

**RICHLAND COUNTY**  
**ADMINISTRATION & FINANCE**  
**COMMITTEE AGENDA**



**Tuesday, APRIL 24, 2018**

**6:00 PM**

**The Honorable Paul Livingston, Chair**

**County Council District 4**

**The Honorable Bill Malinowski**

**County Council District 1**

**The Honorable Yvonne McBride**

**County Council District 3**

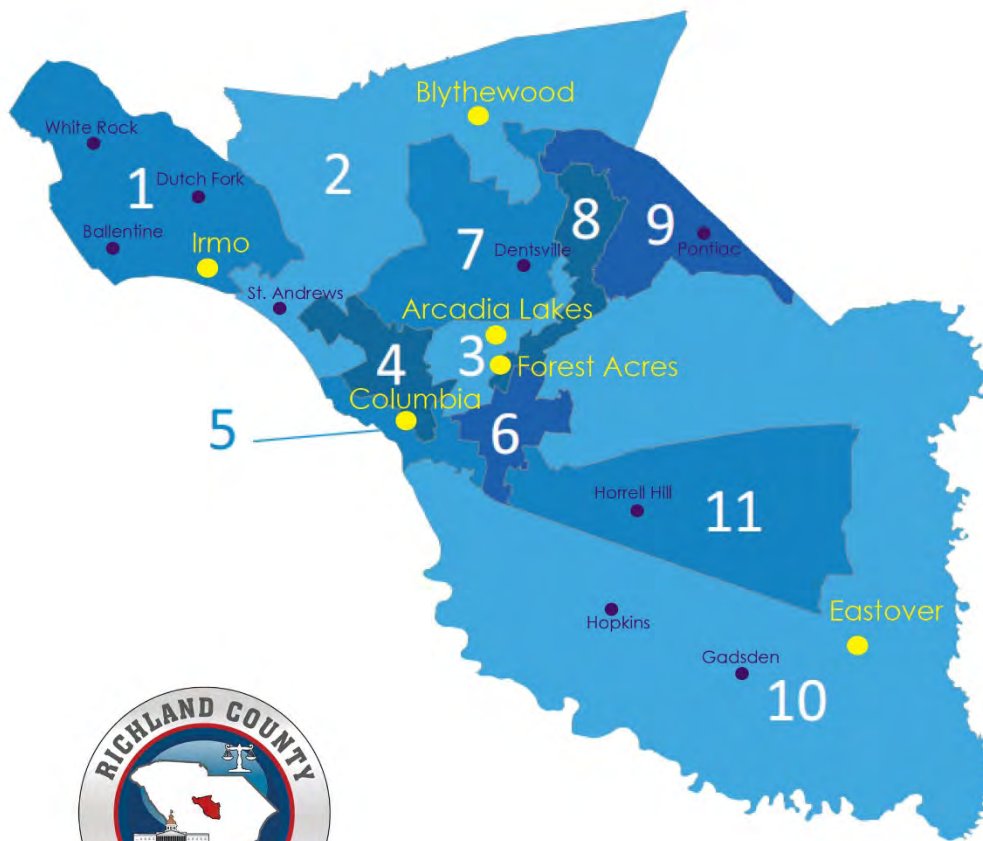
**The Honorable Dalhi Myers**

**County Council District 10**

**The Honorable Norman Jackson**

**County Council District 11**

# RICHLAND COUNTY COUNCIL 2017-2018



**VICE CHAIR**  
Bill Malinowski  
District 1



**CHAIR**  
Joyce Dickerson  
District 2



Yvonne McBride  
District 3



Paul Livingston  
District 4



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District 6



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District 7



Jim Manning  
District 8



Calvin "Chip" Jackson  
District 9



Dalhi Myers  
District 10



Norman Jackson  
District 11



Richland County Administration & Finance Committee

April 24, 2018 - 6:00 PM

2020 Hampton Street, Columbia, SC 29201

1. **CALL TO ORDER** The Honorable Paul Livingston
  
2. **APPROVAL OF MINUTES** The Honorable Paul Livingston
  - a. March 27, 2018 [PAGES 8-20]
  
3. **APPROVAL OF AGENDA** The Honorable Paul Livingston
  
4. **ITEMS FOR ACTION**
  - a. Richland Renaissance GO BAN [PAGES 21-56]
  
  - b. Council Motion: Richland County funds thirteen mills eight mills more than the five mills required by statute. I move that County Council develop a separate Recreation Commission to manage the eight additional mills if the Recreation Commission does not agree to the MOU or if Council still feels that there is taxation without representation. Note: This is a partial solution to the constant challenge for taxation and representation [N. Jackson] [PAGES 57-77]
  
  - c. Lease Proposal for Upper Township Magistrate [PAGES 78-80]
  
  - d. Payment for invoices submitted by Chao & Associates related to their work on Pinewood Lake Park Phase 2 [PAGES 81-106]
  
  - e. Approval to negotiate and enter into a Design/Build Contract for Two Magistrate offices [PAGES 107-171]
  
  - f. Do not approve any additional projects from the

remainder of the \$50 million Recreation Bond until an explanation is given from the Recreation Commission, why \$1,600,000 was paid for 40 acres of land worth \$255,000 NOTE: The intent was to purchase 40 acres and build a road at the cost of \$1,600,000. The documents might state to purchase and only but if an appraisal was done it would have shown that the land was worth \$255,000 [N. JACKSON] [PAGES 172-175]

- g. Move that the agreement with Platinum Plus to operate to perpetuity be reconsidered and that they never reopen at that location. NOTE: It's next to a graveyard and a church which violates County Ordinance. It was never grandfathered making it noncompliance [N. JACKSON] [PAGE 176]
- h. Consider two big items to the Renaissance Plan, one in the Southeast and the other in the Northeast. A basketball complex in the Southeast and a baseball complex in the Northeast. (Revenue producing) NOTE: Some of the most popular basketball tournaments in Richland County the Chick-fil-a Classic turn away visitors. Richland School Districts 1 & 2 pays a tremendous amount of money annually for rental of the Coliseum for graduation services. The use of the basketball complex could be used for graduation services, bringing in much needed revenue to the County. It is difficult for Richland County to host sports tournaments because visitors have to drive and navigate to get to different parks not adequately equipped [N. JACKSON] [PAGE 177]
- i. Council Motion: In 2007, Richland County Council approved Ordinance # 029-07HR, filed with the Clerk of Court on April 12, 2007, Book 010, Page 386. This motion is to direct the Finance Department to provide an accounting for these funds since July 1, 2007 as described so users know how the system currently stands financially [MALINOWSKI] [PAGES 178-180]
- j. Memorandum of Agreement with Hughes Lake Owners' Association for Storm Drainage Pipe Replacement [PAGES 181-192]
- k. Little Jackson Creek (LJC) Mitigation Project close out [PAGES 193-198]

**5. ITEMS PENDING ANALYSIS: NO ACTION REQUIRED**

- a. Council Motion: The Administrator and staff must follow HR policy in nondiscriminatory practices with employees, customers, contractors, businesses and

citizens. Note: Firing an employee because they do not fit is unacceptable. Employees must be allowed an opportunity to improve or correct themselves through warning, reprimand, necessary training and other means, not to be fired or forced to resign. Contracts shall have similar languages in order not to show preference or discrimination. Administration and senior staff knowingly allow these practices should be dealt with according to HR policies without exception. Richland County practices a nondiscriminatory policy [N. JACKSON] [PAGE 199]

- b.** Council Motion: Move to explore options with a Richland County landlord ordinance to assist with issues between communities and landlords [ROSE and MYERS] [PAGE 200]

**6. ADJOURN**



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## Richland County Council

### ADMINISTRATION AND FINANCE COMMITTEE

March 27, 2018 – 6:00 PM

Council Chambers

2020 Hampton Street, Columbia, SC 29204

COMMITTEE MEMBERS PRESENT: Paul Livingston, Chair; Bill Malinowski, Dalhi Myers, Yvonne McBride, and Norman Jackson

OTHERS PRESENT: Brandon Madden, Michelle Onley, Tracy Hegler, Ismail Ozbek, Brad Farrar, Jennifer Wladischkin, Larry Smith, Trenia Bowers, Tim Nielsen, Quinton Epps, Jamelle Ellis, and Kimberly Williams-Roberts

1. **CALL TO ORDER** – Mr. Livingston called the meeting to order at approximately 6:00 PM.

2. **APPROVAL OF MINUTES**

a. February 27, 2018 – Mr. N. Jackson moved, seconded by Ms. Myers, to approve the minutes as distributed.

In Favor: Malinowski, Myers, N. Jackson, and Livingston

The vote in favor was unanimous.

3. **ADOPTION OF AGENDA** – Mr. N. Jackson moved, seconded by Ms. McBride, to move Item # 4(i): “To clarify the motion passed to move forward with the Renaissance Plan. Motion was to “move forward with the plan, to include the necessary purchase by the Administrator, as discussed in Executive Session.” NOTE: The motion did not give the Administrator permission to purchase additional property or make decisions without input and approval of full Council. In executive session the discussion included Vision, Draft and Public Input. It is paramount that this process is not ignored [N. Jackson]” to the first item for action on the agenda.

In Favor: Malinowski, N. Jackson, Livingston and McBride

The vote in favor was unanimous.

Mr. N. Jackson moved, seconded by Mr. Malinowski, to adopt the agenda as amended.

In Favor: Malinowski, Myers, N. Jackson, Livingston and McBride

The vote in favor was unanimous.

4. **ITEMS FOR ACTION**

a. To clarify the motion passed to move forward with the Renaissance Plan. Motion was to “move forward with the plan, to include the necessary purchase by the Administrator, as discussed in



Executive Session.” NOTE: The motion did not give the Administrator permission to purchase additional property or to make decisions without input and approval of full Council. In Executive Session the discussion included Vision, Draft and Public Input. It is paramount that this process in not ignored [N. JACKSON] – Mr. N. Jackson stated in recent discussions pertaining to the Renaissance Plan there is some confusion or misunderstanding of the motion that was passed. The Administrator to move forward with all purchase of properties, renovations and modifications to the Renaissance Plan. His motion was to specifically move forward with the plan to include the necessary purchase by the Administrator, as discussed in Executive Session. That was the properties that were discussed. No additional properties. He thinks anything moving forward with the plan would have been brought before Council and we would make a decision on what to purchase, what changes to do, and move forward. There is some misunderstanding and he wanted to clarify his motion, so Administration could understand and Council members could give their opinion so we can move forward smoothly without any misunderstanding.

Mr. N. Jackson moved, seconded by Mr. Malinowski, to have a clarification of the motion that was passed that all new purchases or anything added to the Renaissance Plan must come before Council before moving forward.

Mr. Malinowski directed the committee’s attention to p. 101 of the agenda, about halfway down, after the 2<sup>nd</sup> substitute motion failed, and Mr. Rose requested Mr. N. Jackson to restate the substitute motion. It says, “Mr. N. Jackson stated the motion is move forward with the plan, to include the necessary purchase by the Administrator, as discussed in Executive Session.” He thinks the intent of Mr. N. Jackson’s motion was the word necessary purchase rather than any and all purchases. If that is the case, then he thinks that’s where Mr. N. Jackson’s motion is for clarification.

Mr. Livingston stated he is okay with the motion to move forward to get clarification, but the other language is assuming what it really meant. We just need to make sure we get it clarified because what it is saying here is the motion did not say and so forth. He is not sure what it did or did not say, but he is willing to move it forward, to at least get some clarification on it.

Mr. N. Jackson stated there is a misunderstanding with the Administrator and what the motion was. We had a lengthy discussion about it, so he just wants it clarified.

Mr. Malinowski made a substitute motion, seconded by Mr. N. Jackson, to move this forward to the Council in order to obtain clarification.

Ms. Myers inquired if it is necessary to have a motion on this rather than instructing the Administrator to refer to the motion. There is a motion in the notes. It is pretty clear. If the point is instructions were not clear, she does not understand why this would need to be forwarded to an agenda.

Mr. Livingston stated the reason he thinks it needs to be forwarded is so we make sure full Council agrees. Full Council might say I was clear on it I don’t need from the Administrator.

Ms. Myers stated, what she was saying was, if Mr. N. Jackson is referring us to p. 101, is that correct?

Mr. N. Jackson stated Mr. Malinowski on that.

Ms. Myers stated she is asking if Mr. N. Jackson is referring to his motion, as stated on p. 101.

Mr. N. Jackson responded in the affirmative.

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Ms. Myers inquired if Mr. N. Jackson's motion is correctly stated there.

Mr. N. Jackson responded in the affirmative. The Administrator, as discussed at the Retreat, had a different understanding and that is why he wants to make it clear.

Ms. McBride stated she is still not sure about the clarity of the motion and what needs to be done.

Mr. N. Jackson stated we cannot discuss in detail what was in Executive Session. It is hard to say what was discussed in Executive Session, unless we go back in Executive Session. What was brought before us was the purchase of certain properties, in certain areas. There was some identification of some properties and places to be included in the Renaissance Plan; however, it was considered to be a vision or a draft. It was not final. That is what was discussed in Executive Session. At the Retreat, the Administrator said everything was final and that was not correct. That is why he made the motion to clarify, so we could have discussion to, at least, let the Administrator know exactly what Council's desires or intentions are, so we move smoothly without things happening and no one knows what really happened.

Ms. McBride inquired if we have this in writing because when we do the discussion we always leave out something. Could we put this in writing once we discuss this with the Administrator?

Mr. Livingston stated that is a great idea. Particularly when we are talking about addressing it before full Council.

Ms. McBride stated sometimes we do the discussion and then we still...we almost need to have it written up to provide to the Clerk.

Mr. N. Jackson stated he can forward his intent of the motion, so it will be in writing.

In Favor: Malinowski, N. Jackson, Livingston, and McBride

The vote in favor was unanimous.

- b. Memorandum of Agreement with Hughes Lake Owners' Association for Storm Drainage Pipe Replacement – Ms. Myers moved, seconded by Ms. McBride, to forward to Council to approve the negotiation of a MOU.

Mr. Malinowski stated staff's recommendation is to authorize staff to negotiate and execute a MOU. He would like to see the document brought back to Council prior to execution.

Ms. Myers accepted the friendly amendment to bring the document back prior to execution.

In Favor: Malinowski, Myers, N. Jackson, Livingston and McBride

The vote in favor was unanimous.

- c. Award of Contract for Hunters Run, Phase I Roadway Repairs project – Ms. Myers moved, seconded by Mr. N. Jackson, to forward to Council with a recommendation to approve the request to award the contract to Armstrong Construction for construction services described in detail in the project plans and specifications advertised.

Mr. Malinowski stated this item was considered at the February 27<sup>th</sup> meeting. During the meeting deliberations the committee voted to keep this item in committee and determine if there is a reason

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why it came before Council. If it should not have, then place Hunters Runs' roads on the list with the other roads and prioritize accordingly. As you go down through the findings it says, "the committee requested staff to develop a prioritized list of private and public roads that need repair." It also says, "Staff has developed an assessment of subdivision roads and is in the process of completing it." His question, therefore is, why are we moving forward with approval of a road when we do not know where it will stand on this prioritization list?

Ms. Myers stated the reason she recommended approval was because during the last Council meeting when she raised this issue, as prioritization of another road that was in the same status, we decided then to move forward because it was before us. And to allow it to be repaired while the staff was left to develop a prioritization list. When she read the briefing documents, her analysis was this one is in the same posture. If that one gets treatment. Then this should get treatment too. Therefore, she moved to approve it out of fairness. The County taxpayers, in all districts, ought to have the same treatment. Since we moved one forward, it was her desire to move this one forward, as well.

Mr. Malinowski stated with that thought process we could have a rush to get several others put in here before we finally get the prioritized list. It will be before us, so we keep approving them to the exclusion of the others that may be in more need of being approved.

Ms. Myers stated, for clarification, this one preceded the one we approved and that is why she thought it was unfair.

Mr. Malinowski stated on p. 16, it says, "...the Department of Public Works (DPW) engineering staff engaged the services of an engineering design firm to perform surveying, geotechnical engineering, and civil engineering design." He inquired as to who approved this since this road was not approved to be done. Also, go on and answer the next paragraph where it says, "An Invitation for Bid (IFB) was issued..." Again, who gave the authority for all of this issuing of things to be done when you did not know if Council was going to approve any of these actions?

Mr. Ozbek stated the companion document Administration prepared goes back to November 17, 2015. During that time, it states that the Council approved accepting the roads and drainage into its system. Administration issued a letter, which they copied Council on, stating the roads and drainage system would be repaired. Based on that, Public Works engaged engineering firm to do the preliminary design and come up with a cost estimate.

Mr. Malinowski stated so it is Administration's fault. He inquired where the funds are coming from.

Mr. Madden stated the funds are coming from Public Works Department's current budget.

Mr. N. Jackson stated he keeps hearing his colleague mention a prioritization list. He knows we have a ranking list, which is based on dirt roads. Usually when a subdivision is built and the County accepts the roads into its inventory, some of the roads are not done properly and there are requests from these communities to have the roads repaired or constructed properly. He does not think we have a list for that.

Mr. Ozbek stated we are in the process. Planning and Public Works is working together to review all of them.

Mr. N. Jackson stated there is some confusion with some of his colleagues. The only list we have is a ranking list with the dirt roads.

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Mr. Ozbek stated the County does not currently have a ranking.

Mr. N. Jackson stated whatever comes before us now, until we have the list developed, or the policy or procedure for that list, the only we can go by... We cannot put everything on hold until we come up with that. He is not sure when that will happen. Anything that is discussed in Council, we should act on it. He would not like to keep the citizens waiting until we decide to develop a list.

Mr. Ozbek stated he and Tracy are working with staff. They are expecting to provide the list somewhere in early Summer because the cost estimates are going to take some time.

Mr. N. Jackson stated he would not like to keep these people waiting until September before we come up with a list and then decide to go by the list. Until then, we have to deal with whatever we have. Whatever comes before us, we discuss it and move forward.

Ms. Myers stated she was not collapsing this with the dirt road list. She thinks she specifically requested that we have a list, so that people would not keep coming and jumping out of turn. To have some sense with the public that there was a fair process and we were adequately accounting for the roads. Also, budgeting so that we would not fix 10 and then run out of money. When one is in a horrible state and one just needed a patch, but because they were the "screaming child" they got it first.

Ms. McBride stated she did not want to be punitive in not funding this, if it is needed, but also want to think in terms of those others that have contacted you and are on a list and have not received the work that is needed. She would hope we would have an opportunity before we receive the list, to review it, and look at the areas that are being repaired. She knows personally that she has submitted several. In order, to be fair she wants District 3 to get the resources they need also. She is skeptical about approving this and saying anything after this we will put on a priority list because District 3 may get left. And other people may get left out. She urges caution as we decide and prioritize the list staff is planning to do.

Mr. Livingston inquired as to when the list may be completed.

Mr. Ozbek stated sometime between May – July, depending on when they can perform all the cost estimates. It is quite an extensive list. These are incomplete, defaulted, and subdivision roads. Several of those roads already have active developers working on them. Planning Development Department are in the process of identifying those developers. There are a lot of activities going on to make the list. We do not want to take all of those privately, unfinished roads while there is an active and capable developer developing properties in the areas. The idea is to eliminate those and narrow down the list.

Mr. Malinowski inquired if Mr. Ozbek is aware if there are any other roads that he referred to on this extensive list that may pre-date this one.

Mr. Ozbek stated he could not answer that question.

Mr. Malinowski stated he would like that answer by the time this item gets to Council. If there are roads that pre-date this one, then those are the ones we should be looking at regardless of when this one came in.

Ms. McBride stated there is no process in place that actually tells how they are coming in.

Mr. Ozbek stated that is correct.

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Mr. Malinowski stated we have discussed these roads before. Certainly in reviewing minutes you can say well XYZ Development came in in August 2016 because the bond had expired and the roads were not done. He knows Hilton Village in the Northwest asked 5 years ago for roads to be done. He does not know if they have been done. He does not know what Ms. McBride has in her area. He thinks we need to find this out before we spend \$250,000 on one.

Ms. McBride stated she was just questioning the source of how they are coming through.

In Favor: Myers, N. Jackson, Livingston and McBride

Opposed: Malinowski

The vote was in favor.

- d. Restructuring Ordinance: Phase II – Ms. Myers stated this was on the Council agenda and she does not understand how it got back to us or why. She may need an understanding of that before she makes a motion.

Mr. Madden stated this item was held in committee from the February 27<sup>th</sup> Committee meeting. There was a request for a report from Councilman N. Jackson.

Mr. N. Jackson stated it did not say which ordinance or anything. It just said “Restructuring Ordinance: Phase II”.

Mr. Madden stated, if you recall, in Summer 2017, staff presented a Countywide restructuring ordinance that was approved by Council. During the approval process, the intent from staff was to bring back a 2<sup>nd</sup> part of that. There were 2 components/phases. Phase I was an overall restructuring. Phase II was to allow the departments an opportunity to go back and flesh out the details of that. Phase II, which is before you now, is the detail.

Mr. N. Jackson stated the reason he asked is because he made a motion to take it back to the original structure, so he was not sure if that was what was here. He inquired if this was different from the motion he made.

Mr. Madden responded in the affirmative.

Ms. Myers moved, seconded by Ms. McBride, to forward to Council with a recommendation to approve the restructuring ordinance: Phase II.

Mr. Malinowski inquired if the Community and Government Services Director position is a new position being created or is it being given to someone already on board.

Mr. Madden stated this is for someone already on board.

Mr. Livingston stated his recommendation is to forward this without a recommendation because he believes this is an item that Council probably needs to have a discussion about before we move forward. Since we are talking about doing evaluations, some of these things may come up. He is not sure he is ready to approve the document.

Mr. N. Jackson moved, seconded by Mr. Livingston, to forward this to Council without a recommendation.

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In Favor: Malinowski, Myers, N. Jackson, Livingston, and McBride

The vote in favor was unanimous.

- e. Public Defender's Office: Budget Amendment Request – Mr. Livingston stated he was not clear because he did not remember getting a recommendation. He just got a letter from someone in his packet.

Mr. Madden stated what is before the committee is a request initiated by the Public Defender's Office. Ms. Fielding Pringle is in attendance and can speak to the request.

Mr. Malinowski stated what is before us is a letter. His recollection is we have a Council rule that items that are placed on committee or Council agendas must go through a Council member. We do not just start getting letters from elected officials or citizens to say I would like to have this discussed. Secondly, we have a rule that says all items placed on a committee agenda must be received by the Clerk two weeks prior to the committee with all backup material in place. This letter is dated March 21<sup>st</sup>. There is no way this was to the Clerk two weeks prior. He believes it is not properly before us and should be placed on the next agenda.

Ms. Myers stated, for clarification, the letter says they are not asking for anything. She thinks it was just a mistake for it be on the agenda. The first paragraph says, "It is my understanding that this issue is already on your March 27, 2018 meeting agenda and I do not need to submit a formal Request of Action at this time." She thinks this was a letter of notification and there is no action being requested.

Mr. Malinowski moved, seconded by Ms. Myers, to accept this as information until we get this officially placed on the agenda.

Mr. N. Jackson stated this is for additional security at the Public Defender's Office. He inquired if it is on the agenda somewhere else.

Mr. Madden stated the item is a request from the Public Defender's Office for a budget amendment. The proposal from the Public Defender's Office is the letter. He thinks the first sentence in the letter may cause some confusion, so he will defer to Ms. Pringle to answer any questions the committee may have about the letter.

Ms. Myers stated she does not think the committee has enough information to properly consider this item. Even if there were a budget amendment, the committee has no documents. They have nothing from staff to guide any deliberations and they would be discussing it for no reason.

Ms. Dickerson inquired about how it got on the agenda.

Mr. Madden stated the request came to him and he forwarded the entire agenda packet for distribution.

Ms. McBride stated she believes staff made a mistake in including it. If someone is here from the Public Defender's Office, would be appropriate to allow them explain it.

Mr. Livingston stated he has read the letter. He doesn't know if there is any explanation, other than the letter.

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Ms. McBride stated she has been here before where they allowed people that were not on the program that had spoken to speak again.

Mr. Livingston requested Ms. McBride to tell him what she would like Ms. Pringle to speak to.

Ms. McBride stated she wanted to allow Ms. Pringle to speak to the request she had.

Mr. Malinowski stated, for clarification, we have nothing but the letter. We have no staff recommendations, background or input. We will likely get a regurgitation or synopsis of what it already here. He does not see the point in having someone talk.

Ms. McBride stated she is sure Ms. Pringle has some extra information she would like to provide, but it is left up to the Chair.

Mr. Livingston stated, in this particular case, this is not properly before us. It is not an action. No matter what she says, we are not going to take any action on this item and move forward with it.

In Favor: Malinowski, Myers, N. Jackson and Livingston

The vote in favor was unanimous.

Ms. Myers stated it would help to have the normal supporting documents staff generally provide with a budget amendment request.

- f. Council Motion: Richland County funds thirteen mills eight mills more than the five mills required by statute. does not agree to the MOU or if Council still feels that there is taxation without representation. NOTE: This is a partial solution to the constant challenge for taxation and representation – Mr. N. Jackson stated several months ago Council sent a MOU with a list of concerns to the Recreation Commission for consideration. Eventually, they responded but they do not accept anything Council sent them. There is no follow-up on what actions we would take, based on that. What he is seeing throughout his area is that people have been told programs are cut because the budget was cut. He does not remember the County cutting any budget. We sent a MOU to the Recreation Commission and they ignored it or decided not to accept anything on the MOU. He brought this back to see what actions or what Council should do in reaction to the Recreation Commission not answering us or telling us no.

Ms. Myers inquired if Mr. Smith heard anything further from the Commission after the joint meeting.

Mr. Smith stated he had not. He thinks several Council members attended a meeting with the Recreation Commission where some of these issues were discussed. However, we have not heard anything formally from their attorney regarding their willingness to execute the MOU, which we forwarded to them months ago.

Ms. Myers stated at the last joint meeting the Recreation Commission was asked to answer some questions. She thanked Ms. Tara Dickerson for providing those answers. The Commission was to follow-up with either modifications or an acceptance of the MOU. She inquired if the Commission had discussed the MOU since the joint meeting.

Ms. T. Dickerson stated that is a Board decision and to her knowledge the Board has not discussed that since the joint meeting.

Ms. Myers stated she would have thought that if they had discussed MOU they would have made a recommendation and give some instruction. As far as Ms. T. Dickerson knows, no action has been taken on that.

Mr. Malinowski stated there is a letter that was sent from Ms. T. Dickerson on February 6<sup>th</sup>. It said it was regarding a follow-up from the January 22, 2018 Special Called Meeting. He stated the letter indicated the Garners Ferry Sports Complex – Phase I, that 40 acres was purchased for \$1.6 million. Yet, he has been given other information that says the property was either listed at or valued at approximately \$245,000. He inquired why 7 – 8 times as much was paid for the property.

Ms. T. Dickerson stated she has the appraisal from 2008 on the property. The individuals who were responsible for the purchase of the property are no longer with the agency. However, she was able to locate the appraisal. The appraisal was done by Marshall Dodds Co., Inc. The only information she can find that the property was valued at \$1,620,000. They paid \$1.6 million.

Mr. Livingston clarified the motion before the committee as follows: “I move that the County develop a separate Recreation Commission to manage the 8 additional mills if the Recreation Commission does not agree to the MOU.”

Mr. Malinowski apologized for skipping ahead.

Mr. Livingston stated legally he does not know whether we can do. We may have to take it up with the attorney. And at what point are we talking about doing that. The current budget. The next budget. It is not very clear to him.

Mr. N. Jackson stated his motion is just as it is. We sent the MOU to the Recreation Commission to consider, and we had a meeting with them also. This is Richland County Council who finances the entire Recreation Commission. If we sent a MOU to the Commission and they decide not to even entertain it. We had a meeting for them to move forward with it and they have not done anything. We sent the MOU for a specific purpose, for them to discuss it. To satisfy some of the concerns Council had because we are funding it. For them not to acknowledge or not to anything, he does not think is appropriate. They should respond, in some form or fashion, because you have people talking about taxation without representation right now. We have a Recreation Commission who is not responding to the MOU we sent to them. In that case, either we take some action or we continue to let it continue as it is. Where they do what they want. We just give them money and we have no say. Or, if we are only responsible for 5 of the 13 mills, let them handle their 5 mills and our 8 mills we have some clear definition how they spent our 8 mills. If they fail to respond to us. It is almost disrespectful for them. We got together. We had a discussion, drafted the MOU and sent it to them. We went and met with them. They are supposed to discuss it. Until till today, they have not done anything.

Ms. McBride stated she did not know why Ms. T. Dickerson was still having to stand because this is a County decision and the motion we are dealing with now. She inquired if we have the right to not provide them the full funding.

Mr. Smith stated the statute says up to 5 mills. The Council has the right to give them less than that, within Council’s discretion. To Mr. Livingston’s point, he wants to make sure Council knows there was a lawsuit filed maybe a year ago to clarify the issue of taxation without representation, which was left hanging from the Weaver decision years ago. It is his understanding that was done in the form of declaratory judgment action and was argued before the courts, but we have not gotten an Order from the judge yet regarding the position that we were taking that it is unconstitutional to allow someone else, other than those elected, to make these taxation decisions.

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Ms. McBride inquired if we would have to make this decision during budget time.

Mr. Livingston stated it depends on the maker of the motion.

Ms. McBride stated, for clarification, could you do it at any time or would it have to be done during budget time.

Mr. Livingston stated it is Mr. N. Jackson's motion and he does not want to speak to that.

Mr. Malinowski moved, seconded by Ms. Myers, that every effort be made by the Recreation Commission to provide this Council some response, in an effort to come to an agreement on the MOU that was initially sent to the Recreation Commission, by the April committee meeting. If no response is received at that point, this committee makes a decision what to do with the additional 8 mills Councilman N. Jackson is referring to and a recommendation for the full Council.

Mr. N. Jackson stated what he is seeing now is the Recreation Commission is charging more for programs and charging for some programs. There is a lot of charging that is going on that has never been done before. They are telling the community the budget was cut. He stated why he made the motion is because they are telling the community has been cut and the budget has not been cut yet. They are preparing that they will not listen to Council and decide to raise the money some other way. It seems like they are doing a good job.

Mr. N. Jackson made a substitute motion, seconded by Ms. McBride, to cut the budget.

Ms. Myers inquired if Mr. N. Jackson is suggesting a budget amendment to cut the 8 mills from this budget cycle.

Mr. N. Jackson stated, if they do not respond to Council immediately, the suggested is to do a budget amendment to cut the 8 mills from this budget cycle.

Ms. Myers inquired as to what Mr. N. Jackson means by immediately.

Mr. N. Jackson inquired as to when the Recreation Commission's next meeting is.

Ms. Dickerson stated she heard what her colleagues said about some people saying that the projects are being cut because we are cutting the money. The money is not there. She inquired if anyone can tell her who said what. She thinks this is when we get all tied up when no one identifies these people that make these comments. Did the Commission go out and tell the people they were going to cut projects and charge more for projects. Or is this just something that came up in the community.

Mr. Livingston said that was not germane to the motion.

Mr. N. Jackson stated, if it is not germane, Ms. Dickerson should not have been allowed to speak to it because he and Ms. Dickerson have concerns.

Mr. Livingston stated the motion is do you want to cut the mill or not.

Mr. N. Jackson stated he thinks this is part of the discussion. Why we should or should not. It is pertaining to that.

Mr. Livingston is going to allow Mr. N. Jackson to respond to Ms. Dickerson's question, but he is going to rule if it is not a part of the question.

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Mr. N. Jackson stated we all have constituents. We all have different teams and leagues in our districts. When they apply to get permission play sports or whatever at the Recreation Commission, they are told by the staff that there is no funding, they have to start paying or the fees have increased. The Recreation Commission does not provide us with a list of what fees have changed.

Mr. Malinowski stated, for clarification, that Mr. N. Jackson's motion is to immediately cut the 8 mills from them unless we get an immediate response to the MOU. He believes it was asked what is immediate and we still have not been provided that to add to the motion.

Mr. N. Jackson stated the Recreation Commission's meeting is on the 16<sup>th</sup> and Council meets on the 17<sup>th</sup>.

Ms. McBride inquired if Mr. N. Jackson meant to immediately cut the budget.

Mr. N. Jackson stated he meant to cut the budget if they did not respond.

Ms. McBride stated so the budget would be immediately cut, which is not what her interpretation was. She misunderstood.

Mr. Pearce stated if you accept that motion you will shut the Recreation Commission down. At this point in the fiscal year, he doubted there is 8 mills left. If you are prepared to shut the Recreation Commission down, support that motion. He thinks the more appropriate motion is the original motion to talk about using the leverage we have, with the millage we have, to get them to negotiate. We have a new budget year coming up. He just thinks this is a more reasonable approach at this point and time.

Ms. Myers stated, in harmony with what Mr. Pearce was saying, to the extent that we are where we are in the year, and those meetings are back to back, it is next to impossible to expect they would meet at 6:00 – 7:00 on Monday and get a response to us that any of us would read by 6:00 – 7:00 the following Tuesday. It might be a more logical response to say to this group that we are very concerned about this and we are looking at the 2<sup>nd</sup> half of the biennium, not the 1<sup>st</sup> half, and give a date certain by which we expect a response. We put them on notice that the 8 mills we give them... She hopes the public understands we are required to give them 5 mills. We give them 5 to 8. The additional 8 are essentially an extension of the budget from the taxpayers above what we are required to do. All we are saying is come back and tell us you will use the money.

Mr. Malinowski moved, seconded by Mr. N. Jackson, to go into recess until after the Zoning Public Hearing.

*The committee recessed the meeting at approximately 7:00 PM  
and reconvened at approximately 7:15 PM*

Mr. N. Jackson moved, seconded by Mr. Malinowski, to complete the current item and hold the remaining items until the April committee meeting.

The vote in favor was unanimous.

Mr. Livingston stated there are 2 motions on the floor. Mr. Malinowski's original motion and Mr. N. Jackson's substitute motion. The substitute motion is not funding the Recreation Commission if we do not have something by a certain date.

Mr. N. Jackson stated his motion was that if we did not hear back from the Recreation Commission immediately (i.e. April committee meeting). Council made a motion to the Recreation Commission about the 8 mills and the 5 mills. His motion was if we send them a MOU and they decided they are not going to respond to the MOU, at least, give them one more opportunity to respond to the MOU before taking any action. And that was what we had about the 8 mills and 5 mills. Holding the 8 mills and we give instructions on our 8 mills. His motion was to take the money from them, but we had a motion, like we did previously, where we would give instruction to our 8 mills. It is 13 mills. We are obligated to 5 and we give an additional 8 mills. If we have no control over anything then we should at least decide how our 8 mills are spent. That will address taxation without representation.

In Favor: N. Jackson

Opposed: Malinowski, Myers, and Livingston

The substitute motion failed.

Mr. Livingston stated that brings us back to Mr. Malinowski's motion. His motion did not stipulate not funding, but stipulated getting some information back by a certain time.

Mr. Malinowski stated the timeframe was by the next committee meeting, which gives them 30 days to respond.

Ms. Myers requested the following friendly amendment: any consideration of defunding would be for the 2<sup>nd</sup> half of the biennium.

Mr. Malinowski accepted the friendly amendment.

Mr. Livingston stated the motion is to get a response by the next committee meeting and any discussing of defunding would only speak to the 2<sup>nd</sup> half of the biennium.

In favor: Malinowski, Myers, N. Jackson, Livingston and McBride

The vote in favor was unanimous.

- g. Do not approve any additional projects from the remainder of the \$50 million Recreation Bond until an explanation is given from the Recreation Commission, why \$1,600,000 was paid for 40 acres of land worth \$255,000 NOTE: The intent was to purchase 40 acres and build a road at the cost of \$1,600,000. The documents might state to purchase and only but if an appraisal was done it would have shown that the land was worth \$255,000 [N. JACKSON] – This item was not taken up.
- h. Move that the agreement with Platinum Plus to operate to perpetuity be reconsidered and that they never reopen at that location. NOTE: It's next to a graveyard and a church which violates County Ordinance. It was never grandfathered making it noncompliance [N. JACKSON] – This item was not taken up.
- i. Consider two big items to the Renaissance Plan, one in the Southeast and the other in the Northeast. A basketball complex in the Southeast and a baseball complex in the Northeast. (Revenue producing) NOTE: Some of the most popular basketball tournaments in Richland County the Chick-fil-a Classic turn away visitors. Richland School Districts 1 & 2 pays a tremendous amount of money annually for rental of the Coliseum for graduation services. The use of the basketball complex could be used for graduation services, bringing in much needed revenue to the County. It is difficult for Richland

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County to host sports tournaments because visitors have to drive and navigate to get to different parks not adequately equipped [N. JACKSON] – This item was not taken up.

5. **ADJOURNMENT** – The meeting adjourned at approximately 7:21 PM.

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-18HR

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT EXCEEDING \$20,000,000 GENERAL OBLIGATION BOND ANTICIPATION NOTES (RICHLAND RENAISSANCE PROJECT), SERIES 2018B, OR SUCH OTHER APPROPRIATE SERIES DESIGNATION, OF RICHLAND COUNTY, SOUTH CAROLINA; FIXING THE FORM AND DETAILS OF THE NOTES; AUTHORIZING THE COUNTY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS RELATING TO THE NOTES; PROVIDING FOR THE PAYMENT OF THE NOTES AND THE DISPOSITION OF THE PROCEEDS THEREOF; AND OTHER MATTERS RELATING THERETO.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

SECTION 1. Findings and Determinations. The County Council (the "County Council") for Richland County, South Carolina (the "County"), hereby finds and determines:

(a) Pursuant to Section 4-9-10, Code of Laws of South Carolina 1976, as amended (the "S. C. Code"), the County operates under the Council-Administrator form of government and the County Council constitutes the governing body of the County.

(b) Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended (the "Constitution"), provides that each county shall have the power to incur bonded indebtedness in such manner and upon such terms and conditions as the General Assembly shall prescribe by general law. Such debt must be incurred for a public purpose and a corporate purpose in an amount not exceeding eight percent (8%) of the assessed value of all taxable property of such county.

(c) Pursuant to Title 4, Chapter 15 of the S. C. Code (the same being and hereinafter referred to as the "County Bond Act"), the governing bodies of the several counties of the State of South Carolina (the "State") may each issue general obligation bonds to defray the cost of any authorized purpose and for any amount not exceeding their applicable constitutional limit.

(d) The County Bond Act provides that as a condition precedent to the issuance of bonds an election be held and the result be favorable thereto. Title 11, Chapter 27 of the S. C. Code provides that if an election be prescribed by the provisions of the County Bond Act, but not be required by the provisions of Article X of the Constitution, then in every such instance, no election need be held (notwithstanding the requirement therefor) and the remaining provisions of the County Bond Act shall constitute a full and complete authorization to issue bonds in accordance with such remaining provisions.

(e) The assessed value of all the taxable property in the County as of June 30, 2017, for purposes of computation of the County's constitutional debt limit, is \$1,567,413,138. Eight percent of such sum is \$125,393,051. As the date hereof, the outstanding general obligation debt of the County subject to the limitation imposed by Article X, Section 14(7) of the Constitution is \$44,890,000. Thus, the County may incur \$80,503,051 of additional general obligation debt within its applicable debt limitation.

(f) Pursuant to a Resolution adopted by the County Council on November 13, 2017, the County as adopted Written Procedures Related to Tax-Exempt Debt.

(g) Pursuant to the provisions of Title 11, Chapter 17 of the S. C. Code (“Title 11, Chapter 17”), any county, whenever authorized by general or special law to issue bonds, may, pending the sale and issuance thereof, borrow in anticipation of the receipt of the proceeds of the bonds. Such provisions also provide that if any approval be necessary prior to the issuance of general obligation bonds by the county, the county must obtain the same approval prior to the issuance of temporary financing provided therein.

(h) County Council has authorized the implementation of a multifaceted, County-wide plan that includes the acquisition of property and relocation of County departments; establishment of strategically placed facilities in various areas of the County; creation of the Start Center for new business development; and the implementation of a major revitalization project (“Richland Renaissance”). Elements comprising Richland Renaissance include (i) consolidating and relocating the County's core operations to Columbia Place Mall; (ii) redeveloping the current County Administration building into a new Judicial Center; (iii) constructing a multipurpose facility in the Lower Richland community; (iv) developing a business and tourism “start center” in the Broad River Road area; (v) “Revivify Richland,” a revitalization strategy to improve the County's appearance and livability; and (vi) creating a historic trail to spotlight cultural and historically significant landmarks.

(i) The financing plan for Richland Renaissance includes the issuance of one or more annual bond anticipation notes during the implementation and construction of Richland Renaissance at which time installment purchase revenue bonds (the “IPRBS”) will be issued to retire the outstanding Notes (hereinafter defined) and fund any additional costs of Richland Renaissance. While the financing plan currently provides for the issuance of IPRBS, the County has the legal authority to issue general obligation bonds in an amount not exceeding its constitutional debt limit for purposes associated with Richland Renaissance.

(j) Pending the issuance of the IRPBS, it is in the best interest of the County for the County Council to provide for the issuance and sale of general obligation bonds with an appropriate series designation (the “Bonds”) in an amount sufficient to retire the Notes and to pay costs of issuance of the Bonds.

(k) It is in the best interest of the County for the County Council to provide for the issuance and sale of not to exceed \$20,000,000 General Obligation Bond Anticipation Notes, Series 2018B or such other appropriate series designation (the “Notes”) for the purposes of: (i) funding a portion of Richland Renaissance (the “Projects”); (ii) paying costs of the issuance of the Notes; and (iii) such other lawful corporate and public purposes as the County Council shall determine.

**SECTION 2. Bonds.** Pursuant to this Ordinance, the County Council has irrevocably obligated and bound itself to effect the issuance of general obligation bonds (the “Bonds”), if necessary, prior to the stated maturity of the Notes. As provided in the financing plan, the County may issue IPRBS prior to the stated maturity of the Notes, thereby eliminating the necessity of issuing the Bonds.

**SECTION 3. Authorization and Details of Notes.** Pursuant to the aforesaid provisions of the Constitution and laws of the State, there is hereby authorized to be issued not exceeding \$20,000,000 aggregate principal amount of general obligation bond anticipation notes of the County, with appropriate series designations, to be designated “(amount issued) General Obligation Bond Anticipation Notes (Richland Renaissance Project), (appropriate series designation) of Richland County, South Carolina” for the purposes set forth in Section 1(k) and other costs incidental thereto, including without limiting the generality of such other costs, engineering, financial and legal fees.

The Notes shall be issued as fully registered Notes registerable as to principal and interest; shall be dated as of their date of delivery to the initial purchaser(s) thereof; shall bear interest from their dated date payable at maturity at such rate or rates as may be determined by the County Council at the time of sale thereof.

Both the principal of and interest on the Notes shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts. U.S. Bank, National Association, Minneapolis, Minnesota shall serve as Registrar/Paying Agent for the Notes.

SECTION 4. Delegation of Authority Relating to Determine Certain Matters Relating to the Notes. The County Council hereby delegates to the County Administrator or his lawfully-authorized designee the authority to: (a) determine the par amount of the Notes; (b) determine the maturity date of the Notes; (c) determine redemption provisions, if any, for the Notes; (d) determine the date and time of sale of the Notes; (e) receive bids on behalf of the County Council; and (f) to award the sale of the Notes to the lowest bidders therefor in accordance with the terms of the Notice of Sale for the Notes.

After the sale of the Notes, the County Administrator or his lawfully-authorized designee shall submit a written report to the County Council setting forth the details of the Notes as set forth in this Section.

SECTION 5. Registration, Transfer and Exchange of Notes. The County shall cause books (herein referred to as the “registry books”) to be kept at the offices of the Registrar/Paying Agent, for the registration and transfer of the Notes. Upon presentation at its office for such purpose the Registrar/Paying Agent shall register or transfer, or cause to be registered or transferred, on such registry books, the Notes under such reasonable regulations as the Registrar/Paying Agent may prescribe.

Each Note shall be transferable only upon the registry books of the County, which shall be kept for such purpose at the principal office of the Registrar/Paying Agent, by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar/Paying Agent duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any such Note the Registrar/Paying Agent on behalf of the County shall issue in the name of the transferee a new fully-registered Note or Notes, of the same aggregate principal amount, interest rate and maturity as the surrendered Note. Any Notes surrendered in exchange for a new registered Note pursuant to this Section shall be canceled by the Registrar/Paying Agent.

The County and the Registrar/Paying Agent may deem or treat the person in whose name any fully-registered Note shall be registered upon the registry books as the absolute owner of such Note, whether such Note shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such Note and for all other purposes and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid, and neither the County nor the Registrar/Paying Agent shall be affected by any notice to the contrary. For every such transfer of Notes, the County or the Registrar/Paying Agent may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer, and, except as otherwise provided herein, may charge a sum sufficient to pay the cost of preparing each Note issued upon such transfer, which sum or sums shall be paid by the person requesting such transfer or by the County as a condition precedent to the exercise of the privilege of making such transfer. Neither the County nor the Registrar/Paying Agent shall be obliged to make any such transfer of Notes during the fifteen (15) days preceding an interest payment date on such Notes.

SECTION 6. Record Date. The County hereby establishes a record date for the payment of interest or for the giving of notice of any proposed redemption of the Notes, and such record date shall be the fifteenth (15th) day of the calendar month preceding the maturity date of the Notes or in the case of any proposed redemption of Notes, such record date shall be the fifteenth (15th) day prior to the giving of notice of redemption of Notes.

SECTION 7. Mutilation, Loss, Theft or Destruction of Notes. In case any Note shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the owner, the County shall execute and the Registrar shall authenticate and deliver at the principal office of the Registrar, or send by registered mail to the owner thereof at his request, risk and expense a new Note of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Note, or in lieu of or in substitution for such lost, stolen or destroyed Note. In any such event the applicant for the issuance of a substitute Note shall furnish the County and the Registrar evidence or proof satisfactory to the County and the Registrar of the loss, destruction, mutilation, defacement or theft of the original Note, and of the ownership thereof, and also such security and indemnity in an amount as may be required by the laws of the State of South Carolina or such greater amount as may be required by the County and the Registrar. Any duplicate Note issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Note or in substitution for any allegedly lost, stolen or wholly destroyed Note shall be entitled to the identical benefits under this Ordinance as was the original Note in lieu of which such duplicate Note is issued, and shall be entitled to equal and proportionate benefits with all the other Notes of the same series issued hereunder.

All expenses necessary for the providing of any duplicate Note shall be borne by the applicant therefor.

SECTION 8. Execution of Notes. The Notes shall be executed in the name of the County with the manual or facsimile signature of the Chair of the County Council attested by the manual or facsimile signature of the Clerk of the County Council under a facsimile of the seal of the County impressed, imprinted or reproduced thereon; provided, however, the facsimile signatures appearing on the Notes may be those of the officers who are in office on the date of adoption of this Ordinance. The execution of the Notes in such fashion shall be valid and effectual, notwithstanding any subsequent change in such offices. The Notes shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. Each Note shall bear a certificate of authentication manually executed by the Registrar.

SECTION 9. Form of Notes. The Notes shall be in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 10. Security for Notes. The full faith, credit, and taxing power of the County are hereby irrevocably pledged for the payment of the principal of and interest on the Notes. Also the proceeds of the Bonds are pledged for the payment of the Notes. As provided in the financing plan, the County may issue IPRBS prior to the stated maturity of the Notes, thereby eliminating the necessity of issuing the Bonds.b

SECTION 11. Defeasance. The obligations of the County under this Ordinance and the pledges, covenants and agreements of the County herein made or provided for, shall be fully discharged and satisfied as to any portion of the Notes, and such Note or Notes shall no longer be deemed to be outstanding hereunder when:



(a) Such Note or Notes shall have been purchased by the County and surrendered to the County for cancellation or otherwise surrendered to the County or the Paying Agent and is canceled or subject to cancellation by the County or the Paying Agent; or

(b) Payment of the principal of and interest on such Notes either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with a corporate trustee in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment, or (2) Government Obligations (hereinafter defined) maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment and all necessary and proper fees, compensation and expenses of the corporate trustee. At such time as the Notes shall no longer be deemed to be outstanding hereunder, such Notes shall cease to draw interest from the due date thereof and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

“Government Obligations” shall mean any of the following:

- (i) direct obligations of the United States of America or agencies thereof or obligations, the payment of principal or interest on which, in the opinion of the Attorney General of the United States, is fully and unconditionally guaranteed by the United States of America;
- (ii) non-callable, U. S. Treasury Securities - State and Local Government Series (“SLGS”);
- (iii) general obligation bonds of the State, its institutions, agencies, school districts and political subdivisions, which, at the time of purchase, carry a AAA rating from Standard & Poor’s or a Aaa rating from Moody’s Investors Service; and;
- (iv) a defeasance obligation as defined in Section 6-5-10 of the S. C. Code as such as may be amended from time to time.

(c) Such Note or Notes shall be defeased as provided in Section 11-14-110 of the S. C. Code as such may be amended from time to time.

**SECTION 12. Exemption from State Taxes.** Both the principal of and interest on the Notes shall be exempt, in accordance with the provisions of Section 12-2-50 of the S.C. Code, from all State, county, municipal, school district and all other taxes or assessments, except estate or other transfer taxes, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise.

**SECTION 13. Eligible Securities.** The Notes initially issued (the “Initial Notes and Bonds”) will be eligible securities for the purposes of the book-entry system of transfer maintained by The Depository Trust Company, New York, New York (“DTC”), and transfers of beneficial ownership of the Initial Notes shall be made only through DTC and its participants in accordance with rules specified by DTC. Such beneficial ownership must be of \$5,000 principal amount of the Notes or the Bonds of the same maturity or any integral multiple of \$5,000.

The Initial Notes shall be issued in fully-registered form. The Notes will be issued in as one single Note in the name of Cede & Co., as the nominee of DTC. When any principal of or interest on the Initial

Notes becomes due, the Paying Agent, on behalf of the County, shall transmit to DTC an amount equal to such installment of principal and interest. DTC shall remit such payments to the beneficial owners of the Notes or their nominees in accordance with its rules and regulations.

Notices of redemption of the Initial Notes or any portion thereof shall be sent to DTC in accordance with the provisions of the Ordinance.

If (a) DTC determines not to continue to act as securities depository for the Notes or, or (b) the County has advised DTC of its determination that DTC is incapable of discharging its duties, the County shall attempt to retain another qualified securities depository to replace DTC. Upon receipt by the County the Initial Notes together with an assignment duly executed by DTC, the County shall execute and deliver to the successor securities depository Notes of the same principal amount, interest rate and maturity registered in the name of such successor.

If the County is unable to retain a qualified successor to DTC or the County has determined that it is in its best interest not to continue the book-entry system of transfer or that interests of the beneficial owners of the Notes or might be adversely affected if the book-entry system of transfer is continued (the County undertakes no obligation to make any investigation to determine the occurrence of any events that would permit it to make any such determination), and has made provision to so notify beneficial owners of the Notes by mailing an appropriate notice to DTC, upon receipt by the County of the Initial Notes together with an assignment duly executed by DTC, the County shall execute, authenticate and deliver to the DTC participants Notes or Bonds in fully-registered form, in substantially the form set forth in Section 2 of this Ordinance in the denomination of \$5,000 or any integral multiple thereof.

SECTION 14. Sale of Notes and Form of Notice of Sale. The Notes shall be sold at public sale. A Notice of Sale in substantially the form attached hereto as Exhibit B and incorporated herein by reference shall be distributed to prospective bidders and a summary of such Notice of Sale may be published in a newspaper having general circulation in the State or in a financial publication published in the City of New York, State of New York, or both, not less than seven (7) days prior to the date set for such sale.

SECTION 15. Preliminary and Final Official Statement. The County Council hereby authorizes and directs the Administrator to prepare, or cause to be prepared, a Preliminary Official Statement to be distributed to prospective purchasers of the Notes, together with the Notice of Sale. The County Council authorizes and directs the Administrator to designate the Preliminary Official Statement as “near final” for purposes of Rule 15c2-12 of the Securities Exchange Commission (the “Rule”). The Administrator is further authorized and directed to effect the completion of the final form of the Official Statement upon the sale of the Notes so that it may be provided to the purchaser of the Notes.

SECTION 16. Filings with Central Repository. In compliance with Section 11-1-85 of the S.C. Code, the County covenants that it will file or cause to be filed with a central repository for availability in the secondary bond market when requested: (a) a copy of an annual independent audit of the County within thirty (30) days of the County's receipt thereof; and (b) within thirty (30) days of the occurrence thereof, event specific information of an event which adversely affects more than five (5%) percent of the tax revenues of the County or the County's tax base.

SECTION 17. Continuing Disclosure. In compliance with the Rule, the County covenants and agrees for the benefit of the holders from time to time of the Notes to execute and deliver prior to closing, and to thereafter comply with the terms of a Disclosure Dissemination Agent Agreement in substantially the form appearing as Exhibit C to this Ordinance. In the event of a failure of the County to comply with any of the

provisions of the Disclosure Dissemination Agent Agreement, an event of default under this Ordinance shall not be deemed to have occurred. In such event, the sole remedy of any bondholder or beneficial owner shall be an action to compel performance by the Ordinance.

SECTION 18. Deposit and Use of Proceeds. The proceeds derived from the sale of the Notes (excluding any bid premium) shall be deposited with the Treasurer of the County in a special fund to the credit of the County, separate and distinct from all other funds and used for the purposes set forth herein. Any bid premium related to the Notes shall be placed in the sinking fund established pursuant to Section 4-15-150 of the S.C. Code.

SECTION 19. Notice of Public Hearing. The County Council hereby ratifies and approves the publication of a notice of public hearing regarding the Notes and this Ordinance, such notice in substantially the form attached hereto as Exhibit D, having been published in *The State*, a newspaper of general circulation in the County, not less than 15 days prior to the date of such public hearing.

SECTION 20. Reimbursement of Certain Expenditures. The County Council hereby declares that this Ordinance shall constitute its declaration of official intent pursuant to Treasury Regulation § 1.150-2 of the Internal Revenue Code of 1986, as amended (the "IRC"), to reimburse the County from the proceeds of the Notes for expenditures with respect to the Project (the "Expenditures"). The County anticipates incurring Expenditures with respect to the capital improvements prior to the issuance by the County of the Notes for such purposes. To be eligible for reimbursement of the Expenditures, the reimbursement allocation must be made not later than 18 months after the later of (a) the date on which the Expenditures were paid, or (b) the date the Project was placed in service, but in no event more than three (3) years after the original Expenditures. The Expenditures are incurred solely to acquire, construct or rehabilitate property having a reasonably expected economic life of at least one (1) year. The source of funds for the Expenditures with respect to the Projects will be the County's general reserve funds or other legally-available funds.

SECTION 21. Tax Covenants. The County hereby covenants and agrees with the Holders of the Notes that it will not take any action which will, or fail to take any action which failure will, cause interest on the Notes to become includable in the gross income of the Noteholders for federal income tax purposes pursuant to the provisions of the IRC and regulations promulgated thereunder in effect on the date of original issuance of the Notes. The County further covenants and agrees with the holders of the Notes that no use of the proceeds of the Notes shall be made which, if such use had been reasonably expected on the date of issue of the Notes would have caused the Notes to be (a) "private activity bonds," as defined in Section 141 of the IRC; (b) "arbitrage bonds," as defined in Section 148 of the IRC, or (c) bonds that do not comply with the "hedge bonds" requirements contained in Section 149(g) of the IRC. To that end, the County hereby shall:

(a) comply with the applicable provisions of Sections 103 and 141 through 150 of the IRC (including, but not limited to, satisfying one or more of the requirements of Sections 149(g)(1), 149(g)(3)(A) and 149(g)(3)(B) of the IRC) and any regulations promulgated thereunder so long as the Notes are outstanding;

(b) establish such funds, make such calculations and pay such amounts, in the manner and at the times required in order to comply with the requirements of the IRC relating to required rebates of certain amounts to the United States; and

(c) make such reports of such information at the time and places required by the IRC.

SECTION 22. Severability. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 23. Miscellaneous. The County Council hereby authorizes any one or more of the following officials to execute such documents and instruments as necessary to effect the issuance of the Notes: Chair of the County Council, County Administrator, Clerk to the County Council and County Attorney. The County Council hereby retains McNair Law Firm, P.A. and The Law Office of Ernest W. Cromartie III, LLC as Co-Bond Counsel, Parker, Poe, Adams & Bernstein LLP, as Disclosure Counsel and Southern Municipal Advisors, Inc., as Municipal Advisor, in connection with the issuance of the Notes and the Bonds. The County Attorney may select additional co-counselors to provide services in connection with the issuance of the Notes and Bonds. The County Administrator is authorized and directed to execute such contracts, documents or engagement letters as may be necessary and appropriate to effectuate these engagements.

All rules, regulations, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Notes are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its adoption.

[Signature Page Follows]

Enacted this \_\_\_\_ day of \_\_\_\_\_, 2018.

RICHLAND COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Joyce Dickerson, Chair  
Richland County Council

(SEAL)

ATTEST THIS \_\_\_\_ DAY OF

\_\_\_\_\_, 2018:

\_\_\_\_\_  
\_\_\_\_\_

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

Date of First Reading:  
Date of Second Reading:  
Date of Public Hearing:  
Date of Third Reading:

Signature Page to Ordinance No. \_\_\_\_\_

**FORM OF NOTE**

UNITED STATES OF AMERICA  
STATE OF SOUTH CAROLINA  
RICHLAND COUNTY  
GENERAL OBLIGATION BOND ANTICIPATION NOTE  
(RICHLAND RENAISSANCE PROJECT)  
SERIES \_\_\_\_\_

No. R-

<u>INTEREST</u> <u>RATE</u>	<u>MATURITY</u> <u>DATE</u>	<u>ORIGINAL</u> <u>ISSUE DATE</u>	<u>CUSIP</u>
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REGISTERED OWNER:

PRINCIPAL AMOUNT:         DOLLARS

KNOW ALL MEN BY THESE PRESENTS that Richland County, South Carolina (the “County”) hereby acknowledges itself indebted, and for value received promises to pay to the registered owner hereof, the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) at the principal office of \_\_\_\_\_, in the City of \_\_\_\_\_, State of \_\_\_\_\_ on the \_\_\_ day of \_\_\_\_\_, 2019, and to pay interest (calculated on the basis of a 360-day year of twelve 30-day months) on said principal sum from the date hereof, at the rate of \_\_\_\_\_%, payable upon the maturity of this note. This note is not subject to prepayment prior to its maturity.

Both the principal of and interest on this note are payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for the payment of public and private debts.

This note represents a series of general obligation bond anticipation notes (the “Notes”), issued by the County, pursuant to the authorization of Title 11, Chapter 17, Code of Laws of South Carolina 1976, as amended, in anticipation of the receipt of the proceeds to be derived from the general obligation bonds of the County to be issued pursuant to and in accordance with the provisions of Ordinance No. \_\_\_\_\_ duly enacted by County Council on \_\_\_\_\_, 2018 (the “Ordinance”). The proceeds to be derived from the sale of general obligation bonds are irrevocably pledged for the payment of the principal of and interest on the Notes.

The Notes are being issued by means of a book-entry system with no physical distribution of certificates to be made except as provided in the Ordinance. One certificate registered in the name of the Securities Depository Nominee is being issued and is required to be deposited with the Securities Depository. The book-entry system will evidence positions held in the Notes by the Securities Depository’s participants, beneficial ownership of the Notes in the principal amount of \$5,000 or any multiple thereof being evidenced in the records of such Participants. Transfers of ownership shall be effected on the records of the Securities Depository on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its Participants.

U. S. Bank National Association as Registrar/Paying Agent will recognize the Securities Depository Nominee, while the registered owner of the Notes, as the owner of the Notes for all purposes, including payments of principal of and redemption premium, if any, and interest on the Notes, notices and voting. Transfer of principal and interest payments to Participants of the Securities Depository will be the responsibility of the Securities Depository, and transfer of principal, redemption premium, if any, and interest payments to beneficial owners of the Notes by Participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial owners. The County and Registrar/Paying Agent will not be responsible or liable for such transfers of payment or for maintaining, supervision or reviewing the records maintained by the Securities Depository, the Securities Depository Nominee, its Participants or persons acting through such Participants. While the Securities Depository Nominee is the owner of the Notes, notwithstanding the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on the Notes shall be made in accordance with existing arrangements between the Registrar/Paying Agent or its successors under the Resolution and the Securities Depository.

This note and the interest hereon are exempt from all State, County, municipal, and all other taxes or assessments of the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate and transfer taxes but the interest on this note may be included for certain franchise fees or taxes.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State to exist, to happen, or to be performed precedent to or in the issuance of this note, do exist, have happened, and have been performed in regular and due time, form and manner, and the amount of this note, and the issue of which this note is one, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, RICHLAND COUNTY, SOUTH CAROLINA, has caused this Note to be signed with the signature of the Chair of the County Council, attested by the signature of the Clerk to the County Council and the seal of the County impressed, imprinted, or reproduced hereon.

RICHLAND COUNTY, SOUTH CAROLINA

(SEAL)

\_\_\_\_\_  
Chair, County Council

ATTEST:

\_\_\_\_\_  
Clerk to County Council

[FORM OF REGISTRAR/PAYING AGENT'S CERTIFICATE OF AUTHENTICATION]

Date of Authentication:

This note is one of the Notes described in the within mentioned Ordinance of Richland County, South Carolina.

[REGISTRAR/PAYING AGENT] as Registrar/Paying Agent

By: \_\_\_\_\_  
Authorized Officer

The following abbreviations, when used in the inscription on the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM - as tenants in common

UNIF GIFT MIN ACT -

TEN ENT - as tenants by the  
entireties

\_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)

JT TEN - as joint tenants with right  
of survivorship and not as  
tenants in common

under Uniform Gifts to Minors  
Act \_\_\_\_\_  
(state)

Additional abbreviations may also be used though not in above list.

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Transferee)

\_\_\_\_\_ the within Note and  
does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney  
to transfer the within Note on the books kept for registration thereof, with full power of substitution in the  
premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature Guaranteed

\_\_\_\_\_  
(Authorized Officer)

\_\_\_\_\_  
Signature must be guaranteed by  
a participant in the Securities Transfer  
Agent Medallions Program (STAMP)

\_\_\_\_\_  
Notice: The signature to the assignment must correspond  
with the name of the registered owner as it appears  
upon the face of the within Note in every particular,  
without alteration or enlargement or any change  
whatever



**FORM OF NOTICE OF SALE**

\$ \_\_\_\_\_  
General Obligation Bond Anticipation Notes  
(Richland Renaissance Project) Series 2018  
Richland County, South Carolina

**DATE AND TIME OF SALE:** Bids for the purchase of all but not part of the above notes (the “Notes”) will be received by Richland County, South Carolina (the “County”), until 11:00 a.m. (South Carolina Time) on \_\_\_\_\_.

**BID SUBMISSION:** Electronic proposals will be received via PARITY®, in the manner described below, until 11:00 a.m., South Carolina time, on \_\_\_\_\_, 2018. Bids may be submitted electronically via PARITY® pursuant to this Notice until 11:00 AM, South Carolina time, but no bid will be received after the time for receiving bids specified above. To the extent any instructions or directions set forth in PARITY® conflict with this Notice, the terms of this Notice shall control. For further information about PARITY®, potential bidders may contact Co-Bond Counsel – Frannie Heizer, McNair Law Firm, P.A., 1221 Main Street, Suite 1800, Columbia, South Carolina 29201, telephone (803) 799-9800 or i-Deal at 395 Hudson Street, New York, New York 10014, telephone (212) 807-3800.

**GOOD FAITH DEPOSIT:** No good faith deposit will be required.

**NOTES:** The Notes will be issued under the DTC Book-Entry Only System. The Notes will be dated the date of their delivery; will be in denominations of \$5,000 each or any integral multiple thereof not exceeding the principal amount of Notes maturing each year; and will mature on \_\_\_\_\_ in the year and in the principal amount as follows:

<u>YEAR</u>	<u>PRINCIPAL AMOUNT</u>
2019	\$ _____

As promptly as reasonably practicable after the bids are opened, the County will notify the bidder to whom the Notes will be awarded, if and when such award is made, and such bidder, upon such notice, shall advise the County of the initial reoffering prices and yields to the public of the maturity of the Notes. Such reoffering prices and yields, among other things, will be used by the County to calculate the final aggregate principal amount of the Notes. It is anticipated that the final aggregate principal amount of the Notes and the final principal amount for the Notes will be communicated to the successful bidder within 24 hours of the bond sale. The dollar amount bid for principal by the successful bidder will be adjusted proportionately to reflect any reduction or increase in the aggregate principal amount of the Notes, but the coupon rate specified by the successful bidder will not change. The successful bidder may not withdraw its bid as a result of any changes made within these limits.

The Notes will bear interest from the date thereof payable \_\_\_\_\_.

**PURPOSE:** Funding a portion of Richland Renaissance, a multifaceted, County-wide plan that includes the acquisition of property and relocation of County departments; establishment of strategically placed facilities in various areas of the County; creation of the Start Center for new business development; and the implementation of a major revitalization project.

**REDEMPTION PROVISIONS:** The Notes will not be subject to redemption prior to their stated maturity.

**INTEREST RATES:** Bidders must specify the fixed rate of interest the Notes shall bear according to the following restrictions: (a) the interest rate may not exceed three percent (3%); and (b) the interest rate specified must be a multiple of 1/100th of one percent.

**BASIS OF AWARD:** The Notes will be awarded to the responsive bidder whose bid results in the lowest net interest cost (the “NIC”) to the County. The NIC will be calculated as the total interest from \_\_\_\_\_ to \_\_\_\_\_, minus any premium. If two or more bids provide for the same lowest NIC, the County shall award the bid to the bidder whose bid is in the best interest of the County to be determined by the County in its sole discretion, and such determination shall be final. **ANY BID FOR LESS THAN ALL THE NOTES OR A BID FOR LESS THAN PAR WILL BE REJECTED.** The County reserves the right to reject any and all bids and to waive informalities in any or all bids. In order to calculate the yield on the Notes for federal tax law purposes and as a condition precedent to the award of the Notes, the successful bidder will be required to disclose to the County the price (or yield to maturity) at which the Notes will be reoffered to the public. The Notes will be awarded or all bids will be rejected within 24 hours of the sale.

**SECURITY:** The Notes shall constitute general obligations of the County and the proceeds of general obligation bonds are irrevocably pledged to the payment of the Notes. Additionally, the Available Revenue (as defined in the ordinance authorizing the Notes) is pledged, as well as the full faith, credit and taxing power of the County.

**REGISTRAR/PAYING AGENT:** U.S. Bank National Association, Minneapolis, Minnesota shall serve as Registrar/Paying Agent for the Notes.

**CUSIP NUMBERS:** CUSIP identification numbers and CUSIP Service Bureau charges for assignment of the numbers will be the responsibility of the successful bidder and should be provided to the County within five (5) days of being selected as the winning bidder, but any delay, error or omission with respect thereto shall not constitute cause for a failure or refusal by the successful bidder to accept delivery of and pay for the Notes in accordance with the terms of this Official Notice of Sale. The successful bidder shall also be responsible for securing DTC eligibility.

**DELIVERY:** The Notes will be delivered on or about \_\_\_\_\_, in New York, New York, at the expense of the County. The purchase price then due must be paid in federal funds or other immediately available funds.

**OFFICIAL STATEMENT:** The County has distributed an Official Statement in connection with the sale of the Notes in preliminary form (the “Preliminary Official Statement”). The County, by accepting the bid of the successful bidder, (a) certifies to such successful bidder as of the date of acceptance of such bid that the Preliminary Official Statement furnished prior to the date of such acceptance has been “deemed final” as of its date by the County within the meaning of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (“Rule 15c2 12”), although subject to revision, amendment and completion; and (b) agrees to provide such successful bidder, in order to permit such successful bidder to comply with Rule 15c2 12, with up to 50 printed copies of the final Official Statement approved by the County in relation to the sale by the County of the Notes within the period of time allowed under Rule 15c2 12, at the sole cost and expense of the County, with any additional printed copies which such successful bidder shall reasonably request to be provided at the sole cost and expense of the successful bidder. Such successful bidder, by executing its bid, agrees to provide two copies of the final Official Statement to the Electronic Municipal Market Access system within the meaning of Rule 15c2 12 (a “EMMA”) upon receipt of the final Official Statement from the County and two copies of the final Official Statement (with any required forms) to the

Municipal Securities Rulemaking Board (the “MSRB”) or its designee pursuant to MSRB Rule G 36 no later than ten (10) business days following the date of acceptance of its bid, and such successful bidder further agrees to comply with all other applicable provisions of Rule 15c2 12 and MSRB Rule G 36. Such successful bidder shall notify the County of (i) the date which is the “end of the underwriting period” within the meaning of Rule 15c2 12 and (ii) the date on which the final Official Statement is filed with EMMA. Copies of the Preliminary Official Statement may be obtained at the offices listed in this Official Notice of Sale under the caption “Additional Information.” In the Ordinance, the County has committed to provide certain annual information and notices of material events as required by Rule 15c2 12 and as described in the Official Statement. The successful bidder’s obligation to purchase the Notes shall be conditioned upon its receiving, at or prior to the delivery of the Notes, in form and substance reasonably satisfactory to the successful bidder, a copy of the continuing disclosure undertaking set forth above, which shall constitute a written agreement for the benefit of the Holders of the Notes as required by Rule 15c2 12. The Preliminary Official Statement has been deemed final by the County for purposes of paragraph (b)(1) of Rule 15c212 but is subject to revision, amendment and completion in a final Official Statement as provided in Rule 15c2 12. Within seven (7) business days of the bid opening date, the County will deliver the final Official Statement to the successful bidder in sufficient quantity to comply with Rule 15c2 12.

**BLUE SKY LAWS:** The County has not undertaken to register the Notes under the securities laws of any state, nor has the County investigated the eligibility of any institution or person to purchase or participate in the underwriting of the Notes under any applicable legal investment, insurance, banking or other laws. By submitting a bid for the Notes, the winning bidder represents that the sale of the Notes in states other than South Carolina will be made only under exemptions from registration or, wherever necessary, the winning bidder will register the Notes in accordance with the securities laws of the state in which Notes are offered or sold. The County agrees to cooperate with the winning bidder, at the winning bidder’s written request and expense, in registering the Notes or obtaining an exemption from registration in any state where such action is necessary, but shall not be required to consent to service of process in any such state.

**POSTPONEMENT:** The County reserves the right to postpone from time to time the date established for receipt of bids. The County will communicate any such change in the sale date through the Bloomberg Wire or the Bond Buyer Wire prior to the time bids are to be received. If any date fixed for the receipt of bids and the sale of the Notes is postponed, any alternative sale date will be announced through the Bloomberg Wire or the Bond Buyer Wire at least 48 hours prior to such alternative sale date. On any such alternative sale date, any bidder may submit a sealed bid for the purchase of the Notes in conformity in all respects with the provisions of this Official Notice of Sale, except for the date of sale and except for the changes announced through the Bloomberg Wire or the Bond Buyer Wire at the time the sale date and time are announced.

**CONTINUING DISCLOSURE:** A description of the County’s undertaking with respect to its Continuing Disclosure Undertaking is set forth in the Preliminary Official Statement.

**LEGAL OPINIONS:** The issuance of the Notes is subject to the favorable opinions of McNair Law Firm, P.A. and The Law Offices of Ernest W. Cromartie III, LLC, as co-Bond Counsel, as to the validity of the issuance of the Notes under the constitution and laws of the State and the exemption of the Notes from federal income taxation, which opinions shall accompany each Note, together with the usual closing documents, including a certificate that no litigation is pending affecting the Notes. Parker Poe Adams & Bernstein LLP, as Disclosure Counsel, will issue an opinion advising that no facts have come to Disclosure Counsel’s attention that causes them to believe that the Official Statement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

**ISSUE PRICE CERTIFICATE:** The winning bidder shall assist the County in establishing the issue price of the Notes and shall execute and deliver to the County at delivery an “issue price” certificate setting forth the reasonably expected initial offering price to the public, with such modifications as may be appropriate or necessary, in the reasonable judgment of the winning bidder, the County and co-Bond Counsel. A sample copy of the certificate may be obtained from McNair Law Firm, P.A.

The County intends that the provisions of Treasury Regulation Section 1.148-1(f)(3)(i) (defining “competitive sale” for purposes of establishing the issue price of the Notes) will apply to the initial sale of the Notes (the “Competitive Sale Requirements”) because:

- (1) the County shall disseminate this Notice of Sale to potential underwriters in a manner that is reasonably designed to reach potential underwriters;
- (2) all bidders shall have an equal opportunity to bid;
- (3) the County may receive bids from at least three underwriters of municipal bonds who have established industry reputations for underwriting new issuances of municipal bonds; and
- (4) the County anticipates awarding the sale of the Notes to the bidder who submits a firm offer to purchase the Notes at the highest price (or lowest interest cost), as set forth in this Notice of Sale.

Any bid submitted pursuant to this Notice of Sale shall be considered a firm offer for the purchase of the Notes, as specified in the bid.

In the event that the Competitive Sale Requirements are not satisfied, the County shall so advise the winning bidder. The County may determine to treat the initial offering price to the public as of the sale date of the Notes as the issue price of the Notes (the “Hold-the-Offering-Price Rule”). The County shall promptly advise the winning bidder, at or before the time of award of the Notes, that the Notes shall be subject to the Hold-the-Offering-Price Rule. Bids will not be subject to cancellation in the event that the County determines to apply the Hold-the-Offering-Price Rule to the Notes. Bidders should prepare their bids on the assumption that the Notes will be subject to the Hold-the-Offering-Price Rule in order to establish the issue price of the Notes.

By submitting a bid, the winning bidder shall (1) confirm that the underwriters have offered or will offer the Notes to the public on or before the date of award at the offering price (the “Initial Offering Price”), or at the corresponding yield, set forth in the bid submitted by the winning bidder and (2) agree, on behalf of the underwriters participating in the purchase of the Notes, that the underwriters will neither offer nor sell unsold Notes to which the Hold-the-Offering-Price Rule shall apply to any person at a price that is higher than the Initial Offering Price to the public during the period starting on the sale date and ending on the earlier of the following:

- (1) the close of the fifth (5<sup>th</sup>) business day after the sale date; or
- (2) the date on which the underwriters have sold at least 10% of the Notes to the public at a price that is no higher than the Initial Offering Price to the public (the “10% Test”).

The winning bidder shall promptly advise the County when the underwriters have sold 10% of the Notes to the public at a price that is no higher than the Initial Offering Price to the public, if that occurs prior to the close of the fifth (5<sup>th</sup>) business day after the sale date.

In making the representation set forth above, the County acknowledges that the winning bidder will rely on (1) the agreement of each underwriter to comply with the Hold-the-Offering-Price Rule, as set forth in an agreement among underwriters and the related pricing wires, (2) in the event a selling group has been created in connection with the initial sale of the Notes to the public, the agreement of each dealer who is a member of the selling group to comply with the Hold-the-Offering-Price Rule, as set forth in a selling group agreement and the related pricing wires, and (3) in the event that an underwriter is a party to a retail distribution agreement that was employed in connection with the initial sale of the Notes to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the Hold-the-Offering-Price Rule, as set forth in the retail distribution agreement and the related pricing wires. The County further acknowledges that each underwriter shall be solely liable for its failure to comply with its agreement regarding the Hold-the-Offering-Price Rule and that no underwriter shall be liable for the failure of any other underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution agreement to comply with its corresponding agreement regarding the Hold-the-Offering-Price Rule as applicable to the Notes.

By submitting a bid, each bidder confirms that: (1) any agreement among underwriters, any selling group agreement and each retail distribution agreement (to which the bidder is a party) relating to the initial sale of the Notes to the public, together with the related pricing wires, contains or will contain language obligating each underwriter, each dealer who is a member of the selling group, and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (a) report the prices at which it sells to the public the unsold Notes allotted to it until it is notified by the winning bidder that either the 10% Test has been satisfied as to the Notes or all Notes have been sold to the public and (b) comply with the Hold-the-Offering-Price Rule, if applicable, in each case if and for so long as directed by the winning bidder and as set forth in the related pricing wires, and (2) any agreement among underwriters relating to the initial sale of the Notes to the public, together with the related pricing wires, contains or will contain language obligating each underwriter that is a party to a retail distribution agreement to be employed in connection with the initial sale of the Notes to the public to require each broker-dealer that is a party to such retail distribution agreement to (a) report the prices at which it sells to the public the unsold Notes allotted to it until it is notified by the winning bidder or such underwriter that either the 10% Test has been satisfied as to the Notes or all Notes have been sold to the public and (b) comply with the Hold-the-Offering-Price Rule, if applicable, in each case if and for so long as directed by the winning bidder or such underwriter and as set forth in the related pricing wires.

Sales of any Notes to any person that is a related party to an underwriter shall not constitute sales to the public for purposes of this Notice of Sale. Further, for purposes of this Notice of Sale:

- (1) “public” means any person other than an underwriter or a related party,
- (2) “underwriter” means (a) any person that agrees pursuant to a written contract with the County (or with the lead underwriter to form an underwriting syndicate) to

participate in the initial sale of the Notes to the public and (b) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (a) to participate in the initial sale of the Notes to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Notes to the public),

- (3) a purchaser of any of the Notes is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (a) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (b) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (c) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and
- (4) “sale date” means the date that the Notes are awarded by the County to the winning bidder.

**ADDITIONAL INFORMATION:** For copies of the Preliminary Official Statement and the Official Notice of Sale, please go to [www.munios.com](http://www.munios.com). The Preliminary Official Statement shall be reviewed by bidders prior to submitting a bid. Bidders may not rely on this Official Notice of Sale as to the complete information concerning the Notes.

RICHLAND COUNTY, SOUTH CAROLINA

**FORM OF DISCLOSURE DISSEMINATION AGENT AGREEMENT**

This Disclosure Dissemination Agent Agreement (the “Disclosure Agreement”), dated as \_\_\_\_\_, \_\_\_\_\_, is executed and delivered by Richland County, South Carolina (the “Issuer”) and Digital Assurance Certification, L.L.C., as exclusive Disclosure Dissemination Agent (the “Disclosure Dissemination Agent” or “DAC”) for the benefit of the Holders (hereinafter defined) of the Notes (hereinafter defined) and in order to provide certain continuing disclosure with respect to the Bonds in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time (the “Rule”).

The services provided under this Disclosure Agreement solely relate to the execution of instructions received from the Issuer through use of the DAC system and do not constitute “advice” within the meaning of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”). DAC will not provide any advice or recommendation to the Issuer or anyone on the Issuer’s behalf regarding the “issuance of municipal securities” or any “municipal financial product” as defined in the Act and nothing in this Disclosure Agreement shall be interpreted to the contrary.

**SECTION 1. Definitions.** Capitalized terms not otherwise defined in this Disclosure Agreement shall have the meaning assigned in the Rule or, to the extent not in conflict with the Rule, in the Official Statement (hereinafter defined). The capitalized terms shall have the following meanings:

“Annual Report” means an Annual Report described in and consistent with Section 3 of this Disclosure Agreement.

“Annual Filing Date” means the date, set in Sections 2(a) and 2(f), by which the Annual Report is to be filed with the MSRB.

“Annual Financial Information” means annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3(a) of this Disclosure Agreement.

“Audited Financial Statements” means the financial statements (if any) of the Issuer for the prior fiscal year, certified by an independent auditor as prepared in accordance with generally accepted accounting principles or otherwise, as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3(b) of this Disclosure Agreement.

“Certification” means a written certification of compliance signed by the Disclosure Representative stating that the Annual Report, Audited Financial Statements, Notice Event notice, Failure to File Event notice, Voluntary Event Disclosure or Voluntary Financial Disclosure delivered to the Disclosure Dissemination Agent is the Annual Report, Audited Financial Statements, Notice Event notice, Failure to File Event notice, Voluntary Event Disclosure or Voluntary Financial Disclosure required to be submitted to the MSRB under this Disclosure Agreement. A Certification shall accompany each such document submitted to the Disclosure Dissemination Agent by the Issuer and include the full name of the [Bonds] [Notes] and the 9-digit CUSIP numbers for all Notes to which the document applies.

“Disclosure Representative” means the Finance Director, or his or her designee, or such other person as the Issuer shall designate in writing to the Disclosure Dissemination Agent from time to time as the person responsible for providing Information to the Disclosure Dissemination Agent.

“Disclosure Dissemination Agent” means Digital Assurance Certification, L.L.C, acting in its capacity as Disclosure Dissemination Agent hereunder, or any successor Disclosure Dissemination Agent designated in writing by the Issuer pursuant to Section 9 hereof.

“Failure to File Event” means the Issuer’s failure to file an Annual Report on or before the Annual Filing Date.

“Force Majeure Event” means: (i) acts of God, war, or terrorist action; (ii) failure or shut-down of the Electronic Municipal Market Access system maintained by the MSRB; or (iii) to the extent beyond the Disclosure Dissemination Agent’s reasonable control, interruptions in telecommunications or utilities services, failure, malfunction or error of any telecommunications, computer or other electrical, mechanical or technological application, service or system, computer virus, interruptions in Internet service or telephone service (including due to a virus, electrical delivery problem or similar occurrence) that affect Internet users generally, or in the local area in which the Disclosure Dissemination Agent or the MSRB is located, or acts of any government, regulatory or any other competent authority the effect of which is to prohibit the Disclosure Dissemination Agent from performance of its obligations under this Disclosure Agreement.

“Holder” means any person (a) having the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any [Bonds] [Notes] (including persons holding [Bonds] [Notes] through nominees, depositories or other intermediaries) or (b) treated as the owner of any Notes for federal income tax purposes.

“Information” means, collectively, the Annual Reports, the Audited Financial Statements (if any), the Notice Event notices, the Failure to File Event notices, the Voluntary Event Disclosures and the Voluntary Financial Disclosures.

“MSRB” means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.

“Notes” means the bond anticipation notes as listed on the attached Exhibit A, with the 9-digit CUSIP number relating thereto.

“Notice Event” means any of the events enumerated in paragraph (b)(5)(i)(C) of the Rule and listed in Section 4(a) of this Disclosure Agreement.

“Obligated Person” means any person, including the Issuer, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the Notes (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities), as shown on Exhibit A.

“Official Statement” means that Official Statement prepared by the Issuer in connection with the Notes, as listed on Appendix A.

“Trustee” means the institution, if any, identified as such in the document under which the Notes were issued.



“Voluntary Event Disclosure” means information of the category specified in any of subsections (e)(vi)(1) through (e)(vi)(11) of Section 2 of this Disclosure Agreement that is accompanied by a Certification of the Disclosure Representative containing the information prescribed by Section 7(a) of this Disclosure Agreement.

“Voluntary Financial Disclosure” means information of the category specified in any of subsections (e)(vii)(1) through (e)(vii)(9) of Section 2 of this Disclosure Agreement that is accompanied by a Certification of the Disclosure Representative containing the information prescribed by Section 7(b) of this Disclosure Agreement.

## SECTION 2. Provision of Annual Reports.

(a) The Issuer shall provide, annually, an electronic copy of the Annual Report and Certification to the Disclosure Dissemination Agent, together with a copy for the Trustee, not later than the Annual Filing Date. Promptly upon receipt of an electronic copy of the Annual Report and the Certification, the Disclosure Dissemination Agent shall provide an Annual Report to the MSRB not later than the next February 1 after the end of each fiscal year of the Issuer, commencing with the fiscal year ending June 30, 2018. Such date and each anniversary thereof is the Annual Filing Date. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 3 of this Disclosure Agreement.

(b) If on the fifteenth (15th) day prior to the Annual Filing Date, the Disclosure Dissemination Agent has not received a copy of the Annual Report and Certification, the Disclosure Dissemination Agent shall contact the Disclosure Representative by telephone and in writing (which may be by e-mail) to remind the Issuer of its undertaking to provide the Annual Report pursuant to Section 2(a). Upon such reminder, the Disclosure Representative shall either (i) provide the Disclosure Dissemination Agent with an electronic copy of the Annual Report and the Certification no later than two (2) business days prior to the Annual Filing Date, or (ii) instruct the Disclosure Dissemination Agent in writing that the Issuer will not be able to file the Annual Report within the time required under this Disclosure Agreement, state the date by which the Annual Report for such year will be provided and instruct the Disclosure Dissemination Agent that a Failure to File Event has occurred and to immediately send a notice to the MSRB in substantially the form attached as Exhibit B, accompanied by a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-1.

(c) If the Disclosure Dissemination Agent has not received an Annual Report and Certification by 6:00 p.m. on the first business day following the Annual Filing Date for the Annual Report, a Failure to File Event shall have occurred and the Issuer irrevocably directs the Disclosure Dissemination Agent to immediately send a notice to the MSRB in substantially the form attached as Exhibit B without reference to the anticipated filing date for the Annual Report, accompanied by a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-1.

(d) If Audited Financial Statements of the Issuer are prepared but not available prior to the Annual Filing Date, the Issuer shall, when the Audited Financial Statements are available, provide in a timely manner an electronic copy to the Disclosure Dissemination Agent, accompanied by a Certification, together with a copy for the Trustee, for filing with the MSRB.

- (e) The Disclosure Dissemination Agent shall:
- (i) verify the filing specifications of the MSRB each year prior to the Annual Filing Date;
  - (ii) upon receipt, promptly file each Annual Report received under Sections 2(a) and 2(b) with the MSRB;
  - (iii) upon receipt, promptly file each Audited Financial Statement received under Section 2(d) with the MSRB;
  - (iv) upon receipt, promptly file the text of each Notice Event received under Sections 4(a) and 4(b)(ii) with the MSRB, identifying the Notice Event as instructed by the Issuer pursuant to Section 4(a) or 4(b)(ii) (being any of the categories set forth below) when filing pursuant to Section 4(c) of this Disclosure Agreement:
    - “Principal and interest payment delinquencies;”
    - “Non-Payment related defaults, if material;”
    - “Unscheduled draws on debt service reserves reflecting financial difficulties;”
    - “Unscheduled draws on credit enhancements reflecting financial difficulties;”
    - “Substitution of credit or liquidity providers, or their failure to perform;”
    - “Adverse tax opinions, IRS notices or events affecting the tax status of the security;”
    - “Modifications to rights of securities holders, if material;”
    - “Bond calls, if material;”
    - “Defeasances;”
    - “Release, substitution, or sale of property securing repayment of the securities, if material;”
    - “Rating changes;”
    - “Tender offers;”
    - “Bankruptcy, insolvency, receivership or similar event of the obligated person;”
    - “Merger, consolidation, or acquisition of the obligated person, if material;” and
    - “Appointment of a successor or additional trustee, or the change of name of a trustee, if material;”
  - (v) upon receipt (or irrevocable direction pursuant to Section 2(c) of this Disclosure Agreement, as applicable), promptly file a completed copy of Exhibit B to this

Disclosure Agreement with the MSRB, identifying the filing as “Failure to provide annual financial information as required” when filing pursuant to Section 2(b)(ii) or Section 2(c) of this Disclosure Agreement;

(vi) upon receipt, promptly file the text of each Voluntary Event Disclosure received under Section 7(a) with the MSRB, identifying the Voluntary Event Disclosure as instructed by the Issuer pursuant to Section 7(a) (being any of the categories set forth below) when filing pursuant to Section 7(a) of this Disclosure Agreement:

1. “amendment to continuing disclosure undertaking;”
2. “change in obligated person;”
3. “notice to investors pursuant to bond documents;”
4. “certain communications from the Internal Revenue Service;”
5. “secondary market purchases;”
6. “bid for auction rate or other securities;”
7. “capital or other financing plan;”
8. “litigation/enforcement action;”
9. “change of tender agent, remarketing agent, or other on-going party;”
10. “derivative or other similar transaction;” and
11. “other event-based disclosures;”

(vii) upon receipt, promptly file the text of each Voluntary Financial Disclosure received under Section 7(b) with the MSRB, identifying the Voluntary Financial Disclosure as instructed by the Issuer pursuant to Section 7(b) (being any of the categories set forth below) when filing pursuant to Section 7(b) of this Disclosure Agreement:

1. “quarterly/monthly financial information;”
2. “change in fiscal year/timing of annual disclosure;”
3. “change in accounting standard;”
4. “interim/additional financial information/operating data;”
5. “budget;”
6. “investment/debt/financial policy;”
7. “information provided to rating agency, credit/liquidity provider or other third party;”

8. “consultant reports;” and
  9. “other financial/operating data.”
- (viii) provide the Issuer evidence of the filings of each of the above when made, which shall be by means of the DAC system, for so long as DAC is the Disclosure Dissemination Agent under this Disclosure Agreement.

(f) The Issuer may adjust the Annual Filing Date upon change of its fiscal year by providing written notice of such change and the new Annual Filing Date to the Disclosure Dissemination Agent, Trustee (if any) and the MSRB, provided that the period between the existing Annual Filing Date and new Annual Filing Date shall not exceed one year.

(g) Any Information received by the Disclosure Dissemination Agent before 6:00 p.m. Eastern time on any business day that it is required to file with the MSRB pursuant to the terms of this Disclosure Agreement and that is accompanied by a Certification and all other information required by the terms of this Disclosure Agreement will be filed by the Disclosure Dissemination Agent with the MSRB no later than 11:59 p.m. Eastern time on the same business day; provided, however, the Disclosure Dissemination Agent shall have no liability for any delay in filing with the MSRB if such delay is caused by a Force Majeure Event provided that the Disclosure Dissemination Agent uses reasonable efforts to make any such filing as soon as possible.

### SECTION 3. Content of Annual Reports.

(a) Each Annual Report shall contain the following Annual Financial Information with respect to the Issuer:

- (i) The financial statements of the Issuer for the preceding fiscal year prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board (or if not in conformity, to be accompanied by a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information). If the Issuer’s audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.
- (ii) Financial and operating data for the fiscal year then ended, to the extent such information is not included in the Issuer’s audited financial statements filed pursuant to clause (1) above, which shall be generally consistent with the tabular information (or other information, as otherwise noted below) contained in the Official Statement under the following headings: [TO BE PROVIDED]. Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Issuer, which have been submitted to the MSRB. If the document included by reference is a final official statement, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

Any or all of the items listed above may be included by specific reference from other documents, including official statements of debt issues with respect to which the Issuer is an “obligated person” (as defined by the Rule), which have been previously filed with the Securities and Exchange Commission or available on the MSRB Internet Website. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Issuer will clearly identify each such document so incorporated by reference.

Any annual financial information containing modified operating data or financial information is required to explain, in narrative form, the reasons for the modification and the impact of the change in the type of operating data or financial information being provided.

#### SECTION 4. Reporting of Notice Events.

(a) The occurrence of any of the following events with respect to the Notes constitutes a Notice Event:

- i. Principal and interest payment delinquencies;
- ii. Non-payment related defaults, if material;
- iii. Unscheduled draws on debt service reserves reflecting financial difficulties;
- iv. Unscheduled draws on credit enhancements reflecting financial difficulties;
- v. Substitution of credit or liquidity providers, or their failure to perform;
- vi. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Notes, or other material events affecting the tax status of the Notes;
- vii. Modifications to rights of [Bond][Note] holders, if material;
- viii. Bond calls, if material, and tender offers;
- ix. Defeasances;
- x. Release, substitution, or sale of property securing repayment of the Notes, if material;
- xi. Rating changes;
- xii. Bankruptcy, insolvency, receivership or similar event of the Obligated Person;

**Note to subsection (a)(12) of this Section 4:** For the purposes of the event described in subsection (a)(12) of this Section 4, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an Obligated Person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Obligated Person, or if such jurisdiction has been

assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Obligated Person.

- xiii. The consummation of a merger, consolidation, or acquisition involving an Obligated Person or the sale of all or substantially all of the assets of the Obligated Person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- xiv. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

The Issuer shall, in a timely manner not in excess of ten business days after its occurrence, notify the Disclosure Dissemination Agent in writing of the occurrence of a Notice Event. Such notice shall instruct the Disclosure Dissemination Agent to report the occurrence pursuant to subsection (c) and shall be accompanied by a Certification. Such notice or Certification shall identify the Notice Event that has occurred (which shall be any of the categories set forth in Section 2(e)(iv) of this Disclosure Agreement), include the text of the disclosure that the Issuer desires to make, contain the written authorization of the Issuer for the Disclosure Dissemination Agent to disseminate such information, and identify the date the Issuer desires for the Disclosure Dissemination Agent to disseminate the information (provided that such date is not later than the tenth business day after the occurrence of the Notice Event).

(b) The Disclosure Dissemination Agent is under no obligation to notify the Issuer or the Disclosure Representative of an event that may constitute a Notice Event. In the event the Disclosure Dissemination Agent so notifies the Disclosure Representative, the Disclosure Representative will within two business days of receipt of such notice (but in any event not later than the tenth business day after the occurrence of the Notice Event, if the Issuer determines that a Notice Event has occurred), instruct the Disclosure Dissemination Agent that (i) a Notice Event has not occurred and no filing is to be made or (ii) a Notice Event has occurred and the Disclosure Dissemination Agent is to report the occurrence pursuant to subsection (c) of this Section 4, together with a Certification. Such Certification shall identify the Notice Event that has occurred (which shall be any of the categories set forth in Section 2(e)(iv) of this Disclosure Agreement), include the text of the disclosure that the Issuer desires to make, contain the written authorization of the Issuer for the Disclosure Dissemination Agent to disseminate such information, and identify the date the Issuer desires for the Disclosure Dissemination Agent to disseminate the information (provided that such date is not later than the tenth business day after the occurrence of the Notice Event).

(c) If the Disclosure Dissemination Agent has been instructed by the Issuer as prescribed in subsection (a) or (b)(ii) of this Section 4 to report the occurrence of a Notice Event, the Disclosure Dissemination Agent shall promptly file a notice of such occurrence with MSRB in accordance with Section 2 (e)(iv) hereof. This notice will be filed with a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-1.

**SECTION 5. CUSIP Numbers.** Whenever providing information to the Disclosure Dissemination Agent, including but not limited to Annual Reports, documents incorporated by reference to the Annual Reports, Audited Financial Statements, Notice Event notices, Failure to File Event notices, Voluntary Event Disclosures and Voluntary Financial Disclosures, the Issuer shall indicate the full name of the Notes and the 9-digit CUSIP numbers for the Notes as to which the provided information relates.

SECTION 6. Additional Disclosure Obligations. The Issuer acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the Issuer, and that the duties and responsibilities of the Disclosure Dissemination Agent under this Disclosure Agreement do not extend to providing legal advice regarding such laws. The Issuer acknowledges and understands that the duties of the Disclosure Dissemination Agent relate exclusively to execution of the mechanical tasks of disseminating information as described in this Disclosure Agreement.

SECTION 7. Voluntary Filing.

(a) The Issuer may instruct the Disclosure Dissemination Agent to file a Voluntary Event Disclosure with the MSRB from time to time pursuant to a Certification of the Disclosure Representative. Such Certification shall identify the Voluntary Event Disclosure (which shall be any of the categories set forth in Section 2(e)(vi) of this Disclosure Agreement), include the text of the disclosure that the Issuer desires to make, contain the written authorization of the Issuer for the Disclosure Dissemination Agent to disseminate such information, and identify the date the Issuer desires for the Disclosure Dissemination Agent to disseminate the information. If the Disclosure Dissemination Agent has been instructed by the Issuer as prescribed in this Section 7(a) to file a Voluntary Event Disclosure, the Disclosure Dissemination Agent shall promptly file such Voluntary Event Disclosure with the MSRB in accordance with Section 2(e)(vi) hereof. This notice will be filed with a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-2.

(b) The Issuer may instruct the Disclosure Dissemination Agent to file a Voluntary Financial Disclosure with the MSRB from time to time pursuant to a Certification of the Disclosure Representative. Such Certification shall identify the Voluntary Financial Disclosure (which shall be any of the categories set forth in Section 2(e)(vii) of this Disclosure Agreement), include the text of the disclosure that the Issuer desires to make, contain the written authorization of the Issuer for the Disclosure Dissemination Agent to disseminate such information, and identify the date the Issuer desires for the Disclosure Dissemination Agent to disseminate the information. If the Disclosure Dissemination Agent has been instructed by the Issuer as prescribed in this Section 7(b) to file a Voluntary Financial Disclosure, the Disclosure Dissemination Agent shall promptly file such Voluntary Financial Disclosure with the MSRB in accordance with Section 2(e)(vii) hereof. This notice will be filed with a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-2.

The parties hereto acknowledge that the Issuer is not obligated pursuant to the terms of this Disclosure Agreement to file any Voluntary Event Disclosure pursuant to Section 7(a) hereof or any Voluntary Financial Disclosure pursuant to Section 7(b) hereof.

Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information through the Disclosure Dissemination Agent using the means of dissemination set forth in this Disclosure Agreement or including any other information in any Annual Report, Audited Financial Statements, Notice Event notice, Failure to File Event notice, Voluntary Event Disclosure or Voluntary Financial Disclosure, in addition to that required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Report, Audited Financial Statements, Notice Event notice, Failure to File Event notice, Voluntary Event Disclosure or Voluntary Financial Disclosure in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report, Audited Financial Statements, Notice Event notice, Failure to File Event notice, Voluntary Event Disclosure or Voluntary Financial Disclosure.

SECTION 8. Termination of Reporting Obligation. The obligations of the Issuer and the Disclosure Dissemination Agent under this Disclosure Agreement shall terminate with respect to the Notes upon the legal defeasance, prior redemption or payment in full of all of the Notes, when the Issuer is no longer an obligated person with respect to the Notes, or upon delivery by the Disclosure Representative to the Disclosure Dissemination Agent of an opinion of counsel expert in federal securities laws to the effect that continuing disclosure is no longer required.

SECTION 9. Disclosure Dissemination Agent. The Issuer has appointed Digital Assurance Certification, L.L.C. as exclusive Disclosure Dissemination Agent under this Disclosure Agreement. The Issuer may, upon thirty days written notice to the Disclosure Dissemination Agent and the Trustee, replace or appoint a successor Disclosure Dissemination Agent. Upon termination of DAC's services as Disclosure Dissemination Agent, whether by notice of the Issuer or DAC, the Issuer agrees to appoint a successor Disclosure Dissemination Agent or, alternately, agrees to assume all responsibilities of Disclosure Dissemination Agent under this Disclosure Agreement for the benefit of the Holders of the Notes. Notwithstanding any replacement or appointment of a successor, the Issuer shall remain liable until payment in full for any and all sums owed and payable to the Disclosure Dissemination Agent. The Disclosure Dissemination Agent may resign at any time by providing thirty days' prior written notice to the Issuer.

SECTION 10. Remedies in Event of Default. In the event of a failure of the Issuer or the Disclosure Dissemination Agent to comply with any provision of this Disclosure Agreement, the Holders' rights to enforce the provisions of this Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of the parties' obligation under this Disclosure Agreement. Any failure by a party to perform in accordance with this Disclosure Agreement shall not constitute a default on the Notes or under any other document relating to the Notes, and all rights and remedies shall be limited to those expressly stated herein.

SECTION 11. Duties, Immunities and Liabilities of Disclosure Dissemination Agent.

(a) The Disclosure Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement. The Disclosure Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent the Issuer has provided such information to the Disclosure Dissemination Agent as required by this Disclosure Agreement. The Disclosure Dissemination Agent shall have no duty with respect to the content of any disclosures or notice made pursuant to the terms hereof. The Disclosure Dissemination Agent shall have no duty or obligation to review or verify any Information or any other information, disclosures or notices provided to it by the Issuer and shall not be deemed to be acting in any fiduciary capacity for the Issuer, the Holders of the Notes or any other party. The Disclosure Dissemination Agent shall have no responsibility for the Issuer's failure to report to the Disclosure Dissemination Agent a Notice Event or a duty to determine the materiality thereof. The Disclosure Dissemination Agent shall have no duty to determine, or liability for failing to determine, whether the Issuer has complied with this Disclosure Agreement. The Disclosure Dissemination Agent may conclusively rely upon Certifications of the Issuer at all times.

The obligations of the Issuer under this Section shall survive resignation or removal of the Disclosure Dissemination Agent and defeasance, redemption or payment of the Notes.

(b) The Disclosure Dissemination Agent may, from time to time, consult with legal counsel (either in-house or external) of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or its respective duties hereunder, and shall



not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel. The reasonable fees and expenses of such counsel shall be payable by the Issuer.

(c) All documents, reports, notices, statements, information and other materials provided to the MSRB under this Agreement shall be provided in an electronic format and accompanied by identifying information as prescribed by the MSRB.

SECTION 12. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the Issuer and the Disclosure Dissemination Agent may amend this Disclosure Agreement and any provision of this Disclosure Agreement may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to both the Issuer and the Disclosure Dissemination Agent to the effect that such amendment or waiver does not materially impair the interests of Holders of the Notes and would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule; provided neither the Issuer or the Disclosure Dissemination Agent shall be obligated to agree to any amendment modifying their respective duties or obligations without their consent thereto.

Notwithstanding the preceding paragraph, the Disclosure Dissemination Agent shall have the right to adopt amendments to this Disclosure Agreement necessary to comply with modifications to and interpretations of the provisions of the Rule as announced by the Securities and Exchange Commission from time to time by giving not less than 20 days written notice of the intent to do so together with a copy of the proposed amendment to the Issuer. No such amendment shall become effective if the Issuer shall, within 10 days following the giving of such notice, send a notice to the Disclosure Dissemination Agent in writing that it objects to such amendment.

SECTION 13. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Trustee of the Notes, the Disclosure Dissemination Agent, the underwriter, and the Holders from time to time of the Notes, and shall create no rights in any other person or entity.

SECTION 14. Governing Law. This Disclosure Agreement shall be governed by the laws of the State of Florida (other than with respect to conflicts of laws).

SECTION 15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The Disclosure Dissemination Agent and the Issuer have caused this Disclosure Agreement to be executed, on the date first written above, by their respective officers duly authorized.

DIGITAL ASSURANCE CERTIFICATION, L.L.C., as  
Disclosure Dissemination Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

RICHLAND COUNTY, SOUTH CAROLINA, as Issuer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT A**

**NAME AND CUSIP NUMBERS OF [NOTES] BONDS**

Name of Issuer \_\_\_\_\_  
Obligated Person(s) \_\_\_\_\_  
Name of Bond Issue: \_\_\_\_\_  
Date of Issuance: \_\_\_\_\_  
Date of Official Statement \_\_\_\_\_

CUSIP Number: \_\_\_\_\_

**EXHIBIT B**

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Issuer: \_\_\_\_\_

Obligated Person: \_\_\_\_\_

Name(s) of Bond Issue(s): \_\_\_\_\_

Date(s) of Issuance: \_\_\_\_\_

Date(s) of Disclosure Agreement: \_\_\_\_\_

CUSIP Number: \_\_\_\_\_

NOTICE IS HEREBY GIVEN that the Issuer has not provided an Annual Report with respect to the above-named Notes as required by the Disclosure Agreement between the Issuer and Digital Assurance Certification, L.L.C., as Disclosure Dissemination Agent. The Issuer has notified the Disclosure Dissemination Agent that it anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

Digital Assurance Certification, L.L.C., as Disclosure  
Dissemination Agent, on behalf of the Issuer

\_\_\_\_\_

cc:

**EXHIBIT C-1**

**EVENT NOTICE COVER SHEET**

This cover sheet and accompanying "event notice" will be sent to the MSRB, pursuant to Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C) and (D).

Issuer's and/or Other Obligated Person's Name:

\_\_\_\_\_

Issuer's Six-Digit CUSIP Number:

\_\_\_\_\_

or Nine-Digit CUSIP Number(s) of the bonds to which this event notice relates:

\_\_\_\_\_

Number of pages attached: \_\_\_\_\_

\_\_\_\_ Description of Notice Events (Check One):

1. \_\_\_\_\_ "Principal and interest payment delinquencies;"
2. \_\_\_\_\_ "Non-Payment related defaults, if material;"
3. \_\_\_\_\_ "Unscheduled draws on debt service reserves reflecting financial difficulties;"
4. \_\_\_\_\_ "Unscheduled draws on credit enhancements reflecting financial difficulties;"
5. \_\_\_\_\_ "Substitution of credit or liquidity providers, or their failure to perform;"
6. \_\_\_\_\_ "Adverse tax opinions, IRS notices or events affecting the tax status of the security;"
7. \_\_\_\_\_ "Modifications to rights of securities holders, if material;"
8. \_\_\_\_\_ "Bond calls, if material;"
9. \_\_\_\_\_ "Defeasances;"
10. \_\_\_\_\_ "Release, substitution, or sale of property securing repayment of the securities, if material;"
11. \_\_\_\_\_ "Rating changes;"
12. \_\_\_\_\_ "Tender offers;"
13. \_\_\_\_\_ "Bankruptcy, insolvency, receivership or similar event of the obligated person;"
14. \_\_\_\_\_ "Merger, consolidation, or acquisition of the obligated person, if material;" and
15. \_\_\_\_\_ "Appointment of a successor or additional trustee, or the change of name of a trustee, if material."

\_\_\_\_ Failure to provide annual financial information as required.

I hereby represent that I am authorized by the issuer or its agent to distribute this information publicly:

Signature:

\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Digital Assurance Certification, L.L.C.  
390 N. Orange Avenue  
Suite 1750  
Orlando, FL 32801  
407-515-1100

Date:

**EXHIBIT C-2**

**VOLUNTARY EVENT DISCLOSURE COVER SHEET**

This cover sheet and accompanying "voluntary event disclosure" will be sent to the MSRB, pursuant to the Disclosure Dissemination Agent Agreement dated as of \_\_\_\_\_ between the Issuer and DAC.

Issuer's and/or Other Obligated Person's Name:

\_\_\_\_\_

Issuer's Six-Digit CUSIP Number:

\_\_\_\_\_

\_\_\_\_\_

or Nine-Digit CUSIP Number(s) of the bonds to which this notice relates:

\_\_\_\_\_

Number of pages attached: \_\_\_\_\_

\_\_\_\_\_ Description of Voluntary Event Disclosure (Check One):

1. \_\_\_\_\_ "amendment to continuing disclosure undertaking;"
2. \_\_\_\_\_ "change in obligated person;"
3. \_\_\_\_\_ "notice to investors pursuant to bond documents;"
4. \_\_\_\_\_ "certain communications from the Internal Revenue Service;"
5. \_\_\_\_\_ "secondary market purchases;"
6. \_\_\_\_\_ "bid for auction rate or other securities;"
7. \_\_\_\_\_ "capital or other financing plan;"
8. \_\_\_\_\_ "litigation/enforcement action;"
9. \_\_\_\_\_ "change of tender agent, remarketing agent, or other on-going party;"
10. \_\_\_\_\_ "derivative or other similar transaction;" and
11. \_\_\_\_\_ "other event-based disclosures."

I hereby represent that I am authorized by the issuer or its agent to distribute this information publicly:

Signature:

\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Digital Assurance Certification, L.L.C.  
390 N. Orange Avenue  
Suite 1750  
Orlando, FL 32801  
407-515-1100

Date:

**EXHIBIT C-3**

**VOLUNTARY FINANCIAL DISCLOSURE COVER SHEET**

This cover sheet and accompanying “voluntary financial disclosure” will be sent to the MSRB, pursuant to the Disclosure Dissemination Agent Agreement dated as of \_\_\_\_\_ between the Issuer and DAC.

Issuer’s and/or Other Obligated Person’s Name:

\_\_\_\_\_

Issuer’s Six-Digit CUSIP Number:

\_\_\_\_\_

\_\_\_\_\_

or Nine-Digit CUSIP Number(s) of the bonds to which this notice relates:

\_\_\_\_\_

Number of pages attached: \_\_\_\_

\_\_\_\_ Description of Voluntary Financial Disclosure (Check One):

- 1. \_\_\_\_ “quarterly/monthly financial information;”
- 2. \_\_\_\_ “change in fiscal year/timing of annual disclosure;”
- 3. \_\_\_\_ “change in accounting standard;”
- 4. \_\_\_\_ “interim/additional financial information/operating data;”
- 5. \_\_\_\_ “budget;”
- 6. \_\_\_\_ “investment/debt/financial policy;”
- 7. \_\_\_\_ “information provided to rating agency, credit/liquidity provider or other third party;”
- 8. \_\_\_\_ “consultant reports;” and
- 9. \_\_\_\_ “other financial/operating data.”

I hereby represent that I am authorized by the issuer or its agent to distribute this information publicly:

Signature:

\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Digital Assurance Certification, L.L.C.  
390 N. Orange Avenue  
Suite 1750  
Orlando, FL 32801  
407-515-1100

Date:

**EXHIBIT D**

FORM OF NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held by the County Council of Richland County, South Carolina (the "County"), in County Council Chambers located at 2020 Hampton Street, Columbia, South Carolina, at 6:00 p.m. on Tuesday, \_\_\_\_\_, 2018, or at such other location as proper notice on the main entrance to the said building might specify.

The purpose of the public hearing is to consider an ordinance (the "Ordinance") providing for the issuance and sale of not to exceed \$20,000,000 General Obligation Bond Anticipation Notes, Series 2018B, or such other series designation, the proceeds of which will be used for: (i) funding a portion of Richland Renaissance; (ii) paying costs of issuance of the Notes; and (iii) such other lawful corporate and public purposes as the County Council shall determine.

The Notes are secured by the full faith, credit, and taxing power of the County and a pledge of the proceeds of general obligation bonds.

At the public hearing all taxpayers and residents of the County and any other interested persons who appear will be given an opportunity to express their views for or against the Ordinance and the issuance of the Bonds.

/s/Chair, County Council, Richland County,  
South Carolina





# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

## March 27, 2018 Administration & Finance Committee Companion Document – MOU with Recreation Commission

During the September 12, 2017 Council meeting, Councilman N. Jackson brought for the following motion:

“Richland County funds thirteen mills eight mills more than the five mills required by statute. I move that County Council develop a separate Recreation Commission to manage the eight additional mills if the Recreation Commission does not agree to the MOU or if Council still feels that there is taxation without representation.

Note: This is a partial solution to the constant challenge for taxation and representation”

This matter was considered by the Committee during its October 24, 2017 meeting, at which time the Committee voted to hold this item in Committee until Council's Recreation Commission liaisons meet with the Recreation Commission.

The Council’s Recreation Commission liaisons met on January 22, 2018. Attached is a memorandum from the Recreation Commission following up to the items discussed during the aforementioned meeting.

This matter is bring presented to the Committee for action.

**BOARD OF COMMISSIONERS:**

Thomas Clark  
Cynthia Shepard  
Donzetta Lindsay  
Stephen Venugopal  
Lisa L. Cotten  
Robert Lapin  
Jermaine L. Johnson, Sr.



*"Enriching Lives, Connecting Communities."*

**ADMINISTRATIVE OFFICE:**

7473 Parklane Road  
Columbia, SC 29223  
Phone: (803) 741-RCRC (7272)  
Fax: (803) 741-2028  
Email: [info@rcrc.state.sc.us](mailto:info@rcrc.state.sc.us)  
[www.richlandcountyrecreation.com](http://www.richlandcountyrecreation.com)

To: The Honorable Joyce Dickerson, Richland County Council Chairwoman

From: Tara M. Dickerson  
Chief of Staff

Date: February 6, 2018

Re: Follow up from January 22, 2018 Special Called Meeting

---

Thank you for taking the time to meet with me and the RCRC Board. I am following up to our discussion on January 22, 2018 regarding questions raised by Councilman Norman Jackson as to the use of funds related to the 2008 general obligation bond projects.

**1. Neighborhood Mini Parks- Phase Three Projects:**

**Mini Parks 1 and 2**

Four (4) mini parks were part of the original project list. The commission was unable to locate property for Mini Parks 1 and 2(District 11), therefore the funds were transferred to an alternate project at Caughman Road Park (District 11) to purchase 9.49 acres of land and build a picnic shelter with councilman’s approval. This project is complete.

**Mini Parks 3 and 4**

To date there are two mini parks in District 11 that remain incomplete. The land has been purchased for Mini Park 3 at 1150 Old Garners Road for \$39,570.00(appraised value). The remaining funds for this project are \$80,430.00. Richland School District 1 has submitted a 25-year lease agreement for the Southeast Middle School Property (Mini Park 4). This project has been bid out twice and both times were over budget due to requirements such as parking, drives, etc. There was \$120,000 allocated for this project and to date we have spent \$29,110.00. This leaves \$90,890.00 remaining.



*Nationally Accredited:*  
The Richland County Recreation Commission became South Carolina’s first nationally accredited parks and recreation agency in 2006.

*Equal Opportunity Statement: The Richland County Recreation Commission is dedicated to the concept of equal opportunity. The Commission will not discriminate on the basis of race, color, religion, sex, age, disability, national origin, or marital status, in its employment practices or in the participation policies for its facilities.*

**1. Garners Ferry Sports Complex-Phase One:**

During Phase One of the bond a 40.545-acre parcel was purchased for \$1,600,000 on Garners Ferry Road. The property appraised for \$1,620,000.00. The original project list attached to the ordinance specified that the above amount was designated for "Southeast Sports Complex Land Only (40 acres)."

There is no indication in the bond ordinance that money was allocated for a roadway project as part of this bond project.

I hope this helps to clarify these issues. Please let me know if you have any further questions.

CC: Gerald Seals, County Administrator  
Members of Richland County Council  
Richland County Recreation Board of Commissioners

**Richland County Recreation Commission  
Special Call Board Meeting Minutes  
January 22, 2018  
4:30PM**

**Commissioners in Attendance:**

Thomas Clark, Chair  
Robert Lapin  
Cynthia Shepard  
Jermaine Johnson, Sr.  
Donzetta Lindsay

**Council Members in Attendance:**

Joyce Dickerson, Chair  
Calvin Jackson  
Yvonne McBride  
Paul Livingston  
Jim Manning  
Greg Pearce  
Norman Jackson  
Dalhi Myers

**RCRC Staff in Attendance:**

Tara Dickerson  
Cornelia Watts

**Others in Attendance:**

Mayor Bob Coble, Interim Parliamentarian  
Frannie Heizer, Bond Attorney  
Larry Smith, County Attorney

**1. Call to Order:**

Commissioner Clark called the meeting to order at 4:38p.m.

**2. Adoption of Agenda:**

**Motion to adopt the agenda made by Commissioner Johnson and second by Commissioner Lapin. Motion approved unanimously by all members present; Clark, Lapin, Lindsay, Johnson and Shepard.**

**3. Introductions:**

**4. Agency Accomplishments:**

Hand out and review of RCRC accomplishments based on suggestions by the Matrix Group Management Audit.

**5. Bond Funds:**

Hand out of outstanding Bond Funds and review by Tara Dickerson, Chief of Staff.

Mr. Norman Jackson requested information on land purchase in Lower Richland referenced in the Bond.

Ms. Tara Dickerson stated that she would do some research and report back to Council through Chair.

Ms. Tara Dickerson stated that she would provide a copy of the Ten Year Master Plan for Council's review.

Council members during discussion expressed the desire for meetings of this nature in the future to discuss budget request and issues before a vote.

**6. MOU:**

Chair Clark introduced the discussion of the MOU and the consensus was to revisit at a later time.

**Motion to adjourn made by Commissioner Shepard second by Commissioner Lindsay. Motion approved unanimously by all members present; Clark, Lindsay, Shepard, Johnson and Lapin.**

**7. Adjournment**

Meeting adjourned at 5:46p.m.



Thomas Clark, Chair

Minutes approved on this 26<sup>th</sup> day of February 2018.

**Richland County Recreation Commission  
Regular Board Meeting Minutes  
January 22, 2018  
6:00PM**

**Commissioners in Attendance:**

Thomas Clark, Chair  
Robert Lapin  
Cynthia Shepard  
Jermaine Johnson, Sr.  
Donzetta Lindsay

**RCRC Staff in Attendance:**

Tara Dickerson  
David Stringer  
Bob Hickman  
Connie Reaves  
Kasey Wilson  
Marta Cleary  
Mike Marshall  
Tiyana Henley  
William Daugherty  
Shaunta Cleveland  
Randolph Anderson  
Cornelia Watts

**Others in Attendance:**

Mayor Bob Coble, Interim Parliamentarian

**1. Call to Order:**

Commissioner Clark called the meeting to order at 6:05pm.

**2. Adoption of Agenda:**

**Motion to adopt the agenda made by Commissioner Johnson and second by Commissioner Lapin. Motion approved unanimously by all members present; Clark, Johnson, Lapin, Shepard, and Lindsay.**

**3. Minutes:**

**Motion to approve minutes from the December 18, 2017 Regular Board Meeting made by Commissioner Lindsay and second by Commissioner Shepard. Motion approved unanimously by all members present; Clark, Johnson, Lapin, Shepard, and Lindsay.**

**4. Public Input:**

Ms. Juliette Greenlee, voiced concerns of the community use of the Crane Creek Community Center which was leased to the Carolina School for Inquiry Ms. Greenlee stated that the school requires a year in advance notice of use.

Commissioners requested copy of lease with the school.

Ms. Barbara Roach, Meadowlake Homeowners Association, distributed handout and thanked Board for waiver last month. Ms. Roach voiced concerns over entrance to Park and asked that it be made a clear turn in.

Mr. Hainsley Lewis, Lincolnshire Community, voiced concerns of the building removals at the site and community use of the Crane Creek Community Center.

Chair Clark advised that the Board will look into the issues.

Ms. Tara Dickerson, Chief of Staff, stated that she would help in facilitating use with the school principal.

Mr. David Dawson, representing football at Polo Road Park, expressed his appreciation and thanks on behalf of the kids and his staff for the hard work that was put in at the Park.



Ms. Gloria Brown, thanked Ms. Dickerson for work done in the bathroom. Ms. Brown voiced concerns on instructor for arthritis class (both instructors scheduled off) and temperature of room during quilting class.

Ms. Dickerson stated that she would look into the instructors' scheduling and Marta Cleary, Property Management, reported on HVAC repair.

Ms. D'Andrea Outten-Brown, expressed her appreciation to Kasey Wilson for promptly handling the trip refund issue. Ms. Outten-Brown requested a better printer at the James Clyburn Technology Center.

#### **5. Financial Report: (Information)**

Kasey Wilson, Financial Operations, reviewed financial reports included in Board's packet.

#### **6. New Business:**

Tara Dickerson, Chief of Staff, introduced Frannie Heizer, RCRC Bond Attorney who also assist RCRC with lease purchases. Ms. Dickerson stated that Ms. Heizer will present information and resolution regarding the lease purchase for the mini buses and adult leader bus that we are desperately in need of.

Ms. Heizer stated that she has for the Board's consideration a resolution authorizing the Recreation Commission of Richland County to enter into a lease purchase agreement in the amount of not to exceed \$245,000 for the purpose of purchasing vehicles and mini buses. Ms. Heizer stated that by adopting this resolution you would be authorizing staff to do a RFP to local banks to see who would enter into the lease purchase with the Commission. We would then take bids, taking the low bid and move forward on the transaction. Documents involved would be the lease purchase agreement and it would be similar to a transaction if you were financing the purchase of the vehicles with the bank except that because you are a special purpose district, you can only borrow money in limited ways; state law requires that you either issue a bond or enter into a transaction like a lease purchase. Ms. Heizer stated that she understands

that the initial payments for this have already been included in the budget and she thinks it will be a four or five-year transaction and each year the annual payments would be included in the budget and at the conclusion of the transaction, the title of the vehicles would be clear titles and come back to the Commission. Ms. Heizer reported that she does not know now what the interest rate would be but this would be tax exempt debt meaning that the bank would not have to declare the interest as income for purposes of its federal income taxation.

In summary, Ms. Heizer advised that the resolution that the Board adopts authorizes the transaction and delegates to your Chief of Staff to go out and issue the request for bids or request for proposals and accept the low bid. Ms. Heizer stated that probably by the next Commission meeting or April we will have the money in the bank.

Ms. Dickerson explained that the buses that we have are 10 to 14 years old and they are not in good condition and she does not feel comfortable transporting our seniors and our children in the buses that we currently have.

Chair Clark stated that they would revisit the issue after Executive Session.

## **7. Other Business:**

**A.** David Stringer, Human Resources, presented policy updates for Policy No. 087 Fraternization and Policy No. 050 Dress Code included in the Board's packet.

Mr. Stringer handed out a second draft of the Dress Code policy stating that after looking at the budget the Administrative Staff has been added.

**Motion to approve Policy No 050 Dress Code made by Commissioner Shepard, second by Commissioner Johnson. Motion approved unanimously by all members present; Clark, Johnson, Shepard, Lapin and Lindsay.**

**Motion to approve Policy No. 087 Fraternization made by Commissioner Lapin, second by Commissioner Johnson. Motion approved unanimously by all members present; Clark, Johnson, Shepard, Lapin and Lindsay.**

**B.** Tara Dickerson, Chief of Staff, presented Agency updates:

1. Verified with County that milledge agencies will be required to submit 18/19 budget and staff is currently working on budget for presentation to Board for approval prior to presenting to County.
2. RCRC is now the owner of property located at 3603 Beatty Road, located adjacent to St. Andrews Park.
3. We were notified of some pond/dam issues at our property located at 225 Rimer Pond Road, caused by the otters and beavers. The pond has been pumped down about ten feet and working on repairing dam.
4. The Finance Department is working with auditor to set up a reserve fund account which was one of the items suggested by the Matrix group.
5. Mr. Hickman along with the Athletics Department is working to get Lacrosse started and we are partnering with Victory Lacrosse to offer a free clinic at Meadowlake Park on Saturday, January 27<sup>th</sup>. We have also expanded our partnership with Lexington County Parks and Irmo Chapin to start a league.
6. The Foundation received a \$2500 contribution from First Citizens Bank for athletic program scholarships and they have also partnered with Adaptive Rec to host the Tee Them Up Golf Tournament on March 15<sup>th</sup> and LinRick Golf Course and the purpose is to raise awareness about therapeutic recreation and individuals with disabilities. The funds will go to help take children with special needs to the Charleston Museum and the remainder will be used for scholarships through the year.
7. RCRC will now offer birthday celebration packages for kid ages 3-12 with a choice of the Play Ball Sports Fun or the Messy Birthday Madness. Information is listed on our website and in the Game Plan.
8. Annual Report and Game Plan provided for your information and they are also located on our website.
9. We are currently accepting applications for our Property Management Division Head as well as a full time custodian for Meadowlake Park and updates were sent through email.
10. Two Commissioners need to be elected to serve on the Foundation Board which is outlined in the Foundation By-laws and hope this will move the Foundation in the right direction and start to make it a more profitable arm of the Agency.

**Motion made by Commissioner Shepard to elect Commissioners Jermaine Johnson and Donzetta Lindsay to serve on the Foundation Board, second by Commissioner Lapin. Motion approved unanimously by all members present; Clark, Lapin, Shepard, Lindsay and Johnson.**

Ms. Dickerson introduced new full time staff; Shaunta Cleveland, interim Manager here at the Adult Activity Center and Javon James, Assistant Manager at Meadowlake Park.

Commissioner Lapin inquired about softball league decisions.

Ms. Dickerson explained the process of league play and RCRC league play.

Commissioner Johnson inquired about free play for volleyball in Lower Richland.

Ms. Connie Reaves, Division Head Parks, stated that Park Manager can set up time for free play.

Commissioner Lapin stated that the Board should plan to meet with County Council on a quarterly basis which could prove to be very productive.

**Motion to go into Executive Session to discuss a personnel matter regarding the Compliance Officer position made by Commissioner Johnson, second by Commissioner Lapin. Motion approved unanimously by all members present; Clark, Lindsay, Shepard, Johnson and Lapin.**

**Entered Executive Session 7:15p.m.**

## **8. EXECUTIVE SESSION:**

**Executive Session ended at 8:19pm.**

Chair Clark stated no action was taken in Executive Session.

**Motion to adjourn meeting made by Commissioner Lapin, second by Commissioner Shepard. Motion approved unanimously by all members present; Clark, Lapin, Shepard, Johnson and Lindsay.**

**9. Adjournment**

Meeting adjourned at 8:20 p.m.



Thomas Clark, Chair

Minutes approved on this 26<sup>th</sup> day of February 2018.



# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

## Administration & Finance Committee Meeting October 24, 2017 Briefing Document

### Agenda Item

Recreation Commission Memorandum of Understanding

### Background

On September 12, 2017, the Honorable Norman Jackson made the following motion:

Richland County funds thirteen mills eight mills more than the five mills required by statute. I move that County Council develop a separate Recreation Commission to manage the eight additional mills if the Recreation Commission does not agree to the MOU or if Council still feels that there is taxation without representation. Note: This is a partial solution to the constant challenge for taxation and representation [N. Jackson]

During the October 17, 2017 meeting deliberations, the County Legal department provided an update on the Memorandum of Understanding (MOU) provided to the Recreation Commission, which has not been executed by the Recreation Commission due to substantial changes requested to the MOU approved by Council.

A copy of the MOU is attached.

### Issues

Memorandum of Understanding with Recreation Commission

### Fiscal Impact

N/A

### Past Legislative Actions

None.

### Alternatives

1. Consider the motion and proceed accordingly.
2. Consider the motion and do not proceed.

### Staff Recommendation

Council discretion, as this is a Councilmember sponsored initiative

**Submitted by:** Councilman Norman Jackson, District 11

**Date:** September 12, 2017



## **Article 1. Findings**

1.1. The parties agree and understand that in order to facilitate the responsible use of public funds and to provide the best available services to the citizens of Richland County that certain changes and recommendations must be implemented by the RCDC.

1.2. The parties agree and understand that the County has an obligation to be a responsible steward of public money.

1.3. The parties agree and understand that the County is required by law to fund the RCRC at the statutory millage rate and that any further funds are the sole discretion of the County.

1.4. The parties agree and understand that in order for the County to responsibly appropriate money to the RCRC that certain expectations regarding management and budgetary control of the RCRC must be met.

## **Article 2. Requirements**

2.1. The parties agree that the following items are necessary to the proper function and management of the RCRC; as such, RCRC agrees to implement the following requirements in a timely manner:

- a. RCRC shall adopt a transparency policy and direct its staff to expand online information available to the public including service delivery standards, service levels, board agendas and actions and planning documents. This policy shall include publishing full board agendas and supporting documents online for transparency and public use.
- b. The RCRC Board shall implement a budget sub-committee.



- c. The RCRC Board shall adopt a policy that provides for evaluation of the Richland County Executive Director by the entire board no less than yearly.
- d. RCRC Department Directors will be involved in the entire internal process of developing budget recommendations for future budget cycles. Department Directors shall be held accountable for managing their budgets during the year and ensuring compliance with the adopted budget.
- e. RCRC shall develop a detailed budget document after adoption and publish this budget on its website.
- f. The RCRC Executive Director shall provide a detailed budget annually to Richland County as part of RCRC's budget submission and provide quarterly budget updates to the Richland County Administrator. **RCRC understands that failure to comply with this requirement will result in non-appropriation of non-statutorily required funds** with consent of County Council.
- g. The RCRC Executive Director shall develop a comprehensive 5-year budget forecast and 5-year Capital Improvement Program for RCRC operations. RCRC agrees and understands that a long-range capital planning effort is critically needed to effectively manage and maintain RCRC's facilities, parks, and recreation infrastructure. As part of its longer-range planning effort, the RCRC will also develop a plan for implementation of the 10-year master plan and integrate this operational plan into the budget process outlined earlier including the 5-year financial forecasting and the 5-year capital improvement plan.

2.2. RCRC understand that failure to implement any of the foregoing recommendations in a timely manner **may** result in non-appropriation of non-statutorily required funds or a reduction in appropriations to the RCRC.

**Article 3. Recommendations**

3.1. The parties agree that the following items would benefit the proper function and management of the RCRC; as such, RCRC agrees to consider implementation of the following recommendations:

- a. The RCDC Executive Director should develop a plan for training all staff on adopted administrative and human resources policies.
- b. The RCDC Executive Director should implement an internal process for a periodic review of all policies and procedures to identify necessary modifications and propose modifications for consideration by the RCRC.
- c. Relevant RCRC staff (for example, Human Resources staff and Finance staff) should conduct periodic compliance audits to ensure the policies they are responsible for implementing are being followed by all staff in the organization.
- d. The annual work program for the Internal Auditor should include specific projects to evaluate compliance with the adopted policies and procedures, thereby evaluating several key policies annually.
- e. After a new RCRC Board is appointed and oriented, they should review the compensation philosophy and the nepotism policy and consider modifications to modify both policies to ensure greater internal compliance and equitable treatment of all employees.

- f. Staffing allocations are generally appropriate for the provision of services. Some internal reallocations may be required with the implementation of enhanced programming and planning efforts.
- g. The Assistant Executive Director position should be eliminated.
- h. The RCRC should implement a new position of Internal Auditor / Compliance Officer that reports directly to the RCRC and who is responsible for investigating issues related to employee and public complaints, and has an annual audit work plan for continuous improvement.
- i. The budget sub-committee should quarterly review budget performance with RCRC executive staff.

#### **Article 4. Miscellaneous**

##### 4.1. Separate Statutory Entities.

The parties agree and understand that the County and the RCRC are separate legal entities and that nothing in this MOU changes or attempts to change the statutory requirements, authority, and/or duties of the parties.

##### 4.2. Representations and Warranties.

Each party to this MOU represents and warrants that:

- a. it has full legal right, power and authority to enter into this MOU and to perform and consummate all other transactions contemplated by this MOU.
- b. it has duly authorized the execution, delivery and performance of its obligations under this MOU and the taking of any and all actions as may be required on the part of each party to perform and consummate the transactions contemplated by this MOU.

4.3. Term.

This MOU shall be effective once executed by both parties and the duties and obligations of each party hereto shall continue in full force and effect until terminated by the written notice of either party to the other party.

4.4. Entire Understanding.

a. This MOU contains the entire understanding of the parties, and no prior agreements, oral or otherwise, among the parties not embodied herein shall be of any force or effect. Any amendment to this MOU shall not be binding upon the parties hereto unless such amendment is in writing and executed by all parties hereto.

b. This MOU may be executed in multiple counterparts, the signature pages of which may be compiled to constitute one original Agreement.

c. This MOU is intended to be performed in compliance with all applicable laws, ordinances, rules and regulations.

IN WITNESS WHEREOF WE THE UNDERSIGNED have this 7<sup>th</sup> day of July, 2017, set our hand and seal hereon.

RICHLAND COUNTY  
RECREATION COMMISSION:


WITNESSES:

\_\_\_\_\_  
Its:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

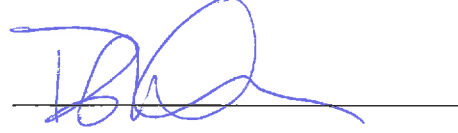
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RICHLAND COUNTY



Its:

WITNESSES:



Richland County Attorney's Office



Approved As To LEGAL Form Only.  
No Opinion Rendered As To Content.

# South Carolina Summary Court



**The Honorable Tomothy C. Edmond**

4919 Rhett Avenue  
Columbia, South Carolina 29203

Phone (803) 576-2570  
Facsimile (803) 576-2578

April 18, 2018

Richland County Council Members  
2020 Hampton Street  
Columbia, SC 29204

## **Re: Lease Approval Request**

Dear County Council Members:

My name is Tomothy Edmond, and I am the Chief Administrative Judge of the Summary Courts in Richland County. I am also the Upper Township Magistrate in the North Columbia District 3 area. I am writing today to respectfully ask for your assistance in approving a short term lease at (20/21 Business Park) 400 Northeast Drive Columbia, South Carolina 29203. This facility has adequate parking and more functional space to service the citizens of Richland County. The lease is approximately fourteen (14) months and a copy of the proposal is attached to this letter.

The current office is located at 4919 Rhett Street. The home was built in 1940 and the landlord will not do any maintenance or modifications to the facility. This facility had code violations from the City and the current employees to include myself have had health issues since 2011. Within the past two years, this facility has been infested with mice, squirrels, and roaches. I have attached pictures of the dead rodents that staffs routinely remove from this facility. On a least four occasion citizens complain of snake activity and excessive ant trails as they enter and exit this facility.

Thank you in advance for considering this request. I am available to follow up with your office or regards to this matter. You may contact me by phone at **803 576 2570** or via email at **edmond.tomothy@richlandcountysc.gov**. I know with your help the citizens can be served at a decent facility that will be reflective of Richland County Government.

Sincerely,

Tomothy C Edmond  
Chief Summary Court Judge



807 Gervais Street  
 Suite 301  
 Columbia, South Carolina 29201  
 803.254.0100  
 1.888.251.0102

April 11, 2018

The Honorable Tomothy C. Edmond  
 Richland County Magistrate Court  
 4919 Rhett Street  
 Columbia, SC 29203

*(sent via e-mail)*

RE: Proposed Lease Terms – 20/21 Business Park, Columbia, South Carolina

Dear Judge Edmond:

On behalf of the landlord, BH Investments, we are pleased to submit this proposal for the Richland County Magistrate’s Office to lease space in 20/21 Business Park located at 400 Northeast Drive, Columbia, South Carolina (“Building”) under the following terms and conditions:

<b>Landlord:</b>	BH Investments, LLC
<b>Tenant:</b>	Richland County Magistrate’s Office
<b>Property Management:</b>	NAI Avant provides property management services for 20/21 Business Park.
<b>Building:</b>	400 Northeast Drive Columbia, SC 29203
<b>Premises:</b>	Suite I, consisting of approximately 1,215 rentable square feet.
<b>Lease Commencement Date:</b>	Earliest of May 1, 2018 or Delivery of Possession.
<b>Term:</b>	Fourteen (14) Month lease term.
<b>Base Rental Rent:</b>	The Base Rent for the Premises shall be \$1,331.37 per month. Base Rent is net of utilities and janitorial service.
<b>Tenant Improvements:</b>	Landlord shall install a door with a lock to separate the reception area from the remaining space and install a window overlooking the reception area with opening at the bottom to pass documents through, clean the carpet and ensure building systems are in working order. (lighting, electrical, HVAC etc.) Landlord shall remove the water fountain in the break room.
<b>Parking:</b>	Parking is available in the surface lot for no additional charge.

<b>Operating Expense and Real Estate Taxes:</b>	Tenant shall pay its pro rata share of operating expenses and real estate taxes which exceeds 2018 base year
<b>Qualifying Conditions:</b>	<p>This proposal is subject to change, modification or withdrawal, without penalty, by either party prior to full lease execution. This proposal shall not bind either the Landlord or Tenant, and there shall be no binding agreement between the Landlord and Tenant, unless and until a final lease document has been executed and delivered by both Landlord and Tenant. Therefore, the preparation, revision or delivery of this proposal or any lease for examination and discussion shall in no event be deemed an offer or an obligation to lease the Premises but shall be merely a part of the negotiations between Landlord and Tenant.</p> <p>This proposal will expire in seven days.</p>

If the terms and conditions outlined above are acceptable, please sign below as indicated and returned to the undersigned. Upon receipt, we will submit for your review a lease for the space. Please contact me with any questions. Thank you for your time and consideration.

Sincerely,



Jeff Hein, SIOR  
NAI Avant

**AGREED AND ACCEPTED:**

**TENANT: Richland County Magistrate's Office**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Its:** \_\_\_\_\_





# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

## April 24, 2018 Administration & Finance Committee Meeting Briefing Document Payment for invoices submitted by Chao & Associates

### Agenda Item

Payment for invoices submitted by Chao & Associates related to their work on Pinewood Lake Park Phase 2

### Background

The County has received a request as to the status of invoice processing for Pinewood Lake Park phase 2, from the attorney for Chao & Associates (Chao), Robert Fuller (attachment A).

The total contract amount for Phase two with associated tasks is below:

Construction Budget	\$ 3,658,537.00
Arch/Eng Services	\$ 402,439.00
Const. Mgmt.	\$ 439,024.00
<b>Chao's Total Budget</b>	<b>\$ 4,500,000.00</b>

We have received six invoices in total (summary of each total, as well as what has been paid is below) (attachment B):

Invoice #	Invoice Date	Amount	Paid
399935D-1	3.8.17	\$ 186,375.85	\$ 186,375.85
399935D-2	4.17.17	\$ 28,170.73	\$ 28,170.73
399935D-3	6.19.17	\$ 152,926.82	\$ 152,926.82
399935D-4	7.14.17	\$ 20,121.95	\$ - Pending
399935D-5	9.28.17	\$ 34,233.91	\$ - Pending
399935D-6 (rev)	2.14.18	\$ 226,463.40	\$ - Pending
		<b>\$ 648,292.66</b>	<b>\$ 367,473.40</b>

That leaves a total of \$280,819.26 unpaid. Chao's letter dated March 1, 2018 (attachment C) indicates the balance unpaid to be \$276,682.04. The small discrepancy may be due to rounding and percentage calculations. The County's number is more conservative.

Note the purchase of property by Chao (TMS#19011-02-12) has been allocated, since the third invoice, to the construction budget line item.

The latest invoice indicates the following % complete for each task order:

Construction Budget	6%
Arch/Eng Services	100%
Const. Mgmt.	6%

The latest invoice received, dated February 14, 2018, expenses 100% of the architectural/engineering services. Note the County is not in receipt of that deliverable, an approved set of buildable plans, particularly in respect to the Community Center portion of this project, which would be appropriate for 100% billing of this task. Currently, plans for the Community Center utilizes a design that is over budget and located on property the County does not own, which is the result of the purchase of TMS#19011-02-12 by Chao noted earlier (attachment D).

Should the County proceed with paying this invoice as presented and should the project proceed in the future, it would be reasonable to expect a scope and budget amendment would be needed for Chao to deliver a design that is within budget and properly located on County-owned property.

Payment Options:

1. As articulated in Chao's letter dated March 1, 2018, deduct the property acquisition amount from the total amount owed on all invoices. That would look like the following:

Invoice Balance	\$ 280,819.26
Minus Property Acquisition	\$ 126,010.00
	<hr/>
	\$ 154,809.26

2. Render two different transactions: one requiring Chao remit reimbursement to the County directly, the \$126,010 as indicated in the February 21, 2018 letter from County Administrator Gerald Seals (attachment E) and the other providing payment in whole to Chao for the total amount owed on all invoices.

In either option 1 and 2, if the full amount of all invoices is approved for payment, the property that the architectural/engineering services have been rendered at 100% remains titled under Chao & Associate. This means that Richland County would have paid for services on a property that the county does not own.

3. Pay a portion of the outstanding invoice balance, for services rendered only. Council may consider reducing the architectural and engineering services amount to leave budget on that line item for future deliverables.

If paying only a portion of the outstanding balance, Council could chose to handle the property purchase reimbursement in the two ways provided in Option 1 and 2 above (either deduct it from the County's payment or treat it as a separate transaction).

4. Deny payment of outstanding invoice balance, while the project is in a hold status (attachment F).

## Issues

- Outstanding invoices
- Invoicing for work not received
- Completion of directive by Council to receive reimbursement for Chao's property purchase using County funds
- If payment of pending invoices is authorized, this payment would be for design services on a property the Richland County does not own

## Fiscal Impact

- \$280,819.26 unpaid invoices
- \$126,010 reimbursement from Chao that has not been received

## Past Legislative Actions

County Council approved funding for Phase 2 on June 9, 2016

- The Notice to Proceed (NTP) was issued on September 30, 2016

County Council directed reimbursement for property purchase on February 20, 2018

- Letter sent to Chao on February 21, 2018

## Alternatives

1. Approve the payment of all outstanding invoices to Chao and deduct the reimbursement for the property purchase.
2. Approve the payment of all outstanding invoices to Chao, in full, and require a separate reimbursement for the property purchase.
3. Approve the payment of some portion of the outstanding invoices to Chao, for services rendered, and require a separate reimbursement for the property purchase.
4. Approve the payment of some portion of the outstanding invoices to Chao, for services rendered, and deduct the reimbursement for the property purchase.
5. Deny payment of outstanding invoice balance, while the project is in a hold status.

## Staff Recommendation

Council discretion. Staff will follow Council's directive.

Submitted by: Administration

Date: April 19, 2018

## Tracy Hegler

---

**From:** SANDRA YUDICE  
**Sent:** Thursday, April 12, 2018 12:05 PM  
**To:** LARRY SMITH  
**Cc:** Tracy Hegler; Brandon Madden; JAMES HAYES; STACEY HAMM  
**Subject:** RE: [spam] RE: CHAO & ASSOCIATES/PALMETTO PARK

Mr. Smith,

Tracy will get with Chao's accountant today to get the last revised invoice to reconcile our figures with theirs. We'll keep you informed once the figures are reconciled.

On the \$126,010 for the property that Chao purchased with county funds, they are fine with the county deducting this amount from the amount RC owes them. However, wouldn't it be better if Chao pays the \$126,010 to keep both transactions (i.e., what RC owes Chao and what Chao owes RC) separate?

Thanks.

Sandra

---

**From:** LARRY SMITH  
**Sent:** Thursday, April 12, 2018 10:40 AM  
**To:** SANDRA YUDICE <YUDICE.SANDRA@richlandcountysc.gov>  
**Subject:** Fwd: [spam] RE: CHAO & ASSOCIATES/PALMETTO PARK

FYI

Begin forwarded message:

**From:** LARRY SMITH <[SMITH.LARRY@richlandcountysc.gov](mailto:SMITH.LARRY@richlandcountysc.gov)>  
**Date:** April 4, 2018 at 10:40:18 PM EDT  
**To:** Jimmy Chao <[Jimmy@chaoinc.com](mailto:Jimmy@chaoinc.com)>  
**Cc:** LARRY SMITH <[SMITH.LARRY@richlandcountysc.gov](mailto:SMITH.LARRY@richlandcountysc.gov)>, "[lease@downtownexecutivesuites.com](mailto:lease@downtownexecutivesuites.com)" <[lease@downtownexecutivesuites.com](mailto:lease@downtownexecutivesuites.com)>  
**Subject:** Re: [spam] RE: CHAO & ASSOCIATES/PALMETTO PARK

Thanks!!

On Apr 4, 2018, at 4:55 PM, Jimmy Chao <[Jimmy@chaoinc.com](mailto:Jimmy@chaoinc.com)> wrote:

Mr. Smith,

Attached please find a copy of the outstanding invoices for the Pinewood Lake Project. Thanks.

Jimmy Chao

[JIMMY@CHAOINC.COM](mailto:JIMMY@CHAOINC.COM)<<mailto:JIMMY@CHAOINC.COM>>

From: LARRY SMITH [<mailto:SMITH.LARRY@richlandcountysc.gov>]

Sent: Tuesday, April 03, 2018 5:17 PM

To: '[lease@downtownexecutivesuites.com](mailto:lease@downtownexecutivesuites.com)'

Cc: Jimmy Chao

Subject: RE: [spam] RE: CHAO & ASSOCIATES/PALMETTO PARK

Bob,

I recall that you sent to me by way of letter or e-mail the amount owed to Chao. However, I don't recall if you sent me the actual invoices. If you did, please resend. If you didn't send the actual invoice. I will forward to Administration.

Thanks!

From:

[lease@downtownexecutivesuites.com](mailto:lease@downtownexecutivesuites.com)<<mailto:lease@downtownexecutivesuites.com>> [<mailto:lease@downtownexecutivesuites.com>]

Sent: Tuesday, April 03, 2018 1:05 PM

To: LARRY SMITH

Cc: Jimmy Chao

Subject: [spam] RE: CHAO & ASSOCIATES/PALMETTO PARK

TO: Larry Smith, Esq - [smithla@rcgov.us](mailto:smithla@rcgov.us)<<mailto:smithla@rcgov.us>>

RE: CHAO & ASSOCIATES/PALMETTO PARK

cc: Jimmy Chao - [Jimmy@Chaoinc.com](mailto:Jimmy@Chaoinc.com)<<mailto:Jimmy@Chaoinc.com>>

Date: April 3, 2018

Larry, I know this is a council Meeting date that has you pulled in multiple directions. Something that may not be on the agenda is of more concern to my client, Chao and Associates.

Although the Pinewood Park Phase II project is not under active processing at present, there are significant outstanding invoices from Chao to Richland County that are long past-due for payment. If the Administrator or Council have specific disputes, we need to have them identified for appropriate processing. (The land acquisitions invoice represents only a portion of the outstanding unpaid costs billed under the overall contract.)

If there is something further Chao needs to do to obtain resolution, please so advise. Otherwise, consider this an affirmative demand upon Richland County for payment of the pending, undisputed invoices.

Regards,

Bob Fuller

<18-0214 Outstanding Invoices.pdf>

Approval Signature: Chao

V000236

Project Code: [REDACTED]

Chao and Associates, Inc.

Date: 3/27/17 PO: CPS17074

7 Clusters Court  
Columbia, SC 29210

[REDACTED]

BY: [REDACTED]

# Invoice

<b>Bill To</b>
Mr. Chad Forsnight Richland County 2020 Hampton St., Suite 3064 Columbia, SC 29204

Date	Invoice #
3-8-2017	359935D-1

RE: Pinewood Lake Phase II C&A Project No. 399935D Billing Period: 11/01/16 to 02/28/17
---

Terms
Due on receipt

Description	Contract Amt.	% Complete	Fee Earned
PO: CPS17074			
Construction Budget	\$ 58,537	0%	0.00
**Property Acquisition	26,010	100%	126,010.00
Architectural and Engineering Services	32,439	15%	60,365.85
Construction Management	39,024		0.00

**PAID**

Thank you for your business	<b>Total</b>	\$186,375.85
-----------------------------	--------------	--------------

Invoices not paid in full 70 days from date of invoice are subject to a financial charge of 1.5% per month on unpaid balances.

<b>Payments/Credits</b>	\$0.00
<b>Balance Due</b>	\$186,375.85



**RICHLAND COUNTY  
FINANCE DEPARTMENT**  
PO BOX 192  
COLUMBIA, SOUTH CAROLINA 29202

07-1189539		
DATE	CHECK NO.	AMOUNT
04/05/17	00094145	***186,375.85

PAY ONE Hundred EIGHTY SIX Thousand THREE Hundred SEVENTY FIVE Dollars and EIGHTY FIVE Cents

VOID IF NOT CASHED WITHIN 90 DAYS

TO THE ORDER OF CHAO AND ASSOCIATES INC  
7 CLUSTERS CT  
COLUMBIA, SC 29210

*David Diggins*

DOCUMENT CONTAINS A COLORED PANTOGRAPH & MICROPRINTING. BACK HAS THERMOCHROMIC INK & A WATERMARK. HOLD AT AN ANGLE TO VIEW. VOID IF NOT PRESENT.

~~00094145 0053200666408 1335760~~

<p><b>Security Features</b></p> <p><b>Color Background</b> Microprint "map"</p> <p><b>Artificial Watermark</b></p> <p><b>Bottom Warning Band</b></p> <p><b>Thermochromic Ink</b></p> <p><input type="checkbox"/> Reflect design is a watermark that disappears when exposed to heat or by rubbing or touching with thumb.</p> <p><input type="checkbox"/> Ink on back of check should disappear when held at an angle to view.</p> <p><input type="checkbox"/> Pink design on back of check should disappear when held at an angle to view.</p>	<p><b>ENDORSE HERE</b></p> <p>X</p> <p>For Deposit Only Chao &amp; Associates, Inc. 1003003</p> <p>DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE RESERVED FOR FINANCIAL INSTITUTION USE</p> <p>053202200 Wilmington 17-04-11 0016029442</p>
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Approval Signature: 

~~CL 133698000.5271.00~~  
~~SL 11980000.5271.00~~

**Chao and Associates, Inc.**

7 Clusters Court  
 Columbia, SC 29210

Phone # 803-772-8420

Date: 5/9/17 PO: CPS17074

**Invoice**

<b>Bill To</b>
Mr. Chad Forsnight Richland County 2020 Hampton St., Suite 3064 Columbia, SC 29204

<b>Date</b>	<b>Invoice #</b>
4/17/2017	399935D-2

RE: Pinewood Lake Phase II C&A Project No.: 399935D Billing Period: 03/01/17 to 03/31/17
--

<b>Terms</b>
Due on receipt


Description	Contract Amt.	% Complete	Fee Earned
PO: CPS17074			
Construction Budget: \$3,600,537.00			
A) Property Acquisition: Land Surveying, Appraisal & Property Purchase	\$126,000.00	100%	126,010.00
Architectural and Engineering Services	\$402,400.00	22%	88,536.58
Construction Management	\$439,000.00	0%	0.00
Previous Amount Invoiced			-186,375.85

**PAID**

Thank you for your business.	<b>Total</b>	\$28,170.73
------------------------------	--------------	-------------

Invoices not paid in full 20 days from date of invoice are subject to a financial charge of 1.5% per month on unpaid balances

<b>Payments/Credits</b>	\$0.00
<b>Balance Due</b>	\$28,170.73

 <b>RICHLAND COUNTY FINANCE DEPARTMENT PO BOX 192 COLUMBIA, SOUTH CAROLINA 29202</b>			THE NATIONAL BANK OF SOUTH CAROLINA Columbia, South Carolina 29202
DATE	CHECK NO.	AMOUNT	
05/24/17	00095739	****28,170.73	

PAY TWENTY EIGHT Thousand ONE Hundred SEVENTY Dollars and SEVENTY THREE Cents

VOID IF NOT CASHED WITHIN 90 DAYS

TO THE ORDER OF CHAO AND ASSOCIATES INC  
7 CLUSTERS CT  
COLUMBIA, SC 29210

*[Signature]*

MP DOCUMENT CONTAINS A COLORED PANTOGRAPH & MICROPRINTING. BACK HAS THERMOCHROMIC INK & A WATERMARK. HOLD AT AN ANGLE TO VIEW. VOID IF NOT PRESENT

**ENDORSE HERE**

**X**

PAY TO THE ORDER OF Chao and Associates, Inc.

100095739

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE RESERVED FOR FINANCIAL INSTITUTION USE

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**Security Features**

**Description**

- Face of check has a colored background
- Small type appears as raised line when photographed.
- Invisibile watermark on back of check w/ a appear when held up to view
- Watermark band at bottom of check lets security team know on back of check should disappear when rubbed with thumb or finger

Thermochromic Ink

Bottom Watering Band

Microprinting

Artificial Watermark

Colorful Background

MP

Approval Signature: *[Signature]*

Budget Code: [Redacted]

**Chao and Associates, Inc.**  
 7 Clusters Court  
 Columbia, SC 29210

Date: 8/22/17 PO: CPS17074

# Invoice

<b>Bill To</b>
Mr. Chad Forsnight Richland County 2020 Hampton St., Suite 3064 Columbia, SC 29204

<b>Date</b>	<b>Invoice #</b>
6/19/2017	399935D-3

RE: Pinewood Lake Phase II C&A Project No.: 399935D Billing Period: 04/01/17 to 05/31/17
--

RECEIVED  
 8-22-17

<b>Terms</b>
Due on receipt

Description	Contract Amt	% Complete	Fee Earned
PO: CPS17074			
Construction Budget: \$3,658,537.00	3,658,537.00	3.4443%	126,010.00
a) Property Acquisition: \$1,200,000.00			
*Subdivision Survey: \$100,000.00			
*Topographic/Tree Survey: \$3,050.00			
*Appraisal: \$1,760.00			
*Purchase Fee: \$120,000.00			
b) Park Phase II Construction: \$3,532,527.00			
Architectural and Engineering Services	\$402,439.00	60%	241,463.40
Construction Management	\$439,024.00	0%	0.00
Previous Amount Invoiced			-214,546.58

**PAID**

Thank you for your business.	<b>Total</b>	\$152,926.82
------------------------------	--------------	--------------

Invoices not paid in full 20 days from date of invoice are subject to a financial charge of 1.5% per month on unpaid balances

<b>Payments/Credits</b>	\$0.00
<b>Balance Due</b>	\$152,926.82



**RICHLAND COUNTY  
FINANCE DEPARTMENT**  
PO BOX 192  
COLUMBIA, SOUTH CAROLINA 29202

**THE NATIONAL BANK OF SOUTH CAROLINA**  
Columbia, South Carolina  
87-1180334

DATE	CHECK NO	AMOUNT
08/23/17	00098726	***152,926.82

VOID IF NOT CASHED WITHIN 90 DAYS

PAY ONE Hundred FIFTY TWO Thousand NINE Hundred  
TWENTY SIX Dollars and EIGHTY TWO Cents

TO THE ORDER OF CHAO AND ASSOCIATES INC  
7 CLUSTERS CT  
COLUMBIA, SC 29210

MP DOCUMENT CONTAINS A COLORED PANTOGRAPH & MICROPRINTING. BACK HAS THERMOCHROMIC INK & A WATERMARK. HOLD AT AN ANGLE TO VIEW. VOID IF NOT PRESENT.

109555180499900265009326788000

**Security Features**

**Colored Background**  
Microprinting  
Additional Watermark  
Soleam Warning Band  
Thermochromic Ink

**Description**

- Faces of check have a colored background
- Small type appears as dotted lines when photocopied
- Invis. line watermark on back of check will appear when rubbed with a coin, under ultraviolet light or fold at an angle to view
- Warning band at bottom of check has security features
- Pink flag on back of check should disappear when rubbed with thumb or finger

Heat sensitive pink flag disappears when exposed to heat by rubbing or brushing with thumb

**MP** The security features listed below, as well as those not listed, exceed industry guidelines.

MP The watermark design is a verification mark of Check Payment Systems Association.

08242017 001063000274020 111310870

ENDORSE HERE

X

For Deposit Only  
Chao & Associates, Inc.  
1003003

DO NOT WRITE STAMP OR SIGN BELOW THIS LINE  
RESERVED FOR FINANCIAL INSTITUTION USE

MP

**Chao and Associates, Inc.**

7 Clusters Court  
Columbia, SC 29210

Pinewood Lake Phase II

**Invoice**

Bill To
Mr. Chad Forsnight Richland County 2020 Hampton St., Suite 3064 Columbia, SC 29204

Date	Invoice #
7/14/2017	399935D-4

RE:Pinewood Lake Phase II C&A Project No.:399935D Billing Period:06/01/17 to 06/30/17
---

Terms
Due on receipt

Description	Contract Amt.	% Complete	Fee Earned
PO: CPS17074			
Construction Budget:\$3,658,537.00	\$3,658,537.00	3.4443%	126,010.00
a) Property Acquisition: \$126,010.00			
*Subdivision Survey: \$1,200.00			
*Topographic/Tree Survey: \$3,050.00			
*Appraisal: \$1,760.00			
*Purchase Fee: \$120,000.00			
b) Park Phase II Construction: \$3,532,527.00			
Architectural and Engineering Services	\$402,439.00	65%	261,585.35
Construction Management	\$439,024.00	0%	0.00
Previous Amount Invoiced			-367,473.40

Thank you for your business.	<b>Total</b>	\$20,121.95
Invoices not paid in full 20 days from date of invoice are subject to a financial charge of 1.5% per month on unpaid balances	<b>Payments/Credits</b>	\$0.00
	<b>Balance Due</b>	\$20,121.95

**Chao and Associates, Inc.**

7 Clusters Court  
Columbia, SC 29210

**Invoice**

Bill To
Mr. Chad Forsnight Richland County 2020 Hampton St., Suite 3064 Columbia, SC 29204

Date	Invoice #
9/28/2017	399935D-5

RE:Pinewood Lake Phase II C&A Project No.:399935D Billing Period:07/01/17 to 08/31/17
---

Terms
Due on receipt

Description	Contract Amt.	% Complete	Fee Earned
PO: CPS17074			
Construction Budget:\$3,658,537.00	\$3,658,537.00	3.61%	132,073.18
* Property Acquisition: \$126,010.00			
**Subdivision Survey: \$1,200.00			
**Topographic/Tree Survey: \$3,050.00			
**Appraisal: \$1,760.00			
**Purchase Fee: \$120,000.00			
* Landscape Design: \$6,050.00			
* Remaining Construction Budget \$3,526,477.00			
Architectural and Engineering Services	\$402,439.00	72%	289,756.08
Construction Management	\$439,024.00	0%	0.00
Previous Amount Invoiced			-387,595.35

Thank you for your business.	<b>Total</b>	\$34,233.91
------------------------------	--------------	-------------

Invoices not paid in full 20 days from date of invoice are subject to a financial charge of 1.5% per month on unpaid balances

<b>Payments/Credits</b>	\$0.00
<b>Balance Due</b>	\$34,233.91

**Chao and Associates, Inc.**

7 Clusters Court  
Columbia, SC 29210

**Invoice**

Bill To
Ms. Tracy Hegler Director of Community Planning & Develop. Richland County 2020 Hampton St., Suite 3064 Columbia, SC 29204

Date	Invoice #
2/14/2018	399935D-6

RE:Pinewood Lake Phase II C&A Project No.:399935D Billing Period:09/01/17 to 02/14/17
---

Terms
Due on receipt

Description	Contract Amt.	% Complete	Fee Earned
PO: CPS17074			
Construction Budget:\$3,658,537.00	\$3,658,537.00	6%	215,398.18
* Property Acquisition: \$126,010.00			
**Subdivision Survey: \$1,200.00			
**Topographic/Tree Survey: \$3,050.00			
**Appraisal: \$1,760.00			
**Purchase Fee: \$120,000.00			
* Landscape Design: \$6,050.00			
* Asphalt Paving of Gravel Lots and Trails: \$74,992.50			
* Remaining Construction Budget \$3,325,474.50			
Architectural and Engineering Services	\$402,439.00	100%	402,439.00
Construction Management	\$439,024.00	6%	26,318.26
Previous Amount Invoiced			-421,829.26

Thank you for your business.	<b>Total</b>	\$222,326.18
Invoices not paid in full 20 days from date of invoice are subject to a financial charge of 1.5% per month on unpaid balances	<b>Payments/Credits</b>	\$0.00
	<b>Balance Due</b>	\$222,326.18



March 1, 2018

Mr. Gerald Seals  
County Administrator  
Richland County  
P.O. Box 192  
Columbia, SC 29202

RE: Pinewood Lake Cease and Desist Letter on Feb. 20, 2018 and Feb 21, 2018

Dear Mr. Seals:

Chao and Associates acknowledges receiving your letters dated February 20 and February 21, 2018. Based on the February 21 letter, I understand that the Pinewood Lake Park Project is on hold. However, the February 20 letter indicates that Chao and Associates' Master Agreement and this Project have been terminated. At this point, I am not clear on the County's intentions.

As always, we want to work with the County to do what is best for the County in accordance with our contract; however, your letters contain several misunderstandings, discrepancies and statements that are unclear. The purpose of this letter is to offer clarification and request further discussion.

As a respected firm within this industry and community, please note that at no time has Chao and Associates acted inappropriately or outside the scope of its duties on this project. We take our work and reputation seriously and always strive to act in a manner that is beyond reproach. In this case, I believe we have not fallen short of that goal.

I am hopeful that we can resolve this matter and restore a positive relationship that does not have to end in termination of our Master Agreement and the Project.

It is important that you and all members of Council understand the history of this project. Please allow me to outline the history in an accurate and orderly manner.

**April 2015**

Chao submitted the Phase II Preliminary Cost Estimate, "with each component separately itemized" as required by the Master Agreement. The cost of the land acquisition was itemized on the cost estimate, along with other itemizations.

**May 29, 2015**

We submitted a revised Cost Estimate, (attachment 1) which is the basis for the Phase II project (attachment 2). The same line item for land acquisition was included.

**September 30, 2016**

We received the Notice-To-Proceed to construct Phase II Pinewood Lake as a design-build project. Even though the Purchase Order was not issued at that time, Chao and Associates





began work immediately because the project had to be completed in 15 months. Please note that the Community Building was the critical path of the project and the design and construction of the building could not be started until the land was purchased.

**October 10, 2016**

We sent our first email to Chad Fosnight, the County Project Manager. We addressed the need to acquire the property timely to facilitate the design/construction of the community building. He acknowledged that the land needed to be purchased but he seemed uncertain about how to handle that requirement and would seek further guidance (attachment 3). From that day, we repeatedly communicated with the County asking for direction on the land purchase. Despite no official direction being given, Mr. Fosnight provided names of acceptable appraisers. With this information, we proceeded with having the property appraised.

**February 24, 2017**

After a 5-month delay, the Purchase Order was issued. At that time, the property had been appraised and Chao was preparing for the purchase of the property. The only information needed was how the County wanted to handle the purchase.

**March 8, 2017**

We emailed Chad Fosnight about the property appraisal and indicated that we could request funds from the County to purchase the property. We received no objection to this.

**March 20, 2017**

We submitted an invoice for the land acquisition. The invoice clearly indicated that the billing was for the land purchase. No questions were raised by the County.

**April 11, 2017**

The invoice was paid.

**June 19, 2017**

Even though we had continued communication on the process to purchase the land, a definitive decision about the process was never relayed to us in writing. On June 19, we received verbal authorization from Chad Fosnight to proceed with the land purchase.

**June 20, 2017**

We proceeded with the purchase of the land, with the funds that the County previously remitted to us.

From then on, Chao continued performing architectural and engineering services. We submitted invoices 1 through 6 (revised), which is dated February 14, 2018.

We hope our summary, breakdown by date, and attached documents show that:

- a) the County was aware of the land acquisition since the inception. The land purchase and payment to Chao was discussed with the County for over 10 months and was not an error;
- b) Chao did not act unilaterally or recklessly in purchasing the land. In addition, Chao never claimed to be the Agent of the County. We simply acted according to the turn-key design-builder's responsibility to complete the project in accordance with our contract; and
- c) the contract extension was discussed and agreed to by County staff. The delays on the project occurred through no fault of Chao's; therefore, the extension was proper.



The land acquisition was an integral part of delivering this project since it was on the critical path for the design and construction of the Community Building. The design of the Community Building was being developed as the land acquisition issue was being discussed however the actual site adaptation could not proceed without the land and therefore delayed the completion of the construction documents, permitting and of course the actual construction of the building.

**Invoices**

Your letters indicate that Chao is owed \$86,550.98. Our records indicate that Chao is owed \$276,682.04. The invoices submitted are as follows:

Invoice 1- 3/20/17- \$186,375.85  
Invoice 2- 4/17/17- \$28,170.73  
Invoice 3- 6/19/17- \$152,926.82  
Invoice 4- 7/14/17- \$20,121.95  
Invoice 5- 9/28/17- \$34,233.91  
Invoice 6 (revised) 2/14/18 \$222,326.18

Total Billed - \$644,155.44  
Less Payments received- \$367,473.40  
Total due- \$276,682.04

We understand that the County may continue with putting this project on hold or even terminating it. If either decision is made, it is our desire to convey the property to the County. However, we are willing to credit the County \$126,010.00 for the property now and have the County pay for the property when the Community building is constructed. With the credit for the property, Chao is owed \$150,672.04 for services rendered on the project.

We are open to discussing these options and any other reasonable resolution to bring this matter to an amicable close that preserves both organizations.

Allow me to conclude by stating that Chao and Associates has been providing Engineering Services for the County for over 20 years. We have enjoyed the professional relationship and would like to do whatever we can to maintain it. Please review the information provided and we will be happy to supplement any information you may need. We are looking forward to hearing from you.

Sincerely,  
Chao and Associates, Inc.



C. Jimmy Chao, PE  
President

- cc. Members of Richland County Council
- Larry Smith, County Attorney
- Sandra Yudice, Ph.D., Assistant County Administrator
- Jamelle Ellis, Ph.D., Director, Community and Government Services
- Tracy Hegler, Director, Planning and Community Development
- Jennifer Wladischkin, Manager, Office of Procurement and Contracting
- Carol Kososki, Chair, Richland County Conservation Commission
- Bob Fuller, Esquire.

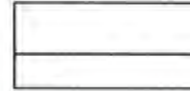


# Pinewood Lake Park Phase II


Date: May 29, 2015

Description	Est. Qty	Unit	Unit Cost	Total
<b>Docks and Trails</b>				
Boardwalk (lake crossing)	1200	lf	\$705	\$846,000
Community Pier	1	ea	\$235,000	\$235,000
Docks	2	ea	\$47,000	\$94,000
New Asphalt Trails	960	lf	\$53	\$50,880
Pave Gravel Trails from Phase 1	1440	lf	\$53	\$76,320
Concrete Sidewalks	620	lf	\$59	\$36,580
Pave Gravel Parking Area	1354	sy	\$14	\$18,956
<b>Total Pond and Trails</b>				<b>\$1,357,736</b>
<b>Existing Structures</b>				
Repurpose Existing House	1	ls	\$117,500	\$117,500
Historical/Educational Allowance	1	ls	\$141,000	\$141,000
Furniture Allowance	1	ls	\$110,000	\$110,000
Existing Auxiliary Buildings Repairs	4263	sf	\$65	\$277,095
<b>Total Exist Structures</b>				<b>\$645,595</b>
<b>New Structures</b>				
Picnic Shelters	3	ea	\$58,750	\$176,250
Fish Cleaning Stations	2	ea	\$5,875	\$11,750
Amphitheater	1	ea	\$235,000	\$235,000
Restroom Buildings	2	ea	\$75,000	\$150,000
Community Building Multipurpose	12000	sf	\$176	\$2,112,000
<b>Total New Structures</b>				<b>\$2,685,000</b>
<b>Perimeter and Vehicular Access</b>				
Install Misc Site Lighting	1	ls	\$58,750	\$58,750
New Perimeter Fencing/Repairs	2850	lf	\$32	\$91,200
Playground Equipment	1	ls	\$35,250	\$35,250
Ent/Parking/Drive Community & Theatre	1	ls	\$211,500	\$211,500
Land Acquisition	4	ac	\$35,250	\$141,000
<b>Total P&amp;VA</b>				<b>\$537,700</b>
<b>Miscellaneous</b>				
Arborist/Landscape/Garden Tree assmt.	1	ls	\$146,875	\$146,875
Irrigation/Water Main and Tap fee	1	ls	\$143,938	\$143,938
Benches/Tables	10	ea	\$588	\$5,880
<b>Total Miscellaneous</b>				<b>\$296,693</b>
<b>Subtotal</b>				<b>\$5,522,724</b>
<b>A &amp; E Fees (11%)</b>				<b>\$607,500</b>
<b>Construcion Manage/Profit (12%)</b>				<b>\$662,727</b>
<b>Grand Total</b>				<b>\$6,792,951</b>

# Pinewood Lake Park Phase II Final



Date: Oct 7, 2016

Description	Est. Qty	Unit	Unit Cost	Total	Pro Rated (.6625)
<b>Docks and Trails</b>					
Boardwalk (lake crossing)	1200	lf	\$705	\$846,000	\$ 560,433.90
Community Pier	1	ea	\$235,000	\$235,000	\$ 155,676.08
Docks	2	ea	\$47,000	\$94,000	\$ 62,270.43
New Asphalt Trails	960	lf	\$53	\$50,880	\$ 33,705.53
Pave Gravel Trails from Phase 1	1440	lf	\$53	\$76,320	\$ 50,558.29
Concrete Sidewalks	620	lf	\$59	\$36,580	\$ 24,232.47
Pave Gravel Parking Area	1354	sy	\$14	\$18,956	\$ 12,557.43
<b>Total Pond and Trails</b>				<b>\$1,357,736</b>	<b>\$ 899,434.13</b>
<b>Existing Structures</b>					
Repurpose Existing House	1	ls	\$117,500	\$117,500	\$ 77,838.04
Historical/Educational Allowance	1	ls	\$141,000	\$141,000	\$ 93,405.65
Furniture Allowance	1	ls	\$110,000	\$110,000	\$ 72,869.66
Existing Auxiliary Buildings Repairs	4263	sf	\$65	\$277,095	\$ 183,561.97
<b>Total Exist Structures</b>				<b>\$645,595</b>	<b>\$ 427,675.32</b>
<b>New Structures</b>					
Picnic Shelters	3	ea	\$58,750	\$176,250	\$ 116,757.06
Fish Cleaning Stations	2	ea	\$5,875	\$11,750	\$ 7,783.80
Amphitheater	1	ea	\$235,000	\$235,000	\$ 155,676.08
Restroom Buildings	2	ea	\$75,000	\$150,000	\$ 99,367.71
Community Building Multipurpose	12000	sf	\$176	\$2,112,000	\$ 1,399,097.39
<b>Total New Structures</b>				<b>\$2,685,000</b>	<b>\$ 1,778,682.05</b>
<b>Perimeter and Vehicular Access</b>					
Install Misc Site Lighting	1	ls	\$58,750	\$58,750	\$ 38,919.02
New Perimeter Fencing/Repairs	2850	lf	\$32	\$91,200	\$ 60,415.57
Playground Equipment	1	ls	\$35,250	\$35,250	\$ 23,351.41
Ent/Parking/Drive Community& Theatre	1	ls	\$211,500	\$211,500	\$ 140,108.47
Land Acquisition	4	ac	\$35,250	\$141,000	\$ 93,405.65
<b>Total P&amp;VA</b>				<b>\$537,700</b>	<b>\$ 356,200.13</b>
<b>Miscellaneous</b>					
Arborist/Landscape/Garden Tree assmt.	1	ls	\$146,875	\$146,875	\$ 97,297.55
Irrigation/Water Main and Tap fee	1	ls	\$143,938	\$143,938	\$ 95,351.93
Benches/Tables	10	ea	\$588	\$5,880	\$ 3,895.21
<b>Total Miscellaneous</b>				<b>\$296,693</b>	<b>\$ 196,544.70</b>
<b>Subtotal</b>				<b>\$5,522,724</b>	<b>\$ 3,658,536</b>
<b>A &amp; E Fees</b>				<b>\$607,500</b>	<b>\$ 402,439</b>
<b>Construciton Manage/Profit</b>				<b>\$662,727</b>	<b>\$ 439,024</b>
<b>Grand Total</b>				<b>\$6,792,951</b>	<b>\$ 4,500,000</b>

## Gerald Lee

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**From:** Chad Fosnight <FosnightC@rcgov.us>  
**Sent:** Monday, October 10, 2016 11:32 AM  
**To:** Gerald Lee; Jimmy Chao  
**Cc:** Norman Jackson  
**Subject:** RE: Phase II NTP

Gerald,

I'm fine with this schedule. Let's keep the schedule though as the executed NTP states a completion date of 12/31/17. We need to discuss how we are handling the land acquisition and the temporary bridge, particularly as it relates to responsibilities. In your role as the Design/Builder, are you taking the lead in these discussions? I see both of these as being some of the biggest hurdles on the schedule. Let's work through lines of responsibility early so that there are no misunderstandings later.

Please keep me updated on all progress and include me on all meeting invitations as I will be providing regular updates to the County Administrator on this project.

Respectfully,

**Chad D. Fosnight**

*Capital Projects Program Manager*  
Richland County Administration  
2020 Hampton Street  
Suite 4058  
Post Office Box 192  
Columbia, South Carolina 29202  
(803) 576-3584 Office  
(803) 394-7296 Cell  
[fosnightc@rcgov.us](mailto:fosnightc@rcgov.us)

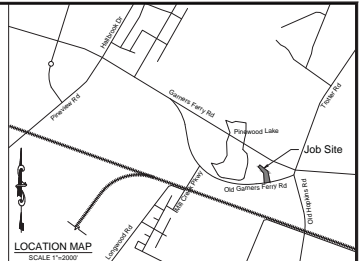
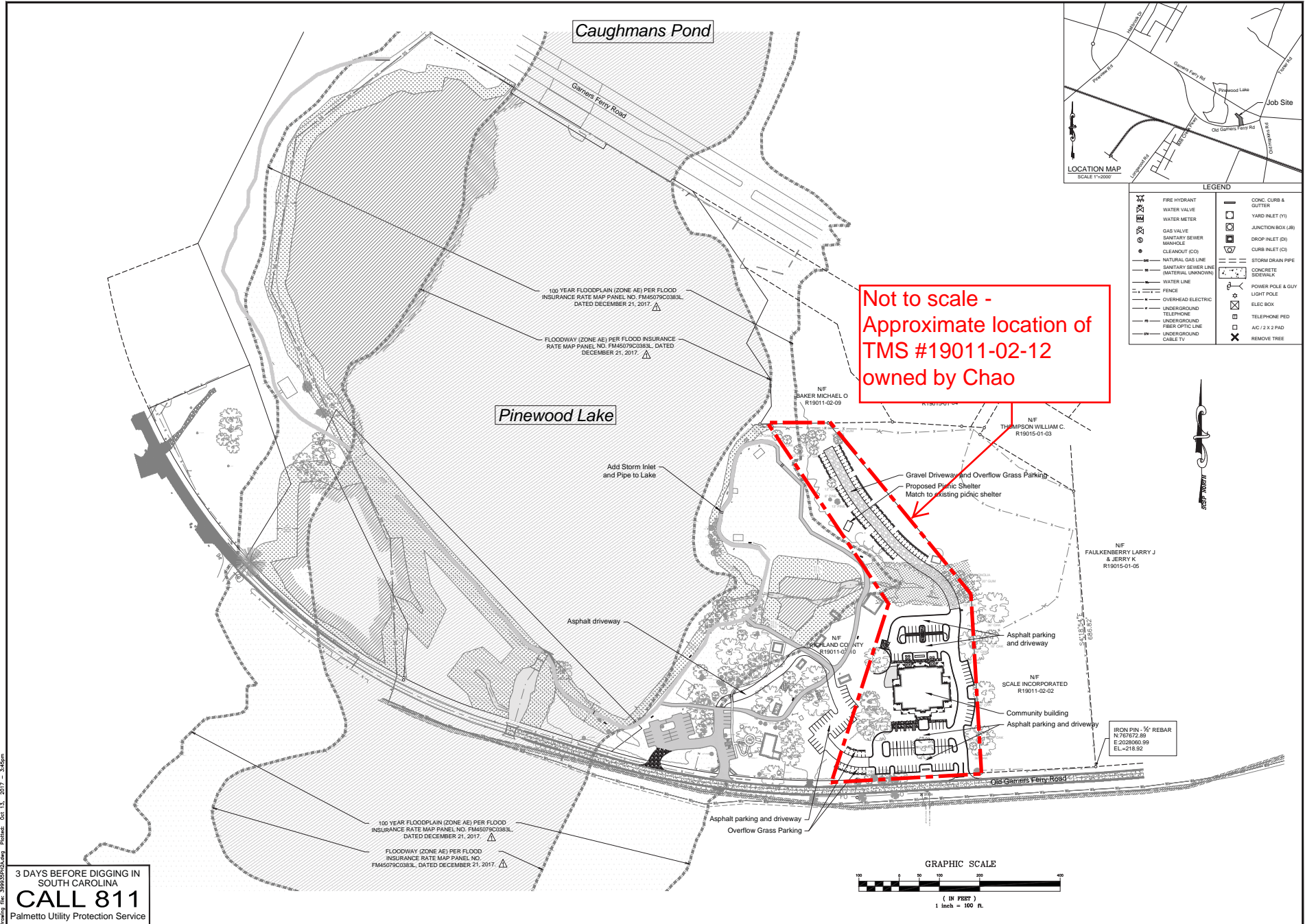


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**From:** Gerald Lee [<mailto:GeraldL@chaoinc.com>]  
**Sent:** Wednesday, October 05, 2016 6:01 PM  
**To:** Chad Fosnight; Jimmy Chao  
**Cc:** Norman Jackson  
**Subject:** RE: Phase II NTP

Chad, attached is the requested schedule. The critical path will be the community building obviously. Let me know if you have any questions.

**Gerald A. Lee, PE**  
[GERALDL@CHAOINC.COM](mailto:GERALDL@CHAOINC.COM)



LEGEND

	FIRE HYDRANT		CONC. CURB & GUTTER
	WATER VALVE		YARD INLET (YI)
	WATER METER		JUNCTION BOX (JB)
	GAS VALVE		DROP INLET (DI)
	SANITARY SEWER MANHOLE		CURB INLET (CI)
	CLEANOUT (CO)		STORM DRAIN PIPE
	NATURAL GAS LINE		CONCRETE SIDEWALK
	SANITARY SEWER LINE (MATERIAL UNKNOWN)		POWER POLE & GUY
	WATER LINE		LIGHT POLE
	FENCE		ELEC BOX
	OVERHEAD ELECTRIC		TELEPHONE PED
	UNDERGROUND TELEPHONE		AC / 2 x 2 PAD
	UNDERGROUND FIBER OPTIC LINE		REMOVE TREE
	UNDERGROUND CABLE TV		

Not to scale -  
Approximate location of  
TMS #19011-02-12  
owned by Chao

3 DAYS BEFORE DIGGING IN  
SOUTH CAROLINA  
**CALL 811**  
Palmetto Utility Protection Service

THESE DOCUMENTS AND THE INFORMATION CONTAINED HEREIN ARE THE PROPERTY OF CHAO & ASSOCIATES, INC. AND MAY NOT BE USED FOR ANY PURPOSE WITHOUT THE WRITTEN PERMISSION OF CHAO & ASSOCIATES, INC.



**Chao & Associates, Inc.**  
Civil, Structural, Survey  
7 Claires Court  
Columbia, SC 29210  
Voice: (803) 772-8420  
Fax: (803) 772-9120  
Email: core.ut@chaoinc.com




**Overall Improvement Plan**  
Pinewood Lake Park Phase 2A (CPS17)  
Prepared For:  
Richland County  
1151 Old Garners Ferry Road, Columbia, SC

Drawn: HMC    Checked: GAL  
Revised: 08/31/2017 Revised per Richland County's comments  
E-File: 399535PH2A.dwg    Project No.: 399393D

**C0.0**  
Sheet Number  
August 11, 2017  
Date



# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

February 21, 2018

Mr. Jimmy Chao  
Chao and Associates, Inc.  
7 Clusters Court  
Columbia, SC 29210

Dear Mr. Chao:

This letter follows up to my February 20, 2018 correspondence in which I shared my final decision concerning the inappropriate acquisition of TMS No. 19011-02-02 (portion) (now TMS# R19011-02-12) from Scale, Inc. by Chao and Associates using County funds on July 20, 2017. To accommodate the review that resulted in this final decision and in light of your having exceeded the "Notice-to-Proceed" deadline attendant to "Pinewood Lake Phase II" and requested an extension, the County extended the agreement judiciously pending the subject review.

The "acquiring the additional property..." upon which your request for extension was based was without merit since said property acquisition was not a part of the aforementioned "Notice-to-Proceed." Further, the Master Agreement between Richland County and Chao and Associates, Inc. contemplated no such property acquisition. Additionally, the record revealed no proposed "change in scope" to the project authorized via said "Notice-to-Proceed" by an authorizing County official or you. Accordingly, the extension so judiciously given was terminated as having been granted on the basis of a circumstance that was never authorized or possible to consummate.

That Chao and Associates, Inc. invoiced (#3999935D-1) the County \$126,010.00 for the purchase of property not part of the Notice-to-Proceed and/or the project scope was inappropriate and could be objectively adjudged fraudulent in as much as you took said acquisition action as if Chao and Associates was an agent of Richland County authorized to purchase property for Richland County. That the County staff processed the invoice was in error and not authorized pursuant to the Notice-to-Proceed. The purported "minutes" submitted by you to support your acting as the County's agent only affirmed that no staff member authorized you to so act and that the staff member involved did not have authority to direct or grant property acquisition authority to you. To be clear, Chao and Associates, Inc. is not an authorized agent of the County and was not at any time delegated or granted property acquisition authority to act on behalf of Richland County.

During its February 20, 2018 meeting, the aforementioned findings were presented to Richland County Council. Upon the conclusion of its deliberations regarding the findings, Richland County Council directed me to seek reimbursement from Chao and Associates, Inc. in the amount of \$126,010.00 which was used by Chao and Associates, Inc. to effect the acquisition (July 20, 2017) of TMS No. 19011-02-02 (portion) (now TMS #R19011-02-12). This letter transmits Council's directive.

Please make the reimbursement check in the amount of \$126,010 payable to Richland County and include in the memo line that it is for reimbursement for purchasing TMS# R19011-02-12. Please mail said reimbursement check to:

Attn: Gerald Seals, County Administrator  
County Administrator's Office  
Re: Pinewood Lake Phase II  
P. O. Box 192  
Columbia, SC 29202

Please note that that until further notice and direction from County Council, the Pinewood Lake Park Project is on hold.

In the Spirit of Excellence,



Gerald Seals  
County Administrator

cc: Members of Richland County Council  
Larry Smith, County Attorney  
Sandra Yúdice, Ph.D., Assistant County Administrator  
Jamelle Ellis, Ph.D., Director, Community and Government Services  
Tracy Hegler, Director, Planning and Community Development  
Jennifer Wladischkin, Manager, Office of Procurement and Contracting  
Carol Kososki, Chair, Richland County Conservation Commission





# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

February 20, 2018

Mr. Jimmy Chao  
Chao and Associates, Inc.  
7 Clusters Court  
Columbia, SC 29210

Dear Mr. Chao:

This letter shares my final decision concerning the inappropriate acquisition of TMS No. 19011-02-02 (portion) (now TMS# R19011-02-12) from Scale, Inc. by Chao and Associates using County funds on July 20, 2017. To accommodate the review that results in this final decision and in light of your having exceeded the "Notice-to-Proceed" deadline attendant to "Pinewood Lake Phase II" and requested an extension, the County extended the agreement judiciously pending this subject review.

The "acquiring the additional property..." upon which your request for extension was based is without merit since said property acquisition was not a part of the aforementioned "Notice-to-Proceed." Further, the Master Agreement between Richland County and Chao and Associates, Inc. contemplated no such property acquisition. Additionally, the record reveals no proposed "change in scope" to the project authorized via said "Notice-to-Proceed" by an authorizing County official or you. Accordingly, the extension so judiciously given is hereby terminated as having been granted on the basis of a circumstance that was never authorized or possible to consummate.

That Chao and Associates, Inc. invoiced (#3999935D-1) the County \$126,010.00 for the purchase of property not part of the Notice-to-Proceed and/or the project scope was inappropriate and could be objectively adjudged fraudulent in as much as you took said acquisition action as if Chao and Associates was an agent of Richland County authorized to purchase property for Richland County. That the County staff processed the invoice was in error and not authorized pursuant to the Notice-to-Proceed. The purported "minutes" submitted by you to support your acting as the County's agent only affirmed that no staff member authorized you to so act and that the staff member involved did not have authority to direct or grant property acquisition authority to you.

To be clear, Chao and Associates, Inc. is not an authorized agent of the County and was not at any time delegated or granted property acquisition authority to act on behalf of Richland County. You are hereby advised:

1. Effective immediately, the Master Agreement with Chao and Associates, Inc. is terminated.
2. Effective immediately, the Notice to Proceed with Chao and Associates, Inc. for the Pinewood Lake Phase II Design and Construction Services is hereby rescinded and terminated.
3. Effective immediately, Chao and Associates, Inc. shall cease and desist its prosecution efforts of the Pinewood Lake Project.

4. The County will pay the remaining invoiced amounts, totaling \$86,550.98 minus the \$126,010 of funding "advanced" to Chao and Associates, Inc. to acquire a 4-acre property and titled to Chao and Associates, which equates to (\$39,459.02).<sup>1</sup>
5. Chao and Associates, Inc. will remit \$39,459.02 to the County within 90 days (by May 25, 2018) of the date of this letter (February 20, 2018), which represents the difference between \$126,010.00 minus \$86,550.98.
6. Chao and Associates will not be prohibited from submitting proposals for future work with the County.

Accordingly, via this letter, Richland County demands that Chao and Associates, Inc. reimburse Richland County for the \$126,010.00, as outlined in the item 5 above, used by Chao and Associates, Inc. and/or Mr. Jimmy Chao to effect the acquisition (July 20, 2017) of TMS No. 19011-02-02 (portion) (now TMS #R19011-02-12). Please make the reimbursement check payable to Richland County and include in the memo line that it is for reimbursement for purchasing TMS# R19011-02-12. Please mail said reimbursement check to:

Attn: Gerald Seals, County Administrator  
County Administrator's Office  
Re: Pinewood Lake Phase II  
P. O. Box 192  
Columbia, SC 29202

In the Spirit of Excellence,



Gerald Seals  
County Administrator

cc: Larry Smith, County Attorney  
Sandra Yúdice, Ph.D., Assistant County Administrator  
Janelle Ellis, Ph.D., Director, Community and Government Services  
Tracy Hegler, Director, Planning and Community Development  
Jennifer Wladischkin, Manager, Office of Procurement and Contracting

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<sup>1</sup> Six (6) total invoices have been submitted by Chao and Associates, Inc. for payment totaling \$454,024.38. Only three (3) of the six invoices have been paid totaling \$367,473.40. Unpaid submitted invoices total \$86,550.98.



# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

## **April 24, 2018 Administration & Finance Committee Meeting Briefing Document Approval to negotiate and enter into a Design/Build Contract**

### Agenda Item

Approval to negotiate and enter into a Design/Build Contract for two Magistrate offices (Upper Township and Hopkins)

### Background

The Upper Township (currently located at 4919 Rhett Ave.) and Hopkins Magistrate (currently located at 6108 Cabin Creek Rd.) offices are currently lease spaces that do not meet the operational needs of the departments. These two current facilities would most likely be listed as class C (towards the bottom end of office space classification as it relates to facility condition).

The Richland County Magistrate offices have been moving into owner occupied spaces (i.e. the Dentsville Magistrate moving to the Decker Center) to enhance the services provided to the citizens by having a facility that is specifically constructed and laid out for courtroom operations. An initiative to transform additional courts from leased space to owner occupied space was started in mid-2016. These two facilities will be the first two of the seven identified locations that will ultimately be addressed. The Upper Richland Magistrate office will move to 7615 Wilson Blvd. (TMS # R14304-05-15) which will consist of renovating the existing metal structure with a new interior and exterior. The Hopkins Magistrate will move to a new fully constructed from the ground up facility located at TSM # R21700-03-29 (no address has been assigned yet) which is located at the SE corner of Lower Richland Blvd and Air Base Road.

A Request of Qualifications (RFQ) solicitation (RC-035-Q-2017) was advertised by the Procurement Office, and two design/construction teams submitted proposals- GMK Associates and Solid Structures. Submittals were reviewed and scored by County staff in the areas of capability, relevant experience, responsiveness and financial resources. With Procurement overseeing the evaluation process, it was determined that GMK, Inc. was the most qualified, responsible, responsive, firm that replied to the solicitation.

GMK, Inc. developed a preliminary design that is approximately 4,830 square feet per facility, with an estimated construction cost of \$2,894,160.00 for both buildings (\$1,536,975.00 for Upper Township and \$1,357,185.00 for Hopkins).

The approval of County Council is being sought for the design/build process, which will develop the preliminary sketches into full construction documents and specifications. These documents will be developed with the full input and review/approval of Richland County staff and all affected and associated parties. As this progresses, further refinement of the construction budget will commence (with any

identified value engineering savings being given back to Richland County as a reduction to the GMP (Gross Maximum Price) contract amount. As the County agrees on the design milestones, construction will begin utilizing GMK, Inc.'s construction department and their associated sub-contractors.

### Issues

If Council decides to not move forward with the expenditure of available funds to construct the two Magistrate offices, the purchased properties (TMS # R14304-05-15 & TSM # R21700-03-29) that were acquired for these projects will go unused and could lead to blighted areas, in opposition to the County's stated priority of removing these areas. Additionally, if the Magistrate offices stay where they are currently located, the services that they provide will continue in their current reduced capacity, thus affecting the overall magistrate judicial process and citizens' experiences.

### Fiscal Impact

If approved, Richland County will enter into a GMP contract with the recommended construction team in the amount of \$2,894,140.00 with an additional \$65,880.00 in contingency, bringing the total project cost to \$2,960,040.00. The contingency is requested to address any unforeseen conditions due to the complexity of remodeling an existing facility and constructing a new facility in an area that is prone to having soil issues that need to be addressed once construction sites are cleared. Contingency use must be requested, evaluated by the Richland County Department of Operational Services as a change order, and no contingency use will be approved without strict scrutiny of all the facts and possible options by the project management team.

There are no additional funds requested for this project.

Funds are available in the existing Operational Services Capital Project budget noted below:

### Past Legislative Actions

None.

### Alternatives/Solutions

1. Authorize staff to move forward with negotiations and to enter into a GMP contract with GMK, Inc., the selected design and construction team from solicitation RC-035-Q-2017, to provide full design and construction services to wholly develop and build two Magistrate offices. The total project cost requested for approval is in the amount of \$2,960,040.00, with a GMP contract amount of \$2,894,160.00 and a reserved contingency amount of \$65,880.00.
2. Do not approve the expenditure of the funds and leave the existing Magistrate offices in their current locations. This decision could have impact on the daily operations of the Magistrate judicial system.

### Staff Recommendation

The recommendation is Option #1 (authorize the expenditure of funds). Richland County would enter into negotiations and execute a GMP contract in the amount of \$2,894,140.00, with an additional \$65,880.00 in contingency, with GMK, Inc. to construct two 4,830 (approximate) square feet Magistrate offices.



# Existing Magistrate Offices

Upper Township Magistrate (4919 Rhett Ave.)



Hopkins Magistrate (6108 Cabin Creek Rd.)



## Office space classification

### Class A

These buildings represent the newest and highest quality buildings in their market. They are generally the best looking buildings with the best construction, and possess high-quality building infrastructure. Class A buildings also are well located, have good access, and are professionally managed. As a result of this, they attract the highest quality tenants and also command the highest rents.

### Class B

This is the next notch down. Class B buildings are generally a little older, but still have good quality management and tenants. Oftentimes, value-added investors target these buildings as investments since well-located Class B buildings can be returned to their Class A glory through renovations such as facade and common area improvements. Class B buildings should generally not be functionally obsolete and should be well maintained.

### Class C

The lowest classification of office building and space is Class C. These are older buildings and are located in less desirable areas and are often in need of extensive renovation. Architecturally, these buildings are the least desirable, and building infrastructure and technology is outdated. As a result, Class C buildings have the lowest rental rates, take the longest time to lease, and are often targeted as re-development opportunities.

*The above is just a general guideline of building classifications. No formal standard exists for classifying a building. Buildings must be viewed in the context of their sub-market; i.e., a Class A building in one neighborhood may not be a Class A building in another.*

8

**RICHLAND COUNTY**

**MAGISTRATE COURT FACILITIES**

**4,830 sf Facilities Option**

**Upper Township Magistrate Court Facility**

**Hopkins Magistrate Court Facility**

**SCHEMATIC BUDGET PACKAGE UPDATE**

**April 13, 2018**



# **Richland County**

## **Upper Township Magistrate Court Facility**

### **Wilson Blvd. Renovations**

#### **Schematic Project Design Narrative**

**April 13, 2018**

The building will be a 4,830 sf renovation to an existing one-story, pre-engineered metal building. The existing interior will be gutted in preparation for the new renovations. The exterior metal roof panels and metal wall panels will be replaced with new roof and wall panels. Windows, where incorporated, will have sills placed at least 6'-8" above the floor elevation for security. Windows will be thermal, aluminum-frame type. Public entrances will be storefront type with glass entry doors and sidelights. Other exterior doors will be painted hollow metal with hollow metal frames. Exterior glass will be low-e, insulated glass. The building interior spaces will be constructed with gypsum board walls and acoustical ceiling tile ceilings. The finishes will be per Richland County standards. Interior doors will be flush style wood doors with hollow metal frames. Door hardware is to be commercial grade minimum grade 2 hardware. Access controls will be coordinated with the Owner's access control vendor as required. The judges bench, clerk bench, jury box and other built in courtroom furniture will be wood with either painted or stained finish.

The plumbing, mechanical, power, lighting and life safety systems will be replaced to meet current Code requirements.

# Richland County

## Upper Township Magistrate Court Facility

### Wilson Blvd. Renovations

#### Schematic Budget Estimate

April 10, 2018

Renovations Area = 4,830 sf

Sitework, 25 Spaces & Out-Building Demolition (Allowance)	\$129,500
Perimeter Skin Improvements / General Demolition:	\$410,480
Magistrate Facility Renovations:	\$867,765
Construction Costs Sub-Total:	<hr/> \$1,407,745
Design Fees (6%):	\$84,465
Design/Construction Contingency (3%):	\$44,765
Design & Construction Costs:	<hr/> <hr/> \$1,536,975

#### NOTES:

- Provide 25 Parking Spaces for Facility.
- Replace Exterior Wall & Roof Cladding, complete.
- Facility will be unsprinklered.
- Only work in Shell Space is utility stubs for Future.

**Richland County**

**Upper Township Magistrate Court Facility**

**Wilson Blvd. Renovations (4,830 sf)**

**Schematic Project Development Cost Worksheet**

**(For Determination of division of Responsibilities)**

**January 19, 2018**

	<u>GMK Responsibility</u>	<u>Owner Responsibility</u>
<b>Hard Costs:</b>		
Exterior Work:		
Sitework Construction <u>Allowance</u> - Clearing, Grading, Drainage, Pavements, On-Site Utilities, Erosion Control, & Landscaping	\$129,500	-
Off-Site Utilities to Property	NIC	
Unexpected Unsuitable Materials Replacement (Rock, Muck)	NIC	
Site Lighting Systems & Design	NIC	By Owner
Exterior Signage & Design	NIC	By Owner
Building Construction:		
Building Construction - Structural, Architectural, Mechanical, Plumbing, Electrical & Fire Protection per Code Requirements.	\$1,278,245	-
Hazardous Materials Abatement	NIC	
Mold & Mildew Remediation	NIC	
Fire Pump Systems	NIC	
Intercom, Security, Television & Communication Systems:		
Data, Telephone & Television Wiring; incl. Cable Tray	NIC	By Owner
Computer System Equipment, incl Power Conditioning	NIC	By Owner
Telephone System Equipment	NIC	By Owner
Television System Equipment	NIC	By Owner
Intercom & Paging Systems; Equipment & Wiring (Speakers, etc.)	NIC	By Owner
Security Systems; Equipment & Wiring (Locks, Cameras, etc.)	NIC	By Owner
Teleconference & AV Systems; Equipment & Wiring	NIC	By Owner
Clock Systems; Equipment & Wiring	NIC	By Owner
Furniture, Fixtures & Equipment:		
General Owner FF&E <u>Allowance</u>	NIC	By Owner
Kitchen & Serving Equipment; incl Installation & Design	NIC	By Owner
Residential Equipment; incl Installation (Refrigerators, Microwaves, Ice Machines, etc.)	NIC	By Owner
Television & Monitor Wall Brackets, incl Installation	NIC	By Owner
Paper Towel, Soap, & Toilet Tissue Dispencers, incl Installation	NIC	By Owner
Misc. Storage Shelving	NIC	By Owner
Furniture & Furnishings, incl Installation & Design	NIC	By Owner
Window Treatments & Blinds, incl Installation & Design	NIC	By Owner
Artwork, incl Installation & Design	NIC	By Owner
Office Equipment, incl Installation & Design	NIC	By Owner
Cubicle Curtains & Tracks, incl Installation	NIC	By Owner
Interior Signage, incl Installation	NIC	By Owner
Vending Equipment, incl Installation	NIC	By Owner
Other Hard Costs:		
<b>Total Hard Costs</b>	<b>\$1,407,745</b>	<b>\$0</b>

**Soft Costs:**

Design Fees (C,S,A,M,E,P & FP)	\$84,465	
Building Permit Fees	Included	
Special Inspections (IBC Chapter 17)	NIC	By Owner
Tap & Impact Fees	NIC	
Builder's Risk Insurance	NIC	
Payment & Performance Bonds	NIC	
Owner's & Contractor's Liability Insurance	NIC	
Construction Loan Interest	NIC	
Construction Loan Fees	NIC	
Traffic Impact Fees	NIC	
Topographic Surveys	NIC	\$4,500
Other Land Related Surveys (Tree Survey or As-Built Survey)	NIC	
Geotechnical & Environmental Studies	NIC	
Relocation Of Existing Underground Utilities	NIC	
Title Insurance	NIC	
Legal & Organizational	NIC	
Consultants	NIC	
Cost Segregation Analysis & Support For Same	NIC	
Cost of Electricity After Metered Power Is Provided To Building	NIC	
Initial Land Carrying Cost	NIC	
Other Miscellaneous Soft Costs	NIC	
Contingency	\$0	\$44,765
<b>Total Soft Costs</b>	<b>\$84,465</b>	<b>\$49,265</b>
<b>Total Estimated Project Costs</b>	<b>\$1,492,210</b>	<b>\$49,265</b>

**\$1,541,475**

\*\*\*See attached accompanying comments\*\*\*

# **Richland County**

## **Upper Township Magistrate Court Facility**

### **Wilson Blvd. Renovations**

#### **Comments to the Project Development Cost Analysis**

**April 13, 2018**

Items not included in the Schematic Budget, if required, to be furnished by Owner:

Intercom, Security, Television and Communication Systems consists of items such as Intercom Systems, Power Conditioning Equipment, Computer Systems, Paging Systems, Speakers, Security Systems, Security Cameras, Television Monitors, Cable Television Systems, Satellite Television systems, Telephone systems, Teleconferencing systems including cameras and speakers, Cable Tray and Wiring Control Systems, as well as wiring and labor for same.

Furniture, Fixtures and Equipment consists of items such as Window Treatments, Appliances, Kitchen Equipment (Not Only the Kitchen Equipment, but also including Hoods, Ductwork for Hoods, Fans and Fire Suppression for Hoods), Lockers, Soap Dispensers, Clocks, Metal Storage Shelving, Interior and Exterior Signage, Office Equipment, as well as labor for same.

Additional items which may be considered on a project specific basis for inclusion at a later date in the Project Development Cost Analysis are: Fire Pump, the Cost for Excavation/Removal/Replacement of Unsuitable Materials (Rocks, Muck, Etc. – 3000 psi bearing pressure assumed), Site Parking Lot Lighting, Site Landscaping and Irrigation (above Code minimum), Mold and Mildew Remediation, Hazardous Material Abatement, Vending Machines, Tap & Impact Fees, Owner's & Contractor's Liability Insurance, and 3<sup>rd</sup> Party Special Inspections.

Design fees apply to the civil design for the site work as well as for the architectural and engineering design required for the facility itself. Interior design fees are included for all items installed by GMK per the contract. Examples are carpet, vinyl tile, paint, flooring, doors, hardware for sinks and toilet accessories. Items not included in GMK's contract should have design fees considered in the budget estimate, such as furniture and artwork.

# Richland County

## Upper Township Magistrate Court Facility

### Wilson Blvd. Renovations

#### Schematic Design List of Inclusions

April 13, 2018

##### General

Full-time Field Construction Supervision

##### Sitework (Allowance) {Provide 25 Parking Spaces}

- Demo Out-Building Complete and Remove
- Demo existing Site Improvements for New Layouts
- Site Grading (under-cut and fill/compact at new Pavements)
- Building and Site Improvements Layout
- Gravity Sanitary Sewer Service (re-use existing)
- Electrical Service (re-use existing)
- Concrete Curb and Gutter
- Concrete Sidewalks
- Handicapped Ramps @ Concrete Sidewalks
- Asphalt Paving and Base
- Concrete Parking Stops (HC Parking)
- Handicapped Parking Signs
- Pavement Line Striping and Pavement Markings
- Temporary Erosion Control Measures
- Grassing for Erosion Control
- Perimeter Metal Fencing
- Temporary Facilities
- Site Cleaning
- Landscaping (per Ordinance)

##### Selective Demolition

Demolition for Exterior Skin Improvements:

- Remove existing Metal Roofing Panels and Insulation
- Remove existing Storefronts & Doors/Frames/Hardware (per Plan)
- Cut Openings @ Exterior Walls for New Windows & Doors/Frames (per Plan)

Building Interior Demolition: (to allow for New Construction)

- Saw-Cut/Remove/Patch Concrete Floor Slabs for New Plumbing
- Demo Walls, Windows, Doors/Frames/Hardware
- Demo Casework and Cabinets
- Remove Flooring and Floor Base Finishes
- Remove Ceilings Finishes
- Remove Plumbing Fixtures and Piping

Remove HVAC Equipment, Ductwork, and Controls  
Remove Electrical Power Devices and Wire  
Remove Electrical Lighting Fixtures & Wire

#### Concrete

Building Layout  
Wire Mesh or Fiber Reinforcement at Slab-on-Grade (Infill/Patch)  
Concrete Slab-on-Grade (Infill/Patch)  
Grouting

#### Masonry (N/A)

#### Metals

Miscellaneous Steel  
New Metal Entry Canopy

#### Carpentry

Platform and Step Framing @ Courtroom and Judge's Office  
Miscellaneous Wood and Metal Blocking and Bridging  
Fire-stopping and Smoke-stopping  
Rough Hardware (Fasteners, Etc.)  
Melamine Clad Cabinets and Shelving  
High Pressure Laminate Countertops  
Solid-Surface Countertops (Bath Vanities & Conferenc/Jury)  
Finish Hardware (Fasteners, etc.)  
Special Millwork Judge's Bench (Stain-Grade)  
Special Millwork Witness/Stenographer Countertop (Stain-Grade)  
Special Millwork Courtroom Banisters/Railings (Stain-Grade)

#### Thermal and Moisture Protection

New Standing-Seam Metal Roof Panels  
New Metal Roof Perimeter Closure Trim  
Spray-Foam Insulation @ New Exterior Walls (per Energy Code)  
Spray-Foam Insulation @ Roof (per Energy Code)  
Sound Batt Insulation at Interior Walls  
Metal Gutters and Downspouts  
Caulking and Sealants

#### Doors and Windows

Interior and Exterior Hollow Metal Door Frames  
Exterior Insulation Hollow Metal Doors  
Interior Wood Doors (Stain Grade Birch)

Aluminum/Glass Storefront Swinging Entry Doors  
Aluminum-Framed Exterior Windows with Insulated Glass  
Aluminum-Framed Storefront System with Insulated Glass  
Interior Hollow Metal-Framed View Windows with Safety Glass (Bullet Proof at Reception Areas)  
Finish Hardware (Hinges, Locks, Panic, and Closers - as required)  
Glass and Glazing

#### Finishes

Gypsum Board Walls  
Suspended Gypsum Board Ceilings (at Shower)  
Carpet Tile Flooring (Country Standard)  
Luxury Vinyl Tile Flooring (County Standard)  
Rubber Cove Floor Base (County Standard)  
Hard Tile Flooring, Base, and Wall Wainscot (Gang Toilet Rooms & Shower)  
Enamel Paint Walls/Ceilings  
Epoxy Paint Walls (Wet Areas)  
2 x 2 Acoustical Grid System and Tile (County Standard)

#### Specialties

Toilet Accessories (Grab Bars and Mirrors)  
Toilet Partitions & Urinal Screens  
Fire Extinguishers and Cabinets

#### Mechanical

##### Plumbing

Waste and Vent System - draining to the existing Site Sanitary Sewer System  
CPVC Water Lines  
PVC Waste Piping Above and Below Grade  
Stainless Steel Sinks @ Casework, Large  
Integral Solid-Surface Sinks @ Bath Vanities  
Vitreous China Wall Lavatory Sinks  
Vitreous China Water Closets  
Vitreous China Urinals  
Cast Stone Janitor Mop Sink  
Shower Head Fixture & Drain  
Pre-Fabricated Shower Insert  
Water Box Fixture @ Conference  
Finish Trim - Faucets, Etc.  
Electric Water Heater  
Water Coolers, ADA

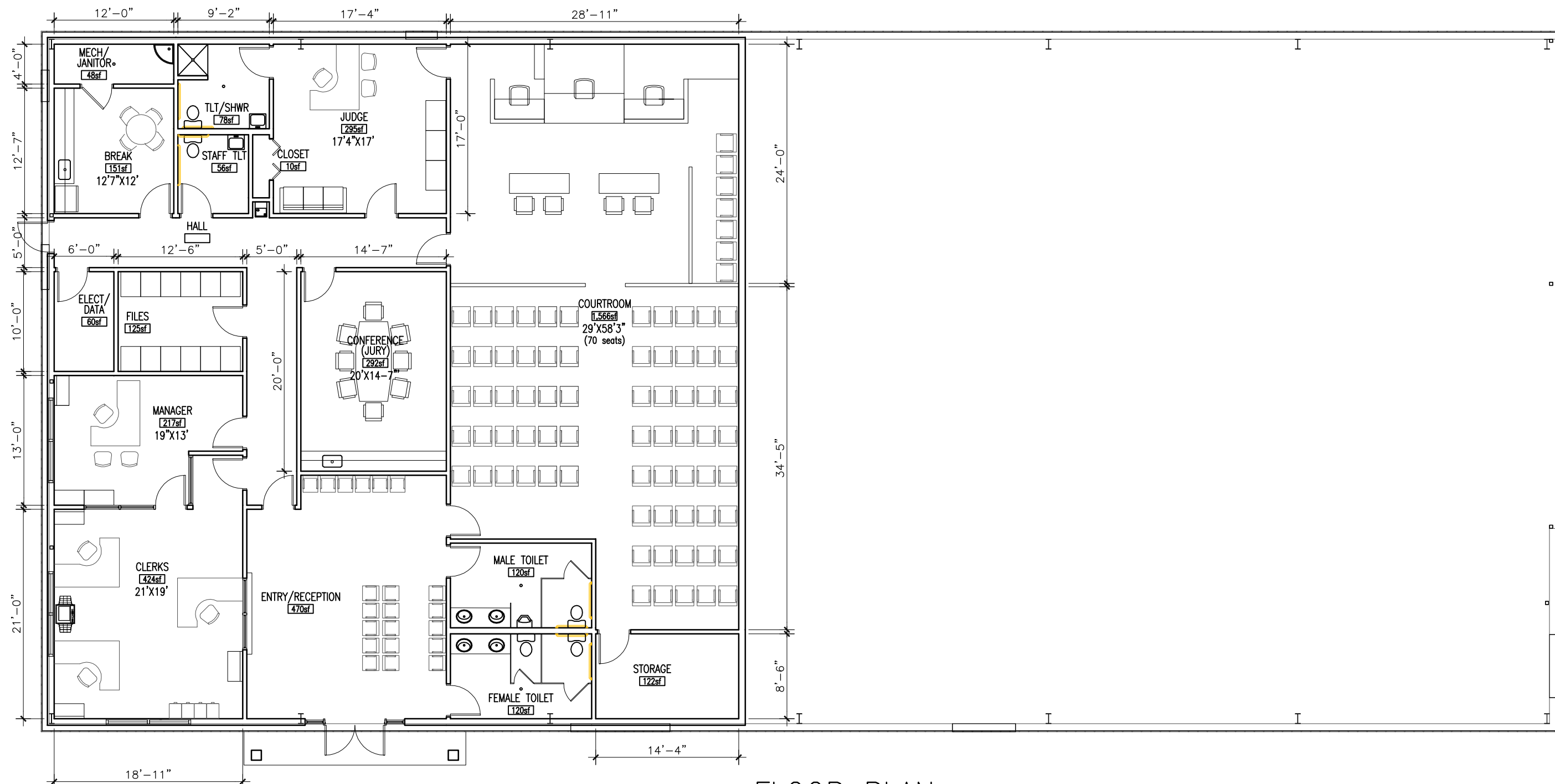


## Heating, Ventilation and Cooling System

- HVAC Temperature Requirements to meet all applicable Codes
- Design Temperature is Standard 95° Outside/75° Inside
- New DX Split-System HVAC Units (15-tons AC)
- Sheetmetal & Flex Ductwork
- Exhaust Fans
- Fire Dampers
- Hangers and Supports
- Mechanical Insulation
- Duct Accessories
- HVAC Controls
- Testing and Balancing

## Electrical

- 3-Phase Service (Existing)
- Distribution Panels (Reuse existing as possible)
- Power Wiring and Circuitry
- Switches, Receptacles and Cover plates
- 2x4 Lighting Fixtures (LED Lamps)
- Fluorescent or LED Recessed Can Lighting Fixtures
- Exterior Wall Packs for Site Safety Lighting
- Exit Lights
- Emergency Lighting (to meet Life Safety Regulations)
- Back Boxes and Conduit for Telephone, Data, and Television to above ceiling (Cable Tray, Wiring and System Equipment by Others)
- Fire Alarm System (to meet Life Safety Regulations)



4,830 GSF

**FLOOR PLAN**  
 3/32" = 1'-0"

 Design/Planning/Construction 1201 Main Street, Suite 2100 Columbia, S.C. 29201 tel. 803-256-0000 fax 803-255-7243	owner 	project name <b>Richland County          Magistrate's          Offices</b> project number 17810.00A	title CONCEPTUAL FLOOR PLAN – Option 7 UPPER TOWNSHIP MAGISTRATE FACILITY issued for BUDGET UPDATE date 4/3/2018 from drawn by
		<b>UT-2.1.7</b>	

**Richland County**  
**Hopkins Magistrate Court Facility**  
**New Facility Construction**  
**Schematic Project Design Narrative**

**April 13, 2018**

The building will be a 4,830 sf slab-on-grade, one-story, brick-veneer/hard-coat stucco building with a pitched architectural asphalt shingle roof. Windows, where incorporated, will have sills placed at least 6'-8" above the floor elevation for security. Windows will be thermal, aluminum-frame type. Public entrances will be storefront type with glass entry doors and sidelights. Other exterior doors will be painted hollow metal with hollow metal frames. Exterior glass will be low-e, insulated glass. The building interior spaces will be constructed with gypsum board walls and acoustical ceiling tile ceilings. The finishes will be per Richland County standards. Interior doors will be flush style wood doors with hollow metal frames. Door hardware is to be commercial grade minimum grade 2 hardware. Access controls will be coordinated with the Owner's access control vendor as required. The judges bench, clerk bench, jury box and other built in courtroom furniture will be wood with either painted or stained finish.

The plumbing, mechanical, power, lighting and life safety systems will be designed to meet current Code requirements.

# Richland County

## Hopkins Magistrate Court Facility

### New Facility Construction

#### Schematic Budget Estimate

April 10, 2018

New Construction Area = 4,830 sf

Sitework, 25 Parking Spaces (Allowance):	\$187,500
Magistrate Facility New Construction:	\$1,055,570
Construction Costs Sub-Total:	<u>\$1,243,070</u>
Design Fees (6%):	\$74,585
Design/Construction Contingency (3%):	\$39,530
Design & Construction Costs:	<u><u>\$1,357,185</u></u>

#### NOTES:

Provide 25 Parking Spaces for Facility.  
Facility will be unsprinklered.

#### \*Off-Site Utility Note:

Site is currently not served by utility for Water nor Sewer.  
No Construction Costs have been included for Off-Site Utility extensions.

**Richland County**

**Hopkins Magistrate Court Facility**

**New Facility Construction (4,830 sf)**

**Schematic Project Development Cost Worksheet**

**(For Determination of division of Responsibilities)**

**April 13, 2017**

	<u>GMK Responsibility</u>	<u>Owner Responsibility</u>
<b>Hard Costs:</b>		
Exterior Work:		
Sitework Construction <u>Allowance</u> - Clearing, Grading, Drainage, Pavements, On-Site Utilities, Erosion Control, & Landscaping	\$187,500	-
Off-Site Utilities to Property	NIC	By Owner
Unexpected Unsuitable Materials Replacement (Rock, Muck)	NIC	By Owner
Site Lighting Systems & Design	NIC	By Owner
Exterior Signage & Design	NIC	By Owner
Building Construction:		
Building Construction - Structural, Architectural, Mechanical, Plumbing, Electrical & Fire Protection per Code Requirements.	\$1,055,570	-
Hazardous Materials Abatement	N/A	N/A
Mold & Mildew Remediation	N/A	N/A
Fire Pump Systems	N/A	N/A
Intercom, Security, Television & Communication Systems:		
Data, Telephone & Television Wiring; incl. Cable Tray	NIC	By Owner
Computer System Equipment, incl Power Conditioning	NIC	By Owner
Telephone System Equipment	NIC	By Owner
Television System Equipment	NIC	By Owner
Intercom & Paging Systems; Equipment & Wiring (Speakers, etc.)	NIC	By Owner
Security Systems; Equipment & Wiring (Locks, Cameras, etc.)	NIC	By Owner
Teleconference & AV Systems; Equipment & Wiring	NIC	By Owner
Clock Systems; Equipment & Wiring	NIC	By Owner
Furniture, Fixtures & Equipment:		
General Owner FF&E <u>Allowance</u>	NIC	By Owner
Kitchen & Serving Equipment; incl Installation & Design	NIC	By Owner
Residential Equipment; incl Installation (Refrigerators, Microwaves, Ice Machines, etc.)	NIC	By Owner
Television & Monitor Wall Brackets, incl Installation	NIC	By Owner
Paper Towel, Soap, & Toilet Tissue Dispencers, incl Installation	NIC	By Owner
Misc. Storage Shelving	NIC	By Owner
Furniture & Furnishings, incl Installation & Design	NIC	By Owner
Window Treatments & Blinds, incl Installation & Design	NIC	By Owner
Artwork, incl Installation & Design	NIC	By Owner
Office Equipment, incl Installation & Design	NIC	By Owner
Cubicle Curtains & Tracks, incl Installation	NIC	By Owner
Interior Signage, incl Installation	NIC	By Owner
Vending Equipment, incl Installation	NIC	By Owner
Other Hard Costs:		
<b>Total Hard Costs</b>	<b>\$1,243,070</b>	<b>\$0</b>

**Soft Costs:**

Design Fees (C,S,A,M,E,P & FP)	\$74,585	
Building Permit Fees	Included	
Special Inspections (IBC Chapter 17)	NIC	By Owner
Tap & Impact Fees	NIC	
Builder's Risk Insurance	NIC	
Payment & Performance Bonds	NIC	
Owner's & Contractor's Liability Insurance	NIC	
Construction Loan Interest	NIC	
Construction Loan Fees	NIC	
Traffic Impact Fees	NIC	
Topographic Surveys	NIC	\$6,600
Other Land Related Surveys (Tree Survey or As-Built Survey)	NIC	
Geotechnical & Environmental Studies	NIC	\$3,875
Relocation Of Existing Underground Utilities	NIC	
Title Insurance	NIC	
Legal & Organizational	NIC	
Consultants	NIC	
Cost Segregation Analysis & Support For Same	NIC	
Cost of Electricity After Metered Power Is Provided To Building	NIC	
Initial Land Carrying Cost	NIC	
Other Miscellaneous Soft Costs	NIC	
Contingency	\$0	\$39,530
<b>Total Soft Costs</b>	<b>\$74,585</b>	<b>\$50,005</b>
<b>Total Estimated Project Costs</b>	<b>\$1,317,655</b>	<b>\$50,005</b>

**\$1,367,660**

\*\*\*See attached accompanying comments\*\*\*

# **Richland County**

## **Hopkins Magistrate Court Facility**

### **New Facility Construction**

#### **Schematic Comments to the Project Development Cost Analysis**

**April 13, 2018**

Items not included in the Schematic Budget, if required, to be furnished by Owner:

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Additional items which may be considered on a project specific basis for inclusion at a later date in the Project Development Cost Analysis are: Fire Pump, the Cost for Excavation/Removal/Replacement of Unsuitable Materials (Rocks, Muck, Etc. – 3000 psi bearing pressure assumed), Site Parking Lot Lighting, Site Landscaping and Irrigation (above Code minimum), Mold and Mildew Remediation, Hazardous Material Abatement, Vending Machines, Tap & Impact Fees, Owner's & Contractor's Liability Insurance, and 3<sup>rd</sup> Party Special Inspections.

Design fees apply to the civil design for the site work as well as for the architectural and engineering design required for the facility itself. Interior design fees are included for all items installed by GMK per the contract. Examples are carpet, vinyl tile, paint, flooring, doors, hardware for sinks and toilet accessories. Items not included in GMK's contract should have design fees considered in the budget estimate, such as furniture and artwork.

**Richland County**  
**Hopkins Magistrate Court Facility**  
**New Facility Construction**  
**Schematic Design List of Inclusions**

**April 13, 2018**

General

Full-time Field Construction Supervision

Sitework (Allowance) {Provide 25 Parking Spaces}

Site Clearing and Grubbing  
Strip/Stockpile/Respread Topsoil  
Site Grading (Cut, Fill & Compaction)  
Building and Site Improvements Layout  
Storm Drainage Piping and Structures to Detention Pond  
Potable Water Service (from Utility Main at Property to Building)  
Gravity Sanitary Sewer Service (from Building to Utility Main at Property)  
Electrical Service (from Utility Transformer to Building)  
Concrete Curb and Gutter  
Concrete Sidewalks  
Handicapped Ramps @ Concrete Sidewalks  
Asphalt Paving and Base  
Concrete Parking Stops (HC Parking)  
Handicapped Parking Signs  
Pavement Line Striping and Pavement Markings  
Temporary Erosion Control Measures  
Grassing for Erosion Control  
Temporary Facilities  
Site Cleaning  
Landscaping (per Ordinance)

Concrete

Building Layout  
Foundation Excavation and Backfill  
Soil Termite Treatment  
Vapor Barrier, Stego Wrap  
Reinforcing Bars at Foundations and Turndowns  
Wire Mesh or Fiber Reinforcement at Slab-on-Grade  
Perimeter Strip Footing Foundations  
Spread Footing Foundations  
Perimeter Concrete Turndowns  
Concrete Slab-on-Grade



Slab-on-Grade Control/Construction Joints  
Grouting

Masonry

Brick Ties  
Sand and Mortar  
CMU Backup @ Foundation Wall below Grade  
CMU Blockfill  
Face Brick Veneer  
Simulated Stone Masonry Accent Bands  
Steel Lintels @ Window/Door Openings  
Thru-Wall Flashing & Weeps  
Masonry Cleaning  
Masonry Control Joints

Metals

Miscellaneous Steel

Carpentry

Wood Stud Framing and Bracing (Exterior and Interior Walls)  
Wood Roof Truss Framing and Bracing  
Exterior Wall & Roof Sheathing/Decking  
Platform and Step Framing @ Courtroom and Judge's Office  
Miscellaneous Wood and Metal Blocking and Bridging  
Fire-stopping and Smoke-stopping  
Rough Hardware (Fasteners, Etc.)  
Melamine Clad Cabinets and Shelving (Breakrooms)  
High Pressure Laminate Countertops (Breakrooms)  
Solid-Surface Countertops (Bath Vanities & Conference/Jury)  
Finish Hardware (Fasteners, etc.)  
Special Millwork Judge's Bench (Stain-Grade)  
Special Millwork Witness/Stenographer Countertop (Stain-Grade)  
Special Millwork Courtroom Banisters/Railings (Stain-Grade)

Thermal and Moisture Protection

Felt Underlayment @ Shingle Roof  
Ice & Water Shield Underlayment @ Roof Perimeter and Valleys  
Spray-Foam Insulation @ New Exterior Walls (per Energy Code)  
Spray-Foam Insulation @ Roof (per Energy Code)  
Sound Batt Insulation at Interior Walls  
30-Year Architectural Asphalt Shingle Roofing  
Metal-Clad-Wood Fascia/Frieze Boards  
Metal Gutters and Downspouts (at Entry Areas)  
Caulking and Sealants

## Doors and Windows

- Interior and Exterior Hollow Metal Door Frames
- Exterior Insulation Hollow Metal Doors
- Interior Wood Doors (Stain Grade Birch)
- Aluminum/Glass Storefront Swinging Entry Doors
- Aluminum-Framed Exterior Windows with Insulated Glass
- Aluminum-Framed Storefront System with Insulated Glass
- Interior Hollow Metal-Framed View Windows with Safety Glass (Bullet Proof at Reception Area)
- Finish Hardware (Hinges, Locks, Panic, and Closers - as required)
- Glass and Glazing

## Finishes

- Hard-Coat Stucco on Exterior Gypsum High Walls & Soffit
- Gypsum Board Walls
- Suspended Gypsum Board Ceilings (@ Shower)
- Carpet Tile Flooring (County Standard)
- Luxury Vinyl Tile Flooring (County Standard)
- Rubber Cove Floor Base (County Standard)
- Hard Tile Flooring, Base, and Wall Wainscot (Gang Toilet Rooms & Shower)
- Enamel Paint Interior Walls/Ceilings
- Epoxy Paint Interior Walls (Wet Areas)
- 2 x 2 Acoustical Grid System and Tile (County Standard)

## Specialties

- Toilet Accessories (Grab Bars and Mirrors)
- Toilet Partitions and Urinal Screens
- Fire Extinguishers and Cabinets

## Mechanical

### Plumbing

- Waste and Vent System - draining to Site Sanitary Sewer System
- Potable Water Riser and Backflow Preventer
- CPVC Water Lines
- PVC Waste Piping Above and Below Grade
- Stainless Steel Sinks @ Casework, Large @ Breakroom/Conference
- Integral Solid-Surface Sinks @ Bath Vanities
- Vitreous China Wall Lavatory Sinks
- Vitreous China Water Closets, Tank Type
- Vitreous China Urinals
- Cast Stone Janitor Mop Sink
- Shower Head Fixture & Drain
- Water Box Fixture @ Break Room
- Finish Trim - Faucets, Etc.
- Electric Water Heater

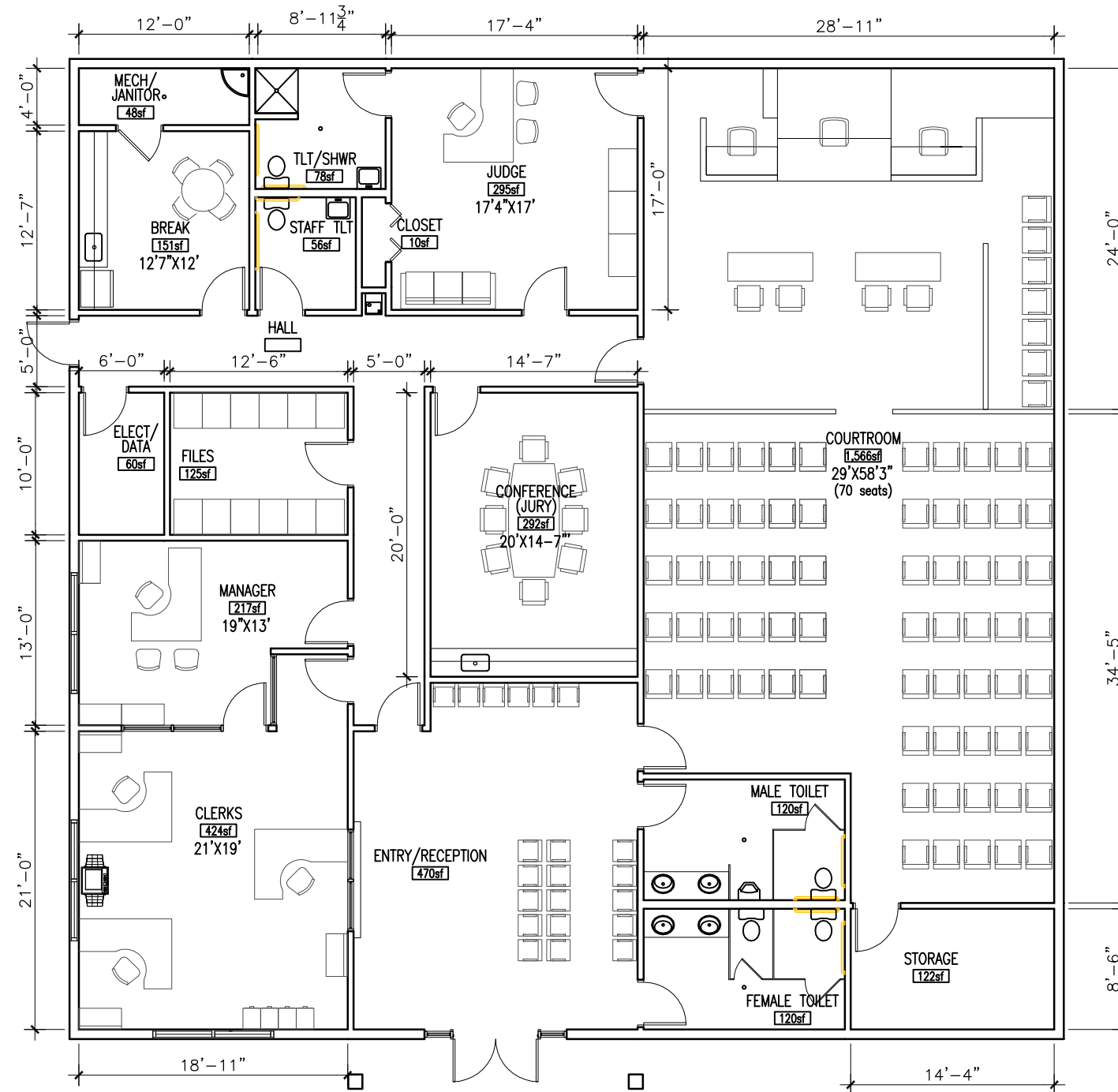
Water Cooler, ADA

Heating, Ventilation and Cooling System

- HVAC Temperature Requirements to meet all applicable Codes
- Design Temperature is Standard 95° Outside/75° Inside
- New DX Split-System HVAC Units (15-tons AC)
- Sheetmetal & Flex Ductwork
- Exhaust Fans
- Fire Dampers
- Hangers and Supports
- Mechanical Insulation
- Duct Accessories
- HVAC Controls
- Testing and Balancing

Electrical

- 3-Phase Service
- Distribution Panels
- Power Wiring and Circuitry
- Switches, Receptacles and Cover plates
- 2x4 Lighting Fixtures (LED Lamps)
- Fluorescent or LED Recessed Can Lighting Fixtures
- Exterior Wall Packs for Site Safety Lighting
- Exit Lights
- Emergency Lighting (to meet Life Safety Regulations)
- Back Boxes and Conduit for Telephone, Data, and Television to above ceiling (Cable Tray, Wiring and System Equipment by Others)
- Fire Alarm System (to meet Life Safety Regulations)



4,830 GSF

**FLOOR PLAN**

3/32" = 1'-0"

**GMK**  
 ASSOCIATES, INC.  
 Design/Planning/Construction  
 1201 Main Street, Suite 2100  
 Columbia, S.C. 29201  
 tel. 803-256-0000  
 fax 803-255-7243

owner



project name  
**Richland County  
 Magistrate's  
 Offices**  
 project number  
**17810.00A**

title CONCEPTUAL FLOOR PLAN - Option 7  
MAGISTRATE FACILITY  
 issued for BUDGET UPDATE date 4/3/2018  
 from \_\_\_\_\_  
 drawn by \_\_\_\_\_ **H-2.1.7**

Consolidated Evaluations			
Evaluation Criteria RC-035-Q-2017 Design-Build for Magistrate's Offices	Maximum Percentage	GMK Associates Inc.	Solid Structures
<b>Capability with Relevant Experience</b>	30		
Evaluator 1		28	20
Evaluator 2		29	15
Evaluator 3		25	0
	<b>90</b>	<b>82</b>	<b>35</b>
<b>Relevant Project Experience</b>	25		
Evaluator 1		25	16
Evaluator 2		23	10
Evaluator 3		25	10
	<b>75</b>	<b>73</b>	<b>36</b>
<b>Responsiveness of Submittal</b>	25		
Evaluator 1		22	22
Evaluator 2		25	15
Evaluator 3		20	10
	<b>75</b>	<b>67</b>	<b>47</b>
<b>Financial Informaiton</b>	20		
Evaluator 1		18	20
Evaluator 2		20	18
Evaluator 3		5	20
	<b>60</b>	<b>43</b>	<b>58</b>
<b>GRANDTOTAL</b>	<b>300</b>	<b>265</b>	<b>176</b>

# DRAFT AIA® Document A141™ – 2014

## Exhibit A

### Design-Build Amendment

#### GMP VERSION

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the «»Twenty-third day of «»August in the year «»Two Thousand Seventeen (the “Agreement”) (In words, indicate day, month and year.)

#### for the following PROJECT:

(Name and location or address)

Richland County Magistrate’s Offices – County Wide Improvements  
Richland County, SC «DB Master Templates»  
«»

#### THE OWNER:

(Name, legal status and address)

Richland County  
2020 Hampton Street  
Columbia, SC 29201  
«»«»  
«»

#### THE DESIGN-BUILDER:

(Name, legal status and address)

GMK Associates Design-Build Division, Inc.  
1201 Main Street  
Suite 2100  
Columbia, SC 29201  
«»«»  
«»

The Owner and Design-Builder hereby amend the Agreement as follows.

#### TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER’S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 MISCELLANEOUS PROVISIONS

#### ARTICLE A.1 CONTRACT SUM

**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.

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.

**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.

**§ A.1.1** The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:  
*(Check the appropriate box.)*

[  ] Stipulated Sum, in accordance with Section A.1.2 below

**§ A.1.2 Stipulated Sum**

**§ A.1.2.1** The Stipulated Sum for Design Services and ~~Construction~~, Construction, subject to authorized adjustments as provided in the Design-Build Documents, is as follows:

**§ A.1.2.1.1 Design Services.** For the Design-Builder's performance of the Work as described in Section 4.1 of the Agreement, the Owner shall pay the Design-Builder in current funds the amount of:

**§ A.1.2.1.2 Construction.** The Stipulated Sum for Construction shall be  (  ).

**§ A.1.2.2** The Stipulated Sum is guaranteed by the Design-Builder not to exceed the above-stated amount, subject to additions and deductions by changes in the work as provided in the final design-build documents. Such maximum sum is referred to in the Design-Build documents as the Guaranteed Maximum Price. Reasonably expected costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

**§ A.1.2.3** The Stipulated Sum will be converted to a Lump-Sum Price at the conclusion of the Construction Documents and be incorporated into this Agreement by Amendment.

**§ A.1.2.4** The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)*

« »

**§ A.1.2.5** Unit prices, if any:  
*(Identify item, state the unit price, and state any applicable quantity limitations.)*

Item	Units and Limitations	Price per Unit (\$0.00)
<input type="text"/>	<input type="text"/>	<input type="text"/>

**§ A.1.2.6** 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
<input type="text"/>	<input type="text"/>	<input type="text"/>

**§ A.1.2.7** Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

**§ A.1.3 Payments**

**§ A.1.3.1 Progress Payments**

**§ A.1.3.1.1** 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.

§ A.1.3.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ A.1.3.1.3 Provided that an Application for Payment is received not later than the «first» day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the «fifteenth» day of the «same» 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 «fifteen» ( «15» ) days after the Owner receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ A.1.3.1.4 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. Compensation for design services, if any, 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.

§ A.1.3.1.5 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, 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. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.3.1.6 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.

§ A.1.3.1.7 In the event that the Owner's Lender engages the services of an independent inspection service for the payment application approval process, the Design-Builder has the right to approve the firm or individual selected to perform the inspection services.

#### § A.1.3.2 Progress Payments—Stipulated Sum

§ A.1.3.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.3.2.2 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 Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of «zero» percent ( «0» %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 5.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of «zero» percent ( «0» %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 8.4 of the Agreement.

§ A.1.3.2.3 The progress payment amount determined in accordance with Section A.1.3.2.2 shall be further modified under the following circumstances:



- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 8.7.5 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 8.9.3 of the Agreement.

**§ A.1.3.2.4** Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.3.2.2.1 and A.1.3.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)*

« »

**§ A.1.3.3 Final Payment**

**§ A.1.3.3.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 8.9 of the Agreement have been satisfied, 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 A.2 CONTRACT TIME**

**§ A.2.1** Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

**§ A.2.2** The Design-Builder shall achieve Substantial Completion of the Work not later than « » ( « » ) days from the date of this Amendment, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

« »

**Portion of Work**

**Substantial Completion Date**

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

« »

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

**§ A.3.1** The Contract Sum and Contract Time set forth in this Amendment are based on the following:

**§ A.3.1.1** The Supplementary and other Conditions of the Contract:

**Document**

**Title**

**Date**

**Pages**

**§ A.3.1.2** The Specifications:

*(Either list the specifications here or refer to an exhibit attached to this Amendment.)*

« »

**Section**

**Title**

**Date**

**Pages**

**§ A.3.1.3** The Drawings:  
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

<< >>

Number	Title	Date

**§ A.3.1.4** The Sustainability Plan, if any:  
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

<< >>

**§ A.3.1.5** Design-Builder's assumptions and clarifications:

<< >>

**§ A.3.1.6** Deviations from the Project Criteria as adjusted by a Modification:

<< >>

**§ A.3.1.7** To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

<< >>

#### **ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**

**§ A.4.1** The Design-Builder's key personnel are identified below:  
(Identify name, title and contact information.)

Project Manager

<< >>

**§ A.4.2** The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:  
(List name, discipline, address and other information.)

<< >>

#### **ARTICLE A.5 MISCELLANEOUS PROVISIONS**

##### **§ A.5.1 Relationship of the Parties**

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to

furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

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

**Richland County**

**GMK Associates Design-Build Division, Inc.**

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

« »« »

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

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

Thomas P. Monahan, Chairman/Treasurer

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

# DRAFT AIA® Document A141™ - 2014

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

### GMP VERSION

AGREEMENT made as of the «→Twenty-third day of «→August in the year «→Two Thousand Seventeen  
(In words, indicate day, month and year.)

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

Richland County  
2020 Hampton Street  
Columbia, SC 29201  
«→«→  
«→  
«→  
«→

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

GMK Associates Design-Build Division, Inc.  
1201 Main Street  
Suite 2100  
Columbia, SC 29201  
«→«→  
«→  
«→  
«→

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

Richland County Magistrate's Offices – County Wide Improvements  
Richland County, SC «DB Master Templates»  
«→  
«→

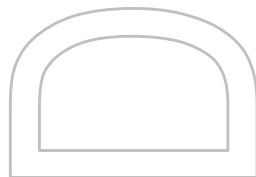
The Owner and Design-Builder agree as follows.



**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.

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 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Project Criteria set forth in this Section 1.1.  
*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

§ 1.1.1 The Owner's program for the Project:

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

« »

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

*(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)*

« »

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 User Notes: (1782667082)

**§ 1.1.3** The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

« »

**§ 1.1.4** The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

*(Provide total for Owner's budget, and if known, a line item breakdown of costs.)*

« »

**§ 1.1.5** The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

« »

.2 Submission of Design-Builder Proposal:

« »

.3 Phased completion dates:

« »

.4 Substantial Completion date:

« »

.5 Other milestone dates:

« »

**§ 1.1.6** Additional Owner's Criteria upon which the Agreement is based:

*(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)*

« »

**§ 1.1.7** The Design-Builder shall confirm that the information included in the Project Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

**§ 1.1.7.1** If the Project Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

**§ 1.1.8** If there is a change in the Project Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 5.

**§ 1.1.9** If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

**§ 1.2 Project Team**

**§ 1.2.1** The Owner identifies the following representative in accordance with Section 6.1.1:

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(List name, address and other information.)

« »  
« »  
« »  
« »  
« »  
« »

§ 1.2.2 The persons or entities, in addition to the Owner’s representative, who are required to review the Design-Builder’s Submittals are as follows:  
(List name, address and other information.)

« »

§ 1.2.3 The Design-Builder identifies the following representative in accordance with Section 2.1.2:  
(List name, address and other information.)

« »  
« »  
« »  
« »  
« »  
« »

§ 1.2.4 Neither the Owner’s nor the Design-Builder’s representative shall be changed without ten days’ written notice to the other party.

**§ 1.3 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Section 13.3, the method of binding dispute resolution shall be the following:  
(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 13.4
- Litigation in a court of competent jurisdiction
- Other: (Specify)
- « »

**§ 1.4 Definitions**

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the “Agreement”); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

**§ 1.4.3 The Work.** The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

**§ 1.4.4 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 may include design and construction by the Owner and by separate contractors.

**§ 1.4.5 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

**§ 1.4.6 Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

**§ 1.4.7 Owner.** 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.

**§ 1.4.8 Design-Builder.** 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 term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

**§ 1.4.9 Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

**§ 1.4.10 Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

**§ 1.4.11 Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The 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.

**§ 1.4.12 Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

**§ 1.4.13 Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

**§ 1.4.14 Day.** The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

**§ 1.4.15 Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

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

### § 2.1 General

**§ 2.1.1** The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

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§ 2.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 2.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 2.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 2.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 5.

§ 2.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 2.1.5 **General Consultation.** Upon the Owner's request the Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 2.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 2.1.7 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.

§ 2.1.8 **Progress Reports** The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

#### § 2.1.9 Design-Builder's Schedules

§ 2.1.9.1 The Design-Builder shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, 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.

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

§ 2.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities 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 the certifications. The Design-Builder's Architect, Consultants, and Contractors shall

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not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

#### **§ 2.1.11 Design-Builder's Submittals**

**§ 2.1.11.1** Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 2.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

**§ 2.1.11.2** By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

**§ 2.1.11.3** The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

**§ 2.1.11.4** The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

**§ 2.1.11.5** All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, related to the Work, shall bear the Design-Builder's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**§ 2.1.12 Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work 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.

#### **§ 2.1.13 Royalties, Patents and Copyrights**

**§ 2.1.13.1** The Design-Builder shall pay all royalties and license fees.

**§ 2.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

#### **§ 2.1.14 Indemnification**

**§ 2.1.14.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but

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not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. 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 2.1.14.

**§ 2.1.14.2** The indemnification obligation under this Section 2.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 2.1.15 Contingent Assignment of Agreements**

**§ 2.1.15.1** 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 Contract by the Owner for cause, pursuant to Section 12.1.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

**§ 2.1.15.2** Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 2.1.15.3** Upon such assignment to the Owner under this Section 2.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

**§ 2.1.16 Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Article 3.

**ARTICLE 3 INSURANCE AND BONDS**

**§ 3.1 General.** The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Article 3. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

**§ 3.2 Design Builder's Insurance and Bonds**

**§ 3.2.1** The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 10.2.2.1 of the Agreement, unless a different duration is stated below:

*(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

« »

**§ 3.2.1.1** Commercial General Liability with policy limits of not less than ~~«»One Million Dollars (\$ «»1,000,000 )~~ for each occurrence and ~~«»Two Million Dollars (\$ «»2,000,000 )~~ in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and

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.5 contractual liability applicable to the Design-Builder's obligations under Section 2.1.14 of the Agreement.

§ 3.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than ~~«→One Million Dollars (\$ «→1,000,000 )~~ per claim and ~~«→One Million Dollar (\$ «→1,000,000 )~~ in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section 3.2.1.2, along with any other statutorily required automobile coverage.

§ 3.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 3.2.1.1 and 3.2.1.2.

§ 3.2.1.4 Workers' Compensation at statutory limits.

§ 3.2.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ~~« » (\$ « » )~~ per claim and ~~« » (\$ « » )~~ in the aggregate.

§ 3.2.1.6 Pollution Liability covering performance of the Work, with policy limits of not less than ~~« » (\$ « » )~~ per claim and ~~« » (\$ « » )~~ in the aggregate.

§ 3.2.1.6.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections 3.2.1.5 and 3.2.1.6, with combined policy limits that are not less than ~~«→Two Million Dollars (\$ «→2,000,000 )~~ per claim and ~~«→Five Million Dollar (\$ «→5,000,000 )~~ in the aggregate.

§ 3.2.1.7 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article 3.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 3.2.1.8 **Additional Insured Obligations.** Upon request the Owner be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ 3.2.1.9 **Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article 3.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 8.9.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 3.2.1. If requested the certificates will show the Owner as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ 3.2.2 **Performance Bond and Payment Bond**

§ 3.2.2.1 If requested by the Owner the Design-Builder shall provide surety bonds as follows:  
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)

§ 3.2.2.2 If requested, the cost of the Performance and Payment Bonds will be paid by the Owner.

**§ 3.2.2.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### **§ 3.3 Owner's Insurance**

#### **§ 3.3.1 Owner's Liability Insurance**

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

#### **§ 3.3.2 Property Insurance**

**§ 3.3.2.1** Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where 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 Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The 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 the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 8.7 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section 3.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 10.2.2 of the Agreement.

**§ 3.3.2.1.1** The insurance required under Section 3.3.2.1 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 the Design-Builder's services and expenses required as a result of such insured loss.

**§ 3.3.2.1.2** If the insurance required under Section 3.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ 3.3.2.1.3** The insurance required under Section 3.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 3.3.2.1.4** Partial occupancy or use in accordance with Section 8.8 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section 3.3.2.1 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.

**§ 3.3.2.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, required by the Design-Build Documents or by law. This insurance shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section 3.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

**§ 3.3.2.3** If the Owner does not intend to purchase the insurance required under Sections 3.3.2.1 and 3.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

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**§ 3.3.2.4 Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to 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 for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Article 3.

**§ 3.3.2.5** 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 3.3.2.7 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.

**§ 3.3.2.6** Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section 3.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article 3.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ 3.3.2.7 Waivers of Subrogation.** The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 4.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section 3.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 4.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the 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, 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.

**§ 3.3.2.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 3.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

**§ 3.3.2.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the 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 5 of the Agreement.

**§ 3.3.2.10** The Owner 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 a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

### § 3.4 Special Terms and Conditions

Special terms and conditions that modify this Insurance and Bonds Article 3, if any, are as follows:

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## ARTICLE 4 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

### § 4.1 Construction Documents

§ 4.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 4.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

### § 4.2 Construction

§ 4.2.1 **Commencement.** Except as permitted in Section 4.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 4.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 4.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 4.2.4 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.

### § 4.3 Labor and Materials

§ 4.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 4.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 5.

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

### § 4.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

### § 4.5 Permits, Fees, Notices and Compliance with Laws

§ 4.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

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§ 4.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 4.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that 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, the Design-Builder shall promptly provide notice to the Owner 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 the Owner determines that 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 recommend 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 Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 13.

§ 4.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 13.

#### § 4.6 Allowances

§ 4.6.1 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 whom the Design-Builder has reasonable objection.

§ 4.6.2 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 the 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 4.6.2.1 and (2) changes in Design-Builder's costs under Section 4.6.2.2.

§ 4.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

#### § 4.7 Key Personnel, Contractors and Suppliers

§ 4.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom 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 and timely objection.

#### § 4.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 8.9.2 as a record of the Work as constructed.

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#### § 4.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

#### § 4.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed 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.

#### § 4.11 Cleaning Up

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

§ 4.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

#### § 4.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

#### § 4.13 Construction by Owner or by Separate Contractors

##### § 4.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 4.13.1.1 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, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 13.

§ 4.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 4.13.1.3 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. 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.

§ 4.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

#### § 4.14 Mutual Responsibility

§ 4.14.1 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.

§ 4.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate

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contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder 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.

**§ 4.14.3** The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 4.14.4** The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 9.2.5.

**§ 4.14.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 4.10.

#### **§ 4.15 Owner's Right to Clean Up**

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 will allocate the cost among those responsible.

### **ARTICLE 5 CHANGES IN THE WORK**

#### **§ 5.1 General**

**§ 5.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 5 and elsewhere in the Design-Build Documents.

**§ 5.1.2** A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

**§ 5.1.3** 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 or Change Directive.

#### **§ 5.2 Change Orders**

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

- .1 The 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.

**§ 5.2.2** If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

#### **§ 5.3 Change Directives**

**§ 5.3.1** A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum, and Contract Time being adjusted accordingly.

**§ 5.3.2** A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 5.3.3** If the Change Directive provides for an adjustment to the Contract Sum the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

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- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 5.3.7.

§ 5.3.4 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 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.

§ 5.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 5.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 5.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 5.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 5.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 5.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 5.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 13.

§ 5.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## ARTICLE 6 OWNER'S RESPONSIBILITIES

### § 6.1 General

§ 6.1.1 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.

§ 6.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. 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.

**§ 6.2 Information and Services Required of the Owner**

§ 6.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 6.2.2 The Owner shall provide, to the extent under the Owner's control 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. The Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 6.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 6.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 6.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 6.2.6 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.

§ 6.2.7 The Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 6.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 6.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. 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.

§ 6.2.10 The Owner shall purchase and maintain insurance as set forth in Article 3.

### § 6.3 Submittals

§ 6.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of 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; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 2.1.11, 2.1.12, and 4.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 6.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 6.4 Visits to the site 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 quality or quantity 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, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 6.5 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, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 6.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 14.5.2, 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, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

### § 6.7 Owner's Right to Stop Work

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 10.2 or persistently 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 4.13.1.3.

### § 6.8 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-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, 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 then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

## ARTICLE 7 TIME

### § 7.1 Progress and Completion

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

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§ 7.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

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

#### § 7.2 Delays and Extensions of Time

§ 7.2.1 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 consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; 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 mediation and binding dispute resolution or by other causes that 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.

§ 7.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 13.

§ 7.2.3 This Section 7.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

### ARTICLE 8 PAYMENT APPLICATIONS AND PROJECT COMPLETION

#### § 8.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

#### § 8.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and 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.

#### § 8.3 Applications for Payment

§ 8.3.1 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 completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 8.3.1.1 As provided in Section 5.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 8.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 8.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as 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.

§ 8.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further

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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, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 8.4 Decisions to Withhold Certification**

**§ 8.4.1** The Owner may withhold a Certificate for 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 Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder in writing, within seven days after receipt of the Design-Builder's Application for Payment. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, 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 the Architect, Consultants, Contractors or others, for 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 repeated failure to carry out the Work in accordance with the Design-Build Documents.

**§ 8.4.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 8.4.3** If the Owner withholds certification for payment under Section 9.4.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

#### **§ 8.5 Progress Payments**

**§ 8.5.1** After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

**§ 8.5.2** The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

**§ 8.5.3** 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.

**§ 8.5.4** Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Section 8.5.2.

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**§ 8.5.5** A Certificate for Payment, 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.

**§ 8.5.6** 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 the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for 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 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.

**§ 8.6 Failure of Payment**

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven 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 shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

**§ 8.7 Substantial Completion**

**§ 8.7.1** 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 utilize the Work for its intended use.

**§ 8.7.1.1** Upon receipt of the Certificate of Occupancy from the Local Authority (temporary or final) and upon acceptance of the building by the Healthcare Facility Construction Division of the State Governing Authority, the building shall be deemed substantially complete. Inspections and approval by the Center for Medicare and Medicaid Services Health Facilities Construction Division, Licensing and Certification is the responsibility of the Owner.

**§ 8.7.2** 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.

**§ 8.7.3** 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 sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

**§ 8.7.4** Prior to issuance of the Certificate of Substantial Completion, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

**§ 8.7.5** A Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

**§ 8.8 Partial Occupancy or Use**

**§ 8.8.1** 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

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consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. 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 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 8.7.2. 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.

**§ 8.8.2** 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 in order to determine and record the condition of the Work.

**§ 8.8.3** 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.

#### **§ 8.9 Final Completion and Final Payment**

**§ 8.9.1** Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 8.9.2, promptly issue a final Certificate for Payment.

**§ 8.9.2** Neither final payment nor any remaining retained percentage shall 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, (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, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, 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 liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

**§ 8.9.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, 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 to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 8.9.4** 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 Contract 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.

**§ 8.9.5** Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

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## ARTICLE 9 PROTECTION OF PERSONS AND PROPERTY

### § 9.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 9.2 Safety of Persons and Property

§ 9.2.1 The Design-Builder shall be responsible for precautions for the safety of, and 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, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 9.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 9.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 9.2.4 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.

§ 9.2.5 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 9.2.1.2 and 9.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, 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 9.2.1.2 and 9.2.1.3; 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 3.2.14.

§ 9.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 9.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 9.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the 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.

### § 9.3 Hazardous Materials

§ 9.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and 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

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recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

**§ 9.3.2** Upon receipt of the Design-Builder's written notice, 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 cause it to be 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 will 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. By Change Order, 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 shut-down, delay and start-up.

**§ 9.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, 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 presents the risk of bodily injury or death as described in Section 9.3.1 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), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

**§ 9.3.4** The Owner shall not be responsible under this Section 9.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner. The Owner shall be responsible for materials or substances required by the Owner, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

**§ 9.3.5** The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 9.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 9.3.6** If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency 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.

#### **§ 9.4 Emergencies**

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.

### **ARTICLE 10 UNCOVERING AND CORRECTION OF WORK**

#### **§ 10.1 Uncovering of Work**

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time 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 and the Contract Time will be adjusted as appropriate.

**§ 10.2 Correction of Work**

**§ 10.2.1 Before or After Substantial Completion.** 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 and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

**§ 10.2.2 After Substantial Completion**

**§ 10.2.2.1** In addition to the Design-Builder's obligations under Section 2.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 8.8.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be 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 one-year period for correction of the 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 nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 6.8.

**§ 10.2.2.2** The one-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 completion of that portion of the Work.

**§ 10.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 10.2.

**§ 10.2.3** The Design-Builder shall remove from the site portions of the Work that 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.

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

**§ 10.2.5** Nothing contained in this Section 10.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 10.2.2 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.

**§ 10.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is 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 reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

**ARTICLE 11 COPYRIGHTS AND LICENSES**

**§ 11.1** Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed

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## **ARTICLE 12 TERMINATION OR SUSPENSION**

### **§ 12.1 Termination or Suspension Following Execution of the Design-Build Amendment**

#### **§ 12.1.1 Termination by the Design-Builder**

**§ 12.1.1.1** The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, 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 that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not made payment on a Certificate for Payment within the time stated in 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 6.2.7.

**§ 12.1.1.2** The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, 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 12.1.3 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.

**§ 12.1.1.3** If one of the reasons described in Section 12.1.1.1 or 12.1.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

**§ 12.1.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly 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 Contract and recover from the Owner as provided in Section 12.1.1.3.

#### **§ 12.1.2 Termination by the Owner For Cause**

**§ 12.1.2.1** The Owner may terminate the Contract if the Design-Builder

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

**§ 12.1.2.2** 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 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 2.1.15; and

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written 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.

§ 12.1.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 12.1.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 12.1.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

#### § 12.1.3 Suspension by the Owner for Convenience

§ 12.1.3.1 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.

§ 12.1.3.2 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 12.1.3.1. 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 Contract.

#### § 12.1.4 Termination by the Owner for Convenience

§ 12.1.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 12.1.4.2 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 Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 12.1.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

### ARTICLE 13 CLAIMS AND DISPUTE RESOLUTION

#### § 13.1 Claims

§ 13.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the 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 Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 13.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 9 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 13.1.2.

#### § 13.1.3 Notice of Claims

§ 13.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party 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.

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**§ 13.1.3.2 Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 8.9.4 or 8.9.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 13.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 13.2.1 shall not apply.

**§ 13.1.4 Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 8.6 and Article 12, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

**§ 13.1.5 Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 9.4.

**§ 13.1.6 Claims for Additional Time**

**§ 13.1.6.1** If the Design-Builder intends to make a 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 cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 13.1.6.2** 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.

**§ 13.1.7 Claims for Consequential Damages**

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 12. Nothing contained in this Section 13.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

**§ 13.2 Initial Decision**

**§ 13.2.1** An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 9.3 and 9.4 of the Agreement and Sections 3.3.2.9 and 3.3.2.10, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

**§ 13.2.2 Procedure**

**§ 13.2.2.1 Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 13.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

**§ 13.2.2.2 Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 13.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 13.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 13.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 13.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 13.2.6.1.

§ 13.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 13.2.7 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.

§ 13.2.8 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.

### § 13.3 Mediation

§ 13.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 8.9.4, 8.9.5, and 13.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 13.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 13.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 13.3.3 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.

### § 13.4 Arbitration

§ 13.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.



§ 13.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 13.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 13.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 13.4.4 Consolidation or Joinder**

§ 13.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 13.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 13.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 13.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

**ARTICLE 14 MISCELLANEOUS PROVISIONS**

**§ 14.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 13.4.

**§ 14.2 Successors and Assigns**

§ 14.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 14.2.2, neither party to the Contract shall assign the 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 Contract.

§ 14.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 14.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 2.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

**§ 14.3 Written Notice**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or

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User Notes: (1782667082)

certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

#### § 14.4 Rights and Remedies

§ 15.4.1 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.

§ 14.4.2 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 Contract, 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.

#### § 14.5 Tests and Inspections

§ 14.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 14.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 14.5.1, the Owner will 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 14.5.3, shall be at the Owner's expense.

§ 14.5.3 If such procedures for testing, inspection or approval under Sections 14.5.1 and 14.5.2 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 shall be at the Design-Builder's expense.

§ 14.5.4 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.

§ 14.5.5 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.

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

#### § 14.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 14.6.1.

§ 14.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

**§ 14.7 Capitalization**

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

**§ 14.8 Interpretation**

**§ 14.8.1** 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.

**§ 14.8.2** 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.

**ARTICLE 15 SCOPE OF THE AGREEMENT**

**§ 15.1** This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed

.6 Other:

« »

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

Richland County

GMK Associates Design-Build Division, Inc.

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

« »

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

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

Thomas P. Monahan, Chairman/Treasurer

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



# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

March 27, 2018 Administration & Finance Committee Meeting Briefing Document  
Recreation Commission Bond Funds

## Agenda Item

Recreation Commission Bond Funds

## Background

During the February 6, 2018 Council meeting, Councilman N. Jackson brought forth the following motion:

“Do not approve any additional projects from the remainder of the \$50 million Recreation Bond until an explanation is given from the Recreation Commission, why \$1,600,000 was paid for 40 acres of land worth \$255,000 NOTE: The intent was to purchase 40 acres and build a road at the cost of \$1,600,000. The documents might state to purchase land only but if an appraisal was done it would have shown that the land was worth \$255,000”

The land purchase was discussed during the January 22, 2018 Richland County Recreation Commission meeting. A memorandum was sent by the Recreation Commission following up to that meeting – see attached memorandum and minutes.

## Issues

There are no other issues.

## Fiscal Impact

None identified.

## Past Legislative Actions

None

## Alternatives

1. Consider the motion and approve accordingly.
2. Consider the motion and do not approve.

### Staff Recommendation

Staff does not have a recommendation on this matter as it a Council initiated request.

**BOARD OF COMMISSIONERS:**

Thomas Clark  
Cynthia Shepard  
Donzetta Lindsay  
Stephen Venugopal  
Lisa L. Cotten  
Robert Lapin  
Jermaine L. Johnson, Sr.



*"Enriching Lives, Connecting Communities."*

**ADMINISTRATIVE OFFICE:**

7473 Parklane Road  
Columbia, SC 29223  
Phone: (803) 741-RCRC (7272)  
Fax: (803) 741-2028  
Email: [info@rcrc.state.sc.us](mailto:info@rcrc.state.sc.us)  
[www.richlandcountyrecreation.com](http://www.richlandcountyrecreation.com)

To: The Honorable Joyce Dickerson, Richland County Council Chairwoman

From: Tara M. Dickerson  
Chief of Staff

Date: February 6, 2018

Re: Follow up from January 22, 2018 Special Called Meeting

---

Thank you for taking the time to meet with me and the RCRC Board. I am following up to our discussion on January 22, 2018 regarding questions raised by Councilman Norman Jackson as to the use of funds related to the 2008 general obligation bond projects.

**1. Neighborhood Mini Parks- Phase Three Projects:**

**Mini Parks 1 and 2**

Four (4) mini parks were part of the original project list. The commission was unable to locate property for Mini Parks 1 and 2(District 11), therefore the funds were transferred to an alternate project at Caughman Road Park (District 11) to purchase 9.49 acres of land and build a picnic shelter with councilman's approval. This project is complete.

**Mini Parks 3 and 4**

To date there are two mini parks in District 11 that remain incomplete. The land has been purchased for Mini Park 3 at 1150 Old Garners Road for \$39,570.00(appraised value). The remaining funds for this project are \$80,430.00. Richland School District 1 has submitted a 25-year lease agreement for the Southeast Middle School Property (Mini Park 4). This project has been bid out twice and both times were over budget due to requirements such as parking, drives, etc. There was \$120,000 allocated for this project and to date we have spent \$29,110.00. This leaves \$90,890.00 remaining.



*Nationally Accredited:*  
The Richland County Recreation Commission became South Carolina's first nationally accredited parks and recreation agency in 2006.

*Equal Opportunity Statement: The Richland County Recreation Commission is dedicated to the concept of equal opportunity. The Commission will not discriminate on the basis of race, color, religion, sex, age, disability, national origin, or marital status, in its employment practices or in the participation policies for its facilities.*

**1. Garners Ferry Sports Complex-Phase One:**

During Phase One of the bond a 40.545-acre parcel was purchased for \$1,600,000 on Garners Ferry Road. The property appraised for \$1,620,000.00. The original project list attached to the ordinance specified that the above amount was designated for "Southeast Sports Complex Land Only (40 acres)."

There is no indication in the bond ordinance that money was allocated for a roadway project as part of this bond project.

I hope this helps to clarify these issues. Please let me know if you have any further questions.

CC: Gerald Seals, County Administrator  
Members of Richland County Council  
Richland County Recreation Board of Commissioners



# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

March 27, 2018 Administration & Finance Committee Meeting Briefing Document  
Agreement with Platinum Plus

## Agenda Item

Agreement with Platinum Plus

## Background

During the February 6, 2018 Council meeting, Councilman N. Jackson brought forth the following motion:

“Move that the agreement with Platinum Plus to operate to perpetuity be reconsidered and that they never reopen at that location. Note: It's next to a graveyard and a church which violates County Ordinance. It was never grandfathered making it noncompliance”

Staff will enforce the County's ordinances.

## Issues

There are no other issues.

## Fiscal Impact

None identified.

## Past Legislative Actions

None

## Alternatives

1. Consider the motion and approve accordingly.
2. Consider the motion and do not approve.

## Staff Recommendation

Staff does not have a recommendation on this matter as it a Council initiated request.





# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

March 27, 2018 Administration & Finance Committee Meeting Briefing Document  
Addition of Two Items to Richland Renaissance

## Agenda Item

Addition of Two Items to Richland Renaissance

## Background

During the March 6, 2018 Council meeting, Councilman N. Jackson brought forth the following motion:

“Consider two big items to the Renaissance Plan, one in the Southeast and the other in the Northeast. A Basketball complex in the Southeast and a Baseball complex in the Northeast. (Revenue producing) NOTE: Some of the most popular basketball tournaments in Richland County the Chickfil-a Classic turn away visitors. Richland School Districts 1 & 2 pays a tremendous amount of money annually for rental of the Coliseum for graduation services. The use of the basketball complex could be used for graduation services, bringing in much needed revenue to the County. It is difficult for Richland County to host sports tournaments because visitors have to drive and navigate to get to different parks not adequately equipped.”

## Issues

There are no other issues.

## Fiscal Impact

Contingent upon the Council action taken pursuant to this motion.

## Past Legislative Actions

None

## Alternatives

1. Consider the motion and approve accordingly.
2. Consider the motion and do not approve.

## Staff Recommendation

Staff does not have a recommendation on this matter as it a Council initiated request.



# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

## April 24, 2018 Administration & Finance Committee Meeting Briefing Document Richland County approved Ordinance #029-07HR

### Agenda Item

During its March 20, 2018 Council meeting, the following motion was brought forth and forward to the A&F Committee for its consideration: "In 2007, Richland County approved Ordinance #029-07HR, filed with the Clerk of Court on April 12, 2007, Book 010, Page 386. This motion is to direct the Finance Department to provide an accounting for these funds since July 1, 2007 as described so users know how the system currently stands financially."

### Background

Mr. Malinowski brought forth the motion to review Ordinance # 029-07HR, which relates to the Broad River Sewer System fees. In fiscal year 2007 the user fee rate for each customer of the System was increased to \$42.02 a month and the tap fee increased from \$2,200 to \$4,000. In fiscal year 2010 the user fee increased to \$46.54 a month and the tap fee was reduced to \$3,000. In fiscal year 2013 the user fee decreased to \$44.54 a month and the tap fee was increased to \$4,000. The ordinance states \$10.54 of the increased in monthly user fee was used for debit payments and 25% of the tap increase should be used for rate stabilization, operations and maintenance, debt service and capital expenditures

### Issues

The status of the system is shown in the following Statement of Net Position over the last 10 years. The years 2008 to 2013 all the water and sewer departments were reported as one amount. In year 2014, the utility systems were separated so just Broad River Utility System is reported. There is also a report showing the taps sold each year and revenue received.

### Fiscal Impact

The Statement of Net Position shows the increase in Unrestricted net position of the Broad Rover Utility System over the last 10 years.

### Past Legislative Actions

None known at this time.

### Alternatives

### **Staff Recommendations**

Staff can do further research and reporting if necessary to answer Council's questions.

RICHLAND COUNTY, SOUTH CAROLINA  
STATEMENT OF NET POSITION  
PROPRIATARY FUNDS  
JUNE 30TH

	<b>Broad River Utility System</b>	<b>Broad River Utility System</b>	<b>Broad River Utility System</b>	<b>Broad River Utility System</b>	<b>Water &amp; Sewer</b>	<b>Water &amp; Sewer</b>	<b>Water &amp; Sewer</b>	<b>Water &amp; Sewer</b>	<b>Water &amp; Sewer</b>	<b>Water &amp; Sewer</b>
	FY 2017	FY 2016	FY 2015	FY 2014	FY 2013	FY 2012	FY 2011	FY 2010	FY 2009	FY 2008
User fees & penalties	7,211,421	6,609,987	6,345,004	6,326,944	7,090,122	5,903,653	5,590,428	4,949,632	5,008,101	4,948,147
Grant revenue	-	-	-	-	-	-	2,080,856	-	-	-
Misc revenue	-	-	-	-	1,504,009	-	2,075	5,635	1,935	-
Interest income	<u>24,030</u>	<u>11,069</u>	<u>3,523</u>	<u>1,975</u>	<u>2,901</u>	<u>8,650</u>	<u>12,918</u>	<u>15,965</u>	<u>179,221</u>	<u>1,276,409</u>
<b>Total revenue</b>	<b>7,235,451</b>	<b>6,621,056</b>	<b>6,348,527</b>	<b>6,328,919</b>	<b>8,597,032</b>	<b>5,912,303</b>	<b>7,686,277</b>	<b>4,971,232</b>	<b>5,189,257</b>	<b>6,224,556</b>
Operating expense	4,075,091	3,291,777	3,153,685	3,493,367	3,733,998	3,416,794	2,939,608	2,769,991	2,540,300	2,112,593
Interest expense	1,168,713	1,323,880	1,346,828	1,368,855	1,393,319	1,319,103	1,662,845	1,640,312	1,475,392	1,279,832
Other (depreciation, pension, etc.)	<u>2,346,105</u>	<u>2,364,076</u>	<u>2,351,940</u>	<u>2,312,644</u>	<u>2,702,743</u>	<u>2,671,716</u>	<u>2,332,690</u>	<u>1,612,425</u>	<u>792,960</u>	<u>716,558</u>
<b>Total expense</b>	<b>7,589,909</b>	<b>6,979,733</b>	<b>6,852,453</b>	<b>7,174,866</b>	<b>7,830,060</b>	<b>7,407,613</b>	<b>6,935,143</b>	<b>6,022,728</b>	<b>4,808,652</b>	<b>4,108,983</b>
Capital contributions (developer, transfer in/out)	1,223,634	814,230	255,080	315,832	1,966,608	3,241,472	1,700,000	464,470	2,897,970	2,468,708
<b>Net position, beginning of year</b>	<b>21,650,883</b>	<b>21,195,330</b>	<b>21,444,176</b>	<b>23,771,017</b>	<b>28,980,313</b>	<b>27,234,151</b>	<b>24,783,017</b>	<b>24,834,399</b>	<b>21,555,824</b>	<b>16,971,543</b>
Changes in net position	869,176	455,553	(248,846)	(530,115)	2,733,580	1,746,162	2,451,134	(587,026)	3,278,575	4,584,281
<b>Net position, end of year</b>	<b><u>\$ 22,520,059</u></b>	<b><u>\$ 21,650,883</u></b>	<b><u>\$ 21,195,330</u></b>	<b><u>\$ 23,240,902</u></b>	<b><u>\$ 31,713,893</u></b>	<b><u>\$ 28,980,313</u></b>	<b><u>\$ 27,234,151</u></b>	<b><u>\$ 24,247,373</u></b>	<b><u>\$ 24,834,399</u></b>	<b><u>\$ 21,555,824</u></b>
Net investment in capital assets	14,328,533	15,713,737	16,806,197	19,400,994	30,128,198	28,520,959	29,889,593	25,185,490	24,286,642	18,742,860
Restricted for debt service	3,366,317	3,359,980	2,678,730	2,683,290	-	-	-	-	-	-
Unrestricted (deficit)	<u>4,825,209</u>	<u>2,577,166</u>	<u>1,710,403</u>	<u>1,156,618</u>	<u>1,585,695</u>	<u>459,354</u>	<u>(2,655,442)</u>	<u>(938,117)</u>	<u>547,757</u>	<u>2,812,964</u>
<b>Net position, end of year</b>	<b><u>\$ 22,520,059</u></b>	<b><u>\$ 21,650,883</u></b>	<b><u>\$ 21,195,330</u></b>	<b><u>\$ 23,240,902</u></b>	<b><u>\$ 31,713,893</u></b>	<b><u>\$ 28,980,313</u></b>	<b><u>\$ 27,234,151</u></b>	<b><u>\$ 24,247,373</u></b>	<b><u>\$ 24,834,399</u></b>	<b><u>\$ 21,555,824</u></b>



# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

## March 27, 2018 Administration and Finance Committee Meeting Briefing Document Memorandum of Understanding (MOU) with the Hughes Lake Owners' Association for Storm Drainage Pipe Replacement

### Agenda Item

Council is requested to authorize staff to negotiate and execute a Memorandum of Understanding (MOA) with the Hughes Lake Owners' Association for storm drainage pipe replacement.

### Background

During the 2015 Flood, Hughes Lake suffered damage to the dam outlet structure and to some of the storm drainage piping that carries the pond's discharge as well as stormwater runoff from the County roadway to a creek outfall. Please see the attached map. The staff of the County Engineer was contacted by the Association to repair the 24" diameter pipe in this area. Maintenance of this drainage pipe is a County responsibility.

The County Roads and Drainage Maintenance staff attempted to repair the pipe, but it was in such poor condition and its location at the toe of the Hughes Lake dam made it prohibitive for our County maintenance forces to make the repair. The County will have to hire an engineer and advertise for bids from a private contractor to affect the necessary repairs. It is estimated that this approach may take several months to complete.

The County staff informed the Association of the situation. The association requested to let their engineer, who is also designing repairs and upgrades to the dam due to requirements of SCDHEC, design the repairs and have their contractors make the repair to the County's pipe also. The Association requested the Richland County to contribute \$15,000 toward the pipe repair and improvements. This amount is equal to approximately half of the estimated pipe replacement cost of \$30,000.

After staff review and consideration, we believe that this is a prudent course of action which, carefully monitored and managed, would not set a negative precedent and could be effectively administered by a simple Memorandum of Agreement (MOU) to be negotiated between the County and the Association.

### Issues

There are no other issues.

### Fiscal Impact

The \$15,000 will be funded from the Roads Maintenance Construction current fiscal year budget and the funds are available.

### Past Legislative Actions

None

### Alternatives

1. Approve the negotiation and execution of a MOU and the subsequent payment of \$15,000 to the Association.
2. Do not approve the negotiation and execution of MOU and the subsequent payment of \$15,000 to the Association.

### Staff Recommendation

It is recommended that Council approve the authorization of the staff to negotiate and execute a MOU and the payment of \$15,000 to the Association.

Submitted by: Department of Public Works

Date: February 15, 2018

## MEMORANDUM AGREEMENT

THIS MEMORANDUM AGREEMENT (this "Agreement") to be effective as of April \_\_\_\_\_, 2018, by and between Hughes Lake Owner's Association, a South Carolina non-profit association (the "Association") and Richland County, South Carolina, a political subdivision of the State of South Carolina (the "County").

### BACKGROUND

On or about August 15, 2016, the Association granted the County an Easement and Right of Way for Existing Drainage covering a storm water drainage line running from the northeastern terminus of Aiken Hunt Circle to Gills Creek as more fully shown on the plat included in Exhibit A attached hereto. This easement provided that the County agreed to maintain and repair the drainage system in reasonable condition and repair. After acceptance of this easement by the County, the County discovered that the drainage line located within the easement area was in a condition that required significant repair or replacement and advised the Association that it was not in a position to accomplish either in fiscal year 2017-2018, then estimated cost of repair by adding a liner, which may not solve long term issues, was in excess of \$30,000. Subsequent to receiving this information, the Association received a bid for replacement of the storm water drainage line with a HDPE drainage pipe system from C & K Trucking and Crew, LLC for \$32,000. In November, 2017, the Association proposed to the County in the letter attached hereto as Exhibit A, that the Association would be responsible for half of the cost of replacing the storm water drainage line if the County would pay for the other half. After further negotiations concerning this matter, the County has agreed to pay \$15,000 towards the replacement of the drainage line. Based upon these circumstances, the Association has accepted the County's offer. To proceed with the payment by the County, the parties deem it appropriate to enter into this Agreement.

NOW, THEREFORE, the Association and the County do hereby agree as follows:

1. The Association will undertake engineering drawings necessary for the replacement of the storm water drainage line from P. E. Dan Creed and receive approval of the County for such replacement using the HDPE drainage pipe system as described in Exhibit A attached hereto, or a comparable product. The County will review and, if acceptable to the County, provide its written approval to the engineering drawings and the specifications required for the pipe replacement before any construction is commenced.
2. The Association will contract with a licensed professional engineer to supervise the installation of the replacement drainage pipe and provide any necessary information to the County which may be requested during the construction process. In addition, the County shall have access to the worksite throughout the construction process to inspect the installation of the drainage pipe.
3. The Association will be responsible for all costs associated with the installation of the drainage pipe and maintenance of the pipe during the one year warranty period provided by the contractor selected by the Association.

4. Before construction commences, the Association will receive a firm bid for the work from the contractor and enter an appropriate construction contract with a one year warranty period.

5. The Association shall be the responsible party for assuring completion of the installation of the drainage pipe in accordance with the plans and specifications approved by the County and for all repair work during the one year warranty period.

6. Before the commencement of any repair work by the contractor, a firm price will be obtained for the completion of the work incorporating the plans and specifications. Upon the fixed price being established, the County will be notified and will remit the sum of \$15,000 to Nexsen Pruet, LLC, to be held in escrow along with all additional funds hereafter required to be provided by the Association. The Association agrees that upon receipt of the County's fund by Nexsen Pruet, LLC, the Association will deposit with Nexsen Pruet, LLC an amount equal to 110% of the contract price for the drain pipe installation, less the \$15,000 remitted by the County. Both the County funds and the Association funds will be held in escrow and remitted to the contractor in accordance with the construction contract as construction proceeds.

7. Should any dispute or issue arise during the installation process with the contractor, regarding performance or payment, the Association and the engineer shall resolve the matter. The Association shall notify the County of any material dispute and provide such information to the County as may be requested by the County from time to time regarding the dispute, include a report on final resolution thereof. In any event, the County's sole responsibility shall be to remit the \$15,000 set forth herein and the Association shall have full responsibility for all additional amounts that may be incurred above the escrow deposit it is required to make to Nexsen Pruet, LLC to assure proper completion of the drainage line and payment therefor.

8. The Association agrees that it shall not look to the County for any amounts beyond the \$15,000 in connection with the replacement of the drain pipe and releases the County from any further obligation of any nature with respect to repair or replacement of the drain pipe as specified in the easement until after the end of the one year warranty period. The Association assumes sole responsibility for the installation of the drain line and for all repair and maintenance work during the one year warranty period with the County to reassume maintenance and repair obligations only after the one year warranty period.

9. The County will be named as a third party beneficiary of all warranty rights that the Association has against the contractor with respect to installation of the drain pipe and shall be entitled to enforce such obligations against the contractor; provided, however, that such rights shall not exist until after the expiration of the one year warranty period, during which the Association shall be solely responsible for maintenance and repair of the replacement drainage line.

10. The County and the Association will join in an appropriate escrow agreement with Nexsen Pruet, LLC before any funds are deposited either by the County or the Association. Should any matter arise concerning the handling of escrow funds, Nexsen Pruet, LLC shall not be obligated to undertake any action without the mutual consent of the Association and the County.



11. This Agreement shall not be effective unless approved by all appropriate governmental action of the County.

12. This Agreement shall not be modified or amended except in writing by the parties hereto.

EXECUTED to be effective as of the day and year first above written.

**ASSOCIATION:**

Hughes Lake Owners' Association

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**COUNTY:**

Richland County, South Carolina

By: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT A

**Edward G. Menzie**  
Member  
Admitted in SC

November 27, 2017

Mr. Stephen S. Staley, P.E.  
County Engineer  
Richland County Department  
Of Public Works  
400 Powell Road  
Columbia, SC 29203

Re: Easement and Right of Way for Existing Drainage from Hughes Lake  
Owners' Association to Richland County recorded in Book 2139 at Page 349  
(the "Easement") (copy attached)

Dear Mr. Staley:

Charleston  
Charlotte  
**Columbia**  
Greensboro  
Greenville  
Hilton Head  
Myrtle Beach  
Raleigh

As you are aware, I am the president of the Hughes Lake Owners' Association (the "Association") and am writing to advise you that the Association is extremely disappointed in the decision of Richland County not to repair or replace the existing storm water drainage line that is covered by the Easement and located directly below the Hughes Lake dam. Please note in the third paragraph from the bottom of page 1 of the Easement that Richland County is obligated to "maintain and repair the drainage system in reasonable condition and repair . . . ." While the Association understands that the repair cost is more than anticipated, there is no financial limit on the County's obligation. Furthermore, the continued dangerous condition of the drainage pipe has the potential to jeopardize the integrity of the Hughes Lake dam, which could be catastrophic to persons who reside below the dam and portions of I-20. Based on these circumstances, we believe that it is imperative that the Association come to some resolution with the County as to repair of the storm water drainage line immediately so that repairs can be undertaken.

We appreciate the County's assistance with respect to this situation and you rightly pointed out that the storm drainage line is used as a part of the overflow system for Hughes Lake. However, the line also serves as a storm drainage system for a number of roadways in Section 7 of WildeWood. Based upon the very substantial water coming in from the County roadways, the County has a clear responsibility as to storm water. However, so that the Association might move forward immediately, the Association is

1230 Main Street  
Suite 700 (2B201)  
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www.nexsenpruet.com

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F 803.727.1479  
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Nexsen Pruet, LLC  
**Attorneys and Counselors at Law**

NPCOLI:6339308.1-LT-(EGM) 900000-00119

Mr. Stephen S. Staley, P.E.  
November 27, 2017  
Page 2

willing to share the cost of the repairs to the storm water drainage on a 50/50 basis, as long as the County also provides its approval and assists with engineering drawings for a replacement line using black PVC double-lined pipe. This has all been spelled out in a previous email I sent you along with an estimated price of \$32,000. While this price might go up slightly, which is far less than installing new concrete pipe and probably less than it would even cost to put a liner in the pipe, which would have a very limited life. I attach information on the proposed pipe for your convenience in reviewing this matter.

We trust that a 50/50 split on the repair costs, as well as providing engineering assistance, is a fair resolution of this matter for the concern of both parties and avoids the need for the Association to enter into litigation with the County regarding its obligation to "maintain and repair of said drainage system in a reasonably good and workmanlike manner." I look forward to hearing from you with regard to this matter at your earliest convenience.

Very truly yours,

Edward G. Menzie

EGM/tjs

cc: Hughes Lake Owners' Association Board of Directors

**ORIGINAL**

**PUBLIC WORKS**

Book 2139-349  
2018080834 08/18/2018 14:54:53:008 Easement  
Fee: \$0.00 County Tax: \$0.00 State Tax: \$0.00

THE STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

**EASEMENT AND RIGHT OF WAY**  
*For Existing Drainage*

2018080834  
John T. Hopkins II  
Richland County R.O.D.

KNOWN ALL MEN BY THESE PRESENTS, that HUGHES LAKE OWNERS' ASSOCIATION,, a South Carolina nonprofit corporation, whose mailing address is 100 Aiken Hunt Circle Columbia, SC 29223 (the "Grantor"), of the County and State aforesaid, for and in consideration of the sum of one (\$1.00) dollar to the Grantor paid by RICHLAND COUNTY, SOUTH CAROLINA, a political subdivision of the State of South Carolina (the "Grantee"), the receipt whereof is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained do mutually agree as follows:

That the Grantor does hereby grant unto the Grantee, its successors and assigns, an easement and rights-of-way fifteen (15) feet in width, as shown on Exhibit "A" attached hereto and incorporated herein by reference, over and across the lands hereinafter described for the purpose of constructing, maintaining and/or improving a drainage system for conveyance of storm water runoff across, through and under the lands hereinafter described, together with the right to excavate and refill ditches and/or trenches, and the further right to remove trees, bushes, undergrowth, crops and/or other obstructions interfering with the construction, maintenance and/or improvement of said drainage system within the below defined easement. All areas affected by said work will be restored to its pre-existing conditions, or as close as pre-existing as possible:

DESCRIPTION: SEE ATTACHED EXHIBIT "A" FOR LOCATION OF FIFTEEN (15) FOOT EASEMENT AREA AND THE GRANTOR'S LANDS

Also, the right of ingress and egress across the real property of the Grantor, including construction equipment, for all purposes related to the easement granted hereby.

SPECIAL PROVISIONS: TO HAVE AND TO HOLD the said easement and rights-of-way unto the Grantee, its successors and assigns, forever upon the following conditions:

The Grantor understands and acknowledges that said drainage system was not designed or constructed by the Grantee; that said drainage system may not have been designed or constructed in accordance with standards currently required by the Grantee; that the structural integrity of said drainage system may be deficient; that the hydraulic capacity of said drainage system may be inadequate; that the Grantee do not hold itself out to perform, nor does it have equipment and material or appropriations of money to correct all of the aforementioned deficiencies; and it is therefore agreed as one of the material considerations and inducements for acceptance of said drainage system by the Grantee, that the Grantor does hereby assume all risks of loss, damage, destruction or claims, of every kind, past, present or future, suffered by Grantee, its successors and assigns, resulting from the aforementioned deficiencies.

And the Grantor, for itself and for its successors and assigns, does hereby further agree to save and hold harmless and release the Grantee, its successors and assigns, from all such losses, damages, destruction and claims hereinabove specified.

And the Grantee, for itself and its successors and assigns, does hereby agree to maintain and repair said drainage system in a reasonably good and workmanlike manner, and to restore the property affected as nearly as practicable to its prior condition upon completion of maintenance or construction work.

And the Grantor warrants that it is the lawful owner of the real property upon which the aforesaid easement is granted and that the Grantor has the right to convey the foregoing easement, with the subject real property being free and clear of all liens and encumbrances of whatsoever kind of nature.

And the Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the foregoing easement unto the Grantee, its successors and assigns, against the Grantor, its successors and assigns, and against any other person lawfully claiming or to claim the same or any part thereof.

WITNESS the hand and seal of the Grantor this 15<sup>th</sup> day of August, 2016.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

GRANTOR:

HUGHES LAKE OWNERS' ASSOCIATION

Mollie L Roche  
.....  
1st witness

By: Edward G Menzie (SEAL)  
Signature of Officer of Hughes Lake Owners' Association

Judy Stealy  
.....  
2nd witness

Edward G. Menzie - President  
.....  
Print Officer's Name and Title

THE STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

PROBATE (Grantor)

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-name Grantor by its officer(s) or partner(s) as its act and deed, sign, seal and deliver the within Easement; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this 15<sup>th</sup>.....

Mollie L Roche  
.....  
(1st Witness)

day of August.....2016

Judy Stealy (Seal)  
Notary Public for South Carolina,  
MCE February 5<sup>th</sup> 2018.....

GRANTEE

RICHLAND COUNTY, SOUTH CAROLINA

Al Sead  
.....  
1<sup>st</sup> witness

By: Steve Stealy (SEAL)  
County Engineer

Andy E Spud  
.....  
2<sup>nd</sup> witness

PER AUTHORITY GRANTED BY RICHLAND  
COUNTY COUNCIL ON JULY 21, 1982.

THE STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

PROBATE (Grantee)

PERSONALLY appeared before me the undersigned witness, who being duly sworn says that (s)he saw the County Engineer of Richland County, its duly authorized officer, sign, seal, and as the act and deed of the County of Richland, deliver the within written Instrument for the uses and purposes therein mentioned and that (s)he with the other above named witness witnessed the execution thereof

SWORN to before me this 15<sup>th</sup>.....  
(Witness)

Al Sead  
.....

day of August.....2016

Andy E Spud (Seal)  
Notary Public for South Carolina,  
MCE 12/13/2021.....

**EXHIBIT A**

Storm Drain Easement Survey Attached

Recorded 08/12/2016 in Richland County ROD  
in Plat Book 2137 at Page 1350







# RICHLAND COUNTY GOVERNMENT

Office of the County Administrator

**April 24, 2018 Administration & Finance Committee Meeting  
Briefing Document – Little Jackson Creek (LJC) Mitigation Project close out**

## Agenda Item

Approval of Change Orders necessary to balance the pay item quantities associated with the Little Jackson Creek (LJC) wetlands mitigation project upon project completion.

## Background

The LJC Wetlands Mitigation Project was constructed in order to address impacted wetlands associated with an Airport Improvement Program (AIP) project at the airport. As such, it was also funded by FAA (90%), SCAC (5%) and a local funding match (5%). The project engineer was WK Dickson, Incorporated and the contractor was Shamrock Environmental Corporation. The project Contracting Officer Representative (COR) was Quinton Epps of the Conservation Commission, and the project liaison was Chris Eversmann of the Airport / Department of Public Works. The project is substantially complete and the FAA staff is eager to close out the AIP grant which funded 90% of the project.

As with most site / civil projects, the project was a unit price contract, which means that initial project quantities were estimated by the project engineer based on design plans and, when bids were submitted, unit costs for each pay item were provided by the bidders. Sometimes project pay item quantities estimated are very close to those actually constructed in the field. Sometimes, however, project quantities vary between those estimated and those actually constructed.

It should be noted that, as a mitigation project, this is atypical as opposed to other type site / civil projects such as construction of a road or parking lot. In other words, the finished project will look more like a natural stream bed or a wetlands as opposed to a road. Field conditions may dictate changes while construction is underway. That describes the situation with this project. Project financials a follow:

Original Project Amount	\$910,462.00
Change Order # 1 – Deductive	(\$30,612.80)
Change Order # 2 – Additive	\$55,053.90
Final Project Amount	\$934,902.90

The net change in the project amount is \$24,440.90 / 2.7%. Please note that since Change Order # 1 was deductive, this was administratively approved by the project liaison.

The original AIP Grant was issued based on the engineer's estimate and was much more than the actual original contract amount. Please note that, though there are surplus funds available in this AIP Grant, the FAA does not authorize designating "project contingencies" in advance. There are ample uncommitted funds available in the AIP and SCAC Grants associated with this project to cover this 2.7% increase.

Copies of both Change Orders are included as an attachment to this BD.

### Issues

Approval of both Change Orders and modification of the project budget.

### Fiscal Impact

The net additional amount needed to fund approval of Change Order # 2 follows:

FAA	AIP-020	90%	\$21,996.81
SCAC	14-016	5%	\$1,222.05
RC	2170367800	5%	\$1,222.04

Funds and local match funds are available in the respective Grants / budgets.

### Past Legislative Actions

The construction contract for Shamrock Environmental Corporation and the professional services contract for construction inspection services for WK Dickson were approved by RC Council on December 2, 2014.

### Alternatives

1. Approve the final project quantities as reflected in the Change Orders and the subsequent additional payment of \$24,440.90 to Shamrock Environmental Corporation.

Or,

2. Do not approve the final project quantities as reflected in the Change Orders and the subsequent additional payment of \$24,440.90 to Shamrock Environmental Corporation.

### Staff Recommendation

It is recommended that Council approve the final project quantities as reflected in the Change Orders and the subsequent additional payment of \$24,440.90 to Shamrock Environmental Corporation.

**Submitted by:** Procurement Department

**Date:** April 10, 2018

## CHANGE ORDER NO. 1

Date February 3, 2016  
Agreement Date March 11, 2015  
Project Little Jackson Creek Mitigation  
Owner Richland County  
Contractor Shamrock Environmental Corporation  
WKD Project No. 20140060.00.CL

The Contract is changed as follows:

1.	Safety Fence (1,323 LF @ \$1.40/LF)	\$ 1,852.20
2.	12" Compost Filter Sock (1,484 LF @ \$8.00/LF)	\$ 11,872.00
3.	Clearing & Grubbing (1.6 AC @ \$10,075.00/AC)	\$ 16,120.00
4.	RSC Type 1 Construction (lump sum)	\$ 110,603.00
5.	RSC Type 2 Construction (lump sum)	\$ 77,938.00
6.	Plunge Pool Construction (lump sum)	\$ 20,822.00
7.	2% Performance/Payment Bond (lump Sum)	\$ 4,784.00
8.	Concrete Headwall No. 1 Credit (lump sum)	(\$ 25,925.00)
9.	Concrete Headwall No. 2 Credit (lump sum)	(\$ 25,925.00)
10.	Precast Junction Box Credit (lump sum)	(\$ 59,992.00)
11.	72" RCP Credit (76 LF @ \$528.00/LF)	(\$ 40,128.00)
12.	Unsuitable Excavation/Haul Off (17,500 CY @ \$6.70/CY)	(\$ 117,250.00)
13.	2% Performance/Payment Bond Credit (lump sum)	(\$ 5,384.00)

The original contract sum was	\$ 910,462.00
The net change by previously authorized Change Orders	\$ 0.00
The Contact Sum prior to this Change Order was	\$ 910,462.00
The Contact Sum will be <b>decreased</b> in the amount of	(\$ 30,612.80)
The new Contract Sum including this Change Order will be	\$ 879,849.20

**The Contract Time will be increased by Twenty (20) days.**

**The date of Substantial Completion as of the date of this Change Order therefore is 140 Days.**

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.


Not valid until signed by the Engineer, Contractor and Owner.

**Accepted by: Richland County, South Carolina - Owner**

\_\_\_\_\_  
Name, Title Christopher Eversmann, PE, AAE  
Airport Director

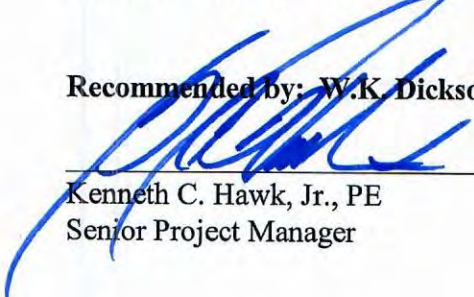
\_\_\_\_\_  
Date

**Accepted by: Shamrock Environmental Corporation - Contractor**

  
\_\_\_\_\_  
Robert D. Dukes (senior Estimator)

\_\_\_\_\_  
April 19, 2016  
Date

**Recommended by: W.K. Dickson & Co., Inc. - Engineer**

  
\_\_\_\_\_  
Kenneth C. Hawk, Jr., PE  
Senior Project Manager

  
\_\_\_\_\_  
Date

**FINAL CHANGE ORDER**

Date December 30, 2016  
Agreement Date March 11, 2015  
Project Little Jackson Creek Mitigation  
Owner Richland County of South Carolina  
Contractor Shamrock Environmental Corporation  
WKD Project No. 20140060.00.CL

The Contract is changed as follows:

- 1. Log Drop Structure (5 @ \$1,340.00/EA) - (\$6,700.00)
- 2. Double Log Drop Structure (3 @ \$2,298.00/EA) - \$6,894.00
- 3. Brush Toe (16LF @ \$5.00/LF) - \$80.00
- 4. Erosion Control Matting (5,341SY @ \$6.70/SY) - \$35,784.70
- 5. Unclassified Excavation (1,587CY @ \$6.60/CY) - \$10,474.20
- 6. Safety Fence (423LF @ \$1.40LF) - (\$592.20)
- 7. Compost filter sock (516LF @ \$8.00/LF) - \$4,128.00
- 8. Log Sill Reconstruction (4 structures) - \$4,985.00

The original contract sum was	\$910,462.00
The net change by previously authorized Change Orders	\$(30,612.80)
The Contact Sum prior to this Change Order was	\$879,849.20
The Contact Sum will be {increased} {decreased} in the amount of	\$55,053.70
The new Contract Sum including this Change Order will be	\$934,902.90

The Contract Time will be {increased} {decreased} by **Zero (0)** days  
The date of Substantial Completion as of the date of this Change Order therefore is 140 Days.

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

Not valid until signed by the Engineer, Contractor and Owner.

Accepted by: \_\_\_\_\_

- Owner

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

Accepted by: Shamrock Environmental Corporation

- Contractor

Liz DiNatale Project Manager  
Name, Title

11/20/17  
Date

Recommended by: W.K. Dickson & Co., Inc.

Jerry Macaluso, V.P.  
Name, Title

- Engineer

11/28/17  
Date

## Richland County Council Request for Action

**Subject:**

Council Motion: The Administrator and staff must follow HR policy in nondiscriminatory practices with employees, customers, contractors, businesses and citizens. Note: Firing an employee because they do not fit is unacceptable. Employees must be allowed an opportunity to improve or correct themselves through warning, reprimand, necessary training and other means, not to be fired or forced to resign. Contracts shall have similar languages in order not to show preference or discrimination. Administration and senior staff knowingly allow these practices should be dealt with according to HR policies without exception. Richland County practices a nondiscriminatory policy [N. JACKSON]

**Notes:**

Councilman N. Jackson's motion was made at the March 20, 2018 Council meeting. Staff is currently reviewing the briefing documentation and will included in the May A&F Committee agenda packet.

## Richland County Council Request for Action

**Subject:**

Council Motion: Move to explore options with a Richland County landlord ordinance to assist with issues between communities and landlords [ROSE and MYERS]

**Notes:**

Councilman Rose and Councilwoman Myers' motion was made at the April 3, 2018 Council meeting. Staff is currently reviewing the briefing documentation and will included in the May A&F Committee agenda packet.