community. Nevertheless, Richland County staff recommended to Richland County Council that the contract be awarded to McClam & Associates, Inc. rather than Richardson. This was because Richland County took the position that Richland County would not permit an immaterial correction to Richardson's bid that had no effect on the price of the work to be done or the quality of work.

After learning of Richland County staff's recommendation to Richland County Council, Richardson filed an appeal on December 6, 2016, pursuant to Richland County Code Section 2-621.4(a), with the Richland County Procurement Review Panel appealing the following matters:

1. Decision of County staff to recommend awarding the contract for Shop Road Extension Phase 1 Construction to McClam & Associates, Inc. and
2. Policy decision of Interim County Administrator that permitting any correction of a bid after bid opening is inconsistent with the Richland County Procurement Ordinance.

Representatives of Richardson attended the Richland County Council meeting on the evening of December 6, 2016, and requested that a vote on the award of the Shop Road Project contract be deferred until Richardson's appeal could be heard by the Procurement Review Panel. That request was denied, and Richland County Council voted on December 6, 2016, to award the Shop Road Project contract to McClam & Associates, Inc.

On December 15, 2016, Richardson filed a Complaint with the Richland County Court of Common Pleas requesting a temporary restraining order, temporary injunction, and writ of mandamus. The gravamen of that Complaint is to stay the award of the Shop Road Project contract until Richardson's appeal and now this protest can be heard by the Richland County Procurement Review Panel. The Complaint is attached. Richardson's appeal discussed above is incorporated as an exhibit to the Complaint.

Now that Richland County Council has voted to award the contract to McClam & Associates, Inc., Richardson must take all steps to protect its right to challenge the award including filing this protest. The grounds for this protest are as set forth in the multiple letters, email, and other items attached hereto. At bottom, Richardson believes that Richland County erred (1) in refusing to permit Richardson to correct a clerical or scrivener's error in its bid wherein it inadvertently listed the incorrect name for a sub-contractor and (2) by Richland County Council voting to award the Shop Road Project contract to McClam & Associates, Inc. instead of Richardson.

Richardson understands that, pursuant to Richland County Code Section 2-621.1(b), the Director of Procurement has the authority to administratively settle this matter in negotiation with the parties. If the Director of Procurement does not administratively settle this matter, Richardson requests that the Director of Procurement issue an administrative decision reversing the decision of the Richland County Council and awarding the Shop Road Project contract to Richardson. Richardson reiterates its request that execution of the Shop Road Project contract be stayed until after a decision by the Director of Procurement or the Richland County Procurement Review Panel.

Essential to Richardson's ability to pursue this protest are documents that Richardson has requested via the South Carolina Freedom of Information Act. Those items have not yet been produced. Richardson reserves the right to supplement this protest as may be necessary following production of those documents by Richland County.

I can find no filing fee for this protest in the Richland County Code. However, if there is a filing fee or other procedure generally followed by Richland County in these types of matters, please let me know and we will comply with those requirements.

Thank you for your consideration of this protest.

With kind regards, I am

Sincerely,



Kathleen McDaniel

Encls.

cc: Gerald Seals (via hand-delivery and email to sealsg@rcgov.com)
Larry Smith, Esq. (via hand-delivery and email to smithla@rcgov.com)
Ned Nicholson, Esq.
Joseph Richardson

Kathleen McDaniel – Member
Ph.: 803-404-6900
Fax: 803-404-6901
kathleenmcdaniel@callisontighe.com

December 23, 2016

EXHIBIT F

(via email on 12/23/16 and hand-delivery 12/28/16)

Richland County Director of Procurement
2020 Hampton Street, Suite 4069
Columbia, South Carolina 29204

**Re: Shop Road Extension Phase I Construction contract award protest
CTR file number: 6344.012**

Dear Director of Procurement:

On December 16, 2016, Richardson Construction Company (RCC) filed a protest of the anticipated award of the Shop Road Extension Phase I Construction (Shop Road Project) contract to McClam & Associates, Inc. (McClam) instead of the RCC. This protest was filed pursuant to Richland County Code Section 2-621.1(a).

As you are aware, Richland County staff recommended to Richland County Council that they vote to award the Shop Road Project contract to McClam because Richland County staff were of the opinion that RCC and C.R. Jackson, Inc. (Jackson) submitted bids that were not responsive to the bid specifications. It now appears that Richland County intends to enter into a contract for the Shop Road Project with McClam despite the fact that RCC's bid was lower than the bid of McClam by \$3 million and the fact that RCC's bid directed \$1.1 million more to the disadvantaged (DBE) and small local business (SLBE) community than McClam.

In its previous protest letter, dated December 16, 2016, RCC sought to exhaust its administrative remedies in seeking to reverse the vote of the Richland County Council and have the Shop Road Project contract awarded to RCC. RCC's basis for seeking such relief was set forth in its protest letter dated December 16, 2016.

On December 19, 2016, Richland County produced documents responsive to RCC's Freedom of Information Act (FOIA) request that was submitted on November 28, 2016. A copy of the cover letter accompanying the FOIA response from Richland County and a copy of the documents regarding McClam produced therewith are attached as **Exhibit 1**. After reviewing the documents produced by Richland County, RCC has determined that there are deficiencies in McClam's bid that render it non-responsive. This is information that RCC did not have prior to filing its protest on December 16, 2016. In its December 16, 2016 protest letter, RCC expressly noted that it had not yet obtained a response to its first FOIA request and that RCC reserved the right to supplement its protest should the FOIA response contain relevant information. Based upon this newly obtained information, RCC now supplements its previously submitted protest.

The basis for this supplement is that it now appears to RCC that McClam's bid is deficient in several respects, including but not limited to the following:

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1. McClam improperly counted its SLBE subcontractor's—the Taylor Brothers— participation toward not only McClam's SLBE goal but also toward its DBE goal.
2. McClam failed to include the address and license number of its subcontractors.
3. McClam has not submitted the required signed quotes from its DBE subcontractors.

First, it is contrary to the Richland County procurement code to permit McClam to "stack" meaning to count the Taylor Brothers' work toward its DBE as well as its SLBE requirements. See McClam bid package pages 38 and 40. The purpose of the DBE and SLBE provisions in the Richland County procurement code and the Shop Road Project Manual is to ensure that actual contract dollars go to DBE and SLBE firms that satisfy the DBE or SLBE requirements. While some companies have qualified as both DBEs and SLBEs, there is very little overlap between those two designations in the grading and heavy civil construction fields. This is primarily because SLBEs have a more restrictive income and contract award limitation than DBEs, and on the other hand DBEs must undergo a rigorous application process to obtain that certification. The two also differ in that a company can graduate from the SLBE program by becoming successful and winning multiple County contracts, while a DBE company can remain a DBE indefinitely, as long as it manages its income.

When the Richland County PDT assembled the contract requirements for Shop Road Extension Phase I, it mandated a 7% participation for DBEs and 4.37% participation for SLBEs. On its face, this mandates a total of 11.37% of the contract for disadvantaged and small-local businesses as a whole. Because it is difficult to find SLBEs that are capable of taking on 4.37% of a roughly \$21 million job (approximately \$917K), McClam attempted to kill two birds with one stone by allocating 4.37% of the contract to companies that are certified as both SLBEs and DBEs. By double counting Taylor Brothers' SLBE participation toward their DBE goal as well, McClam effectively allocated only 7.3% total to both the DBE and SLBE community.

Second, the face of McClam's bid demonstrates it did not comply with the bid requirements. The bid package required bidders to include the address and license number of its subcontractors. McClam failed to do this. See the McClam bid package page 43.

Third, McClam has not submitted the required signed quotes from its DBE subcontractors. Nowhere in the documents that Richland County produced in response to RCC's request for McClam's bid and supplemental bid submissions is there any evidence that McClam submitted the signed DBE quotes.

RCC is continuing to review McClam's bid and reserves the right to further supplement its procurement award protest should it find additional deficiencies in McClam's bid documents or develop additional arguments. Nevertheless, even now, based on the three points outlined above, McClam's bid fails to meet the bid requirements and should be determined to be non-responsive.

Where Richland County receives no responsive bids, the County has the authority to rebid the contract. If Richland County considers RCC's bid to be non-responsive then it must also consider McClam's bid to be non-responsive. In that case, rebid it appropriate, and RCC

December 23, 2016

Page 3

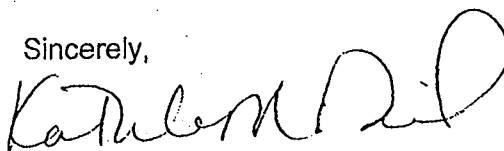
would request that form of relief be considered at all levels of administrative review by Richland County.

Of course, RCC still maintains that its bid was responsive and as a primary remedy, RCC continues to request that the Director of Procurement or the Richland County Procurement Review Panel find that RCC's bid was responsive and direct Richland County to award the Shop Road Project contract to RCC. In the alternative, however, if Richland County does not reverse its position and continues to find that RCC's bid was non-responsive, then McClam's bid should be determined to be non-responsive as well and the entire project should be rebid.

Please let me know if you need any further information or have any questions. Thank you for your consideration of this information.

With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen McDaniel', written in a cursive style.

Kathleen McDaniel

Encls.

cc: Larry Smith, Esq.
Gerald Seals
Ned Nicholson, Esq.
Joseph Richardson



Office of Procurement and Contracting
2020 Hampton Street, Suite 3064
Columbia, SC 29204
(803) 576-2130 – Phone
(803) 576-2135 – FAX

May 18, 2017

(via email on 5/18/17 and U.S. Mail)

EXHIBIT G

Kathleen McDaniel, Esq.
Callison Tighe & Robinson
1812 Lincoln Street, Suite 200
Columbia, SC 29201

Re: Richardson Construction Company, Inc., protest (Shop Road Extension Phase I)
Settlement Determination (No Settlement Possible)

Dear Ms. McDaniel:

I have completed my review of the Shop Road Extension Phase I project file. Pursuant to Richland County Code of Ordinances §2-621.1(b), I have the right to administratively settle any protest "consistent with this ordinance and procurement regulations promulgated by Richland County." As the contract has been awarded and work is currently in progress, it is my determination that administrative settlement of the Richardson Construction Company, Inc. protest consistent with the procurement ordinances is impossible at this point.

Pursuant to Richland County Code of Ordinances §2-621.1(c), I will issue a written Decision on the protest within ten (10) days of the date of this letter. Should any party wish to appeal the Decision, that party shall adhere to the requirements of § 2-621.1(e) and within ten (10) days of the issuance of the Decision appeal to the Richland County Procurement Review Panel ("the Panel.") The appealing party shall in its appeal state whether or not it requests an interview with the Panel. The appeal can be provided to me at the Procurement Office and must be delivered to my office within the ten (10) day appeal period.

In the event of an appeal and request of interview with the Panel, the Panel will meet on June 27, 2017. Additionally, upon receipt of an appeal, I will immediately contact the members of the Panel and provide them a copy of the protest, the Decision, the appeal of the Decision, and copies of the materials I reviewed in rendering my Decision.

If you have any questions or concerns, please do not hesitate to contact me.
With kind regards, I am

Sincerely,

A handwritten signature in dark ink, appearing to read "Jennifer Wladischkin".

Jennifer Wladischkin
Acting Procurement Director/Manager
Assistant Procurement Director/Manager
Richland County

**Cc: Larry Smith, Esq., Richland County Attorney
Ned Nicholson, Esq., McNair Law Firm, P.A.
Liz Crum, Esq., McNair Law Firm, P.A.
Alan Peace, Esq., Harrell & Martin, PA
Richard Detwiler, Callison, Tighe, & Robinson, LLC
(all cc's via email only)**