



**ADMINISTRATOR'S REPORT**  
**Kevin Bronson**  
OFFICE OF THE CITY ADMINISTRATOR  
WESTMINSTER, SOUTH CAROLINA

January 5, 2024

### **GENERAL INFORMATION**

#### **Adding more choices for bill pay**

This week to offer customers more choices in how they pay their bills, City of Westminster has partnered with Xpress Bill Pay for an online payment system. All customers are encouraged to sign up which may be done by going to <https://westminstersc.org/wp-content/uploads/2024/01/2023-12-End-User-Website-Instructions.pdf> and follow the instructions there, or go to [www.xpressbillpay.com](http://www.xpressbillpay.com). The full information sheet is attached.

#### **January is National Blood Donor Month**

The Oconee County Public Library will host blood drives at each Oconee County Public Library location. A flyer for the drive in Westminster is attached, please use the QR code to make an appointment. The full schedule of the drives is:

Monday	1/8/24	10:00a-2:00p	Salem
Tuesday	1/16/24	10:00a-2:00p	Walhalla
Monday	1/22/24	10:00a-2:00p	Seneca
Monday	1/29/24	10:00a-2:00p	Westminster

#### **Police Chief Search**

The search for a new Police Chief continues. The position in the City's website and the Municipal Association of South Carolina's website. The deadline for application is January 16, 2024. The position posting may be viewed here; <https://westminstersc.org/careers/>

#### **USDA-RD Water System Projects**

Two contractors are being utilized to install the water system improvements funded by the USDA-RD. Both contractors are on schedule.

*Arrowood General Contracting* is responsible for a grouping of projects entitled Division 1.

- The project areas for Division 1 are: Dawn Drive; Dixon Rd; Phillip Lear; and Dr. Johns Rd.
- Dawn Drive is complete.
- Dixon road is complete and customers are beginning to hook up to the new line. We will be setting a deadline soon for all to be connected so the old line may be abandoned.
- Arrowood GC is continuing to work on installing pipe on Phillip Lear Rd. They are nearing the intersection of Dr. Johns Rd. The project was originally drawn to connect through Dale's Drive, but due to numerous utilities already in the ground and a very narrow right-of-way, the decision was made to stay on Phillip Lear Rd to the intersection of Dr. Johns Rd. A short run of 160' will still be laid on Dale's Dr. to set a fire hydrant.

*Payne, McGinn and Cummins* is responsible for a grouping of projects entitled Division 2.

- The project areas in Division 2 are: two sections of Highway 76; Welcome Church Rd to Berry Farm Rd; and Berry Farm Rd to Cleveland Pike Rd.
- PMC continues to lay pipe on Welcome Church Rd. They have installed approximately 1-1/2 miles so far.
- They plan on flooding the line on 76 in the next 2 weeks to begin testing. Connections are set to begin in the spring on that section.

### Westminster Planning Commission

Nothing to report.

### OJRSA

The Board met Thursday, January 4, 2024, the agenda is attached. Of note, the Board approved making the December 11, 2023 memorandum from Pope Flynn, LLC regarding impact fees a public document and not bound by attorney-client privilege. The December 11, 2023 memorandum is attached.

The ORJRSA sponsored Central Basin Study is underway. Three meetings will be held to gather public input:

- February 8 3:30-5:30 at the Walhalla Depot 211 S College St, Walhalla, SC 29691
- February 15 5:30-7:30 at the Westminster Depot 129 E Main St, Westminster, SC 29693
- February 22 5:30-7:30 at the Seneca City Hall Council Chambers 221 E. North 1st Street Seneca, SC 29678

More information about these meetings is forthcoming.

### PMPA

Nothing to report.

### PLEASE MARK YOUR CALENDARS

**January 9, 2024 at 1:00 pm City Council Planning Workshop at City Hall Conference Room**

**January 9, 2024 at 6:00 pm City Council Meeting at Westminster Fire Department**

**January 10, 2024 at 9:00 am City Council Planning Workshop at City Hall Conference Room.**

**January 15, 2024 City Offices closed to observe Martin Luther King, Jr. Day**

February 6, 2024 Municipal Association Hometown Legislative Action Day in Columbia, SC

February 15, 2024 Central Basin Study Stakeholder Input Meeting – the Depot

### Special Events Calendar

**February 3, 2024 at time TBD – TreesUpstate Tree Planting Event at Yousef Mefleh Memorial Fields**

**March 9, 2024 Tree Giveaway sponsored by TreesUpstate at City Hall**

*– more details to come – trees of various species to be given away for free to the public*



*Together We Grow*

**January 4, 2024**

As a way to offer you more choices in how you pay your bills, City of Westminster has partnered with Xpress Bill Pay.

All you need is an internet connection and an email address.

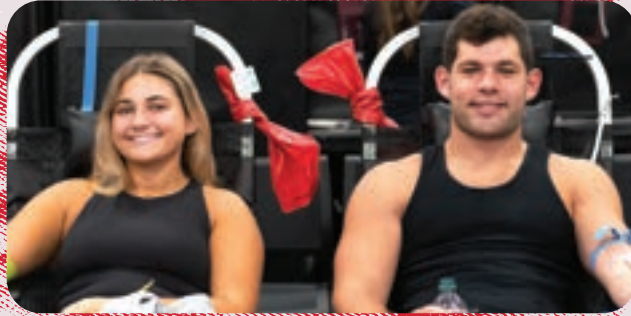
It's simple to use. Every month we'll send you reminder emails of the notifications that you choose. Then, you just log into your account at [xpressbillpay.com](https://xpressbillpay.com) or use our mobile app to view your account.

When you're ready to pay your bill, select a payment type. You can pay with credit card, debit card, or electronic funds transfer. Enter the information and you're done! It's that easy, and only takes you a few minutes each month. Or you can set up your bill on Auto Pay and have it automatically paid for you each month!

Card fees are 3% of the total bill plus \$.65 when paid online or in-person. An electronic funds transfer is a charge of \$1.00.

To sign up, go to <https://westminstersc.org/wp-content/uploads/2024/01/2023-12-End-User-Website-Instructions.pdf> and follow the instructions there, or go to [www.xpressbillpay.com](https://www.xpressbillpay.com)

# A New Year to **SAVE LIVES**



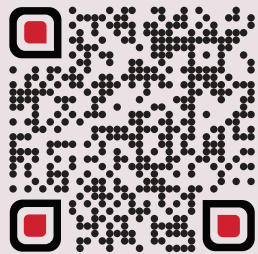
## OCPL Westminster Branch

112 West North Avenue  
Westminster, SC 29693

**01/29/2024 | 10:00 AM–02:00 PM**

**9279**

Scan to make  
an appointment!  
(sponsor code above)



**Donate Blood &  
receive \$50 in rewards!**

WB + DRBC only, rewards = TBC reward points to redeem  
for eGift cards, check social media for promo dates.



[thebloodconnection.org](https://thebloodconnection.org)

The Blood Connection is a non-profit organization. Blood can be donated every 56 days. Donors must be 16 years or older and over 110 lbs. to donate. Written parental consent required for 16 year olds in SC and GA, 16 AND 17 year olds in NC. Before you donate blood, make sure that you drink plenty of water and eat a healthy meal. TBC Donor ID Card (preferred) or photo ID required to donate. Rewards are non-transferable.

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**THE BLOOD®  
CONNECTION**  
*Your Community Blood Center*



## **Annual Members' Meeting**

Seneca Light & Water Lake Keowee Water Treatment Plant  
630 Northampton Road, Seneca, South Carolina  
January 4, 2024 at 5:00 p.m.

*The Annual Members' Meeting is held in accordance with Article IV Section 1 of the  
Oconee Joint Regional Sewer Authority Bylaws*

### **Agenda**

- A. Call to Order** – OJRSA Board Chair
- B. Welcome Members and Guests** – OJRSA Board Chair
- C. Invocation and Pledge of Allegiance** – Led by Commissioner Bob Faires
- D. Introduction of Attendees** – Led by OJRSA Board Chair
- E. State of the Oconee Joint Regional Sewer Authority** – Chris Eleazer, Director
- F. Questions and Closing Comments** – OJRSA Board Chair and Chris Eleazer, Director
- G. Upcoming Meetings** *All meetings to be held in the Lamar Bailes Board Room unless noted otherwise.*
  - 1. Operations & Planning Committee – January 17, 2024 at 8:30 a.m.
  - 2. Finance & Administration Committee – January 23, 2024 at 9:00 a.m.
  - 3. Board of Commissioners – February 5, 2024 at 4:00 p.m.
- H. Adjourn**



## Board of Commissioners Meeting

Seneca Light & Water Lake Keowee Water Treatment Plant  
630 Northampton Road, Seneca, South Carolina  
January 4, 2024 at 4:00 p.m.

*The OJRSA Board of Commissioners Meeting will be held at the SL&W Lake Keowee Water Treatment Plan prior to the Annual Members' Meeting*

### Agenda

- A. Call to Order** – Brian Ramey, Board Chair
- B. Swearing in of Commissioners** – Larry Brandt, OJRSA Attorney
- Seat 1 Seneca: Robert William Faires III
  - Seat 2 Seneca: Timothy Scott Moulder
  - Seat 3 Seneca: Gregory Scott McLane
  - Seat 4 Seneca At-Large: Thomas Marshall McKee
  - Seat 5 Walhalla: Celia Boyd Myers
  - Seat 6 Walhalla: Jeffrey Scott Parris
  - Seat 7 Westminster: Brian Franklin Ramey
  - Seat 8 Westminster: William Kevin Bronson
  - Seat 9 Walhalla/Westminster At-Large: David Newton Dial
- C. Invocation and Pledge of Allegiance** – Led by Commissioner Bob Faires
- D. Election of Officers and Committee Appointments**
1. Nominate and elect the following positions for the OJRSA Board of Commissioners for a two-year term in accordance with OJRSA Bylaws – Brian Ramey, Board Chair
    - a. Chair (will also serve on the Executive Committee, must be held by a Commissioner)
    - b. Vice Chair (must be held by a Commissioner)
    - c. Secretary/Treasurer (does not need to be held by a Commissioner)**NEWLY ELECTED CHAIR WILL PRESIDE OVER MEETING FOLLOWING AGENDA ITEM D.1.**
  2. Elected Board Chair to appoint no more than four members to the Finance & Administration (F&A) Committee for a two-year term *[It is recommended that no Member City have no more than two seats on the Committee]* – Elected Board Chair
  3. The members of the F&A Committee shall elect a Committee Chair, who will also serve on the Executive Committee – Elected Board Chair
  4. Elected Board Chair to appoint no more than four members to the Operations & Planning (O&P) Committee for a two-year term *[It is recommended that no Member City have no more than two seats on the Committee]* – Elected Board Chair
  5. The members of the O&P Committee shall elect a Committee Chair, who will also serve on the Executive Committee – Elected Board Chair
- E. Public Session** – Receive comments relating to topics that may or may not be on this agenda. Session is limited to a maximum of 30 minutes with no more than 5 minutes per speaker.
- F. Approval of Minutes**
- December 4, 2023 Board of Commissioners Meeting
- G. Committee and Other Meeting Reports**
- Finance & Administration Meeting of December 18, 2023 – Celia Myers, Committee Chair
  - Operations & Planning Meeting of December 20, 2023 – Bob Faires, Committee Chair
- H. Secretary/Treasurer's Report** (Exhibit A) – Lynn Stephens, Secretary/Treasurer

- I. Oconee County Government Update Regarding Matters Involving Wastewater – Oconee County Administrator or Appointed County Representative**
- J. Presentation and Discussion Items** *[May include Vote and/or Action on matters brought up for discussion]*
1. Continued discussion regarding Oconee County's \$25 million planned sewer expansion into southern Oconee area – Brian Ramey, Commissioner
  2. Review the goals the Board established for 2023 (Exhibit B) and consider the coming year's Board's goals – led by Elected Board Chair
- K. Action Items**
1. Approve OJRSA Resolution 2024-05 adopt Procurement & Property Disposal Policy (Exhibit C) with effective date of January 8, 2024 – Elected Board Chair
  2. Repeal December 1, 2003 policy that required the agency to not accept bids for analytical services from firms doing work for industries regulated by the organization – Chris Eleazer, Director
  3. Approve making December 11, 2023 memorandum from Pope Flynn, LLC regarding impact fees a public document and not bound by attorney-client privilege *[NOTE: If approved, this shall only apply to this document and not subsequent written or verbal communications between OJRSA and legal counsel concerning this matter]* – Chris Eleazer, Director
  4. Approve reclassifying Commercial Pretreatment & Construction Inspector position to NE-5 (Exhibit D) – Chris Eleazer, Director
  5. Consider authorizing Executive Director to execute License Agreement with Norfolk Southern Railway Company for the proposed installation of the 16-inch Seneca Creek pump station force main pipe as seen in Exhibit E – Chris Eleazer, Director
- L. Executive Director's Discussion and Compliance Matters – Chris Eleazer, Director**
1. Environmental and regulatory compliance
  2. Budget amendment for capacity improvement assessment at the Coneross Creek Water Reclamation Facility
  3. Retail sewer service rates
  4. Miscellaneous *(if any)*
- M. Commissioners' Discussion – Elected Board Chair**  
Discussion can be related to matters addressed in this meeting or for future consideration by the Board or Committee. Voting is not permitted during this session.
- N. Upcoming Meetings** *All meetings to be held in the Lamar Bailes Board Room unless noted otherwise.*
- Annual Members' Meeting – January 4, 2024 at 5:00 p.m. *at the SL&W Lake Keowee Water Treatment Plant, 630 Northampton Road, Seneca*
  - Operations & Planning Committee – January 17, 2024 at 8:30 a.m.
  - Finance & Administration Committee – January 23, 2024 at 9:00 a.m.
  - Board of Commissioners – February 5, 2024 at 4:00 p.m.
- O. Adjourn**



## Secretary/Treasurer’s Report for Board of Commissioners

Prepared for the January 4, 2024 OJRSA Board of Commissioners Meeting

Cash and investment information stated herein come from bank and other financial records as of: December 31, 2023

### UNRESTRICTED FUNDS CASH AND INVESTMENTS SUMMARY

Account/Fund Name	Cash (\$)	Investments (\$)	Total (\$)
Wholesale Operations & Maintenance (O&M)	489,981	980,000	1,469,981
Retail Operations & Maintenance (RO&M)	920,465	495,000	1,415,465
<b>TOTAL UNRESTRICTED FUNDS</b>	<b>1,410,446</b>	<b>1,475,000</b>	<b>2,885,446</b>

### RESTRICTED FUNDS CASH AND INVESTMENTS SUMMARY

Account/Fund Name	Cash (\$)	Investments (\$)	Total (\$)
Projects and Contingency (PCF)	241,579	1,225,000	1,466,579
Wholesale Impact Fund (WIF)	187,099	3,590,000	3,777,099
Retail Impact Fund (RIF)	0	0	0
<b>TOTAL RESTRICTED FUNDS</b>	<b>428,678</b>	<b>4,815,000</b>	<b>5,243,678</b>

#### Combined Total for All Funds

Cash  Investments  Combined

*See additional sheets for investment information*

#### Account Notes:

I believe there was an error made on my part in last month's report for the WIF account when I was pulling data prior to the bank statement. CDs that matured and were reinvested in November (but paid for in December) were incorrectly calculated in duplicate. The amounts shown on this report are correct.

### INDEPENDENT RECONCILIATION OF ACCOUNTS

All transactions for all funds have been satisfactorily reconciled by an independent accounting firm for the month of November 2023 :  YES  NO

See attached document from independent accountant.

#### Reconciliation Notes:

Still a discrepancy to the General Ledger of \$348.76. Ms. Stephens and backup accountant investigated this issue and cannot locate the problem. Okay per Jason White to create a journal entry to balance.

By my signature, to the best of my knowledge, I certify this report is accurate.

Lynn Stephens  
OJRSA Secretary/Treasurer



**INVESTMENTS UPDATE**

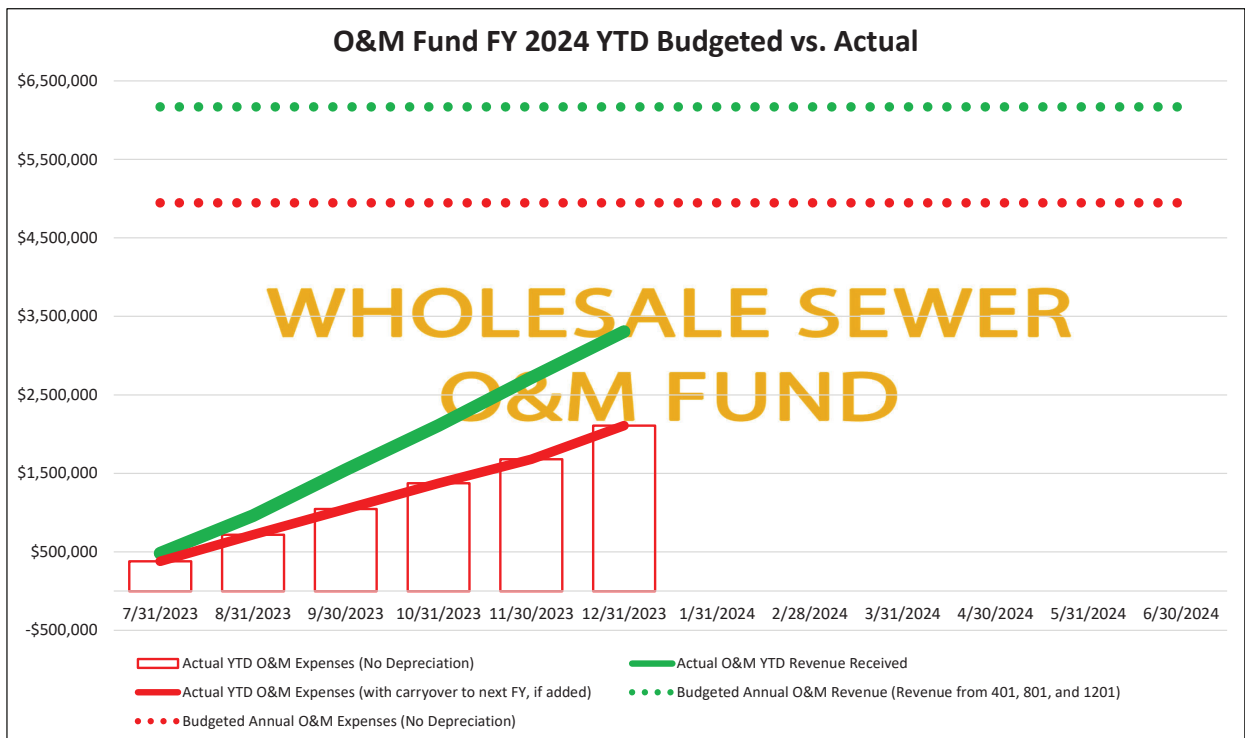
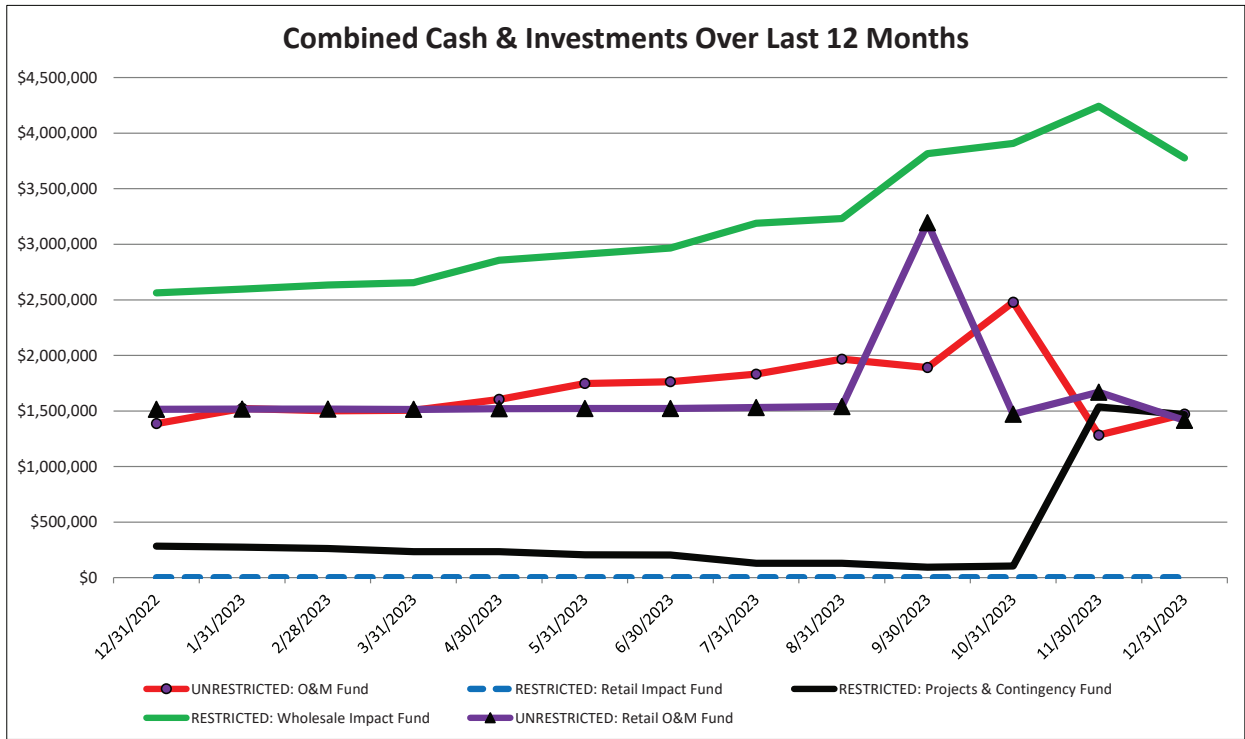
Maturing Investment	Fund Code	Maturity Date	Amount (\$)	To Be Reinvested?
Pathfinder Bank @ .70%	WIF	01/31/2024	250,000.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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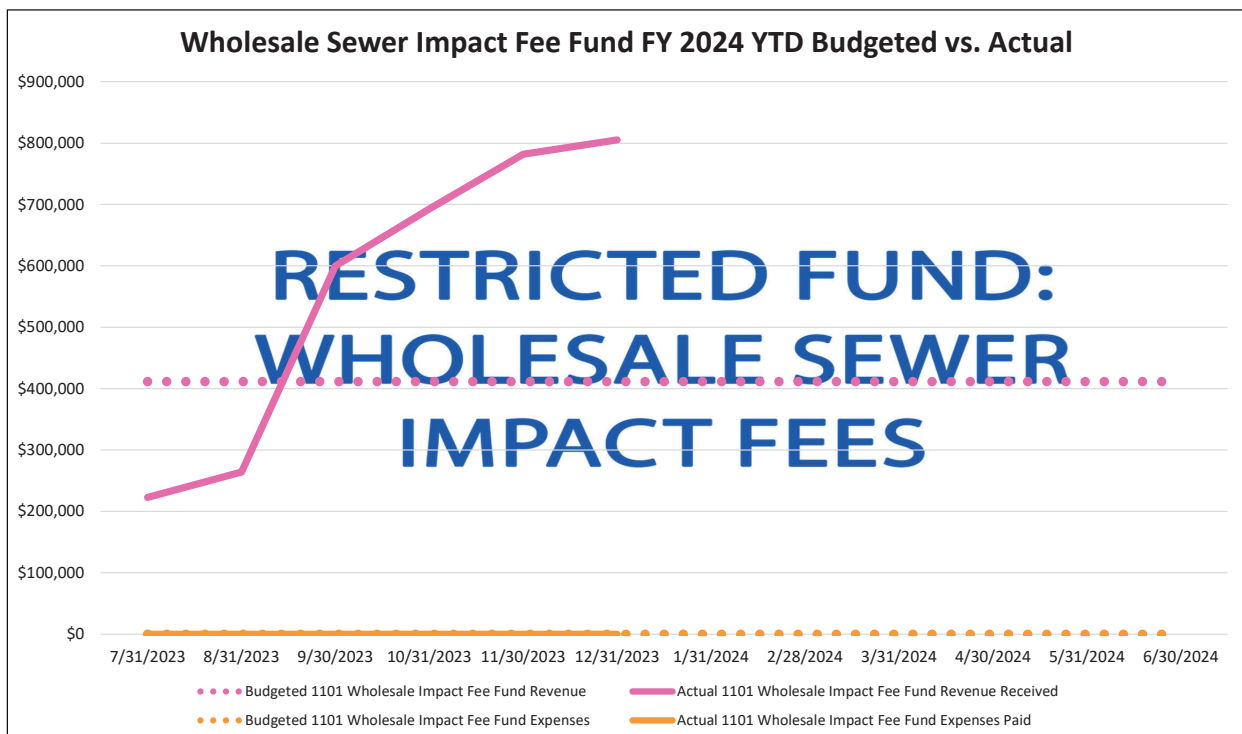
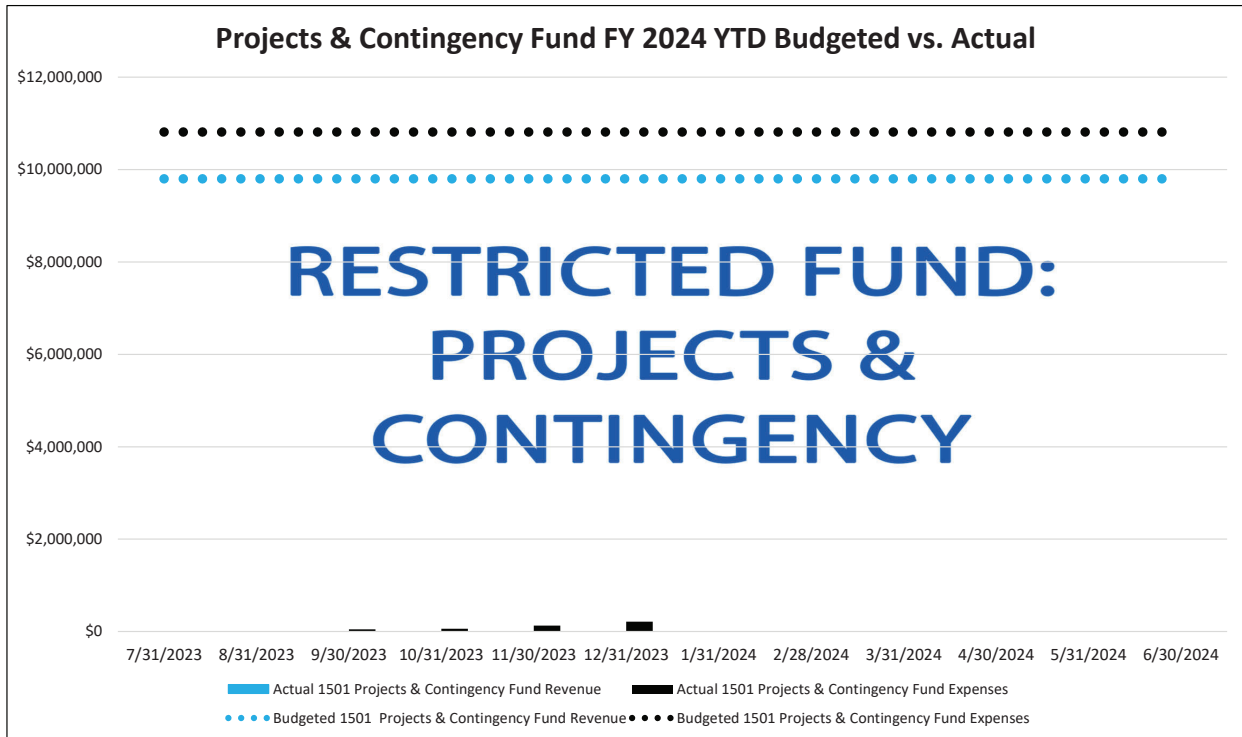
See additional sheets, if necessary

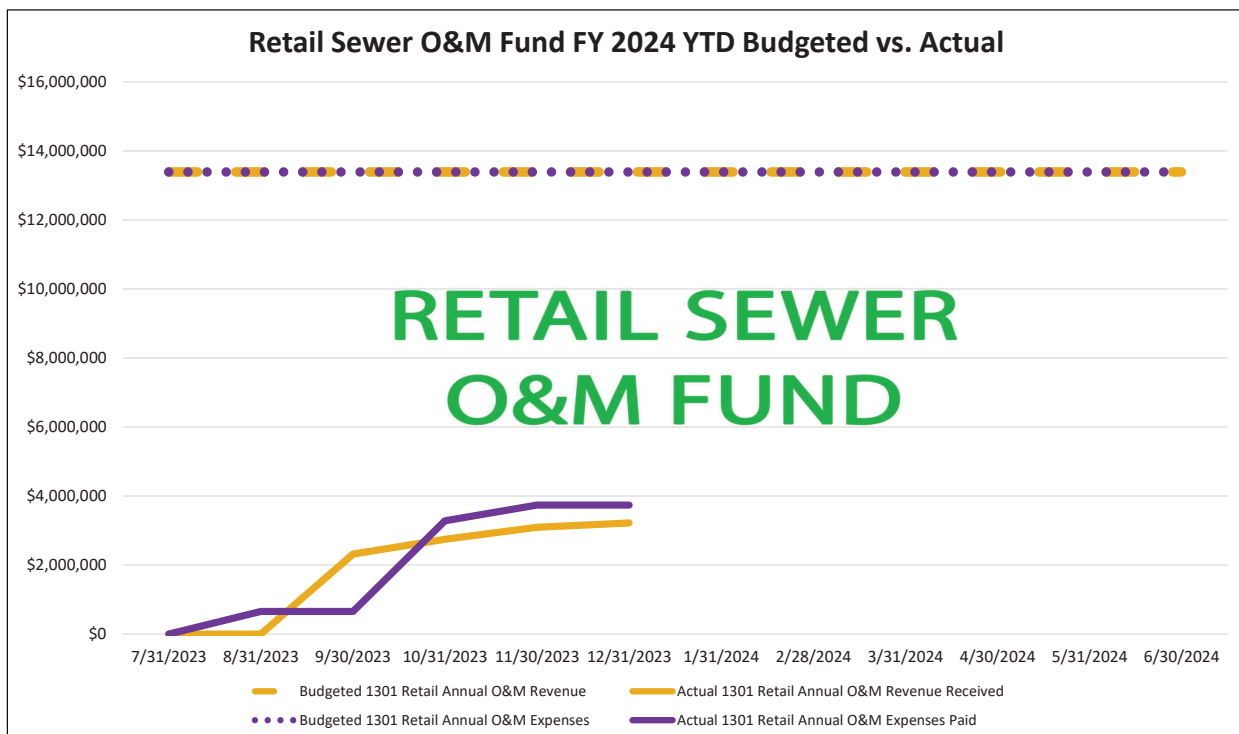
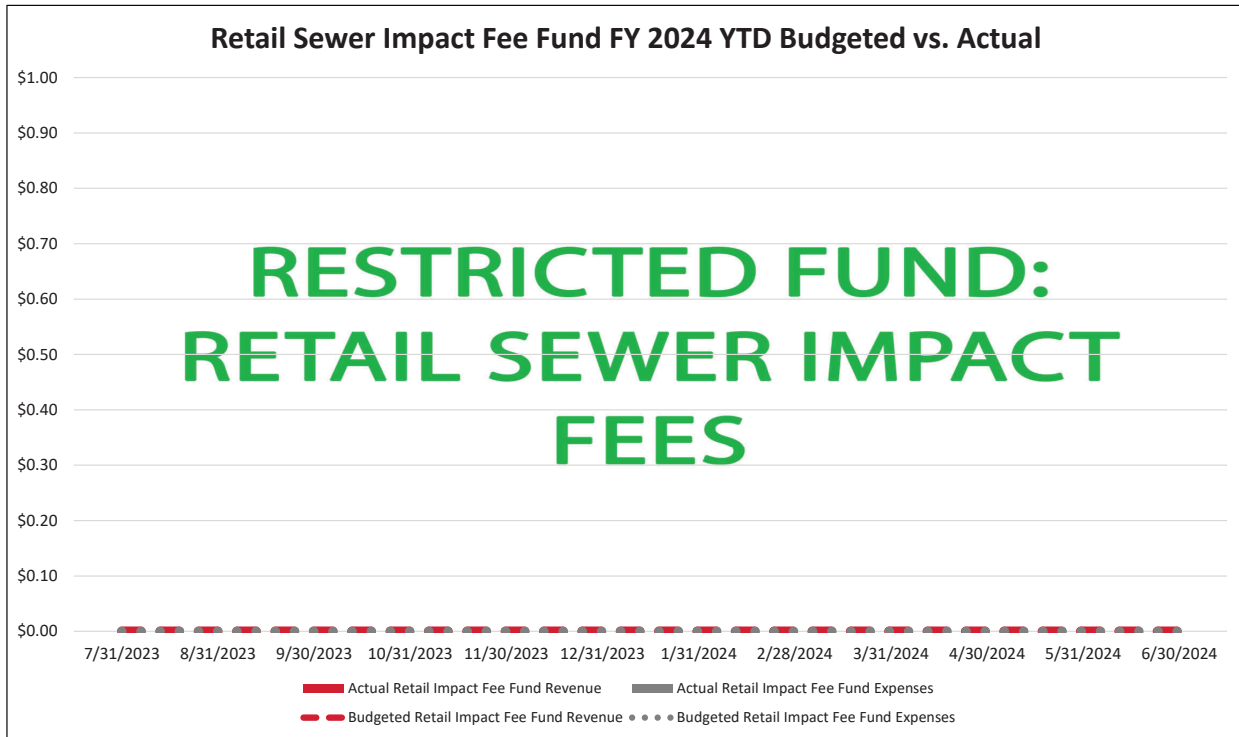
**Investment Notes:**

More CDs will be invested to bring account balances down again: Received monthly payment from Seneca towards latter part of month of December which brought O&M account back up. Received over \$500K reimbursement check from Oconee County at end of month that brought SSF balance back up.

*See additional sheets for 12-month cash and investment trends and other information.*









## Assessment of 2023 Agency Goals Established by Board of Commissioners at its January 5, 2023 Meeting

### Chairman Ramey

1. Establish regular meetings with Oconee County Council as it is important for the County to know that the OJRSA is here to serve them and that the OJRSA knows the County is on board with what the OJRSA is doing.
2. Continue keeping information as transparent as possible as to why the OJRSA is raising rates and why the OJRSA must maintain its system.

**Commissioner Moulder:** Provide clearer definitions of rate increases and a smaller time frame to finish priorities.

**Commissioner Faires:** Would like the OJRSA to schedule the next meeting with Oconee County Council.

### Commissioner Bronson:

1. The Executive Director should state in the meeting agendas what will be presented during the Executive Director's Update.
2. It would be helpful to have a map to look at that would show where current projects have not been built out yet and where capacity was requested but could not be granted.

### Commissioner Burton:

1. OJRSA needs a smaller, more attainable capital improvement plan for grants.
2. Place more information on the website for the Board to retrieve in lieu of sending it by email.

**Commissioner Parris:** Establish continued meetings with Oconee County and include Economic Development in with these discussions to work towards better communication between all parties.



**RESOLUTION 2024-05**

**Adoption of Procurement and Property Disposal Policy**

**A RESOLUTION ADOPTING A POLICY OF THE OCONEE JOINT REGIONAL SEWER AUTHORITY REGARDING FINANCIAL MATTERS; AND OTHER MATTERS RELATED THERETO.**

**NOW, THEREFORE, BE IT RESOLVED** by the Oconee Joint Regional Sewer Authority Commission (the “Commission”), the governing body of the Oconee Joint Regional Sewer Authority, South Carolina (“OJRSA”) in a meeting duly assembled as follows:

**Section 1 Findings.** The Commission hereby makes the following findings of fact in connection with the adoption of this resolution (this “Resolution”):

- A. OJRSA was established pursuant to Title 6, Chapter 25 of the Code of Laws of South Carolina 1976, as amended (the “Act”) by its three member-municipalities: the City of Seneca, the City of Walhalla, and the City of Westminster under the terms of an Intergovernmental Agreement dated October 31, 2007 (the “Agreement”).
- B. Pursuant to the Act and the Agreement, the Commission is tasked with the management and control over the joint regional sewer system owned by OJRSA.
- C. In fulfilling this charge, the Commission has determined it is in the best interest of OJRSA to adopt a formal policy regarding procurement and property disposal (the “*OJRSA Procurement and Property Disposal Policy*”).

**Section 2 Adoption.** In accordance with the findings above, the Commission hereby adopts the *OJRSA Procurement and Property Disposal Policy* as set forth at Exhibit A.

**Section 3 Effective Date.** The *OJRSA Procurement and Property Disposal Policy* is effective immediately upon the adoption of this Resolution. All resolutions or policies (including former financial policies) that are in conflict with the provisions of this Resolution or the *OJRSA Procurement and Property Disposal Policy* are hereby repealed to the extent of the conflict or inconsistency or in their entirety where the conflict or inconsistency is not severable from such document.

**DONE AND ADOPTED** by the Oconee Joint Regional Sewer Authority Board of Commissioners, Seneca, South Carolina on this 4th day of January 2024.

\_\_\_\_\_  
\_\_\_\_\_, **Chair**  
OJRSA Board of Commissioners

Attest: \_\_\_\_\_  
**Lynn Stephens, Secretary/Treasurer**  
OJRSA Board of Commissioners -and-  
OJRSA Office Manager

Approved as to form:

\_\_\_\_\_  
**Larry Brandt, OJRSA Attorney**

Date: \_\_\_\_\_

<seal>

**Exhibit A**

*Attached beginning on following page*

DRAFT  
For Consideration  
by OJRSA Board

**OJRSA Procurement and Property Disposal Policy**  
January 4, 2024

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**OJRSA Procurement and Property Disposal Policy**  
January 4, 2024

## **SECTION 0 – DEFINITIONS, ACRONYMS, AND FORMAT**

This Section of the *OJRSA Procurement and Property Disposal Policy* contains definitions, acronyms, abbreviations, and formatting that are specific to this document.

### **0.1 DEFINITIONS**

The following words, unless the context, custom or intent clearly indicates otherwise, shall mean:

Agency Property shall mean any movable thing or intangible item of value that is capable of being owned by the OJRSA and not recognized as a Capital Asset or Real Property.

Aggregate shall mean considering many purchases of Services, equipment, and/or materials as a single purchase if for one task or project. Example: If a broken pipe must be repaired, then the cost of the new pipe and appurtenances, stone, contractor fees, and other costs incurred by the OJRSA to perform the work shall all be considered as the aggregate cost to make the repair.

Alternate Project Delivery Method shall mean carrying out projects using custom methods to reduce risk and streamline Construction and design. Examples include, but are not limited to, design-build; design-bid-build; operation and maintenance; design-build-operate-maintain; design-build-finance-operate-maintain; Construction Manager At-Risk (CMAR); Construction Management Services; and other methods permitted by the State of South Carolina.

Bidder shall mean any person who has submitted a bid or quote in response to a solicitation for bids or quotes, whether formally through a Request for Bids or informally.

Bidder's List shall mean the list maintained by OJRSA containing the names and addresses of suppliers of various goods and Services from whom bids or proposals can be solicited.

Board shall mean the Board of Commissioners of Oconee Joint Regional Sewer Authority (OJRSA).

Business shall mean any corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

Business Day shall mean Monday through Friday, except recognized holidays as defined in the *OJRSA Employee Handbook* or when otherwise established by the OJRSA Board of Commissioners.

Calendar Day shall mean all days, including weekends and holidays. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for OJRSA, then the period shall run to the end of the next business day.

Capital Asset (or Asset) shall mean those defined in *OJRSA Financial and Accounting Policy Section 5 CAPITAL ASSETS AND DEPRECIATION* paragraphs.

Change Order shall mean any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. This could be referred to by other names, such as task order amendment, contract amendment, etc. *Also see Contract Modification.*

Construction Management At-Risk shall mean a project delivery method in which OJRSA awards separate contracts, one (1) for architectural and engineering Services to design an infrastructure facility and the second for Construction Management At-Risk Services with the Construction manager agreeing to construct the project for a Guaranteed Maximum Price (GMP) for the completed project, and to provide Construction management Services. If the Construction Management At-Risk contract is awarded before the project design is completed, the contractor will typically be consulted during the design process so that Construction issues can be identified and minimized.

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Construction Management Services shall mean Professional Services associated with contract administration, project management, and other specified Services provided in connection with the administration of a project delivery method authorized within the *OJRSA Procurement and Property Disposal Policy*. These Services may include Construction planning, coordination of Construction schedules to make best use of Subcontractors, addressing cost issues and quality of Construction issues for the Owner, supervision of the Construction process, assuring proper implementation of the design, and coordination with architects or engineers with regard to resolving any issues relating to project design, so that the final design provides the project specified in the RFP issued by OJRSA.

Construction Manager Agent shall mean a Business that has been awarded a separate contract with OJRSA to provide Construction Management Services but not Construction.

Construction Manager At-Risk shall mean a Business that has been awarded a separate contract with OJRSA to provide both Construction Management Services and Construction Services using the Construction Management At-Risk project delivery method. A contract with a Construction Manager At-Risk may be executed before completion of design. The risk assumed by this method of project Procurement is that all Construction Services can be completed in accordance with the final, approved design at a Guaranteed Maximum Price (GMP). The Construction Manager At-Risk assumes all financial risks if the project comes in over-budget and/or not in compliance with the plans and specifications.

Construction shall mean the process of building, altering, repairing, remodeling, improving, or demolishing any public structure or building or other public improvements of any kind to any OJRSA Real Property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings, or Real Property.

Contract Modification shall mean a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. *Also see Change Order.*

Contract shall mean any type of agreement, regardless of what it may be called, for the Procurement or disposal of Supplies, Services, or Construction.

Contractor shall mean any Person or business entity having a contract with OJRSA.

Data shall mean recorded information, regardless of form or characteristic.

Debarment shall mean the disqualification of a Person or business entity to receive invitations for bids, or requests for proposals, or the award of a contract by OJRSA, for a specified period of time.

Designee shall mean a duly authorized representative of the Procurement Officer with formal responsibilities under the *OJRSA Procurement and Property Disposal Policy* unless otherwise stated.

Employee shall mean an individual member of OJRSA staff as defined in the current version of the *OJRSA Employee Handbook*.

Executive Director shall mean the Executive Director of OJRSA.

Executive Level Staff shall mean Employees serving in positions identified within the appropriate hierarchical or organizational level as identified in APPENDIX A of this Policy.

Fiscal Year shall mean the budget year as defined within the current version of the *OJRSA Financial and Accounting Policy*.

Frontline Level Staff shall mean Employees serving in positions identified within the appropriate hierarchical or organizational level as identified in APPENDIX A of this Policy.

Governance Level Officials shall mean appointees serving on the OJRSA Board of Commissioners as identified within the appropriate hierarchical organizational level as identified in APPENDIX A of this Policy.

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Grant shall mean the furnishing of assistance, whether financial or otherwise, to any Person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of Supplies, Services, or Construction; a contract resulting from such an award is not a Grant but a Procurement contract.

Guaranteed Maximum Price shall mean a cost-reimbursement contract wherein the contractor shall be paid a fee based on a fixed rate or amount or on a fixed formula, but where the total contract amount, including the contractor's fee and general conditions, will not exceed a guaranteed maximum amount. The GMP Contract shall include all costs for the Construction and completion of the project, including all mobilization, general conditions, profit, and overhead cost of any nature.

Information Technology shall mean Data processing, telecommunications, and office systems technologies and information Services:

1. Data Processing means the automated collection, storage, manipulation and retrieval of Data and equipment such as terminals, document scanners, word processors, intelligent copiers, offline memory storage and printing systems, Data transmission equipment; and related software such as operating systems, library and maintenance routines and application programs.
2. Telecommunications means voice, Data, message, and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.
3. Office Systems Technology means office equipment such as computers, duplicating and photocopy machines, paper forms and records; microfilm and microfiche equipment and printing equipment and Services.
4. Information Services means the providing of consultant assistance for any aspect of Information Technology, systems, and networks.

Local Vendor shall mean a vendor that maintains an office with full-time staff employed by the vendor within the legally defined boundaries of OJRSA, the County of Anderson, the County of Pickens, the County of Greenville, the County of Abbeville, the County of Laurens, the County of Spartanburg, or the State of South Carolina.

Management Level Staff shall mean Employees serving in positions identified within the appropriate hierarchical organizational level as identified in APPENDIX A of this Policy.

May is permissive. Shall is mandatory and requires compliance.

Multi-Term Contract shall mean a contract established by the Procurement Officer for a specific product or service for a specified time.

Non-Appropriation Clause shall mean a contractual provision whereby a contract with OJRSA, which provides for the delivery of goods or services beyond the current budget year, will be terminated without penalty at the end of the Fiscal Year for which funds have been appropriated, unless funds are specifically appropriated for the payments required under such contract for the new budget year when the Board adopts its annual budget.

Offeror shall mean any Person who has submitted an offer in response to a solicitation made by OJRSA.

Payment Bond shall mean a labor and materials payment bond satisfactory to OJRSA, executed by a surety company meeting the criteria established by §29-6- 250 of the 1976 SC Code of Laws, as amended, or secured by cash, cashier's check or unconditional letter of credit issued by a commercial bank in South Carolina, to secure the payment of all Persons supplying labor, material or rental equipment to the contractor or its Subcontractors performing work under a contract for the improvement of Real Property or who are otherwise entitled to assert a claim against the bond under SC Code Ann. §29-6-250 or SC Code Ann. §11-1-120.

Performance Bond shall mean an undertaking satisfactory to OJRSA, executed by a surety company meeting the criteria established by OJRSA or by state law, or otherwise secured in a manner satisfactory to OJRSA, to secure the performance of the contract by the successful Bidder.

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Person shall mean any of the following in the singular or as a collection of an individual human, group of individual humans, corporate organization (including without limitation corporations, limited partnerships, and limited liability companies), business, union, committee, club, and/or other organization.

Personal Property shall mean any movable thing or intangible item of value that is capable of being owned by the OJRSA and not recognized as Real Property.

Procurement Officer shall mean an individual designated by Policy to serve as the Procurement official for OJRSA.

Procurement shall mean buying, purchasing, renting, leasing, or otherwise acquiring any Supplies, Services, or Construction. It also includes all functions that pertain to the obtaining of any supply, service, or Construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

Professional Services shall mean those Services which involve extended analysis, the exercise of discretion, independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Examples of some Professional Services may include, but are not limited to, contracts for Services with engineers, architects, land surveyors, accountants, financial advisors, underwriters, legal counsel, consultants, planners, psychologists, counselors, public relations, Information Technology professionals, interior designers, software developers, and graphic designers.

Programming shall mean the finalization of project objectives, determining the OJRSA's requirements for the facility to be constructed, and to set the scope of work. This phase is sometimes referred to as pre-design.

Publish shall mean the production or dissemination of information to the public through appropriate media including, but not limited to, newspapers of general circulation, direct mailings, flyers, pamphlets, and posting to internet web sites such as South Carolina Business Opportunities (SCBO) or any successor State Procurement web site.

Real Property shall mean any land, all natural resources and things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

Request for Bids or RFB shall mean written or published solicitation for competitive sealed bid responses, sometimes called a formal bid, to provide Supplies or Services, which ordinarily result in the award of the contract to the lowest Responsive and Responsible Bidder when price is the basis of award.

Request for Proposals or RFP shall mean a written or published solicitation used to solicit proposals from suppliers for commodities, such as goods and Services. Selection is based on evaluation of criteria and may include price and a preference for Local Vendors.

Request for Qualifications or RFQ shall mean a written or published solicitation for qualifications from prospective Bidders. Such request shall contain at a minimum a description of the goods or Services to be solicited by the Request for Bids, the general scope of the work, the deadline for submission of information, and how prospective Bidders may apply for consideration. The request shall require, as appropriate, information concerning the prospective Bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the Request for Qualifications shall be given in the manner provided in SECTION 5.1.2.

Responsible Bidder shall mean a Person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

Responsive Bidder shall mean a Person who has submitted a bid which conforms in all material respects to the requirements set forth in the Request for Bids.

Scrap shall mean Agency Property or a Capital Asset that has more value as a raw material than it has as a whole.

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Service Area shall mean Oconee County, South Carolina, and other areas where the OJRSA is authorized to collect and/or treat wastewater by statute or contract, which may include areas outside of Oconee County.

Services shall mean the furnishing of labor, time, or effort by a contractor, not required to deliver a specific end product, other than reports which are merely incidental to required performance. *This term includes consultant services other than architectural, engineering, land surveying, Construction management, and related services.*

Shall is mandatory and requires compliance. May is permissive.

South Carolina Business Opportunities shall mean the database for goods, Information Technology and Construction needs of state and local government or any comparable successor platform.

Specification shall mean any technical or purchase description or other description of the physical or functional characteristics, or of the nature of a supply, service, or Construction item. It may also include a description of any requirement for inspecting, testing, or preparing a supply, service, or Construction item for delivery.

Subcontractor shall mean any Person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with OJRSA.

Supervisory Level Staff shall mean Employees serving in positions identified within the appropriate hierarchical organizational level as identified in APPENDIX A of this Policy.

Supplies shall mean all Personal Property, including but not limited to equipment, rolling stock, materials, printing, insurance, and leases of Real Property but not Real Property or an interest in Real Property other than a lease-hold.

Surplus Property shall mean:

- A. OJRSA-owned Real Property, Capital Assets, Agency Property with remaining useful life that has no reasonable expectation of future use within the purposes of OJRSA; and
- B. Scrap.

Suspension shall mean the disqualification of a Person, contractor, or contract by OJRSA for an appropriate period of time or while an investigation may be in process to clarify any criminal, fraudulent, or improper conduct, failure or inadequacy of performance which may lead to Debarment.

Vendor shall mean a provider of goods or Services.

**0.2 ACRONYMS AND ABBREVIATIONS**

§: Section

e.g.: "for example" (Latin)

et seq.: "and the following" (Latin)

FOIA: Freedom of Information Act

GMP: Guaranteed Maximum Price

OJRSA: Oconee Joint Regional Sewer Authority

RFB: Request for Bids

RFP: Request for Proposals

RFQ: Request for Qualifications

SC: South Carolina

SC Code Ann.: South Carolina Code of Laws Annotated

SCBO: South Carolina Business Opportunities

SCDAH: South Carolina Department of Archives and History or any successor agency

SOQ: Statement of Qualifications

USC: United States Code

**0.3 DOCUMENT FORMAT**

This manual contains fonts and styles that mean certain things, including points of emphasis or reference other sections or materials. Below is a list of the types used within this manual and what it represents when encountered in the *OJRSA Procurement and Property Disposal Policy*.

**BOLD RED CAPITAL LETTERS**

Important point of emphasis

Dashed Underline

Name of a form to use for documenting a task referenced in the document

*Italics*

Title of books, manuals, policies, and other documents

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MIX-SIZED CAPITAL LETTERS

*Underlined Italics*

Name of sections in a book, manual, policy, or other document

A note of caution or warning

DRAFT  
For Consideration  
by OJRSA Board

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## **SECTION 1 – ADOPTION**

The *OJRSA Procurement and Property Disposal Policy* shall become effective in accordance with OJRSA Resolution 2024-05.

## **SECTION 2 – GENERAL PROVISIONS**

### **2.1 PURPOSE AND APPLICATION**

- A. **Purpose:** The *OJRSA Procurement and Property Disposal Policy* (“Policy”) is to provide for procedures and policies embodying sound principles of appropriately competitive Procurement and for equitable treatment in purchasing, to maximize purchasing value and to provide safeguards for maintaining quality, and integrity in compliance with SC Code Ann. §11-35-50.
- B. **Application:** This Policy applies to contracts for the Procurement of Supplies, Services, and Construction entered into by OJRSA upon and after the effective date of this Policy unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to all expenditures of public funds irrespective of their source.
- C. **Anti-Discrimination in Purchasing Practices:** The OJRSA does not discriminate against any vendor on the basis of race, color, religion, national origin, gender, age, disability, or veteran status in any area of the purchasing or property disposal process.
- D. **Specific Repealer:** All previously issued Resolutions, Rules, or Regulations pertaining to public Procurement for OJRSA are repealed.

### **2.2 PUBLIC ACCESS TO PROCUREMENT INFORMATION**

- A. Procurement information shall be a public record to the extent required by Title 30 Chapter 4 of the South Carolina Code of Laws, 1976, as amended, (the “Freedom of Information Act” or “FOIA”) with the exception that commercial, financial or proprietary information obtained in response to a ‘Request for Bids’ or ‘Request for Proposals’ or any type of bid solicitation need not be disclosed, if designated as privileged and confidential by the submitter of the bid or proposal and is exempt from disclosure under SC Code Ann. §30-4-40(a)(1) or (5)(c) or other provision of the FOIA. Such information can be returned to the submitter upon request after the proposals or bids have been evaluated; no duty of confidentiality arises with regard to such records while the records are in the possession of OJRSA.
- B. Refer to FOIA and any policies that may be separately promulgated by the Board under the FOIA for guidance on those matters which can and cannot be disclosed, and for other policies on disclosure of public information by OJRSA.
- C. Consult with appropriate legal counsel as appropriate.

### **2.3 COMPLIANCE WITH FEDERAL OR STATE PROCUREMENT REQUIREMENTS**

When the Procurement involves the expenditure of State or Federal assistance or contract funds, the Procurement shall be conducted in accordance with applicable State and Federal laws, regulations, and requirements which are mandatory even though such requirements may not be presently reflected in this Policy. Nothing in this Policy shall prevent OJRSA from complying with the terms and conditions of any Grant, gift, or bequest which are otherwise consistent with law.

### **2.4 ETHICS IN PROCUREMENT**

**Standards of Conduct:** In all actions involving Procurement of Supplies, Services, or Construction, OJRSA shall comply with the provisions of Chapter 13 of Title 8 (State Ethics Act), South Carolina Code of Laws, 1976, as amended and the *OJRSA Ethics Policy* adopted on September 11, 2023 as may be amended.



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## **SECTION 3 – PROCUREMENT ORGANIZATION**

### **3.1 RESPONSIBILITY FOR PROCUREMENT AND DELEGATION OF AUTHORITY**

- A. Procurement Officer
1. The Procurement Officer shall serve as the Procurement official of OJRSA.
  2. Unless a dedicated OJRSA Employee serves in a position whose job description includes tasks that primarily include Procurement on behalf of the entire OJRSA (not only a department or division of the organization), then the Executive Director will serve as the Procurement Officer.
  3. If the Procurement Officer position is vacated due to resignation, termination, or temporary absence, then the Board, by resolution, shall appoint an interim Procurement Officer until a full-time replacement is hired.
- B. Duties: The duties of the Procurement Officer include, but are not limited to:
1. Procure or supervise the Procurement of Supplies, Services, and Construction needed by OJRSA;
  2. Exercise general management supervision, control, and disposal of all inventories and Supplies belonging to OJRSA;
  3. Sell, trade, or otherwise dispose of surplus Supplies belonging to OJRSA as stated in SECTION 9; and
  4. Establish and maintain programs for the inspection, testing, and acceptance of Supplies, Services, and Construction.
- C. The Procurement Officer may delegate authority to purchase certain Supplies, Services, and/or Construction to other OJRSA officials or Designees, if such delegation is deemed necessary for the effective Procurement of those items. Certain delegations are functions of positions within the OJRSA and these positions are identified within this Policy based upon their hierarchical level within the agency. These levels can be viewed in APPENDIX A of this Policy and are defined within SECTION 0.1 DEFINITIONS and include (1) Governance Level officials, (2) Executive Level staff, (3) Management Level staff, (4) Supervisory Level staff, and (5) Frontline Level Staff.
- NOTE: Appendix A is subject to change based on organizational structure and may be updated as necessary by Executive Level staff or Governance Level officials (as stated within the illustration indicated within Appendix A) without begin considered as a substantive change to this Policy.*

### **3.2 ORGANIZATION OF PUBLIC PROCUREMENT**

#### **3.2.1 Centralization of Procurement**

Except as otherwise provided in this Section, the Procurement of Supplies, Services, and Construction is hereby vested in the Procurement Officer as provided in this Policy.

#### **3.2.2 Authority to Contract for Certain Goods and Services**

- A. Professional Services Exemption: The Procurement of Professional Services are expressly exempted from the provisions of this Policy; provided, if the contract engaging any such professional exceeds one (1) year or is valued at fifty thousand dollars (\$50,000) or more, it is formally approved by the Board in meeting duly assembled. However, the Board may, in its discretion, utilize any manner of solicitation in the hiring of any such professional, including basing any engagement on interviews of potential providers of Professional Services. The Professional Services of architects, engineers, or land surveyors, will comply with the requirements set forth at Section 40-3-300 of the SC Code Ann. for architects and Section 49-305 of the SC Code of Regulations for engineers & land surveyors.
- B. The Executive Director may contract for such Professional Services if the following conditions are met. Those contracts exceeding these conditions shall be submitted to the Board for approval.
1. The Professional Services to be contracted for were to perform a function in the approved OJRSA budget;
  2. Contract may be for up to one (1) year; and
  3. Contract does not exceed fifty thousand dollars (\$50,000).
- C. The Executive Director may also authorize the Procurement of repairs and equipment purchases if the following conditions are met. Those purchases exceeding these conditions shall be submitted to the Board for approval.

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1. The purchase being made is to perform a function in the approved OJRSA budget; and
2. The purchase does not exceed one hundred thousand dollars (\$100,000) or other condition as stated in SECTION 4.

**3.2.3 Auditing**

A review of this Policy and any activities of OJRSA shall be included in OJRSA's annual financial audit and reported to the Board annually.

**3.3 LEGAL AND AUDIT SERVICES**

No contract for the Services of general counsel or audit Services may be awarded without the approval of the Board.

**3.4 PUBLIC NOTICE**

- A. Adequate public notice of a Request for Bids shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice may include utilization of a Bidder's List through direct solicitation, publication in a newspaper of general circulation in this region of the State of South Carolina, and in electronic media such as the South Carolina Business Opportunities (SCBO) or through another means of electronic advertising, as well as OJRSA's website. Bids shall be received for at least ten (10) business days and the length of time will be posted in the public notice of a Request for Bids.
- B. Addendums: After public notice has been given, any questions received by OJRSA or other pertinent information regarding the project shall be provided to all interested parties through addendums. Once issued, addendums should be provided directly to all parties by email that have expressed interest either through notification to the OJRSA about the specific project and/or attended a pre-submittal meeting as well as posted on the OJRSA website. In the case of providing the addendums by email, it shall be the responsibility of those who expressed interest in the solicitation to provide the OJRSA with the appropriate email address to submit any supplemental information to following the issuance of the RFB.

**3.5 EXEMPTIONS**

Supplies and Services that are exempt from the competitive requirement of this Policy shall be procured by the appropriate authorization and procedures. Examples include, but not limited to:

- A. Items detailed in SECTION 5.3.
- B. Informal quotes, which are detailed in Section 4(4.5)(A)
- C. Published books, maps, periodicals, and technical pamphlets;
- D. Postage stamps and postage fees;
- E. The following professions are exempt from competitive bidding requirements, although competitive bidding may be used when in the best interest of the OJRSA: Professional Services where the Person employed is customarily employed on a fee basis rather than by competitive bidding. Examples would include, but are not limited to, Information Technology providers, appraiser, architects, engineers, auditor, lawyers (and all legal Services), physician, insurance, land-surveying, banking, certain consulting Services and other Professional Services.
- F. Other normal, fixed, recurring operation expenses such as utilities, insurance, financial Services such as banking and investments, training and educational programs and materials, association memberships, Employee travel, etc.

**3.6 RIGHT TO WAIVE**

Under circumstances, where it is in the best interest of OJRSA to waive the requirements pursuant to this Policy, the Procurement Officer or his/her Designee is to do so only after a justification in writing proving there was a genuine attempt to follow the requirements in this Section to provide a competitive environment, and authorization by the Executive Director. For the right to waive for competitive sealed bids, see SECTION 5.1.2(O).

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### **3.7 REPORTS AND RECORDS**

#### **3.7.1 Reporting of Anti-Competitive Practices**

When any information concerning collusion or other anti-competitive practices among any Bidders or Offerors comes to the attention of OJRSA, notice of the relevant facts shall be transmitted to the Procurement Officer, who shall then consult with the OJRSA Attorney about the matter.

#### **3.7.2 Procurement Records**

- A. **Contract File**: All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained in a contract file by the Procurement Officer or his/her Designee.
- B. **Retention of Procurement Records**
  1. **General Records**: All Procurement records shall be retained and disposed of in accordance with *OJRSA Records Retention Policy* or in accordance with the express written conditions of another regulatory body, whichever is longer.
  2. **Federally Funded Projects**: If a contract is being funded *in whole or in part* by assistance from a federal agency, then all Procurement records pertaining to that contract shall be maintained for at least five (5) years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.

### **3.8 FUTURE REGULATIONS**

The Board may pass additional regulations. No new regulation shall change any commitment, right, or obligation of OJRSA, or any contractual right or duty in existence at the time of the new regulation without the consent of the other party to the contract.

## **SECTION 4 – PROCUREMENT THRESHOLDS AND AUTHORIZATION LEVELS**

### **4.1 SEPARATION OF PURCHASES PROHIBITED**

**LARGE PROJECTS, SERVICES, OR PURCHASES MAY NOT BE BROKEN DOWN INTO SMALLER ONES TO CIRCUMVENT THE MAXIMUM FEE LIMITS ESTABLISHED IN THIS POLICY.**

### **4.2 PURCHASES LESS THAN \$5,000**

*If the amount is equal to exactly five thousand dollars (\$5,000), then this Paragraph is not applicable.*

- A. **Compliance with 4.1 above is mandatory.**
- B. Competitive bidding is not required for qualified purchases for goods and Services is less than five thousand dollars (\$5,000).
- C. Each department should exercise good judgment when making purchases within this threshold. Supervisor Level staff for each department shall ensure funds are budgeted sufficiently prior to committing to the purchase.
- D. At the discretion of the appropriate department's Supervisor Level staff member, a purchase requisition or order will be issued to the qualified vendor as recommended by the department staff.
- E. The department's Supervisor Level staff member must approve the purchase requisition or order in writing or through the required financial software that authorizes the purchase.

### **4.3 PURCHASES \$5,000 TO LESS THAN \$10,000**

*If the amount is equal to exactly ten thousand dollars (\$10,000), then this Paragraph is not applicable.*

- A. Competitive pricing is required when qualified purchases for goods or Services is greater than or equal to five thousand dollars (\$5,000) but less than ten thousand dollars (\$10,000). **Compliance with 4.1 above is mandatory.**
- B. Supervisor Level staff for each department shall oversee the Procurement of verbal or written quotations from Vendors in order to obtain competitive pricing from at least three (3) Vendors. **If three (3) quotes cannot be solicited, refer to SECTION 3.6.**

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- C. Documentation of the quotes shall be included with the purchase requisition or order. Absent unique circumstances, the award will be made to the lowest responsible quote.
- D. The department's Supervisor Level staff then the department's Management Level staff must approve of any purchase within this range in writing or through required financial software before the purchase is made.

**4.4 PURCHASES \$10,000 TO LESS THAN \$25,000**

*If the amount is equal to exactly twenty-five thousand dollars (\$25,000), then this Paragraph is not applicable.*

- A. Compliance with 4.1 above is mandatory.
- B. Competitive pricing is required when qualified purchases for goods or Services is greater than or equal to ten thousand dollars (\$10,000) but less than twenty-five thousand dollars (\$25,000).
- C. Management Level staff for each department (or his/her Designee) shall request written quotations from vendors in order to obtain competitive pricing from at least three (3) vendors. Quotes received electronically (e.g., by email) shall be sufficient for purposes of establishing the writing requirement. *If three (3) quotes cannot be solicited, refer to SECTION 3.6.*
- D. Documentation of the quotes shall be included with the purchase requisition or order. Absent unique circumstances, the award will be made to the lowest responsible quote.
- E. Before the purchase is made, first the department's Management Level staff then the Procurement Officer must approve of any purchase within this range in writing or through required financial software.

**4.5 PURCHASES \$25,000 TO LESS THAN \$100,000**

*If the amount is equal to exactly one hundred thousand dollars (\$100,000), then this Paragraph is not applicable.*

- A. Compliance with 4.1 above is mandatory.
- B. Informal quotes for bids and solicitations for proposals are required when qualified purchases for goods or Services is greater than twenty-five thousand dollars (\$25,000) but less than one hundred thousand dollars (\$100,000) unless using an Indefinite Delivery Contract to procure Services (see SECTION 5.5.3).
- C. The OJRSA, acting through the Procurement Officer, shall issue a written Request for Bids (RFB), Request for Proposals (RFP), or Request for Qualifications (RFQ), depending on the type of Procurement. Typically, commodity items are procured using a bid process where an award is made to the lowest responsive and responsible Bidder. However, in some instances an RFP or RFQ may be used.
- D. Before the purchase is made, first the department's Management Level staff, then the Procurement Officer, then the Executive Level staff must approve of any purchase within this range in writing or through required financial software.
- E. To the extent any items in SECTION 4.5 has not been authorized in the OJRSA's approved budget, or such items exceed twenty-five percent (25%) of the amount budgeted for such item, such purchase shall additionally be approved by the OJRSA Board of Commissioners prior to executing the purchase for the goods or Services.
- F. *In the case of an RFB*, three (3) written bids, at minimum, should be solicited from at least three (3) qualified sources on the Bidder's Lists. Bids received electronically (e.g., by email) shall be sufficient for purposes of establishing the writing requirement. *If three (3) quotes cannot be solicited, refer to SECTION 3.6.* Award shall be made to the lowest Responsive and Responsible Bidder. For normal competitive purchases and before the purchase is made, the Procurement Officer must approve of any purchase within this range in writing or through required financial software.
- G. *In the case of an RFP/RFQ*, award is made in accordance with the evaluation criteria, terms and conditions stated in the request solicitation. Purchases, inclusive of Grants, those with federal funds, or those requiring contracts shall be referred to the Procurement Officer for processing. For normal competitive purchases and before the purchase is made, the Procurement Officer must approve of any purchase within this range in writing or through required financial software.

**4.6 PURCHASES \$100,000 AND GREATER**

- A. Compliance with 4.1 above is mandatory.
- B. Unless exempted as stated in SECTION 5.1.1 or for solicitations requested through the issuance of a RFP/RFQ, competitive sealed bidding (see SECTION 5.1.2) is required for all purchases of one hundred thousand dollars (\$100,000) or more unless using an Indefinite Delivery Contract to procure Services (see SECTION 5.5.3).

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- C. For RFP/RFQ solicitations, a minimum of ten (10) business days must be allowed for Offerors to submit a statement of qualifications (SOQ) following the advertisement.
- D. Procurements involving Construction may use an Alternate Product Delivery Method described in SECTION 5.3.3, which the Procurement Officer determines is most advantageous to the OJRSA and will result in the most timely, acceptable quality, economical, and successful completion of a project.
- E. To the extent any items in SECTION 4.6 has not been authorized in the OJRSA's approved budget, or such items exceed twenty-five percent (25%) of the amount budgeted for such item, such purchase shall additionally be approved by the OJRSA Board of Commissioners prior to executing the purchase for the goods or Services.
- F. It is anticipated that a contract or an agreement shall be executed and delivered by the OJRSA for all purchases equal to or in excess of one hundred thousand dollars (\$100,000). All contracts or agreements for purchases meeting this criteria shall be reviewed by the OJRSA Attorney and approved by the OJRSA Board of Commissioners.

## **SECTION 5 – SOURCE SELECTION AND CONTRACT FORMATION**

### **5.1 METHODS OF SOURCE SELECTION**

#### **5.1.1 Methods of Selection**

**UNLESS OTHERWISE REQUIRED BY LAW OR THIS POLICY, ALL OJRSA CONTRACTS SHALL BE AWARDED BY COMPETITIVE SEALED BIDDING, PURSUANT TO SECTION 5.1.2 OF THIS POLICY WITH EXCEPTIONS PROVIDED BELOW IN THESE AND OTHER SECTIONS:**

- A. SECTION 3.5 EXEMPTIONS;
- B. SECTION 4
  - 1. 4.2 PURCHASES LESS THAN \$5,000;
  - 2. 4.3 PURCHASES \$5,000 TO LESS THAN \$10,000;
  - 3. 4.4 PURCHASES \$10,000 TO LESS THAN \$25,000;
  - 4. 4.5 PURCHASES \$25,000 TO LESS THAN \$100,000;
- C. SECTION 5
  - 1. 5.1.3 COOPERATIVE CONTRACTS;
  - 2. 5.1.3 COMPETITIVE FIXED PRICE BIDDING;
  - 3. 5.1.5 COMPETITIVE BEST VALUE BIDDING;
  - 4. 5.1.6 COMPETITIVE ONLINE BIDDING;
  - 5. 5.1.7 COMPETITIVE SEALED PROPOSALS;
  - 6. 5.1.8 PROCUREMENTS AT AUCTION;
  - 7. 5.2 CANCELLATION AND/OR REJECTION OF PROCUREMENT;
  - 8. 5.3 EXCEPTIONS TO BIDDING;
- D. SECTION 6
  - 1. 6.1.3 CONSTRUCTION PROCUREMENT PROCEDURES; and
  - 2. 6.1.5 CONSTRUCTION MANAGER AT-RISK.

#### **5.1.2 Competitive Sealed Bidding**

- A. Condition for Use: Purchases as stated in SECTION 4.6 and other appropriate Policy sections shall be awarded by formal competitive bidding except whereas otherwise provided in SECTION 5.1.1.
- B. Request for Bids: A Request for Bids (RFB) shall be issued in an efficient and economical manner to at least three (3) qualified sources on the Bidder's Lists appropriate for the particular Procurement and advertised by public notice (see SECTION 3.4). If there are not at least three (3) qualified sources on the Bidder's List, then it shall be acceptable to solely advertise by public notice *unless explicitly waived in writing by the Procurement Officer*. The RFB shall include specifications and all contractual terms and conditions applicable to the Procurement and shall specify the method and procedures for submitting a bid to OJRSA.
- C. Bidders' Lists and Prequalification of Major Equipment for Construction Projects

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1. Bidder's Lists: All sources requesting to be put on a Bidder's List shall be so enlisted, unless the Procurement Officer or an OJRSA engineer makes a written determination that the source should not be enlisted in accordance with regulations approved by the Board, including the *OJRSA Development Policy*. Decisions to reject enlistment shall be appealable to the Executive Director. The Procurement Officer shall ensure that the Bidder's List contain all known sources interested in bidding on Procurement and shall review periodically the Bidder's List and require the addition to such lists of any appropriate sources which are not contained therein.
2. Prequalification of Major Equipment Manufacturers: Until the end of the design phase of a project, OJRSA will offer opportunities for major equipment manufacturers to be listed on the Major Equipment Bidder's List for future consideration if they prequalify major equipment. An evaluation of the equipment will be made by OJRSA at no cost to the manufacturer if submittals are made before the end of the project design phase. If a manufacturer misses this deadline for prequalification, and the contractor submits an "or equal" substitution during the bidding process, the manufacturer or contractor shall pay OJRSA consulting engineer directly for the cost of the evaluation. The contractor must obtain the approval of the "or equal" substitution by OJRSA prior to the contractor's submission of their bid. Any submission after the date defined in the bid will not be allowed. The submittal by the manufacturer or the contractor for an "or equal" substitution before or after that deadline shall include the following:
  - a. Descriptive information including information on materials used, minimum design standards, standard design features, manufacturing processes and facilities, and similar information which indicate experience and expertise in the manufacture of the product being evaluated including costs, warranty information, electrical requirements and diagrams, and erection requirements and weights.
  - b. Performance specifications applicable to the manufacturer's standard design which indicates the level of performance to be expected from the product.
  - c. A complete set of submittal drawings of similar products which have been completed and placed into operation.
  - d. A list of existing installations of products similar in type and size, information regarding experience at the installations.
  - e. A brochure or equivalent material indicating technical capabilities, field service capabilities and financial information.
  - f. A complete list of all requirements of the drawings and specifications with which the manufacturer cannot conform, including reasons why alternate features are considered equivalent.
  - g. An operational and maintenance history of the equipment, including incidents of failure and repair during the warranty period of the product. If no history is available equal to the time provided for in the warranty, then it should be provided from the time of origin of the product.
  - h. A chart showing operation and maintenance and carrying costs based upon the above history.
  - i. A chart showing the projection of the cost of operation, maintenance, and carrying cost until the date the manufacturer estimates the equipment will have to be replaced, together with the documentation upon which the projection is based.
  - j. A list indicating the availability of spare parts and the time necessary for delivery.
- D. Bid Opening: Sealed bids shall be submitted to OJRSA securely sealed in an envelope with such designation as may be provided for in the Request for Bids. Bids shall be opened publicly in the presence of three (3) or more witnesses at the time and place as stated in the Request for Bids. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each Bidder, shall be recorded. The record and each bid shall be open to public inspection after award and may be posted on OJRSA website. Records of bids shall be maintained in compliance with the *OJRSA Records Retention Schedule* as approved by the SCDAAH.
- E. Bid Evaluation and Acceptance
  1. Bids shall be unconditional and accepted without alteration or correction, except as authorized in this

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Policy.

2. Bids shall be evaluated based on the requirements set forth in the Request for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Request for Bids shall set forth the evaluation criteria to be used. No criteria may be used in the bid evaluation that are not set forth in the Request for Bids.\*
  3. Preference shall be given to Local Vendors in accordance with PARAGRAPH 5.1.2(I).
  4. If less than three (3) bids are received and OJRSA receives a declination to bid from prospective Bidders, the Procurement Officer or Executive Director can move forward with the Procurement using the bid(s) received.
  5. If less than three (3) bids are received and there is no declination to bid from others, then the Procurement Officer or Executive Director can proceed with the Procurement using the bids received only if requirements as stated in SECTION 5.1.2(O) are met.
- F. Correction or Withdrawal of Bids, Cancellation of Awards: Corrections or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. After the deadline to submit bids or following bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of OJRSA or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel contracts after award but prior to performance, shall be supported by a written decision made by the Procurement Officer and approved by the Executive Director but only upon a written request by a Bidder and when documents are clearly evident the error or mistake and which demonstrates the Bidder will suffer substantial loss. Any correction causing the Bidder to become low Bidder must be clearly evident by an analysis of the bid documents.
- G. Discussion with Bidders: As provided in the Request for Bids, discussions may be conducted with apparent Responsive Bidders for the purpose of clarification to assure full understanding of the requirements of the Request for Bids. All bids, in the Procurement Officer's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any Bidder's bid must be documented in writing by the Procurement Officer and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request.
- H. Tie Bids: If two (2) or more Responsible and Responsive Bidders are tied in price, after considering the Local Vendor preference set forth at PARAGRAPH 5.1.2(I) while otherwise meeting all of the required conditions, awards are determined by the following criteria, which are listed in order of importance. The first item in the order shall qualify one (1) Bidder over the other(s). If one (1) Bidder does not meet the qualification as stated below and there are two (2) or more Bidders remaining, then the Procurement Officer shall continue to progress through the criteria until only one (1) qualified Bidder remains.
1. Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in the OJRSA's Service Area.
  2. Tie bids involving South Carolina firms both of whom are located in OJRSA Service Area must be resolved by the flip of a coin in the office of the Procurement Officer witnessed by all interested parties.
  3. If there is a South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.
  4. Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the State must be resolved in favor of the South Carolina commodity.
  5. In all other situations where bids are tied, the award will be made to the tied Bidder offering the quickest delivery time, or if the Bidders have offered the same delivery time, the tie shall be resolved by the flip of a coin in the office of the Procurement Officer, witnessed by all interested parties.
- I. Local Vendor Preference:
1. To qualify for a Local Vendor preference the following requirements must be certified by the vendor

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\* To the extent it is being utilized, Local vendor preference should be stated in the RFB and reference SECTION 5.1.2(I) of this Policy.

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using the Local Vendor Preference Registry and Certification Application Certification form and including it with their original submittal. This form, a copy of which is in APPENDIX B, shall be made available to interested parties in the section of the OJRSA website where solicitations are posted and directly from the OJRSA.

- a. The vendor must maintain an office within the legally defined boundaries of the OJRSA Service Area, the County of Anderson, the County of Pickens, the County of Greenville, the County of Abbeville, the County of Laurens, the County of Spartanburg, or the State of South Carolina;
  - b. The vendor must have a majority of full-time employees, chief officers, and managers regularly conducting work and business from the office listed in (I)(1)(a) above. The vendor must have maintained the eligible office for at least three (3) consecutive years in addition to the qualifications under subsection (I)(1)(a) above; and
  - c. The vendor must submit a local preference certified application in a format and manner determined by the Procurement Director.
2. For purposes of evaluating bids and establishing the lowest Responsive Bidders, Bidders who qualify as Local Vendors pursuant to the definition in SECTION 0.1 shall qualify for Local Vendor preference based on the location of the eligible office as follows:
    - a. Eligible office located within the limits of the OJRSA Service Area will be entitled to a bid price reduction of four percent (4%), not to exceed a maximum of reduction of five thousand dollars (\$5,000).
    - b. Eligible office located in the County of Anderson, the County of Pickens, the County of Greenville, the County of Abbeville, the County of Laurens, or the County of Spartanburg will be entitled to a bid price reduction by three percent (3%), not to exceed a maximum reduction of four thousand dollars (\$4,000).
    - c. Eligible office located in the State of South Carolina that does not qualify for one (1) of the higher percentage preferences will be entitled to a bid price reduction of one percent (1%), not to exceed a maximum reduction of two thousand five hundred dollars (\$2,500).
  3. A vendor may claim only one (1) preference based upon the location of the eligible office.
  4. A vendor with no eligible office may claim a Local Vendor preference in instances where Subcontractors are proposed that would be eligible under PARAGRAPH 5.1.2(I)(2).<sup>†</sup>
    - a. In order to claim a preference based upon eligible Subcontractors, the proposer must certify the value of the Subcontractor award compared to the total contract amount. The Subcontractor must submit a certified application as required in PARAGRAPH 5.1.2(I)(2) and be fully qualified under the provisions of this Section. The preference will be the product of the percentage of the contract price certified to eligible Subcontractors applied to the preference percentage for which the Subcontractors would be eligible.
    - b. A Subcontractor preference may not exceed the dollar limits imposed in PARAGRAPH 5.1.2(I)(2) based upon the eligible offices of the respective Subcontractors.
  5. The final contract price will reflect the original bid amount before the Local Vendor preference was applied.
  6. All RFPs and RFQs for Professional Services, as well as other methods of source selection as stated in SECTION 5.1 shall be excluded from the Local Vendor preference.
  7. Local Vendor preference shall not be utilized to the extent prohibited by grant funding or other restrictions as determined by the Executive Director.

<sup>†</sup> If Subcontractors eligible for Local Vendor preference account for  $\chi\%$  of the price (where " $\chi$ " represents a percentage number), then the bidder will receive  $\chi\%$  of the preference for which the Subcontractor is eligible for in accordance with Section 5.1.2(I). Example: An out-of-state contractor hires a Subcontractor eligible for the Local Vendor preference under 5.1.2(I)(2)(a) who's cost accounts for 20% of the total bid. The contractor's total bid is for \$80,000. To determine the Local Vendor preference, first multiply the 4% eligible Local Vendor discount by 20% to get the contractor's Local Vendor preference rate ( $4\% \times 20\% = 0.8\%$ ), then multiply that percentage by the total cost of the \$80,000 bid to get the Local Vendor preference amount they are eligible for as a bidder ( $\$80,000 \times 0.8\% = \$640$ ). Then subtract this amount from their bid to get the preference price ( $\$80,000 - \$640 = \$79,360$ ), which is what shall be compared to the other submittals when determining the low bidder for the project.



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8. The Procurement Officer or his/her Designee shall maintain a registry of eligible vendors and contractors. Inclusion on the registry will be limited to those having submitted a request for inclusion and certified eligibility based upon the criteria established in Section 5.1.2(1)(1).
  9. In instances where a contract price is anticipated to exceed one hundred thousand dollars (\$100,000) and the use of Subcontractors is reasonably anticipated, the Procurement Officer or his/her Designee shall require documentation by proposers of attempts to include Local Vendors. At minimum, the documentation shall substantiate attempts to include Subcontractors eligible for a preference of three percent (3%) or greater to equal a goal amount of fifteen percent (15%) or more of the proposed contract price.<sup>‡</sup> A proposer should provide an explanation of reasons that the local preference goals were not achieved. Documentary requirements shall be included in the bid specifications and only apply when the requirements are so documented. There shall be no penalty for failure to meet the fifteen percent (15%) goal. However, failure to include required documentation shall be considered an informality in the bid.
  10. The Procurement Officer or his/her Designee shall establish procedures to promote the various Local Vendor preferences and to provide notice in bid solicitations of the availability of the preferences. If a Local Vendor preference is not recited in a bid solicitation, it shall not be applicable to such bidding.
- J. Award: The Contract shall be awarded with reasonable promptness by written notice from the Procurement Officer to the lowest Responsive and Responsible Bidder whose bid meets the requirements and criteria set forth in the RFB. In the event all bids for a Construction project exceed available funds as approved by the Board, and the low bid from a Responsive and Responsible Bidder does not exceed such funds by more than ten percent (10%), the Executive Director is authorized in situations where time and economic considerations preclude re-solicitation of work of a reduced scope to negotiate an adjustment in the bid price, including changes in the bid requirements, with the low Responsive and Responsible Bidder, in order to bring the bid within the amount of available funds. The Executive Director may, in their discretion and only as provided for in the RFB, waive any technicalities with respect to any bid and reject any or all bids. The Executive Director may, at their discretion, require the posting of a bond, including without limitation a Performance Bond, by any successful Bidder, provided, however, that the requirement of any bond shall be stated in the Request for Bids.
- K. Request for Qualifications Prior to Request for Bids: Prior to soliciting bids, the Procurement Officer may issue a Request for Qualifications (RFQ) from prospective Bidders. After receipt of the SOQ to the RFQ from prospective Bidders, the prospective Bidders shall be ranked from most qualified to least qualified on the basis of the information provided. Bids shall then be solicited from at least the top two (2) prospective Bidders by means of an RFB. The failure of a prospective Bidder to be selected to receive the RFB shall not be grounds for protest.
- L. Receipt and Safeguarding of Bids: The Procurement Officer shall be responsible for handling all bids (including modifications) received prior to the time of opening and shall be kept secure, unopened in a locked bid box or safe. Necessary precautions shall be taken to ensure the security of the bid box or safe. Prior to bid opening, information concerning the identity and number of bids received shall not be available to the public. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.
- M. Canceled Request for Bids: If an RFB is canceled, bids shall be returned to the Bidders.
- N. Minor Informalities and Irregularities: A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the Request for Bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the Supplies or performance of the contract, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, Bidders. The Procurement Officer may either give the Bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is

<sup>‡</sup> On large projects (greater than or equal to one hundred thousand dollars (\$100,000)) where there will be Subcontractors, the Bidder must try and use local Subcontractors. If they are able to find Local Vendors, then they may be eligible for one of the discounts as stated in SECTION 5.1.2(1)(2). They do not have to seek Local Vendors for every Subcontractor that they use but should strive to use Local Vendors for at least fifteen percent (15%) of the contract value.

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to the advantage of OJRSA. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

1. Failure of a Bidder to return the number of copies of signed bids required by the solicitation;
  2. Failure of a Bidder to furnish the required information concerning the number of the Bidder's employees or failure to make a representation concerning its size;
  3. Failure of a Bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of that authorization, and the bid carries that signature or the unsigned bid is accompanied by other material indicating the Bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bids or a letter signed by the Bidder with the Bidder referring to and identifying the bid itself;
  4. Failure of a Bidder to acknowledge receipt of an amendment to a solicitation, but only if
    - a. The bid received indicates in some way that the Bidder received the amendment, such as where the amendment added another item to the solicitation and the Bidder submitted a bid, therein provided that the Bidder states under oath that it received the amendment prior to bidding and that the Bidder will stand by its bid price, or
    - b. The amendment has no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or the relative standing of Bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;
  5. Failure of a Bidder to furnish an affidavit concerning affiliates;
  6. Failure of a Bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;<sup>5</sup>
  7. Failure of a Bidder to furnish cut sheets or product literature;
  8. Failure of a Bidder to furnish certificates of insurance;
  9. Failure of a Bidder to furnish financial statements;
  10. Failure of a Bidder to furnish references;
  11. Failure of a Bidder to furnish its Bidder number; and
  12. Notwithstanding SC Code Ann. §40-11-180, the failure of a Bidder to indicate their contractor's license number or other evidence of licensure, provided that no contract shall be awarded to the Bidder unless and until the Bidder is properly licensed under the laws of South Carolina.
- O. Right to Waive (for Competitive Sealed Bids only): Under circumstances, where it is in the best interest of the Agency to waive the requirements pursuant to this Section, the Procurement Officer or his/her Designee is to do so only after a justification in writing proving there was a genuine attempt to follow the requirements in this Section to provide a competitive environment, and authorization by the Executive Director.
- P. Responsibility
1. OJRSA Standards of Responsibility: Factors to be considered in determining whether a Bidder is a Responsible Bidder include whether a prospective contractor or vendor has:
    - a. Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
    - b. A satisfactory record of performance;
    - c. A satisfactory record of integrity;
    - d. Qualified legally to contract with OJRSA and has not been barred; and
    - e. Supplied all necessary information in connection with the inquiry concerning responsibility.
  2. Duty of Contractor to Supply Information: The prospective contractor shall supply information requested by the Procurement Officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible

<sup>5</sup> If there is an instance where the OJRSA receives federal and/or state grant money for a project, it is typical that all vendors and contractors must include an Equal Employment Opportunity and Affirmative Action clause in their documents. If a vendor fails to include in a bid subject to these requirements it would be consider a minor informality and they can be given an opportunity to cure.

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if such failure is unreasonable.

3. **Demonstration of Responsibility:** The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
    - a. Evidence that such contractor possesses such necessary items;
    - b. Acceptable plans to subcontract for such necessary items; or
    - c. Documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
  4. **Justification for Contract Award:** Before awarding a contract, the Procurement Officer must be satisfied that the prospective contractor is responsible.
  5. **Written Determination of Non-responsibility:** If a Bidder or Offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Procurement Officer. A copy of the determination shall be sent promptly to the non-Responsible Bidder or Offeror. The final determination shall be made part of the Procurement file.
- Q. **Negotiations After Unsuccessful Competitive Sealed Bidding:** When bids received pursuant to an RFB are considered unreasonable by OJRSA and exceed available funds or were not independently reached in open competition, and it is determined in writing by the Procurement Officer or his/her Designee that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this Section, provided that the lowest base bid does not exceed available funds by an amount greater than ten percent (10%) of the budget established for that portion of the work. However, each Responsible and Responsive Bidder who submitted a bid under the original request for bids must be notified of the determination and given a reasonable opportunity to negotiate. The negotiated price must be lower than the lowest bid received under the original solicitation. OJRSA may change the scope of the work to reduce the cost to be within the established Construction budget.
- R. When the lowest base bid received pursuant to an RFB exceeds approved available funds and OJRSA is able to identify additional funds for the project, in the amount of the difference between the lowest base bid and the approved available funds for the project, OJRSA, in its discretion, may elect to accept the bid.

**5.1.3 Cooperative Contracts**

- A. The State of South Carolina enters into a variety of contracts with manufacturers and/or dealers utilized by the state and local governments at all levels. The Procurement Officer or his/her Designee may procure without competitive bids equipment, Supplies, or Services which are under current state contract. These commodities may include, but are not limited to, vehicles, tractors, backhoes, janitorial supplies, office supplies, traffic control equipment, and fuel.
- B. The United States of America General Services Administration (GSA) contract holders make their products available to state and local governments for the same prices charged to federal government agencies. Purchasing may procure without competitive bids, equipment or supplies under contract with GSA, also referred to as Federal Supply Schedules.
- C. Various support agencies and organizations, such as the Municipal Association of South Carolina, Sourcewell, and National Association of Counties have made available to local governments cooperative Procurement programs. The programs are generally the result of a thorough competitive bidding process at the state or national level which fully satisfies the OJRSA's Procurement requirements.
- D. The Procurement Officer or his/her Designee may utilize such cooperative Procurement programs as needed.
- E. Third-party participants claiming pre-negotiated prices and/or Procurement approval by government parties as stated within this Section shall provide written documentation of such approval.

**5.1.4 Competitive Fixed Price Bidding**

- A. **Conditions for Use:** When the Procurement Officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to OJRSA, a contract may be entered into by competitive fixed price bidding subject to the provisions of SECTION 5.1.2 and the ensuing regulations, unless otherwise provided for in this Section.
- B. **Fixed Price Bidding:** The purpose of fix priced bidding is to provide multiple sources of supply for specific

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goods or Services based on a pre-set maximum price which OJRSA will pay for such goods or Services.

- C. **Public Notice:** Adequate public notice of the solicitation shall be given in the same manner as provided in SECTION 3.4.
- D. **Pricing:** OJRSA shall establish, prior to issuance of the fixed price bid, a maximum amount it will pay for the goods or Services desired.
- E. **Evaluation:** Vendor or contractor responses to the fixed price bid will be reviewed to determine if they are responsive and responsible.
- F. **Discussion with Responsive Bidders:** Discussions may be conducted with apparent Responsive Bidders to assure understanding of the requirements of the fixed priced bid. All Bidders, whose bids need clarification in the Procurement Officer's sole judgment, shall be accorded such an opportunity.
- G. **Award:** Award must be made to all Responsive and Responsible Bidders to OJRSA request for competitive fixed price bidding. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.
- H. **Bids Received After Award:** Bidders not responding to the initial fixed price bid may be added to the awarded vendors list provided the Bidder furnishes evidence of responsibility and responsiveness to OJRSA original fixed price bid as authorized by the solicitation.
- I. **Remedies:** The failure of a specific Offeror to receive business, once it has been added to the awarded vendors list, shall not be grounds for a protest.

#### **5.1.5 Competitive Best Value Bidding**

- A. **Conditions for Use:** When the Procurement Officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to OJRSA, a contract may be entered into by competitive best value bidding subject to the provisions of SECTION 5.1.2 and the ensuing sections, unless otherwise provided for in this Section.
- B. **Best Value Bidding:** The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific goods or Services based on pre-determined criteria identified by OJRSA.
- C. **Public Notice:** Adequate public notice of the request for the solicitation shall be given in the same manner as provided in SECTION 3.4.
- D. **Bid Opening:** At bid opening, the only information that will be released is the names of the participating Bidders. Cost information will be provided upon request after the ranking of Bidders and the issuance of award.
- E. **Evaluation Factors:** The best value bid shall state the factors to be used in determination of award and the numerical weighting for each factor. Cost must be a factor in determination of award and cannot be weighted at less than sixty percent (60%). Best value bid evaluation factors may be defined to include, but are not limited to, any of the following as determined by the Procurement Officer in its sole discretion and is not subject to protest:
  1. Operational costs that OJRSA would incur if the bid is accepted;
  2. Quality of the product or service, or its technical competency;
  3. Reliability of delivery and implementation schedules;
  4. Maximum facilitation of Data exchange and systems integration;
  5. Warranties, guarantees, and return policy;
  6. Financial stability;
  7. Consistency of the proposed solution with OJRSA planning documents and announced strategic program direction;
  8. Quality and effectiveness of business solution and approach;
  9. Industry and program experience;
  10. Prior record of performance;
  11. Expertise with engagement of similar scope and complexity;
  12. Extent and quality of the proposed participation and acceptance by all user groups;
  13. Proven development methodologies and tools; and
  14. Innovative use of current technologies and quality results.

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- F. Discussion with Responsive Bidders: Discussions may be conducted with apparent Responsive Bidders to assure understanding of the best value bid. All Bidders, whose bids, in the sole judgment of OJRSA, need clarification, shall be provided such an opportunity.
- G. Selection and Ranking: Bids shall be evaluated by using only the criteria stated in the best value bid solicitation and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the score for each participating Bidder. Once the evaluation is complete, all Responsive Bidders shall be ranked from most advantageous to least advantageous to OJRSA, considering only the evaluation factors stated in the best value bid.
- H. Award: Award must be made to the Responsive and Responsible Bidder whose bid is determined, in writing, to be most advantageous to OJRSA, taking into consideration all evaluation factors set forth in the best value bid. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

**5.1.6 Competitive Online Bidding**

- A. Conditions for Use: When the Procurement Officer determines that online bidding is more advantageous than any other Procurement methods provided by this Policy, a contract may be entered into by competitive online bidding, subject to the provisions of SECTION 5.1.2 and the ensuing regulations, unless otherwise provided in this Section.
- B. Bidding Process: The solicitation must designate both an opening date and time to begin receiving bids and a closing date and time after which bids will not be accepted. The closing date and time need not be a fixed point in time but may remain dependent on a variable specified in the solicitation. At the opening date and time, OJRSA must begin accepting real-time electronic bids. The solicitation must remain open until the closing date and time. OJRSA may require Bidders to register before the opening date and time and, as a part of that registration, to agree to any terms, conditions, or other requirements of the solicitation. Following the receipt of the first bid after the opening date and time, the lowest bid price must be posted electronically to the Internet and updated on a real-time basis. At any time before the closing date and time, a Bidder may lower the price of its bid, except that after the opening date and time, a Bidder may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after opening date and time. Except for bid prices, bids may be modified only as otherwise allowed by this Regulation. A bid may be withdrawn only in compliance with SECTION 5.1.2. If a bid is withdrawn, a later bid submitted by the same Bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the closing date and time, OJRSA may cancel the solicitation in accordance with this Policy or reopen electronic bidding to all prior Bidders by giving notice to all prior Bidders of both the new opening date and time and the new closing date and time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.
- C. Receipt and Safeguarding of Bids: Other than price, any information provided by OJRSA by a Bidder must be safeguarded as required by PARAGRAPH 5.1.2(L).
- D. Provisions Not to Apply: PARAGRAPH 5.1.2(D) shall not apply to solicitations issued pursuant to this Section.

**5.1.7 Competitive Sealed Proposals**

- A. Conditions for Use: Subject to SECTION 5.1.1, when the Procurement Officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to OJRSA, a contract may be entered into by competitive sealed proposals.
- B. Request for Proposals or Qualifications: Proposals shall be solicited through a Request for Proposal (RFP) or Request for Qualifications (RFQ).
- C. Public Notice: Public notice of the RFP or RFQ shall be given in the same manner as provided in SECTION 3.4.
- D. Submittal Opening: Submittals may be publicly opened and only the names of the Offerors disclosed at the proposal opening. Contents of competing Offerors shall not be disclosed during the process of review and negotiation. Proposals shall be open for public inspection after Contract award. \*\* Privileged and confidential information meeting the requirements as such in this Policy and marked as such in each proposal shall not be disclosed without written consent of the Offeror.

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\*\* All notes and scoring criteria made by evaluators must be maintained as they are subject to FOIA.

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- E. Negotiation/Selection Committee: The Executive Director shall establish a negotiation/selection committee to review submittals, rank which Person or firm is most qualified, conduct interviews if necessary, and make a recommendation to the Executive Director and the Board for procuring Services as stated within this Section. The committee shall be made up of at least three (3) people qualified to make selections based on experience in the function or operation of the proposed Services, finances, and the like. The committee may be made up of those employed by the OJRSA, Board members (but not to constitute a quorum of any committee, including ad hoc committees, without complying with applicable FOIA laws), and non-OJRSA employees and must be made up of an odd number of representatives but shall not more than seven (7) members.
- F. Interviews with Interested Firms
1. Following receipt of information from all interested Persons and firms, the Procurement Officer may hold interviews with no more than three (3) Persons or firms who have responded to the advertisement and who are deemed most qualified on the basis of information available prior to the interviews. A list of firms selected for interview shall be sent to all firms that submitted information in response to the advertisement, prior to the date selected for the interviews. The purpose of the interviews shall be to provide such further information as may be required by the Procurement Officer to fully acquaint themselves with the relative qualifications of the several interested firms.
  2. If interviews are conducted, the Procurement Officer's determination as to which will be interviewed shall be in writing and shall be based upon his/her review and evaluation of all submitted materials. The written report of the Procurement Officer shall specifically list the names of all Persons and firms that responded to the advertisement and enumerate the reasons for selecting those to be interviewed.
- G. Selection and Ranking of the Most Qualified: The Procurement Officer shall evaluate each of the Persons or firms interviewed in view of their:
1. Past performance;
  2. The ability of professional personnel;
  3. Demonstrated ability to meet time and budget requirements;
  4. Location;
  5. Recent, current, and projected workloads of the firms;
  6. Creativity and insight related to the project; and
  7. Related experience on similar projects.
- Based upon these evaluations, the Procurement Officer shall select up to the top three (3) Persons or firms which, based on his/her objective numerical ratings of each firm based on the qualifications listed in the Published solicitation of qualifications, and are the best qualified, after ranking all in priority order. The Procurement Officer's report ranking the Persons or firms shall be in writing and shall include Data substantiating these determinations.
- H. Notice of Selection and Ranking: When it is determined by the Procurement Officer that the ranking report is final, written notification of the selection shall be immediately sent to all Persons or firms interviewed.
- I. Negotiation of Contract: The Procurement Officer or his/her Designee shall negotiate a contract for Services with the most qualified Person or firm at a compensation which is fair and reasonable to OJRSA. Should OJRSA be unable to negotiate a satisfactory contract with this Person or firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third most qualified until a satisfactory contract has been negotiated. If no agreement is reached with one (1) of the three (3), additional Persons or firms in order of their competence and qualifications shall be selected after consultation with the agency selection committee, and negotiations shall be continued in the same manner until agreement is reached.
- J. Discussion with Responsible Offerors and Revisions to Submittals: As provided in the RFP or RFQ, discussions may be conducted with Responsible Offerors who submit responses for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of submittals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by

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competing Offerors.

- K. **Evaluation Factors:** The RFP or RFQ shall state the evaluation factors in relative order of importance and may include a weighted percentage for scoring submittals.
- L. **Award:** Award shall be made to the Responsible Offeror whose proposal is determined in writing to be most advantageous to OJRSA taking into consideration the evaluation factors set forth in the RFP or RFQ. No other factors or criteria shall be used in the evaluation. The Contract file shall contain the basis on which the award is made.

**5.1.8 Procurements at Auction**

- A. OJRSA, having knowledge of an auction, may elect to participate. The Procurement Officer or his/her Designee shall:
  - 1. Survey the needed items being offered at auction to ascertain their condition and usefulness;
  - 2. Determine a fair market value for new like items through informal quotes; and
  - 3. Determine the fair market value from similar items considering age and useful life, and estimated repair cost and delivery cost, if any, of the desired items.
- B. Using this information, the Procurement Officer or his/her Designee shall determine the maximum price that it can pay for each item desired. At the auction, the Procurement Officer or his/her Designee shall not exceed the maximum price so determined.

**5.2 CANCELLATION AND/OR REJECTION OF PROCUREMENT**

- A. A Request for Bids, a Request for Proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part in the solicitation when it is in the best interest of OJRSA. The reason therefore shall be made part of the contract file.
- B. Rejection of Request for Bids or Requests for Proposals
  - 1. **Application:** Unless there is a compelling reason to reject one (1) or more bids, award will be made to the lowest Responsible and Responsive Bidder. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective Bidders of any resulting modification or cancellation, thereby permitting Bidders to change their bids and preventing the unnecessary exposure of bid prices.
  - 2. **Cancellation of Bid/Proposals Prior to Award:** When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met the Request for Bids shall be canceled. Requests for Bids may be canceled after opening, but prior to award, when such action is consistent with PARAGRAPH 5.1.2(F) and the Procurement Officer determines in writing that:
    - a. Inadequate or ambiguous specifications were cited in the Request for Bids;
    - b. Specifications have been revised;
    - c. The Supplies or Services being procured are no longer required;
    - d. The Request for Bids did not provide for consideration of all factors of cost to OJRSA;
    - e. Bids received indicate that the needs of OJRSA can be satisfied by a less expensive article differing from that on which the bids were invited;
    - f. All otherwise acceptable bids received are at unreasonable prices;
    - g. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
    - h. At the discretion of OJRSA.
- C. **Rejection of Individual Bids**
  - 1. **General Application:** Any bid which fails to conform to all requirements of the RFB except as provided in PARAGRAPH 5.1.2(N) shall be rejected.
  - 2. **Alternate Bids:** Any bid which does not conform to the specifications contained or referenced in the Request for Bids may be rejected unless the Request for Bids authorized the submission of alternate bids and the Supplies offered as alternates meet the requirements specified in the Request for Bids.
  - 3. **Nonresponsive Bids:** Any bid which fails to conform to the material bid specifications, the delivery

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- schedule, or permissible alternates thereto stated in the Request for Bids, or other material requirements of the RFB, may be rejected as nonresponsive.
4. **Nonresponsive Conditions:** A bid should be rejected when the Bidder attempts to impose conditions which would modify requirements of the Request for Bids or limit their liability to OJRSA, since to allow the Bidder to impose such conditions would be prejudicial to other Bidders. For example, bids should be rejected in which the Bidder:
    - a. Attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to OJRSA cannot be determined;
    - b. Fails to state a price and in lieu thereof states that price shall be “price in effect at time of delivery”;
    - c. States a price but qualified such price as being subject to “price in effect at time of delivery”;
    - d. When not authorized by the Request for Bids, conditions, or qualifies their bid by stipulating that their bid is to be considered only if, prior to date of award, Bidder receives (or does not receive) award under a separate Procurement;
    - e. Requires OJRSA to determine that the Bidder’s product meets OJRSA specifications;
    - f. Fails to submit supplemental documents or information, such as proof of insurance, by deadlines as stated in the RFB;
    - g. Limits the rights of OJRSA under any contract clause; or
    - h. Attaches any condition or qualification that reduces the Bidder’s legal liability or increases OJRSA responsibility.
  5. **Imbalanced Bids:** Imbalanced bids will not be accepted (e.g., offering unreasonably low price on some items and compensating for them with unreasonably high prices on other items.)
  6. **Price Unreasonableness:** Any submittal may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price.<sup>††</sup>
  7. **Bid Guarantee Requirement:** When a bid guarantee is required and a Bidder fails to furnish it in accordance with the requirements of the RFB, the bid shall be rejected.
  8. **Incomplete or Unsigned Bids:** The Procurement Officer shall reject any incomplete or unsigned bids except those deemed immaterial as stated in SECTION 5.1.2(N).<sup>††</sup>
  9. **Exceptions to Rejection Procedures:** Any bid received after the Procurement Officer or his/her Designee has declared that the time set for bid opening has arrived shall be rejected unless a bid was in the possession of the designated purchasing office and had been misplaced by OJRSA Employees in that office. In this event, the Procurement Officer shall annotate the bid tabulation and consider the misplaced bid along with the other previously received bids.

## 5.3 EXCEPTIONS TO BIDDING

### 5.3.1 Emergency or Critical Procurement

- A. Notwithstanding any other provision of this Policy, the Procurement Officer may make or authorize others to make emergency Procurements when there exists a threat to public health or welfare, critical economy or efficiency, or safety under emergency conditions, or where normal daily operations are affected; provided that such emergency Procurements shall be made with such competition as is practicable under the circumstances.
- B. Emergency Procurement Notification and Documentation Requirements: The following requirements are established for estimated costs for emergency purchases. **IF THE COST AT THE BEGINNING OF THE PROJECT IS UNKNOWN BUT IT IS SUSPECTED THAT IT COULD EQUAL OR EXCEED TWENTY-FIVE THOUSAND DOLLARS**

<sup>††</sup> If the Procurement Officer determines that a bid is unreasonably high, then it may be outright rejected and does not have to be formally evaluated. This determination must be made in writing. If the bid is unreasonably low, it warrants further investigation to confirm the Offeror’s submittal complies with the specifications as listed in the solicitation. If it is found that the low bid(s) did not comply, then it may be rejected by the Procurement Officer.

<sup>††</sup> Anything beyond this is subject to automatic rejection.



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**(\$25,000), THEN FOLLOW THE PROTOCOL AS STATED IN 5.3.1(B)(1) below).**

1. Procurement Equal to or Exceeding \$25,000: A Management Level staff member making or directing others to make emergency purchases shall be required to notify the Procurement Officer and provide a written document of the Procurement of Services and materials for all purchases equal to or exceeding twenty-five thousand dollars (\$25,000) in the Aggregate within one (1) Business Day of when the project began. The record shall set forth the contractor's name, the amount and type of the contract as applicable, a listing of the item(s) or service(s) procured, and a written documentation of the basis for the emergency and for the selection of the particular contractor.
2. Procurement Less than \$25,000: A Management Level staff member making or directing others to make emergency purchases shall be required to notify the Procurement Officer and provide a written document of the Procurement of Services and materials for all purchases less than twenty-five thousand dollars (\$25,000) in the Aggregate within five (5) Business Days. The record shall set forth the contractor's name, the amount and type of the contract as applicable, a listing of the item(s) or service(s) procured, and a written documentation of the basis for the emergency and for the selection of the particular contractor.

C. Protest Bond for Emergency or Critical Procurement: See SECTION 8(J).

**5.3.2 Certain Construction Projects (Generally)**

When negotiating Construction projects, the OJRSA understands and recognizes that competitive bidding may not be the best project delivery method. As a result, the Procurement Officer, in consultation with qualified consultants, is authorized to determine the project delivery method deemed most advantageous to the OJRSA, which is the method which is intended to result in the most timely, economical, and successful completion of the project. The Procurement Officer will have the final approval for the selection of the project delivery method.

**5.3.3 Alternative Product Delivery Methods**

- A. In addition to those methods specifically identified in this Policy, the Board by resolution may:
1. Approve as an Alternate Project Delivery Method any combination of services for the design, Construction, financing, and operations and maintenance of an infrastructure facility that the Board in its discretion may adopt; and
  2. Establish additional or alternative processes and procedures for procuring goods and Services under this Policy or combine the processes and procedures set forth in this Policy to meet the needs of the Procurement in question. Such resolution shall set forth the process to be employed, the facts and circumstances that justify the alternative project delivery method, the interests of OJRSA that will be furthered by it and shall contain findings establishing that the method chosen is appropriately competitive. For purposes of the specific Procurement in question, the process adopted by the Board shall function in all respects as if it were adopted as a formal amendment to this Policy and included herein as an alternative Procurement process.
- B. Without in any way limiting the foregoing, the Board may adopt Alternate Project Delivery Methods that involve:
1. Prequalification of Bidders through an RFQ process;
  2. Soliciting bids for the prices or Guaranteed Maximum Prices for a project in whole or by component parts, including unit prices where practicable, through sealed bids;
  3. Evaluation of proposals based on multiple enumerated factors including price weighted at least sixty percent (60%) of the total; or
  4. Negotiation with one (1) or more leading Bidders to finalize a contract most advantageous to OJRSA.
- C. Alternative Methods for Construction Projects
1. Design-Bid-Build: A traditional project delivery method for designing and constructing facilities in which the OJRSA sequentially awards separate contracts, the first for architectural and engineering Services to design the project and the second, based on competitive bidding by the OJRSA, for Construction of the project according to the final design. The Procurement of Construction Management Services (see 5.3.3(C)(7) below) for such a project would make this method a specialized method of Procurement. Errors and omissions insurance is required to cover the architectural and engineering

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- Services provided by the Offeror.
2. **Design-Build:** A project delivery method in which the OJRSA enters into a single contract for design and Construction of a project. Procurement of design-build Services is appropriate when the OJRSA does not have the in-house capability to design and supervise the project, and when compliance with technical regulations and best practices for Construction is critical. With the assistance of experts, the OJRSA may develop performance specifications for the desired infrastructure which can then be used to develop design requirements for submission to design-build firms for development. The design-build Services may be awarded to either (a) the Responsive and Responsible Bidder where price is a factor, or (b) the responsible contractor (selected from a group of pre-approved contractors) who is the low Bidder. Errors and omissions insurance is required to cover the architectural and engineering Services provided by the Offeror.
  3. **Operation and Maintenance:** A project delivery method whereby the OJRSA enters into a single contract for the routine operation, routine repair, and routine maintenance of an existing, or to-be-constructed, project. Operation and maintenance Services shall be procured from prequalified contractors by utilizing competitive sealed proposals submitted in response to an RFP (5.1.7), which has established the Supplies and Services required to maintain and operate infrastructure facilities.
  4. **Design-Build-Operate-Maintain:** A project delivery method in which the OJRSA enters into a single contract for design, Construction, operation and maintenance of a project over a contractually defined period. Ownership of the facility may be in the name of the OJRSA or leased by the OJRSA from a non-profit corporation. All or a portion of the funds required to pay for the Services provided by the contractor during the contract period are either appropriated by the OJRSA prior to award of the contract or secured by the OJRSA through fee or user charges or other sources of revenue. The OJRSA should not participate in financing any such project without an opinion from bond counsel or tax counsel. Errors and omissions insurance is required to cover the architectural and engineering Services provided by the Offeror.
  5. **Design-Build-Finance-Operate-Maintain:** A project delivery method in which the OJRSA enters into a single contract for design, Construction, finance, operation and maintenance of a project over a contractually defined period. No funds are appropriated to pay for any part of the Services provided by the contractor during the contract period. Procurement of design-build-finance-operate-maintain Services shall generally follow procedures outlined above for design-build projects with the additional elements of financing and operation incorporated into the project. A preliminary determination by the OJRSA should have been made that project revenues would be sufficient, over the length of the proposed contract, to cover design, Construction, finance, and operations, and that the traditional design-bid-build approach is inappropriate or impracticable for this project. The OJRSA should not participate in financing any such project without an opinion from bond counsel or tax counsel. Errors and omissions insurance is required to cover the architectural and engineering Services provided by the Offeror.
  6. **Construction Management At-Risk:** A project delivery method in which the OJRSA awards separate contracts, one (1) for architectural and engineering Services to design a project and the second to a Construction Manager At-Risk for both preconstruction and Construction of the project according to the design specifications of the architect or engineer. The contract with the Construction Manager At-Risk may be awarded before completion of design. The Construction Manager At-Risk shall assume the risk for Construction, rehabilitation, alteration, or repair of the project at a fixed or Guaranteed Maximum Price (GMP). This is addressed in more detail in SECTION 6.1.5.
  7. **Construction Management Services:** A project delivery process by which a qualified third-party provides Construction leadership with a defined scope throughout various phases of the project (e.g. planning, design and Construction). Construction Management Services are typically procured using competitive sealed bidding (5.1.2) or competitive sealed proposals (5.1.7) and bids may be awarded to either (a) the Responsive and Responsible Bidder where price is a factor or (b) the responsible contractor (selected from a group of pre-approved contractors) who is the low Bidder. Construction Management Services, specifically including a Construction Manager At-Risk, may be procured for any of

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the alternative delivery methods authorized herein. Errors and omissions insurance may be required to cover any architectural and engineering Services provided by the Offeror.

8. Other special project delivery methods or combinations of the above may be utilized provided that the OJRSA can demonstrate that the delivery methods meet the intent of this Policy and receives the approval of the Procurement Officer and/or Board, as appropriate. Insurance of various types may be required as additional security for the OJRSA for the particular method of project delivery utilized.

### **5.3.4 Sole Source Procurement**

- A. A contract may be awarded for a supply, service, or Construction item without competition when the *OJRSA Development Policy* requires or the Procurement Officer determines in writing that there is only one (1) source for the required supply, service, or Construction item or to provide uniform system efficiencies (e.g., minimize tools and specialty training necessary to perform repairs, purchase equipment that performs with computerized systems, minimize spare parts inventory due to interchangeability of parts across several systems or platforms, etc.).
- B. When outside of the requirements for specific equipment and materials listed in the current version of the *OJRSA Development Policy* or *OJRSA Sewer Use Regulation*, any decision that Procurement be restricted to one (1) potential vendor or contractor must be accompanied by a written explanation using the Sole Source Justification Request Form (available by request from Procurement Officer) as to why no other vendor or contractor is suitable or acceptable to meet the need.

### **5.3.5 Fuels, Oils, and Chemicals**

Subject to the review and approval of the Procurement Officer or his/her Designee, purchases of gasoline, diesel fuel, alcohol fuel, propane, motor oil, fuel oil, grease, lubricants, and chemicals vital to the operation of a wastewater treatment facility and its supporting system (e.g., conveyance system piping, pump stations, flow metering stations, etc.) may be made using authority delegated to an individual by the Procurement Officer, regardless of the size of the purchase.

### **5.3.6 Fleet and Equipment Services**

Due to the OJRSA's dependence on and its need for continuous operation of its rolling stock fleet, special provisions for securing Supplies, parts, and maintenance for use by OJRSA vehicles must be made. Each department Management Level staff member, subject to the review and approval of the Procurement Officer, is authorized to use whatever resources may be available to maintain the OJRSA's vehicular, mobile utility, and heavy equipment fleet, provided approval of the Procurement Officer or his/her designee is obtained in writing or through required financial software. Repairs that exceed amounts as stated in Section 4.2 may be considered for noncompetitive procurement when approved by the Procurement Officer or his/her designee for specialized fleet and equipment services (e.g., the manufacturer of a piece of heavy equipment is the most qualified or only source to perform repair).

### **5.3.7 Real Property, Easements, and Rights-of-Way**

Any real property acquisitions of OJRSA will be made pursuant to a written resolution adopted by the Board.

### **5.3.8 Purchasing Card Policy**

All Employees shall be subject to the *OJRSA Purchasing Card Policy* as adopted by the Board.

## **5.4 QUALIFICATIONS AND DUTIES**

### **5.4.1 Responsibility of Bidders and Offerors**

- A. Determination of Responsibility: Responsibility of the Bidder or Offeror, as defined by PARAGRAPH 5.1.2(P) and shall be ascertained for each contract let by OJRSA based upon full disclosure to the Procurement Officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.
- B. Determination of Non-Responsibility: A determination of non-responsibility of a Bidder or Offeror shall be made in writing. The unreasonable failure of a Bidder or Offeror to supply information within a timely fashion

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in connection with an inquiry with respect to responsibility may be grounds for a termination of non-responsibility with respect to such Bidder or Offeror.

**5.4.2 Prequalification of Suppliers**

Prospective suppliers may be prequalified for particular types of Supplies, Services, and Construction. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified suppliers.

**5.5 TYPES OF CONTRACTS**

Subject to the limitations of this Section, any type of contract which will promote the best interest of OJRSA may be used. A cost-reimbursement Contract or a cost-plus-a-percentage-of-cost Contract, however, may be used only when a determination by the Procurement Officer is made in writing that such Contract is likely to be less costly to OJRSA than any other type or that it is impracticable to obtain the Supplies, Services, or Construction required except under such a Contract.

**5.5.1 Purchase Requisitions and Orders**

**A. Purchase Orders as a Legal Document**

1. Once issued by authorized OJRSA staff, a purchase requisition or order (collectively a “purchase order”) is a legally binding Contract and is the OJRSA’s commitment pay for the goods or Services ordered upon the receipt and proper invoice. Unless a separate contract document is executed, the purchase order establishes the contractual relationship between the OJRSA and the vendor that authorizes the vendor to deliver materials or Supplies in accordance with the terms and conditions specified therein (or incorporated from a bid or other document by reference).
2. Because the purchase order is a legal document that represents, or forms the basis of, the contractual relationship between the OJRSA and a vendor, any changes to that Contract must be in writing, and approved by the appropriate department Management Level staff member and the Procurement Director. When Changes Orders are needed, they must be approved in the same sequence as the initial purchase order up to and including necessary approvals. Any payments to the vendor will be delayed while proper documentation is completed. Furthermore, the contractual rights of the OJRSA and the vendor are jeopardized by such unauthorized changes.

**B. One-time Purchase Orders:** Purchase orders are generally issued for a finite quantity of goods or Services. Once the goods or Services have been received, and the invoice has been received and approved, payment may be applied.

**C. Blanket Purchase Orders:** A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for small quantities of Supplies or Services by establishing “charge accounts” with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents. Any blanket purchase agreement should contain the following:

1. Description of the agreement in general terms for a specified period for the agreement and a stipulated Aggregate amount during the term;
2. Statement that OJRSA is only obligated to the extent purchases are ordered by a Person authorized in the blanket purchase agreement to make orders;
3. That a delivery ticket will be required showing the supplier referenced in the agreement, the date of the order, and an itemized list of Supplies and Services furnished and the price thereof with the date of delivery of the shipment; and
4. A statement that a summary invoice for the whole period will be submitted at any time during the period or at the end of the period as requested by OJRSA. A blanket purchase agreement shall not be issued for a term longer than twelve (12) months.
5. Blanket purchase agreements must be executed by the Procurement Officer.

**5.5.2 Multi-Term Contract**

**A. Specified Period:** A Contract for Supplies or Services, excluding contractors, may be entered into for a period of time not to exceed three (3) years with the option to extend two (2) more years, one (1) year at a time,

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provided the term of the Contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.

- B. Determination Prior To Use: Prior to the utilization of a Multi-Term Contract, the Procurement Officer shall determine in writing that:
1. Estimated requirements cover the period of the Contract and are reasonably firm and continuing; and
  2. Such a Contract will serve the best interest of OJRSA by encouraging effective competition or otherwise promoting economies in Procurement administration.
- C. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods: All Multi-Term Contracts shall contain a Non-Appropriations Clause stating that when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the Contract shall be canceled at no cost to OJRSA.

### **5.5.3 Indefinite Delivery Contracts**

- A. Establishment of Indefinite Delivery Contracts: With the approval of the Executive Director, and in accordance with any applicable regulations, OJRSA may establish contracts providing for an indefinite delivery, within approved maximum or minimum limits, of specified Supplies or Services, to be furnished during a fixed period, and that provide for the issuance of orders for delivery or performance of individual requirements during the period of the contract.
- B. General Applicability: Indefinite delivery contracts may be awarded on an as-needed basis for goods and/or Services pursuant to the procedures set forth below.
1. When the contracts are awarded, each contract shall be limited to a maximum total cost of four million dollars (\$4,000,000) for a three (3) year period with individual project costs not to exceed one million dollars (\$1,000,000).
  2. Multiple Firms: OJRSA may select multiple firms to supply goods and/or Services on an as-needed basis by using any of the Procurement methods described above in SECTION 5 or SECTION 6 with the exception that interviews are optional. OJRSA shall strive to reasonably distribute costs annually. The term of years for any such contract for each individual vendor shall be subject to SECTION 5.5.2.

## **5.6 INSPECTIONS, AUDITS, AND DETERMINATIONS**

### **5.6.1 Right to Inspect Facility**

OJRSA may, at reasonable times, inspect the part of the plant or place of business of a contractor or any Subcontractor which is related to the performance of any contract awarded or to be awarded by OJRSA.

### **5.6.2 Right to Audit Records**

- A. Audit of Cost or Pricing Data: OJRSA may, at reasonable times and places, audit the books and records of any Person who has submitted cost or pricing Data to the extent that such books and records relate to such cost or pricing Data. Any Person who receives a contract, Change Order, or Contract Modification for which cost or pricing Data is required, shall maintain such books and records that relate to such cost or pricing Data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.
- B. Contract Audit: OJRSA shall be entitled to audit the books and records of a contractor or Subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the Subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

### **5.6.3 Finality of Determinations**

The decision to proceed determinations as required by the following SECTIONS/PARAGRAPHS shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law:

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- A. 5.1.2(F) COMPETITIVE SEALED BIDDING: CORRECTION OR WITHDRAWAL OF BIDS, CANCELLATION OF AWARDS;
- B. 5.1.2(K) COMPETITIVE SEALED BIDDING: REQUEST FOR QUALIFICATIONS PRIOR TO REQUEST FOR BIDS;
- C. 5.1.4(A) COMPETITIVE FIXED PRICE BIDDING: CONDITIONS FOR USE;
- D. 5.1.5(A) COMPETITIVE BEST VALUE BIDDING: CONDITIONS FOR USE;
- E. 5.1.5(H) COMPETITIVE BEST VALUE BIDDING; AWARD;
- F. 5.1.6 COMPETITIVE ONLINE BIDDING;
- G. 5.1.7 COMPETITIVE SEALED PROPOSALS;
- H. 5.3.1 EMERGENCY OR CRITICAL PROCUREMENT;
- I. 5.3.3 ALTERNATIVE PRODUCT DELIVERY METHODS;
- J. 5.3.4 SOLE SOURCE PROCUREMENT;
- K. 5.4.1(B) RESPONSIBILITY OF BIDDERS AND OFFERORS: DETERMINATION OF NON-RESPONSIBILITY;
- L. 5.5 TYPES OF CONTRACTS;
- M. 6.1.3 CONSTRUCTION PROCUREMENT PROCEDURES;
- N. 6.1.4 PREQUALIFICATION OF CONSTRUCTION BIDDERS;
- O. 6.1.5 CONSTRUCTION MANAGER AT-RISK; and
- P. SECTION 8(H) STAY OF PROCUREMENT DURING PROTESTS.

**5.6.4 Acceptance and Incorporation of Terms**

Any bid or response returned under this Policy shall be deemed to constitute an acceptance of all terms contained in the Request for Bids, or requests for proposals or qualifications, which are not expressly disclaimed or limited in the responsive proposal. Such terms shall be considered incorporated by reference in the resulting contracts and other documents, unless expressly disclaimed by OJRSA in writing referencing this provision of this Policy. Time shall be considered to be of the essence in all contracts entered into under this Policy.

## **SECTION 6 – PROCUREMENT OF CONSTRUCTION AND LAND SURVEYING SERVICES**

**6.1 PROCUREMENT PROCEDURES****6.1.1 Responsibility for Selection of Method of Construction Management**

The Procurement Officer or his/her Designee shall have discretion to select the appropriate method of Construction contract management for a particular project.

**6.1.2 Contract Administration**

The Procurement Officer or his/her Designee shall maintain a contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded and the terms and conditions of the contract.

**6.1.3 Construction Procurement Procedures**

- A. Source Selection: All Construction contracts shall be awarded by competitive sealed bidding pursuant to the procedures set forth in SECTION 5.1.2 except as provided in this Section and the following Sections:
  1. SECTIONS 4.2, 4.3, 4.4, and 4.5 for purchases less than one hundred thousand dollars (\$100,000) and as noted in 4.6(B) for purchases at or above one hundred thousand dollars (\$100,000);
  2. 5.1.5 COMPETITIVE BEST VALUE BIDDING;
  3. 5.1.6 COMPETITIVE ONLINE BIDDING;
  4. 5.1.7 COMPETITIVE SEALED PROPOSALS;
  5. 5.3.1 EMERGENCY OR CRITICAL PROCUREMENT;
  6. 5.3.3 ALTERNATIVE PRODUCT DELIVERY METHODS;
  7. 5.3.4 SOLE SOURCE PROCUREMENT; and
  8. 6.1.5 CONSTRUCTION MANAGER AT-RISK.

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- B. Competitive Fixed Price Bidding as provided in SECTION 5.1.4 shall not be used, except in such cases and in accordance with criteria as may be authorized and prescribed by regulation of the Board.
- C. **Bid Evaluation and Acceptance**: In lieu of PARAGRAPH 5.1.2(E), the following provision applies. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this Regulation. The Request for Bids shall set forth all requirements of the bid including, but not limited to:
1. The Procurement Officer, in consultation with the architect-engineer assigned to the project, shall identify by specialty in the RFB all Subcontractors, as defined by applicable documents of the American Institute of Architects, who are expected to perform work for the prime contractor to or about the Construction when those Subcontractors' contracts are each expected to exceed three percent (3%) of the prime contractor's total base bid. In addition, the Procurement Officer, in consultation with the architect-engineer assigned to the project, may identify by specialty in the RFB any Subcontractors who are expected to perform work which is vital to the project. The determination of which Subcontractors are included in the list provided in the RFB is not protestable under SECTION 8 or any other provision of this Policy. Any Bidder in response to a RFB shall set forth in the bid the name of only those Subcontractor(s) that will perform the work as identified in the RFB. If the Bidder determines to use their own employees to perform any portion of the work for which they would otherwise be required to list a Subcontractor and if the Bidder is qualified to perform such work under the terms of the RFB, the Bidder shall list themselves in the appropriate place in their bid and not subcontract any of that work except with the approval of the Procurement Officer for good cause shown.
  2. Failure to complete the list provided in the RFB renders the Bidder's bid unresponsive.
  3. No prime contractor whose bid is accepted shall substitute any Person as Subcontractor in place of the Subcontractor listed in the original bid, except for one (1) or more of the following reasons:
    - a. Upon a showing satisfactory to the Procurement Officer by the contractor that a Subcontractor who was listed is not financially responsible;
    - b. Upon a showing satisfactory to the Procurement Officer by the contractor that the scope of work bid by a listed Subcontractor did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the listed Subcontractor's original bid;
    - c. Upon a showing satisfactory to the Procurement Officer made by the contractor within four (4) Business Days of the bid opening that the Subcontractor was listed as a result of an inadvertent clerical error;
    - d. Upon a showing satisfactory to the Procurement Officer by the contractor that the listed Subcontractor failed or refused to submit a performance and Payment Bond;
    - e. Upon a showing satisfactory to the Procurement Officer by the contractor that the listed Subcontractor is required to be licensed and does not have the license by the time it is required by law;
    - f. When the listed Subcontractor fails or refuses to perform the duties of the subcontract;
    - g. When the work of the listed Subcontractor is found by the Procurement Officer to be substantially unsatisfactory;
    - h. Upon mutual agreement of the contractor and Subcontractor; or
    - i. With the consent of the Procurement Officer for good cause shown. The request for substitution must be made to the requesting department in writing. This written request does not give rise to any private right of action against the prime contractor. Where substitution is allowed, the prime contractor, before obtaining prices from any other Subcontractor, must attempt in good faith to negotiate a subcontract with at least one (1) Subcontractor whose bid was received prior to the submission of the prime contractor's bid. Nothing in this Section affects a contractor's ability to request withdrawal of a bid in accordance with the provisions of this Policy.
- D. **Bid Tabulation**: The Procurement Officer shall send all Responsive Bidders a copy of the bid tabulation within ten (10) Business Days following the bid opening and may make it available to the public by posting on the OJRSA website. In lieu of Local Vendor preferences as stated in 5.1.2(I) the following provisions apply. Unless

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there is a compelling reason to reject bids as prescribed by regulation of the Board, notice of an intended award of a contract to the lowest Responsive and Responsible Bidder whose bid meets the requirements set forth in the RFB shall be given by posting such notice at a location which has been specified in the RFB. The request and the posted notice must contain a statement of the Bidder's right to protest under SECTION 8 and the date and location of posting must be announced at bid opening. In addition to posting notice as provided above, the Procurement Officer shall promptly send all Responsive Bidders a copy of the notice of intended award and of the bid tabulation. Such mailed notice must indicate the posting date and must contain a statement of the Bidder's right to protest under SECTION 8. Fourteen (14) Calendar Days after notice is given, OJRSA may enter into a contract with the Bidder named in the notice in accordance with the provisions of this Policy and of the bid solicited. A determination of responsibility must be made before award in accordance with SECTION 5.4.1. If, after bid opening, only one (1) bid is received and determined to be Responsive and Responsible and within the Construction budget, award may be made without the fourteen (14) day waiting period.

E. Negotiations after Unsuccessful Competitive Sealed Bidding: In lieu of PARAGRAPH 5.1.2(Q), the following provisions apply:

1. When bids received pursuant to an RFB exceed available funds and it is determined in writing by the Procurement Officer that circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this Section with the lowest Responsible and Responsive Bidder, provided that this base bid, less any deductive alternates, does not exceed available funds by an amount greater than ten percent (10%) of the Construction budget established for that portion of the work. OJRSA may change the scope of the work to reduce the cost to be within the established Construction budget but shall not reduce the cost below the established Construction budget by more than ten percent (10%) without the written approval of the Procurement Officer based on the best interest of OJRSA.
2. When the lowest base bid received pursuant to an RFB exceeds approved available funds and OJRSA is able to identify additional funds for the project, as certified by the appropriate fiscal officers, in the amount of the difference between the lowest base bid and the approved available funds for the project, the Procurement Officer shall submit its request to use such additional funds to the Board.

**6.1.4 Prequalification of Construction Bidders**

- A. OJRSA shall develop a procedure and a list of criteria for prequalifying Construction Bidders. The criteria shall include, but not be limited to:
1. Prior performance with OJRSA;
  2. Past references on all aspects of performance not older than five (5) years;
  3. Financial stability; and
  4. Experience on similar Construction projects.
- B. OJRSA may use the prequalification process only for projects where the Construction involved is unique in nature or over two million dollars (\$2,000,000) in value as determined by and subject to the approval of OJRSA.
- C. All prequalification projects shall be under the supervision of OJRSA.
- D. When the prequalification process is employed, only those Bidders who are prequalified through this procedure are entitled to submit a bid for the project. The determination of which Bidders are prequalified, and thereby entitled to bid, is not protestable under this Section or any other provision of this Policy.

**6.1.5 Construction Manager At-Risk**

- A. Condition for Use: The Procurement Officer may determine that it is in the best interest of OJRSA to procure Construction Services through a Construction Manager At-Risk contract. Bids for such a contract shall be obtained following the provisions of SECTION 3.2.2 except to the extent that such provisions are amended or superseded by the terms of this Section.
- B. Independent Design Services: Prior to issuance of an RFP for Construction Manager At-Risk Contract, OJRSA may procure architect-engineer and land surveying Services, including completed programming, conceptual design, and preliminary budget. The architect-engineer or land surveyor may participate in the development of a preliminary budget, the development of a RFP, the evaluation, and ranking of the proposal, and all negotiations.



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**C. Bidding Process and Evaluation Factors**

1. The RFP shall request information concerning the prospective Offeror's qualifications, experience, and ability to perform the requirement of the contract, including, but not limited to, experience on projects of similar size, and complexity, and a history of on-time, on-budget, and on-schedule Construction.
2. The RFP may include complete programming, the conceptual design, and a preliminary budget.
3. The Offeror's proposed fee may be one (1) factor in the determination award.

**D. Guarantee Maximum Price Contract:** After all preconstruction Services and final Construction drawings have been completed, or prior thereto upon written determination of the Procurement Officer, OJRSA may negotiate with and enter into a Guaranteed Maximum Price (GMP) Contract for the project. The GMP Contract shall include all costs for the Construction and completion of the project, including all mobilization, general conditions, profit, and overhead costs of any nature. The OJRSA shall have the right at any time, and for three (3) years following final payment, to audit the Construction Manager, and to disallow and to recover costs not properly charged to the project. OJRSA shall pay actual costs incurred, plus specified profit and overheads, up to the GMP. Any costs incurred above the GMP shall be paid for by the Construction Manager, unless such costs are incurred for work done outside of scope of the RFP and approved in writing by the Procurement Officer.

**E. Subcontractor Selection:** The Construction Manager shall invite bids from prospective Subcontractors. As determined by OJRSA, the Construction Manager may, or may not, self-perform work. Competitive proposals must be taken for any materials or equipment that is used to self-perform work.

**F. Subcontractor Prequalification:** Prior to inviting bids, OJRSA may require the Construction Manager At-Risk to issue a Request for Qualifications from prospective Subcontractors. Such request shall contain at a minimum a description of the general scope of the work, the deadline for submission of information, and how prospective Bidders may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform requirements of the contract. Prospective Subcontractors shall be ranked by the Procurement Officer or his/her Designee from most qualified to least qualified on the basis of the information provided per internal Procurement procedures. Bids shall then be solicited from at least the top three (3) prospective Subcontractors by means of an RFB. If the Procurement Officer, in consultation with the Construction Manager, determines in writing that there are not three (3) Subcontractors for a particular area of subcontract work which meet the required qualifications, the Construction Manager may invite bids only from those Subcontractors deemed qualified.

**6.1.6 Alternative Procurement**

In addition to those methods specifically identified in this Policy, the Board by resolution may approve of Alternative Product Delivery Methods as stated in SECTION 5.3.3.

**6.2 CONSTRUCTION CONTRACT CLAUSES AND FISCAL RESPONSIBILITY**

**6.2.1 Execution of Contracts**

See current version of the *OJRSA Financial and Accounting Policy* SECTION 3 for those authorized by the OJRSA to sign financial transactions and documents on the agency's behalf.

**6.2.2 Contract Clauses and Administration**

All contracts for Supplies, Services, and Construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Procurement Officer may establish standard contract clauses for its use or use other acceptable contracts which have adequate safeguards to protect OJRSA interests.

**6.2.3 Changes to Contracts (Change Orders) and Fiscal Responsibility**

The Procurement Officer or his/her Designee shall be allowed to approve and pay for Change Orders which do not alter the original scope or intent of the project, and which do not exceed the previously approved project budget, including project contingency if so included. However, every Contract Modification, Change Order, or contract price adjustment under a Construction contract with OJRSA in excess of one hundred thousand dollars (\$100,000)

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shall be approved by the Board after receiving a report from the Procurement Officer as to the effect of the Contract Modification, Change Order, or contract price adjustment on the total project budget or the total contract budget. The Executive Director will promptly notify the Board of all Change Orders over one thousand dollars (\$100,000).

## **SECTION 7 – BONDS**

### **7.1.1 Bid Security**

- A. **Requirement for Bid Security:** Bid security shall be required for all competitive sealed bidding for Construction contracts when the price is estimated by the Procurement Officer to exceed one hundred thousand dollars (\$100,000). Bid security shall be a bond provided by a surety company authorized to do business in South Carolina, or the equivalent in cash, or otherwise supplied in a form satisfactory to OJRSA. Nothing herein prevents the requirement of such bonds on Construction contracts under one hundred thousand dollars (\$100,000) when the circumstances warrant.
- B. **Amount of Bid Security:** Bid security shall be in an amount equal to two percent (2%) and up to five percent (5%) of the amount of the bid at the discretion of the Procurement Officer and as Published in the solicitation for bids.
- C. **Rejection of Bid for Noncompliance with Bid Security Requirements:** The Request for Bids shall require a bid security bond or approved security in a proper amount. Noncompliance will require that the bid be rejected except that a Bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating shall be given one (1) Business Day from bid opening to cure such deficiencies. If the Bidder cannot cure these deficiencies within the one (1) Business Day, his/her bid shall be rejected.
- D. **Withdrawal of Bids:** After the bids are opened, they shall be irrevocable for the period specified in the RFB. If a Bidder is permitted to withdraw his/her bid before award, no action shall be had against the Bidder or the bid security. The permission to withdraw the bid must be in writing signed by the Procurement Officer for such withdrawal to be effective.
- E. **Return of Bid Security:** All bid security submitted shall be retained by OJRSA until such time as the award has been made and all bonds required by SECTION 7.1.2 have been submitted by the Bidder receiving the award and have been accepted by OJRSA.

### **7.1.2 Contract Performance and Payment Bonds**

- A. **Required Amounts:** When a Construction contract is awarded in excess of one hundred thousand dollars (\$100,000), the following bonds or security shall be delivered to OJRSA and shall become binding on the parties upon the execution of the contract:
  - 1. A Performance Bond satisfactory to OJRSA, executed by a surety company authorized to do business in South Carolina (see 7.1.1(A)), or otherwise secured in a manner satisfactory to OJRSA in an amount equal to one hundred percent (100%) of the price specified in the contract; and
  - 2. A Payment Bond satisfactory to OJRSA, executed by a surety company authorized to do business in South Carolina (see 7.1.1(A)), or otherwise secured in a manner satisfactory to OJRSA and in compliance with SC Code Ann. §29-6-250, for the protection of all Persons supplying labor and materials to the contractor or its Subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.
- B. **OJRSA to Require Additional Bonds:** Nothing in this Section shall be construed to limit OJRSA in requiring a Performance Bond or other security in addition to those bonds, or in circumstances other than specified in PARAGRAPH (A) of this Section.

### **7.1.3 Bond Forms and Copies**

- A. **Bond Forms:** The Procurement Officer shall provide the form of bonds required by this Section.
- B. Any Person may request and obtain from OJRSA a certified copy of a bond upon payment of the cost of repro-

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duction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

## **SECTION 8 – RESOLVING PROTESTS**

- A. **Right to Protest, Time for Protest, Exclusive Remedy:** Any Bidder, Offeror, contractor, or Subcontractor who is aggrieved in connection with the solicitation or award of a contract shall protest to the Procurement Officer. The protest shall set forth the specifics of the protest and shall be submitted in writing within ten (10) Business Days after such aggrieved Persons know or should have known of the facts giving rise thereto. Any actual Bidder, Offeror, Contractor, or Subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the Procurement Officer in the manner stated in PARAGRAPH B below within ten (10) Business Days of the date notification of award is posted in accordance with this Policy. The rights and remedies granted in this Section to a disappointed Bidder, Offeror, contractor, or Subcontractor are to the exclusion of all other rights and remedies of such disappointed Bidder, Offeror, contractor, or Subcontractor against OJRSA at common law or otherwise for the loss or potential loss of an award of a contract under this Policy. A failure to file a protest within this time period shall be an absolute bar to any later filing.
- B. **Protest Procedure:** A protest under PARAGRAPH A above shall be in writing, submitted to the Procurement Officer, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. If applicable, a bond shall accompany the protest pursuant to PARAGRAPH J below.
- C. **Duty and OJRSA to Attempt to Settle Protests:** Prior to commencement of an administrative review as provided in PARAGRAPH D below, the Procurement Officer thereof shall attempt to settle by mutual agreement, a protest of an aggrieved Bidder, Offeror, contractor, or Subcontractor, actual or prospective, concerning the solicitation or award of the contract. Any settlements tentatively reached will require approval of the Board before becoming final and enforceable.
- D. **Administrative Review and Decision:** If in the opinion of the Procurement Officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the Executive Director shall promptly conduct an administrative review and shall issue a decision in writing within ten (10) Business Days of completion of the review. The decision shall state the reasons for the action taken.
- E. **Notice of Decision:** A copy of the decision under PARAGRAPH F below shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. The Procurement Officer shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal to the Board.
- F. **Finality of Decision:** A decision under PARAGRAPH D above shall be final and conclusive unless procured by fraud or unless a Person adversely affected by the decision requests an appeal to the Board within ten (10) Business Days of posting of the decision. The request for review shall be directed to the Executive Director, who shall forward the request to the Board and shall be in writing, setting forth the reasons why the Person disagrees with the decision of the Executive Director.
- G. **Board Review:** Upon request, the Board will review the determination by the Executive Director without any further hearing and may uphold the determination or set it aside. The Board may also determine what relief, if any, shall be given to the protestant and whether or not there should be a re-award or re-bid of the contract.
- H. **Stay of Procurement During Protest:** A timely protest will stay Procurement solicitation or award until a decision by the appropriate officer or Board; provided, however, if the Procurement Officer makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interest of OJRSA, then Procurement may continue.
- I. **Frivolous Protest**
1. **Signature Constitutes a Certificate:** The signature of a party or their attorney upon a document seeking to protest action constitutes a certificate that the signer has read the document, and to the best of their knowledge, information, and belief, found after reasonable inquiry, is well-grounded in fact

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and warranted.

2. **Sanctions:** If any document is signed in violation of PARAGRAPH I.1 above, then upon notice to the party and an opportunity to be heard, and upon a finding by the Board that such document protesting action was frivolous or interposed for harassment or other improper purpose, the Board may impose an appropriate sanction, including an order to pay reasonable expenses incurred by OJRSA because of the filing of the protest, pleading, motion, or other document, including a reasonable attorney fee, or face permanent Debarment as a Person or firm eligible to bid on contracts or otherwise contract with or supply goods or Services to OJRSA. In evaluating any such submission, the Board may be guided by any judicial or administrative law court interpretation of Section 11-35-4430 of South Carolina Law, which contains similar provisions for sanctions for frivolous appeals.
- J. **Protest Bond:** OJRSA may request that any Bidder or Offeror who files an action protesting the intended award or award of a contract solicited under this Policy valued at five hundred thousand dollars (\$500,000) or more to post with the Procurement Officer a bond or irrevocable letter of credit payable to OJRSA in an amount equal to one percent (1%) of the total potential value of the contract as determined by the appropriate Procurement Officer. The decision to require a bond or irrevocable letter of credit is not appealable. The bond or irrevocable letter of credit shall secure payment of all reasonable costs incurred by OJRSA as a result of filing the protest and the administrative subsequent proceedings. For protests of a sole source or emergency or critical Procurement, the bond or irrevocable letter of credit shall be in an amount equal to one percent (1%) of the Procurement Officer's estimate of the contract amount for the sole source or emergency or critical Procurement. In lieu of a bond or irrevocable letter of credit, the Procurement Officer may accept a cashier's check or money order in the amount of the bond or irrevocable letter of credit. If, after completion of the administrative hearing process and any appellate court proceedings, OJRSA prevails, the OJRSA Board shall determine by resolution the costs and charges associated with the protest which may reasonably be recovered by OJRSA, excluding attorney's fees. Upon payment of such costs and charges by the Bidder or Offeror protesting the intended award or award of a contract, the bond, irrevocable letter of credit, cashier's check, or money order shall be returned to the Bidder or Offeror. Failure to pay such costs and charges by the Bidder or Offeror protesting the intended award or award of a contract shall result in the forfeiture of the bond, irrevocable letter of credit, cashier's check, or money order to the extent necessary to cover the payment of the costs recoverable from the protesting Bidder or Offeror.
- K. **OJRSA to Debar or Suspend:** This Section applies to a Debarment for cause from consideration for award of contracts or a Suspension from such consideration during an investigation where there is probable cause for such Debarment. After reasonable notice of Debarment to the Person or firm involved, and a reasonable opportunity for such Person or firm to be heard, the Procurement Officer shall recommend to the Board the Debarment of a Person or firm for cause from consideration for award of contracts, provided that doing so is in the best interest of OJRSA. The Debarment shall be for a period as recommended by the Procurement Officer and becomes effective upon the approval of the Board. The causes for Debarment or Suspension shall include, but not be limited to, the following:
1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or in the performance of such contract or subcontract;
  2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, violation of environmental laws (to include those not necessarily associated with the United States Clean Water Act (33 USC §§ 1251 et seq.)), receiving stolen property or any other offense indicating a lack of business integrity or professional honesty which currently, seriously, and directly affects responsibility as a State licensed contractor;
  3. Conviction under State or Federal antitrust laws arising out of the submission of bids or proposals;
  4. Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Officer to be so serious as to justify Debarment action:
    - a. Failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the

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terms of one (1) or more contracts; provided, the failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for Debarment.

5. Any other cause the Procurement Officer determines to be so serious and compelling as to affect responsibility as contractor, including Debarment by another governmental entity for any cause listed herein.
6. **Board Review:** A debarred party may request review by the Board. The Board may designate a panel to provide such review and report back to the Board concerning what relief, if any, should be given.

## **SECTION 9 – SALE AND DISPOSAL OF SURPLUS PROPERTY**

### **9.1 SURPLUS PROPERTY DETERMINATION**

The OJRSA, at the discretion of the Board or Executive Director, may determine that any real or Personal property has become Surplus Property. Upon a determination that the property is Surplus Property, the Procurement Officer may proceed to obtain an appraisal of the value of the Surplus Property by a qualified independent licensed appraiser or shall otherwise ascertain the value of the property, the costs of sale, or disposal or trade-in.

### **9.2 SALE OF REAL PROPERTY**

- A. All Real Property to be sold shall first be approved by the Board. The Board is to determine how to advertise and sale the Real Property (e.g., using a licensed real estate agent, by owner, sealed bids, auction, etc.).
- B. Real property must be appraised by a qualified independent real estate appraiser licensed by the state of South Carolina.
- C. Notice of the sale of Real Property shall be Published once a week for two (2) weeks in a paper of general circulation and be posted at OJRSA business offices and website, as well as the sale site. This notice shall be posted at least fifteen (15) Business Days prior to day of sale and state the terms and conditions and appraised value. If the sale is not accomplished at or above the appraised value, the Board may authorize a subsequent offering and sale without restriction as to price or without reservation of the right to withdraw the property from public sale.
- D. **Documentation:** The sale, destruction, or disposition of all Capital Assets and Agency Property must be documented using the Affidavit of Disposition or Destruction form, which is available by request from Procurement Officer. This form is to be completed by the Executive Director and signed by both the Board Chair and Executive Director. It must be kept on file by the Procurement Officer or his/her Designee in accordance with the *OJRSA Records Retention Policy*.

### **9.3 SALE OF CAPITAL ASSETS AND AGENCY PROPERTY**

- A. Management Level staff who oversee the department with surplus or scrap Capital Assets or Agency Property are responsible for the transfer and disposition of these items. Only those designated in Table 1 have the authority to declare item(s) surplus or scrap and only up to the amount approved within the table.

*Table 1: Surplus or Scrap determination levels*

<b>Surplus or Scrap Value Less Than</b>	<b>Approval Level</b>
\$5,000	Management Level Staff
\$10,000	Executive Level Staff
Equal to or greater than \$10,000	Board/Governance Level Officials

- B. Surplus assets and Agency Property that may result from the termination of a lease agreement shall be specifically reported to the Procurement Officer prior to the termination of the lease. The report shall include all information about the lease, including purchase price at the commencement of the lease, residual value at the end of the lease, the total payments through the end of the lease, and the fair market value at the end of the lease. In determining the fair market value, each department shall document the methods used to make such a determination including tools such as Kelly Blue Book, classified advertisements, and Local Vendors

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with similar products available.

- C. Supervisor Level staff for each department (or Management Level staff for departments that do not have Supervisor Level staff) shall periodically review its equipment, material, and inventory, and shall promptly notify the Procurement Officer of any surplus assets and Agency Property. A memo shall be completed to document the reason(s) that the Capital Asset or Agency Property should be considered as surplus and the recommended method of disposal.
- D. The sale of Capital Assets and Agency Property shall be by public auction, online auction, public sale, or sealed bids to the highest Bidder. The notice of sale or auction may be Published in a paper of general circulation and/or posted at OJRSA Administration Office, OJRSA website, or third-party sale/auction host site.
- E. General
  - 1. The solicitation to Bidders shall stipulate, at a minimum, any terms and conditions of sale and the fact that OJRSA retains the right to reject any and all bids.
  - 2. OJRSA Employees and Board members may participate in such auctions on an equal, non-preferential basis, with all other public Bidders. OJRSA Employees may not bid on items during work hours, including when performing work for the OJRSA outside of normal work hours.
- F. Auction Sales
  - 1. Property sold by online auctions shall be placed for auction for at least seven (7) Calendar Days.
  - 2. The sale or auction shall be upon such terms and conditions as may be determined by the Procurement Officer.
- G. Documentation: The sale, destruction, or disposition of all Capital Assets and Agency Property must be documented using the Affidavit of Disposition or Destruction form. This form is to be completed by the appropriate staff level individual submitting the item for removal (as stated in Table 1) and must be kept on file by the Procurement Officer or his/her Designee in accordance with the *OJRSA Records Retention Policy*.

**9.4 TRADE-IN SALES**

- A. The Procurement Officer may trade-in Agency Property or Capital Assets of OJRSA. The trade-in value may be applied to the purchase or lease of new like items, upon terms and conditions deemed appropriate. All financial Data and transaction records shall be disclosed to the OJRSA accountant and auditor.
- B. Real property shall not be subject to trade without express authorization by the Board in the form of an adopted resolution.

**9.5 PROCEEDS OF SALES, TRADE-INS, AND SCRAP**

- A. Real Property: Proceeds from disposal of Real Property shall be recorded as revenue in the fund designated by the Board of Commissioners. *Proceeds from the sale of surplus Real Property shall not be used to offset departmental operating expenses.*
- B. Capital Assets or Agency Property: Proceeds from disposal of these items shall be recorded in the Other Revenue account of the O&M Fund. *Proceeds from the sale of surplus Agency Property or Scrap shall not be used to offset departmental operating expenses.*

**9.6 DONATIONS**

If approved by the Executive Director or Board of Commissioners, surplus Capital Assets and Agency Property may be donated to registered non-profit organizations or other governmental agencies, such as school districts, within OJRSA boundaries. When an item is donated, a donation receipt letter must be obtained from the receiving organization and kept on file by the Procurement Officer or his/her Designee.

**9.7 SALES AND LEASES TO OTHER GOVERNMENTAL BODIES, AND FOR COLLECTIVE OR GROUP PURCHASING BY GOVERNMENTAL BODIES**

- A. Nothing in this Policy shall be construed to prevent OJRSA from participating in leases or rentals of equipment or Supplies or other items, as long as:
  - 1. It complies with requirements of any intergovernmental agreement(s) between the OJRSA and other parties, such as the Member Cities; and
  - 2. Written justification is given for why it is in the best interest of OJRSA and the public that the item

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should be leased rather than purchased.

- B. Likewise, OJRSA may purchase, acquire from, use, or sell Personal Property to another governmental body upon Board approval provided such sale is at or near fair market value. OJRSA may also participate in cooperative purchasing with any other governmental body in accordance with SC Code §11-35-4810 et seq., and may also share personnel, facilities, material, equipment, or other items with another governmental body through an intergovernmental agreement specifying the obligations, rights, and duties of the parties.

**REVISION HISTORY**

This and previous editions of the *OJRSA Procurement and Property Disposal Policy* must be maintained in accordance with the *OJRSA Records Retention Policy*.

Table 2: OJRSA Procurement and Fiscal Policy revision history

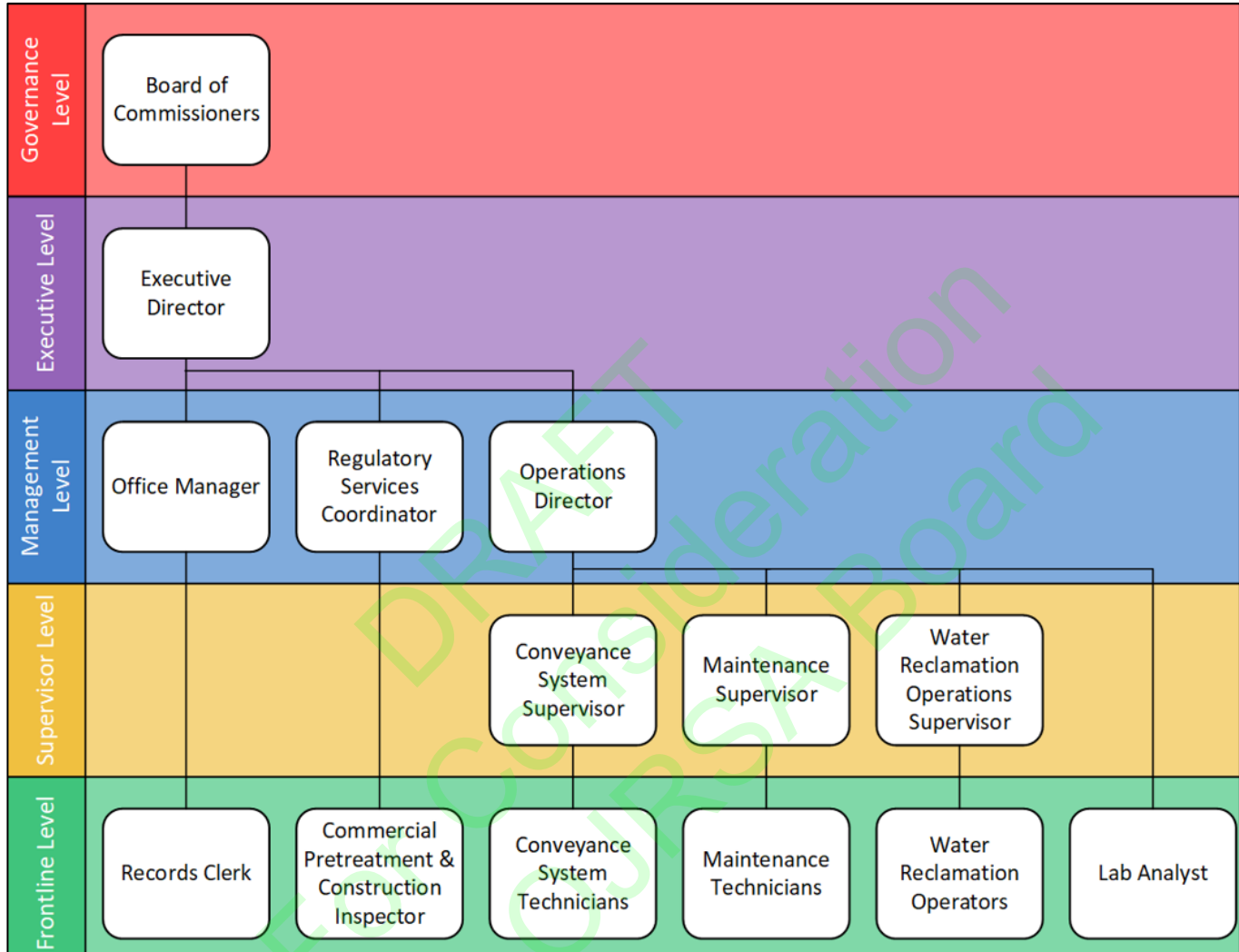
Revision Number	Date	Description of Changes
N/A	07/02/1979	Adoption of Procurement Policy by Oconee County Sewer Commission (OCSC).
N/A	07/11/1983	Updated OCSC Procurement Policy.
N/A	12/04/1989	Updated OCSC Procurement Policy.
N/A	10/29/1993	OCSC Superintendent authorized to purchase surplus property and may delegate this authority to any OCSC employee.
N/A	01/04/1999	OCSC Superintendent authorized to sell surplus items.
N/A	12/01/2003	When bidding analytical services, the OCSC cannot accept bids from firms doing work for industries regulated by OCSC.
N/A	01/12/2010	Establishment of internal protocol that established definition of a purchase order and how it is to be processed.
N/A	02/01/2016	Update to the Procurement Policy dated 01/2016 was included in the Board Meeting minutes on this date; however, there was no record of it actually being approved by the Board.
0000	01/04/2023	Initial issue of comprehensive <i>OJRSA Procurement and Property Disposal Policy</i> by <i>OJRSA Resolution 2024-05</i> .

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**APPENDIX A – ORGANIZATION CHART**

*NOTE: Appendix A is subject to change based on organizational structure and may be updated as necessary by Executive Level staff or Governance Level officials (as stated within the illustration indicated within APPENDIX A) without begin considered as a substantive change to this Policy.*

Figure 1: Organization as of December 18, 2023





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# APPENDIX B – LOCAL VENDOR PREFERENCE REGISTRY AND CERTIFICATION APPLICATION

*NOTE: Appendix B is subject to change and may be updated as necessary by Executive Level staff or Governance Level officials (as stated within the illustration indicated within APPENDIX A) without begin considered as a substantive change to this Policy. This form can be obtained from the Procurement Officer or the OJRSA website*



## Local Vendor Preference Registry and Certification Application

Business Name: \_\_\_\_\_

Eligible Location  
(physical location / address): \_\_\_\_\_  
\_\_\_\_\_

**Eligible location must have a majority of full-time employees, chief officers and managers regularly conducting work and business from this location.\***

Please indicate below the highest preference for which your Eligible office qualifies based upon location:†

- \_\_\_ Within the service territory of the Oconee Joint Regional Sewer Authority, 4% preference credit not to exceed \$5,000.
- \_\_\_ Within Anderson County, Pickens County, Greenville County, Abbeville County, Laurens County or Spartanburg County, 3% preference credit not to exceed \$4,000.
- \_\_\_ Within South Carolina but not in any jurisdiction noted above, 1% preference credit not to exceed \$2,500.

**Please provide complete contact information for the individual responsible for this application:**

Name†	Title†		
Street Address†	City†	State†	Zip Code†
Contact Phone Number†	Office Phone Number†	Email Address†	
Link to Website			

I understand that inclusion on the Local Vendor Preference Registry is voluntary and not a guarantee of obtaining contracts with the Oconee Joint Regional Sewer Authority ("OJRSA") or with contractors proposing OJRSA projects. I understand that contracts with the OJRSA are awarded in compliance with local, state, and federal law as applicable. I acknowledge that a valid Certificate of Insurance, IRS Form W-9, and all proper licensing will be required to contract with the OJRSA. I further acknowledge responsibility for and accuracy of all information contained in this application and I agree to update the application as needed to keep the information accurate. I understand that failure to provide accurate information may result in removal from the registry, cancelation of contracts, voiding of proposals, and other penalties as may be applicable. I understand that inclusion on the registry will involve public disclosure of information contained herein and I agree to such disclosure by OJRSA. I hereby also certify eligibility for the preference credits indicated above in compliance with the Oconee Joint Regional Sewer Procurement and Property Disposal Policy.

Signature \_\_\_\_\_ Title \_\_\_\_\_

Date \_\_\_\_\_

\* Eligible locations for Local Vendor Preference must have been maintained for at least six consecutive months.  
† Indicates a required field to complete



**Commercial Pretreatment and Utility Construction Inspector**

Years of Experience	March 2023			December 2023			Difference		
	25th Percentile	Median	75th Percentile	25th Percentile	Median	75th Percentile	25th Percentile	Median	75th Percentile
12	\$27.94	\$30.38	\$33.69	\$30.29	\$33.29	\$37.01	8.41%	9.57%	9.85%
10	\$26.85	\$29.16	\$32.31	\$28.97	\$31.54	\$35.05	7.88%	8.16%	8.48%
8	\$25.69	\$27.87	\$30.86	\$27.95	\$30.24	\$33.79	8.80%	8.51%	9.48%
6	\$24.42	\$26.45	\$29.26	\$26.57	\$28.53	\$31.86	8.80%	7.88%	8.87%
4	\$23.01	\$24.89	\$27.49	\$24.84	\$26.92	\$30.03	7.97%	8.17%	9.23%
2	\$21.51	\$23.23	\$25.62	\$23.35	\$24.96	\$27.77	8.55%	7.45%	8.39%

Based on this Comprehensive Review, it is recommended to reassess this position as a NE-5 with a new range of \$23.22/\$28.68/\$34.14. [Position was initially classified in April 2023 report as NE-2 \$17.22/\$21.67/\$26.00]



November 22, 2023

Chris Eleazer  
**OCONEE JOINT REGIONAL SEWER AUTHORITY**  
623 Return Church Rd  
Seneca, South Carolina, 29678

**RE: Proposed installation of Transverse Crossing Only of a Sewer pipeline**

**Coastal Division, at Mile Post Z-32.65**  
**Seneca, Oconee, South Carolina**  
**Latitude 34.688056, Longitude -82.919139**  
**NS Activity No. 1312707**

Dear Chris Eleazer:

RailPros, as consultant for Norfolk Southern Railway Company ("Railway"), has reviewed the above-referenced request. Based on the information and documentation presented, Railway has no objections to the proposed work.

Attached you will find the requested offer of agreement for execution, by an official authorized to execute contract agreements on behalf of the Licensee. Please have the agreement executed via DocuSign. Note, however, that the attached offer of agreement does not constitute a binding contract, unless or until it is executed by both the Licensee and Railway.

In order for Railway to countersign the document, the following items are needed for review:

1. **Payment of the License Fee** in the amount of **\$30,000.00** within the **Application System**;
2. **A Certificate of Insurance** as required in the agreement, is to be submitted within the Application System.
3. **A separate Railroad Protective Liability Insurance policy**, as required in the agreement, with Railway as the named insured, and the Activity ID referenced in the description, submitted within the Application System; OR
4. The submission of the **Risk Management Fee** adds the specific project/activity to the Norfolk Southern Master Railroad Protective insurance policy, and as such no further railroad protective liability insurance coverage is necessary or requested.

**NOTE: No work shall be permitted on or about the Railway's property until the agreement becomes binding, and the Division Engineer or their authorized representative has reviewed and approved field services** for the project, such as *flagging protection, construction monitoring, and post-construction inspection services*. Once the above items are received, the fully executed agreement will be sent, along with the name and contact information for field service coordination.

If we have not received the executed agreement and corresponding payments and/or documents within sixty (60) days from the date of this letter, we reserve the right to cancel this request.

If you have any questions, please contact me within the messages tab of the application portal or by calling the number listed below.

Sincerely,

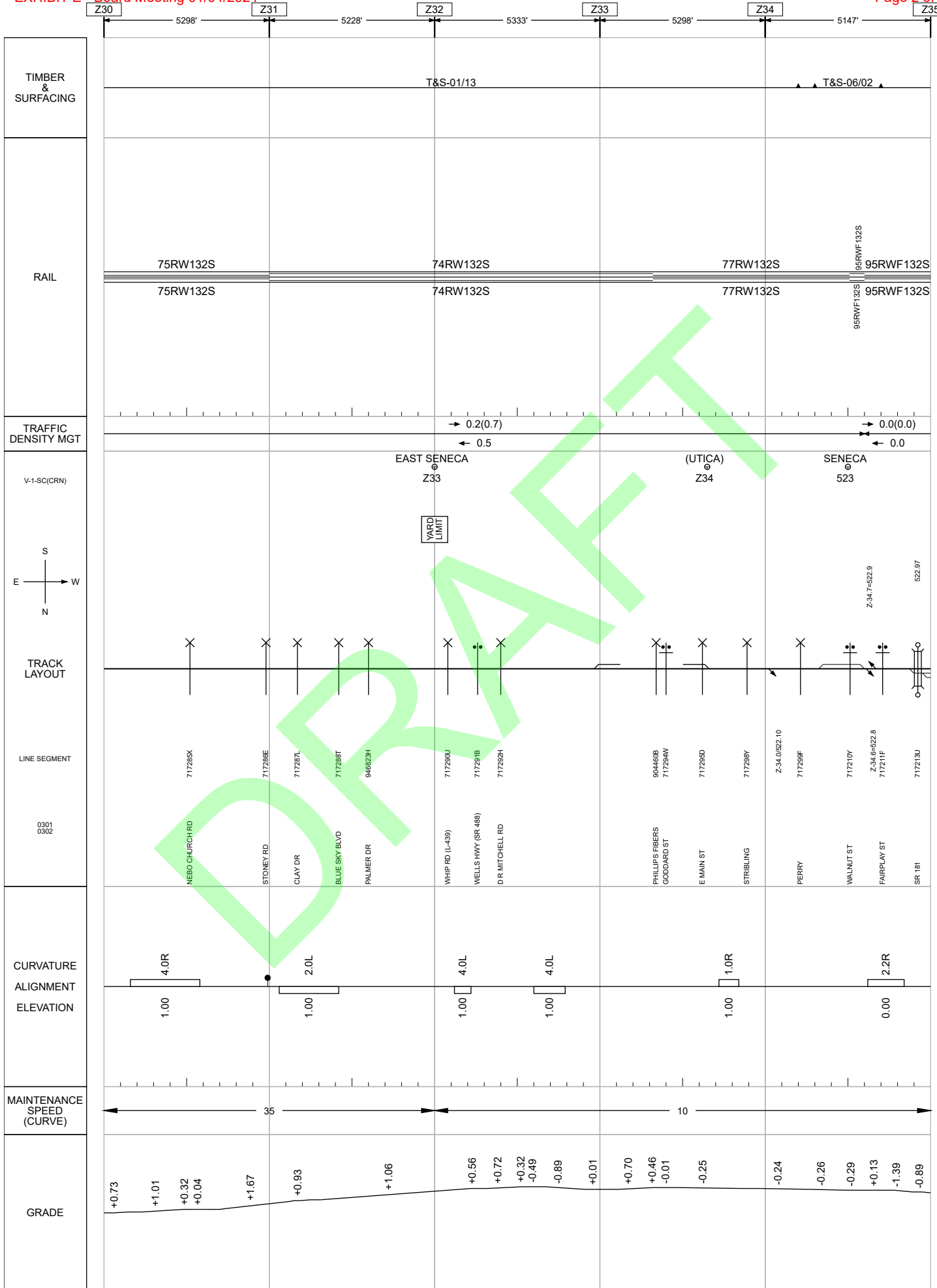
A handwritten signature in cursive script that reads "Laura Wilburn".

Laura Wilburn  
Real Estate Specialist

11819 Miracle Hills Dr. Ste, 102  
PO Box 642270  
Omaha, NE 68164

**P:** (402) 965-0539 **F:** (866) 762 - 7619

**www.railpros.com**



Sheet 04\_Z\_30\_35

### PIPE DATA SHEET

	CARRIER PIPE	CASING PIPE
CONTENTS TO BE HANDLED	Wastewater	Carrier Pipe
MAX. ALLOWABLE OPERATING PRESSURE	25 psi	
NOMINAL SIZE OF PIPE	16-inch	30-inch
OUTSIDE DIAMETER	16.000	30.000
INSIDE DIAMETER	14.940	29.062
WALL THICKNESS	0.500	0.469
WEIGHT PER FOOT	16.286 lb/ft	148.2 lb/ft
MATERIAL	PVC	Steel
PROCESS OF MANUFACTURE	Extrusion	Centrifugally Spun
SPECIFICATION	AWWA C900-22	ASTM A53
GRADE OR CLASS (Specified Minimum Yield Strength)	235 psi	35,000
TEST PRESSURE	150 psi	
TYPE OF JOINT	Restrained	Welded
TYPE OF COATING	n/a	None
DETAILS OF CATHODIC PROTECTION	n/a	None
DETAILS OF SEALS OR PROTECTION AT END OF CASING		Wrap around end seals
CHARACTER OF SUBSURFACE MATERIAL		Cecil Sandy Loam
APPROXIMATE GROUND WATER LEVEL		
SOURCE OF INFORMATION ON SUBSURFACE CONDITIONS		USDA

Proposed method of installation (refer to NSCE-8 Specification):

- Bore & Jack
- Jacking
- Tunneling (with Tunnel Liner Plate)
- Directional Bore/Horizontal Direction Drilling – Method A
- Directional Bore/Horizontal Direction Drilling – Method B
- Open Cut – *All installations directly under any track must be designed as a bored installation. Open cut installations will be considered on a case-by-case basis by Norfolk Southern's Division Superintendent at the time of installation.*
- Other – Please Specify: \_\_\_\_\_

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** (this “Agreement”), dated as of \_\_\_\_\_ (the “Effective Date”) is made and entered into by and between

**NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation, whose mailing address is 650 West Peachtree St. Box 22, Atlanta, Georgia 30308 (hereinafter called “Railway”), and **OCONEE JOINT REGIONAL SEWER AUTHORITY**, a South Carolina Government Entity, whose mailing address is 623 Return Church Rd, Seneca, South Carolina 29678 (hereinafter called “Licensee”).

### WITNESSETH

**WHEREAS**, Licensee has submitted to Railway an Application (as defined herein) related to the proposed installation and construction of **one (1) underground transverse 16-inch PVC wastewater pipeline with a 30-inch steel casing** (hereinafter called the “Facilities”) located in, under, and across the right-of-way or property and any tracks of Railway at or near:

- Milepost Z-32.65, Coastal Division
- Latitude 34.688056, Longitude -82.919139
- Seneca, Oconee County, South Carolina

the same to be located in accordance with and limited to the installation shown on the diagram set forth in **EXHIBIT A** attached hereto and made a part hereof (such right-of-way or property of Railway, collectively, the “Premises”); and

**WHEREAS**, Railway has approved the Application for the initial installation and construction of the Facilities; and

**WHEREAS**, Licensee desires a license to use such right-of-way or property of Railway for the installation and construction, as well as the subsequent maintenance, operation and removal, of the Facilities.

**NOW, THEREFORE**, Railway and Licensee agree as follows:

1. Grant; Consideration; Term. Subject to Section 2(b) below, Railway hereby grants to Licensee, insofar as Railway has the right to do so, without warranty and subject to all encumbrances, covenants and easements to which the Railway’s title may be subject, the right to use and occupy so much of the Premises as may be necessary for the installation, construction, maintenance, operation and removal of the Facilities (collectively, “Operate” or “Operations”). Upon execution of this Agreement, Licensee shall pay to Railway (i) a non-refundable, non-assignable, one-time license fee in the amount of **THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000.00)**, and (ii) if applicable as determined by Railway pursuant to Section 12 below, the Risk Financing Fee (as defined in Section 12). The term of this Agreement shall be perpetual and commence on the Effective Date, subject to prior termination as hereinafter described (the “Term”).

2. Use and Condition of the Premises.

(a) The Premises shall be used by Licensee only for Operations and for no other purpose. Licensee accepts the Premises in their current “as is” condition, as suited for Operations, and without the benefit of any improvements to be constructed by Railway.

(b) With respect to each Operations project that requires access to the Premises after the initial installation and construction of the Facilities, Licensee shall submit to Railway an application conforming to Railway’s then-current standards and procedures (an “Application”) for review and approval.

3. Installation of the Facilities; Railway Support. Licensee shall, at its expense, Operate the Facilities (i) on a lien-free basis and in such a manner as will not interfere with the operations of Railway, or endanger persons or property of Railway and (ii) in accordance with (a) the plans and specifications (if any) shown on the prints attached hereto and any other specifications prescribed by Railway, (b) applicable laws, regulations, ordinances and other requirements of federal, state and local governmental authorities, and (c) applicable specifications adopted by the American Railway Engineering and Maintenance-of-Way Association, when not in conflict with the applicable plans, specifications, laws, regulations, ordinances or requirements mentioned in clauses (a) and (b) above. All underground pipes must have secondary pipe containment if the material flowing through the pipeline poses a safety or environmental hazard. Any change to the character, capacity or use of the Facilities shall require execution of a new agreement. In the event it becomes necessary for Licensee to deviate from the approved plans and specifications, Licensee shall seek prior approval from Railway’s Division Engineer or his or her authorized representative and, when applicable, an authorized representative of the Division Engineer in the field during Construction Monitoring. Licensee shall provide Railway with complete as-built drawings of the Facilities in an electronic format within thirty (30) days of (i) completion of the initial installation and construction of the Facilities and (ii) completion of any material change to the Facilities.

4. Railway Support. With respect to each Operations project that requires access to the Premises, Railway shall, at Railway’s option, furnish, at the sole expense of Licensee, Support Services. The term “Support Services” means such materials and services as necessary, in Railway’s sole judgment, to support Railway’s tracks and to protect Railway’s traffic, including without limitation flagging services and Construction Monitoring during Operations that require access to the Premises. Support Services shall be provided unless Railway’s Division Engineer or his or her authorized representative provides to Licensee a written waiver of Support Services, whether in whole or in any part, in a given instance. The term “Construction Monitoring” means services comprised of one or more Railway representatives being assigned and present to monitor construction activities of Licensee, which may include a preconstruction site assessment and a post-construction site assessment.

5. Electronic Interference. If the Facilities cause degradation of Railway’s signal, communications and other electronic systems (hereinafter collectively called the “Electronic Systems”) or endanger Railway’s personnel or other individuals entitled to be on or about the

Premises, through inductive or electrostatic interference or otherwise, Licensee, at its expense, will modify the Facilities to the satisfaction of Railway so as to eliminate such degradation or danger. Such modifications may include, without limiting the generality of the foregoing, transposing circuits or providing additional shielding, reactance or other corrective measures deemed necessary by Railway. The provisions of this Section 5 shall apply to the Electronic Systems existing as of the date of this Agreement and to any Electronic Systems that Railway may install in the future.

6. Corrective Measures. If Licensee fails to take any corrective measures requested by Railway in a timely manner, or if an emergency situation is presented which, in Railway's judgment, requires immediate repairs to the Facilities, Railway, at Licensee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

7. Railway Changes. If Railway shall make any changes, alterations or additions to the line, grade, tracks, structures, roadbed, installations, right-of-way or works of Railway, or to the character, height or alignment of the Electronic Systems, at or near the Facilities, Licensee shall, upon not less than thirty (30) days prior written notice from Railway and at Licensee's sole expense, make such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of Railway, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions of Railway.

8. Assumption of Risk. Unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway, Licensee hereby assumes all risk of damage to the Facilities and Licensee's other property relating to its use and occupation of the Premises or business carried on the Premises and any defects to the Premises; and Licensee hereby indemnifies Railway, its officers, directors, agents and employees from and against any liability for such damage.

9. Entry Upon Premises. Licensee shall enter the Premises in any given instance only pursuant to an approved Application. Prior to commencement of any work to be performed on or about the Premises, Licensee shall notify the appropriate Division Engineer or their authorized representative for the scheduling of Support Services as determined pursuant to Section 4 above. Within seventy-two (72) hours after the Division Engineer's actual receipt of such notification, the Division Engineer shall review the necessity and availability of flagmen for the proposed work and advise Licensee of such matters and the estimated cost of Support Services. In the event of an emergency, Licensee shall call the Railway police emergency line at (800) 453-2530. No work shall be permitted on or about the Premises without the presence of Railway's flagman or the Division Engineer's waiver of the requirement for flag protection. Entry on or about the Premises or any other Railway right-of-way without the Division Engineer's prior approval shall be deemed trespassing. Licensee agrees to pay Railway, within thirty (30) days after delivery of an invoice therefor, for the cost of Support Services provided by or on behalf of Railway.

10. Liens; Taxes. Licensee will not permit any mechanic's liens or other liens to be placed upon the Premises, and nothing in this Agreement shall be construed as constituting the consent or request of Railway, express or implied, to any person for the performance of any labor or the furnishing of any materials to the Premises, nor as giving Licensee any right, power or



authority to contract for or permit the rendering of any services or the furnishing of any materials that could give rise to any mechanic's liens or other liens against the Premises. In addition, Licensee shall be liable for all taxes levied or assessed against the Facilities and any other equipment or other property placed by Licensee within the Premises. In the event that any such lien shall attach to the Premises or Licensee shall fail to pay such taxes, then, in addition to any other right or remedy available to Railway, Railway may, but shall not be obligated to, discharge the same. Any amount paid by Railway for any of the aforesaid purposes, together with related court costs, attorneys' fees, fines and penalties, shall be paid by Licensee to Railway within ten (10) days after Railway's demand therefor.

11. Insurance.

(a) Insurance Requirements. Without limiting in any manner the liability and obligations assumed by Licensee under any other provision of this Agreement, and as additional protection to Railway, Licensee shall comply with the following provisions:

(i) Subject to subsection (ii) below, upon execution of this Agreement, Licensee shall pay Railway a risk financing fee of \$1,900 (the "Risk Financing Fee") to provide Railroad Protective Liability Insurance or such supplemental insurance (which may be self-insurance) as Railway, in its sole discretion, deems to be necessary or appropriate with respect to the initial construction and installation of the Facilities.

(ii) Prior to commencement of each Operations project that requires access to the Premises, unless Railway elects to make available and Licensee pays the then-current Risk Financing Fee for a given Operations project, Licensee shall furnish Railway with an original Railroad Protective Liability ("RPL") Insurance Policy naming Railway as the named insured and having a limit of (1) not less than a combined single limit of \$2,000,000 each occurrence and \$6,000,000 aggregate, or (2) if the value of a given operations project exceeds \$350,000, not less than a combined single limit of \$5,000,000 per occurrence and \$10,000,000 in the aggregate. Each RPL policy shall conform to CG 00 35 04 13 or equivalent and include coverage for Terrorism and the Physical Damage to Property Endorsement and shall name Norfolk Southern Corporation and its affiliates and subsidiaries as the insured. Licensee shall ensure that the project location, Licensee identification and work description appear on the declaration pages of a given RPL policy. Licensee shall provide an electronic copy of each RPL policy (and not merely the binder) to Railway at [ns.permitting@railpros.com](mailto:ns.permitting@railpros.com) for review and approval prior to commencing any work on the associated Operations project. Licensee may submit inquiries about RPL issues at [ns.permitting@railpros.com](mailto:ns.permitting@railpros.com).

(iii) Licensee shall maintain a Commercial General Liability ("CGL") policy containing products and completed operations and contractual liability coverage, with a combined single limit of not less than \$2,000,000 for each occurrence. Any portion of this requirement may be satisfied by a combination of General Liability and/or Excess/Umbrella Liability Coverage. The policy shall not deny any obligation of any insured under the Federal Employer's Liability Act, as amended. The CGL policy shall provide additional insured coverage equivalent to ISO CG 20 10 11/85.

(iv) Licensee shall maintain Automobile Liability Insurance with a current ISO occurrence form policy (or equivalent) and apply on an “any auto” (Symbol 1) basis, including coverage for all vehicles used in connection with the Work or Services on the leased property, providing annual limits of at least \$1,000,000 per occurrence for bodily injury and property damage combined including uninsured and underinsured motorist coverage, medical payment protection, and loading and unloading.

(v) Licensee shall maintain Workers’ Compensation Insurance to meet fully the requirement of any compensation act, plan or legislative enactment applicable in connection with the death, disability or injury of Licensee’s officers, agents, servants or employees arising directly or indirectly out of the performance of this Agreement;

(vi) Licensee shall maintain Employers’ Liability Insurance with limits of not less than \$1,000,000 each accident \$1,000,000 policy limit for disease, and \$1,000,000 each employee for disease;

(b) General Insurance Requirements. Each insurance policy referred to in subsection (a) above shall also comply with the following requirements:

(i) Additional Insureds. Each insurance policy (excluding any RPL policy and Workers’ Compensation policy) shall name Railway and its parent, subsidiary and affiliated companies as additional insureds with an appropriate endorsement to each policy.

(ii) Licensee’s Coverage Primary and Without Right to Contribution. All policies secured by Licensee, whether primary, excess, umbrella or otherwise, and providing coverage to the Railway as an additional insured (1) are intended to take priority in responding and to pay before any insurance policies Railway may have secured for itself must respond or pay and (2) may not seek contribution from any policies the Railway may have secured for itself.

(iii) Severability of Interests (Cross Liability). No cross-liability exclusions are permitted that would apply to the additional insureds, and there may not be any restrictions in any policy that limits coverage for a claim brought by an additional insured against a named insured.

(iv) Waiver of Subrogation. To the fullest extent permitted by law, all insurance furnished by Licensee pursuant to this Agreement shall include a waiver of subrogation in favor of Railway with an appropriate endorsement to each policy.

(v) Notice of Cancellation, Modification or Termination. Each insurance policy shall not be subject to cancellation, termination, modification, changed, or non-renewed except upon thirty (30) days’ prior written notice to the additional insureds.

(vi) No Limitation. Each insurance policy shall not limit any of Licensee’s

indemnity obligations or other liabilities under this Agreement. The insurance available to Railway and its parent, subsidiary and affiliated companies as additional insureds shall not be limited by these requirements should Licensee maintain higher coverage limits.

(vii) Any deductibles or self-insured retentions of Licensee over \$50,000 must be declared and approved by Railway. Approval of such requests shall not be unreasonably withheld.

(viii) Licensee shall require all subcontractors who are not covered by the insurance carried by Licensee to maintain the insurance coverages set forth in subsection (a) above, except for the RPL insurance, including but not limited to additional insured status for Railway and its parent, subsidiary and affiliated companies.

(ix) Licensee shall furnish their memorandum of insurance and the RPL Insurance Policy to Railway's Managing Agent prior to execution of this Agreement at [ns.permitting@railpros.com](mailto:ns.permitting@railpros.com). The insurance coverage required herein shall in no way limit Licensee's liability under this Agreement.

13. Environmental Matters. Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations, ordinances or other requirements of federal, state and local governmental authorities relating to (a) any Operations, including notification and reporting of any releases, and (b) any contamination of any property, water, air or groundwater arising or resulting, in whole or in part, from Licensee's operation or use of the Premises pursuant to this Agreement. In addition, Licensee shall obtain any necessary permits to conduct Operations. Licensee agrees to indemnify and hold harmless Railway from and against any and all fines, penalties, demands or other Losses (including attorneys' fees) incurred by Railway or claimed by any person, company or governmental entity relating to (a) any contamination of any property, water, air or groundwater due to the use or presence of the Facilities on the Premises, (b) Licensee's violation of any laws, regulations or other requirements of federal, state or local governmental authorities in connection with the use or presence of the Facilities on the Premises or (c) any violation of Licensee's obligations imposed under this Section. Without limitation, this indemnity provision shall extend to any cleanup and investigative costs relating to any contamination of the Premises arising or resulting from, in whole or in part, Licensee's use of the Facilities or any other activities by or on behalf of Licensee occurring on or about the Premises. Licensee further agrees not to dispose of any trash, debris or wastes, including hazardous waste, on the Premises and will not conduct any activities on the Premises which would require a hazardous waste treatment, storage or disposal permit.

14. Assignments and Other Transfers.

(a) Licensee shall not assign, transfer, sell, mortgage, encumber, sublease or otherwise convey (whether voluntarily, involuntarily or by operation of law) this Agreement or any interest therein, nor license, mortgage, encumber or otherwise grant to any other person or entity (whether voluntarily, involuntarily or by operation of law) any right or privilege in or to the Premises (or any interest therein), in whole or in part, without the prior written consent of Railway, which consent may be withheld by Railway in its sole discretion. Any such assignment or other transfer

made without Railway's prior written consent shall be null and void and, at Railway's option, shall constitute an immediate default of this Agreement. Notwithstanding the foregoing, upon prior written notice to Railway, Licensee may assign this Agreement to a parent, a wholly-owned subsidiary of Licensee or a wholly-owned subsidiary of Licensee's parent without Railway's consent; provided, however, that no such assignment shall relieve Licensee of its obligations under this Agreement.

(b) Railway shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in or to the Premises. From and after the effective date of any such assignment or transfer, Railway shall be released from any further obligations hereunder; and Licensee shall look solely to such successor-in-interest of Railway for the performance of the obligations of "Railway" hereunder.

15. Meaning of "Railway". The word "Railway" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railway. Said term also shall include Railway's officers, directors, agents and employees, and any parent company, subsidiary or affiliate of Railway and their respective officers, directors, agents and employees.

16. Default; Remedies.

(a) The following events shall be deemed to be events of default by Licensee under this Agreement:

(i) Licensee shall fail to pay the Fee or any other sum of money due hereunder and such failure shall continue for a period of ten (10) days after the due date thereof;

(ii) Licensee shall fail to comply with any provision of this Agreement not requiring the payment of money, all of which terms, provisions and covenants shall be deemed material, and such failure shall continue for a period of thirty (30) days after written notice of such default is delivered to Licensee;

(iii) Licensee shall become insolvent or unable to pay its debts as they become due, or Licensee notifies Railway that it anticipates either condition;

(iv) Licensee takes any action to, or notifies Railway that Licensee intends to file a petition under any section or chapter of the United States Bankruptcy Code, as amended from time to time, or under any similar law or statute of the United States or any State thereof; or a petition shall be filed against Licensee under any such statute; or

(v) A receiver or trustee shall be appointed for Licensee's license interest hereunder or for all or a substantial part of the assets of Licensee, and such receiver or trustee is not dismissed within sixty (60) days of the appointment.

(b) Upon the occurrence of any event or events of default by Licensee, whether enumerated in this Section or not, Railway shall have the option to pursue any remedies available

to it at law or in equity without any additional notices to Licensee. Railway's remedies shall include, but not be limited to, the following: (i) termination of this Agreement, in which event Licensee shall immediately surrender the Premises to Railway; (ii) entry into or upon the Premises to do whatever Licensee is obligated to do under the terms of this License, in which event Licensee shall reimburse Railway on demand for any expenses which Railway may incur in effecting compliance with Licensee's obligations under this License, but without rendering Railway liable for any damages resulting to Licensee or the Facilities from such action; and (iii) pursuit of all other remedies available to Railway at law or in equity, including, without limitation, injunctive relief of all varieties.

17. Railway Termination Right. Notwithstanding anything to the contrary in this Agreement, Railway shall have the right to terminate this Agreement and the rights granted hereunder, after delivering to Licensee written notice of such termination no less than sixty (60) days prior to the effective date thereof, upon the occurrence of any one or more of the following events:

(a) If Licensee shall fail to install the Facilities within two (2) years from the date of the Agreement, or if Licensee shall discontinue the use or operations of the Facilities for one (1) year; or

(b) If Railway shall be required by any governmental authority having jurisdiction over the Premises to remove, relocate, reconstruct or discontinue operation of its railroad on or about the Premises; or

(c) If Railway, in the good faith judgment of its Superintendent, shall require a change in the location or elevation of its railroad on or about the location of the Facilities or the Premises that might effectively prohibit the use or operation of the Facilities; or

(d) If Railway, in the good faith judgment of its Superintendent, determines that one or more aspects of Operations unduly interfere with the operation and maintenance of the facilities of Railway, or with the present or future use of such property by Railway, its lessees, affiliates, successors or assigns, for their respective purposes.

18. Condemnation. If the Premises or any portion thereof shall be taken or condemned in whole or in part for public purposes, or sold in lieu of condemnation, then this Agreement and the rights granted to Licensee hereunder shall, at the sole option of Railway, forthwith cease and terminate. All compensation awarded for any taking (or sale proceeds in lieu thereof) shall be the property of Railway, and Licensee shall have no claim thereto, the same being hereby expressly waived by Licensee.

19. Removal of Facilities; Survival. The Facilities are and shall remain the personal property of Licensee. Upon the expiration or termination of this Agreement, Licensee shall remove the Facilities from the Premises within thirty (30) days after the effective date thereof. In performing such removal, unless otherwise directed by Railway, Licensee shall restore the Premises to the same condition as existed prior to the installation or placement of Facilities, reasonable wear and tear excepted. In the event Licensee shall fail to so remove the Facilities or

restore the Premises, the Facilities shall be deemed to have been abandoned by Licensee, and the same shall become the property of Railway for Railway to use, remove, destroy or otherwise dispose of at its discretion and without responsibility for accounting to Licensee therefor; provided, however, in the event Railway elects to remove the Facilities, Railway, in addition to any other legal remedy it may have, shall have the right to recover from Licensee all costs incurred in connection with such removal and the restoration of the Premises. Notwithstanding anything to the contrary contained in this Agreement, the expiration or termination of this Agreement, whether by lapse of time or otherwise, shall not relieve Licensee from Licensee's obligations accruing prior to the expiration or termination date, and such obligations shall survive any such expiration or other termination of this Agreement.

20. Entire Agreement. This Agreement contains the entire agreement of Railway and Licensee and supersedes any prior understanding or agreement between Railway and Licensee respecting the subject matter hereof, and no representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of any force or effect.

21. Attorneys' Fees. If Railway should bring any action under this Agreement or consult or place the Agreement or any amount payable by Licensee hereunder, with an attorney concerning or for the enforcement of any of Railway's rights hereunder, then Licensee agrees in each and any such case to pay to Railway all costs, including but not limited to court costs and attorneys' fees, incurred in connection therewith.

22. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the Term, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby; and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

23. Modifications; Waiver; Successors and Assigns. This Agreement may not be altered, changed or amended, except by instrument in writing signed by both parties hereto. No provision of this Agreement shall be deemed to have been waived by Railway unless such waiver shall be in a writing signed by Railway and addressed to Licensee, nor shall any custom or practice that may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of Railway to insist upon the performance by Licensee in strict accordance with the terms hereof. The terms and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. If there shall be more than one Licensee, the obligations hereunder imposed upon Licensee shall be joint and several.

24. Notice. Any and all other notices, demands or requests by or from Railway to Licensee, or Licensee to Railway, shall be in writing and shall be sent by (a) postage paid, certified

mail, return receipt requested, or (b) a reputable national overnight courier service with receipt therefor, or (c) personal delivery, and addressed in each case as follows:

If to Railway:

c/o Norfolk Southern Corporation  
650 West Peachtree Street, Box 22  
Atlanta, Georgia 30308  
Attention: Director Real Estate

If to Licensee:

OCONEE JOINT REGIONAL SEWER AUTHORITY  
623 Return Church Rd  
Seneca, South Carolina 29678  
Attention: Chris Eleazer

Either party may, by notice in writing, direct that future notices or demands be sent to a different address. All notices hereunder shall be deemed given upon receipt (or, if rejected, upon rejection).

25. Miscellaneous. Time is of the essence with regard to each provision of this Agreement. This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State in which the Premises are located. Each covenant of Railway and Licensee under this Agreement is independent of each other covenant under this Agreement. No default in performance of any covenant by a party shall excuse the other party from the performance of any other covenant. The provisions of this Agreement that, by their nature, are intended to survive the expiration or earlier termination of this Agreement, including Sections 8, 10, 11, 13 and 19, shall so survive.

26. Limitations of Grant. Licensee acknowledges that the license granted hereunder is a quitclaim grant, made without covenants, representations or warranties with respect to Railway's (a) right to make the grant, (b) title in the Premises, or (c) right to use or make available to others the Premises for the purposes contemplated herein. Railway is the owner and/or holder of the Premises subject to the terms and limitations under which it is owned or held, including without limitation conditions, covenants, restrictions, easements (including any pre-existing fiber optic easements or licenses), encroachments, leases, licenses, permits, mortgages, indentures, reversionary interests, fee interests, zoning restrictions and other burdens and limitations, of record and not of record, and to rights of tenants and licensees in possession, and Licensee agrees that the rights licensed hereunder are subject and subordinate to each and all of the foregoing. Licensee accepts this grant knowing that others may claim that Railway has no right to make it, and Licensee agrees to release, hold harmless and indemnify (and, at Railway's election, defend, at Licensee's sole expense, with counsel approved by Railway) Railway, its affiliated companies, and its and their respective officers, directors, agents and employees, from and against any detriments to, or liabilities of, any type or nature arising from such claims, including punitive damages and any forfeitures declared or occurring as a result of this grant.

27. Limitations Upon Damages. Notwithstanding any other provision of this Agreement, Railway shall not be liable for breach of this Agreement or under this Agreement for any consequential, incidental, exemplary, punitive, special, business damages or lost profits, as well as any claims for death, personal injury, and property loss and damage which occurs by reason of, or arises out of, or is incidental to the interruption in or usage of the Facilities placed upon or about the Premises by Licensee, including without limitation any damages under such claims that might be considered consequential, incidental, exemplary, punitive, special, business damages or lost profits. It is understood and agreed by Licensee that Railway cannot and will not make any warranties, representations or guarantees that Licensee's communication system (if any), as located on Railway's property, will not be interrupted.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the date first above written.

Witness:

**NORFOLK SOUTHERN RAILWAY  
COMPANY**

\_\_\_\_\_  
As to Railway

By: \_\_\_\_\_  
Real Estate Manager

Witness:

**OCONEE JOINT REGIONAL SEWER  
AUTHORITY**

\_\_\_\_\_  
As to Licensee

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

Activity Number: 1312707  
NJR: 11/20/2023





177 Wilborn St  
 Greenville, SC 29601  
 T 864.527.0440  
 GCM.NETWORK.COM

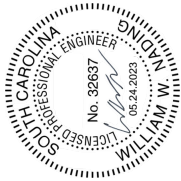


**EXHIBIT 1**

PROJ # CGRE220055  
 DATE: 05/24/2023  
 DRAWN BY: JLM

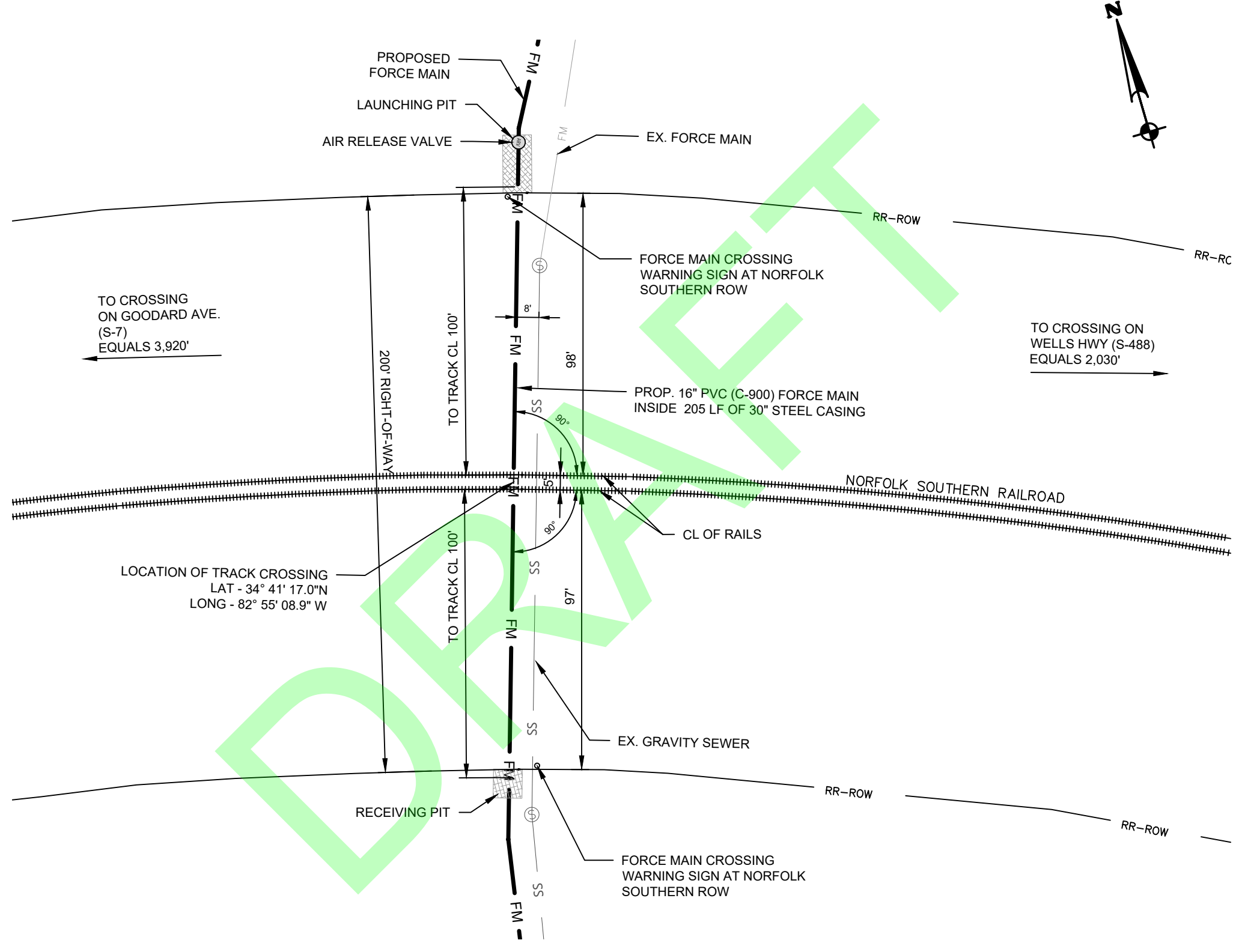
SENECA CREEK FORCE MAIN  
 REPLACEMENT

SENECA, SOUTH CAROLINA



NORFOLK SOUTHERN PLAT 1  
 PIPE PLAN VIEW

SCALE: 1" = 40'



**EXHIBIT A**  
 Pages 1-2  
 Norfolk Southern Railway Company  
 Accompanying Agreement With  
 Oconee Joint Regional Sewer Authority

Activity No.:	1312707	E.S.:	1726+38
Division:	Coastal	Mile Post:	Z-32.65
Val Sec:	1	Map No.:	6
City:	Seneca	County:	Oconee
State:	South Carolina		
Lat:	34.688056	Long:	-82.919139

All work to be performed in accordance with the latest approved Norfolk Southern NSCE-4 and NSCE-8 Specifications dated 6/7/23  
**BLASTING NOT PERMITTED**



171 Wilborn St  
Greenville, SC 29601  
T 864.327.0400  
GMCNETWORK.COM

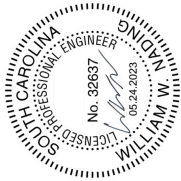


EXHIBIT 2

PROJ # CGRE220055  
DATE: 05/24/2023  
DRAWN BY: JLM

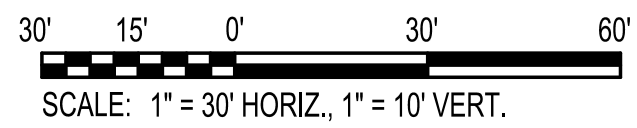
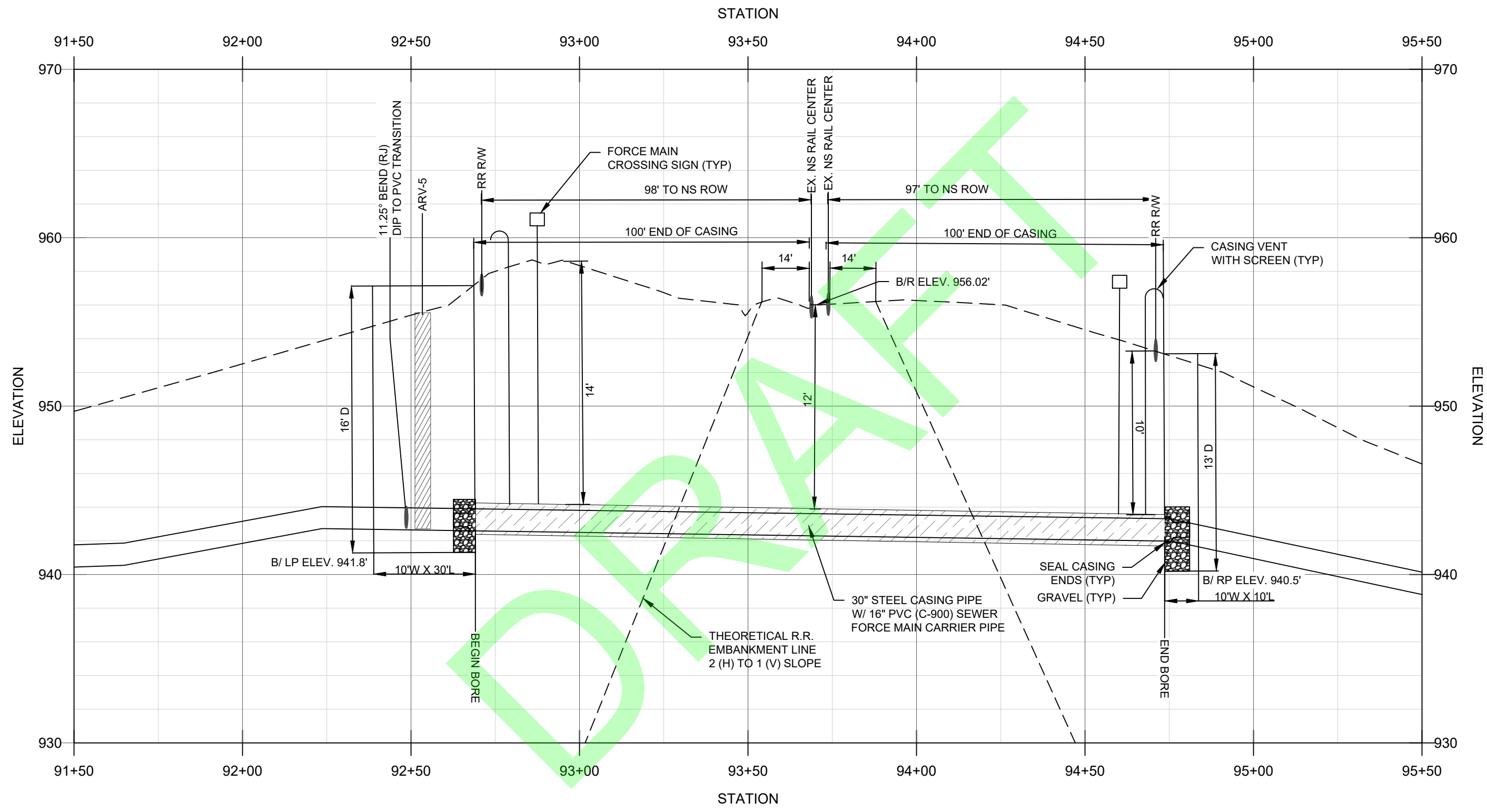
SENECA CREEK FORCE MAIN REPLACEMENT

SENECA, SOUTH CAROLINA



NORFOLK SOUTHERN PLAT 1  
PIPE PROFILE VIEW

SCALE: 1" = 30' HORIZ., 1" = 10' VERT.



**Certificate Of Completion**

Envelope Id: 69571742F34A450CB9FF48409EECA26D	Status: Sent
Subject: 1312707 Oconee Joint UG Pipeline for Signature Redline (20984)	
Source Envelope:	
Document Pages: 16	Signatures: 0
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	RailPros Permitting
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	1320 Greenway Dr.
	Suite 490
	Irving, TX 75038
	docusign@railpros.com
	IP Address: 3.130.31.15

**Record Tracking**

Status: Original	Holder: RailPros Permitting	Location: DocuSign
11/22/2023 9:13:58 AM	docusign@railpros.com	

**Signer Events**

Signature	Timestamp
Chris Eleazer (Licensee/Facility Owner) chris.eleazer@ojrsa.org Security Level: Email, Account Authentication (None)	Sent: 11/22/2023 9:14:00 AM Viewed: 11/22/2023 9:22:03 AM

**Electronic Record and Signature Disclosure:**  
Accepted: 11/22/2023 9:22:03 AM  
ID: 7be47238-37f1-4e01-afbb-242f7088a4a6

Jamie Jordan (Document Specialist 2)  
jamie.jordan@railpros.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Accepted: 11/9/2020 6:20:10 AM  
ID: 0a68d14b-a488-477d-8ea6-1abc9a7a0a90

Keyana Holloway  
keyana.holloway@nscorp.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Accepted: 11/9/2020 5:38:02 AM  
ID: 95fda88c-ee71-44b3-806f-7614e3b7bc43

Solomon Jackson  
solomon.jackson@nscorp.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Accepted: 11/9/2020 5:27:48 AM  
ID: 097fa1b6-fca4-4d11-8fd5-d5fc7c21939a

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Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp

<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
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Laurawilburn.NS  
laura.wilburn@railpros.com  
Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Accepted: 9/26/2023 2:17:40 PM  
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<b>Witness Events</b>	<b>Signature</b>	<b>Timestamp</b>
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<b>Notary Events</b>	<b>Signature</b>	<b>Timestamp</b>
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<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
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Envelope Sent	Hashed/Encrypted	11/22/2023 9:14:00 AM
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<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
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<b>Electronic Record and Signature Disclosure</b>
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DRAFT

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Railpros (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

### **How to contact Railpros:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [docusign@railpros.com](mailto:docusign@railpros.com)

### **To advise Railpros of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [docusign@railpros.com](mailto:docusign@railpros.com) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

### **To request paper copies from Railpros**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [casey.vorwaller@railpros.com](mailto:casey.vorwaller@railpros.com) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

### **To withdraw your consent with Railpros**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [docusign@railpros.com](mailto:docusign@railpros.com) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Railpros as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Railpros during the course of your relationship with Railpros.



Pope Flynn, LLC  
1411 Gervais Street, Suite 300  
Post Office Box 11509 (29211)  
Columbia, SC 29201

MAIN 803.354.4900  
FAX 803.354.4899  
www.popeflynn.com

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MEMORANDUM

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PRIVILEGED AND CONFIDENTIAL  
ATTORNEY-CLIENT COMMUNICATION

---

To: Christopher Eleazer, MPA, Executive Director  
Oconee Joint Regional Sewer Authority

From: Pope Flynn, LLC

Date: December 11, 2023

Re: Impact Fees

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Oconee Joint Regional Sewer Authority, South Carolina (“OJRSA”) currently charges impact fees for its wastewater system. The fees are imposed and structured to recover the incremental costs of its public infrastructure (existing and proposed). Certain changes to the OJRSA’s impact fees are being discussed, and this memorandum has been prepared in response to such discussions.

- Utilities, like OJRSA, must provide and fund many types of wastewater capital items. Major facilities represent the greatest capital expenditures for utilities since these facilities are constructed to provide large increments of capacity that are shared by numerous customers. A popular mechanism used to fund capital expenditures is impact fees (also called system development charges, capital recovery fees, and a variety of other names). Impact fees should be structured to recover the per-unit cost of capacity to serve new customers.
- Impact fees are one-time charges assessed to new wastewater customers or developers/builders to recover a proportional share of capital costs incurred to provide service capacity for the new customers. These fees should be reviewed for consistency and allocated based on per-unit cost (likely by a recognized/sophisticated consultant and updated regularly) to ensure all applicable costs are captured.
- Importantly, the imposition of the fees is expressly authorized by South Carolina law, particularly Sections 6-1-330 and 6-1-1080 of the Code of Laws of South Carolina 1976, as amended, and validated by the Supreme Court: *J.K. Const., Inc. v. Western Carolina Regional Sewer Authority*, 336 S.C. 162 (1999).
- New capital required for expanding systems to accommodate growth is usually more costly per unit of capacity than historical capital costs for facilities benefiting the existing



customers. To be cost-effective, expansion of major utility systems, such as wastewater treatment plants or major lines, typically involves the construction of significant increments of capacity that will meet projected demand for a number of years. Initially, much of this incremental capacity may be underutilized, as new customer growth tends to occur steadily over time, and capacity must be in place prior to its connecting to the system. If bonds are issued to finance the full cost of expansion facilities, debt service payments recovered through rates could cause user charges to increase significantly. Eventually, the impact of this debt service cost may be reduced as more new customers connect and these capital costs are recovered from a larger customer base; however, the initial impact on existing customers can be significant.

- Impact fees theoretically add equity to the pricing system by requiring the new customer to make up-front contributions (mitigating rate increases required to serve such customers). The objective is for “growth to pay for growth,” such that existing customers would not have to subsidize growth through their user rates and charges. In practice, impact fees do not fully mitigate the total impact of significant capital expansions, although the magnitude of rate increases can be reduced by integrating impact fees into the broader capital financial planning initiatives. However, care must be given in projecting future revenue from impact fees, since the assessment of these fees is contingent on system growth, which can fluctuate substantially due to economic conditions and other factors. Additionally, impact fees revenue is often excluded from revenue for the purpose of calculating debt service coverage. Regardless, intergenerational equity is increased because a larger portion of the total costs of capacity are shifted from the existing customers to new or future customers.
- Significant caution should be exercised when considering any economic development inducements, credits, or incentives, as you may be essentially shifting the burden of facility costs to the ancestral payors. Every applicable dollar that is credited/reduced for a new user, is a cost that needs to either be funded from economic development funding sources committed by the utility, or subsidized by the existing customer base.
- Maintaining standard impact fees offer several advantages, including:
  - The charges are paid up front to the utility, enabling the community to provide additional services immediately. The revenue has more worth to the community when paid in a lump sum than if it was financed over time or paid through user charges after the customer connects to the system (which is an argument against financing such charges over time or allows for deferral of payments).
  - The charges can be administratively relatively easy to develop, implement, and update. Unlike certain types of bonds, the charges do not normally require a vote of the public.
  - The charges are a financial intergenerational equalization device. When calculated properly, they require new development or customers to “buy into” public infrastructure and/or system equity at a fair rate and to repay existing users who have subsidized the system-wide facilities through prior service charges or taxes.

- The charges provide an additional source of revenue to supplement otherwise inadequate funds for constructing and/or maintaining essential facilities and services. As a result, less pressure is placed on user charges for financing capital items. In addition, they provide a source of funds when the bond market is unfavorable for financing capital facilities.
- There can, however, be disadvantages to impact fees, including:
- Impact fees are not popular with homebuilders, land developers, economic development entities and new wastewater customers because they present an upfront economic burden and may limit or reduce new development.
  - Impact fees add to the "front-end" cost of housing, making new housing less affordable to low and middle-income families.
  - While new home buyers should be required to bear the costs of facilities and other improvements that benefit them directly, impact fees can represent a subsidy of pre-existing services and can be unfair to new home buyers who are long-standing community residents.
  - Impact fees are not legally deductible for federal income tax purposes, making them more expensive in relative terms than ad valorem taxes, if taxes are used to retire debt for infrastructure facilities.
  - Complex assessment methods can make administration costly and complicated.

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