

# COUNTY COUNCIL OF BEAUFORT COUNTY

ADMINISTRATION BUILDING  
100 RIBAUT ROAD  
POST OFFICE DRAWER 1228  
BEAUFORT, SOUTH CAROLINA 29901-1228  
TELEPHONE: (843) 255-2180  
FAX: (843) 255-9401  
www.bcgov.net

D. PAUL SOMMERVILLE  
CHAIRMAN

STEWART H. RODMAN  
VICE CHAIRMAN

## COUNCIL MEMBERS

CYNTHIA M. BENSCH  
RICK CAPORALE  
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BRIAN E. FLEWELLING  
WILLIAM L. MCBRIDE  
GERALD W. STEWART  
ROBERTS "TABOR" VAUX, JR  
LAURA L. VON HARTEN

GARY KUBIC  
COUNTY ADMINISTRATOR

BRYAN J. HILL  
DEPUTY COUNTY ADMINISTRATOR

JOSHUA A. GRUBER  
COUNTY ATTORNEY

SUZANNE M. RAINEY  
CLERK TO COUNCIL

## AGENDA PUBLIC FACILITIES COMMITTEE

Tuesday, August 20, 2013

2:00 p.m.

Executive Conference Room  
Administration Building, Government Center  
100 Ribaut Road, Beaufort

### Committee Members:

Gerald Dawson, Chairman  
Cynthia Bensch  
Rick Caporale  
Brian Flewelling  
William McBride  
Stu Rodman  
Jerry Stewart

### Staff Support:

Rob McFee, Division Director

1. CALL TO ORDER – 2:00 P.M.
2. DISCUSSION / BLUFFTON PARKWAY PHASE 5B ([backup](#))
3. DISCUSSION / COUNTY BOAT LANDINGS ([backup](#))
4. PRESENTATION / TRAFFIC CALMING POLICY ([backup](#))
5. CONSIDERATION OF CONTRACT AWARD
  - A. Disabilities and Special Needs Home Renovations 18 Cottage Walk, Lady's Island ([backup](#))
6. ACCEPTANCE OF RIGHT OF WAY
  - A. Kato Lane, Burton ([backup](#))
7. COUNTY PAVING REQUIREMENTS FOR DIRT ROADS WITHOUT RIGHT OF WAY
  - A. Fish Haul Road, Hilton Head Island ([backup](#))
8. REQUEST FROM BLUFFTON PARK COMMUNITY OWNERS ASSOCIATION TO BEAUFORT COUNTY TO RELINQUISH OWNERSHIP AND MAINTENANCE RESPONSIBILITY OF NINTH AVENUE, PIN OAK STREET AND RED CEDAR STREET ([backup](#))
9. UPDATE / BEAUFORT COUNTY / B/JWSA MITIGATION SITE (THE GREAT SWAMP) ([backup](#))
10. CONSIDERATION OF REAPPOINTMENTS AND APPOINTMENTS
  - A. Southern Beaufort County Corridor Beautification Board
11. ADJOURNMENT





**OFFICE OF THE COUNTY ADMINISTRATOR  
COUNTY COUNCIL OF BEAUFORT COUNTY**



**GARY KUBIC**  
COUNTY ADMINISTRATOR

**CHERYL HARRIS**  
EXECUTIVE ASSISTANT

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**BRYAN J. HILL**  
DEPUTY COUNTY ADMINISTRATOR

**JOSHUA A. GRUBER**  
STAFF ATTORNEY

July 27, 2013

Mr. Terry A. Finger, Esquire  
P.O. Box 24005  
Hilton Head Island, SC 29925

Re: Bluffton Parkway Phase 5B  
Your File No. 1935.

Dear Terry:

Thank you for your letter of June 25, 2013. In informally reviewing your responses with some of our County Council members, I have been asked to reach out to you and seek additional clarification on several points. It is our hope that this additional information will be provided prior to any future discussions on the Phase 5B realignment being designated as the County's preferred design choice. The following issues are presented in the same order as previously contained in my initial letter to Mayor Sulka:

You have indicated that the County will not be required to assume any of the Town's obligations under the Buckwalter Development Agreement resulting from the County's acceptance of the donated right-of-way. As the County is not a signatory to this Agreement, I believe that you are likely correct on this issue. However, you go on to further state that it is not possible to remove this property from the Agreement itself. Given that the Buckwalter Development Agreement is a living document that has been amended multiple times by the parties since its initial adoption; please provide a further explanation as to why it would not be possible for the current parties to the Agreement to consent to the removal of the road right-of-ways from being subject to the terms of the Agreement via another amendment.

Your letter goes on to affirmatively state that the County will have no obligation to design or build Innovation Drive or any of the other anticipated connector roads. I believe that this information is very helpful and will alleviate some of the concerns held by County Council associated with adoption of the realignment design. However, due to some lingering concerns regarding the certainty of future construction of these connector roads; please provide additional details concerning the identity of the party or parties that in your opinion will be obligated to design and build said roads. Additionally, please indicate your understanding as to the timing of this(these) obligation(s) and whether or not they will be performed concurrently with the construction of Phase 5B or within a defined time period thereafter.

Lastly, you have requested that the County set a deadline for construction of a portion of this roadway project without a dedicated funding plan to pay for such construction. As the anticipated costs of this undertaking are projected to exceed \$25,000,000, I believe it would be fiscally irresponsible for the County to set even an aspirational deadline without first having identified a funding source. Should the Town wish to commit to the entirety of such funding at this time, we would be happy to begin identification of a construction commencement deadline.

Thank you very much for your continued assistance in this matter and I look forward to providing your responses to County Council in the near future.

Please do not hesitate to contact me if you should have any questions.

Sincerely,

Joshua A. Gruber  
Beaufort County Attorney

cc: Beaufort County Council  
Gary Kubic  
Bryan Hill  
Hon. Lisa Sulka  
Anthony Barrett

**FINGER & FRASER, P.A.**  
ATTORNEYS AT LAW

TERRY A. FINGER •  
DENSON H. FRASER, JR.  
ANNE C. MARSCHER \*□  
TYLER A. MELNICK  
JULIE A. SERAFINO •  
MICHAEL C. CERRATI &

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Also admitted in:  
\* Georgia  
• Pennsylvania  
& California  
† New York

Of Counsel:  
ARTHUR F. ANDREWS†□

□ Court Certified Mediator  
• Court Certified Arbitrator / Mediator

August 8, 2013

***VIA E-MAIL ONLY***

Joshua A. Gruber, Esquire  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901

**Re: Bluffton Parkway Phase 5B**  
**Our File No.: 1935.230**

Dear Josh:

Thank you for your letter dated July 27, 2013. On the issue of removing the right-of-way ("ROW") from the Buckwalter Development Agreement, I do not believe this is something that can be accomplished. There are many, many property owners that have purchased property in reliance on the Development Agreement and the property that is contained thereunder. Prior amendments may have changed use, allocated density, etc., but no amendments have had the effect of deleting property from Development Agreements. It would be impossible to get all owners to agree to remove the ROW from the Development Agreement. I believe that would be the only way to accomplish a complete removal of the property. We have not removed the Buckwalter Parkway or Bluffton Parkway ROW from the Development Agreements and there have been no issues with those roads.

When we discussed this issue last week, I mentioned that the ROW could be deeded with an Indenture Deed that would certainly take care of any County concerns relative to whether the County was assuming any obligations under the Development Agreement. The Indenture Deed would specifically disavow any obligations, being transferred and/or assumed by the County.

The second point in your letter deals with exactly who would be obligated to design and build the connector roads. The connector roads would be built by the Town and/or the party developing the property. We believe that the connector roads will be built at or before the time the Phase 5B extension is built. Certainly, the connector roads will be built as soon as there is a need.



Mr. Joshua A. Gruber

August 8, 2013

Page 2

As to a deadline for the commencement of construction, I understand your point. Your invitation for the Town to fund the entirety of this \$25,000,000 project is politely declined.

Please let me know what additional information or clarification you may need. I would be happy to meet with you or County staff at your convenience.

Very truly yours,

FINGER & FRASER, P.A.



Terry A. Finger

TAF/cc

cc: The Honorable Lisa Sulka (via e-mail only)  
Mr. Anthony Barrett (via e-mail only)  
Lewis J. Hammet, Esquire (via e-mail only)  
Robert Vaux, Esquire (via e-mail only)

# Cross Island Boat Landing

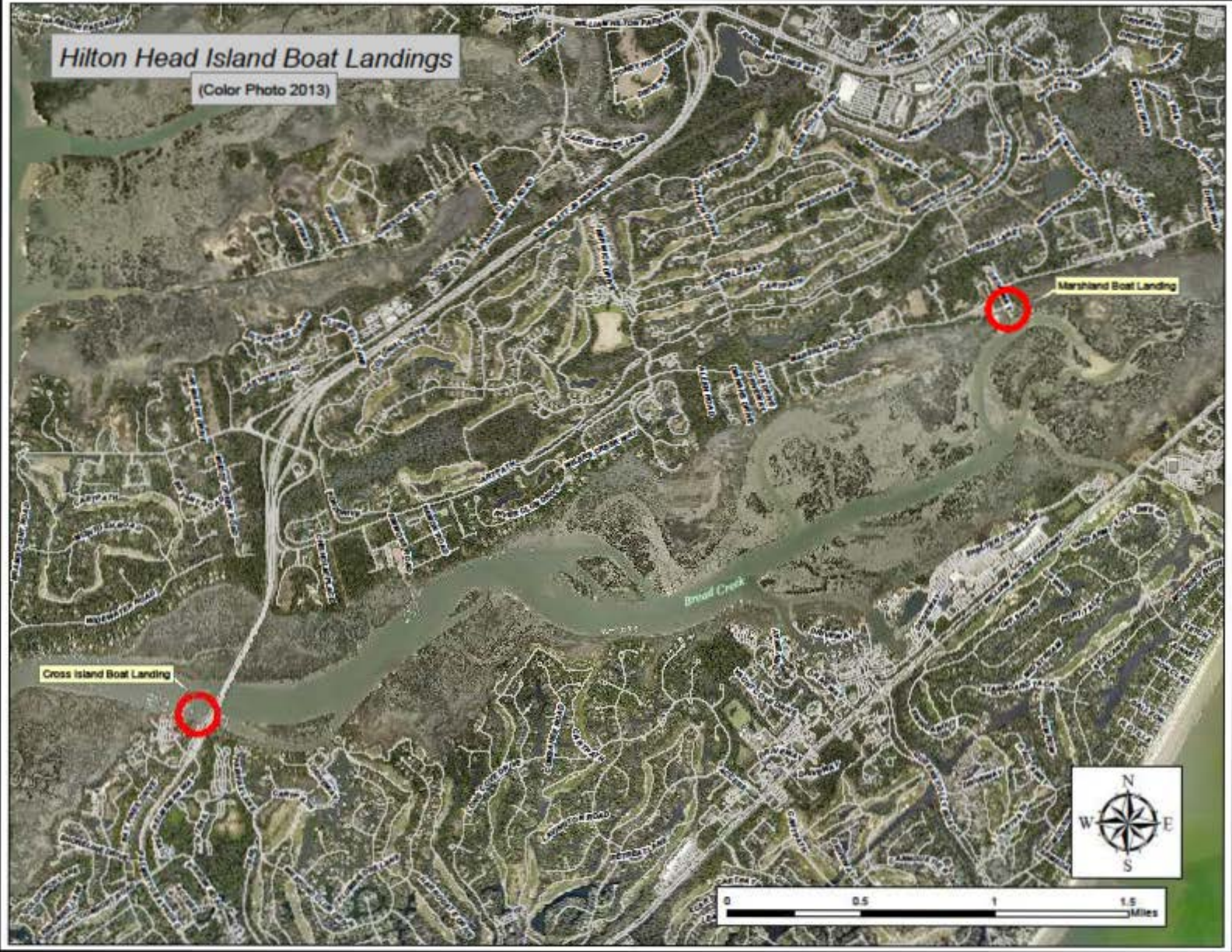
August 20, 2013

# Situation

- One of two public boat landings in the Town of Hilton Head Island; only deep water, modern landing
- Limited parking spaces: 36 spaces for vehicles with trailers; 12 vehicles only spaces
- Limited mooring space: 4 boats at one time

# Hilton Head Island Boat Landings

(Color Photo 2013)



Cross Island Boat Landing

Marshland Boat Landing

Broad Creek





*Cross Island Boat Landing  
&  
Palmetto Bay Marina*

(Color Photo 2013)



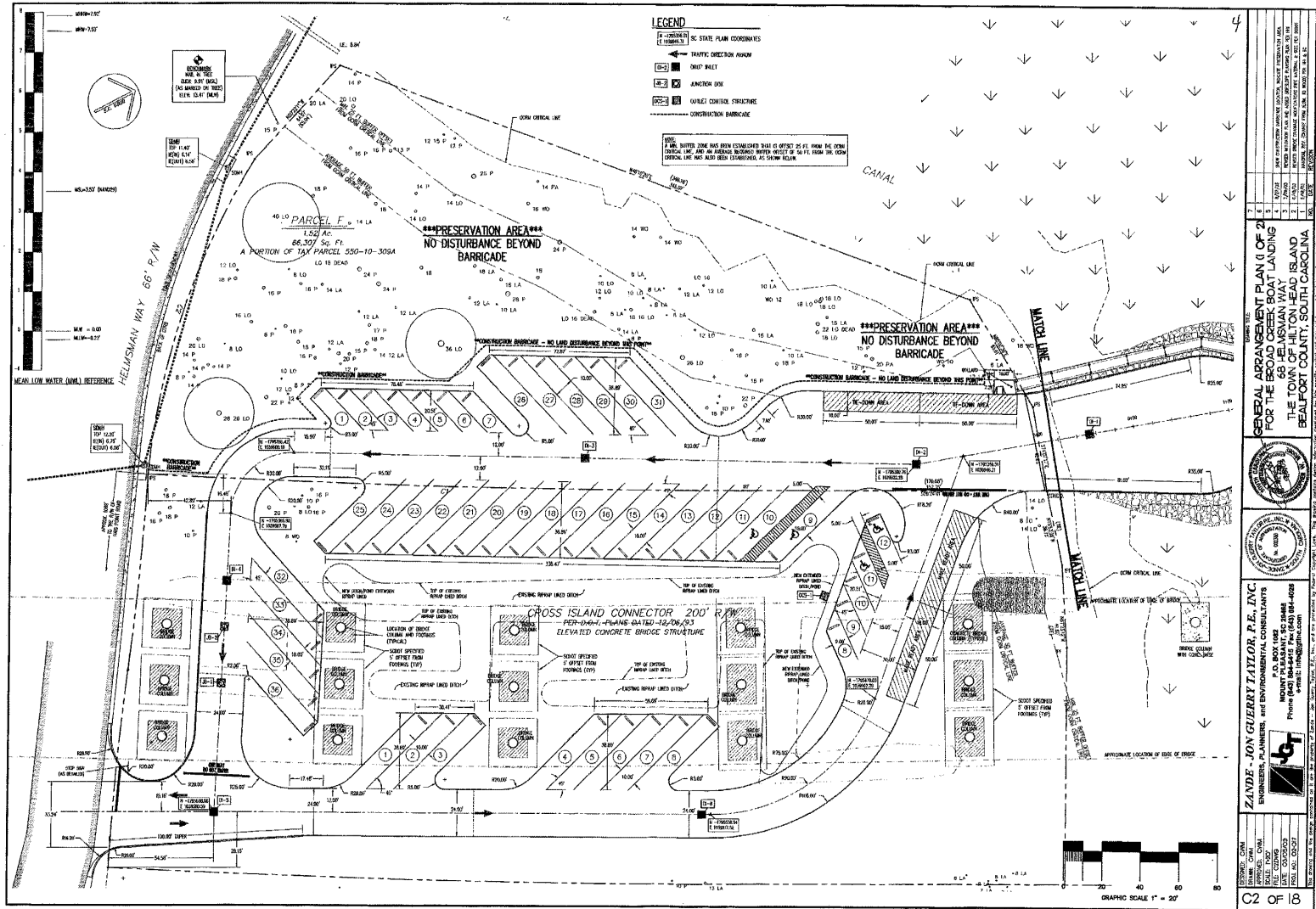
Palmetto Bay Marina

Cross Island Boat Landing



0 250 500 750 1,000 Feet

# Cross Island BL Site Plan # 1





# Issues

- Patrons using parking lot for boat storage
- Patrons leaving vehicles and trailers in lot for over 48 hours
- Boats left unattended at float for extended periods
- Tour and fishing guides embarking clients at landing
- Kayak tour companies meeting, training, and loading clients at landing
- People fishing from floating dock
- Numerous complaints regarding commercial use of landing, particularly parasail company



# Pictures





COUNTY COUNCIL OF BEAUFORT COUNTY  
BEAUFORT COUNTY TRAFFIC & TRANSPORTATION  
ENGINEERING DEPARTMENT  
113 Industrial Village Road, 29906  
PO Drawer 1228, Beaufort, SC 29901-1228  
Phone: (843) 255-2940 Fax: (843) 255-9443

**TO:** Councilman Gerald Dawson, Chairman, Public Facilities Committee

**VIA:** Gary Kubic, County Administrator *GKubic*  
Bryan Hill, Deputy County Manager *BHill*  
Robert McFee, Director of Engineering & Infrastructure *JR McFee*

**FROM:** Colin Kinton, Traffic & Transportation Engineering *CK*

**SUBJ:** County Traffic Calming Policy

**DATE:** August 7, 2013

**BACKGROUND:** The Traffic & Transportation Engineering Department has developed a traffic calming policy which may be used to determine what traffic calming measures, if any, could be used on Beaufort County maintained roadways within a residential neighborhood.

The County receives numerous requests each year regarding speeding and cut-through traffic on residential roadways. This policy provides standards for measuring traffic impacts, minimum thresholds and community support/input. Traffic & Transportation Engineering will be better positioned to adequately address neighborhood needs in a fair methodology as they arise.

**RECOMMENDATION:** The Public Facilities Committee approves and recommends to County Council adoption of the traffic calming policy.

CK/cg

Attachment: 1) Policy

## Beaufort County - Traffic Calming Policy

June 11, 2013

1. Process starts with written request from Homeowners Association or residential neighborhood group.
2. Traffic Engineering Staff will meet with neighborhood representatives to discuss study need, study scope and neighborhood limits
3. Traffic Engineering Department conducts study of neighborhood. Study may include
  - a. Speed studies using radar gun
  - b. Traffic Counts
  - c. Signing evaluation and appropriateness
  - d. Accident Analysis
  - e. Pedestrian Access evaluation
  - f. Intersection and Corridor Condition Diagrams
4. Once data collected, evaluation completed to determine demonstrated need and applicability
5. For Speed Humps and Speed Tables, the following conditions must exist:
  - a. Posted speed limit of 30 mph or less
  - b. Speed study demonstrates need with 85% speed greater than 10 mph over posted
  - c. Volume less than 2,500 vehicles per day
  - d. Roadway classified as either Local or Minor Collector
  - e. Location will not have significant interruption of emergency services
  - f. Neighborhood agrees to share in funding of improvements
6. For other calming devices, the following conditions must exist:
  - a. Posted speed limit of 35 mph or less
  - b. Speed study demonstrates need with 85% speed greater than 10 mph over posted
  - c. Volume less than 3,500 vehicles per day
  - d. Roadway classified as either Local or Minor Collector
  - e. Location will not have significant interruption of emergency services
  - f. Neighborhood agrees to share in funding and/or maintenance of improvements
7. Proposed Traffic Calming Plan must be approved by 75 percent of those owning real property within the residential development
8. Proposed traffic calming plan and requisite budget are given necessary Committee/County Council approval.
9. Expenditure of traffic calming funds on first come first serve basis as funds permit.
10. Traffic calming features may include the following:
  - a. Speed humps
  - b. Speed tables (raised crosswalks)
  - c. Roadway narrowing (Chicanes)
  - d. Mini traffic circles
  - e. On-street Parking bump-outs
  - f. Pavement markings and signing based on guidance of MUTCD
11. Follow-up Study will be completed 3-12 months after traffic calming plan has been enacted to determine compliance and results.





**COUNTY COUNCIL OF BEAUFORT COUNTY  
BEAUFORT COUNTY ENGINEERING DIVISION  
102 Industrial Village Road, Building #3, Beaufort, SC 29906  
Post Office Drawer 1228, Beaufort, SC 29901-1228  
Telephone: 843-255-2700 Facsimile: 843-255-9420**

TO: Councilman Gerald Dawson, Chairman, Public Facilities Committee

VIA: Gary Kubic, County Administrator *GKubic*  
Bryan Hill, Deputy County Administrator *BH*  
Alicia Holland, Interim Chief Financial Officer *AH*  
Dave Thomas, Purchasing Director *DT*  
Monica Spells, Compliance Officer *MS*

FROM: Robert McFee, Director of Engineering and Infrastructure *JRM*

SUBJ: **DSN HOUSE RENOVATIONS – 18 COTTAGE WALK, LADY’S ISLAND  
IFB #1340050011050224**

DATE: July 31, 2013

**BACKGROUND.** On 5/20/13, County Council awarded a contract to Ground Works General Construction (GWGC) LLC in the amount \$70,495.86 for the renovation of 18 Cottage Walk. GWGC contacted the Engineering Department and indicated that unfortunately they could not acquire a payment and performance bond as required per bid documents. As a result of not producing a payment and performance bond they are disqualified.

*X* The next qualified and responsive bid is Hutter Construction Corporation with a total bid of \$75,000. Hutter’s bid submittal was reviewed and is in compliance with the state procurement guidelines for the grant. There is no apparent cause for rejecting their bid. SMBE program provisions did not apply due to the SCDDSN Grant award.

**FUNDING.** Contract amount \$75,000, 10% contingency \$7,500, project budget \$82,500.

<u>Funding Source</u>	<u>Available Balance</u>	<u>Project Budget</u>
Renovations for Existing Bldgs-DSN Acct #24410011-54420	\$78,879	\$62,500
SCDDSN Grant	\$20,000	<u>\$20,000</u>
Total		<u>\$82,500</u>

**FOR ACTION.** Public Facilities Committee meeting on August 19, 2013.

**RECOMMENDATION.** The Public Facilities Committee approve and recommend to County Council approval of a project budget of \$82,500 and award of a contract to Hutter Construction Corporation in the amount of \$75,000 for the renovations to the DSN House at 18 Cottage Walk from the funding source listed above.

JRMjr/DC/mjh

- Attachments: 1) Bid Document Special Provisions for Construction Page #1  
2) County Council Agenda 5/20/13  
3) Bid Certification  
4) 5/13/13/Public Facilities Committee Agenda Item

## SPECIAL PROVISIONS FOR CONSTRUCTION

1. In the event the bid amount exceeds \$30,000 the bidders shall be required to furnish the following Bonds:
  - A. BID BONDS: Each bidder shall submit with his bid a Bid Bond with good and sufficient surety or sureties company licensed in South Carolina, in the amount of five per cent (5%) of the total Bid Amount. The Bid Bond may be expressed in terms of a percentage of the Bid Price or may be expressed in dollars and cents.
  - B. CERTIFIED CHECKS: A certified check or cashiers check can be submitted in lieu of a Bid Bond. The check will be made payable to The Beaufort County Treasurer.
  - C. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND: The successful Contractor shall furnish within 10 days after written notice of acceptance of bid a Performance Bond. Contractor shall provide and pay the cost of Performance and Payment Bonds, in the form of A.I.A. Document A312 "PERFORMANCE BOND AND LABOR AND MATERIAL BOND". Each shall be in full amount of the Contract Sum, issued by a Surety Company licensed in South Carolina, with an "A" minimum rating of performance as stated in the most current publication of "Best's Key Rating Guide, Property Liability" which shall show a financial strength rating of at least five (5) times the Contract Price. Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety and certified to include the date of the bond.

### FAILURE TO SUBMIT CORRECT BID GUARANTEE WILL RESULT IN REJECTION OF BID.

2. CONTRACTORS QUALIFICATIONS:
  - A. If bidding as a general contractor and the bid amount is \$5,000 or more a General Contractor's License is required and number must be shown on the outside of the bid envelope along with bid number. Failure to do so may result in your bid considered non-responsive.
  - B. If bidding as an electrical, mechanical or plumbing subcontractor and the bid amount is \$5,000 or above, a State License is required and number must be shown on the outside of the bid envelope along with bid number. Failure to do so may result in your bid considered non-responsive.



- F. CRYSTAL LAKE PRESERVATION PARK, LADY'S ISLAND, PHASE 1 IMPROVEMENTS (backup)
  - 1. Contract award: O'Quinn Marine Construction, Beaufort, South Carolina
  - 2. Contract amount: \$155,000
  - 3. Funding: Rural and Critical Lands Preservation Capital Improvement Program, Account 45010011-5411 with a current balance of \$437,438
  - 4. Public Facilities Committee discussion and recommendation to approve occurred May 13, 2013 / Vote 6:0
- G. DISABILITIES AND SPECIAL NEEDS HOUSE RENOVATION – 18 COTTAGE WALK, LADY'S ISLAND (backup)
  - 1. Contract award: Ground Work General Construction LLC, North Charleston, South Carolina
  - 2. Contract amount: \$70,495.86
  - 3. Funding: Account 244199110-54420, Renovations for Existing Buildings, DSN – \$50,495.86; SC Department of Disabilities and Special Needs Grant - \$20,000
  - 4. Public Facilities Committee discussion and recommendation to approve occurred May 13, 2013 / Vote 6:0
- H. ISLAND WEST US 278 FRONTAGE ROAD DESIGN AND CONSTRUCTION (backup)
  - 1. Contract award: Lane Construction Corporation, Beaufort, South Carolina
  - 2. Contract amount: \$598,389.50
  - 3. Funding: Sales Tax Project 2D for US 278 Frontage Roads \$398,389.50, Account 33402-54504; Harris Teeter \$100,000 for signalization of the intersection with Hampton Parkway/US 278; Island West POA \$100,000 for frontage road completion
  - 4. Public Facilities Committee discussion and recommendation to approve occurred May 13, 2013 / Vote 6:0
- I. REQUEST FOR CONDEMNATION OF CEE CEE ROAD, ST. HELENA ISLAND (backup)
  - 1. Public Facilities Committee discussion and recommendation to approve occurred May 13, 2013 / Vote 6:0
- J. REQUEST FOR CONDEMNATION OF INGLEWOOD CIRCLE, ST. HELENA ISLAND(backup)
  - 1. Public Facilities Committee discussion and recommendation to approve occurred May 13, 2013 / Vote 4:1
- K. REQUEST FOR CONDEMNATION OF QUEENS ROAD, ST. HELENA ISLAND (backup)
  - 1. Public Facilities Committee discussion and recommendation to approve occurred May 13, 2013 / Vote 5:0
- L. REQUEST TO REMOVE FROM COUNTY ROAD MAINTENANCE INVENTORY ROSIE SINGLETON DRIVE, ST. HELENA ISLAND (backup)
  - 1. Public Facilities Committee discussion and recommendation to approve occurred May 13, 2013 / Vote 5:0







COUNTY COUNCIL OF BEAUFORT COUNTY  
BEAUFORT COUNTY ENGINEERING DIVISION

102 Industrial Village Road, Building #3, 29906  
Post Office Drawer 1228, Beaufort, SC 29901-1228  
Telephone: 843-255-2692 Facsimile: 843-255-9420

TO: Councilman Gerald Dawson, Chairman, Public Facilities Committee

VIA: Gary Kubic, County Administrator *GKubic*  
Bryan Hill, Deputy County Administrator  
David Starkey, Chief Financial Officer *DS*  
Robert McFee, Director of Engineering and Infrastructure *JR McFee*  
Dave Thomas, Purchasing Director  
Monica Spells, Compliance Officer *Spells*

FROM: Bob Klink, County Engineer *BKlink*

SUBJ: DSN HOUSE RENOVATIONS - 18 COTTAGE WALK, LADY'S  
IFB# 1340050011050224

DATE: April 30, 2013

**BACKGROUND.** Beaufort County has received a grant totaling \$20,000 from the South Carolina Department of Disability & Special Needs for renovations and up fits to the 18 Cottage Walk DSN home.

On May 2, 2013, Beaufort County received bids for the renovations of DSN House at 18 Cottage Walk, Lady's Island. The improvements include enlarged doorways and up fits for electrical, plumbing, HVAC, flooring, and fire protection. Listed below are the five firms that submitted bids:

<u>Contractors</u>	<u>Total Bid</u>
Ground Work General Construction, LLC, North Charleston, SC	\$70,495.86
Hutter Construction Corporation, Beaufort, SC	\$75,000.00
Beaufort Design Build, LLC, Beaufort, SC	\$79,900.00
Patterson Construction Company, Beaufort, SC	\$88,928.00
Beaufort Construction Company, Beaufort, SC	\$97,607.00
Engineer's Estimate	\$90,000

Ground Work General Construction, LLC (GWGC) submitted the lowest qualified/responsible bid of \$70,495.86. Their bid is in compliance with the state procurement guidelines for the grant. There is no apparent cause for rejecting their bid. SBE program provisions did not apply due to the SCDDSN grant award.

<u>FUNDING.</u>	<u>Funding Source</u>	<u>Available Balance</u>	<u>Project Budget</u>
	Renovations for Existing Buildings - DSN Acct #24410011-54420	\$79,229	\$50,495.86
	SCDDSN Grant	\$20,000	<u>\$20,000</u>
	Total		\$70,495.86

**RECOMMENDATION.** The Public Facilities Committee approve and recommend to County Council award of a contract to GWGC, LLC in the amount of \$70,495.86 for the renovations to the DSN House at 18 Cottage Walk from the funding source listed above.

REK/DC/mjh

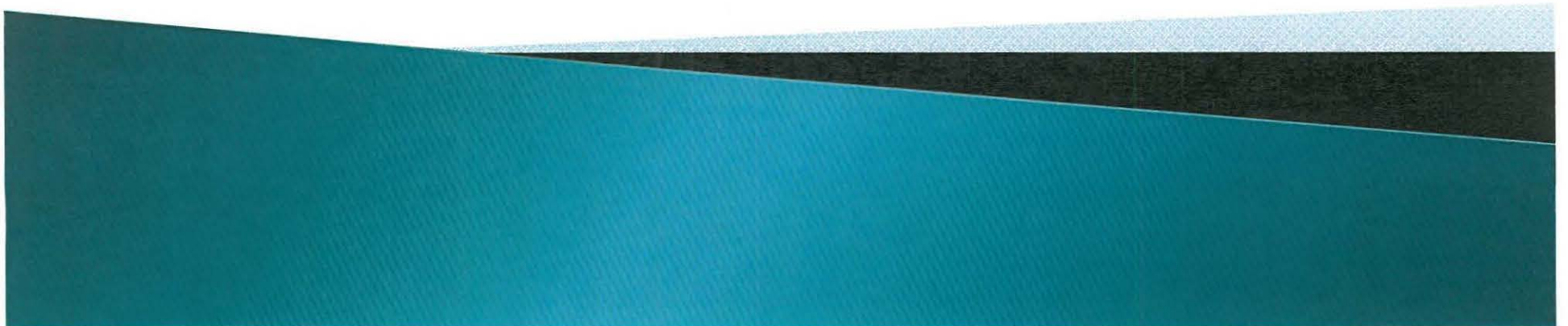
Attachment: 1) Bid Certification



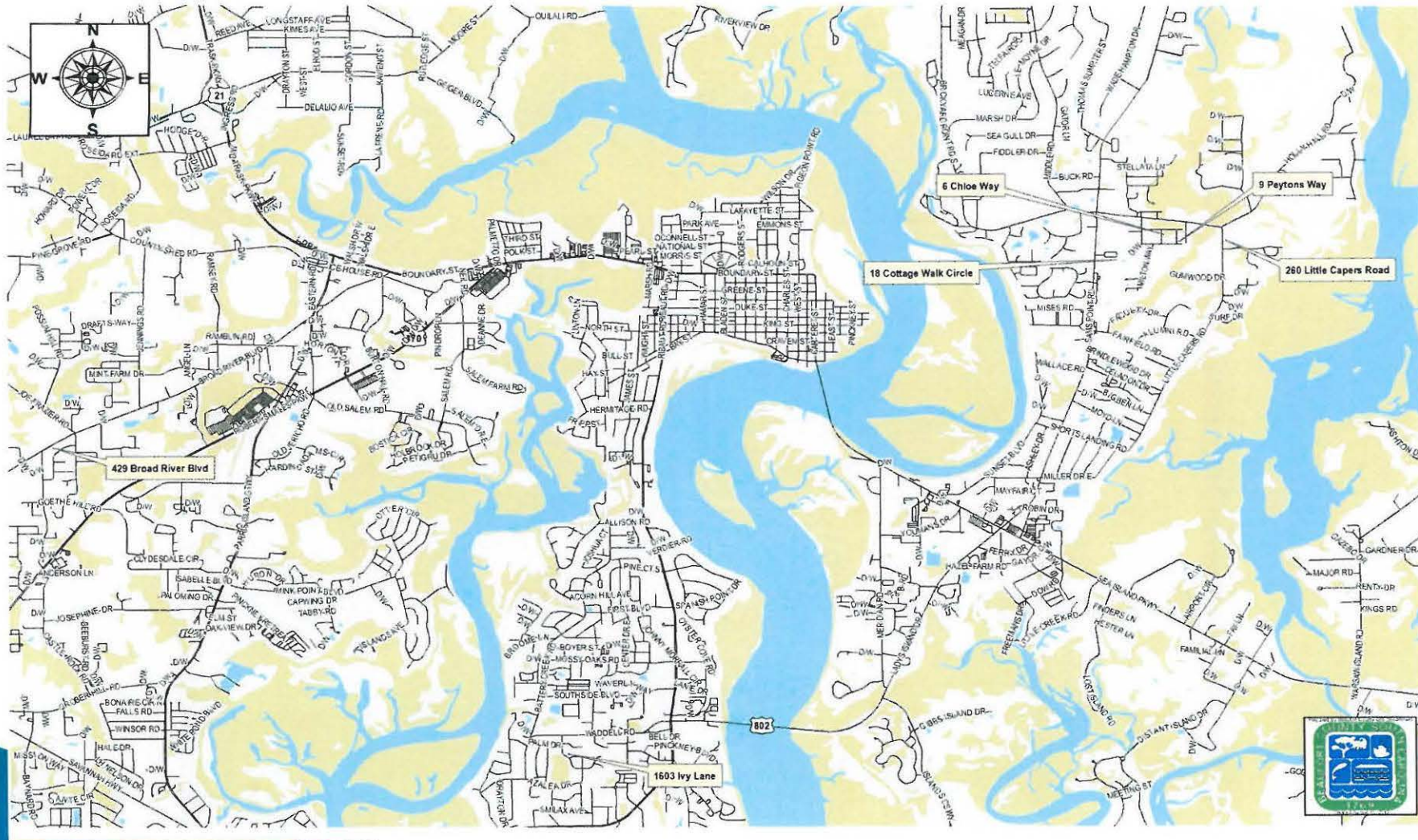
# Public Facilities Meeting

## August 20, 2013

Beaufort DSN Residential Facilities



# Location of Residential Homes





# Residential Development Over 10 Years

- ▶ Started with a total of 4 CTH II homes, all old, non ADA and in poor repair
- ▶ In 2007 replaced 2 homes and added a new home bringing total to 5
- ▶ In 2010 purchased Cottage Walk Circle home to replace Broad River CTH II home



# A Quick Review

Little Capers CTH II Replaced



Darby CTH II  
3 bedroom non ADA



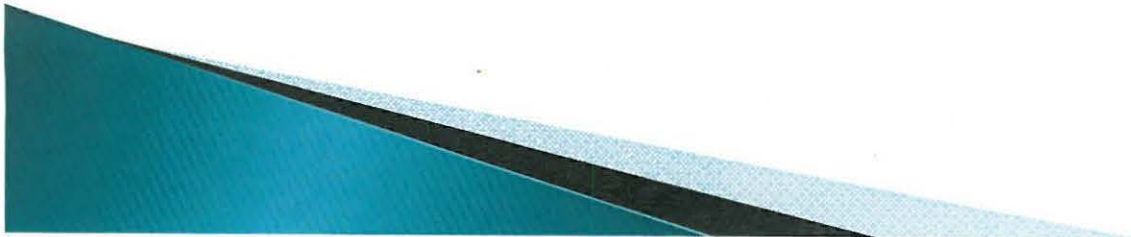


Peyton CTH II  
Replaced

Palmetto CTH II

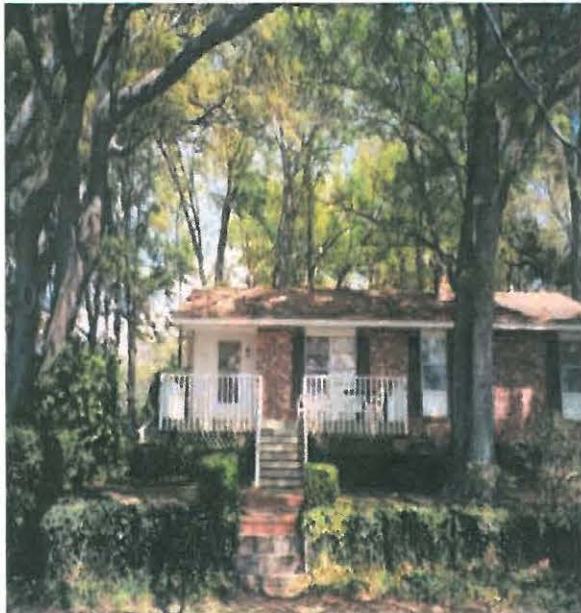


# Chloe CTH II- New Home



# IVY LANE CTH II

## Remaining Original Home



- ▶ Sagging Floor in kitchen has been repaired
- ▶ Not ADA
- ▶ No usable safe outdoor space
- ▶ 4 gentlemen currently reside there

Currently in use

Current Issues



# Broad River CTH II





# New Cottage Walk Circle

- ▶ Purchased in 2010
- ▶ Located on Lady's Island
- ▶ 4 Bedroom home, 3 baths
- ▶ Fenced back yard
- ▶ On a quiet cul de sac

Needs renovations to:

- ▶ Add sprinkler system
- ▶ Convert closet to office area
- ▶ Make 2 bathrooms ADA
- ▶ Remove carpet to make hard surface
- ▶ Widen doorways

# Cottage Walk Circle





# Cottage Walk Circle Details





COUNTY COUNCIL OF BEAUFORT COUNTY  
BEAUFORT COUNTY ENGINEERING DIVISION  
102 Industrial Village Road, Building #3, Beaufort, SC 29906  
Post Office Drawer 1228, Beaufort, SC 29901-1228  
Telephone: 843-255-2700 Facsimile: 843-255-9420

TO: Councilman Gerald Dawson, Chairman, Public Facilities Committee

VIA: Gary Kubic, County Administrator *GKubic*  
Bryan Hill, Deputy County Administrator *BHill*  
Josh Gruber, County Attorney *JGruber*  
Eddie Bellamy, Public Works Director *EBellamy*

FROM: Robert McFee, Division Director of Engineering & Infrastructure *RMcFee*

SUBJ: Acceptance of Kato Lane Right-Of-Way, Burton

DATE: August 1, 2013

**BACKGROUND.** Kato Lane is a private, unpaved road with a platted 50 foot right-of-way and a length of approximately 1,036 feet. It is located off Pine Grove Road in the Burton area, and is owned by Brickyard Holdings, Inc., (Bobby Tillman, President).

The residents of Kato Lane (Wildwood Subdivision and Kato Rivers Subdivision) have petitioned the County to accept Kato Lane as a County road and to add it to the County's road maintenance inventory.

Brickyard Holdings, Inc., has submitted an executed quitclaim deed conveying its interest in the Kato Lane right-of-way to the County.

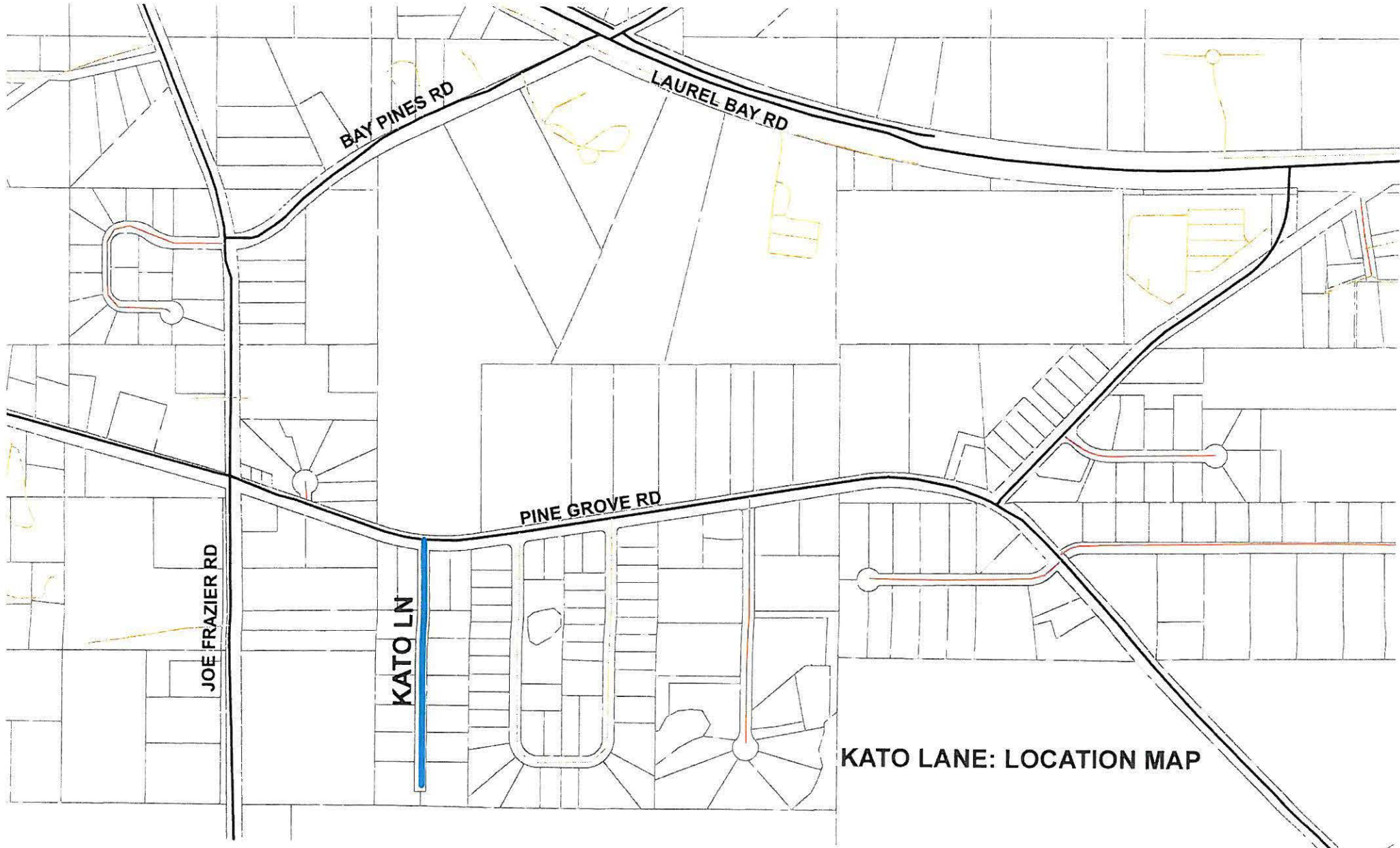
**FOR ACTION.** Public Facilities Committee meeting occurring on August 19, 2013.

**RECOMMENDATION.** The Public Facilities Committee approve and recommend to County Council acceptance of Kato Lane as a County maintained road.

JRMjr/EK/mjh

Attachments: Map, Plat





**KATO LANE: LOCATION MAP**

PB 56/107

FILED *Rivers*  
 JOHN A. SULLIVAN - RMC  
 BEAUFORT COUNTY, S.C.  
 96 MAY 20 PM 2:36  
 BK FOLDER# PG

**LEGEND**

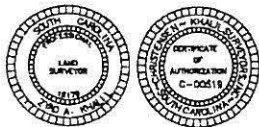
- IP(O) = OLD IRON PIPE FOUND
- CM(O) = OLD CONCRETE MONUMENT FOUND
- RB(N) = NEW REBAR SET 1/2" DIA.
- CK(O) = OLD CRIMP TOP IRON PIPE
- OE(O) = OLD OPEN END IRON PIPE FOUND
- RE(O) = OLD REBAR FOUND
- P.P. = POWER POLE
- O.H.P. = OVERHEAD POWER LINES
- A = CALCULATED POINT

**GENERAL NOTES:**

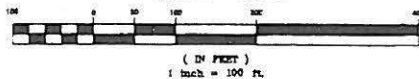
- 1.) PRESENT OWNER OF PROPERTY SHOWN HEREON BRICKYARD HOLDINGS INC.
- 2.) TOTAL ACRES SURVEYED AND SHOWN HEREON: 7.099 ACRES
- 3.) ACREAGE DETERMINED BY RECTANGULAR COORDINATES.
- 4.) TMN #100-24-135
- 5.) IT IS EXPRESSLY UNDERSTOOD THAT CHRISTENSEN SURVEYING CO. DOES NOT CERTIFY TO THE EXISTENCE OR ABSENCE OF ANY FRESHWATER WETLANDS ON THE PROPERTY SHOWN HEREON.
- 6.) THE BEARINGS SHOWN HEREON ARE MAGNETIC AND AS SUCH SUBJECT TO LOCAL ATTRACTION.
- 7.) PROPERTY SHOWN HEREON IS LOCATED IN FLOOD ZONE 'C' PER FEMA MAP PANEL 450025-0065-D DATED SEPTEMBER 29, 1986

**REFERENCE PLATS & DEEDS**

- 1.) DEED: 655/1935
- 2.) DEED: 680/2072
- 3.) DEED: 500/862
- 4.) DEED: 685/1467
- 5.) PB 39/PG 131
- 6.) PB 48/PG 143
- 7.) PB 35/PG 220
- 8.) PB 52/PG 162

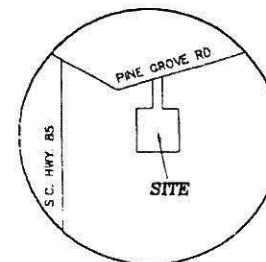
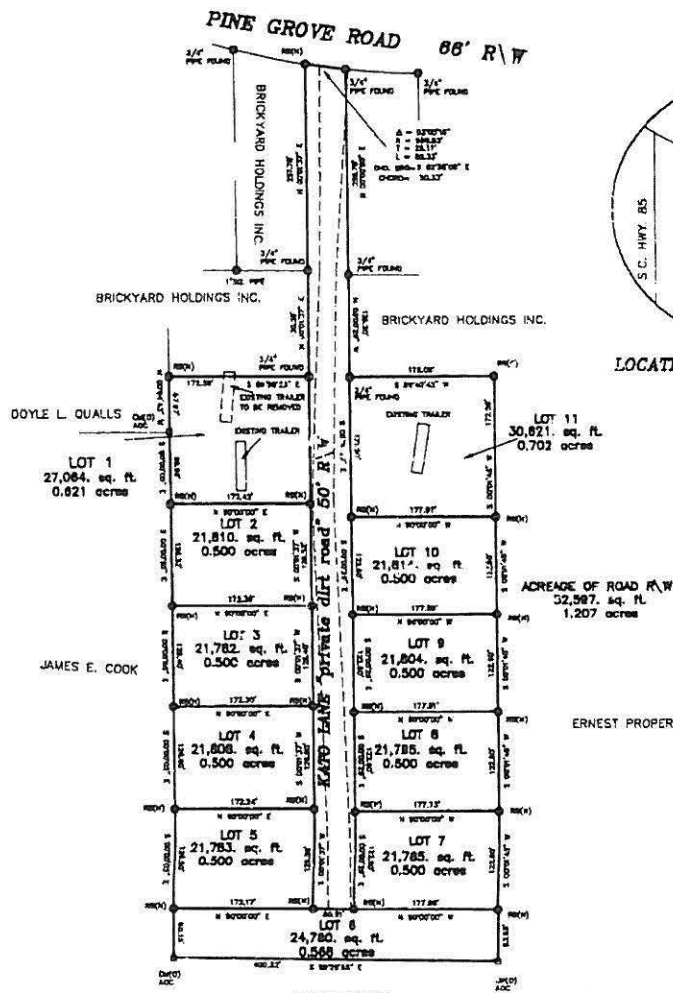


GRAPHIC SCALE



**CHRISTENSEN ~ KHALL SURVEYORS, INC.**

1518 BOUNDARY STREET, BEAUFORT, S.C. 29502  
 (803) 524-4148, FAX (803) 524-8844



LOCATION MAP (Not To Scale)

**CERTIFICATION:**

I, ZYAD A. KHALIL, HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN;

[ THIS CONVEY IS NOT VALID UNLESS IT BEARS THE ORIGINAL SIGNATURE AND AN EMBOSSED SEAL ]

PLAT SHOWING  
 SUBDIVISION OF  
 TMN # 100-24-135

PREPARED FOR:  
**KATO RIVERS**  
 LOCATED IN,  
 BURTON AREA  
 BEAUFORT COUNTY, SOUTH CAROLINA  
 DATED: APRIL 8, 1996...SCALE 1"=100'  
 REVISED: APRIL 29, 1996

L-2458

22X





COUNTY COUNCIL OF BEAUFORT COUNTY  
BEAUFORT COUNTY ENGINEERING DIVISION  
102 Industrial Village Road, Building #3, Beaufort, SC 29906  
Post Office Drawer 1228, Beaufort, SC 29901-1228  
Telephone: 843-255-2700 Facsimile: 843-255-9420

TO: Councilman Gerald Dawson, Chairman, Public Facilities Committee

VIA: Gary Kubic, County Administrator *GKubic*  
Bryan Hill, Deputy County Administrator *BHill*  
Josh Gruber, County Attorney *JGruber*

FROM: Robert McFee, Division Director of Engineering & Infrastructure *Robert McFee*

SUBJ: **Beaufort County Dirt Road Paving Requirements for Dirt Roads Without  
Right of Way Documentation – Fish Haul Road, Hilton Head Island**

DATE: July 31, 2013

**BACKGROUND.** Fish Haul Road is a County maintained dirt road located on Hilton Head Island intersecting Mitchelville and Baygall Roads. Public Works has maintained the 0.8 mile dirt road for over 20 years.

Fish Haul Road was included in Dirt Road Paving Contract #44 to be designed and constructed on the basis of prescriptive right of way. County Council awarded Contract #44 on 3/24/11. During construction of Fish Haul Road, one property owner challenged the County's right of ownership to pave the road on a prescriptive basis. Construction work on Fish Haul Road was stopped in May 2012. The Engineering Division and the design-build contractor team have been working under guidance that Beaufort County can no longer pave a County dirt road based on presumption of prescriptive right. Rather, it must assure that the County posses a deeded right-of-way, signed right-of-way document, or signed easement document from each adjoining property owner along the dirt road identified for paving.

Staff efforts to date to obtain signed deeds for Fish Haul Road include validation of the field survey, preparing letters and deeds, conducting several community meetings, and providing time for owner consideration, questions and discussions. The timeline associated with this right of way process has been over a year. Engineering has obtained signed deeds from 14 of the 18 property owners. The majority of the owners have support the road paving effort. Condemnation for right of way on the remaining four parcels is necessary to complete the paving project.

Engineering staff and the design-build contractor team are therefore presenting this information for committee review and are recommending that the remaining required right-of-way be condemned.

**FOR ACTION.** Public Facilities Committee meeting on August 19, 2013.

**RECOMMENDATION.** The Public Facilities Committee approve and recommend to County Council to authorize proceeding with condemnation of the remaining required right-of-way for Fish Haul Road in order to complete its construction.

JRMjr/DS/mjh

Attachment: ROW Map



A map showing a network of roads and property boundaries. A red line with a black border highlights a specific path along Fish Haul Road. Three areas along this path are shaded in dark green. The map also shows other roads: Mitchelville Road and Baygall Road. A large central area is outlined in yellow.

**FISH HAUL ROAD**

**MITCHELVILLE ROAD**

**FISH HAUL ROAD:  
EASEMENTS TO BE CONDEMNED**

**BAYGALL ROAD**



# *Bluffton Park*

Community Owners' Association

July 17, 2013

Mr. Josh Gruber  
County Attorney  
Beaufort County  
P.O. Box 1228  
Beaufort, SC 29901

Dear Mr. Gruber:

*I am writing to request, in behalf of the Bluffton Park Community Owners' Association, that Beaufort County relinquish ownership and maintenance responsibility for three (3) county owned roads that run within the Bluffton Park community. These roads are Ninth Avenue, Pin Oak Street and Red Cedar Street. The association is only requesting that ownership of the portion of the roads located within the community be turned over. These areas include Pin Oak Street between Able Street and Ninth Avenue, Ninth Avenue between Shultz Road and Red Cedar and Red Cedar between Ninth Avenue and Able Street.*

*Bluffton Park is not a gated community, so these roads would not be closed off. The purpose in having the community control the roads is to allow the community to enforce its covenants along the portion of these roads in front of Bluffton Park residences and to allow the Bluffton Park community to maintain the roads and to instigate traffic calming measures along the roadways.*

*Please let us know when this issue can be submitted to committee and then to County Council.*

*Thank you for your assistance in this matter.*

Sincerely,

  
Patsy G. Hancock  
Management Agent

Bluffton Park Community Owners' Association, Inc.  
C/o Coastal Community Association Management, LLC.  
PO Box 1698  
Bluffton, SC 29910  
Phone: 843-706-7268  
Fax: 843-706-7369



COUNTY COUNCIL OF BEAUFORT COUNTY  
BEAUFORT COUNTY ENGINEERING DIVISION  
102 Industrial Village Road, Building #3, Beaufort, SC 29906  
Post Office Drawer 1228, Beaufort, SC 29901-1228  
Telephone: 843-255-2700 Facsimile: 843-255-9420

TO: Councilman Gerald Dawson, Chairman, Public Facilities Committee

VIA: Gary Kubic, County Administrator *GKubic*  
Bryan Hill, Deputy County Administrator *BH*  
Josh Gruber, County Attorney *JG*  
Alicia Holland, Interim Chief Financial Officer *AH*

FROM: Robert McFee, Division Director of Engineering & Infrastructure *Rob McFee*

SUBJ: Beaufort County/BJWSA Mitigation Site (The Great Swamp)

DATE: August 2, 2013

**BACKGROUND.** In 2003, County Council approved an agreement with BJWSA for the purpose of purchasing and development of a wetland mitigation bank site. This bank would be used initially for wetland mitigation for the Bluffton Parkway Phases 3, 4 and 5. BJWSA was in the process of purchasing a 585 acre tract from International Paper. BJWSA needed the acreage for treated effluent disposal and did not need all of the estimated 1,500 wetland mitigation credits that the site could yield. The agreement between the County and BWSA included the following conditions:

1. County and BJWSA would share the purchase cost equally and jointly own the site.
2. County and BJWSA would share all costs in developing the mitigation bank including permitting, design, construction, and monitoring.
3. County would receive 2/3 of the mitigation credits and BJWSA would receive 1/3.
4. BJWSA would be permitted to dispose of treated effluent on the entire site and pay all costs associated with effluent disposal.

The total purchase of the site was \$780,000. Development, permitting, construction and monitoring fees from 2003 to 2010 totaled \$467,457.38. The County's expenditure share was \$233,728.70.

County Engineering has received from BJWSA a 2013 invoice which includes fees from 2010 to 2013 (Attachment 1) for the County's share of costs at \$61,688.25. Past expenditures for these fees were paid from either Road Impact Fees – Bluffton or Bluffton Parkway Phase 5 Sales Tax Funds. There is an available balance of \$539,918 in Road Impact Fees-Bluffton for the 2013 expenditure.

BJWSA has indicated in Attachment 2 that the mitigation site is in the 4<sup>th</sup> year of the 5 year baseline monitoring period. To date, the County has used 367.49 of the current created total of 906.8 mitigation credits as outlined in Attachment 3. It is estimated that the price per credit would cost approximately \$3,500 on the open market or from a commercial mitigation bank.

**FOR ACTION.** Public Facilities Committee meeting on August 19, 2013.

**RECOMMENDATION.** This agenda item is presented for information only and does not require any action by the Public Facilities Committee.

- Attachments:
- 1) 6/21/13 BJWSA Inv #1181
  - 2) 7/9/13 Email from Ed Saxon, BJWSA
  - 3) 7/8/13 Email from Stuart Sligh, Sligh Environmental Consultants
  - 4) County Council 9/22/03 Minutes
  - 5) 2/4/05 Agreement btwn Beaufort County & BJWSA





**Beaufort - Jasper Water & Sewer Authority**

6 Snake Road  
Okatie, SC 29909-3937  
(843) 987-9292 Fax (843) 987-9293

**SERVICE INVOICE**

Invoice Date	Invoice No.
06/21/2013	1181
Customer Number	
73	
Invoice Total Due	
\$61,688.25	
Payment Terms	
DUE UPON RCPT	

BEAUFORT COUNTY  
POST OFFICE BOX 1228  
BEAUFORT, SC 29901

GREAT SWAMP CIP21580

**Beaufort - Jasper Water & Sewer Authority**

Invoice Date 06/21/2013

Customer Number 73

Description	Unit	Quantity	Unit Price	Extended Price
GREAT SWAMP	EACH	1.00	61,688.25	61,688.25
Please write Invoice Number on your check. Make check payable to: BJWSA			<b>Invoice Total:</b>	<b>\$61,688.25</b>

Attachment 1



## Vendors Paid for CIP 21580 - Great Swamp Cost-Share w/ Bft Co

	<i>Amount Paid</i>	<i>Invoice Date</i>	
<b>Wetland Solutions</b>	-1,629.82	1/2/2009	<i>duplicate invoice on previous requests</i>
<i>biological monitoring</i>	7,086.25	12/30/2009	
	1,345.00	2/1/2010	
	4,300.00	2/1/2010	
	4,684.83	3/1/2010	
	2,601.25	3/31/2010	
	13,053.21	6/1/2010	
	6,038.00	7/1/2010	
	648.71	8/3/2010	
	1,590.00	8/31/2010	
	2,115.18	9/30/2010	
	1,455.47	11/1/2010	
	522.48	12/2/2010	
	4,813.55	1/3/2011	
	4,434.93	2/1/2011	
	10,393.56	3/1/2011	
	5,810.00	4/4/2011	
	1,270.94	5/3/2011	
	3,931.25	5/3/2011	
	14,723.65	5/31/2011	
	3,437.15	6/30/2011	
	830.04	9/1/2011	
	2,649.03	10/3/2011	
	2,325.00	12/1/2011	
	2,361.51	1/3/2012	
	2,045.00	1/3/2012	
	1,375.00	2/2/2012	
	2,914.19	2/2/2012	
	3,000.27	3/1/2012	
	3,565.00	3/1/2012	
	4,645.00	3/30/2012	
	9,903.75	3/30/2012	
	1,827.04	5/1/2012	
	4,110.00	5/1/2012	
	17,365.14	6/4/2012	
	1,385.34	6/29/2012	
	1,190.00	8/1/2012	
	4,706.83	8/3/2012	
	993.62	10/31/2012	
	2,943.23	12/3/2012	
	1,598.03	1/3/2013	
	1,472.50	2/5/2013	
	4,400.00	3/6/2013	
	8,096.69	4/2/2013	
	<b>89,139.36</b>	<b>paid to</b>	<b>Wetland Solutions</b>

## Vendors Paid for CIP 21580 - Great Swamp Cost-Share w/ Bft Co

	<i>Amount Paid</i>	<i>Invoice Date</i>	
<i>Sligh Environmental</i>			
permitting	4,034.60	12/15/1990 <sup>2009</sup>	
	1,087.50	3/15/2010	
	1,149.20	4/15/2010	
	3,017.52	6/15/2010	
	70.00	10/18/2010	
	4,042.89	14/15/2010	
	1,529.50	12/15/2010	
	810.00	4/15/2011	
	420.00	5/16/2011	
	257.50	6/15/2011	
	1,904.62	7/15/2011	
	210.00	8/15/2011	
	3,255.74	11/15/2011	
	930.70	12/15/2011	
	350.00	1/13/2012	
	1,617.50	5/15/2012	
	1,433.93	6/15/2012	
	1,772.99	8/15/2012	
	280.00	9/14/2012	
	2,469.54	10/15/2012	
	727.50	11/30/2012	
	280.00	12/31/2012	
	1,770.50	6/15/2013	
	<b>29,387.13</b>	<b>paid to</b>	<b>Sligh Environmental</b>
<i>Atlas Surveying &amp; Mapping</i>			
topographic survey	2,750.00	6/2/2012	
	<b>2,750.00</b>	<b>paid to</b>	<b>Atlas Surveying &amp; Mapping</b>
<i>Tuten Tree Service and Debris Removal</i>			
site line work	2,100.00	5/21/2010	
	<b>2,100.00</b>	<b>paid to</b>	<b>Tuten Tree Service</b>

**123,376.49 TOTAL PAID OUT BY BJWSA**

**61,688.25 SHARED AMOUNT FOR BFT CO**

## Hickman, Maggie

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**From:** Hickman, Maggie  
**Sent:** Wednesday, August 07, 2013 12:56 PM  
**To:** Hickman, Maggie  
**Subject:** FW: County-BJWSA Wetland Mitigation Monitoring

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**From:** Ed Saxon [<mailto:EdS@bjwsa.org>]  
**Sent:** Tuesday, July 09, 2013 8:12 AM  
**To:** Hickman, Maggie  
**Subject:** RE: County-BJWSA Wetland Mitigation Monitoring

We are currently in year 4 of our 5 year baseline monitoring period to verify that our restoration and enhancement efforts have been successful. Our reimbursement request covers ~ 3 years of monitoring efforts and we expect the county's share to be about \$20,000/year for the next 2 years. Once we have finished the 5 year baseline monitoring effort, our monitoring costs should be reduced by about half but can't be certain until we issue our 5 year report to the COE and get their response. Just let me know if you need more information.

Ed Saxon  
BJWSA  
General Manager

Attachment 2



## Hickman, Maggie

---

**From:** Hickman, Maggie  
**Sent:** Wednesday, August 07, 2013 12:52 PM  
**To:** Hickman, Maggie  
**Subject:** BJWSA Wetland Mitigation Monitoring -

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**From:** Stuart Sligh [[mailto:s\\_sligh@slighec.com](mailto:s_sligh@slighec.com)]  
**Sent:** Monday, July 08, 2013 3:52 PM  
**To:** Hickman, Maggie  
**Subject:** RE: BJWSA Wetland Mitigation Monitoring

The bank was set, that Beaufort County would have two-thirds of the credits and BJWSA would have one-third of the wetland credits. To-date, 589.47 credits have been released in the mitigation bank for use (Credit releases are based on monitoring reports and meeting performance standards that were established in the Mitigation Bank Agreement – to date the mitigation bank has been successful). There is a remaining balance of 317.41 credits that will be released for use over the next two years – 136.03 to be released this year and 181.38 to be release in 2014. There is only one more year of success monitoring, which should be completed in 2014. Beaufort County has utilized 367.49 of its allotted 604.6 total credits (applying the two-thirds of the total credit number of 906.8), and should have remaining a total of 237.11 credits at the end of the success monitoring. Currently Beaufort County has 12.91 credits it can utilize for a needed project, and will gain an additional 90.7 this year and 120.9 in 2014. I would estimate that the price per credit would cost \$3,500 on the open market, or from a commercial mitigation bank.

If I can be of further assistance please do not hesitate to call me at (912) 232-0451.

Sincerely,

Stuart Sligh  
Sligh Environmental Consultants

Attachment 3

**Wetlands Permitting Bluffton Parkway Phases III and IV**

Mr. Tom Henrikson, Interim County Administrator, reported the County has been approached by the B/J Water and Sewer Authority (B/JWSA) to participate in purchasing a 587-acre tract from International Paper in the amount of \$763,100 that can be utilized for both treated effluent disposal and about 1,500 wetland credits; both of which B/JWSA has preliminary approval from the regulation agencies. The County is in the process of applying for a Corps of Engineers Wetland Permit for Bluffton Parkway Phases III and IV. Due to the wetland impact of 25.33 acres, the County will need to provide for 259.6 wetland mitigation credits to offset the wetland impact for the construction of the Bluffton Parkway Phases III and IV. A credit is worth about \$3,500. If the County were to purchase these credits from a wetland mitigation bank, it would cost about \$908,600. The total cost of the land is approximately \$763,100. The County cost in developing the mitigation bank is between \$100,000 and \$300,000. The total estimated cost to the County would be between \$500,000 and \$700,000. The funding source is road impact fees.

It was moved by Mr. Glaze, as Public Services Committee Vice Chairman (no second required), that Council enter into an agreement with B/J Water and Sewer Authority for the purpose of purchasing and developing a wetland mitigation bank to be initially used for wetland mitigation for Bluffton Parkway Phases III & IV with excess credits to be used by the County on other projects. The vote was: FOR – Mr. Brafman, Mr. Generales, Mr. Glaze, Mrs. Griffin, Mrs. Hairston, Mr. Ladson, Mr. McBride, Mr. Newton, Mr. Stewart and Mr. Von Harten. ABSENT – Mr. Lamb. The motion passed .

**5. Discussion of Wetlands Permitting****Bluffton Parkway Phases III and IV (\$386,100)**

**Discussion:** Mr. Bob Klink, County Engineer, addressed this issue. The County is in the process of applying for a Corps of Engineers Wetland Permit for the above-referenced projects. Due to the wetland impact of 25.33 acres, the County will need to provide for 259.6 wetland mitigation credits to offset the wetland impact for the construction of the Bluffton Parkway Phases III and IV. A credit is worth about \$3,500.

If the County were to purchase these credits from a wetland mitigation bank, it would cost about \$908,600. Coincidentally, the Beaufort/Jasper Water and Sewer Authority (B/JWSA) is in the process of purchasing a 587-acre tract from International Paper in the amount of \$763,100 that can be utilized for both treated effluent disposal and about 1,500 wetland credits; both of which B/JWSA has preliminary approval from the regulation agencies.

B/JWSA needs the acreage for treated effluent disposal and does not need 1,500 wetland mitigation credits and is therefore proposing to Beaufort County:

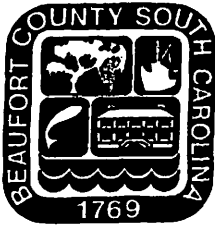
1. Beaufort County and B/JWSA would share the purchase costs equally and jointly own the 587-acre site.
2. The County and B/JWSA would share all costs in developing the mitigation bank including permitting, design, construction and monitoring.
3. The County will receive 2/3 (1,000) of the mitigation credits and B/JWSA will receive 1/3 (500).
4. B/JWSA will be permitted to dispose treated effluent on the entire site.
5. B/JWSA will pay all costs associated with effluent disposal.

A cost analysis by Thomas & Hutton Engineering Company indicated that it would potentially cost the County \$727,000 and have about 740-wetland mitigation credits left over for future use by the County. The funds available for this are impact fee funds.

Staff recommends Council enter into an agreement with B/JWSA for the purpose of purchasing and developing a wetland mitigation bank to be initially used for wetland mitigation for the Bluffton Parkway Phases III & IV, with excess credits to be used by the County on other projects.

**Recommendation:** Council approve the County entering into an agreement with B/JWSA in the amount of \$386,100 for the purpose of purchasing and developing a wetland mitigation bank to be initially used for wetland mitigation for the Bluffton Parkway Phases III & IV with excess credits to be used by the County on other projects.





COUNTY COUNCIL OF BEAUFORT COUNTY  
BEAUFORT COUNTY ENGINEERING DIVISION

Building 3, 102 Industrial Village Road  
Post Office Drawer 1228, Beaufort, SC 29901-1228  
Phone: (843) 470-2625 Fax: (843) 470-2630

TO: Councilman Peter Lamb, Chairman, Public Services Committee  
VIA: Tom Henrikson, Interim County Administrator  
Buz Boehm, Director, Public Services  
FROM: Bob Klink, County Engineer *REK*  
SUBJ: **Bluffton Parkway Phases III & IV – Wetland Permitting**  
DATE: September 2, 2003

The County is in the process of applying for a Corps of Engineers Wetland Permit for the above referenced projects. Due to the wetland impact of 25.33 acres, the County will need to provide for 259.6 wetland mitigation credits to offset the wetland impact for the construction of the Bluffton Parkway Phases III and IV.

If the County were to purchase these credits from a wetland mitigation bank, it would cost about \$908,600. Coincidentally, BJWSA is in the process of purchasing a 587-acre tract from International Paper in the amount of \$763,100 that can be utilized for both treated effluent disposal and about 1,500 wetland credits; both of which BJWSA has preliminary approval from the regulation agencies.

BJWSA needs the acreage for treated effluent disposal and does not need 1,500 wetland mitigation credits and is therefore proposing to Beaufort County:

1. Beaufort County and BJWSA would share the purchase costs equally and jointly own the 587-acre site.
2. The County and BJWSA would share all costs in developing the mitigation bank including permitting, design, construction and monitoring.
3. The County will receive 2/3 (1,000) of the mitigation credits and BJWSA will receive 1/3 (500).
4. BJWSA will be permitted to dispose treated effluent on the entire site.
5. BJWSA will pay all costs associated with effluent disposal.

A cost analysis by Thomas & Hutton Engineering Company is attached which indicated that it would potentially cost Beaufort County \$727,000 and have about 740 wetland mitigation credits left over for future use by Beaufort County. The funds available for this are impact fee funds.

**RECOMMENDATION.** The Public Services Committee approve and recommend to County Council entering into an agreement with BJWSA for the purpose of purchasing and developing a wetland mitigation bank to be initially used for wetland mitigation for the Bluffton Parkway Phases III & IV with excess credits to be used by the County on other projects.

REK/mjh

- Attachments:
- 1) T & H 8/8/03 Correspondence
  - 2) Sligh 7/30/03 Correspondence
  - 3) Sligh 7/22/03 Correspondence
  - 4) BJWSA 7/21/03 Correspondence
  - 5) T & H 7/10/03 Correspondence
  - 6) BJWSA 7/1/03 Correspondence
  - 7) Proposed Wetland Mitigation Site Map

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

C O N T R A C T

This Contract (hereafter "Contract") is made as of this 4th day of February, 2005, by and among the Beaufort Jasper Water and Sewer Authority, a body politic (hereafter "Authority"), and Beaufort County, a body politic (hereafter "County").

RECITALS

WHEREAS, heretofore the Authority entered into an Agreement of Sale dated July 22, 2003, (hereafter "Agreement of Sale") with International Paper Realty Corporation, a Delaware Corporation, for the purchase of 600.0 acres of the Argent Tract, Jasper County, South Carolina (hereafter "600.0 Acre Tract").

WHEREAS, The Authority purchased the 600.0 Acre Tract on May 21, 2004, from International Paper Realty Corporation by that certain deed duly indexed and recorded in the Office of the Clerk of Court for Jasper County, South Carolina, in Book 296 at Page 304; and

WHEREAS, Beaufort County paid fifty (50%) percent of the purchase price of the 600.0 Acre Tract; and

WHEREAS, the Authority desires to assign a fifty (50%) percent interest in the rights and obligations of the Agreement of Sale to the County, and the County desires to accept the assignment.

WHEREAS, the Authority and County have agreed to certain terms and conditions relating to the Agreement of Sale and the purchase of the 600.0 Acre Tract and desire to set forth the same in this Contract.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Authority and County agree as follows:

- 1) **Assignment:** The Authority assigns a fifty (50%) percent interest in the rights and obligations of the Agreement of Sale to the County.
- 2) **Acknowledgment:** The Authority and County hereby acknowledge the terms and conditions of the Agreement of Sale, a copy of which is attached hereto as Exhibit "A".
- 3) **Title:** The title to the 600.0 Acre Tract is vested as the "Beaufort Jasper Water and Sewer Authority and Beaufort County" with a mailing address of 6 Snake Road, Okatie, South Carolina 29909.
- 4) **Purchase Price:** The total Purchase Price of SEVEN HUNDRED EIGHTY THOUSAND AND 00/100 (\$780,000.00) DOLLARS, any legal fees, including, but

not limited to, the cost of a sixty (60) year title exam, and normal purchasers' closing costs, the \$300.00 Sellers' preparation charge.

- 5) **Disposal Rights:** The Authority will have ownership of one hundred (100%) percent of the effluent disposal rights for the 600.0 Acre Tract. The Authority is responsible for all costs involved in the permitting and construction associated with the application of treated effluent on the 600.0 Acre Tract.
- 6) **Mitigation Credits:** The mitigation credits for the 600.0 Acre Tract as determined by the Corps of Engineers Mitigation Banking Review Team will be vested one-third (1/3) to the Authority and two-thirds (2/3) to the County. The Authority and the County will use the mitigation credits and maintain the 600.0 Acre Tract in accordance with the approved Mitigation Banking Instrument for the 600.0 Acre Tract. If mutually agreeable, either the Authority or the County can transfer their mitigation credits to the other under a separate agreement. If the Mitigation Banking Review Team does not approve the 600.0 Acre Tract for enhancement credits and as a result, only a minimum of 600 mitigation credits (Minimum Mitigation Credits) are approved for the 600.0 Acre Tract, the mitigation credits will be vested one-quarter (1/4) to the Authority and three-quarters (3/4) to the County. Anything above the Minimum Mitigation Credits will be divided one-third (1/3) to the Authority and two-thirds (2/3) to the County.
- 7) **Restoration Efforts:** In accordance with the approved Mitigation Banking Instrument, approximately 11 acres of silviculture roads and logging decks must be removed and the area replanted in order to maximize the number of mitigation credits for enhancement. The Authority will be responsible for 50% of the cost and the County will be responsible for 50% of the cost associated with this restoration effort. The Authority and the County agree to utilize internal resources to reduce the restoration costs and to mutually agree on the cost of contract removal. In addition, the mitigation bank permitting and the on-going monitoring costs, shall be paid fifty (50%) percent by the Authority and fifty (50%) by the County.
- 8) **Closing Date:** The terms and conditions of this Contract will vest on the Closing Date in the Agreement of Sale, which Closing Date is May 21, 2004.
- 9) **Event of Default:** If either party to this Contract should fail to perform any of the terms, conditions or obligations of this Contract or the Agreement of Sale, the non-defaulting party must give the defaulting party ten (10) calendar days written notice of the right to cure said default. After the aforementioned notice period, the non-defaulting party may exercise any and all remedies available at law or equity.
- 10) **Binding Effect and Assignment:** This Contract shall be binding upon and inure to the benefit of the Authority and the County and their respective successors and assigns.



- 11) **Governing Law and Entire Agreement:** This Contract shall be governed by the laws of the State of South Carolina. This Contract and the documents and instruments referred to herein contain the entire agreement of the parties herein on the matters covered herein. Any agreement, statement, or promise made by any party herein or by any employee, officer, or agent of any party that is not in writing and signed by all the parties to this Contract shall not be binding.
- 12) **Counterparts:** This Contract may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.
- 13) **Inconsistency:** In the event that any of the terms and conditions of this Contract are inconsistent with any of the terms and conditions of the Agreement of Sale referenced herein, the terms and conditions of this Contract shall govern.
- 14) **Notices:** Any notices required or permitted hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, certified, or return receipt requested, postage prepaid, to the party to whom directed at the following (or such other address as such party may designate in writing):

As to the Authority:                    Beaufort Jasper Water and Sewer Authority  
6 Snake Road  
Okatie, SC 29909  
ATTN: Edward R. Saxon

With a copy to:                        Raymond H. Williams, Esquire  
P. O. Drawer 1027  
Beaufort, South Carolina 29901

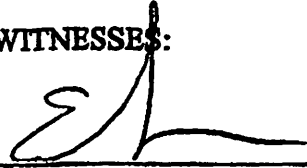
As to Beaufort County:                Gary Kubic, County Administrator  
Beaufort County  
P.O. Drawer 1228  
Beaufort, SC 29901

With a copy to:                        Robert E. Klink, County Engineer  
P.O. Drawer 1228  
Beaufort, SC 29901

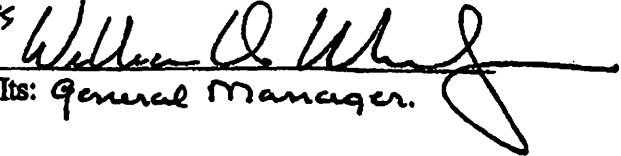
- 15) **Litigation Expenses:** In the event of litigation to enforce this Contract, the non-prevailing party shall be responsible for the prevailing party's costs and attorney's fees incurred in any such claim, proceeding or litigation, including those incurred in the course of appellate proceedings.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as of the day and year first above written.

WITNESSES:

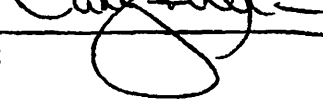
  
\_\_\_\_\_  
*Dawn P. Bates*

BEAUFORT JASPER WATER & SEWER  
AUTHORITY

By:   
Its: General Manager.

*Margaret J. White*  
\_\_\_\_\_  
*Mary A. Bason*  
\_\_\_\_\_

BEAUFORT COUNTY

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

# EXHIBIT "A"

## AGREEMENT OF SALE

### TRACT NO. SC01J-3 - PORTION OF ARGENT TRACT JASPER COUNTY, SOUTH CAROLINA

AGREEMENT dated July 22, 2003 between INTERNATIONAL PAPER REALTY CORPORATION, a Delaware corporation ("Seller"), having an office at 3 Paragon Drive, Montvale, New Jersey 07645-0436 and BEAUFORT JASPER WATER & SEWER AUTHORITY, a South Carolina public body ("Purchaser"), having a mailing address of P. O. Box 2149, Beaufort, SC 29901-2149.

#### WITNESSETH:

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### 1. Sale and Purchase of Real Property:

Seller agrees to sell and Purchaser agrees to purchase all of the real property (the "Premises") known as Tract No. SC01J-3, a portion of the Argent Tract, located in the County of Jasper, State of South Carolina, containing approximately 585.0 acres and being more particularly described on Exhibit A attached hereto and made a part hereof. The Premises shall mean all of the land described on Exhibit A, together with Seller's interest in any improvements thereon, and in easements, covenants and other rights appurtenant to such land. At closing, Seller will grant to Purchaser a relocatable easement for ingress to and egress from the Property; the parties shall agree to the location of such easement during the Due Diligence Period.

The Premises shall be sold to Purchaser subject to the following matters of title (collectively, the "Permitted Exceptions"):

(a) (i) Rights, if any, relating to the construction and maintenance in connection with any public utility of wires, poles, pipes, conduits and appurtenances thereto, on, under or across the Premises;

(ii) Real estate taxes, water rates and other governmental charges, if any, subject to adjustment as herein provided;

(iii) Restrictions on Purchaser's ability to build upon or use the Premises imposed by any current or future development standards, building or zoning ordinances or any other law or regulation of any governmental authority;

(iv) Any state of facts which an accurate survey or an inspection of the



Premises would reveal, including, but not limited to, the location of boundary lines, improvements and encroachments, if any;

(v) All outstanding easements, servitudes, rights-of-way, flowage rights, restrictions, licenses, leases, reservations, covenants and all other rights in third parties of record or acquired through prescription or adverse possession;

(vi) All roll back taxes, if any, for any year and the current year's taxes, assessments and other charges of any kind or nature imposed upon or levied against or on account of the Premises by any governmental authority, which taxes, assessments and other charges are not yet due and payable but are liens on the Premises;

(vii) All previous currently existing reservations, exceptions and conveyances of the oil, gas, associated hydrocarbons, minerals and mineral substances and royalty and other mineral rights and interests;

(viii) All claims of governmental authorities in and to any portion of the Premises lying in the bed of any streams, creeks or waterways or other submerged lands or land now or formerly subject to the ebb and flow of tidal waters or any claims of riparian rights;

(ix) Any and all restrictions on use of the Premises due to environmental protection laws, including, without limitation, wetlands protection laws, rules, regulations and orders except for the requirements of Article 18 herein;

(x) Other standard title exceptions in the State of South Carolina; and

(xi) Any interests created by or limitations on use imposed by, the Federal Coastal Zone Management Act or other Federal law and regulations or by South Carolina Code Section 48-39-220, as amended, or any regulations promulgated pursuant to said such federal or state law.

(b) Such other matters disclosed on Purchaser's title commitment to which Purchaser either does not object or agrees to accept.

## **2. Purchase Price.**

The purchase price for the Premises (the "Purchase Price") is the sum of SEVEN HUNDRED SEVENTY-TWO THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$772,200.00), payable by Purchaser to Seller as follows:

(a) THIRTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$38,000.00) (the "Earnest Money") by check upon or prior to execution of this Agreement payable to the "INTERNATIONAL PAPER REALTY CORPORATION", the receipt of which (subject to collection) is hereby acknowledged by Seller. Non-payment of the check in due course shall give Seller the right to cancel this Agreement; but if

Seller does not cancel this Agreement, Purchaser shall deliver the Earnest Money to Seller, in the form and in the manner set forth in paragraph (b) below, promptly upon notice from Seller. Seller shall have unrestricted control over the funds comprising the Earnest Money.

(b) SEVEN HUNDRED THIRTY-FOUR THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$734,200.00), following Seller's instructions by wire transfer of immediately available funds to a designated account of Seller (or its designee) upon delivery of the deed on the day of closing of title (the "Closing Date").

No amount paid on account of the Purchase Price shall create a lien on the Premises. The Purchase Price and the amounts payable pursuant to (b) above are subject to adjustment as provided in Article 3 below (costs and prorations) and Article 7 below (survey).

### **3. Costs and Prorations.**

(a) The following shall be apportioned between Seller and Purchaser on and as of the Closing Date: (a) rents and other amounts payable in the year of closing under leases and contracts, if any, (b) real estate taxes due and payable in the year of closing, and (c) assessments if any, payable in the year of closing. If the closing shall occur before the real estate tax rate is fixed for the current year, real estate taxes shall be apportioned on the basis of the tax rate for the preceding tax year applied to the latest assessed valuation. Purchaser shall be responsible for the payment of all roll back taxes (if any) and taxes for all subsequent years imposed upon or levied against or on account of the Premises by any governmental authority.

(b) Purchaser shall pay all real estate transfer or stamp taxes and all recording fees applicable to this transaction. At closing, Purchaser shall pay to Seller a document preparation fee of \$300.00.

(c) Purchaser and Seller shall each pay for its own legal fees and disbursements.

(d) The obligations set forth in this Article shall survive the Closing.

### **4. Representations.**

(a) Except as is herein specifically set forth, Seller has not made, does not make and has not authorized anyone else to make, any representations as to: (i) the existence or non-existence of access to or from the Premises or any portion thereof; (ii) the location of the Premises or any portion thereof within any flood plain, flood prone area, water shed or the designation of any portion thereof as "wetlands"; (iii) the availability of water, sewer, electrical, gas or other utility services; (iv) the number of acres in the Premises; (v) the present or future physical condition or suitability of the Premises for any purpose; (vi) the existence of any environmental hazards or contaminants; (vii) the

knowledge of any unrecorded agreements; (viii) the amount and type of timber on the Premises, if any; or (ix) any other matter or thing affecting or relating to the Premises or this Agreement.

(b) Except as specifically set forth in this Article, SELLER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES RELATING TO THE PREMISES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SUITABILITY FOR PURCHASER'S INTENDED USE. PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER SHALL BE SOLELY RESPONSIBLE FOR OBTAINING ALL PERMITS AND LICENSES, IF ANY, REQUIRED BY PURCHASER TO CARRY ON ITS INTENDED OPERATIONS AT THE PREMISES.

(c) Purchaser expressly acknowledges that: (i) no representations, warranties or promises, express or implied, have been made by or on behalf of Seller including but not limited to the condition or value of the Premises; (ii) in entering into this Agreement, Purchaser has not relied and does not rely on any representations, expressed or implied, of Seller, and (iii) Purchaser has inspected the Premises, or caused an inspection of the same to be made on Purchaser's behalf, and is thoroughly familiar with and fully satisfied therewith. Purchaser shall take the Premises in its "as is" condition on the Closing Date, except as otherwise provided in this Agreement.

(d) Purchaser represents to Seller that: (i) the execution and delivery of this Agreement by Purchaser or its signatories and the performance of this Agreement by Purchaser (including the execution and delivery of any documents at the closing) have been duly authorized by the Board of Directors of the Purchaser, and this Agreement is binding on Purchaser and enforceable against Purchaser in accordance with these terms; (ii) no consent of any partner (limited or general), shareholder, director, creditor, investor, judicial or administrative body, governmental authority or other party to such execution, delivery and/or performance is required; and (iii) neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (A) result in a breach of or default under any agreement to which Purchaser is a party or by which Purchaser or any of its property is bound or (B) violate any law, rule, regulation, restriction, court order or agreement to which Purchaser is subject. The representations made in this Agreement by Purchaser shall be continuing and shall be deemed remade by Purchaser as of the Closing Date with the same force and effect as if remade at that time, and the same shall survive the Closing Date.

## **5. Deed.**

The deed to be delivered to Purchaser at the closing shall be a limited or special warranty deed, or equivalent, warranting only against parties claiming by, through or under Seller, shall be in recordable form and shall contain the restrictions provided for in this Agreement, including but not limited to Article 18. Acceptance of the deed by Purchaser shall be deemed a full performance and discharge of every agreement and obligation on the part of Seller to be performed pursuant to this Agreement. No agreement, representation or warranty of Seller made in this Agreement shall survive



delivery of the deed, except as set forth in Articles 3, 11 and 22.

**6. Evidence of Title: Title Defects.**

(a) On or before sixty (60) days from the date of this Agreement, Seller, at Seller's expense, shall obtain from Fidelity National Title Insurance Company of New York and deliver to Seller a commitment for a title insurance policy which shall contain exceptions to be insured by an owner's policy of title insurance ("Owner Policy"). The Owner Policy shall be paid for by Seller and issued to the Purchaser. Any modification or endorsement to the Owner Policy shall be paid for by the Purchaser.

(b) Purchaser shall have ten (10) days after receipt of the title commitment to deliver to Seller written objections to matters reflected in the title commitment other than Permitted Exceptions; provided that power line and water line easements and easements for roads and rail lines shall not be objections to title. If Seller does not receive Purchaser's written title objections on or before such ten (10) day period, Purchaser shall have waived its right to object and shall accept such title as Seller is able to convey.

(c) In the event Seller cannot or chooses not to remedy such title defects prior to the Closing Date, Seller may, in its discretion, have up to an sixty (60) days to remedy any title defects; provided, however, that Seller shall not be required to take any action or expend any sums for the purpose of removing such defects. Upon removal of such defects, Seller may reschedule a closing date upon five (5) business days written notice to Purchaser. If Seller cannot or chooses not to remedy such title defects either prior to the original Closing Date or at the end of such sixty (60) day period, Purchaser may, as its sole remedy, (i) terminate this Agreement with a refund of the Earnest Money, or (ii) close the sale and accept such title as Seller is able to convey without any reduction in the Purchase Price and without any other liability on the part of Seller (and any title defects will be deemed Permitted Exceptions). In the event Purchaser elects (i), then upon refund of the Earnest Money, this Agreement shall be deemed terminated and neither party shall retain any rights against the other in connection therewith except as otherwise specifically provided herein.

**7. Survey: Wetlands Delineation: Phase I.**

(a) On or before sixty (60) days from the date of this Agreement, Seller, at Seller's expense, shall provide Purchaser with a boundary survey ("Survey") of the Premises prepared by a surveyor duly licensed in the State of South Carolina. Purchaser shall have ten (10) days after receipt of the Survey to furnish Seller with any written objections to matters reflected in the Survey other than Permitted Exceptions; provided that power line and water line easements and easements for roads and rail lines shall not be objections to the Survey. If Seller does not receive notice within such ten (10) day period of Purchaser's objections to the Survey, then Purchaser shall have waived its right to object to the Survey and shall close the purchase of the Premises subject to the remaining terms of this Agreement.

(b) In the event Seller cannot or chooses not to cure such objections prior to the

Closing Date, Seller may, in its discretion have up to an additional sixty (60) days to cure such objections; provided, however, that Seller shall not be required to take any action or expend any sums for the purpose of curing such objections. Upon removal of such objections, Seller may reschedule a closing date upon five (5) business days written notice to Purchaser. If Seller cannot or chooses not to remedy such objections either prior to the original Closing Date or by the end of such sixty (60) day period, Purchaser may, as its sole remedy, (i) terminate this Agreement with a refund of the Earnest Money, or (ii) close the sale and accept the Survey without any reduction in the Purchase Price and without any other liability on the part of Seller. In the event Purchaser elects (i), then upon refund of the Earnest Money, this Agreement shall be deemed terminated and neither party shall retain any rights against the other in connection therewith except as otherwise specifically provided herein.

(c) In the event such Survey shows a total acreage of the Premises different than that set forth in Article 1 hereof, the parties shall adjust the Purchase Price as stated in Article 2 above, on the basis of the rate of \$1,300.00 per total acre. The surveyed acreage to be used in determining whether there is to be an adjustment to the Purchase Price shall include all acreage within Seller's fee ownership. There shall be no acres excluded for creeks, roads, powerlines, pipelines, other easements or similar encumbrances.

(d) On or before sixty (60) days from the date of this Agreement, Seller at its expense, shall provide Purchaser with a wetlands delineation survey showing the number of upland and wetland acres in the Premises as certified by the U.S. Army Corps of Engineers. Such wetlands delineation shall not result in any change to the Purchase Price.

(e) On or before sixty (60) days from the date of this Agreement, Seller, at its expense, shall provide to Purchaser a Phase I Environmental Report ("Phase I"). Seller shall provide Purchaser with a copy of the Phase I upon the following conditions: (i) the Phase I is delivered to Purchaser for informational purposes only, without any representation or warranty by Seller; (ii) the Phase I is subject to the confidentiality provisions of Article 8(b) of this Agreement; and (iii) Seller shall have no obligation to take any action or to perform any remediation whatsoever.

## **8. Right of Entry.**

(a) Prior to the Closing Date and with the prior written consent of Seller, Purchaser may enter upon the Premises for the purposes of making inspections, surveys and other studies. Upon the completion of such inspections, surveys and studies, Purchaser, at its expense, shall restore the Premises to its former condition and remove all debris and other material therefrom.

(b) At Seller's request, Purchaser shall disclose the results of such surveys and studies, and shall deliver copies of all reports and test results, to Seller. The results of such surveys and studies (as well as any information and documents that Seller delivered or caused to be delivered to Purchaser concerning the Premises) shall be treated as

strictly confidential by Purchaser and the same shall not be disclosed to any third party or governmental entity (provided, however, that such results, information and documents, may be disclosed only to Purchaser's consultants, attorneys and lenders, who shall be required by Purchaser to similarly treat such results, information and documents as strictly confidential).

(c) Purchaser shall defend, indemnify and hold Seller harmless from and against any and all claims, demands, losses, expenses, damages, costs and liabilities, suffered or incurred by Seller as a result of any physical damage to the Premises or any death or personal injury to any person caused by or attributable to the acts or omissions of Purchaser, its employees, contractors, representatives or agents arising in connection with inspections, surveys or studies performed by or on behalf of Purchaser. In addition, Purchaser agrees that Purchaser's contractors, representatives and agents (but not Purchaser's real estate agent) who enter upon the Premises shall maintain general liability insurance, naming Seller as an additional insured, in an amount not less than \$1,000,000.00 and shall provide Seller with written evidence of such insurance.

(d) The obligations of Purchaser set forth in this Article shall survive the termination of this Agreement or the Closing.

**9. Closing: Time is of the Essence.**

The closing of title shall take place at 10:00 a.m. on or before September 20, 2003, at a time and place or in such other manner as the parties shall agree. Except as specifically provided herein, time is of the essence of this Agreement for all purposes.

**10. Notice.**

Any notice given pursuant to this Agreement shall be given in writing and delivered in person, by overnight courier, by facsimile (with a copy sent by regular mail) or by registered or certified mail, postpaid, return receipt requested, addressed as follows:

if to Seller: L. H. Ronnie, Jr.  
International Paper Realty Corporation  
3 Paragon Drive  
Montvale, New Jersey 07645-0436  
Facsimile: (201) 307-4790

with a copy to: David S. Stein, Esq.  
International Paper Realty Corporation  
3 Paragon Drive  
Montvale, NJ 07645-0436  
Facsimile: (201) 307-4790

*[Remainder of page intentionally left blank]*



if to Purchaser: Edward R. Saxon, PE  
Beaufort Jasper Water & Sewer Authority  
P. O. Box 2149  
Beaufort, SC 29901-2149  
Facsimile: (843) 987-9234

Such notices, if delivered personally or by overnight courier service, shall be deemed given at the time of delivery; if sent by registered or certified mail, shall be deemed given two (2) days after the time of mailing; and if sent by facsimile, shall be deemed given one (1) hour after transmission (as evidenced by the sender's facsimile machine confirmation) if such time is during business hours at the place of its receipt, or, if it is not during business hours, at 10:00 a.m. on the next succeeding business day at the place of receipt, subject to having in fact been received in legible form, properly addressed.

**11. Broker.**

The parties represent to each other that no advisor, broker, salesperson or finder has been employed or consulted in connection with the sale of the Premises, the preparation of this Agreement and/or any other aspect of the transaction set forth herein. Each party agrees to pay any amounts which may be due on account of this transaction to any advisor, broker, salesperson or finder employed or contacted by such party and to indemnify the other party against any claim for payment of such amounts. The representations and agreements set forth in this Article shall survive the termination of this Agreement or the Closing Date.

**12. Condemnation and Casualty Loss.**

(a) If any portion of the Premises is condemned or damaged by fire, earthquake, flood or other casualty, so that the fair market value of the Premises is reduced by twenty-five percent (25%) or more, either party shall have the right, exercisable within ten (10) days of notice of such condemnation or damage, to terminate this Agreement, in which event Seller shall refund the Earnest Money to Purchaser, and the parties shall have no further rights or obligations with respect to the other, except as otherwise stated in this Agreement. If this Agreement is not so terminated, Purchaser shall close the sale and purchase set forth herein, but with a reduction in the Purchase Price in an amount calculated as described in paragraph (c) below, and (i) Seller shall be entitled to receive and retain any condemnation award; (ii) Seller shall be entitled to receive and retain any insurance proceeds payable under policies procured by Seller; and (iii) Purchaser shall be entitled to receive and retain any insurance proceeds payable under policies procured by Purchaser.

(b) If any portion of the Premises is condemned or damaged so that the fair market value of the Premises is reduced by less than twenty-five percent (25%), Purchaser shall accept the Premises in its then condition, with no reduction in the Purchase Price, but with the right to receive and retain any condemnation award or insurance proceeds up to the amount of the reduction in fair market value by reason of

such condemnation or casualty (however, Seller shall not be obligated to insure the Premises). Seller shall be entitled to receive and retain the amount by which any such condemnation award or insurance proceeds exceeds the reduction in fair market value.

(c) The amount of any reduction in the fair market value of the Premises, or in the Purchase Price, in accordance with this Article shall be determined by agreement between the parties or, if the parties are unable to agree, by an independent, licensed real estate appraiser selected by Seller and reasonably satisfactory to Purchaser (provided, however, that Seller shall not be obligated to accept any such determination by the appraiser if the amount of reduction so determined shall be more than 5% greater than the reduction amount selected by Seller). The cost of any such appraiser shall be borne equally by Seller and Purchaser.

(d) As of this date hereof, Seller has no knowledge of any condemnation of any portion of the Premises or of any condemnation proceeding pending or threatened against the Premises.

### **13. Termination; Failure to Close; Damages.**

(a) If this Agreement is cancelled pursuant to its terms, this Agreement shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, except that: (i) the Earnest Money shall be promptly refunded to Purchaser, and (ii) Purchaser's obligations under Articles 8, 11, 15 and 22 shall survive the termination of this Agreement.

(b) Purchaser and Seller agree that it would be impractical and extremely difficult to ascertain and fix actual damages to Seller in the event of any breach hereunder by Purchaser; that the Earnest Money paid in connection with the execution of this Agreement is a fair measure of such damages; and that, in the event Purchaser breaches this Agreement, Seller shall be entitled to retain the Earnest Money as a legal remedy for such breach.

(c) If Seller defaults hereunder, Seller's sole liability shall be to refund the Earnest Money to Purchaser. Upon such refund, neither party shall have any obligations to or further rights against the other (except that Purchaser's obligations under Articles 8, 11, 15 and 22 shall survive termination of this Agreement).

### **14. Assignment.**

Purchaser's rights under this Agreement may not be assigned, except to Beaufort County, without Seller's prior written consent, which consent may be withheld for any reason. Any assignment made by Purchaser without Seller's prior consent thereto shall be void. If Purchaser requests and Seller consents to an assignment or in the event of an assignment to Beaufort County, Purchaser will deliver a fully executed instrument of assignment to Seller, in form and substance satisfactory to Seller, at least ten (10)

business days prior to the Closing Date. No assignment shall relieve Purchaser from its obligations hereunder, and all representations, covenants and indemnities made by Purchaser hereunder also shall be made by Purchaser's assignee and, where applicable, shall survive the closing.

**15. Recording.**

This Agreement (or a memorandum thereof) may not be recorded by Purchaser. In the event that this Agreement (or a memorandum thereof) shall be recorded by Purchaser, Seller may, at its option, terminate this Agreement and retain the Earnest Money as liquidated damages.

**16. Like-Kind Exchange.**

In the event either Seller or Purchaser intends for this transaction to qualify as a "like-kind" exchange under section 1031 of the Internal Revenue Code, the other party agrees to cooperate with the exchanging party in arranging this transaction as to qualify as a "like-kind" exchange, including its assignment to a "qualified intermediary" pursuant to section 1031, at no cost or expense to the cooperating party. Notwithstanding the provisions of Article 14, this Agreement may be assigned by the exchanging party to a "qualified intermediary" provided the cooperating party is given notice thereof at least ten (10) days prior to the Closing Date.

**17. Due Diligence.**

Purchaser shall have sixty (60) days from the date of this Agreement (the "Due Diligence Period") to complete, at its expense, all aspects of its due diligence with respect to its examination of the Premises (including, but not limited to, survey and title review, soils, environmental, obtaining financing and other matters). During the Due Diligence Period, Purchaser shall perform such due diligence as Purchaser deems necessary to accept the Premises in its "As Is" condition. In the event Seller receives written notice from Purchaser on or before 4 p.m. (Eastern Time) on the last day of the Due Diligence Period that Purchaser has determined, in its sole judgment, that it does not wish to purchase the Premises for any reason, then upon receipt of such notice Seller shall refund the Earnest Money to Purchaser, and the parties shall have no further obligations to each other (except for such provisions which specifically survive termination). Failure of Seller to timely receive such notice shall be deemed a waiver of Purchaser's rights hereunder. Any activities in connection with Purchaser's due diligence shall be subject to the provisions of Article 8 thereof.

**18. Purchaser's Use and Development of Premises.**

(a) Purchaser, its successors and assigns, agree that the Premises shall be used only as a mitigation area and effluent disposal site (collectively, a "Disposal Site") and for no other purposes. Purchaser, at Purchaser's expense, shall prepare a disposal site plan ("Site Plan") acceptable to Seller and shall submit same to the necessary regulatory agencies (OCRM, SCDHEC and COE) for approval. The

specifics of the Site Plan must be consistent with the terms of this Agreement and shall be determined during the Due Diligence Period. Any proposed changes to the Site Plan by the Purchaser following the Due Diligence Period and/or following closing are subject to Seller's prior written approval.

(b) During the Due Diligence Period, Purchaser, at Purchaser's cost and expense, shall apply for all necessary approvals ("Necessary Approvals") to use the Premises as a Disposal Site. Obtaining such necessary approvals shall be a condition to both Seller's and Purchaser's obligation to close this transaction, subject to the next sentence. In the event Purchaser does not obtain such Necessary Approvals by the end of the Due Diligence Period, then either party, by written notice to the other, may terminate this Agreement. In the event either Seller or Purchaser so terminates, Seller shall refund the Earnest Money to Purchaser, and the parties shall have no further obligations to each other (except as otherwise provided in this Agreement). However, if neither party receives such notice of termination from the other within five (5) days after expiration of the Due Diligence Period, then Purchaser and Seller shall each be deemed to have waived its right to terminate and shall proceed to closing.

(c) Purchaser further covenants, and the Seller relies upon the Purchaser's covenant, to make diligent and timely effort to obtain the Necessary Approvals and that Purchaser will sign all papers and submit all documents and information as may be required of Purchaser. Seller shall not be responsible for or be obliged to pay, in whole or in part, any expenses incurred in connection with Purchaser obtaining the Necessary Approvals.

(d) The use of the Premises as a Disposal Site shall be a covenant running with the land, enforceable by Seller, its successors and assigns, against Purchaser, its successors and assigns. At closing, such use shall be included in the deed for the Premises.

(e) The terms of this Article, and the restrictions upon and affirmative obligations of Purchaser contained herein, shall survive closing and shall be covenants running with the land, enforceable by Seller and its successors and assigns, against Purchaser and its successors and assigns. At closing, Purchaser shall execute documents satisfactory to Seller to confirm the terms and conditions of this Article, and Purchaser's obligations under this Article.

#### **19. Placement of Roadways.**

Purchaser acknowledges that Seller has no obligation to construct any roads to serve the Premises. In the event Purchaser elects to build roads ("Roads") on the Premises, Purchaser, at Purchaser's cost and expense, shall be responsible for the permitting and construction of such Roads. The Roads shall be of a grade and quality satisfactory to meet the requirements of regulatory agencies with jurisdiction over the Premises.



**20. Other Special Provisions.**

(a) Purchaser, at Purchaser's sole cost and expense, shall be responsible for delivering any electricity, telephone and water and sewer lines to the Premises, and for obtaining any utility services for the Premises. Seller makes no representations or warranties concerning utility lines or service, and shall have no responsibility to provide for the delivery of such utility lines and services.

(b) By owning the Premises, Purchaser shall be liable for the payment of any applicable periodic sewer and water availability fees, any other utility availability fees levied by any governmental entity, utility company or other entity providing utility services, all service charges and user fees for use of water, sewer and other utility services, together with any aid-to-constructions fees which may be charged by any utility provided.

**21. Other Properties/Phases Facilities.**

(a) Seller, its successors and assigns, and any persons owning property in the general vicinity of the Premises may, at their sole discretion, phase the development and construction of the Argent Tract in multiple phases or separate projects, with no guarantee to Purchaser that subsequent phases or projects will be developed. The development may consist of only the phase in which the Premises is located or may, at the sole option of Seller, its successors and assigns or persons owning property in the general vicinity of the Premises, be developed in multiple phases or projects. Seller, its successors and assigns, and persons owning property in the general vicinity of the Premises, hereby reserve the right and privilege to determine at some future date whether or not to proceed with any additional phases of development of separate projects.

(b) Seller declares that it, its successors and assigns, are under no obligation to develop other properties that it may own in Jasper County, South Carolina or elsewhere or to provide any amenities, recreational or otherwise, and does not warrant in any manner whatsoever the development or the success of any properties which are owned by it in the Argent Tract or elsewhere, whether or not in the general vicinity of the Premises, and further, Seller reserves the right to develop such property, if developed, in any manner whatsoever without interference from the Purchaser or any subsequent purchaser, their heirs, successors or assigns, through public zoning hearings, documents filed with the County of Jasper for zoning purposes, public or private showings of proposed or preliminary development plans.

(c) The Premises are located within that certain property owned by Seller known as the Argent Tract located in Jasper County, South Carolina. Seller hereby reserves the right to replat, to place of record such replatting with all appropriate authorities and to apply for the rezoning of all or any part of the Carolina Forest other than the Premises. Purchaser hereby acknowledges and agrees that Seller reserves such right. Purchaser agrees that it has not entered into this Agreement in reliance on any recorded or unrecorded subdivision plat of the Argent Tract and shall have no cause of action or claim of any kind against Seller should Seller, in its sole discretion, elect to replat

the Argent Tract Forest, other than the Premises, or to apply for rezoning of all or any part of the Argent Tract, other than the Premises.

(d) It is further understood and agreed by Purchaser that Seller has made no representations to Purchaser that Seller or others will not deliver other parcels of land within or in the vicinity of the Argent Tract for a use similar or identical to Purchaser's proposed use of the Premises, and Purchaser further agrees that Seller and others may develop other parcels of land within or in the vicinity of the Argent Tract for uses that may be similar or identical to Purchaser's contemplated use of the Premises. Additionally, Purchaser understands and agrees that Seller may amend or change its existing plans for development of other parcels of land within or in the vicinity of the Argent Tract Forest without any liability to Purchaser and without any requirement that Seller consult with Purchaser or submit for Purchaser's review of approval any such changed or amendment.

## **22. Mediation.**

(a) In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement or the breach thereof, or the Premises, Seller and Purchaser shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

(b) If Seller and Purchaser do not reach such a solution within a period of thirty (30) days after such discussions are initiated in writing by either party, the parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement or the Premises shall be submitted to non-binding, voluntary mediation. Either party may commence mediation by providing the other party with a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with one another in selecting a mediator, and in scheduling the mediation proceedings.

(c) If the parties cannot agree upon a mediator, the parties hereby agree that they shall appoint the American Arbitration Association as a mediation body, and shall implement the Commercial Mediation Rules.

(d) All offers, promises, conduct and statements, whether oral or written, made in the course of the settlement and mediation process by either of the parties, their agents, employees, experts and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its disclosure during settlement or mediation efforts.

(e) During the pendency of the settlement and mediation process, the parties agree to forebear from filing or otherwise proceeding with litigation. If the agreement of the parties to use ADR breaks down and a later application for an injunction is made, the parties will not assert a defense of laches or statute of limitations, based upon the time

spent on ADR.

(f) Either party may initiate litigation with respect to the matters submitted to mediation at any time following the initial mediation session or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. The mediation may continue after the commencement of litigation if the parties so desire.

(g) The provisions of this Article may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

### **23. Miscellaneous.**

(a) Purchaser acknowledges that this Agreement constitutes an offer by Purchaser to Seller with respect to the Premises and all other matters contemplated herein. No action by Seller constitutes acceptance of the offer, and this Agreement shall not be binding upon Seller, unless and until: (i) the execution and delivery of this Agreement by Seller and Purchaser; and (ii) all corporate approvals to sell and purchase the Premises on the terms stated herein have been obtained which corporate approvals shall be applied for by Seller and Purchaser within five (5) days after joint execution of this Agreement in contemplation of receiving such approval within the Due Diligence Period.

(b) None of Seller's or Seller's successors' or assigns' officers, directors, shareholders, employees or agents shall be personally or individually liable under this Agreement or any instrument executed or delivered by any one of them pursuant to the terms and conditions of this Agreement, and Purchaser shall not look to them or any one of them personally or individually for the satisfaction of any claim hereunder or thereunder. Seller's liability under this Agreement, if any, shall be limited solely to its interest in the Premises.

(c) This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Seller and Purchaser have contributed substantially and materially to the preparation of this Agreement.

(d) If any date herein set forth for the performance of any obligation by Seller or Purchaser, or for the delivery of any instrument or notice as herein provided, should be a Saturday, Sunday or legal holiday, the compliance with such obligation or delivery shall be deemed acceptable on the next day which is not a Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the State of South Carolina or New Jersey for observance thereof.

(e) In the event any legal proceeding should be brought to enforce the terms of this Agreement or for breach of any provision of this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable costs and expenses of the

prevailing party (including but not limited to its attorney's fees and disbursements).

(f) This Agreement shall apply to and bind the heirs, executors, administrators, successors and permitted assigns of the respective parties.

(g) This Agreement embodies the entire agreement and understanding of the parties and there are no further or prior agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

(h) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties or their respective successors or permitted assigns.

(i) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(j) This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

(k) This Agreement shall be construed in accordance with and governed by the laws of the State of South Carolina.

*[The remainder of this page left intentionally blank]*



IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

**SELLER:**

**INTERNATIONAL PAPER REALTY CORPORATION,**  
a Delaware corporation

By: \_\_\_\_\_

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

*Jacob*

*Vice President*

**PURCHASER:**

**BEAUFORT JASPER WATER & SEWER  
AUTHORITY, a South Carolina public body**

By: \_\_\_\_\_

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

*William D. Ward*

*General Manager*

**Attachments:**

**Exhibit A: Legal Description**