

# **COUNTY OF LEXINGTON SOUTH CAROLINA**

## **REQUEST FOR PROPOSALS NO. P15002 – 09/30/14H**

**Design/Build Services for Construction of a 120,000 Square Foot  
Industrial Building and Associated Sanitary Sewer Lift Station  
in  
Saxe Gotha Industrial Park  
Lexington County, South Carolina**

**August 28, 2014**

**PROCUREMENT SERVICES  
212 SOUTH LAKE DRIVE  
LEXINGTON, SC 29072**

**Telephone 803-785-8107 / Fax 803-785-2240**

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# **I. INTRODUCTION**

## **1.00 PURPOSE/CURRENT STATUS**

The Lexington County Economic Development Department, hereafter referred to as The County, is soliciting proposals from qualified design/builders for the design and construction of a 120,000 square foot industrial building and associated sanitary sewer lift station located adjacent to the Saxe Gotha Industrial Park on Old Wire Road, Cayce, Lexington County, South Carolina. The instructions, requirements and minimum specifications for the project are detailed in this Request for Proposals (RFP).

## **2.00 PROJECT SUMMARY**

Lexington County has entered into a ground lease for an 18.46 acre tract of land on the east side of Interstate 26, identified by Lexington County Tax Map Number (TMS #008098-01-023- Bristly Acres, LLC). The site will eventually be part of the future Saxe Gotha Industrial Park – Phase II. As a stimulus to the future park's development, the County wishes to engage the services of a qualified design/build team to design and construct a 120,000 square foot industrial building shell and associated sanitary sewer lift station. The speculative building will be of tilt-up concrete construction and will provide paved areas for parking, truck loading and circulation, dock doors, electrical and fire sprinkler system infrastructure, lighting, a detention pond sized for development of the entire 18.46 acre site, a future equipment display area and a building pad area for a future 50,000 building footprint. Additionally, a sanitary sewer lift station will be constructed which will serve multiple sites in addition to the subject site.

The site has been permitted through the Corps of Engineers for wetlands mitigation credits. As a result, .08 acres of jurisdictional wetlands have been approved for infilling. The civil design for the site has been completed by Cox and Dinkins in accordance with the Corps of Engineers permit to reflect a building pad for the subject building and a future 50,000 square foot building. Design of the sanitary sewer lift station is also complete. The site construction document package has been submitted for permitting and is migrating through the regulatory approvals simultaneous with the design/builder selection process. The lift station has already been permitted. Civil construction documents and the sanitary sewer lift station construction documents are included in the RFP as Exhibit O. In addition, geotechnical and environmental studies have been completed. A copy of the geotechnical report is included in the RFP as Exhibit M. The Phase I Environmental Report revealed no environmental concerns for the site.

The County has set forth herein the minimum standards and specifications for the speculative industrial building. All respondents will be required to address the requirements of the RFP in their responses and the proposed building must comply with the standards and specifications outlined. Responsive bids must include unit prices and alternates as required.

Lexington County will be the responsible party for the development costs associated with the project and will be the entity with whom the selected design/builder will execute an agreement.

It is the County's objective to select a design/builder and complete construction of the speculative industrial building as soon as possible. Time is of the essence.

## II. ADMINISTRATIVE REQUIREMENTS OF THE RFP

### 1.00 ADDITIONAL INFORMATION INQUIRIES

1.01 All inquiries should be directed to:

Ms. Belinda Doss  
LCK  
P. O. Box 11129  
1301 Gervais Street, Ste. 522 (29201)  
Columbia, SC 29211  
(803) 401-4219  
[bdoss@lckcs.com](mailto:bdoss@lckcs.com)

1.02 The County's Procurement Coordinator:

Jeffrey A. Hyde, CPPB  
Procurement Manager  
County of Lexington  
212 South Lake Drive, Ste. 503  
Lexington, SC 29072-3437  
(803) 785-8385  
[jhyde@lex-co.com](mailto:jhyde@lex-co.com)

### 2.00 DUE DATE FOR PROPOSALS / BOND REQUIREMENTS

2.01 Proposals are to be submitted no later than **4:00pm on September 30, 2014** in the County Procurement Services Office, 5th Floor, Suite 503, County Administration Building, 212 South Lake Drive, Lexington, South Carolina 29072. There will be no public opening of bids.

*Any proposals received after the scheduled deadline, will be immediately disqualified. The County assumes no responsibility for late delivery of proposals which are mailed or sent via other delivery service.*

2.02 The offeror shall enclose with the proposal submitted, bid security in the form of a bid bond executed by the offeror and a qualified surety or a certified or cashier's check on any national or state bank in the amount of ten thousand dollars (\$10,000) made payable to the County of Lexington. Such bid security shall serve as a guarantee that the offeror will not withdraw from the competition after opening the bids and, in the event the contract is awarded to the offeror. Bid bonds or certified checks will be held by the County until the successful offeror is selected. Within 48 hours after selection, security bonds or checks belonging to all but the successful offeror will be returned. If the successful offeror should fail to accept the award within ten (10) days after receipt of written notification of award by the County, the security bond or check shall become the property of the County as liquidated damages. If, however, the successful offeror furnishes the County within the required time, the required evidence that it has all necessary licenses and insurance needed for the requirements of this solicitation, the bid bond or check will be returned, 5 days after construction has commenced.

### 3.00 WITHDRAWAL OF PROPOSALS

3.01 An offeror may withdraw its proposal without prejudice not later than the day and hour set in the advertisement for receiving proposals, by communicating the purpose in writing to the Procurement Manager, 212 South Lake Drive, Lexington SC 29072. When received, said proposal

surety, if applicable, will be returned to the offeror unopened. Notification of withdrawal is the sole responsibility of the offeror.

#### **4.00 PRE-PROPOSAL CONFERENCE**

A Pre-Proposal Conference will be conducted on September 16<sup>th</sup>, 2014 from 2:00 p.m. to 4:00 p.m. at the Lexington County Administration Building, 212 South Lake Drive, Suite 502, Lexington South Carolina, 29072 in the 2<sup>nd</sup> Floor Committee Room. At the time of the conference, attendees may raise questions or make comments regarding this RFP. ***Prospective offeror's attendance at the pre-proposal meeting is voluntary.*** Any addenda or revisions resulting from the Pre-Proposal Conference shall be developed as expeditiously as possible and forwarded to all attendees who were at the Pre-Proposal Conference. It is solely the offeror's responsibility to ensure that any and all addenda resulting from the Pre-Proposal Conference are received by the offerors. Addenda must be acknowledged on the appropriate forms. Failure to do so may result in the rejection of an offeror's bid. All requests for information must be made in writing. The County is not responsible for any verbal representations.

It is the responsibility of the offeror to e-mail the Procurement office at [jhyde@lex-co.com](mailto:jhyde@lex-co.com) to be registered as a potential offeror to receive any subsequent amendments. Questions may be submitted using the enclosed form. Deadline for questions is September 19<sup>th</sup>, 2014.

#### **5.00 OFFEROR'S RESPONSIBILITIES**

**5.01** Each offeror shall carefully examine all RFP documents and thoroughly familiarize itself with all requirements prior to submitting a proposal. Should an offeror find discrepancies, ambiguities, or omissions in the RFP, or should the offeror be in doubt as to the meaning of information provided, offeror shall at once request written clarification from the Procurement Manager no later than the date indicated on the request for written questions form located at the end of this document.

**5.02** Before submitting a proposal, each offeror shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this proposal. Failure to make such investigations and examinations shall not relieve the successful offeror from the obligation to comply, in every detail, with all provisions and requirements of the request for proposal.

**5.03** If the offeror is a corporation, the proposal shall be signed in the name of and under the seal of the corporation by a duly authorized officer of the corporation with the designation of the signor's official capacity. The proposal shall show the state in which the corporation is chartered, and, if that state is other than South Carolina, the proposal shall show that the corporation is authorized to do business in the state of South Carolina. If the offeror is a partnership, the proposal shall be signed in the name of the partnership by a general partner or other person who is duly authorized to bind the partnership. The signor's official capacity and authority shall be shown. If the offeror is an individual or sole proprietorship, the proposal shall be signed by the individual in person, stating the name or style under which the offeror is doing business. In any case, the proposal shall show the current business address of the offeror which is to be used for receiving communications from the County.

#### **6.00 DISQUALIFICATIONS OF OFFERORS**

**6.01** More than one proposal from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. Any or all proposals will be rejected if there is reason to believe that collusion exists among the offerors and no participants in such collusion will be considered in future proposals for the same work. Proposals in which the prices are obviously unbalanced will be rejected.

**6.02** No proposal will be considered from any firm that has failed to perform acceptably on any other contract with the County.

**7.00** **CORRECTIONS MADE BY OFFEROR**

**7.01** Offerors are cautioned not to obliterate, erase, or strikeover any *printed material* as set forth in this RFP. In quoting prices, wherever offeror has made an error and has corrected, any and all such corrections should be initialed by the person signing the proposal. Failure to comply with this provision may result in rejection of the proposal. All documents submitted must be legible.

**8.00** **EVALUATION OF PROPOSALS**

**8.01** A committee has been established to review and evaluate proposals submitted in response to this RFP. In evaluating the proposals, the County reserves the right to accept or reject all or any part of any proposal, waive minor technicalities, and award the contract to the offeror deemed to best serve the interests of the County; and adopt any part or all of a proposal if it is judged in the best interests of the County.

**8.02** Each proposal will be evaluated on the content of the offeror's proposal, i.e., the burden of information clarification and research rests solely on each offeror's effort and will be considered a reflection of interest and efficiency.

**8.03** During the review process, the review panel shall have the right to request from offerors any other information or evidence which it deems necessary for evaluation of the proposal and relevant to any one or more of the stated evaluation factors. The failure of an offeror to promptly provide such requested information or evidence shall be sufficient grounds for determining the offeror to be non-responsive and for rejection of the proposal.

**8.04** The County reserves the right to contact an offeror for clarification of information submitted, to contact references, and to use other sources of obtaining information regarding the offeror that is deemed appropriate and would assist in the evaluation.

**8.05** Proposals which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of the RFP will be classified as "acceptable". Proposals found not to be acceptable will be classified as "unacceptable" and no further discussion concerning same will be conducted.

**9.00** **EVALUATION CRITERIA**

**9.01** The County intends to award a contract resulting from this RFP to the responsive offeror whose proposal is determined to be the most advantageous to the County taking into consideration price and other evaluation factors set forth herein; however, the right is specifically reserved to reject any and all proposals. The County shall be the sole judge of whether or not a proposal meets the requirements of this RFP.

**9.02** Proposals will be reviewed and evaluated by the review panel based upon the evaluation factors which are listed below. In selecting a design/builder, the County will emphasize cost and value, experience of the firm and of assigned personnel in providing like functions on projects of similar magnitude and complexity as the proposed project. Selection preference will be first toward cost and schedule supported secondarily by depths of knowledge and resources for design, general contracting, scheduling, contract coordination and compliance, and budget control, as well as familiarity with laws, ordinances, and codes applicable to the project and governing authorities

having jurisdiction over the project. Responses will be evaluated by the evaluation committee based on the following criteria:

- A. COST AND SCHEDULE – 50%
  - a. Total Cost of the Work, Design/Builder’s Fee, and General Conditions
  - b. Demonstrated ability to meet time and budget requirements.
  - c. Recent, current, and projected work load.
  - d. Proposed project schedule.
  
- B. DESIGN – 20%
  - a. Design features of the proposed building and the quality of proposed materials
  
- C. QUALIFICATIONS – 20%
  - a. Length of time the design/builder has been incorporated, volume of work completed annually for the past five years, and prevailing sources of business (i.e. project types).
  - b. Relevant experience on similar industrial projects using tilt-up construction method.
  - c. Financial strength, stability.
  - d. Bonding capacity.
  - e. Safety experience and experience modification rate.
  - f. Recent past references on all aspects of performance.
  - g. Education and depth of experience of proposed personnel including proposed design team, job superintendent.
  
- D. LOCATION – 10%
  - a. Location of design/builder’s ownership and corporate offices and local company office’s proximity to the proposed site.
  - b. Location of design/builder’s design firm and major subcontractors.

**10.00 BASIS FOR AWARD**

**10.01** An award resulting from this request shall be earned by the most responsive and responsible offeror whose proposal is determined to be most advantageous to the County, taking into consideration price and the evaluation factors set forth herein. The County will be the sole judge as to whether an offeror's proposal has or has not satisfactorily met the requirements of this RFP. **BIDS WILL NOT BE CONSIDERED FROM ANY OFFEROR WHO OWES DELINQUENT BUSINESS OR PROPERTY TAXES TO THE COUNTY OF LEXINGTON OR FROM ANY OFFEROR WHOSE TEAM MEMBERS OWE DELINQUENT BUSINESS OR PROPERTY TAXES TO THE COUNTY OF LEXINGTON.**

**10.02** The County reserves the right to make its final selection based on written responses to this RFP or to elect to invite a short-listed group of offerors to participate in an interview with the evaluation committee. The County will select the most responsive and highest qualified design/builder. Should the County be unable to negotiate a satisfactory agreement with the first selected design/builder, negotiations shall be formally terminated with that firm. Negotiations will then proceed with the next ranked design/builder(s) in the same manner and continue until an agreement is reached.

The evaluation committee will make appropriate recommendation to the Lexington County Council prior to actual execution of the final agreement.

**11.00 INTERVIEWS**

**11.01** As noted above, any offeror who submits a response to this RFP *may* be required to participate in an interview with the County's evaluation committee. Such interview would provide an opportunity for an offeror to clarify the proposal and to ensure mutual understanding. The interview will in no way change the offeror's original proposal. Subsequent travel expense by the offeror will be at the offeror's expense.

**11.02** Offerors are advised that, in the event of receipt of an adequate number of proposals, which in the opinion of the Procurement Manager and evaluation committee require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Hence, proposals should be comprehensive and convey clearly and succinctly the qualifications of the design/build team, their experience, the proposed design of the building and its associated development cost in the detail requested. If any proposal submitted requires additional clarification and/or supplementary information, the offeror should be prepared to submit such additional clarification and/or supplementary information in a prompt and timely manner.

**12.00 CONTRACTING**

**12.01** The form of agreement for the project will be AIA141 - 2004 as modified, a copy of which is attached hereto. The basis for cost will be cost of the work plus a fee with a Guaranteed Maximum Price. The design/builder will establish a GMP for general conditions and for the cost of the work. This RFP and its exhibits, attachments and references and the successful offeror's proposal, including all correspondence, supporting documents and completed forms, shall become part of the final agreement. All written communications between the County and the successful offeror after the proposal opening may also be incorporated into the agreement.

**13.00 AMENDMENTS**

**13.01** All amendments to and interpretations of this solicitation shall be in writing. The County shall not be legally bound by any amendment or interpretation that is not in writing. Only information supplied by the County in writing or in this RFP should be used in preparing offeror responses. All contacts that an offeror may have had before or may have after receipt of this RFP with any individuals, employees, or representatives of the County and any information that may have been read in any news media or seen or heard in any communication facility regarding this proposal should be disregarded in preparing responses.

**14.00 TERMINOLOGY**

**14.01** The terminology used and the organization of the RFP are not intended to be restrictive in any way. Appropriate interpretation of the intent of the RFP should be made by the offeror in these situations.

**15.00 PROHIBITION OF GRATUITIES**

**15.01** Section 8-13-700 and 705 of the 1976 Code of Laws of South Carolina states in part as follows: "Whoever gives or offers to any public official or public employee any compensation including a promise of future employment to influence his action, vote, opinion or judgment as a public official or public employee, or such public official solicits or accepts such compensation to influence his action, vote or judgment shall be subject to the punishment as provided by Sections 16-9-210 and 16-9-220". Gratuities in any form are strictly prohibited.

**16.00 PROPRIETARY/CONFIDENTIAL INFORMATION**

**16.01** Trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Freedom of Information Act; however, the offeror must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state reasons why protection is necessary. Disposition of material after award is made should be stated by the offeror. No information, materials or other documents relating to this procurement will be presented or made otherwise available to any other person, agency, or organization until after award.

**16.02** All offerors must visibly mark as "Confidential" each part of their proposal which they consider to contain proprietary information. **All unmarked pages will be subject to release in accordance with the guidelines set forth under Chapter 4 of Title 30 (The Freedom of Information Act) South Carolina Code of Laws and Section 11-35-410 of the South Carolina Consolidated Procurement Code.** Privileged and confidential information is defined as "information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the part supplying the information." The examples of such information provided in the statute are:

1. Customer lists;
2. Design recommendations and identification of prospective problem areas under an RFP;
3. Design concepts, including methods and procedures;
4. Biographical data on key employees of the offeror.

**16.03** Evaluative documents pre-decisional in nature such as inter- or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decisional deliberations.

**16.04 *MARKING AN ENTIRE PROPOSAL CONFIDENTIAL/PROPRIETARY IS NOT IN CONFORMANCE WITH THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT.***

**17.00 OWNERSHIP OF MATERIAL**

**17.01** All proposals submitted in response to this RFP become the property of the County. Proposals submitted may be reviewed and evaluated by any person(s) at the discretion of the County upon award of contract. Ownership of all data, material and documentation originated and prepared for the County pursuant to this contract shall belong exclusively to the County. Offerors not awarded a contract under this solicitation, may request return of excess copies of their proposals within thirty (30) days after notification of award is mailed. All cost of returns will be paid by the offeror. If a Federal Express, UPS, or other shipping number is not received with request, all excess copies will be destroyed.

**18.00 DISCUSSIONS/NEGOTIATIONS**

**18.01** By submission of a proposal, offeror agrees that during the period following issuance of the RFP and prior to final award of contract, offeror shall not discuss this procurement with any party except the Procurement Manager or other parties that may be designated in this solicitation. Offeror shall not attempt to discuss with or attempt to negotiate with the using agency/department, members of Lexington County Council, staff members of the County or LCK staff members regarding any aspects of the procurement without prior approval of the Procurement Manager.

**19.00 MINIMUM QUALIFICATIONS**

**19.01** The County reserves the right to determine whether offerors have the minimum qualifications to conduct the requirements of this solicitation. The determination by the County concerning offeror qualifications shall be final.

**20.00 NOTIFICATION OF INTENT OR STATEMENT OF AWARD**

**20.01** Intent to Award and/or Statement of Award will be posted on the Lexington County web site at [www.lex-co.com](http://www.lex-co.com).

**21.00 RIGHT TO PROTEST**

**21.01** Any prospective offeror who is aggrieved in connection with the solicitation of a contract shall protest in writing to the Procurement Manager within ten (10) calendar days of the date of issuance of the RFP or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue. Any actual offeror, who is aggrieved in connection with the intended award or award of a contract, shall protest in writing to the procurement manager within ten (10) calendar days of the notification of intent to award or statement of award.

**21.02. Protest Procedure** A protest shall be in writing, submitted to the Lexington County Procurement Manager, and shall set forth the specific grounds of the protest with enough particularity to give notice of the issues to be decided.

**III. CONTRACTUAL REQUIREMENTS/SUPPLEMENTAL CONDITIONS**

The below provisions serve as supplemental conditions to the agreement included herein which, to the extent there are discrepancies between the provisions in the agreement and this Section III of the RFP, this Section III shall prevail.

**1.00 TERM OF THE AGREEMENT** To be determined based upon proposed schedule for design and construction.

**2.00 MODIFICATIONS TO TERMS OF THE AGREEMENT** The agreement form which will be required to be executed by the selected design/builder is AIA141 – 2004 as modified and is attached as Exhibits E, F, and G to this RFP. Any exceptions to the terms of the enclosed agreement shall be submitted in writing within the offeror’s response to the RFP. The County and its evaluation committee will take such exceptions into consideration as part of the procurement process. No additional modifications to the agreement will be accepted for consideration after the date of the RFP responses.

**3.00 TERMINATION**

**3.01** The County may terminate the Agreement with the selected design/builder for cause or convenience in accordance with the terms and conditions of paragraph A.14 of the AIA A141 – Exhibit A attached.

**4.00 OFFEROR RESPONSIBILITY – EXISTING CONDITIONS**

**4.01** The design/builder shall provide all of the proposed design and construction services as defined in this RFP and as finally agreed upon and accepted by the County. Each offeror shall fully acquaint itself with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this proposal. It is expected that this will sometimes require on-site observation. The failure or omission of an offeror to acquaint itself with existing conditions shall

in no way relieve it of any obligation with respect to this RFP, any supporting documents, and the final executed agreement.

**5.00 AFFIRMATIVE ACTION**

**5.01** The design/builder will take affirmative action and will required its subcontractors and team members to take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap. The following are incorporated herein by reference: 41 C.F.R. 60-1.4, 60-250.4 and 60-741-4.

**6.00 SC LAW CLAUSE**

**6.01** Upon award of a contract under this proposal, the person, partnership, association, or corporation to whom the award is made must comply with the laws of the State of South Carolina which require such person or entity to be authorized and/or licensed to do business in this State and to deliver design and construction services. Notwithstanding the fact that applicable statutes may exempt or exclude the successful offeror from requirements that it be authorized and/or licensed to do business in this State, by submission of this signed proposal, the offeror agrees to subject itself to the jurisdiction and process of the courts of the State of South Carolina, County of Lexington, as to all matters and disputes arising or to arise under this RFP, the final agreement, and the performance of design and construction services thereof, including any questions as to the validity, construction, interpretation and effect of the final agreement or liability for taxes, licenses, or fees levied by the State.

**7.00 COMPLIANCE WITH LAWS**

**7.01** The design/builder shall keep fully informed of all existing and future State and Federal Laws and Municipal Ordinances and Regulations in any manner affecting those engaged or employed in the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the specifications for this work in relation to any such law, ordinance, regulation, order or decree, the design/builder shall forthwith report same to the Procurement Manager, in writing. The design/builder shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the County, its officers and agents, against any claim or liability arising from or based upon violation of any such law, ordinance, regulation, order or decree whether by themselves or their employees.

**8.00 INDEMNIFICATION**

**8.01** The design/builder and any of its subcontractors shall indemnify, defend, hold harmless and reimburse the County, its agents, officers and employees from and against any and all losses, liabilities, expenses, and all claims for damages of any nature whatsoever, relating to or arising out of any action or failure to act, by the design/builder, its subcontractors, officers, agents and employees, or relating to or arising out of the performance or failure to perform by the design/builder, its subcontractors, officers, agents and employees of any of the obligations under this RFP and the final executed agreement. Losses, liabilities, expenses and claims for damages shall include, but not be limited to, civil and criminal fines and penalties, a taking, whether direct or indirect (inverse), loss of use and/or services, bodily injury, death, personal injury, or injury to real or personal property, defense costs, legal fees and costs and attorney's fees for an appeal.

**8.02** The County shall promptly notify the design/builder of any civil or criminal actions filed against it or of any notice of violation from any federal or state agency or of any claim as soon as practical.

The design/builder upon receipt of such notice shall have the right at its election to defend any and all actions or suits or join in the defense. Nothing herein shall be construed to prevent the County from defending its own interest.

**9.00 EQUAL EMPLOYMENT OPPORTUNITY**

**9.01** Design/builder agrees that it will not discriminate and will by agreement require its subcontractors not to discriminate in hiring, promotion, treatment, or other terms and conditions of employment based upon race, sex, national origin, age, disability, or in any way violative of Title VII of 1964 Civil Rights Act and amendments or the South Carolina Human Affairs Law, except as permitted by said laws.

**10.00 SOUTH CAROLINA SALES TAX**

Bids shall include sales tax in the bid price unless otherwise noted. *By submission of a signed proposal, the offeror is certifying, under penalties of perjury, that it complies with Title 12, Chapter 36, Article 1 of the SC Code of Laws relating to payment of any applicable taxes. This will certify to the County its compliance.*

Forms to register for all taxes administered by the South Carolina Department of Revenue may be obtained by calling the License and Registration Section at (803) 898-5872 or by writing to the South Carolina Department of Revenue, Registration Unit, and Columbia, South Carolina 29214-0140.

**11.00 ATTORNEY FEES**

**11.01** In the event that the County is required to enforce any provision of its agreement with the design/builder or to compel performance or recovery for any breach of any stipulation, covenant, term or condition of that agreement, the County would be entitled to reasonable attorney fees. Otherwise, attorney fees in connection with any suit or action will be borne by the parties experiencing said expenses.

**12.00 ASSIGNMENT AND MODIFICATION**

**12.01** The agreement resulting from this RFP shall be binding upon the design/builder, its successors, and assigns. The agreement shall be binding upon the County in accordance with its terms and conditions. The agreement shall not be assigned by the design/builder without the express written consent of the County, such consent to be within the sole discretion of the County. Any change in majority ownership or operational control of the design/builder shall be deemed as assignment by operation of law and shall not be permitted except as provided for in the agreement.

**12.02** No agreement to modify the final executed agreement shall be binding on the part of the County unless such modification is reduced to writing and executed by an authorized agent of the County.

**13.00 SUBCONTRACTING**

**13.01** For any part of the work covered by this RFP which is subcontracted, the design/builder shall identify the subcontracting organization and at the request of the County, provide copies of contractual arrangements made therewith. All subcontractors must be approved by the County. The successful offeror will also furnish, at the request of the County, the corporate or company name and the names of the officers of any subcontractors engaged by the offeror.

**14.00 DRUG-FREE WORKPLACE**

**14.01** (Note: This clause applies to any resultant contract or agreement of \$50,000 or more). The State of South Carolina has amended Title 44, code of Laws of South Carolina, 1976, relating to health, by adding Chapter 107, so as to enact the Drug-Free Workplace Act. (See Act No. 593, 1990 Acts and Joint Resolutions). By submission of a signed proposal, you are certifying that you will comply with this Act. (See Section 44-107-30). This will certify to the County your compliance.

**15.00 PAYMENT TERMS**

**15.01** Payment for the design/build services rendered will be made within thirty (30) days of receipt of an invoice prepared in accordance with the requirements herein and detailed in the AIA A141 attached.

**IV. SPECIAL PROVISIONS**

**1.00 CHANGES**

**1.01** No changes to the approved specifications or design documents for the industrial building or to the scope of work to be provided by the design/builder shall be made without the prior written authorization of the County.

**2.00 INSURANCE**

**2.01** The limits and types of insurance required should be reasonably commensurate with the hazards and magnitude of the undertaking, but in no event of lesser amount nor more restrictive than the limits of liability and schedule of hazards below described. Without limiting its liability under the agreement, the design/builder shall procure and maintain, at its expense during the life of the final executed agreement, insurance of the types in the minimum limits as follows:

<u>Schedule</u>	<u>Limit</u>
<b>WORKERS COMPENSATION</b> As required by the State of South Carolina.	Statutory
<b>COMPREHENSIVE GENERAL LIABILITY</b> <i>(Such coverage may be a combination of a basic policy and an umbrella policy.)</i>	\$6,000,000
Premises Operations	\$1,000,000 <i>(each occurrence)</i> Single Limit
Contractual Liability Independent Contractors Personal Injury Products - Completed Operations	
<b>PROFESSIONAL LIABILITY</b> <i>(Applies to each of the design professionals)</i>	\$1,000,000 <i>(each occurrence)</i>
<b>AUTOMOBILE LIABILITY</b> All Owned, Non-Owned, and Hired	\$ 500,000 <i>Combined</i>
<b>BUILDER'S RISK INSURANCE</b>	Value of the Construction

- 2.02** The design/builder's comprehensive general liability policy shall also include blanket contractual liability coverage or shall be endorsed to cover the liability assumed by the design/builder. Said insurance shall be written by a company or companies approved to do business in the State of South Carolina and acceptable to the County. Before execution of the final agreement and prior to commencing any work hereunder, certificates evidencing the maintenance of said insurance shall be furnished to the County reflecting the county as an additional insured. The County, its officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the design/builder, including the insured's general supervision of the contract; products and completed operations of the design/builder; premises owned, occupied or used by the design/builder; or automobiles owned, leased, hired or borrowed by the design/builder. The coverage shall contain no special limitations on the scope of protection afforded to the County, its officials, employees or volunteers. To accomplish this objective, the County and Bristly Acres, LLC shall be named as additional insureds under the design/builder's insurance as outlined above.
- 2.03** The design/builder shall maintain, during the life of the final agreement, the statutory Workmen's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this contract, and in case any such work is sublet, the design/builder shall require the subcontractor similarly to provide Workmen's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work.
- 2.04** The design/builder's insurance coverage shall be primary insurance as respects the County, its officials, employees and volunteers. To accomplish this objective, the following wording should be incorporated in the previously referenced additional insured endorsement:
- Other Insurance:* This insurance is primary, and our obligations are not affected by any other insurance carried by the additional insured whether primary, excess, contingent or on another basis.
- 2.05** Each insurance required by the County shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.
- 2.06** The design builder shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.
- 2.07** All certificates and endorsements must be received and approved by the County within ten (10) days after notification of award.
- 2.08** The County and Bristly Acres, LLC, their officers and employees shall be named as an "additional insureds" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage "is primary to all other coverage the County or Bristly Acres, LLC may possess".
- 3.00** **SOCIAL SECURITY**
- 3.01** The design/builder shall be and shall remain an independent contractor with respect to all services performed pursuant to the final executed agreement and agrees to accept full and exclusive liabilities for the payment of any and all contributions or taxes for Social Security, Unemployment Insurance, or Old Age Retirement Benefits, Pensions, or Annuities now or hereafter imposed under any State or Federal Law which are measured by the wages, salaries, or other compensation paid to persons employed by the design/builder or work performed under the terms of this award and

further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by duly authorized State and Federal Officials; and the design/builder also agrees to indemnify and save harmless the County from any such contributions of taxes or liability hereof.

**4.00 WORKER'S COMPENSATION COVERAGE**

**4.01** The design/builder shall comply and shall require its subcontractors to comply with the State law known as the Worker's Compensation Act. The design/builder shall maintain such insurance as will protect both the design/builder and the County from claims under Worker's Compensation Acts and from any other claims for damages for personal injury, including death, which may arise from operations under the final executed agreement, whether such operations be by the design/builder or anyone directly or indirectly employed in the work.

**V. SCOPE OF WORK & SERVICES TO BE PROVIDED**

**1.00 SCOPE OF WORK**

**1.01** The offeror will be required to provide comprehensive design/build services for the design and construction of a 120,000 square foot speculative industrial building and a sanitary sewer lift station to be constructed on the herein referenced 18.43 acres in the Lexington County adjacent to the Saxe Gotha Industrial Park on Old Wire Road.

**1.02** Construction documents for the site and the sanitary sewer lift station design have been completed on behalf of the County and will be the construction documents for the design/builder's use for construction. The design/builder will be required to provide architectural, structural, mechanical, electrical and fire system design services under its scope of work. The architect and consultants providing engineering for each discipline shall be licensed professionals registered to do work in the State of South Carolina.

**1.03** The design of the industrial building shall meet the minimum standards and specifications detailed herein and shall comply with the Declaration of Covenants, Conditions, and Restrictions for the Saxe Gotha Industrial Park also attached in Exhibit N. The design shall also comply with any restrictions or limitations set forth in the wetlands mitigation permit, a copy of which is included in the exhibits herein. The design shall meet all codes and regulatory requirements having jurisdiction over the site and the design/builder shall be responsible for obtaining all necessary building permits. The building and site shall meet all codes and requirements of the regulatory bodies having jurisdiction over the project including the requirements of the Americans with Disabilities Act (ADA).

**1.04** The successful design/builder must comply with the Grading, Storm Drainage and Erosion and Sediment Control Plan for the site. An approved Land Disturbance Permit must be provided to the County by the design/builder prior to commencement of construction.

**1.05** The design/builder shall obtain written approval of the final construction documents by the County and subsequently construct the sitework, building, infrastructure, paving and sanitary sewer lift station in accordance with the approved construction drawings and specifications.

**1.06** The design/builder shall be required to provide construction services including any value engineering that may be requested by the County, scheduling, permitting, project management, and supervision.

- 1.07 The County desires to deliver the building as soon as possible. The design/builder should present a creative approach to planning and phasing the project in order to deliver in the quickest duration—without impacting project cost.
- 1.08 The design/builder shall be required to have a full-time superintendent assigned to the project.
- 1.09 The County shall inspect the work of the design/builder and may appoint its own project manager/representative to ensure the interests of the County are carried out throughout the project.
- 1.10 The design/builder shall require its design professionals to inspect the contractor's work and provide the County with a certification that the installation of their respective areas of design was completed in accordance with the construction documents. In addition, the design/builder shall engage Cox and Dinkins to provide contract administration services associated with the site development to include preparation of record drawings for water, sewer, etc. as required by the respective regulatory agencies having jurisdiction over the project. Further, the design/builder shall engage Tidewater Consulting, Inc. to serve as consultants regarding the Corps of Engineers Permit to ensure complete compliance with the requirements thereof.
- 1.11 The design/builder shall engage its Architect and consultants to provide review of all submittals, shop drawings, etc. Such reviews and approvals/comments shall be provided to the County as a precedent to the County's approval of any such submittals.
- 1.12 The design/builder shall coordinate with the County's appointed representative any construction testing or special inspections that are to be performed by firms retained by the County.
- 1.13 Upon completion of construction, the design/builder shall provide the County with comprehensive owner's manuals and warranty information as well as record drawings and as-built construction documents in electronic, CADD format.
- 1.14 The design/builder shall provide a two-year warranty for the development and shall provide that the contractor's warranty and that of any manufacturer shall be transferrable at any time during the warranty period at no cost to the County.

## **VI. PROPOSAL PRESENTATION**

### **1.00 DELIVERY OF PROPOSALS**

- 1.01 Seven (7) copies of the proposals and an electronic version on a redacted CD shall be delivered or mailed in a sealed envelope addressed to Procurement Services, County Administration Building, 212 South Lake Drive, Suite 502, Lexington SC 29072 prior to the specified date and time. ***Proposals submitted must show the proposal number on the outside of the package.*** Of the copies submitted, each copy shall be numbered (#1 - #7), with copy #1 containing all original documentation and original signatures. Offerors must complete all forms included in this RFP. Failure to include all forms may result in disqualification of the offeror's proposal.
- 1.02 All proposals should be concise and clear, and should convey all of the information requested by the County. Proposals should be prepared simply and economically. All proposals shall be complete and effective to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. All information included in the proposal should be relevant and to the point. Inclusion of non-relevant marketing materials should be avoided.
- 1.03 Each copy of the proposal should be bound separately in a single volume.

**1.04** Proposals should be limited to 20 pages and should respond to that which is requested below. Failure to provide all required information may result in the proposal being non-responsive. (The bid detail, outline specifications and RFP forms should be included in an appendix and are not counted in the 20-page limit.)

**2.00** **ORDER OF PRESENTATION**

**2.01** It is requested that the following section headings with dividers be used in offeror responses to this RFP:

- a. Executive Summary**
- b. Minimum Qualifications** – Address each of the Requirements in 2.02 Below – Include a copy of licenses in the Appendix
- c. Evaluation Criteria** – Address each of the Evaluation Criteria Set Forth in Section II, ¶ 9.02
- d. Sample Design/Builder Projects** - A minimum of five and not more than ten examples of past similar projects completed by the design/builder in the past seven years
- e. Sample Team Projects** - Sample of projects completed in the past five years for which the proposed design and construction team has worked together to provide design/build services
- f. Personnel** – See below
- g. Understanding of the Project** – See below
- h. References** - See below
- i. Proof of Bonding Capacity** – Provide confirmation in writing from bond underwriter and a statement of the design/builder’s subcontractor bonding policy
- j. Statement of Qualifications Forms** (AIA A305-1986 and AIA B305-1993)
- k. Agreement Exceptions** – Confirmation of review of the agreement and a statement of any exceptions to the agreement
- l. Color Renderings/Concept Drawings** - Include color images of the proposed building elevations and concept plans and elevations.
- m. Proposal Form** – Fully Executed
- n. Proposed Project Schedule** - Include Design, Permitting, Owner Review, and Construction Activities
- o. Appendix:**
  - a. Bid Detail/Schedule of Values
  - b. Project Specifications
  - c. Schedule of Equipment Rental Rates for equipment owned by design/builder which will be charged to the job
  - d. RFP Forms (As described below)
  - e. Copy of Licenses
  - f. Certificates of Insurance

**3.00** **MINIMUM QUALIFICATIONS**

**3.01** Each offeror must meet the following minimum qualifications and respond to each in the written response to the RFP.

**3.02** Possess a minimum of fifteen years of experience in the construction of industrial buildings of similar size utilizing tilt-up panels and in delivering services as a design/builder.

**3.03** Hold a South Carolina BD-5 General Contractor’s license.

**3.04** Have bonding capacity sufficient to cover to the value of the project along with other work in progress.

- 3.05 Have audited financial statements for the past two years which, if ultimately selected, can be submitted to the County. Financial statements shall satisfactorily represent the design/builder's capacity to carry the construction project in addition to other work the firm currently has in progress.
- 3.06 Provide certification that if selected, the design/builder can commence design services within 10 days after notification of award and construction within 60 days.
- 3.07 The design/builder, the design professionals on the team and the design and construction personnel assigned to the project must have relevant experience with at least ten similar industrial, tilt-up construction projects.
- 3.08 Have a demonstrated record of success in delivering design/build industrial projects on time and within budget.

**4.00 REFERENCES**

- 4.01 List five (5) customer references and one bank reference for a project similar to the one outlined in the County RFP. Provide the name, address, email contact and telephone number of the reference person who can be reached regarding your performance.

**5.00 PERSONNEL**

The offeror must identify the design and construction teams proposed for the project including the architect and consultants. Each key member of its design and construction team including the proposed superintendent who will participate in the project and the nature and scope of the individual's responsibilities and duties should be clearly articulated. Resumes are required which will indicate education, background, and recent relevant experience with the subject matter of the project. The offeror must demonstrate how its proposed staffing plan will be sufficient to complete the services required in a timely fashion. Inexperienced personnel may not be proposed.

The personnel to work on this project as identified in the proposal are considered to be essential to the services to be provided. No personnel substitutions following contract award will be made without the prior consent of the County. All requested substitutes must be submitted in writing, together with resumes, for approval. All replacements must be of equal or superior stature and no adjustments in the Cost of the Work shall be made for personnel substitutions.

The proposal shall list the names and telephone numbers of the principals authorized to conduct negotiation.

**6.00 UNDERSTANDING OF THE PROJECT**

- 6.01 In this section, the offeror should discuss its understanding of the requirements outlined in Section V- Scope of Work & Services to Be Provided. Provide a brief description of the offeror's approach to the project, any phasing plans, schedule, cost control, safety, staffing, etc.

**7.00 APPENDIX**

- 7.01 Include in the appendix the bid detail, the outline specifications, and the RFP forms, copies of general contracting license, certificate of insurance, and equipment rental rate schedule.

**8.00** ***COST PROPOSAL***

**8.01** The design/builder's cost proposal shall include a breakdown of design services fee, general conditions, contingency, payment and performance bond, insurance, and cost of the work which shall have been allocated in accordance with the cost allocation matrix provided herein. The proposal shall include a detail of general conditions expenses along with a cost breakdown by 16 divisions. The cost allocation matrix has been provided to ensure that the job costs listed therein which are applicable to this assignment are accurately allocated as to fee, general conditions, owner cost, and cost of the work. The matrix is not provided to suggest that all of the expenses listed are applicable to the job, but to ensure accurate allocation of cost in the offeror's proposal.

## VII. CALENDAR OF EVENTS

**ADVERTISEMENT IN SCBO PUBLICATION.....August 28, 2014**  
(South Carolina Business Opportunity)

**RFP AVAILABLE TO RESPONDENTS.....August 28, 2014**

**PRE-PROPOSAL CONFERENCE (VOLUNTARY ATTENDANCE).....September 16, 2014**  
2:00 p.m. – 4:00 p.m. Lexington County Administration Building  
Second Floor - Committee Room  
212 South Lake Drive  
Lexington SC 29072

Questions raised at the pre-proposal conference requiring written response, must be submitted in writing on the day of the conference. Please use enclosed form. Responses to all requests will be mailed to all attendees.

**DEADLINE FOR ADDITIONAL WRITTEN INQUIRIES.....September 19, 2014**  
Fax to Belinda Doss at 803-252-0577 or email [bdoss@lckcs.com](mailto:bdoss@lckcs.com)

**WRITTEN RESPONSES TO RESPONDENTS..... September 22, 2014**

Responses will be prepared and distributed to all  
Vendors represented at the pre-proposal conference.  
Responses will be made by fax or email if possible.

**DEADLINE FOR RECEIPT OF PROPOSALS..... September 30, 2014**  
4:00 p.m.  
Lexington County Procurement Office  
212 South Lake Drive, Suite 503, County Administration Building  
Lexington SC 29072

**EVALUATION COMMITTEE MEETING.....October 7, 2014**

**SCHEDULED INTERVIEWS & FINAL EVALUATION (if warranted).....October 10, 2014**

**PRESENT TO COUNTY COUNCIL.....October 28, 2014**

**AWARD CONTRACT TO OFFEROR.....October 29, 2014**

## **VIII. EXHIBITS**

## **EXHIBIT A**

### **DESIGN REQUIREMENTS/MINIMUM SPECIFICATIONS**

#### **General Requirements**

The design/build team will be responsible for comprehensive design and construction services required to successfully deliver the project described herein, including the minimum specifications that follow. Site development and landscaping shall be completed in accordance with the engineering package enclosed herein and the jurisdictional wetlands permit also enclosed. Each design/build team shall develop and include in its proposal concept drawings for building and site development contemplated by the design/builder's cost for the project. It is the County's desire to select a firm that offers a practical, yet attractive design that reflects the quality and standards embraced by other developments within the park. At the same time, the County is seeking a quality building for the best value. Therefore, each team shall carefully consider the minimum standards outlined below. If alternates are identified which may reduce construction cost without jeopardizing quality, such alternates must be priced separately. The design/builder's base bid must adhere to the minimum specifications and standards set forth.

The design/build teams are afforded the creativity to present a building concept that is consistent with the minimum standards, but may include features which serve as differentiators for the project when compared to other speculative buildings that might be on the market.

Construction shall be compliant with all applicable codes, regulations and requirements of the governing bodies having jurisdiction over the project.

### **DESIGN REQUIREMENTS/MINIMUM SPECIFICATIONS**

#### **1. General**

- A. Architectural Design: The project shall be designed to be architecturally compatible with existing buildings in the adjacent Saxe Gotha Industrial Park. Concrete walls should blend with color, texture, and level of detail of those used on adjacent buildings. The building should be aesthetically appealing and include glass/storefront components at the front of the building with punched windows above the overhead doors and knockout panels to allow for natural lighting.
- B. Budget: Project cost will be an important factor in selection of the successful design/builder. The design/builder should be mindful that this is a speculative development project and project cost must be kept in line with that of comparable speculative industrial building developments in order to be economically feasible.
- C. Structure: Load-bearing exterior tilt-up concrete walls. (An alternate for a structural steel framed building with non-loadbearing pre-cast concrete panels will be considered if it is more cost effective and schedule sensitive.) The roof shall be a shed type roof -single slope, with the highest point fronting on the rear elevation and sloping downward toward the employee parking area fronting on I-26. The parapet shall be a single level.
- D. Design Team: The successful design/builder shall employ a registered architect and engineer(s) to design, produce, and seal all work and shall provide complete drawings and specifications for all work. The County has provided civil and landscape design drawings for the site and for the sanitary sewer lift station. The design/builder shall include in the design scope contract administration by Cox and Dinkins for the site design and for Tidewater Consulting, Inc. for administration of the wetlands infill. The architect and consultants shall be retained for shop drawing and submittal reviews shall perform a final inspection to certify that the project was built in accordance with their respective plans and specifications.

#### **2. Site Development**

- A. See design documents attached.
- B. Additional geotechnical testing will be required as part of the design/builder's scope to confirm if soil from the proposed detention pond can be used for fill to balance the site. Proposals

should assume the soil *cannot* be used, however, estimated quantities and unit prices shall be provided for haul-in and haul-off as well as any premiums for balancing the site. The base bid shall also include the cost of mucking of the wetlands area including estimated quantities of haul-off and compacted fill, and unit prices for haul-off, haul-in, and mucking. The sitework price shall include any additional cut/fill as necessary for project development.

- C. The area shown for the future 50,000 square foot building should be filled and compacted sufficient to support a future building development. The area should be filled to slightly above grade and hydro-seeded.
  - (1) Provide water service to the building as reflected in the civil drawings.
  - (2) Provide a separate water meter for irrigation
  - (3) Provide all required backflow preventers for the building and irrigation service
  - (4) Construct the sanitary sewer lift station as shown in the construction documents provided herein. Sanitary sewer service lines shall be provided to the building and at intervals within the building slab with cleanouts as shown.
  - (5) Provide a gas service line to the building sized sufficiently to serve future gas heaters.
  - (6) All areas disturbed by construction shall be hydro-seeded as noted on the landscape plans.
- D. Electrical:
  - (1) Underground power service to transformer(s), site distribution, and telephone service to be included in site work bid.
  - (2) Site lighting: Provide wall pack lighting for the parking and loading areas. Lighting control shall be achieved by photoelectric cell and time clock. Parking lot lights and building exterior lights to be wired to separate timers. Include a decorative lighting package to accent the Old Wire Road and I-26 elevations of the building. Conduit shall be provided to extend from the building underneath the paving at both the employee parking and truck loading areas for wiring of future pole lights as shown on the civil drawings.
- E. Landscaping
  - (1) Landscaping shall be in accordance with the landscape plan enclosed.
  - (2) Irrigation system for all planted areas, designed to sufficiently sustain plant material growth.
  - (3) All plant materials shall be guaranteed for one year.
- F. Soil Treatment
  - (1) Soil treatment by use of a termiticide that is warranted for not less than five years against infestation of subterranean termites.
- G. Site Concrete/Paving
  - (1) 3000 psi minimum all for all concrete sidewalks aprons and other areas unless otherwise specified.
  - (2) Provide curb and gutter where shown on site plan.
  - (3) Provide broomed finish sidewalks where shown.
  - (4) Concrete paving required at all truck loading areas.
  - (5) Provide alternate pricing for paving and concrete to complete the future parking and truck loading area.

### 3. Building Design

- A. Orient the building as shown on the site plans utilizing a footprint that generally falls within the dimensions shown. Minor variations may be proposed to achieve a creative design feature/concept at the building entry. It should be assumed that office space for any future owner/tenant may be located in the corner of the building facing Old Wire Road and I-26 adjacent to the employee parking area.
- B. Building general:
  - (1) Size: Approximately 600 x 200'
  - (2) Gross Area: 120,000 square feet
  - (3) Minimum clear interior height: 32' clear at the lowest eave.
  - (4) Column spacing: 50 x 50 bays
- C. Building Exterior walls:

- (1) Tilt-up concrete load-bearing walls, uninsulated panels, 4,000 psi. (An alternate for pre-cast panels may be considered as noted above in general comments section if the option is more cost effective and has a positive impact on schedule.) Panels shall have a light trowel finish on the interior and smooth finished on the exterior.
- (2) Texture, color and pattern of exterior concrete face shall include reveals, bands and windows which give the building some creative identity and flexibility to attract different types of users.
- (3) Insulation: Provide insulation at the roof in accordance with the current Energy Code.
- (4) Personnel Doors and Windows: All perimeter doors and windows shall meet the current International Energy Code. All exterior doors shall be protected by recesses in the wall or canopies.
- (5) Truck Dock Doors: Provide (4) – 9’ wide x 10’ high roll-up dock doors and (2) – 12’ wide x 14’ high roll-up doors with on-grade vehicle entrance. Roll-up doors shall be pre-finished metal with view windows, insulated, with manual operators and a vertical track system. Each loading area shall be equipped with 30,000 lb. automatic levelers, dock seals and canopies. (Provide an add alternate for motor operated roll-up doors and a unit price to add a future door and equipment at a knockout panel as described below.)
- (6) Future Knock Outs – Knock outs shall be provided for fifteen additional loading dock doors which would be similarly equipped as C.5 above. Knock out panels shall be designed to allow for future dock openings to be cut into the panel without requiring additional reinforcing.
- (7) The site shall be filled as shown on the civil drawings to provide four standard height loading docks. A ramp shall be required to provide vehicle access from grade at two locations. Loading docks shall include electric dock levelers, dock bumpers, seals, etc.

D. Concrete Floor Slab:

- (1) Reinforced 6” concrete slab, 4,000 psi, on compacted fill designed for fork-lift (8,000 lb) loading and minimum of 6,000 pound point loading on a 3” x 4” base plate
- (2) Provide a good quality membrane with sealed joints to limit moisture and vapor transmission through slab. W.R. Grace Florprufe or approved equal.
- (3) Floor slabs to have a steel troweled, “burnished” finish.
- (4) Control joints of 1/8” x 1-1/2” shall be sawn at 12’ – 14’ center to center each way and shall be sealed with epoxy as required. (Provide an alternate for dowels and baskets at joints.)
- (5) Slab shall be treated with a quality penetrating concrete sealer/dust-proofer.

E. Metals

- (1) Exterior steps, railing and handrails: Structural steel, welded, galvanized after fabrication; prime for galvanized coating and finish with two (2) coats of enamel (if required).

F. Thermal and Moisture Protection:

- (1) Roofing:
  - a. Carlisle or equal, Forty-five (45) mil mechanically fastened and heat welded TPO single-ply membrane system. Provide 20-year manufacturer’s NDL and 2-year contractor’s warranties; both must be transferable for the life of the warranty with no fee to the County. (If a structural steel building with pre-cast panels is proposed, provide a standing seam roof with a 20-year warranty, also transferrable.)
  - b. Slope: Minimum ¼” per foot.
  - c. Insulation: The greater of 3” of insulation or comply with the R rating required by the 2012 International Energy Code.
  - d. Structure: Galvanized metal deck on structural steel or open web steel joists, factory painted white. Provide for a 40 lb. dead load and 50 lb live load minimum.
  - e. Gutters/Downspouts: Minimum prefinished .032 aluminum, as required for roof design. Pipe roof drains to stormwater system.
  - f. Design roof system for rooftop HVAC units, exhaust fans and similar items, as required.
  - g. Provide interior ladder access to roof and roof hatch.

- (2) Joint Sealant: Seal with joint backing and Tremco “Dymeric” or equal.
- G. Exterior Personnel Doors:
- (1) Provide personnel doors as required by the IBC. Personnel doors with a metal canopy and any required railing or stairs shall be provided adjacent to each grade level overhead door.
  - (2) Doors and frames shall be 16 gauge galvanized hollow-metal, pre-primed.
  - (3) Door hardware: Heavy duty commercial, lever handle, keyed lockset; provide weather-stripping and metal threshold. Hardware to be commercial grade Schlage, Corbin/Russwin or approved equal.
- H. Entrances and Storefront:
- (1) Extruded aluminum, factory color anodized; 1” insulated low “e” glazing; keyed cylinder with interior lever handle, closer, push/pull threshold, weather-stripping all doors.
- N. HVAC:
- (1) Provide an alternate cost for installation of natural gas unit heaters to maintain 50 degrees in warehouse space during heating season. Provide in the base bid sidewall louvers and ventilation system with controls for the entire building. Design criteria shall be three air changes per hour.
- O. Plumbing:
- (1) Provide four exterior hose bibs on each of the 600 ft. building elevations and two on each of the 200 ft. building elevations.
  - (2) Provide water service as shown on the civil drawings.
  - (3) Provide two sanitary sewer lines with cleanouts at the building slab extending on both sides of the building parallel with the longest length of the footprint as shown on the civil documents.
- P. Fire Protection:
- (2) Provide in the base bid the fire water loop and service as shown on the civil design documents. Provide an add alternate to install an ESFR fire suppression system for 100% of the building, complete with fire alarm panel, tamper and flow switches, etc.
- N. Electrical:
- (1) Provide 3-phase 277/480V 2000 AMP service.
  - (2) Lighting shall be high bay, LED fixtures, CREE CXB Series, CXBA16N or equal. The base bid shall include lighting for two bays (200 feet x 100 feet) to effect the marketing efforts for the property. An add alternate shall be provided for comprehensive LED lighting throughout to achieve a minimum of 30 foot candles at 60” AFF. (Provide an alternate for T5 fluorescent lighting to achieve the same level.) All rebates and incentives for the LED fixtures shall accrue to the benefit of the County.
  - (3) Provide conduits to the building for underground fiber and communications cabling. Conduit shall be extended from the service point on the property line to inside the building at two location—one near the front and one 300 feet from the front as shown on the plans.
  - (4) Electrical equipment shall be Square D or equal.
  - (5) Provide an add alternate for a fire alarm system as noted in the Fire Protection System section above.

**CONTACTS FOR CONTRACT ADMINISTRATION SERVICES REQUIRED BY THE RFP:**

Mr. Jamie Pruitt  
 Cox & Dinkins  
 724 Beltline Blvd.  
 Columbia, SC 29205  
 Email: [jpruitt@coxanddinkins.com](mailto:jpruitt@coxanddinkins.com)  
 (P) 803.764.6222  
 (C) 803.609.4292

Mr. John Collum  
 Tidewater Environmental Services, Inc.  
 P.O. Box 8902  
 Columbia, SC 29202  
 Email: [john@tidewaterenvirnmental.com](mailto:john@tidewaterenvirnmental.com)  
 (P) 803.765.0070  
 (C) 803.960.3633

## EXHIBIT B

### COST ALLOCATION MATRIX

Lexington County- Design/Build Services for 120,000 SF Industrial Building and Construction of a Sanitary Sewer Lift Station

I. CONSTRUCTION MANAGEMENT EXPENSES				
DESCRIPTION	FEE	GEN. CONDS.	OWNER COST	DIRECT COST
Project Superintendent(s)		X		
Assistant Superintendent(s)		X		
Field Coordinators		X		
Field Engineer		X		
Corporate Executives	X			
Principal in Charge	X			
Officer in Charge		X		
Legal (Basic Service)	X			
Project Manager		X		
Accounting	X			
Scheduling		X		
Life-Cycle	X			
Office Engineer		X		
Project Engineer		X		
Safety Director		X		
Secretarial - On Site		X		
Clerk - Typist - Offsite	X			
Superintendents Transportation		X		
Off-Site Staff Travel Costs		X		
On-Site Project Manager Trans.		X		
Project Budget Estimating	X			
Employee Bonuses, Profit Sharing, 401K, Etc.	X			
Mobilization		X		

Note: Personnel expenses are base salary, taxes and benefits at cost.

Lexington County- Design/Build Services for 120,000 SF Industrial Building and Construction of a Sanitary Sewer Lift Station

II. SAFETY, SECURITY, AND SERVICES				
DESCRIPTION	FEE	GEN. CONDS.	OWNER COST	DIRECT COST
Safety Equipment		X		
First Aid Supplies		X		
Handrails & Toe Boards		X		
Opening Protection		X		
Fire Extinguishers/Fire Watch		X		
Security Guard/Watchman Svcs.		X		
Weekly Cleanup		X		
Final Cleanup		X		
Temporary Fencing		X		
Covered Walkways				X
Barricades		X		
Safety Nets				X
Ambulance Costs				X
Debris Hauling/Removal				X
Traffic Control		X		
Roadway Maintenance		X		
Dust Controls		X		
2-Way Radio Equipment		X		
Trash Chute & Hoppers				X
Snow & Ice Removal				X

Lexington County- Design/Build Services for 120,000 SF Industrial Building and Construction of a Sanitary Sewer Lift Station

III. FACILITIES, EQUIPMENT, AND SERVICES				
DESCRIPTION	FEE	GEN. CONDS.	OWNER COST	DIRECT COST
Office Trailer Rental		X		
Tool/Utility Trailer Rental		X		
Water/Ice		X		
Temp. Lighting/Wiring				X
Power Expenses				X
Temporary Water Services				X
Temporary Heat Expenses				X
Temporary Cooling Expenses				X
Temporary Toilets/Sewer Services		X		
Temporary Stairs				X
Temporary Enclosures/Partitions				X
Project Signs/Bulletin Boards		X		
Telephone Expenses*		X		
Temporary Roads				X
Trucks		X		
Air Compressors				X
Dewatering Equipment				X
Generators				X
Miscellaneous Equipment				X
IS Systems and Hardware		X		
Fuel/Repairs/Maintenance		X		

\*Site office telephone expenses and cell phones for on-site staff only, home office phone and off-site cell phones are part of fee.

Lexington County- Design/Build Services for 120,000 SF Industrial Building and Construction of a Sanitary Sewer Lift Station

IV. VERTICAL HOISTING				
DESCRIPTION	FEE	GEN. CONDS.	OWNER COST	DIRECT COST
Hoist & Tower Rental				X
Small Material Hoist Rental				X
Hoist Landings & Fronts				X
Hoist Operators				X
Hoist Safety Inspections				X
Hoist Material Skips				X
Hoist Material Hoppers				X
Erect & Dismantle Hoists				X
Fuel/Repairs/Maintenance				X
Hoist Communication				X
Crane Rental				X
Crane Operators				X
Crane Safety Inspections				X
Erect & Dismantle Crane				X
Fuel/Repairs/Maintenance				X
Crane Raising/Jumping Cost				X
Temporary Elevator Rental				X
Elevator Operation Cost				X
Elevator Repairs & Maintenance				X
Cage Rider @ Elevator				X
Safety Inspections				X
Forklift Rental				X
Forklift Operators				X
Forklift Safety Inspections				X
Fuel/Repairs/Maintenance				X
Elevator Service Costs				X

Lexington County- Design/Build Services for 120,000 SF Industrial Building and Construction of a Sanitary Sewer Lift Station

V. REPRODUCTION AND PRINTING				
DESCRIPTION	FEE	GEN. CONDS.	OWNER COST	DIRECT COST
Bid Package Documents	X			
Bidding Instructions	X			
Construction Documents	X			
Postage & Express Costs		X		
As-Built Documents (Drafting)		X		
As-Built Documents (Printing)		X		
Accounting Forms	X			
Field Reporting Forms	X			
Contract Agreements	X			
Schedule Report Forms	X			
Estimating Forms	X			
Cost Reporting Forms	X			
Presentation Charts & Graphics	X			
Value Analysis Studies	X			
Data Processing (In-House)	X			
Reference Materials	X			
Duplication Expense (Misc.)		X		
Shop Drawing Printing		X		
Maintenance Manuals		X		
Operation Manuals		X		
Special Forms	X			
Postage & Delivery Expense		X		

Lexington County- Design/Build Services for 120,000 SF Industrial Building and Construction of a Sanitary Sewer Lift Station

VI. QUALITY CONTROL				
DESCRIPTION	FEE	GEN. CONDS.	OWNER COST	DIRECT COST
Special Testing Consultants			X	
Concrete Testing			X	
Masonry Testing			X	
Compaction Testing			X	
Welding Inspections			X	
Soils Investigations			X	
Special Testing Services			X	
Stormwater Management Inspections			X	
Field Office Supplies/Materials		X		
Project Photographs		X		
Warranty Inspection Coord.		X		
Air & Water Balancing				X
Operator On-Site Training				X
Prepare Operation Manuals		X		
Prepare Maintenance Manuals		X		

Lexington County- Design/Build Services for 120,000 SF Industrial Building and Construction of a Sanitary Sewer Lift Station

VII. PERMITS AND SPECIAL FEES				
DESCRIPTION	FEE	GEN. CONDS.	OWNER COST	DIRECT COST
Storage Yard Rental		X		
Parking Lot Rentals		X		
Parking Fees		X		
Curb & Gutter Permits				X
Temporary Construction Signs & Permits		X		
Permanent Sign Permits				X
Staking & Layout Fees/Costs		X		
Sidewalk Permits			X	
Landscape Permits			X	
Building Permits			X	
Plan Review Fees			X	
Tap and Impact Fees			X	
Contractor's GC Licenses	X			
Local Business Licenses		X		
Zoning Fees / Consultants			X	
Construction Equip. Licenses		X		
Construction Equip. Permits		X		
A.G.C. and Other Membership Fees	X			

Lexington County- Design/Build Services for 120,000 SF Industrial Building and Construction of a Sanitary Sewer Lift Station

VIII. INSURANCE AND BONDS				
DESCRIPTION	FEE	GEN. CONDS.	OWNER COST	DIRECT COST
Builders Risk Insurance				X
General Liability				X
Excess Liability Coverage				X
Other Contractor Insurance Reqmts.				X
Workman's Compensation*		X		
FICA Insurance*		X		
Federal Unemployment*		X		
State Unemployment*		X		
Payment Bond				X
Performance Bond				X
Off-Site Insurance	X			
Off-Site Staff Taxes	X			

\*On-site staff only

IX. OTHER COSTS				
DESCRIPTION	FEE	GEN. CONDS.	OWNER COST	DIRECT COST
Construction Equipment				X
Construction Labor Costs				X
Construction Materials				X
Preliminary Soils Investigations			X	
Cost of Corrective Work	X			
Costs of Emergency Work				X
General Overhead Cost	X			
Profit/Margin	X			
Costs Over GMP	X			

**EXHIBIT C**

**BID FORM**

**Lexington County Design-Build Services for a  
120,000 SF Industrial Building and  
Construction of a Sanitary Sewer Lift Station**

The undersigned offeror having carefully examined the RFP, the AIA Contract Documents, design documents and minimum specifications and having visited the site, attended the pre-proposal conference and having clarified all questions, hereby agrees to furnish design services, material and labor to fulfill the design/build responsibilities for the above-referenced project and to abide by the cost and billing rate schedules included herein. Offeror further acknowledges that the offeror's projected commencement date of construction is \_\_\_\_\_ and that this proposal shall be valid until the commencement of construction and throughout the duration of the construction period.

**1. General Conditions**

GMP for Design and Construction of the Building  
and Lift Station: \$ \_\_\_\_\_  
(Schedule of Values Attached)

GMP for General Conditions Included Above: \$ \_\_\_\_\_  
(Schedule of Values Attached)

Cost for the Sanitary Sewer Lift Station  
Included Above: \$ \_\_\_\_\_

Daily Rate for General Conditions for  
Changes in the Work: \$ \_\_\_\_\_

**2. Fee**

Design/Builder's Fee (Lump Sum or Percentage)  
for the Project (Included in GMP Above): \$/% \_\_\_\_\_

Proposed Change Order Fee for the Project: \$/% \_\_\_\_\_

**3. Schedule**

Proposed Construction Duration: \_\_\_\_\_  
(Schedule Attached)

**4. Alternates**

a. Alternate for structured steel framed building with  
non-loadbearing pre-cast concrete panels (optional --  
not required): \$ \_\_\_\_\_

b. Alternate for motor operated roll-up doors: \$ \_\_\_\_\_

c. Alternate to install an ESFR fire suppression  
system for 100% of the building, complete with  
fire alarm panel, tamper and flow switches, etc. \$ \_\_\_\_\_

d. Alternate for dowels and baskets at joints in slab: \$ \_\_\_\_\_

e. Alternate for paving of future employee parking area \$ \_\_\_\_\_

f. Alternate for paving/concrete of future truck loading area \$ \_\_\_\_\_

- g. Alternate for comprehensive LED lighting throughout to achieve a minimum of 30 foot candles at 60" AFF for the complete building. \$ \_\_\_\_\_
- h. Alternate for T5 fluorescent lighting to achieve a minimum of 30 foot candles at 60" AFF. \$ \_\_\_\_\_
- Alternate for installation of natural gas unit heaters. \$ \_\_\_\_\_

**5. Unit Prices**

- a. Cost for mucking of wetlands per cubic yard \$ \_\_\_\_\_ cu/yd
- b. Estimated cubic yards to be mucked from wetlands \_\_\_\_\_ cu/yd
- c. Cost for haul-in of soils for compacted fill per cubic yard \$ \_\_\_\_\_ cu/yd
- d. Cost for haul off of unsuitable soils per cubic yard \$ \_\_\_\_\_ cu/yd
- e. Estimated cubic yards of haul-in required to balance site (if applicable) \_\_\_\_\_ cu/yd
- f. Per door cost for future knock out and installation of overhead door, bumpers, seals and levelers as specified \$ \_\_\_\_\_ per door

**6. Other**

- Payment and Performance Bond Rate: \$ \_\_\_\_\_
- Labor Burden Rate: \$ \_\_\_\_\_
- General Liability Insurance Rate: \$ \_\_\_\_\_
- (Equipment Rental Rate Schedule to be Attached)

**7. Clarifications/Qualifications**

Clarifications/qualifications for the above data (if any) are as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Legal Name of Offeror: \_\_\_\_\_

\*By (Name/Signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title/Position with the Firm: \_\_\_\_\_

\*Must be an officer of the firm, duly authorized to obligate the firm.

**EXHIBIT D**

**NO RESPONSE BID FORM**

SOLICITATION #: **P15002-09/30/14H**  
PROCUREMENT: **Design/Build Package for 120,000 SF Speculative Building, Saxe  
Gotha Industrial Park, Lexington County, South Carolina**

**"NO BID" RESPONSE FORM**

To submit a *"No Bid"* response for this project, this form must be completed for your company to remain on our bidders list for commodities/services referenced. If you do not respond your name may be removed from this bidders list. **In order to ensure that the County file has current information, or if you wish to be added to Lexington County's Vendor Listing, you must also return the Certificate of Familiarity form completed in its entirety.**

Note: Please show the solicitation number on the outside of the envelope.

Please check statement(s) applicable to your *"No Bid"* response --

- Specifications are restrictive; i.e. geared toward one brand or manufacturer only (explain below).
- Specifications are ambiguous (explain below).
- We are unable to meet specifications.
- Insufficient time to respond to the solicitation.
- Our schedule would not permit us to perform.
- We are unable to meet bond requirements.
- We are unable to meet insurance requirements.
- We do not offer this product or service.
- Remove us from your vendor list for this commodity/service.
- Other (specify below).

**Comments:**

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\_\_\_\_\_  
Company Name (as registered with the IRS)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Correspondence Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_/\_\_\_\_\_  
Telephone Fax

**EXHIBIT E**

**AIA141 – 2004 AS MODIFIED**



**AIA**<sup>®</sup>

# Document A141™ – 2004

## Standard Form of Agreement Between Owner and Design-Builder

**AGREEMENT** made as of the  day of  in the year 2014.  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address and other information)*

County of Lexington  
212 South Lake Drive  
Lexington, SC 29072

and the Design-Builder:  
*(Name, legal status, address and other information)*

for the following Project:  
*(Name, location and detailed description)*

Provide Design/Build Services for Development of a 120,000 SF Industrial Building on Old Wire Road and Construct a Sanitary Sewer Lift Station

The Owner and Design-Builder agree as follows.

- 1) Owner shall provide confirmation to design/builder regarding its appointed Representative and may at its option at any time outsource project management/owner's representation services to a third party service provider.
- 2) For the purposes of this project and this Agreement, references herein to approvals of or submittals to Owner shall be construed as approvals of or submittals to Owner's designated representative.
- 3) Design/Builder shall at all times conform its work to the requirements of the Corps of Engineers permit for wetlands infill which documents are incorporated hereto.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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## TABLE OF ARTICLES

- 1 THE DESIGN-BUILD DOCUMENTS
- 2 WORK OF THIS AGREEMENT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 MISCELLANEOUS PROVISIONS
- 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

## TABLE OF EXHIBITS

- A TERMS AND CONDITIONS
- B DETERMINATION OF THE COST OF THE WORK
- C INSURANCE AND BONDS

### ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

### ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the approved Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

(Paragraphs deleted)The date of commencement shall be fixed in a Notice to Proceed.

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.  
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

Design-Builder shall complete the Project within the parameters set forth in Design-Builder's schedule attached hereto as Exhibit \_\_\_\_\_.

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than \_\_\_\_\_ days from the date of commencement, or as follows:  
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:  
(Check the appropriate box.)

Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

(Paragraphs deleted)  
(Table deleted)  
(Paragraphs deleted)  
(Table deleted)  
(Paragraphs deleted)

#### § 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

#### § 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 The sum of the Cost of the Work, General Conditions and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed \$ \_\_\_\_\_, subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. The cost of Design-Builder's General Conditions shall be a guaranteed maximum as detailed in the schedule of values.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price (\$0.00)
-------------	-------	----------------

§ 4.4.3.4 Allowances, if any, are as follows:

*(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)*

Allowance	Amount (\$0.00)	Included Items
-----------	-----------------	----------------

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

*(Identify the assumptions on which the Guaranteed Maximum Price is based.)*

## § 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

*(Paragraph deleted)*

## ARTICLE 5 PAYMENTS

### § 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received not later than the 10<sup>th</sup> day of month, the Owner shall make payment to the Design-Builder not later than the 10<sup>th</sup> day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty ( 30 ) days after the Owner receives the Application for Payment.

§ 5.1.4 With each Application for Payment, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence if required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work, including a detailed breakdown of General Conditions and contingency. Compensation for design services shall be shown separately. The Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the

Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

*(Paragraphs deleted)*

#### § 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of ten percent ( 10 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than ten percent ( 10 %). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

#### § 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's

responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1**

*(Paragraphs deleted)*

**§ 6.2** If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

*(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)*

*(Check one.)*

Litigation in a court of competent jurisdiction

*(Paragraphs deleted)*

**ARTICLE 7 MISCELLANEOUS PROVISIONS**

**§ 7.1** The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed and insured to practice their professions in the jurisdiction where the Project is located, shall not be substituted without prior approval of Owner, and are listed as follows:

*(Insert name, address, license number, relationship to Design-Builder and other information.)*

Name and Address	License Number	Relationship to Design-Builder	Other Information

--	--	--	--

**§ 7.2** Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:

*(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)*

Name and Address	License Number	Responsibilities to Owner	Other Information

--	--	--	--

**§ 7.3** Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:

*(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)*

Name and Address	License Number	Responsibilities to Owner	Other Information

--	--	--	--

**§ 7.4** The Owner's Designated Representative is:

*(Insert name, address and other information.)*

[Redacted area]

**§ 7.4.1** The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

**§ 7.5** The Design-Builder's Designated Representative is:

*(Insert name, address and other information.)*

[Redacted area]

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User Notes:

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§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

(Paragraphs deleted)

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

§ 7.7.2 Payments due and unpaid under the Design-Build Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

The County will make payment within thirty (30) days of receipt of a properly submitted invoice.

#### ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:  
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

##### Document

- 1) Request for Proposals dated August 15, 2014
- 2) Civil Engineering Construction Documents by Cox & Dinkins dated \_\_\_\_\_
- 3) Sanitary Sewer Lift Station Construction Documents by Cox & Dinkins dated \_\_\_\_\_

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:

(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

Title

Date

§ 8.1.4 The Design-Builder's Proposal, dated \_\_\_\_\_, consists of the following:

(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:

(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:

*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

Number	Date	Pages

§ 8.1.7 Exhibit A, Terms and Conditions.

*(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)*

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.

*(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)*

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.

*(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")*

- 1) Payment and Performance Bond
- 2) Certificate of Insurance

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:

*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
DESIGN-BUILDER (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

**EXHIBIT F**

**AIA141 – 2004 EXHIBIT A AS MODIFIED**



# Document A141™ – 2004 Exhibit A

## Terms and Conditions

### for the following PROJECT:

*(Name and location or address)*

Provide Design-Build Services for Development of a 120,000 SF Industrial Building on Old Wire Road and Construct a Sanitary Sewer Lift Station

### THE OWNER:

*(Name, legal status and address)*

County of Lexington  
212 South Lake Drive  
Lexington, SC 29073

### THE DESIGN-BUILDER:

*(Name, legal status and address)*

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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## ARTICLE A.1 GENERAL PROVISIONS

### § A.1.1 BASIC DEFINITIONS

#### § A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

#### § A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

#### § A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

#### § A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

#### § A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

#### § A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

#### § A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

*(Paragraphs deleted)*

### § A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder should have recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

### § A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

### § A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

### § A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

### § A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and Consultants and furnished by the Design-Builder are Instruments of Service. The Design-Builder, Design-Builder's Architect and other providers of professional services individually shall assign all common law, statutory and other reserved rights, including copyright in those Instruments of Services furnished by them to the Owner. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.

§ A.1.6.2 Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project's further development by the Owner and others retained by the Owner for such purposes, provided that the Owner shall comply with all obligations, including prompt payment of sums when due, under the Design-Build Documents. Subject to the Owner's compliance with such obligations, such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive licenses from its design professionals, including the Architect. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense without liability to the Design-Builder and its design professionals. Except as provided in Section A.1.6.4, termination of this Agreement prior to completion of the Design-Builder's services to be performed under this Agreement shall terminate this license.

§ A.1.6.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents.

§ A.1.6.4 If this Agreement is terminated for any reason other than the default of the Owner, each of the Design-Builder's design professionals, including the Architect, shall be contractually required to convey ownership of all documents to the Owner to use that design professional's Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner's written notice to that design professional of the Owner's assumption of the Design-Builder's contractual duties and obligations to that design professional and payment to that design professional of all amounts due to that design professional and its consultants, provided such financial obligation does not extend beyond the design fee included in the Design-Builder's GMP for the project. The Design-Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its design professionals.

§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

## ARTICLE A.2 OWNER

### § A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate project manager, architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

*(Paragraph deleted)*

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

### § A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

- .1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
- .2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
- .3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
- .4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
- .5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents including the minimum specifications and requirements set forth in the Owner's RFP unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of

the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner at Owner's sole discretion may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

#### § A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

#### § A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

### ARTICLE A.3 DESIGN-BUILDER

#### § A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

### § A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions and insured in accordance with the requirements of the Owner's RFP for Design-Build Services.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would

require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

### § A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and

machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ **A.3.4.2** When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ **A.3.4.3** The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### § **A.3.5 WARRANTY**

§ **A.3.5.1** The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § **A.3.6 TAXES**

§ **A.3.6.1** The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

#### § **A.3.7 PERMITS, FEES AND NOTICES**

§ **A.3.7.1** The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ **A.3.7.2** The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ **A.3.7.3** It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ **A.3.7.4** If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

#### § **A.3.8 ALLOWANCES**

§ **A.3.8.1** The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ **A.3.8.2** Unless otherwise provided in the Design-Build Documents:

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual

costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

#### § A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work which is attached hereto as Exhibit \_\_\_\_\_. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, including durations for design, Owner approvals and permitting, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

#### § A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

#### § A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.11.7 Design-Builder shall engage its Architect and consultants to provide contract administration services for the purpose of review and approval of submittals.

#### § A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

#### § A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

#### § A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

#### § A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

*(Paragraphs deleted)*

#### § A.3.17 INDEMNIFICATION

§ A.3.17.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### ARTICLE A.4 DISPUTE RESOLUTION

#### § A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 **Time Limits on Claims.** Claims by Design-Builder must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Owner.

§ A.4.1.3 **Continuing Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 **Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.5 **Claims for Additional Cost.** If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 **Claims for Additional Time**

§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Design-Builder shall include in its schedule assumptions for weather delay and shall provide Owner with those assumptions upon submittal of the schedule for approval.

§ A.4.1.8 **Injury or Damage to Person or Property.** If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

*(Paragraphs deleted)*

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

#### § A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

*(Paragraph deleted)*

§ A.4.2.2 **Decision by Owner.** Except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Section A.4.2.2 shall be in writing shall state the reasons therefore and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

§ A.4.2.4 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.5 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

#### § A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

*(Paragraphs deleted)*

#### ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

#### § A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- .1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

#### ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

##### § A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

##### § A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder

because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

#### § A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

### ARTICLE A.7 CHANGES IN THE WORK

#### § A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order.

#### § A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

*(Paragraphs deleted)*

§ A.7.2.4 No work pursuant to a Change Order shall be commenced without the Owner's approval of the cost and/or a methodology for computing the cost.

#### § A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

### ARTICLE A.8 TIME

#### § A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

#### § A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### § A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

§ A.8.3.3 This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

#### ARTICLE A.9 PAYMENTS AND COMPLETION

##### § A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

##### § A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

##### § A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents. All Applications for Payment must be accompanied by a Waiver of Lien in a format acceptable to Owner.

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may not include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

#### § A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;  
or
- .7 failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

#### § A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

#### § A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon fourteen additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

#### § A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's

inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

#### § A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

#### § A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder.

Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

### § A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

### § A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
- .3 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.

§ A.10.2.2 The Design-Builder 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.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a 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 Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### § A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

### § A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

## ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11 and the Owner's RFP for Design/Build Services dated August 28, 2014.

### § A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

#### § A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Unless otherwise provided, the Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner and any of its designees, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 The Owner does not intend to purchase property insurance. The Design-Builder shall effect insurance that will protect the interests of the Design-Builder, Contractors and Subcontractors in the Work, and the cost thereof shall be charged to the Owner.

§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles. Owner and Design-Builder shall agree on the deductibles, policy limits, and premium prior to Design-Builder's purchase of the coverage.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

*(Paragraph deleted)*

§ A.11.4.3 **Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 If the Design-Builder requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design-Builder by appropriate Change Order.

§ A.11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section A.11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ A.11.4.6 Before an exposure to loss may occur, the Design-Builder shall file with the Owner a copy of each policy that includes insurance coverages required by this Section A.11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least 30 days' prior written notice has been given to the Owner.

§ A.11.4.7 **Waivers of Subrogation.** The Design-Builder shall waive all rights against the Owner and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, of the Design-Builder, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work. The Design-Builder shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 A loss insured under Design-Builder's property insurance shall be adjusted by the Design-Builder as fiduciary and made payable to the Design-Builder as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section A.11.4.10. The Design-Builder shall pay the Owner and the Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

§ A.11.4.9 If required in writing by a party in interest, the Design-Builder as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Design-Builder's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Design-Builder shall deposit in a separate account proceeds so received, which the Design-Builder shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.

§ A.11.4.10 The Design-Builder as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power. The Design-Builder as fiduciary shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution. Design-Builder shall receive approval of Owner prior to Design-Builder's execution of any settlements or claims.

#### § A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

### ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

#### § A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

#### § A.12.2 CORRECTION OF WORK

##### § A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

##### § A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within two years after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The two-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the two-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.2.5 Design-Builder's two-year warranty and any other warranties provided hereunder by materials suppliers or others shall be transferrable during the warranty period at no cost to the Owner.

#### § A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

#### ARTICLE A.13 MISCELLANEOUS PROVISIONS

##### § A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

##### § A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

##### § A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

#### § A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### § A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Owner shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall coordinate the services of such independent testing entities and shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the Owner and Design-Builder:

- .1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 **Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- .3 **After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

## ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

### § A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-BUILDER may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-BUILDER or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-BUILDER, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 the Owner has failed to make payment to the Design-BUILDER in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-BUILDER promptly, upon the Design-BUILDER's request, reasonable evidence as required by Section A.2.2.8.

§ A.14.1.2 The Design-BUILDER may terminate the Design-Build Contract if, through no act or fault of the Design-BUILDER or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-BUILDER, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-BUILDER may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed including associated general conditions and fee.

§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-BUILDER or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-BUILDER because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-BUILDER may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

### § A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-BUILDER:

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-BUILDER and the Architect and Contractors;
- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-BUILDER and the Design-BUILDER's surety, if any, seven days' written notice, terminate employment of the Design-BUILDER and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-BUILDER;
- .2 accept assignment of contracts pursuant to Section A.5.5.1;
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-BUILDER, the Owner shall furnish to the Design-BUILDER a detailed accounting of the costs incurred by the Owner in finishing the Work; and
- .4 accept all rights of use and ownership of construction documents.

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-BUILDER shall not be entitled to receive further payment until the Work is finished.

*(Paragraph deleted)*

§ A.14.2. If such costs and damages incurred by the Owner associated with finishing the work exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

**§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

**§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, and costs incurred by reason of such termination and all rights and ownership of design documents prepared through the event of termination shall be transferred to Owner. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed through the date of termination including general conditions and fee associated with work executed and direct costs incurred by reason of such termination.

**EXHIBIT G**

**AIA141 – 2004 EXHIBIT B AS MODIFIED**



# Document A141™ – 2004 Exhibit B

## Determination of the Cost of the Work

**for the following PROJECT:**

*(Name and location or address)*

Provide Design-Build Services for Development of a 120,000 SF Industrial Building on Old Wire Road and Construct a Sanitary Sewer Lift Station

**THE OWNER:**

*(Name, legal status and address)*

County of Lexington  
212 South Lake Drive  
Lexington, SC 29073

**THE DESIGN-BUILDER:**

*(Name, legal status and address)*

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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(Paragraphs deleted)

## ARTICLE B.2 COSTS TO BE REIMBURSED

### § B.2.1 COST OF THE WORK

Design-Builder's Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall be subject to the cost allocation matrix provided in Owner's RFP for Design/Build Services and this Exhibit B as modified. The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B.2.

### § B.2.2 LABOR COSTS

§ B.2.2.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's approval, at off-site locations.

§ B.2.2.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's approval.

§ B.2.2.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3. Profit sharing, retirement plan contributions and other bonuses shall not be included in the cost of the work.

### § B.2.3 CONTRACT COSTS

§ B.2.3.1 Payments made by the Design-Builder to Contractors in accordance with the requirements of their contracts.

### § B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ B.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ B.2.5.3 Costs of removal of debris from the site.

§ B.2.5.4 Cost of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ B.2.5.5 That portion of the reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work.

§ B.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

#### § B.2.6 DESIGN AND OTHER CONSULTING SERVICES

§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents.

#### § B.2.7 MISCELLANEOUS COSTS

§ B.2.7.1 That portion of insurance and bond premiums that can be directly attributed to this Design-Build Contract.

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.13.5.3.

*(Paragraph deleted)*

§ B.2.7.6 Customary data processing costs related to the Work.

§ B.2.7.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Design-Build Documents.

*(Paragraph deleted)*

§ B.2.7.9 Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

#### § B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions.

§ B.2.8.3 Upon prior approval of Owner, cost of repairing or correcting damaged or non-conforming Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Contractors, Subcontractors or suppliers.

#### ARTICLE B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 The Cost of the Work shall not include any expenses allocated to general conditions or fee as provided in the cost allocation matrix included in Owner's RFP for Design/Build Services or:

§ B.3.1.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Sections B.2.2.2 and B.2.2.3.

§ B.3.1.2 Expenses of the Design-Builder's principal office and offices other than the site office.

§ B.3.1.3 Overhead and general expenses, except as may be expressly included in Article B.2 of this Exhibit.

§ B.3.1.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.

§ B.3.1.5 Rental costs of machinery and equipment, except as specifically provided in Section B.2.5.2.

§ B.3.1.6 Except as provided in Section B.2.8.3 of this Agreement, costs due to the negligence or failure of the Design-Builder to fulfill a specific responsibility of the Design-Builder, Contractors, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ B.3.1.7 Any cost not specifically and expressly described in Article B.2, Costs to be Reimbursed.

§ B.3.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price, if any, to be exceeded.

#### ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

§ B.4.2 Amounts that accrue to the Owner in accordance with the provisions of Section B.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

#### ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed by others under contracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons or entities from whom the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Contractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. The Owner shall then determine which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 Contracts or other agreements shall conform to the applicable payment provisions of this Design-Build Contract, and shall not be awarded on the basis of cost plus a fee without the Owner's prior consent.

§ B.5.3 Design-Builder shall at Owner's request provide a copy of any or all contracts, agreements, or purchase orders to be included in the Cost of the Work to Owner for its review and records.

#### ARTICLE B.6 ACCOUNTING RECORDS

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's accountant a final accounting of the Cost of the Work.

§ B.6.3 The Owner's accountants will review and report in writing on the Design-Builder's final accounting within 21 days after delivery of the final accounting. Based upon such Cost of the Work as the Owner's accountants report

to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section A.9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's accountants, notify the Design-Builder in writing of the Owner's intention to make final payment or to withhold final payment.

**§ B.6.4** If the Owner's accountants report the Cost of the Work as substantiated by the Design-Builder's final accounting to be less than claimed by the Design-Builder, the Design-Builder shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, for the disputed amount. If the Design-Builder fails to so initiate resolution of the dispute within the period of time required by Section A.4.1.2 of Exhibit A, Terms and Conditions, the substantiated amount reported by the Owner's accountants shall become binding on the Design-Builder. Pending a final resolution pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, the Owner shall pay the Design-Builder the amount, if any, determined by the Owner's accountant to be due the Design-Builder.

**§ B.6.5** If, subsequent to final payment and at the Owner's request, the Design-Builder incurs costs in connection with the correction of defective or non-conforming work as described in Article B.2, Costs to be Reimbursed, and not excluded by Article B.3, Costs Not to be Reimbursed, the Owner shall reimburse the Design-Builder such costs and the Design-Builder's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Design-Builder has participated in savings as provided in Section 4.4.3.1 of the Agreement, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Design-Builder.

## **EXHIBIT H**

### **STATEMENT OF QUALIFICATIONS FORMS**

**EXHIBIT H**

**STATEMENT OF QUALIFICATIONS FORMS**



**AIA**<sup>®</sup>

# Document A305™ – 1986

## Contractor's Qualification Statement

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

**SUBMITTED TO:**

**ADDRESS:**

**SUBMITTED BY:**

**NAME:**

**ADDRESS:**

**PRINCIPAL OFFICE:**

Corporation

Partnership

Individual

Joint Venture

Other

**NAME OF PROJECT:** *(if applicable)* Provide Design-Build Services for Development of a 120,000 SF Industrial Building on Old Wire Road and Construct a Sanitary Sewer Lift Station

**TYPE OF WORK:** *(file separate form for each Classification of Work)*

General Construction

HVAC

Electrical

Plumbing

Other: *(Specify)*

### § 1 ORGANIZATION

§ 1.1 How many years has your organization been in business as a Contractor?

§ 1.2 How many years has your organization been in business under its present business name?

§ 1.2.1 Under what other or former names has your organization operated?

\_\_\_\_\_

§ 1.3 If your organization is a corporation, answer the following:

§ 1.3.1 Date of incorporation:

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This form is approved and recommended by the American Institute of Architects (AIA) and The Associated General Contractors of America (AGC) for use in evaluating the qualifications of contractors. No endorsement of the submitting party or verification of the information is made by AIA or AGC.

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- § 1.3.2 State of incorporation:
- § 1.3.3 President's name:
- § 1.3.4 Vice-president's name(s)

- § 1.3.5 Secretary's name:
- § 1.3.6 Treasurer's name:

§ 1.4 If your organization is a partnership, answer the following:

- § 1.4.1 Date of organization:
- § 1.4.2 Type of partnership (if applicable):
- § 1.4.3 Name(s) of general partner(s)

§ 1.5 If your organization is individually owned, answer the following:

- § 1.5.1 Date of organization:
- § 1.5.2 Name of owner:

§ 1.6 If the form of your organization is other than those listed above, describe it and name the principals:

## § 2 LICENSING

§ 2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

§ 2.2 List jurisdictions in which your organization's partnership or trade name is filed.

## § 3 EXPERIENCE

§ 3.1 List the categories of work that your organization normally performs with its own forces.

§ 3.2 Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)

§ 3.2.1 Has your organization ever failed to complete any work awarded to it?

§ 3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

§ 3.2.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five years?

§ 3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)

§ 3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.

§ 3.4.1 State total worth of work in progress and under contract:

§ 3.5 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces.

§ 3.5.1 State average annual amount of construction work performed during the past five years:

§ 3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

#### § 4 REFERENCES

§ 4.1 Trade References:

§ 4.2 Bank References:

§ 4.3 Surety:

§ 4.3.1 Name of bonding company:

§ 4.3.2 Name and address of agent:

#### § 5 FINANCING

§ 5.1 Financial Statement.

§ 5.1.1 Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:

Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses);

Net Fixed Assets;

Other Assets;

Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes);

Other Liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings).

§ 5.1.2 Name and address of firm preparing attached financial statement, and date thereof:

[Redacted]

§ 5.1.3 Is the attached financial statement for the identical organization named on page one?

[Redacted]

§ 5.1.4 If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsiary).

[Redacted]

§ 5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

[Redacted]

§ 6 SIGNATURE

§ 6.1 Dated at this [ ] day of

Name of Organization:

By:

Title:

§ 6.2

[Redacted]

M [ ] being duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this [ ] day of

Notary Public:

My Commission Expires:



AIA®

# Document B305™ – 1993

## Architect's Qualification Statement

DATE:

SUBMITTED TO:

ADDRESS:

NAME OF PROJECT (If Applicable): Provide Design-Build Services for Development of a 120,000 SF Industrial Building on Old Wire Road and Construct a Sanitary Sewer Lift Station

### 1 BASIC INFORMATION

§ 1.1 Architect: (Firm Name and Legal Status)

§ 1.2 Business Address:

§ 1.3 Telephone Number:

§ 1.4 Person to Contact:

§ 1.5 Type of Organization: (Check one)

- Individual or Sole Proprietorship
- Professional Corporation/Association
- Corporation
- Partnership
- Joint Venture\*
- Other\*

\*If Joint Venture or Other, give details.

### 2 GENERAL STATEMENT OF QUALIFICATIONS

### 3 GENERAL INFORMATION

(This information may be provided via the Architect's brochure which may be attached and listed in Article 8.)

§ 3.1 Names of Principals:

**ADDITIONS AND DELETIONS:**  
 The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

§ 3.2 Professional History:

§ 3.3 Registration Status:

§ 3.4 Professional Affiliations:

§ 3.5 Key Personnel:

§ 3.6 Total Number of Staff:

§ 3.7 Number of Registered Architects:

§ 3.8 Honors and Awards:

§ 3.9 Professional and Civic Involvement:

#### 4 RELATED PROFESSIONAL SERVICES

*(List proposed consultants, if applicable.)*

§ 4.1 Structural:

§ 4.2 Mechanical:

§ 4.3 Electrical:

§ 4.4 Interior Design:

§ 4.5 Others:

5 PROJECTS

(Projects for which personnel of this firm had responsible charge while associated with other firms are indicated by an asterisk.)

§ 5.1 The following projects are representative of the Architect's recent work. A brief description of each project is attached.

§ 5.2 Other representative projects with dates of completion:

6 REFERENCES

7 STATEMENT OF POTENTIAL CONFLICTS OF INTEREST

8 ADDITIONAL INFORMATION

(If attachments are provided, list them here.)

ARCHITECT:

By:

I hereby certify that, as of the above date, the information provided in this Architect's Qualification Statement is true and sufficiently complete so as not to be misleading.

(Signature)

(Printed name and title)

ARCHITECT:



PROJECT:



Size:

Cost:

Owner:

Owner Contact:

Completion Date:

Contractor/Construction Manager:

Brief Description:



**ARCHITECT:**



**PROJECT:**



Size:

Cost:

Owner:

Owner Contact:

Completion Date:

Contractor/Construction Manager:

Brief Description:



ARCHITECT:



PROJECT:



Size:

Cost:

Owner:

Owner Contact:

Completion Date:

Contractor/Construction Manager:

Brief Description:



ARCHITECT:



PROJECT:



Size:

Cost:

Owner:

Owner Contact:

Completion Date:

Contractor/Construction Manager:

Brief Description:



**EXHIBIT I**

**NON-COLLUSION AFFIDAVIT**

**NON-COLLUSION AFFIDAVIT**

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He/She is the \_\_\_\_\_ of offeror that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached proposal proposal and of all pertinent circumstances respecting such proposal;
3. Such proposal is genuine and is not a collusive or sham proposal;
4. Neither the said offeror nor any of its officers, partners, owners agents, representatives, employees or parties of interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other offeror, firm or person to submit a collusive sham proposal in connection with the contract for which the attached proposal has been submitted or to refrain from proposal in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other offeror, firm or person to fix the price or prices in the attached proposal or of any other offeror, or to fix any overhead, profit or cost element of the proposal price of any other offeror or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Lexington or any person interested in the proposed contract; and
5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the offeror or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Authorized Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Company \_\_\_\_\_

Subscribed and sworn to before  
me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Authorized Signature \_\_\_\_\_  
Notary Public

Printed Name \_\_\_\_\_

Commission Expires: \_\_\_\_\_

**EXHIBIT J**

**CERTIFICATE OF FAMILIARITY**

**CERTIFICATE OF FAMILIARITY**

The undersigned, having fully familiarized himself/herself with the information contained within this entire solicitation and applicable amendments, submits the attached bid and other applicable information to the County, which I verify to be true and correct to the best of my knowledge. I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a bid for the same materials, supplies or equipment, and is in all respects, fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid. *By submission of a signed bid, I certify, under penalties of perjury, that the below company complies with section 12-54-1020(B) of the SC Code of Laws 1976, as amended, relating to payment of any applicable taxes.* I further certify that this bid is good for a period of ninety (90) days, unless otherwise stated.

\_\_\_\_\_  
Company Name as registered  
with the IRS

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Correspondence Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Remittance Address

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Toll-Free Number if available

\_\_\_\_\_  
Federal Tax ID Number

\_\_\_\_\_  
SC Sales Tax Number

**DOES YOUR FIRM OWE THE COUNTY OF LEXINGTON ANY DELINQUENT BUSINESS  
PROPERTY TAXES ?**

**\_\_\_ YES/ \_\_\_ NO**

**EXHIBIT K**

**FORM FOR WRITTEN QUESTIONS**

**TO:** BELINDA DOSS, LCK  
**FAX:** 803-252-0577 or Email your questions to bdoss@lckcs.com

**REQUEST FOR WRITTEN RESPONSE TO QUESTIONS  
RFP NO. P15002-09/30/14H**

**Design/Build Services for Construction of a 120,000 Square Foot  
Industrial Building and Associated Sanitary Sewer Lift Station  
in  
Saxe Gotha Industrial Park  
Lexington County, South Carolina**

Deadline for submitting questions September 19, 2014 by 4:00 p.m.

OFFEROR NAME AND ADDRESS: \_\_\_\_\_ DATE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE #: \_\_\_\_\_

FAX #: \_\_\_\_\_

*(PLEASE REFER TO PAGE AND PARAGRAPH NUMBER WHEREVER POSSIBLE)*

**EXHIBIT L**

**ARMY CORPS OF ENGINEERS PERMIT**



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
CHARLESTON DISTRICT, CORPS OF ENGINEERS  
69-A Hagood Avenue  
CHARLESTON, SOUTH CAROLINA 29403-5107

September 22, 2011

Regulatory Division

Mr. Joe Blanchard  
Bristley Acres, LLC  
c/o Blanchard Machinery Company  
P.O. Box 7517  
Columbia, South Carolina 29202

Dear Sir:

This is in response to your application requesting a Department of the Army permit.

Enclosed is your Department of the Army Permit #2008-1515-6IF. It authorizes you to perform the work specified on the attached drawings. This permit is issued under the provisions of the Federal laws for the protection and preservation of the navigable waters of the United States.

Please notify this office promptly, in writing, when you start and complete the work. The enclosed cards may be used for that purpose. You should also be aware that a special condition has been included in this permit which requires that a copy of the permit and drawings must be available at the work site during the entire time of construction.

Respectfully,

A handwritten signature in black ink, appearing to read "Tina B. Hadden", is written over a printed name and title.

Tina B. Hadden  
Chief, Regulatory Division

Enclosures



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
CHARLESTON DISTRICT, CORPS OF ENGINEERS  
69-A Hagood Avenue  
CHARLESTON, SOUTH CAROLINA 29403-5107

REGULATORY DIVISION

TO WHOM IT MAY CONCERN:

In issuing the permit, this office has acted with reliance on the plans which you submitted. As you proceed with your project, please exercise every caution to ensure the work is performed exactly as shown on the approved plans and specifications, as deviations of any nature are expressly prohibited without the prior authorization of this office.

With this in mind, you will find this office cooperative in authorizing minor deviations if they are clearly within the scope of the original permit; however, you are placed on notice that any "unauthorized" deviation from the approved plans will be construed as a violation of Federal law and, at a minimum, you will be required to submit as-built plans of any deviations. These as-built plans will have to be prepared by a registered land surveyor. You will not be required to submit as-built drawings unless an "unauthorized" deviation is detected by this office or such submittals are required by a special condition in the permit (i.e., certified as-built plans are commonly required for utility crossings and structures adjacent to Federal channels.) If, upon demand, you fail to provide this office with such drawings in the requisite format, this office will request the U.S. Attorney to seek appropriate civil or criminal sanctions in order to maintain the integrity of the Department of the Army Permit Program.

Please be assured that you will find the Corps of Engineers receptive to minor deviations from the approved plans as long as such deviations are approved prior to commencement of work.

NOTICE OF COMMENCEMENT OR COMPLETION  
OF WORK AUTHORIZED BY PERMIT

\_\_\_\_\_  
DATE

WORK AUTHORIZED BY DEPARTMENT OF THE ARMY PERMIT \_\_\_\_\_

DATED \_\_\_\_\_

PERFORM WORK IN \_\_\_\_\_  
(WATERBODY NAME)

WAS COMMENCED

ON \_\_\_\_\_

WAS COMPLETED (DATE)

(check appropriate box)

\_\_\_\_\_  
SIGNATURE

FL 130  
5 MAR 79

NOTICE OF COMMENCEMENT OR COMPLETION  
OF WORK AUTHORIZED BY PERMIT

\_\_\_\_\_  
DATE

WORK AUTHORIZED BY DEPARTMENT OF THE ARMY  
PERMIT \_\_\_\_\_

DATED \_\_\_\_\_

PERFORM WORK IN \_\_\_\_\_  
(WATERBODY NAME)

WAS COMMENCED

ON \_\_\_\_\_

WAS COMPLETED (DATE)

(check appropriate box)

\_\_\_\_\_  
SIGNATURE

FL 130  
5 MAR 79

## DEPARTMENT OF THE ARMY PERMIT

Permittee: **JOE BLANCHARD**  
**C/O TIDEWATER ENVIRONMENTAL**  
**SERVICES, INC.**

**P.O. BOX 8902**  
**COLUMBIA, SC 29202**

Permit No: **2008-1515-61F**

Issuing Office: **CHARLESTON DISTRICT**

**NOTE:** The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

### **Project Description:**

The work consists of the placement of fill material in 0.8 acres of waters of the U.S. to create a suitable upland area to construct an industrial use facility that will allow for commercial sales, storage, and service in accordance with the attached drawings entitled: SAC-2008-1515-61F, Old Wire Road Industrial Project; Lexington County; South Carolina; Sheets 1 thru 4 of 4, dated September 8, 2010.

### **Project Location:**

This project is located in Lexington County, South Carolina.

### **Permit Conditions:**

#### **General Conditions:**

1. The time limit for completing the work authorized ends on **30 September 2016**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions:**

SEE PAGE 4.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Section 404 of the Clean Water Act (33 U.S.C. 1344).

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

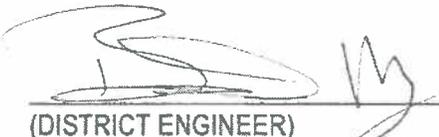
  
\_\_\_\_\_  
(PERMITTEE)  
JOE BLANCHARD

9-8-11  
\_\_\_\_\_  
(DATE)

  
\_\_\_\_\_  
(PRINT NAME)

9-8-11  
\_\_\_\_\_  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

  
\_\_\_\_\_  
(DISTRICT ENGINEER)  
EDWARD P. CHAMBERLAYNE, P.E., LTC  
or his Designee  
Tina B. Hadden  
Chief, Regulatory Division

9/22/11  
\_\_\_\_\_  
(DATE)

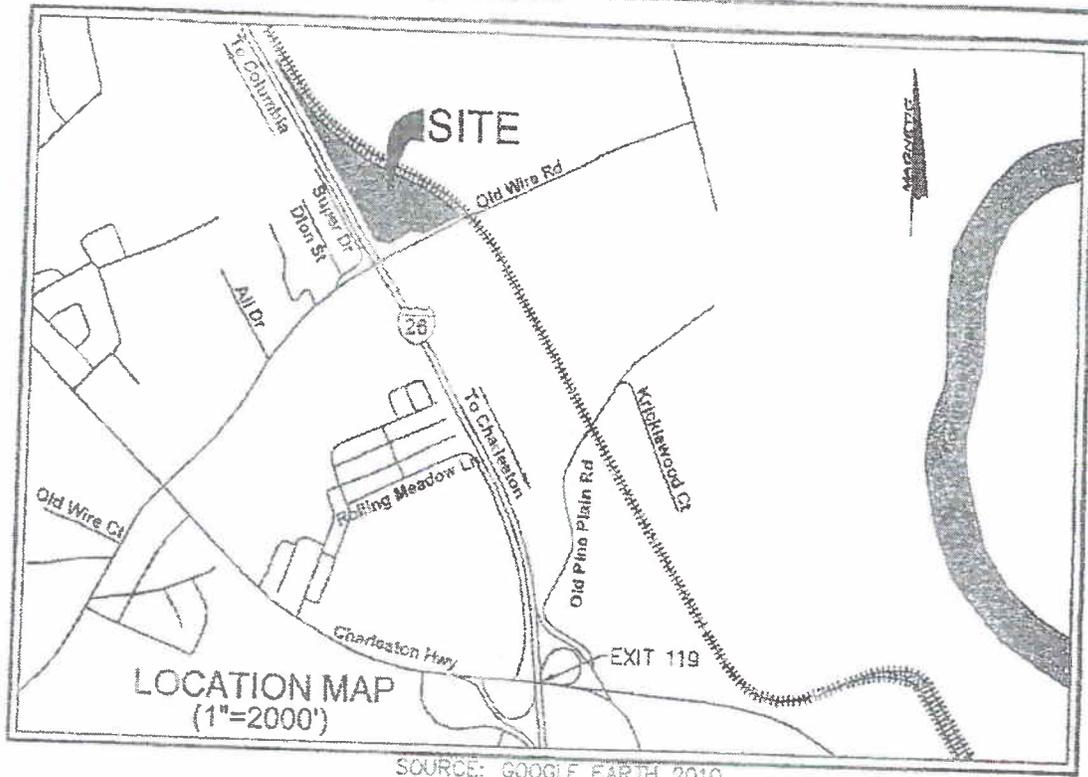
When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEE)

\_\_\_\_\_  
(DATE)

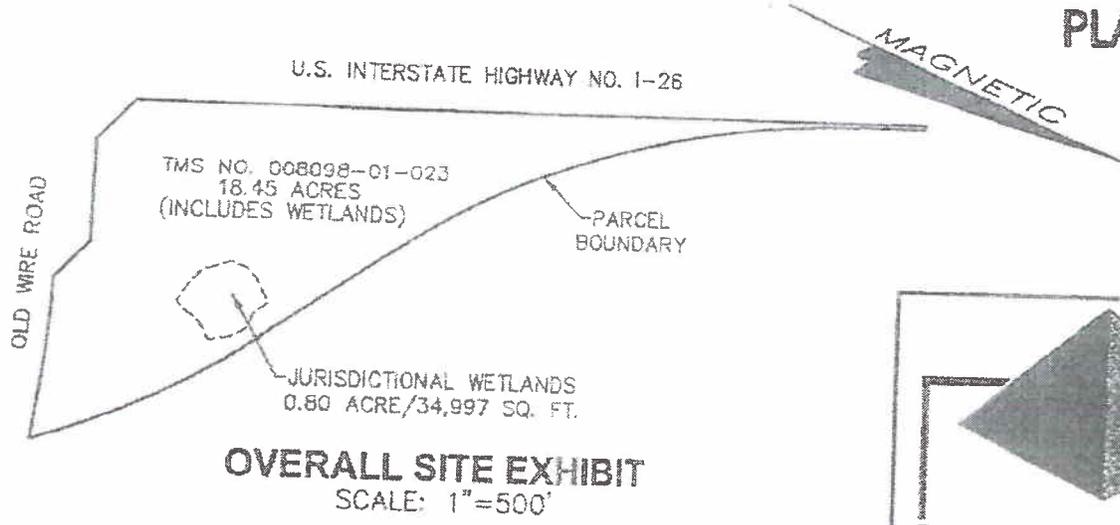
**A. SPECIAL CONDITIONS FOR PERMIT #: 2008-1515-61F**

- a. That the permittee agrees to provide all contractors associated with construction of the authorized activity a copy of the permit and drawings. A copy of the permit will be available at the construction site at all times.
- b. That the permittee shall submit a signed compliance certification to the Corps within 60 days following completion of the authorized work and any required mitigation. The certification will include:
  1. A copy of this permit;
  2. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
  3. A statement that any required mitigation was completed in accordance with the permit conditions;
  4. The signature of the permittee certifying the completion of the work and mitigation.
- c. That the permittee recognizes that its commitment to perform and implement the following conditions was a deciding factor towards the favorable and timely decision on this permit and that the permittee recognizes that a failure on its part to both actively pursue and implement these conditions may be grounds for modification, suspension or revocation of this Department of the Army authorization.
  1. That as compensatory mitigation for impacts to aquatic resources, the permittee agrees to purchase a total of 7.8 credits from the Sandhills Mitigation Bank. At least one quarter of the required credits (1.2 credits) must be restoration/non-buffer enhancement credits. In addition, no more than one half of the required mitigation credits (3.9 credits) may be preservation credits.
  2. That the permittee must submit evidence of the purchase of the required mitigation credits and or that the permittee must submit evidence of execution and recording of the preservation easements or covenants and surveyed plat of the mitigation area to both the Corps of Engineers and DHEC not later than 60 days from the effective date of this authorization, or prior to commencement of the authorized work, whichever is later. Your responsibility to complete the required compensatory mitigation as set forth in this Special Condition will not be considered fulfilled until you have received written verification from the U.S. Army Corps of Engineers.
- d. That the permittee agrees to implement best management practices that will minimize erosion and migration of sediments during and after construction.



SOURCE: GOOGLE EARTH 2010

**PERMITTED PLANS**



**OVERALL SITE EXHIBIT**  
SCALE: 1"=500'

WETLANDS AREA TABLE	
DESIGNATION	AREA (Acres)
Total Jurisdictional Wetland	0.80 Acre
Total Upland	17.65 Acre
Total	18.45 Acre



**COX AND DINKINS**  
ENGINEERS - SURVEYORS  
COX AND DINKINS, INC.  
724 BELTLINE BLVD.  
COLUMBIA, SC 29205  
803-254-0518  
Fax: 803-765-0993  
Email: [cdinc@coxanddinkins.com](mailto:cdinc@coxanddinkins.com)

APPLICANT NAME:  
**BRISTLEY ACRES, LLC**  
150 EAST BROAD STREET  
SUITE 102  
SPARTANBURG, SC  
29306  
864-585-2745  
Fax: 864-585-2749

PROJECT:  
**OLD WIRE ROAD INDUSTRIAL PARK**  
NEAR CAYCE  
LEXINGTON COUNTY, SOUTH CAROLINA

SAC 2008-1515-6IF  
Old Wire Road Industrial Park  
Lexington County, South Carolina  
2010

**Location Map**

# PERMITTED PLANS

U.S. INTERSTATE HIGHWAY NO. 1-26

PROPOSED 120,000 SQ. FT. BUILDING

EQUIPMENT DISPLAY IS OUTSIDE STORAGE

PROPOSED 50,000 SQ. FT. BUILDING

NOW OR FORMERLY COUNTY OF LEXINGTON  
TMS#008096-02-006

RETENTION POND

NOW OR FORMERLY TITLE EXCHANGE SERVICES OF SC, LLC ETAL  
TMS#008096-02-008

RETENTION POND

JURISDICTIONAL WETLANDS

MAGNETIC



GRAPHIC SCALE IN FEET  
SCALE: 1"=200'

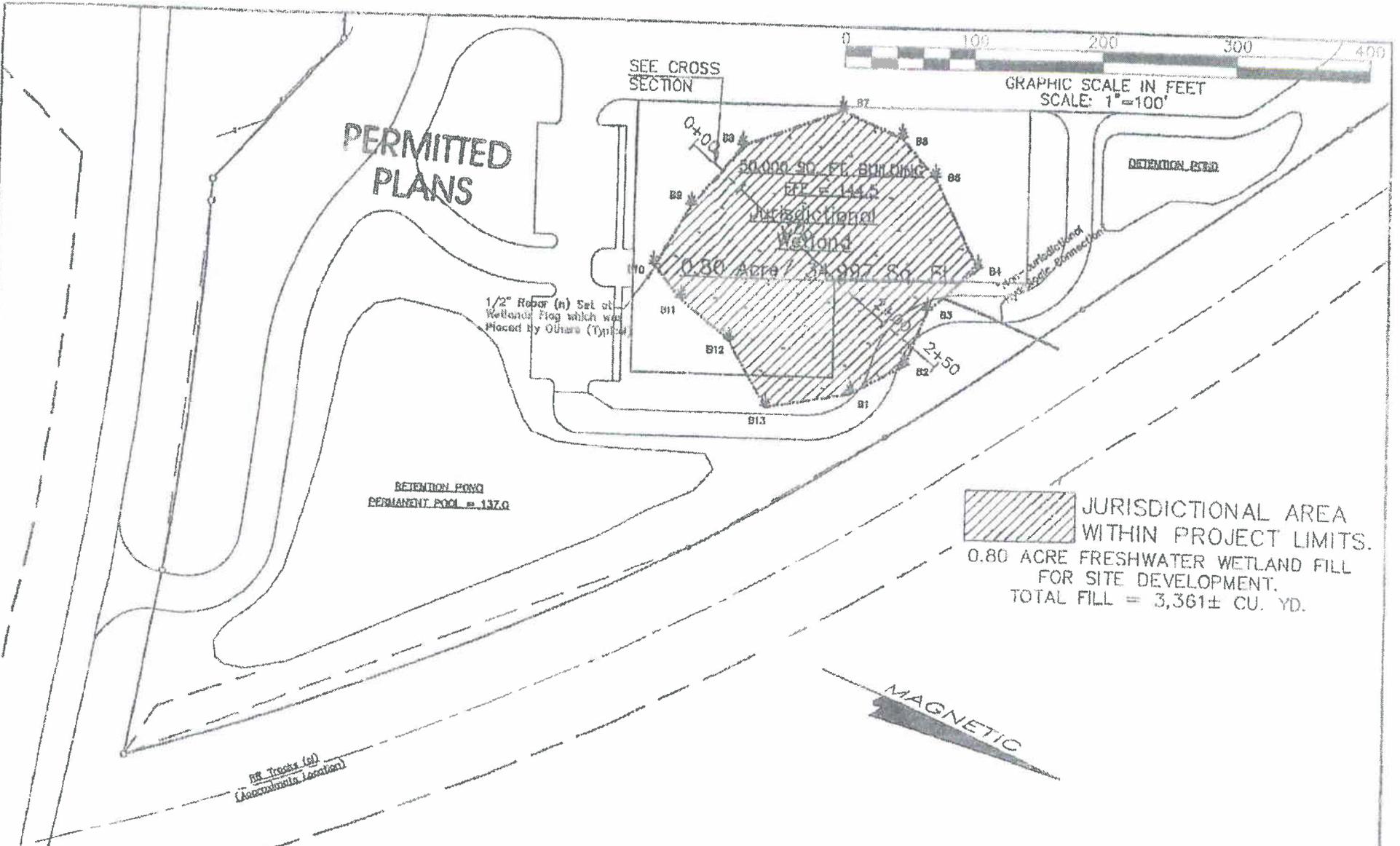
NOW OR FORMERLY SC ELECTRIC & GAS  
TMS#008096-02-007

APPLICANT NAME:  
**BRISTLEY ACRES, LLC**  
130 EAST BROAD STREET  
SUITE 102  
SPARTANBURG, SC  
29306  
864-585-2745  
Fax: 864-585-2749

PROJECT:  
**OLD WIRE ROAD INDUSTRIAL PARK**  
NEAR CAYCE  
LEXINGTON COUNTY, SOUTH CAROLINA

**CONCEPTUAL**

SAC 2008-1515-61F  
Old Wire Road Industrial Park  
Lexington County, South Carolina  
September 8, 2010  
Sheet 2 of 4



 JURISDICTIONAL AREA WITHIN PROJECT LIMITS.  
 0.80 ACRE FRESHWATER WETLAND FILL FOR SITE DEVELOPMENT.  
 TOTAL FILL = 3,361± CU. YD.

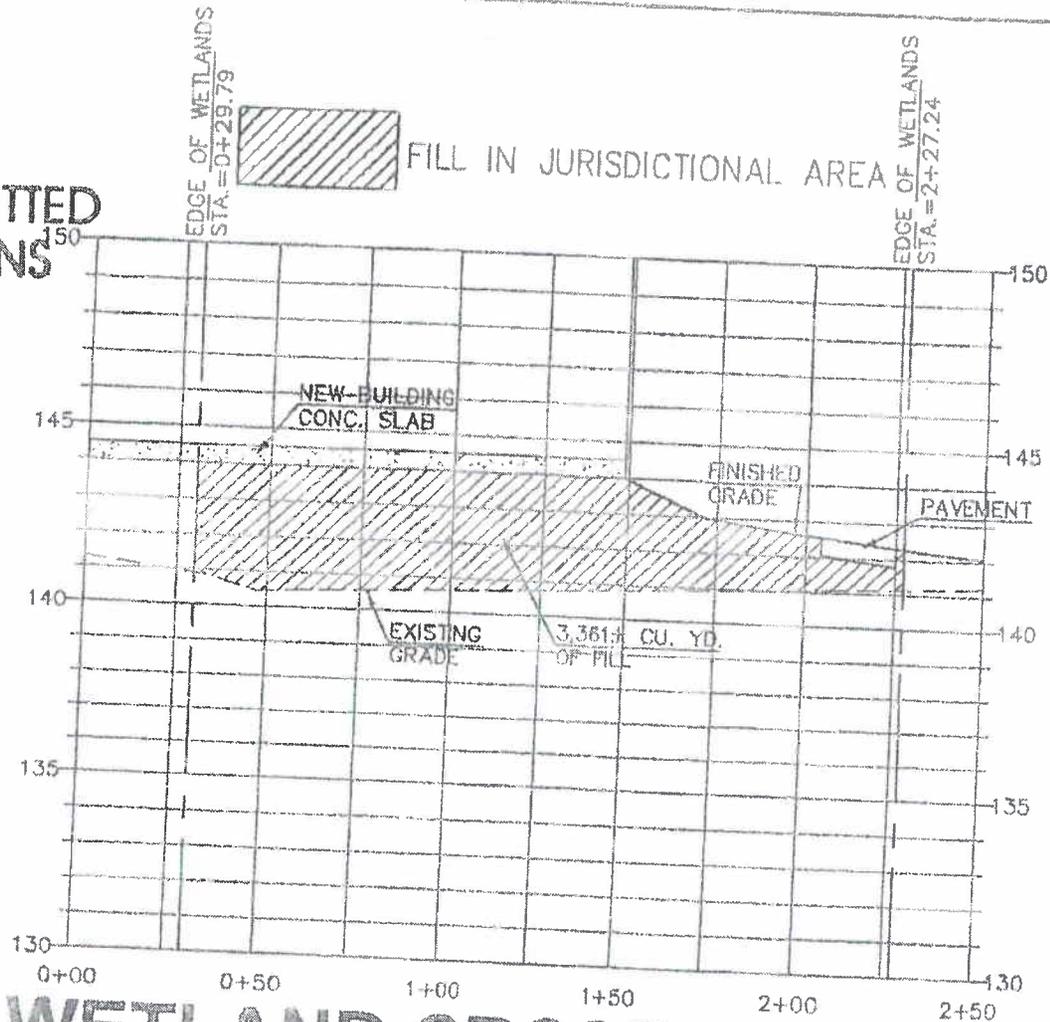
APPLICANT NAME:  
**BRISTLEY ACRES, LLC**  
 130 EAST BROAD STREET  
 SUITE 102  
 SPARTANBURG, SC 29308  
 864-585-2745  
 Fax: 864-585-2749

PROJECT:  
**OLD WIRE ROAD INDUSTRIAL PR**  
 NEAR CAYCE  
 LEXINGTON COUNTY, SOUTH CAROLINA

**Wetland Impact Sketch**

SAC 2008-1515-61F  
 Old Wire Road Industrial Park  
 Lexington County, South Carolina  
 Setember 8, 2010 Sheet 3 of 4

**PERMITTED  
PLANS**



**WETLAND CROSS SECTION**

<p>APPLICANT NAME:  <b>BRISTLEY ACRES, LLC</b>          130 EAST BROAD STREET          SUITE 102          SPARTANBURG, SC          29308          884-585-2745          Fax: 864-585-2749</p>	<p>PROJECT:  <b>OLD WIRE ROAD          INDUSTRIAL PI</b>          NEAR CAYCE          LEXINGTON COUNTY, SOUTH CAROLINA</p>	<p><b>Cross Section</b>          DATE: SEPTEMBER 8, 2010</p> <p>SAC 2008-1515-61F          Old Wire Road Industrial Park          Lexington County, South Carolina          September 8, 2010</p>
---	--	---

**EXHIBIT M**

**GEOTECHNICAL REPORT**

**Proposed Old Wire Road Industrial Project  
TMS# 008098-01-007 (Portion) and TMS#008098-01-023  
West Columbia-Cayce, South Carolina**

**GS2 Project Number 10-3460-G  
October 28, 2010**

**Report of Preliminary Subsurface  
Investigation**

**Prepared for:**

Blanchard Machinery Company-Spartanburg  
130 East Broad Street, Suite 102  
Spartanburg, South Carolina 29306



ENGINEERING & ENVIRONMENTAL  
CONSULTANTS, INC.

**Columbia Main Office**

241 Business Park Boulevard  
Columbia, South Carolina 29203  
(803) 750-1510  
(803) 750-0773

**Florence Office**

2353D Walker Swinton Road  
Timmonsville, South Carolina 29161  
(843) 292-9660  
(843) 292-9661

**Charleston Office**

430 i Dorchester Road Ste 12A  
North Charleston, South Carolina 29405  
(843) 763-4093  
(843) 763-4094

**Myrtle Beach Testing Office**

1514 U.S. Highway 501 Gumm Plaza  
Myrtle Beach, South Carolina 29577  
(843) 444-2766  
(843) 444-2799

**Bluffton Testing Office**

P.O. Box 2143  
Bluffton, South Carolina 29910  
(843) 297-2035

**Greenville-Spartanburg Office**

1865 East Main Street, Suite B  
Duncan, South Carolina 29334  
(864) 485-0950  
(864) 485-0951

**Anderson Testing Office**

5214 Olden Porter Road  
Anderson, South Carolina 29670  
(864) 449-6759

[www.gs2engineering.com](http://www.gs2engineering.com)

October 28, 2010

Blanchard Machinery Company-Spartanburg  
130 East Broad Street, Suite 102  
Spartanburg, South Carolina 29306

**Attention: Mr. Tom Arthur**

**Reference: Report of Preliminary Subsurface Investigation  
Proposed Old Wire Road Industrial Project  
Old Wire Road and Industrial Park Road  
TMS# 008098-01-007 (Portion) and  
TMS#008098-01-023  
West Columbia - Cayce, South Carolina  
GS2 Project Number 10-3460-G**

Dear Mr. Arthur,

This report presents our preliminary subsurface investigation of the Proposed Old Wire Road Industrial Project site, in West Columbia - Cayce, South Carolina. Information obtained from our preliminary subsurface investigation has been used to evaluate the existing site conditions for the use of developing preliminary design parameters for the future development at the site. This work was performed in general accordance with our proposal number P3054-10, dated September 16, 2010.

Recommendations detailed in this report are specific to the soil conditions in the immediate vicinity of the boring locations for this particular project. This report does not include any environmental assessment of soils, surface water or groundwater, the determination of wetlands, the determination of noise impact, the assessment of air quality, the identification of cultural resources, and the identification of endangered species. These services are beyond the scope of services of a preliminary subsurface investigation.

**PROJECT INFORMATION**

**Proposed Development**

Although, the exact location of, and the construction details for, the future development were not known at the time of this investigation, it is our understanding that the proposed development may include the construction of three new industrial structures including (2) 50,000 square foot structures and (1) 120,000 square foot structure, with associated paved parking and drives.

We have assumed that the new structures will be 1 to 1½ stories in height and be constructed utilizing a steel framed wall and roof system, with a metal/glass exterior veneer, and will be supported with a conventional shallow foundation system with a cast-in-place concrete slab-on-grade. Maximum wall and column loads for structures of this type usually are on the order of 3 to 5 kips per linear foot and 40 to 60 kips, respectively.

Additionally, it is understood that a new sanitary sewer line, roughly 2000 feet in length, will be installed to provide service to the proposed development.

Furthermore, no finished floor elevations for the proposed development were available at the time of this investigation; therefore, we assume that there will be possible cuts and fills ranging from 1 to 5 feet within the two parcels of the site and possible cuts and fills ranging from 3 to 7 feet along the sanitary sewer alignment.

Also, we have assumed that the site will require light duty and heavy duty paved parking and drives. Anticipated traffic volumes were not available at the time of this investigation.

Finally, we have assumed that the design and construction of the proposed structures will be governed by the International Building Code, Edition 2006 (IBC2006).

## SITE SETTING

### Site Location

**5.52 Acre Tract:** This subject site is approximately 5.52 acres in area and is located along the southern side of Old Wire Road, east of its intersection with Interstate I-26, in West Columbia - Cayce, South Carolina. More specifically, the tract is legally defined as TMS# 008098-01-007 (Portion). The location of the site relative to the nearby streets is shown in the "Site Location Map", Figure 1 in Appendix A.

**18.45 Acre Tract:** This subject site is approximately 18.45 acres in area and is located along the northern side of Old Wire Road, east of its intersection with Interstate I-26, in West Columbia - Cayce, South Carolina. More specifically, the tract is legally defined as TMS#008098-01-023. The location of the site relative to the nearby streets is shown in the "Site Location Map", Figure 1 in Appendix A.

**Proposed Sanitary Sewer Line:** This subject site is located along the eastern side of Industrial Park Road and the northern side Old Wire Road east of the two previously mentioned parcels of land, in West



Columbia-Cayce, South Carolina. The location of the site relative to the nearby streets is shown in the "Site Location Map", Figure 1 in Appendix A.

### Site Description

**5.52 Acre Tract:** This subject site was noted to be irregular in shape, and, at the time of our visit, it was noted to be undeveloped and recently cleared by timbering operations. The site was further noted to be bordered by Old Wire Road to the north, undeveloped wooded property to the south and east, and by railroad tracks to the east. Access to the site was gained via Old Wire Road.

**18.45 Acre Tract:** This subject site was noted to be irregular in shape, and, at the time of our visit, it was noted to be undeveloped and recently cleared by timbering operations. It is important to note that a wetlands area appears to exist within the central-northern portion of the site, approximately where the 50,000 square foot structure is planned for this site. The site was further noted to be bordered by railroad tracks to the north and east, Old Wire Road to the south, and Interstate I-26 to the west. Access to the site was gained via Old Wire Road.

**Proposed Sanitary Sewer Line:** At the time of our visit, the portion of this site located along Old Wire Road was noted to be generally rectangular in shape, undeveloped and grassed. Additionally, the portion of this site located along Industrial Park Road was noted to be generally rectangular in shape, undeveloped and grassed. The portion of the site located along Old Wire Road was further noted to be bordered by undeveloped and commercial property to the north, Old Wire Road to the south, railroad tracks to the west, and Industrial Park Road to the east. Additionally, the portion of the site located along Industrial Park Road was noted to be bordered by undeveloped property to the north, Old Wire Road to the south, undeveloped property and commercial property to the west, and Industrial Park Road to the east. Access to the site was gained via Old Wire Road and Industrial Park Road.

### Site Topography

**5.52 Acre Tract:** Topographically, this site is located on the side slope of a ridge in the Upper Coastal Plains Physiographic Province that is noted to be sloping to the south towards Toms Branch and eventually into the Congaree River. Ground surface elevations across the site appear to range from 145 to 140 feet mean sea level. General topographic information was obtained from the USGS Southwest Columbia topographic quadrangle, Figure 2 in Appendix A

**18.45 Acre Tract:** Topographically, this site is located on the side slope of a ridge in the Upper Coastal Plains Physiographic Province that is noted to be sloping to the east/southeast towards Toms Branch and



eventually into the Congaree River. Ground surface elevations across the site appear to average 150 to 145 feet mean sea level. General topographic information was obtained from the USGS Southwest Columbia topographic quadrangle, Figure 2 in Appendix A.

**Proposed Sanitary Sewer Line:** Topographically, this site is located on the side slope of a ridge in the Upper Coastal Plains Physiographic Province that is noted to be sloping to the east/southeast towards Toms Branch and eventually into the Congaree River. Ground surface elevations across the site appear to average 138 to 135 feet mean sea level. General topographic information was obtained from the USGS Southwest Columbia topographic quadrangle, Figure 2 in Appendix A.

## SUMMARY OF FIELD EXPLORATION

**5.52 Acre Tract:** The subsurface conditions at this site were explored with 2 mechanically-augered soil borings, with Standard Penetration Tests (SPT) taken at regular intervals, extended to termination depth of 20 feet below the existing ground surface. The approximate boring locations are shown on the attached Boring Location Plan, Figure 3 in Appendix A. The borings were located in the field by measuring from estimated property and building corners.

**18.45 Acre Tract:** The subsurface conditions at this site were explored with 5 mechanically-augered soil borings, with Standard Penetration Tests (SPT) taken at regular intervals, extended to termination depth of 20 feet below the existing ground surface. The approximate boring locations are shown on the attached Boring Location Plan, Figure 4 in Appendix A. The borings were located in the field by measuring from estimated property and building corners.

**Proposed Sanitary Sewer Line:** The subsurface conditions at this site were explored with 10 mechanically-augered soil borings, with Standard Penetration Tests (SPT) taken at regular intervals, extended to termination depth of 10 feet below the existing ground surface. The approximate boring locations are shown on the attached Boring Location Plan, Figures 5 and 6 in Appendix A. The borings were located in the field by measuring from estimated property and building corners.

## SITE SOIL CONDITIONS

### Site Geology

The subject site is located in the Sand Hills region of the Upper Coastal Plain Physiographic Province. The Sand Hills are composed of undulating deposits of sand and clay sediments, which are underlain by deeper residual soils of the Piedmont Physiographic Province. Surface topography is dominated by a series of nearly level terraces formed by



ancient shorelines of the Atlantic Ocean. The sand and clay deposits of the Sand Hills are the exposed portion of the Tuscaloosa Formation.

### Soil Conditions

The subsurface conditions encountered at the boring locations are detailed on the attached "Soil Test Boring Logs". These logs represent our interpretation of the subsurface conditions at the boring locations based on our visual and textural examination of the recovered soil samples. The horizontal lines in the Soil Description column of the boring logs represent an approximate interface between various soil strata. It is important to understand that these horizontal lines represent an estimated depth of soil variance where as the actual soil change may be gradual.

In general, the borings encountered approximately 6 inches of topsoil at the ground surface across the sites.

**5.52 Acre Tract:** In general, the borings at this site (Borings B-1 and B-2) generally encountered native Coastal Plain deposits, consisting of clean sands (SP) to a depth of roughly 3 feet below the existing ground surface, underlain by a layer of clayey sands (SC) to a depth of roughly 6 feet below the existing ground surface, followed by a subsequent layer of clean sands (SP) to a depth of roughly 8 feet below the existing ground surface, then by another layer of clayey sands (SC) to a depth of roughly 18 feet below the existing ground surface, and finally, a basement layer of sandy silts and silts (ML) to the termination depths of 20 feet below the existing ground surface.

The native sandy (SP and SC) soils exhibited SPT N-values noted to range from 8 to 34 blows per foot (bpf), indicating loose to dense relative densities, while the native silty (ML) soils exhibited SPT N-values noted to range from 15 to 34 bpf, indicating stiff to hard relative consistencies.

**18.45 Acre Tract:** In general, the borings at this site (Borings B-3 through B-7) generally encountered native Coastal Plain deposits, consisting of alternating layers of clean sands (SP) and clayey sands (SC) to a depth of 13 to 20 feet below the existing ground surface, underlain, where encountered, by sandy silts and silts (ML) to the termination depths of 20 feet below the existing ground surface.

The native sandy (SP and SC) soils exhibited SPT N-values noted to range from 8 to 50 bpf, indicating loose to dense relative densities, while the native silty (ML) soils, where encountered, exhibited SPT N-values noted to range from 14 to 20 bpf, indicating stiff to very stiff relative consistencies.



**Proposed Sanitary Sewer Line:** In general, the borings at this site (Borings B-8 through B-17) generally encountered native Coastal Plain deposits, consisting of clean sands (SP) to a depth of roughly 6 to 10 feet below the existing ground surface, underlain by clayey sands (SC), where encountered, to the termination depths of 10 feet below the existing ground surface.

The native sandy (SP and SC) soils exhibited SPT N-values noted to range from 7 to 64 bpf, indicating loose to very dense relative densities.

### Groundwater

Free groundwater was encountered in the borings B-1 through B-7, B-9, and B-15 at the time of drilling at depths ranging from approximately 7 to 14 feet below the existing ground surface. Due to safety concerns, the boreholes were backfilled upon completion and therefore 24-hour groundwater depths were not recorded. Groundwater levels are dependent on many factors and can experience seasonal fluctuations and various other fluctuations due to precipitation, construction activities, and many other factors.

### CONCLUSIONS AND RECOMMENDATIONS

The borings performed during this preliminary investigation indicate that the existing sandy soils (SP and SC) are *suitable*, while the residual low plasticity silty soils (ML) are *marginally suitable*, for the intended development. The following general conclusions and recommendations are offered at this time:

- **Surface Materials:** The borings generally encountered 6 inches of topsoil during the drilling activities. These topsoils and the associated root mat and vegetation should be removed and either disposed of offsite or reused in landscaped areas. Additionally, any existing surface and/or buried debris, or abandoned underground utilities, if encountered, will need to be removed from beneath, and within a 5-foot perimeter of, structures or pavements.
- **Suitability of In-situ Soils:** As previously stated, the near-surface soils have been identified to have a **SP** and **SC**, with deeper **ML** USCS soil classification. Most text includes soils with Unified Soil Classifications of SW, SP, SM, SC, SM-SC, ML and CL as suitable for support of structure or for use as structural fill, while soils with classifications of MH, CH, OL and OH are considered unsuitable. Therefore, it is important to note that the site contains soils that are considered in the industry to be suitable (SP and SC) to marginally suitable (ML).



Soils that have SC (with high Plasticity Indexes) and ML, if encountered, designations are less preferable fill soils that exhibit fair to good structural support characteristics under buildings, less ease in workability, with little flexibility in achieving compaction at various moisture contents. Consequently, these soils are less preferred for use as roadway subgrade, with a fair to poor rating, due to their instability when exposed to excessive moisture. These soils may be used as roadway subgrade, if adequate moisture control is maintained during placement and if stormwater is not allowed to pond or penetrate these soils, ultimately preventing subgrade degradation due to oversaturation.

Additionally, fine-grained soils (SC (with high PIs), and ML) are typically sensitive to variations in moisture content with a relatively narrow range of workable moisture contents. Therefore, close control of moisture content will probably be necessary during grading and fill placement operations, where these soils are involved. In addition, these soils may become difficult to work during periods of wet weather. Grading operations under wet conditions may result in the deterioration of otherwise suitable soil conditions, or of previously placed and properly compacted fill.

- **General Site Preparation Recommendations:** Upon achieving finished grade, or prior to fill placement, the proposed fill and exposed cut areas of the building pad subgrade areas should be carefully inspected and proofrolled in order to detect locally yielding soils.
- **Structural Fill – On-site Soils:** In general, the on-site sandy soils appear *suitable* for re-use as structural fill, while the silty soils appear *marginally suitable* for re-use. The fine-grained nature of the silts indicates that they are typically sensitive to variations in moisture content, with a relatively narrow range of workable moisture contents. Therefore, close control of moisture content will be necessary during grading and fill placement operations. In addition, the silty soils at this site may become difficult to work during periods of wet weather. Grading operations under wet conditions may result in the deterioration of otherwise suitable soil conditions, or of previously placed and properly compacted fill. These inherent soil properties make the silty soils less desirable for use as structural fill, however, if placed properly, suitable support of structures and pavements are achievable.



Prior to the placement of fill soils, representative soil samples should be obtained and tested to determine their classification and compaction characteristics. Optimum fill material should be free of debris, rocks and any fibrous organic material or organic soils and should have a Plasticity Index (PI) less than 15. We recommend that fibrous organic material found in the fill materials be no more than 5 percent by weight. Compaction characteristics of the fill soils should be determined using the laboratory Standard Proctor density test, ASTM D698, "Moisture-Density Relations of Soils and Soil-Aggregate Mixtures Using 5.5-lb. Rammer and 12-in. Drop".

- **Stormwater and Groundwater Management:** As previously stated, groundwater was encountered in the borings B-1 through B-7, B-9, and B-15 at time of drilling. However, due to the depth of the groundwater encountered, it appears to be at a sufficient depth as to not affect construction at the site. It is important to note that this groundwater appears to be perched in nature, and therefore, could be encountered at more shallow depths.

Any exposed soils and recently placed fills should be well drained to minimize the accumulation of stormwater runoff. If the exposed subgrade soils are not as anticipated, or become excessively wet, the geotechnical engineer should be consulted.

- **IBC 2006 Seismic Site Classification:** Our preliminary analysis of the subsurface seismic conditions was based on the information obtained from our SPT borings, known site and vicinity geological conditions, known regional seismic conditions, and seismic design parameters established in data published in the International Building Code 2006 (IBC2006), section 1613. Therefore, from the known regional conditions, the SPT N-values measured, and the parameters established in the IBC2006, we have preliminarily estimated that the site is best defined to have a seismic **Site Class D**.
- **Preliminary Foundation Bearing Capacities:** Provided any loose near-surface soils have been undercut or densified in-place and that fill has been properly placed, on-site structures should be able to be supported utilizing a conventional shallow spread foundation system. The preliminary soil data indicates that the on-site soils should provide an allowable bearing pressure on the order of **2,500 to 3,000** pounds per square foot. Footings for this site should bear at a minimum depth of 12 inches below the final ground surface in order to ensure that bearing surfaces are below maximum frost depth.



- **Preliminary Grade-Slab Recommendations:** The on-site soils' re-compacted modulus of subgrade reaction (k), used for design of slab reinforcement at this site, will likely range between **140** and **145** pounds per cubic inch.
  
- **Preliminary Pavement Subgrade Recommendations:** Assuming the pavement subgrades are to bear in the on-site sandy soils, and that industry standards are applied for preparation of the subgrades, (i.e. related civil design factors such as subgrade drainage, shoulder support, cross-sectional configurations, surface elevations, and environmental factors that will significantly affect the service life of pavements), a design California Bearing Ratio (CBR) value of approximately **10** to **12** should be available for subgrade support of flexible pavements at this site.

## **BASIS FOR RECOMMENDATIONS**

The recommendations presented in this report are based on our understanding of the project information, our interpretation of the data obtained during our preliminary exploration and our experience with similar soil and project conditions. The Standard Penetration Test (SPT) values obtained at the boring locations have been used to estimate existing soil conditions at this specific site. Regardless of the thoroughness of this exploration, it is possible that the soil conditions intermediate of the borings vary from the soil conditions encountered at the boring locations.

As noted in this report, our geotechnical exploration was preliminary and was performed to provide general observations and soil conditions. This report accounted for no static or dynamic loading conditions that are typically modeled in a standard geotechnical exploration. We therefore strongly recommend that additional geotechnical studies be performed, and that the static and dynamic loading of the on-site soils be modeled with actual design loads. Additionally, we recommend that the report generated from the future geotechnical exploration address at the minimum the following information: site preparation, structural fill, retaining wall earth pressure coefficients, seismic site classification, storm and groundwater management, foundation construction recommendations, grade slab recommendations, pavement recommendations and any other soil related recommendations deemed to be necessary. Our personnel will be made available to aid in developing an appropriate scope of work for this project, upon establishment of the design criteria.



**CLOSING**

Once again we appreciate the opportunity to provide our services for your geotechnical consulting needs. If there are any questions concerning our recommendations or if additional information becomes available please contact us.

Sincerely,  
**GS<sub>2</sub> ENGINEERING & ENVIRONMENTAL CONSULTANTS, INC.**



Mark W. King  
Staff Geotechnical Professional



Jayson E. Floyd, P.E.  
Operations Manager



Robert C. Bruorton, P.E.  
Chief Geotechnical Engineer, AVP

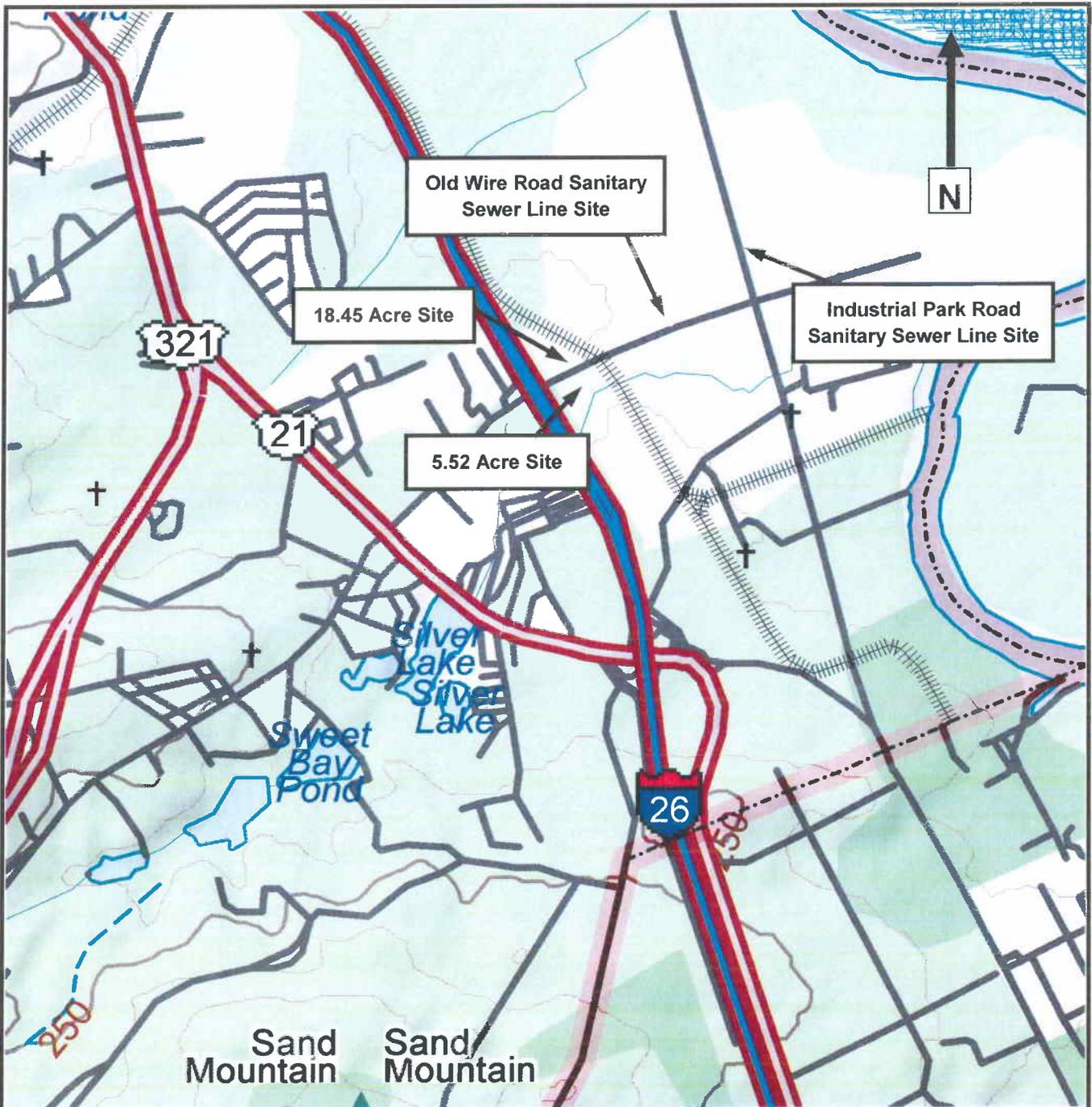


## APPENDIX A

Figure 1. Site Location Map

Figure 2. USGS Topographic Map

Figures 3 through 6. Boring Location Plan



Source: Presented by DeLorme, dated 1999.

Prepared By/Date: MWK-10/10  
 Checked By/Date: RCB-10/10

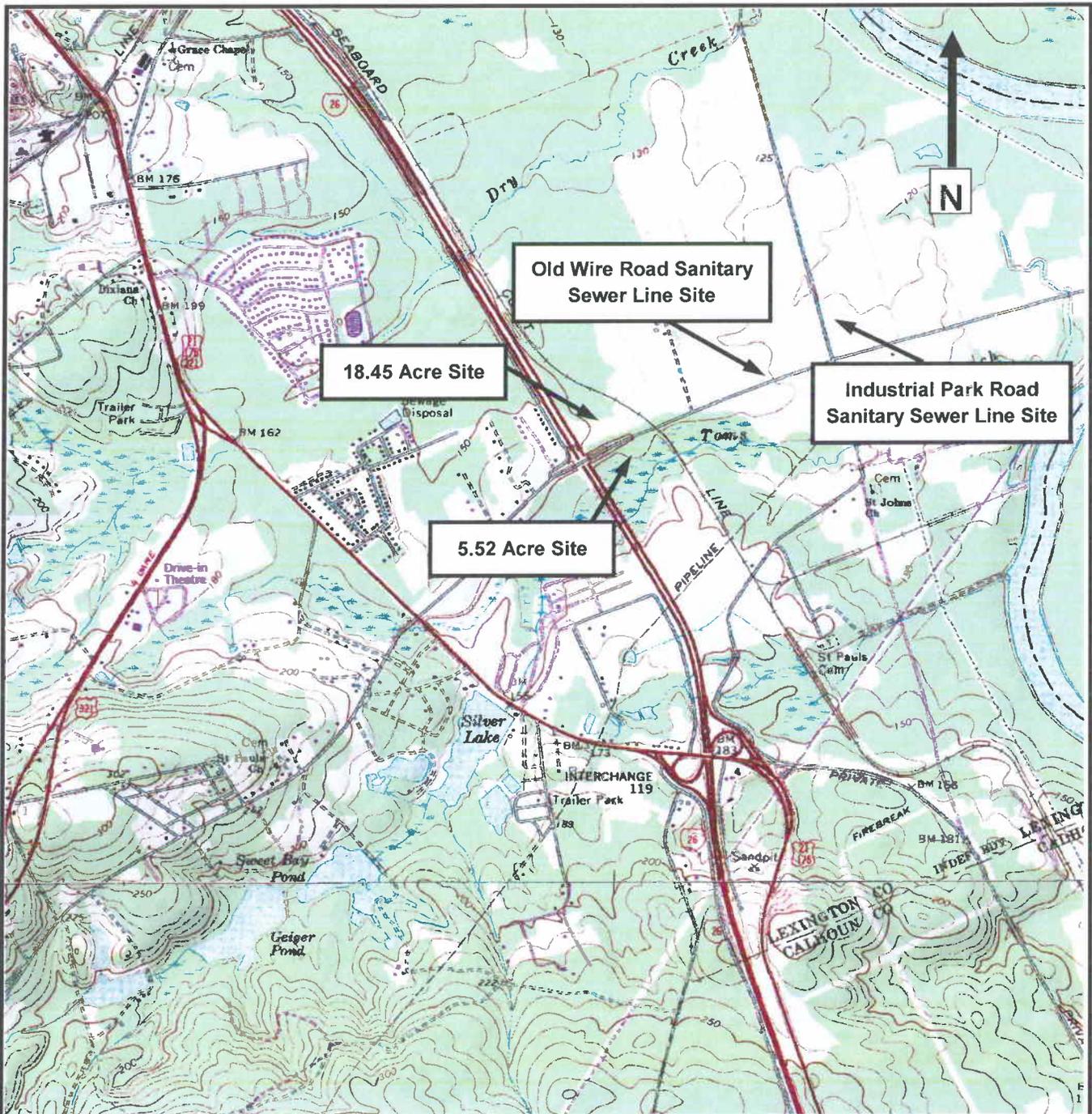


**Site Location Map**  
 Proposed Old Wire Road Industrial Park Road  
 GS2 Project Number 10-3460G  
 Old Wire Road and Industrial Park Road  
 West Columbia-Cayce, South Carolina

**Blanchard Machinery Company-Spartanburg**  
 130 East Broad Street, Suite 102  
 Spartanburg, South Carolina 29306

**Scale**  
 1 inch = 2300 feet

**Figure 1**



Source: Presented by DeLorme, dated 1999.

Prepared By/Date: MWK-10/10  
 Checked By/Date: RCB-10/10

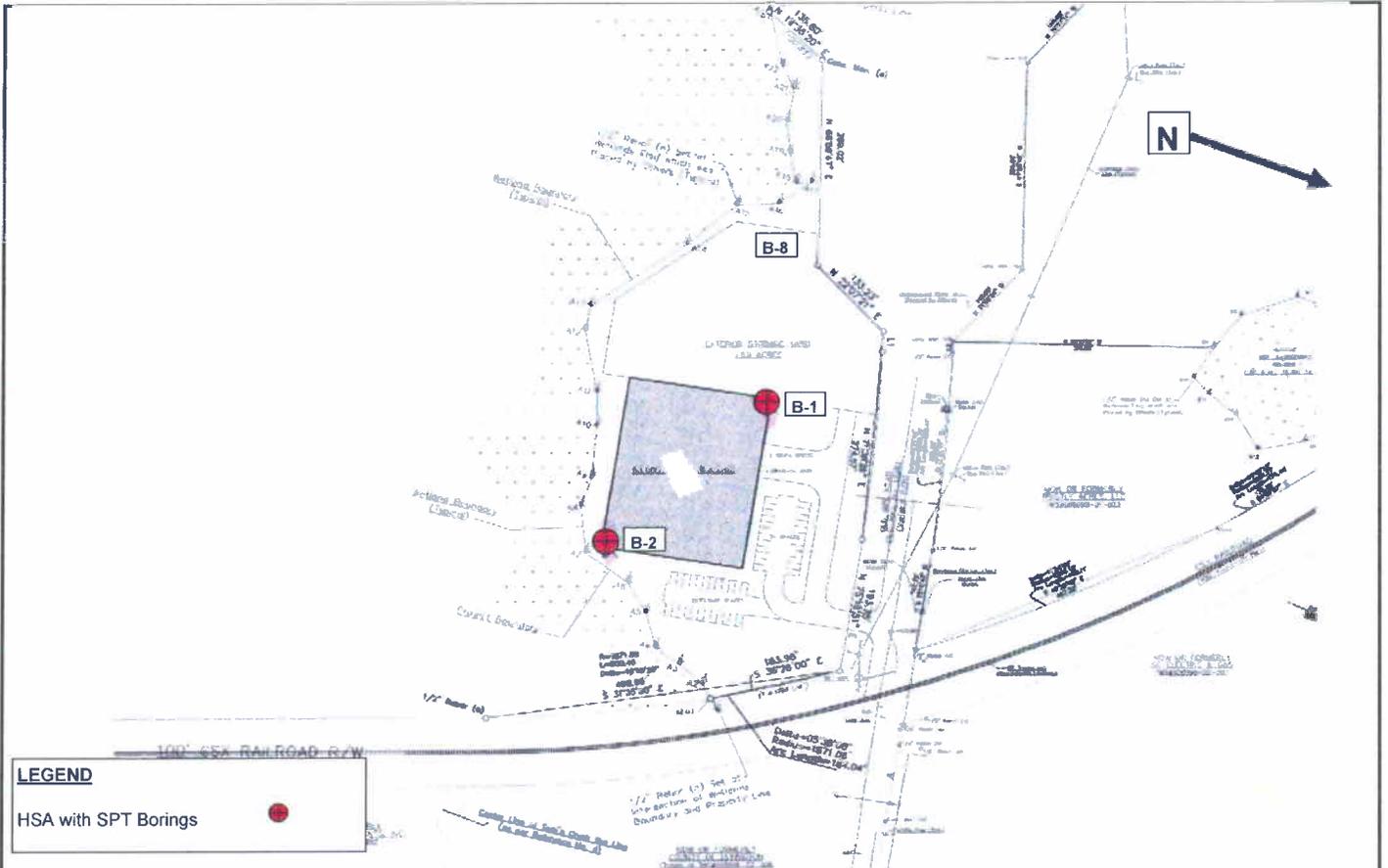


**USGS Topographic Map**  
 Proposed Old Wire Road Industrial Park Road  
 GS2 Project Number 10-3460G  
 Old Wire Road and Industrial Park Road  
 West Columbia-Cayce, South Carolina

**Blanchard Machinery Company-Spartanburg**  
 130 East Broad Street, Suite 102  
 Spartanburg, South Carolina 29306

**Scale**  
 1 inch = 2000 feet

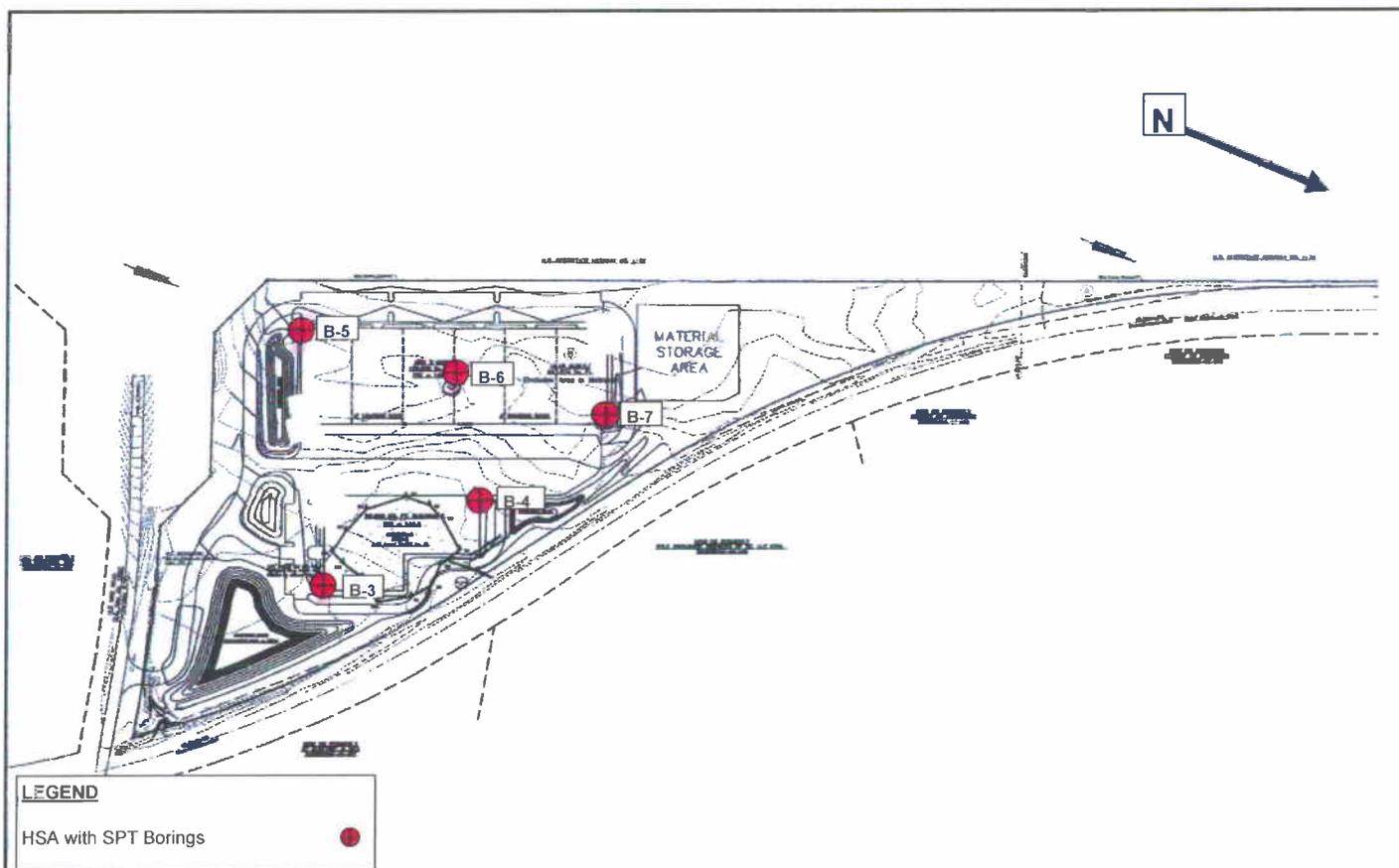
**Figure 2**



**Boring Location Plan**  
 Proposed Old Wire Road Industrial Park Road  
 GS2 Project Number 10-3460G  
 Old Wire Road and Industrial Park Road  
 West Columbia-Cayce, South Carolina

**Blanchard Machinery Company**  
 -Spartanburg  
 130 East Broad Street, Suite 102  
 Spartanburg, South Carolina 29306

Prepared By/Date: MWK-10/10  
 Checked By/Date: RCB-10/10  
 Scale  
 AS SHOWN  
 Figure 3



Source: Conceptual Site/Grading Plan provided by Cox and Dinkins, dated August 24, 2010.



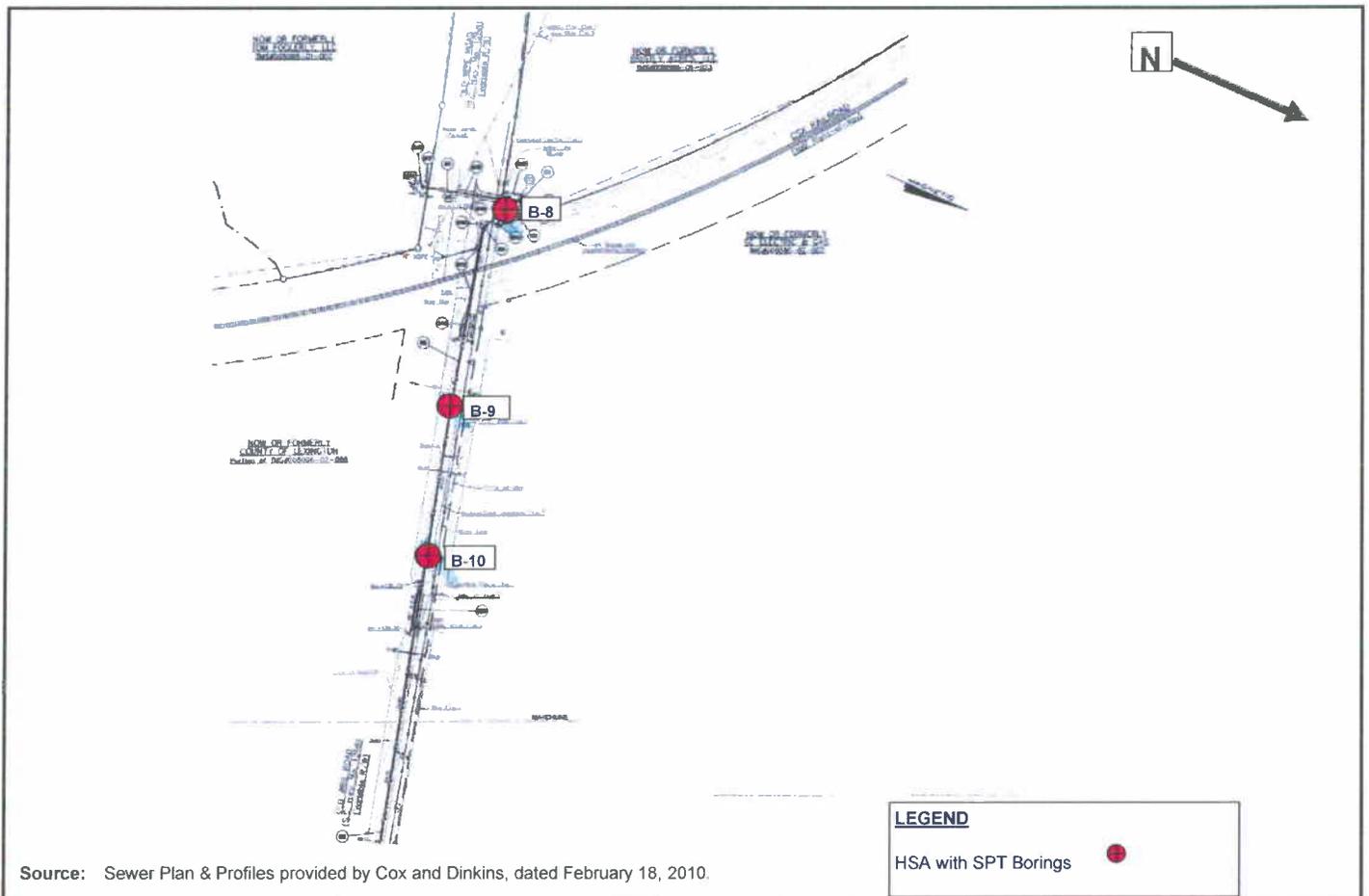
**Boring Location Plan**  
 Proposed Old Wire Road Industrial Park Road  
 GS2 Project Number 10-3460G  
 Old Wire Road and Industrial Park Road  
 West Columbia-Cayce, South Carolina

**Blanchard Machinery Company**  
 -Spartanburg  
 130 East Broad Street, Suite 102  
 Spartanburg, South Carolina 29306

Prepared By/Date: MWK-10/10  
 Checked By/Date: RCB-10/10

Scale  
 AS SHOWN

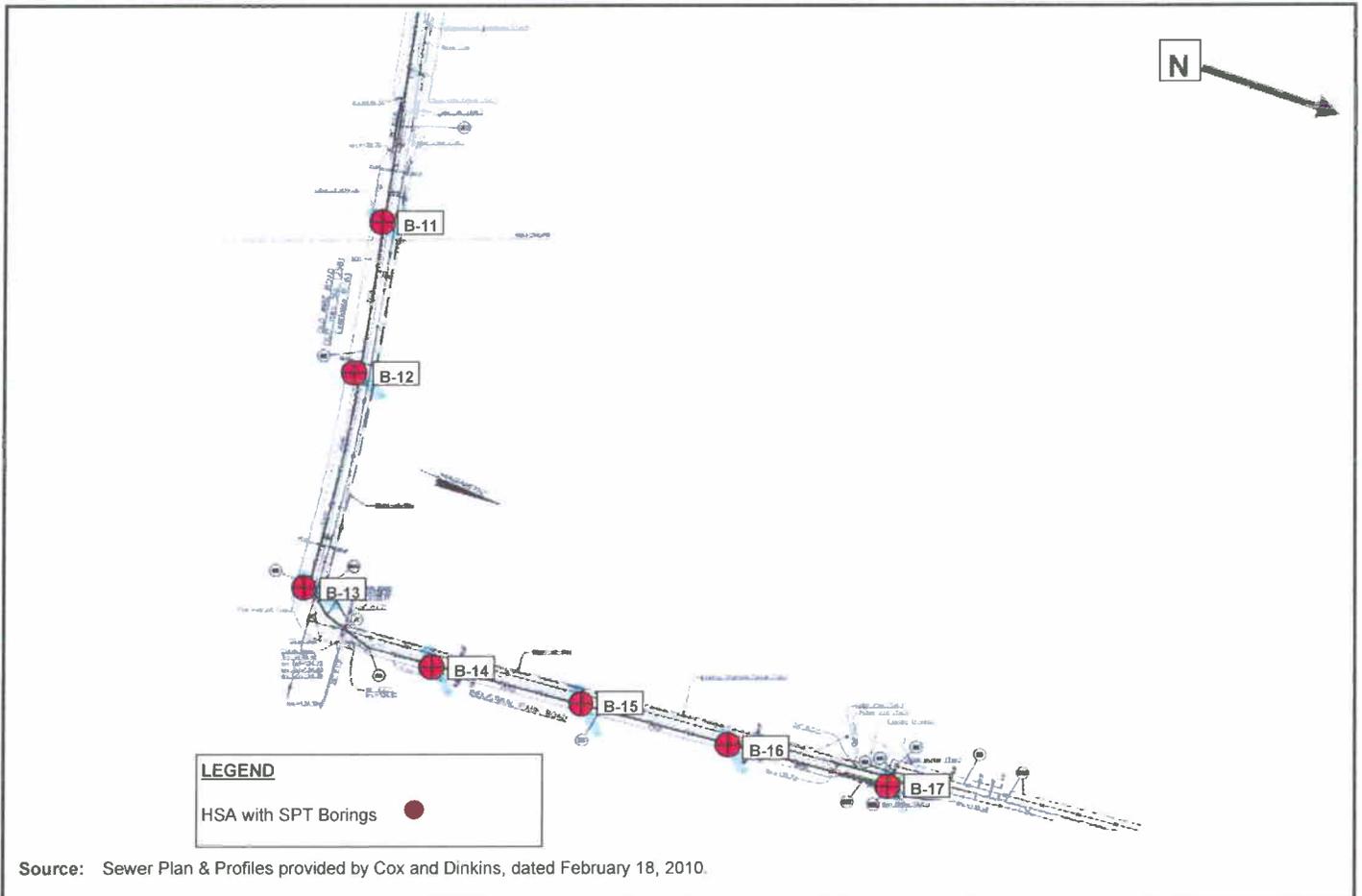
Figure 4



**Boring Location Plan**  
**Proposed Old Wire Road Industrial Park Road**  
 GS2 Project Number 10-3460G  
 Old Wire Road and Industrial Park Road  
 West Columbia-Cayce, South Carolina

**Blanchard Machinery Company**  
**-Spartanburg**  
 130 East Broad Street, Suite 102  
 Spartanburg, South Carolina 29306

**Prepared By/Date: MWK-10/10**  
**Checked By/Date: RCB-10/10**  
 Scale  
 AS SHOWN  
**Figure 5**



	<p align="center"><b>Boring Location Plan</b>          Proposed Old Wire Road Industrial Park Road          GS2 Project Number 10-3460G          Old Wire Road and Industrial Park Road          West Columbia-Cayce, South Carolina</p>	<p align="center"><b>Blanchard Machinery Company          -Spartanburg</b>          130 East Broad Street, Suite 102          Spartanburg, South Carolina 29306</p>	<p>Prepared By\Date: MWK-10/10          Checked By\Date: RCB-10/10          Scale          AS SHOWN          Figure 6</p>
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## APPENDIX B

Soil Test Boring Log Key

Soil Test Boring Logs

## SOIL TEST BORING LOG KEY

### COLOR SCHEME (Primary Soil Type):



#### **SURFACE MATERIALS**

Generally consist of Asphalt, Graded Aggregate Base Course, Concrete or Topsoils. Topsoils typically combine a mixture of soils and organic materials. Topsoils are typically recognized through texture and odor.



#### **SANDS**

Sands are considered to be a granular soil type with no cohesive properties. Grain sizes are categorized as fine (falls between 0.075 and 0.420 mm. in diameter), medium (falls between 0.420 and 2 mm. in diameter) or coarse (falls between 2 and 4.75 mm. in diameter).



#### **SILTS**

Silt grain sizes typically fall between 0.002 and 0.075 mm. in diameter. The Atterberg's limits for silts typically plot below the A-Line on a Plasticity Chart. Silts are typically distinguished as having a Low Plasticity (P.I. is between 0 and 22) or as having a High Plasticity (P.I. is between 22 and 59). Silts exhibit some cohesive properties.



#### **CLAYS**

Clay grain sizes typically are smaller 0.002 mm. in diameter. The Atterberg's limits for clays typically plot on or above the A-Line on a Plasticity Chart. Clays are typically distinguished as having a Low Plasticity (P.I. is between 0 and 22) or as having a High Plasticity (P.I. is between 22 and 59). Clays exhibit strong cohesive properties.



#### **COOPER MARL**

The Cooper Marl Formation is typically olive green in color and classifies as a silty sand or sandy silt. It is composed of overconsolidated marine deposits and is highly reactive to hydrochloric acid. The Cooper Marl sometimes contains cemented layers of phosphate. This formation is native to the Low Country Area of South Carolina.



#### **NO RECOVERY**

Denotes that there was no recovery in the split-spoon sampler barrel upon its retrieval from the borehole. No recovery may be due to very hard soil layers that are unable to be penetrated by the barrel or super-saturated soils that are unable to be retained in the barrel.

### PATTERN SCHEME: (Secondary Soil Type)



#### **SANDY**

Denotes a soil that has a percentage of sand. The portion of the soil that is sandy in nature is considered coarse-grained. When used in conjunction with the yellow color scheme, this pattern means the soil has more than 50% retained on the No. 200 sieve (i.e 0.075 mm in diameter).



#### **SILTY**

Denotes a soil that has a percentage of silt. The portion of the soil that is silty in nature is considered fine-grained. When used in conjunction with the gray color scheme, this pattern means the soil has more than 50% passing the No. 200 sieve (i.e 0.075 mm in diameter).



#### **CLAYEY**

Denotes a soil that has a percentage of clay. The portion of the soil that is clayey in nature is considered fine-grained. When used in conjunction with the red color scheme, this pattern means the soil has more than 50% passing the No. 200 sieve (i.e 0.075 mm in diameter).



#### **PARTIALLY WEATHERED ROCK**

Denotes a soil that is considered Partially Weathered Rock (PWR). PWR is defined as residuum that exhibits SPT N-values in excess of 100 bpf.



#### **DEBRIS LADEN**

Denotes a soil that is laden with debris. Debris may consist of anything man-made, including, but not limited to, house hold trash, construction debris (concrete, brick, metal, etc.) or may consist of natural debris, such as organics. Depending on the severity and type of the debris, these materials may require excavation and replacement.



#### **OLD FILL**

Denotes a soil that is assumed or known to be previously placed, possibly untested, old fill. As there is no known record of its placement, these soils are undocumented, and may require excavation and replacement.

**Note:**

The above detailed color schemes are indicative of the predominant primary soil type observed in the indicated soil strata at the Boring locations for the subject site. Secondary soil types are detailed by the pattern scheme. Both the color and pattern scheme are detailed in the Remarks column of the SOIL TEST BORING LOG. All soil descriptions are based on visual and textural properties observed in the recovered soils. No laboratory tests were performed on the soils described in this report, unless noted within the remarks column of the logs.

## SOIL TEST BORING LOG

Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 26, 2010



ENGINEERING & ENVIRONMENTAL  
CONSULTANTS, INC.

Boring Number: B-1

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.			
2	COASTAL PLAIN: Firm Brown and Tan Fine to Medium SAND. (SP)	0 to 1-1/2'	12	
3				
4				
5	Loose Orange and Tan Clayey Fine to Medium SAND. (SC)	3-1/2' to 5'	9	
6				
7				
8	Very Firm Tan, Orange, and Grey Slightly Clayey Fine to Medium SAND. (SP)	6' to 7-1/2'	21	GW at TOB
9				
10				
11	Dense Brown and Tan Clayey Fine to Medium SAND. (SC)	8-1/2' to 10'	34	
12				
13				
14	Very Firm Orange, Tan, and Brown Clayey Fine to Medium SAND. (SC)	13-1/2' to 15'	22	
15				
16				
17	Stiff Grey and Tan Sandy SILT. (ML)	18-1/2' to 20'	15	
18				
19				
20	Boring Terminated at 20 Feet.			(WET)
21				
22				
23				
24				
25				

Depth of Boring (ft): 20 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): 8 Feet

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG

Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 26, 2010



ENGINEERING & ENVIRONMENTAL  
CONSULTANTS, INC.

Boring Number: B-2

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.			
2	COASTAL PLAIN: Loose Tan and Brown Fine to Medium SAND. (SP)	0 to 1-1/2'	8	
3				
4				
5	Firm Tan and Orange Clayey Fine to Medium SAND. (SC)	3-1/2' to 5'	13	
6				
7				
8	Firm Brown and Tan Slightly Clayey Fine to Medium SAND. (SP)	6' to 7-1/2'	15	
9				
10				
11	Firm Tan and Grey Clayey Fine to Medium SAND. (SC)	8-1/2' to 10'	14	
12				
13				
14	Firm Orange and Tan Clayey Fine to Medium SAND. (SC)	13-1/2' to 15'	18	
15				
16				
17	Hard Grey and Orange SILT. (ML)	18-1/2' to 20'	34	
18				
19				
20	Boring Terminated at 20 Feet.			
21				
22				
23				
24				
25				

Depth of Boring (ft): 20 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): 14 Feet

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG



**Project Name:** Proposed Old Wire Road Industrial Project

**Project Number:** 10-3460-G

**Date of Test:** October 26, 2010

**Boring Number:** B-3

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.			
2	COASTAL PLAIN: Firm Tan and Orange Clayey Fine to Medium SAND. (SC)	0 to 1-1/2'	13	
3				
4				
5	Firm Tan and Brown Slightly Clayey Fine to Medium SAND. (SP)	3-1/2' to 5'	12	
6				
7				
8	Firm Tan Fine to Medium SAND. (SP)	6' to 7-1/2'	30	
9	Firm Brown and Orange Clayey Fine to Medium SAND. (SC)	8-1/2' to 10'	16	
10				
11				
12				
13	Firm Tan Medium to Coarse SAND. (SP)	13-1/2' to 15'	14	
14				
15				
16				
17				
18	Very Stiff Grey and Tan Sandy SILT. (ML)	18-1/2' to 20'	20	
19				
20				
21	Boring Terminated at 20 Feet.			
22				
23				
24				
25				

Depth of Boring (ft): 20 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): 9 Feet

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG



Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 26, 2010

Boring Number: B-4

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.	0 to 1-1/2'	16	
2	COASTAL PLAIN: Firm Tan and Brown Slightly Clayey Fine to Medium SAND. (SP)			
3				
4	Firm Tan Fine to Medium SAND. (SP)	3-1/2' to 5'	19	
5				
6				
7	Dense Brown and Orange Clayey Fine to Medium SAND. (SC)	6' to 7-1/2'	31	
8				
9	Firm Tan Fine to Medium SAND. (SP)	8-1/2' to 10'	16	GW at TOB
10				
11				
12				
13				
14	Stiff Grey and Tan Sandy SILT. (ML)	13-1/2' to 15'	14	(MOIST)
15				
16				
17				
18	Stiff Grey and Orange SILT. (ML)	18-1/2' to 20'	15	
19				
20				
21	Boring Terminated at 20 Feet.			
22				
23				
24				
25				

Depth of Boring (ft): 20 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): 10 Feet

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG



ENGINEERING & ENVIRONMENTAL  
CONSULTANTS, INC.

Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 18, 2010

Boring Number: B-5

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.			
2	COASTAL PLAIN: Firm Tan and Brown Fine to Medium SAND. (SP)	0 to 1-1/2'	12	
3				
4				
5	Firm Orange and Tan Clayey Fine to Medium SAND. (SC)	3-1/2' to 5'	19	
6				
7				
8	Dense Orange and Tan Clayey Fine to Medium SAND. (SC)	6' to 7-1/2'	50	
9				
10				
11	Loose Tan and Orange Slightly Clayey Fine to Medium SAND. (SP)	8-1/2' to 10'	8	
12				
13				GW at TOB
14	Firm Tan and White Medium to Coarse SAND. (SP)	13-1/2' to 15'	16	
15				(MOIST)
16				
17				
18	Firm Tan Medium to Coarse SAND. (SP)	18-1/2' to 20'	15	
19				
20				(WET)
21	Boring Terminated at 20 Feet.			
22				
23				
24				
25				

Depth of Boring (ft): 20 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): 12 Feet

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG



ENGINEERING & ENVIRONMENTAL  
CONSULTANTS, INC.

Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 11, 2010

Boring Number: B-6

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil. COASTAL PLAIN: Loose Brown and Tan Fine to Medium SAND with trace organics. (SP)	0 to 1-1/2'	10	
2				
3				
4	Loose Tan Fine to Medium SAND. (SP)	3-1/2' to 5'	9	
5				
6				
7	Firm Brown and Tan Clayey Fine to Medium SAND. (SC)	6' to 7-1/2'	15	
8				
9				
10	Dense Brown and Orange Clayey Fine to Medium SAND. (SC)	8-1/2' to 10'	34	
11				
12				
13				
14	Stiff Grey and Tan Sandy SILT. (ML)	13-1/2' to 15'	14	
15				
16				
17				
18	Very Stiff Grey and White SILT. (ML)	18-1/2' to 20'	16	
19				
20				
21	Boring Terminated at 20 Feet.			
22				
23				
24				
25				

Depth of Boring (ft): 20 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): 7 Feet

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG

Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 11, 2010



ENGINEERING & ENVIRONMENTAL  
CONSULTANTS, INC.

Boring Number: B-7

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.	0 to 1-1/2'	10	
2	COASTAL PLAIN: Loose Orange and Tan Clayey Fine to Medium SAND. (SC)			
3				
4	Firm Tan and Orange Clayey Fine to Medium SAND. (SC)	3-1/2' to 5'	20	
5				
6				
7	Firm Tan and Orange Clayey Fine to Medium SAND. (SC)	6' to 7-1/2'	16	
8				
9	Firm Tan Medium to Coarse SAND. (SP)			
10		8-1/2' to 10'	12	
11				
12				
13		13-1/2' to 15'	19	
14	Firm Tan and White Medium to Coarse SAND. (SP)			
15				
16		18-1/2' to 20'	19	
17				
18	Very Stiff Grey Sandy SILT. (ML)			
19		Boring Terminated at 20 Feet.		
20				
21				
22				
23				
24				
25				

Depth of Boring (ft): 20 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): 8 Feet

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment

## SOIL TEST BORING LOG



Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 27, 2010

Boring Number: B-8

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.	0 to 1-1/2'	11	
2	COASTAL PLAIN: Firm Tan Fine to Medium SAND. (SP)			
3				
4	Firm Brown and Tan Fine to Medium SAND. (SP)	3-1/2' to 5'	14	
5				
6				
7	Firm Orange and Brown Clayey Fine to Medium SAND. (SC)	6' to 7-1/2'	18	
8				
9				
10	Firm Orange and Tan Clayey Fine to Medium SAND. (SC)	8-1/2' to 10'	13	
11	Boring Terminated at 10 Feet.			
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Depth of Boring (ft): 10 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): Not Encountered

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG

Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 27, 2010



Boring Number: B-9

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.			
2	COASTAL PLAIN: Firm Tan Fine to Medium SAND. (SP)	0 to 1-1/2'	14	
3				
4				
5				
6		3-1/2' to 5'	13	
7	Very Firm Orange and Brown Clayey Fine to Medium SAND. (SC)			
8		6' to 7-1/2'	26	
9	Very Dense Orange and Tan Clayey Fine to Medium SAND. (SC)			
10		8-1/2' to 10'	64	
11	Boring Terminated at 10 Feet.			
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Depth of Boring (ft): <u>10 Feet</u>	Location of Boring: <u>See Boring Location Plan</u>
Depth of Groundwater T.O.B. (feet): <u>9.5 Feet</u>	Method of Drilling: <u>Hollow Stem Auger</u>
Depth of Groundwater 24 hrs. (feet): <u>Not Available</u>	Performed By: <u>GS2 Engineering</u>

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG



ENGINEERING & ENVIRONMENTAL  
CONSULTANTS, INC.

Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 27, 2010

Boring Number: B-10

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.			
2	COASTAL PLAIN: Firm Tan Fine to Medium SAND. (SP)	0 to 1-1/2'	12	
3				
4				
5	Loose Tan Fine to Medium SAND. (SP)	3-1/2' to 5'	10	
6				
7				
8	Dense Orange and Brown Clayey Fine to Medium SAND. (SC)	6' to 7-1/2'	35	
9				
10				
11	Boring Terminated at 10 Feet.	8-1/2' to 10'	16	
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Depth of Boring (ft): <u>10 Feet</u>	Location of Boring: <u>See Boring Location Plan</u>
Depth of Groundwater T.O.B. (feet): <u>Not Encountered</u>	Method of Drilling: <u>Hollow Stem Auger</u>
Depth of Groundwater 24 hrs. (feet): <u>Not Available</u>	Performed By: <u>GS2 Engineering</u>

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG

Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 27, 2010



Boring Number: B-11

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.			
2	COASTAL PLAIN: Loose Tan Fine to Medium SAND. (SP)	0 to 1-1/2'	10	
3				
4				
5	Firm Brown and Tan Fine to Medium SAND. (SP)	3-1/2' to 5'	11	
6				
7				
8	Very Firm Orange and Brown Clayey Fine to Medium SAND. (SC)	6' to 7-1/2'	27	
9				
10				
11	Boring Terminated at 10 Feet.	8-1/2' to 10'	12	
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Depth of Boring (ft): <u>10 Feet</u>	Location of Boring: <u>See Boring Location Plan</u>
Depth of Groundwater T.O.B (feet): <u>Not Encountered</u>	Method of Drilling: <u>Hollow Stem Auger</u>
Depth of Groundwater 24 hrs. (feet): <u>Not Available</u>	Performed By: <u>GS2 Engineering</u>

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG

Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 27, 2010



ENGINEERING & ENVIRONMENTAL  
CONSULTANTS, INC.

Boring Number: B-12

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil. COASTAL PLAIN: Loose Brown and Tan Fine to Medium SAND. (SP)	0 to 1-1/2'	7	
2				
3				
4	Loose Tan Fine to Medium SAND. (SP)	3-1/2' to 5'	8	
5				
6				
7	Dense Tan and Orange Fine to Medium SAND. (SP)	6' to 7-1/2'	47	
8				
9				
10		8-1/2' to 10'	37	
11	Boring Terminated at 10 Feet.			
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Depth of Boring (ft): 10 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): Not Encountered

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG



Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 27, 2010

Boring Number: B-13

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.	0 to 1-1/2'	20	
2	COASTAL PLAIN: Firm Tan Fine to Medium SAND. (SP)			
3				
4	Firm Brown and Tan Fine to Medium SAND. (SP)	3-1/2' to 5'	11	
5				
6				
7	Dense Orange and Brown Clayey Fine to Medium SAND. (SC)	6' to 7-1/2'	32	
8				
9	Very Firm Orange and Tan Clayey Fine to Medium SAND. (SC)			
10		8-1/2' to 10'	23	
11	Boring Terminated at 10 Feet.			
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Depth of Boring (ft): 10 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): Not Encountered

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG



Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 27, 2010

Boring Number: B-14

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.			
2	COASTAL PLAIN: Firm Tan Fine to Medium SAND. (SP)	0 to 1-1/2'	11	
3				
4				
5	Firm Brown and Tan Fine to Medium SAND. (SP)	3-1/2' to 5'	11	
6				
7				
8	Dense Orange and Tan Clayey Fine to Medium SAND. (SC)	6' to 7-1/2'	34	
9				
10	Dense Brown and Tan Clayey Fine to Medium SAND. (SC)	8-1/2' to 10'	34	
11				
12	Boring Terminated at 10 Feet.			
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Depth of Boring (ft): 10 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): Not Encountered

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

## SOIL TEST BORING LOG

Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 27, 2010



ENGINEERING & ENVIRONMENTAL  
CONSULTANTS, INC.

Boring Number: B-15

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.			
2	COASTAL PLAIN: Loose Brown and Tan Fine to Medium SAND. (SP)	0 to 1-1/2'	9	
3				
4				
5	Loose Tan Fine to Medium SAND. (SP)	3-1/2' to 5'	10	
6				
7				
8	Firm Orange and Brown Clayey Fine to Medium SAND. (SC)	6' to 7-1/2'	17	
9				
10	Firm Orange and Tan Clayey Fine to Medium SAND. (SC)	8-1/2' to 10'	20	
11				
12	Boring Terminated at 10 Feet.			
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Depth of Boring (ft): 10 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): 9 Feet

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.



## SOIL TEST BORING LOG

Project Name: Proposed Old Wire Road Industrial Project

Project Number: 10-3460-G

Date of Test: October 27, 2010



ENGINEERING & ENVIRONMENTAL  
CONSULTANTS, INC.

Boring Number: B-17

Depth (feet)	Soil Description	Sample Interval	Blow Counts*	Remarks
1	SURFACE MATERIALS: 6 Inches of Topsoil.			
2	COASTAL PLAIN: Firm Tan Fine to Medium SAND. (SP)	0 to 1-1/2'	16	
3				
4				
5	Firm Brown and Tan Fine to Medium SAND. (SP)	3-1/2' to 5'	17	
6				
7				
8	Firm Orange and Brown Clayey Fine to Medium SAND. (SC)	6' to 7-1/2'	19	
9				
10				
11	Boring Terminated at 10 Feet.	8-1/2' to 10'	50	
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Depth of Boring (ft): 10 Feet

Location of Boring: See Boring Location Plan

Depth of Groundwater T.O.B. (feet): Not Encountered

Method of Drilling: Hollow Stem Auger

Depth of Groundwater 24 hrs. (feet): Not Available

Performed By: GS2 Engineering

\* The Blow Counts given above are recorded for a 140 pound hammer (falling 30 inches/blow) to drive a 2 inch O.D., 1.375 inch I.D. split-barrel sampler 12 inches, after an initial 6 inch seating increment.

**EXHIBIT N**

**RESTRICTIVE COVENANTS FOR SAXE GOTHA INDUSTRIAL PARK**



- 1.2 In order to establish an orderly, general use plan for the improvement and development of the Property, the Developer desires to adopt certain conditions, covenants, easements and restrictions upon all the Property which shall be held, improved, transferred and conveyed.

**Article 2**

**General Provisions**

- 2.1 The Developer hereby declares that the Property is now held and shall hereafter be held, transferred, sold, leased, subleased, conveyed and occupied subject to the restrictive covenants, conditions and easements herein set forth, each and all of which shall be to the benefit of and pass with each parcel of the Property and shall apply to and bind the owners thereof and their respective heirs, assigns and successors.
- 2.2 The Property is subject to the covenants, conditions, restrictions and easements hereby declared to insure proper use and appropriate development and improvement of each Building Site to:
  - a. Protect the Owners (as defined herein) against such improper use of surrounding Building Sites as would depreciate the value of their property;
  - b. Guard against the erection on Building Sites of structures built of improper or unsuitable materials;
  - c. Ensure adequate and reasonable development of the Property;
  - d. Prevent haphazard and inharmonious improvements on appropriate Building Sites;
  - e. Secure proper setbacks from streets, and adequate opens spaces between structures; and
  - f. Provide adequately for a high-quality type of improvement on the Property.
- 2.3 Every entity who now or hereafter owns or acquires any rights, title or interest in or to any portion of the Property shall be conclusively deemed to have consented and agreed to and assumed every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such entity acquired an interest in the Property. All restrictions, conditions, covenants and agreements contained herein are made:
  - a. For the direct, mutual and reciprocal benefit of each and every part and parcel of the Property;

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- b. To create a mutual, equitable servitude upon each Building Site;
- c. To create reciprocal rights and obligations between the respective Owners and all Building Sites; and
- d. To the Owner of each Building Site, its heirs, successors and assigns, operate as covenants running with the land, for the benefit of the rest of the Property.

#### 2.4 Definitions

- A. **"Building Site"** shall mean any contiguous parcel of land composed of a portion of the Property which is shown on any recorded plat of all or a portion of the Property, and which is suitable for construction and Improvements.
- B. **"Common Areas"** means and refers to those areas of the Property which are not Building Sites. Common areas include, but are not limited to, parks, median strips, drainage areas, private rights-of-way and easements, ponds, common storm water management facilities, utility easements, beautification easements, dams, sign location areas and sign located areas therein, and street lighting.
- C. **"Common Expenses"** shall mean those expenses that will be shared by all the Owners and identified or suggested by this plan.
- D. **"Declaration"** means this Declaration of Covenants, Conditions, Restrictions and Easements for the Saxe Gotha Industrial Park as the same may be amended or modified from time to time as provided herein.
- E. **"Developer"** shall mean Lexington County, South Carolina. Any decision made by the Developer hereunder may be made by Lexington County Council. A document executed by Lexington County Council shall be conclusive evidence of a decision by the Developer, shall be legally binding on the Developer and the Original Owner, and the Owner of a Building Site shall be entitled to rely on such document.
- F. **"Improvements"** shall mean any and all structures, betterments, construction and/or made or placed upon any Building Site, or any portion thereof, and shall include, without limitation, all changes in site topography, lighting fixtures, communications equipment, underground utilities, all buildings, outbuildings, roofed structures, parking areas, roads, loading docks, loading areas, fences, wall hedges, landscaping, mass plantings, poles, signs, monuments, sculptures, driveways, ponds, lanes, pools, lawns, drives, trees and shrubs, picnic facilities, recreation facilities and any structure of any type or kind.

G. "Owner" shall mean any party and its successors, assigns, heirs and legal representatives owning a record fee simple interest or any leasehold interest in and to any Building Site or portion thereof; provided however, the term "Owner" shall not include any person or entity having an interest merely as security for the repayment of indebtedness or the performance of an obligation. To the extent that either the Developer meets the criteria for ownership set forth herein, it shall be deemed an Owner hereunder in addition to possession of the rights, powers, privileges, obligations and duties hereby specifically imposed upon and granted to them as the Developer.

### Article 3

#### Regulation of Improvements

- 3.1 **Approval of Plans and Specifications.** No improvements shall be constructed, erected, placed, altered, maintained or permitted on any Building Site until plans and specifications therefore have been approved in writing by the Developer, as provided in Part 5, hereof, or which when constructed do not conform to the requirements set forth herein, except as otherwise provided herein.
- 3.2 **Pre-Construction Meeting.** Prior to the commencement of construction on any Building Site including site grading, a pre-construction meeting shall be conducted. The meeting shall include the Developer and its representatives, the Owner or the Owner's representative and the contractor including the site grading contractor.
- 3.3 **Construction Vehicular Traffic.** For the purpose of coordinating construction traffic on the Property during construction, the Developer shall have the right to control construction traffic on the Property during construction as well as access to a Building Site; provided, however, Developer shall at no times deny an Owner access to the materials, equipment, personnel and other personal property.
- 3.4 **Completion of Construction.** After commencement of construction of any Improvement on any Building Site, the Owner shall diligently prosecute the work to the end that the Improvement shall not remain in a partly finished condition any longer than reasonably necessary for completion. All improvement shall be completed within one (1) year after approval of plans by the Developer. During construction, the Owner shall cause the Building Site to remain in reasonably neat and orderly condition, shall prevent the accumulation of trash, and shall prevent runoff surface water and soil from the Building Site onto adjacent property or streets. If, at the end of the above stated one year period, construction of any Improvement is not being diligently pursued by the Owner, then the Developer shall have the option to proceed with such construction and any cost

incurred by the Developer relative to such construction shall be paid by the Owner and shall constitute a lien on the Building Site and Improvement until paid and may be collected by the Developer together with all costs of collection from the nonpaying Owner by appropriate legal action. Any such lien shall be subordinate to any first mortgage lien on the affected Building Site.

- 3.5 **Excavation.** No excavation shall be made on any Building Site except in connection with construction of improvements thereon and except in connection with storm water management systems. Upon completion of construction of improvements on the Building Site exposed openings shall be backfilled and disturbed ground shall be smoothly graded and landscaped.
- 3.6 **Storm Drainage.** All storm drainage on a Building Site shall meet and comply with all applicable county, state, and federal laws and regulations governing storm water drainage. Each Owner shall at all times manage and maintain all drainage facilities within its Building Site in a safe, clean, orderly, neat and operable condition. All Building Sites are subject to all applicable county, state and federal laws and regulations regarding storm water drainage which may be more stringent than this Declaration.
- 3.7 **Landscaping.** All Building Sites shall be landscaped to promote compatible and substantially continuous landscape treatment throughout the Property, to provide for a neat and well maintained appearance in areas not covered by buildings or parking, to minimize adverse visual and environmental impact on large surface areas, to promote the quality image of the Property, and to safeguard and enhance property values.

Plans and specifications for landscaping shall be submitted to the Developer for review prior to installation. Such plans should indicate the type of sodding, the type of seeding, type of trees to include, the location, size, type and height of each planting. Such plans should reflect and take into account any landscaping which exists on the Property, including, but not limited to, existing trees, if any, on the Building Site. Such plans shall, at a minimum, comply with all planning and zoning ordinances and requirements of building authorities of Lexington County.

The area of any Building Site and the area between the Building Site property line and street curb line or ditch shall be landscaped by the Owner of such Building Site, except for areas covered by buildings, paved areas and sidewalks. Beautification easements, if located within the Building Site, shall be maintained by the Owner to provide a visual barrier to screen the Property from streets, roads, and adjacent property.

Paved parking between a building and street frontage property line shall be at least twenty-five (25) feet (which shall include any designated easements) from the street frontage property line. The area between the paved parking and the curb line of the street shall be suitably landscaped with either berms or other landscape treatment which may include ground cover. When paving adjacent to any side property line, a minimum of five (5) feet of landscaping shall be provided along the side property line.

All landscaping shall be installed within sixty (60) days after substantial completion of construction, weather permitting. Landscape areas shall be perpetually maintained in a sightly and well-kept condition including such replanting and replacement, as is from time to time necessary. If any Owner fails to undertake and complete his landscaping within the time limit previously set forth herein, The Developer may, at its option, after giving the Owner ten (10) days written notice forwarded to Owner (unless within said ten (10) day period the Owner of the Building Site shall proceed and thereafter pursue with diligence the completion of such landscaping), undertake and complete the landscaping of the Building Site in accordance with the landscaping plan. If the Developer undertakes and completes such landscaping because of the failure of the Owner to complete the same, the costs of such landscaping shall be assessed against the Owner, and if said assessment is not paid within thirty (30) days after written notice of such assessment from Developer, said assessment will constitute a lien on the Building Site and may be enforced as set forth in this agreement.

3.8 **Signage.** Any and all signs located on the Property shall conform to the following standards:

- A. All signs, including identification, directional, vehicular control, temporary and informational, including, but not limited to, those in the setback areas, on loading docks, parking facilities, on buildings, and storage areas, along with appropriate plans and specifications shall be first submitted to the Developer for written approval of conforming with these Declarations, which approval shall not be unreasonably withheld. Such plans and specifications for any sign shall include, but not be limited to, the color(s), dimensions, locations on the site, height, copy, type of illumination, and other characteristics. No sign shall be erected on the Property without prior written approval of the Developer.
- B. No neon signs shall be permitted upon the Property;
- C. Signs may be electrified but shall not be flashing or moving;
- D. No monument sign located on the Property shall exceed a height of ten (10) feet measuring from the elevation of the ground immediately beneath said sign to the top of said sign. No sign shall protrude above the Building line or parapet. There shall be no more than two (2) signs per building façade;
- E. Signs may not be located in dedicated easements; all signs must conform to the setback requirements of Lexington County; and
- F. Notwithstanding anything contained in these Declarations to the contrary, the Developer in its sole discretion may approve or refuse requests for variances to these sign requirements on a case by case basis.

3.9 **Loading Areas.** Loading and receiving areas shall not be permitted in the front yard of

any Building Site or in the side yard that fronts on any interior (within the Property) public road and the frontage of any Building Site, except with the prior written approval of the Developer. Proper integration of landscape and screening elements as approved by the Developer must be provided between any truck loading and receiving area and any street.

- 3.10 **Outside Storage.** Materials, supplies, equipment, finished or semi-finished products or articles of any nature may not be stored or permitted to remain on any Building Site outside the main building located thereon unless approved by the Developer. Any outside storage is strongly discouraged. Waste and rubbish storage facilities shall be properly screened and shall not be installed, constructed or utilized without prior written approval of the Developer.
- 3.11 **Parking.** Adequate off street parking shall be provided by each Owner for employees, tenants, occupants, customers and visitors. The location, number and size of parking spaces shall be subject to review by the Developer, and shall conform to all applicable Lexington County zoning ordinances and other governmental regulations. However, at no time shall the minimum standards for parking be any less than the total of the following: One (1) space for each two (2) employees on the largest shift; one (1) space for each member of the managerial or office staff; one (1) visitor parking space for each ten (10) persons on the managerial staff; and one (1) space for each vehicle used directly in the conduct of business.
- No parking shall be permitted on any street or place other than the paved parking spaces provided for in this Declaration. No parking shall be permitted within dedicated easement areas.
- 3.12 **Utility Connections.** All utility connections, including all electrical and telephone connections and installation of wires to improvements shall be made underground from the nearest available power or utility source. No transformer, electric, gas, or other meter of any type or other apparatus shall be located on any power pole or hung on the outside of any building or other improvements, but the same shall be placed at or below ground level, and where placed at ground level, shall be adequately screened. Notwithstanding the foregoing, overhead and telephone connections shall be permitted during the construction period of the improvement.
- 3.13 **Fences.** No fence, wall, hedge, or mass planting shall be erected, installed, or permitted without written approval of the Developer which approval shall not be unreasonably withheld.
- 3.14 **Exterior Lighting.** All exterior lighting of any nature on any Building Site shall be designed, erected, altered and maintained in accordance with plans and specifications approved by the Developer which approval shall not be unreasonably withheld. Exterior lighting on all Building Sites shall be limited to signs and security and safety illumination of driveways, parking lots, walks, building entrances, loading and service areas and exterior lighting of overall building services. Lighting shall be compatible and

harmonious throughout the Property and shall be keeping with the exterior design of the Building Site in question.

3.15 **Maintenance of Building and Landscaped Areas.** Each owner shall keep all Improvements on a Building Site in a safe, clean, maintained, neat condition and shall comply in all respects with all governmental statutes, ordinances, regulations and health, police and fire requirements. Each Owner shall remove at its own expense, on a regular basis, any rubbish or trash of any type which may accumulate on its Building Site.

- A. Rubbish, trash, garbage, or other waste shall be kept only in appropriate containers. All equipment for the storage or disposal of such materials shall be kept in clean and neat condition. Rubbish and trash and other waste shall not be permitted to accumulate or be disposed of on the Property by burning or burial;
- B. All signs permitted will be maintained in neat and orderly manner and repainted or repaired promptly as required;
- C. All paved areas, driveways and concrete aprons on a Building Site shall be kept in good repair, and swept clean from dirt and silt;
- D. All steep banks and slopes shall be maintained with suitable grasses, trees and shrubs to prevent exposure of dirt and clay, and an unsightly appearance;
- E. No improvements to any Building Site shall be permitted by the Owner of such Building Site to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair, properly maintained and adequately painted or otherwise finished;
- F. All planted grasses, trees, shrubs or other plantings shall be maintained consistently in a neat, orderly and healthy manner;
- G. Each Owner shall pay his pro rata portion of the gross expenses for the maintenance (including landscaping maintenance), repairs, replacements and services required in connection with the Property Used in Common. Such expenses shall include, but not be limited to fighting, signing, landscaping, cleaning and insurance premiums. (Pro rata shall mean the percentage by comparing the Owner's Building Site to the total property excluding Property Used in Common).
- H. In the event the Owner of any Building Site shall fail to comply reasonably with all of the requirements of this section 7.1, the Developer and its successors shall have the right, but not the duty, to take corrective action at the expense of the Owner;

3.16 **Height Restrictions.** No building or appurtenance, including, but not limited to, water towers, stand pipes, penthouses, elevators or elevator equipment, stairways, ventilating

fans or similar equipment required to operate and maintain any building, fire or parapet walls, skylights, tanks, cooling or other towers, wireless radio or television masts and antennae, or flagpoles shall exceed heights prescribed or approved by the Developer or applicable zoning ordinances; provided, the Developer will not unreasonably withhold approval of such Improvements.

- 3.17 **On-Site Drainage.** Each Building Site Owner shall be required to provide adequate drainage facilities, in accordance with the existing storm system, existing topography and by such methods as may be approved by the Developer. Once established, the drainage system may not be changed by an Owner without approval of the Developer and the system will be maintained to provide for subsurface water drainage in accordance with the drainage pattern established.

3.18 **Building Materials and Design.**

- A. **Exterior Walls** The exterior walls of all buildings shall be of such materials, design and colors as may be approved by the Developer. All concrete masonry units or concrete panels shall be finished in stone, textured, or coated tastefully.
- B. **Canopies** Design of canopies shall be in keeping with the design of the buildings including color coordination;
- C. **Coverage** Unless otherwise approved by the Developer, no more than forty-five percent (45%) of the gross acreage of a Building Site may be covered by building(s);

- 3.19 **Setbacks.** Except in those circumstances where the Building Site and topography do not permit, all Improvements on any Building Site shall be constructed to observe and honor the following setback requirements:

Front (or fronts, in the case of a corner lot) – 50 feet;  
 Sides (including all non-front, in the case of a corner lot) – 20 feet; and  
 Rear (where applicable, as in the case of a non-corner lot) – 30 feet.

- 3.20 **Right to Subdivide.** No Owner, other than the Developer, may subdivide or re-subdivide or in any way alter the size, shape, or area of any Building Site by any Owner, other than the Developer. The prohibition against subdivision of any Building Site by any Owner, other than the Developer, as contained in this paragraph, shall survive any conveyance by the Developer to any Owner or any conveyance to any successor Owner.

Article 4

Operational Standards

- 4.0 **Permitted Uses.** Building Sites shall only be utilized for the development and

construction of improvements, ownership, and operation of and/or leasing to tenants for the operation of one or more light and medium industrial uses, office, manufacturing, warehousing, distribution, engineering, research facilities, testing facilities, laboratories; and any other uses approved by the Developer (which approval shall not be unreasonably withheld) and permitted by applicable zoning codes.

No noxious or offensive trades, services or activities shall be conducted on any Building Site nor shall anything be done thereon which may be or become an annoyance or nuisance to the Owner, tenant or occupant of Other Building Sites within the Property by reason of unsightliness, or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

The following uses shall not be permitted:

- A. Truck terminal or storage facility;
- B. Scrap yard storage;
- C. Automotive garage, repair or sales facility;
- D. Building material storage and lumberyard, coal or wood yard, and stone or monument works;
- E. Auto wrecking, salvage yards, used material yards, storage or baling of waste or scrap paper, rags, scrap metals, bottles or junk;
- F. Bag cleaning;
- G. Boiler and tanker works;
- H. Central mixing plant for asphalt, mortar, plaster or concrete;
- I. Any quarrying operation;
- J. Uses determined by the Developer to be unsafe or dangerous, such as those creating explosion or radiation hazards;
- K. Uses determined by the Developer to constitute a nuisance which include but shall not be limited to odor, dust, fumes, smoke, noise, vibration, electro-mechanical disturbance, refuse matter or water-carried waste.

- 4.1 **Damage or Destruction of Improvements.** Any improvements on any Building Improvement damaged in whole or in part by fire, windstorm, tornado, vandalism, strike or civil disorder, or of the like, shall be repaired and restored or replaced immediately, including the removal of debris or if it should be determined by the Owner thereof not to

repair or replace such Improvement then the Improvement shall be removed from its Building Site and thereafter the Owner shall maintain the Building Site in a graded, maintained condition until the Building Site is again improved in accordance with the provisions hereof. In no instance shall any damaged Improvement remain on the Building Site unrepaired or un-removed for a period in excess of ninety (90) days from the date of said casualty; provided, however, if the Owner commences reasonable commercial efforts within thirty (30) days of the casualty and diligently pursues such repair or removal, such ninety (90) day period shall be extended by the amount of time that is reasonably required to accomplish the repair or removal with the exercise of reasonable commercial diligence.

- 4.2 **Right to Enter.** During reasonable business hours, after at least one hour prior notice to the Owner, the Developer, or its authorized agents, shall have the right to enter any Building Site, but not insides of buildings, for the purpose of ascertaining whether the restrictions provided herein may have been violated. Developer or its agents must present themselves at the main office of the Owner on the Building Site or at such other comparable location at the Building Site, present appropriate identification and/or credentials to the Owner or Owner's authorized representative prior to any further inspection of the Building Site, and, at the Owner's discretion, be accompanied by the Owner or the Owner's representative during any such inspection. Any such entry shall constitute an authorized entry, and the Developer or its representatives shall not be deemed guilty of trespass or constructive eviction by reason thereof.

**Article 5**

**Approval of Plans; Variances; Easements**

- 5.1 **Approval.** No improvement shall be erected, placed, replaced, altered, maintained or permitted to remain on any Building Site which does not conform to the requirements of this Declaration and with all applicable laws, ordinances, and regulations then in effect, including without limitation, any land use and zoning regulations, building codes, environmental laws and regulations, storm water and drainage laws and regulations, building codes, environmental laws and regulations, storm water and drainage laws and regulations, and planning laws and regulations. An Owner shall submit to the Developer for approval plans and specifications showing site plan, drainage plan, and all exterior elevations, with materials and colors therefore, and landscaping plans. The Developer reserves the right to withhold approval upon any grounds, including aesthetic condition, which shall be determined in the sole discretion of the Developer.
- 5.2 **No Damages.** Neither the Developer, or its successors or assigns, shall be liable in damages or otherwise to anyone submitting plans to the Developer for approval, or to any Owner affected by this Declaration, for any cause arising out of or in connection with the approval or disapproval or failure to approve such plans and specifications. Every entity which submits plans to the Developer for approval agrees by submission of such plans, and every Owner of any Building Site agrees by acquiring title thereto or interest therein, that it will not bring any action or suit against the Developer to recover

Debra M. Gunter

Levellington County Register of Deeds

any such damages based upon the aforesaid causes.

- 5.3 **Variations.** The Developer, and its successors and assigns, are hereby authorized and empowered to grant reasonable variations from the provisions of this Declaration in order to overcome practical difficulties and unnecessary hardships in the application of the provisions contained herein; provided, however, that such variations shall be reasonably consistent with the purposes hereof and shall not materially adversely affect any existing Improvements on the Property. Any variance granted pursuant to the authority granted herein shall constitute a waiver of provisions of this Declaration by all Owners of Building Sites, and all Owners hereby irrevocably appoint the Developer, its successors and assigns, as their true lawful attorney-in-fact for the limited purpose of consenting to the aforesaid variations.
- 5.4 **Easements.** The Developer shall have the right, in its reasonable discretion, to grant easements through, across, over and under any of the Property for the purposes of all electric, water, sewer, storm drainage, gas, telephone, cable television, security systems and all other utilities necessary or desirable, for the benefit of any Building Site; provided such easements do not interfere with existing improvements constructed, or in the process of being constructed on Building Sites; and, provided further, such grants of easement shall not extend more than twenty (20) feet perpendicularly beyond any side, front, or rear lot line of a Building Site.

## Article 6

### Enforcement

- 6.1 **Responsibility of Owner.** Each Owner shall be responsible for compliance with the terms, conditions and provisions of this instrument by its employees, agents, independent contractors, tenants, building occupants, customers and visitors.
- 6.2 **Abatement and Suit.** Violation or breach of any restriction herein contained shall give to the Developer and every Owner subject to this Declaration the right to prosecute a proceeding at law or in equity against the Owner who has violated, is attempting to violate, or is permitting the violation on its Building Site of any of these restrictions including without limitation, actions to enjoin or prevent such Owner from doing so, to cause said violation to be remedied, or to recover actual damages for said violation.
- 6.3 **Deemed to Constitute a Nuisance.** Any action or omission whereby any restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner, either public or

private, shall be applicable against every such action or omission and may be exercised by the Developer or by the Owner.

- 6.4 **Attorney's Fees.** In any legal or equitable proceedings for the enforcement of this Declaration or any provision hereof, the Developer shall be entitled to recover from the losing party against whom a final unappealable order is issued, actual out of pocket costs and expenses, including, but not limited to, its attorney's fees and expenses incurred in connection with or related to such proceedings in such amounts as may be fixed by the court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive of any other remedies.
- 6.5 **Failure to Enforce Not a Waiver of Rights.** The failure of the Developer or any other Owner to enforce any restrictions herein contained shall in no event be deemed to be a waiver of the right to do so, nor of the right to enforce any other restriction. No suit shall lie against the Developer for any failure, refusal or omission to institute or join in any action or proceeding for the enforcement hereof or to restrain the violation of any of the provisions hereof.
- 6.6 **Equitable Relief.** Notwithstanding anything to the contrary contained in this Declaration, from time to time, the Owner of a Building Site shall have the right to commence proceeding or proceedings against the Developer and/or one or more other Owners for one or more restraining orders, injunctions, declaratory relief and/or other equitable relief and the prevailing party or parties in any such proceeding(s) shall be entitled to recover from the losing party or parties against whom a final unappealable order is issued, the prevailing party's or parties' actual out of pocket costs and expenses including, but not limited to, its attorney's fees and expenses occurred in connection with or related to such proceeding(s) in such amounts as may be fixed by the court in such proceeding(s).

## Article 7

### Term, Termination, Modification and Assignment

- 7.1 **Term.** This Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period commencing on the date hereof and expiring twenty (20) years from the date hereof. All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any for the period of twenty-five (25) years from the execution date of this Declaration, after which time all said covenants shall be automatically extended for successive period of ten (10) years, unless an instrument signed by a majority of the then owners of lots substantially affected by such change in covenants has been recorded, agreeing to change said covenants in whole or in part.
- 7.2 **Termination and Modification.** This Declaration, or any provision hereof, may be

terminated, extended or modified by the Developer.

- 7.3 **Assignment of Developer's Rights and Duties.** The rights, powers, privileges, obligations and duties hereby specifically granted to or imposed upon the Developer (as opposed to those rights, powers, privileges, obligations and duties hereby granted to or imposed upon Owners) may be transferred to any successor or assignee of the Developer which succeeds to the Developer's interest in the Property. After 100% of the Property is sold, all rights and duties, as identified in this section, will be transferred to an Owner's Association established by the Owners for that purpose.
- 7.4 **Assignment of Owner's Rights and Duties.** The rights, powers, obligations and duties hereby granted to or imposed upon any Owner may not be assigned or delegated except to any entity acquiring Owner's interest in a Building Site or any lessee or sub lessee of such Owner. The instrument by which the interest of any Owner in a Building Site is acquired shall recite that it is subject to this Declaration of Restrictive Covenants, Conditions and Easements and shall contain an agreement by the transferee to be bound by all of the terms and conditions thereof.
- 7.5 **Right of Re-Purchase.** If construction of any industrial or other approved building is not substantially completed within two years of the date of the conveyance of any tract from the Developer to an Owner, other than Developer, Developer shall have the right to repurchase the Building Site at any time within one hundred eighty (180) days after the expiration of said two-year period upon giving fifteen (15) days prior written notice of its intention to re-purchase to said Owner. The re-purchase price shall be the price paid by Owner for the Building Site when purchased from Developer plus reimbursement for any real property taxes by Owner relating to Building Site, less the unpaid balance of any mortgage, deed of trust, or other amounts, nonpayment of which may be assessed as liens against the Building Site. The provisions of this Article may be enforced by an action at law maintained by the Developer.

## Article 8

### Owners Association

- 8.1 **Creation, Membership.** The Developer may cause to be incorporated under the laws of the State of South Carolina a non-profit corporation to be named Saxe Gotha Park Association, or a similar name (the "Association"). Developer shall establish, or cause to be established, the Association once Developer, in its sole discretion, deems necessary. Upon organization every Owner as defined in this Declaration shall automatically become a member of the Association. The Association shall be governed by provisions of Article 8 along with any hereinafter created by-laws.
- 8.2 **Election of Directors.** The initial board of directors will be named by Developer and set forth in the Articles of Incorporation.

**8.3 Members.** Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from Ownership of a Site. In the event of multiple ownership of a site, the co-owners of such Site shall be considered as one Owner for voting purposes. Developer, so long as it owns any land in the Property, shall be a member (but ownership of Street Rights-of-Way shall not be counted in determining the number of votes to which it is entitled as provided in Section 8.4 of this Article 8), but only to the extent it owns land which is a part of the Property.

**8.4 Voting.** Each member of the Association shall be entitled to one vote for each acre of land owned; however, in the election of directors, the land owned by the Developer shall not be counted, but in all other matters on which the members are entitled to vote, the Developer's land shall be counted. Directors shall be elected annually to serve one year.

**8.5 Assessments and Maintenance of Common Areas.** Upon creation of the Association, the Association shall become responsible for the maintenance of the Common Areas. The Budget shall be based upon annual estimates by the Board of Directors of the Association's revenues and its cash requirements to pay all estimated expenses and costs relating to the use, maintenance and operation of the Common Areas and the operation of the Association. Such estimated expenses and costs (the "Common Expenses") may include, among other things, the following: insurance premiums; repairs and maintenance; utility charges; street lighting, and any other expense deemed by the Board of Directors to be a common expense.

**8.6 Unpaid Assessments.** Any assessments by the Association which are not paid by the Developer (assuming the Developer is still an Owner) or an Owner within such reasonable time as shall be designated by vote of the members at the meeting at which the assessment is made, or in the by-laws of the Association, shall bear interest at a rate per annum determined by the Board of Directors or as provided in the by-laws, from such date until paid, and shall constitute a lien upon the Site(s) owned by such member. The amount of any such lien may be enforced by suit or otherwise, at the election of the Association, and the Owner will reimburse the Association for all reasonable attorneys' fees and expenses incurred in so doing, the amount of which shall also constitute a lien on the Site and such lien may be recorded in the Register of Deeds Office for Lexington County.

## Article 9

### Miscellaneous Provisions

**9.1 Constructive Notice and Acceptance.** Every entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to and assumed every covenant, condition, and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such entity acquired an interest in the Property.

**9.2 Mutuality, Reciprocity, Runs with the Land.** All restrictions, conditions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of

each and every part and parcel of the Property; shall create mutual, equitable rights and obligations between the respective Owners of all Building Sites; and shall, as to the Owner of each Building Site, its heirs, successors and assigns, operate as covenants running with the land, for the benefit of the rest of the Property.

- 9.3 **Inurement.** This instrument shall bind and inure to the benefit of the Developer and all Owners and their respective successors, assigns, heirs or legal representatives.
- 9.4 **Compliance with Laws and Regulations.** All other provisions of this Declaration notwithstanding, all Owners of Building Sites shall comply with all laws, ordinances, and regulations pertaining to the ownership and use thereof, including, without limitation, all environmental, land use and zoning, building codes, storm water and drainage, and planning laws, ordinances and regulations.
- 9.5 **Indemnification and Hold Harmless.** All Owners and the Developer are each exclusively responsible for the portions of the Property which they own and their activities, developments, and operations thereon. The Owners shall indemnify and hold harmless the Developer, including, without limitation, for the costs and expenses of defending, including attorney's fees, where applicable, against all liability and claims of any nature, for activities, development and operations occurring on such Owner's property or by such Owner, except that occurring as a direct result of the Developer's willful acts or negligence. Provided further, the prevailing party or parties (whether one or more Owners and the Developer) in any proceeding shall be entitled to recover from the losing party (whether one or more Owners or the Developer) against whom a final unappealable order is issued such prevailing party's or parties' actual out of pocket costs and expenses including, but not limited to, its attorney's fees and expenses incurred in connection with or related to such proceeding in such amounts as may be fixed by the court in such proceedings.
- 9.6 **Paragraph Headings.** Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.
- 9.7 **Effect of Invalidation.** If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.
- 9.8 **Notice.** If at any time after the execution of this declaration it shall become necessary or convenient for the Developer or an Owner to serve any notice, demand or communication, such notice shall be in writing signed by the party serving the same and shall be deemed to have been delivered (a) when delivered to the intended party or by facsimile with facsimile acknowledgment of receipt personally, (b) at 5:00 P.M. on the business day after the date delivered to any nationally recognized private mail or courier service (Federal Express, UPS, Airborne or such similar service), postage paid and sent for next day delivery (c) at 5:00 P.M. on the third business day after the date deposited in

the registered or certified United States mail, return receipt requested, postage prepaid and addressed as follows:

The Developer: Lexington County  
Attention: County Administrator  
Lexington County, 212 South Lake Drive  
Lexington, South Carolina 29270  
Facsimile: 803.359.8101

An Owner:

At the address of the Owner's Building Site, and if to any other entity, at the address of the Building Site which is the subject of such notice or communication.

9.9 **Time Computation.** In computing any period of time prescribed or allowed in this Declaration, the day of the delivery notices, the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Agreement, "legal holiday" includes New Years Day, Martin Luther King Jr.'s Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States, or by the State of South Carolina.

IN WITNESS WHEREOF, the Developer has executed this Declaration to be effective December 7, 2010.

WITNESS the hand and seal of the County of Lexington, South Carolina, by Katherine Hubbard, Lexington County Administrator, this 7 day of December, 2010.

WITNESSES:

Carol R. Murphy  
Jeff M. Allen

County of Lexington, South Carolina

BY:

Katherine Hubbard  
Katherine Hubbard  
Lexington County Administrator

Debra M. Carter

Lexington County Register of Deeds



**EXHIBIT O**

**CIVIL DRAWINGS – SITE DEVELOPMENT AND SANITARY SEWER  
LIFT STATION  
CONSTRUCTION DOCUMENTS BY  
COX AND DINKINS, INC. DATED \_\_\_\_\_**