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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2020-001135
Case No. 2015-CP-40-1805

Wendy Brawley,..... Respondent-Appellant,

v.

Richland County, South Carolina ..... Appellant-Respondent.

RECORD ON APPEAL
VOLUME I OF II

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FORM 4

STATE OF SOUTH CAROL
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT I . CIVIL CASE

CASE NO. 2015 CP-4001805

HOPKINS AND LOWER RICHLAND CITIZENSUNITED, INC.

WNEDY BRAWLEY
PLAINTIFF(S)

RICHLAND COUNTY

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

RICHLAND COUNTY FILED
2015 AUG 14 PM 2:33
JEANETTE W. McBRIDE C.C.C. & G.S.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' CLAIM FOR INJUNCTIVE RELIEF IS GRANTED.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2127
Judge Code

Aug 11, 2015
Date

SCRCP Form 4C (03/2013)

SCANNED

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of August, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCANNED

SCRCP Form 4C (10/2011)

FORM 4

STATE OF SOUTH CAROL[illegible]
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT [illegible] A CIVIL CASE

CASE NO. 2015 **CP**-40-01805

Hopkins and Lower Richland Citizens United Inc — PLAINTIFF(S)

Richland County — DEFENDANT(S)

Wendy Brawley

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

RICHLAND COUNTY FILED 2016 SEP 12 AM 11:36 JEANETTE W. McBRIDE C.C.P. & G.S.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Summary judgement is denied; Lower Richland Citizens United Inc. shall be dimissed as a party; A more detailed Order to follow.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2127 **Judge Code**

Sept 6, 2016 **Date**

Jeanette W. McBride

SCRCP Form 4C (03/2013)

SCANNED

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley,	)	Civil Action No. 2015-CP-40-1805
Plaintiffs,	)	
v.	)	**ORDER GRANTING DISMISSAL OF PLAINTIFFS' CLAIM FOR INJUNCTIVE RELIEF**
Richland County, South Carolina,	)	
Defendant.	)	

2016 OCT -4 AM 8:30

This matter is before this Court on the Motion to Dismiss filed by the Defendant Richland County. After a review of the pleadings, the motion, the written submissions by the parties, and the oral arguments of counsel, this Court grants the Plaintiff's Motion to Dismiss for the reasons discussed below.

The Plaintiffs have brought this action pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq.*, related to four FOIA requests submitted on September 9, 2014 to the Defendant Richland County. The Plaintiffs have alleged that the County failed to fully respond to those FOIA requests. In addition, as part of their prayer for relief as contained in their Complaint, the Plaintiffs seek the following temporary and permanent injunctive relief:

> a. Enjoining Defendant from sending surveys to residents that make any representation that Richland County will provide all residents that reside within 200 feet of the proposed Phase I sewer line a full waiver of tap or connection fees;

b. Enjoining Defendant from entering into negotiations with residents of Hopkins and Lower Richland for the acquisition of easements; and

c. Enjoining Defendant from providing third reading to the Lower Richland Sewer Project.

See, Complaint, ¶ 40.

The Defendant takes the position that it provided timely responses to the four FOIA requests at issue and produced what its staff reasonably believed to be the information in its files that was responsive to those requests. However, the Defendant's compliance with the FOIA requests is not an issue before the Court on this Rule 12(b) motion. This motion is limited to the legal question as to whether the Court has the authority to issue the injunctive relief sought by the Plaintiffs in Paragraph 40 of their Complaint. The Defendant contends that the injunctive relief as sought by the Plaintiffs is not relief contemplated or allowed under FOIA. This Court agrees and dismisses the Plaintiffs' claim for injunctive relief.

S.C. Code Ann. § 30-4-100(a) allows a court to issue "a declaratory judgment and injunctive relief to enforce the provisions of this chapter." Therefore, the available relief is limited to the enforcement of the provisions of FOIA. Based upon existing precedent, a court may invalidate an ordinance that was enacted in violation of FOIA's open meeting requirements or order the disclosure of public records that are not exempt from disclosure and have been wrongfully withheld. However, the Court finds that in this case the Plaintiffs are seeking injunctive relief that does not enforce the provisions of FOIA and which is much broader than the relief contemplated or allowed under S.C. Code Ann. § 30-4-100(a).

Importantly, the Plaintiffs are not contending that the Defendant's contemplated actions to be enjoined, as pled in Paragraph 40 of the Plaintiffs' Complaint, are illegal, unlawful, or

unconstitutional. Instead, the Plaintiffs contend that they have been denied the opportunity to offer "adequate, meaningful community input" to their elected representatives and "to provide the public with information regarding the truthfulness of statements regarding tap fee waivers that Defendant proposes to include in certain community surveys that it indicated would be sent during its March 17, 2015 County Council meeting." *See*, Complaint, ¶¶ 33-34. They complain about "being subject to misleading community surveys" and "being deprived of the ability to confirm the Defendant's compliance with USDA loan and grant requirements." *See*, Complaint, ¶ 39.

The Plaintiffs are not permitted by law, however, to use FOIA as a mechanism to block or delay by judicial action the exercise of legislative and executive powers that are legal, lawful and constitutional. As indicated, the Plaintiffs have not alleged that the conduct for which they seek an injunction is unlawful or unconstitutional. Thus, the Court concludes that it does not have the authority pursuant to FOIA to enjoin a governmental entity from pursuing a lawful course of action that has been determined by elected representatives to be in the best interests of the public at large and necessary for carrying out and effectuating public policy and the public welfare.

As precedent reflects, the South Carolina courts have granted injunctive relief that is tied specifically to the FOIA violation. By way of example, the courts have allowed for the invalidation of a vote that was taken in violation of FOIA open meeting provisions. *See*, *Business License Opposition Committee v. Sumter County*, 311 S.C. 24, 426 S.E.2d 745 (1992); *Piedmont Public Service District v. Cowart*, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995). Likewise, the courts have ordered the production of non-exempt documents that were sought pursuant to FOIA. Most recently, in *Donohue v. City of North Augusta*, 412 S.C. 526, 773

S.E.2d 140 (2015), the Supreme Court remanded for "consideration of possible remedies" which were limited by the Court to an award of attorney's fees and/or "prospective injunctive relief relating to future executive sessions." 773 S.E.2d at 143. However, this Court is unaware of and has not been directed to any FOIA case where a court has authorized the use of FOIA to temporarily or permanently enjoin a governmental entity from moving forward with lawful legislative or executive action – which is the very injunctive relief sought by the Plaintiffs here.

Furthermore, the Plaintiffs' claims for injunctive relief raise what are quintessentially non-justiciable political questions over which this Court lacks subject matter jurisdiction. As the Supreme Court has held, "courts will not rule on questions that are exclusively or predominantly political in nature rather than judicial." *Segars Andrews v. Judicial Merit Selection Commission*, 387 S.C. 109, 691 S.E.2d 453, 460 (2010). The Supreme Court has explained that the political question doctrine "excludes from judicial review those controversies which revolve around policy choices and value determination constitutionally committed for resolution to the hall of state legislatures or to the confines of the executive branch." 691 S.E.2d at 461. In the case at bar, the Plaintiffs have not alleged nor shown that the Defendant has violated any open meeting requirements under FOIA nor committed any unlawful or unconstitutional act that must be enjoined. Instead, the Plaintiffs appear to be using FOIA for political purposes – to block or delay legitimate governmental action with which they are opposed. In accordance with the separation of powers and the political question doctrines, the Court may not however use its equitable authority under FOIA to interfere with the legislative and executive process of government.

In summary, the Court concludes that that the temporary and injunctive relief, as pled in Paragraph 40 of the Plaintiffs' Complaint, is beyond the scope of the relief contemplated or

allowed under S.C. Code Ann. § 30-4-100(a). The Court therefore grants the Motion to Dismiss with respect to the Plaintiffs' claim for injunctive relief.

AND IT IS SO ORDERED.

CLIFTON B. NEWMAN
Presiding Circuit Court Judge,
Fifth Judicial Circuit

Columbia, South Carolina

Aug 22, 2016

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley,	)	Civil Action No. 2015-CP-40-1805
Plaintiffs,	)	
v.	)	**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
Richland County, South Carolina,	)	
Defendant.	)	

RICHLAND COUNTY FILED
2016 OCT 24 AM 11:28
JEANETTE W. McBRIDE C.C.P. & G.S.

This matter is before this Court on the Motion for Summary Judgment filed by the Defendant Richland County. A hearing was held on August 23, 2016, with counsel for all parties present. After a review of the pleadings, the motion, the written submissions by the parties including affidavits, and the oral arguments of counsel, this Court grants in part and denies in part the County's Motion for Summary Judgment for the reasons discussed below.

The Plaintiffs have brought this action pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq.*, related to four FOIA requests submitted by the Plaintiff Wendy Brawley on September 9, 2014 to the Defendant Richland County. In their Complaint, the Plaintiffs alleged that the County failed to fully respond to those FOIA requests. The County takes the position that it provided timely responses to the four FOIA requests at issue and produced what its staff reasonably believed to be the information in its files that was responsive to those requests.

SCANNED

At the commencement of the hearing, counsel for the Plaintiffs conceded that the County fully responded to three of the four FOIA requests, specifically the request seeking a copy of the minutes from the Richland County Council meeting when funds were approved by Council for waivers of tap on fees for the Lower Richland Sewer Project, the request seeking a copy of the minutes from Richland County Council's meeting when the Council gave Third Reading Approval for the Lower Richland Sewer Project, and the request seeking a copy of Richland County's MOU with City of Columbia regarding the sewer services agreement. As a result, summary judgment is granted to the Defendant Richland County with respect to those three FOIA requests.

The fourth FOIA request seeks the production of a copy of Richland County's USDA Rural Development Application for Loan and Grant Funding Lower Richland Sewer Project. Based upon the affidavits presented and the arguments of counsel, the Court concludes that there appears to be a genuine issue of material fact in dispute that precludes the resolution of this claim at the summary judgment stage.

The Defendant County also seeks summary judgment against the Plaintiff Hopkins and Lower Richland Citizens United, Inc. which did not incorporate until March 17, 2015. The County argues that Hopkins and Lower Richland Citizens United, Inc. has no standing to claim a violation of any FOIA requests that were submitted and answered prior to its incorporation and existence. Moreover, the evidence presented shows that the four FOIA requests were submitted by Wendy Brawley, who is also a Plaintiff to this action, and there is no indication in those requests themselves that Ms. Brawley was submitting them in a representative capacity. Accordingly, this Court agrees with the County's position and concludes that the Plaintiff Hopkins and Lower Richland Citizens United, Inc. should and hereby is dismissed as a party to this action.

SCANNED

In sum, the only claim that remains for trial is the claim by the Plaintiff Wendy Brawley related to the FOIA request dated September 9, 2014, which sought "a copy of the application and supporting documentation Richland County submitted to the USDA Rural Development for grant and loan funding for the Lower Richland Sewer Project."

AND IT IS SO ORDERED.

CLIFTON B. NEWMAN
Presiding Circuit Court Judge,
Fifth Judicial Circuit

Columbia, South Carolina

Oct 24, 2016

SCANNED

ELECTRONICALLY FILED - 2020 Feb 13 4:46 PM - RICHLAND - COMMON PLEAS - CASE#2015CP4001805

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Wendy Brawley,	)	Civil Action No. 2015-CP-40-1805
	)	
Plaintiff,	)	
	)	
v.	)	**FINAL ORDER ON THE MERITS**
	)	
Richland County, South Carolina,	)	
	)	
Defendant.	)	
	)	

THIS MATTER CAME BEFORE THE COURT on September 5, 2019 for a hearing on the merits pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq*.[1] Present at the Trial and appearing on behalf of Plaintiff Wendy Brawley ("Ms. Brawley") were Shaun C. Blake, Esq. and Jenkins M. Mann, Esq. Present at the bench trial and appearing on behalf of Defendant Richland County was Andrew F. Lindemann, Esq.

On March 27, 2016, the Plaintiff filed a Complaint seeking declaratory and injunctive relief. The Defendant Richland County filed a Motion to Dismiss which was heard by Judge Clifton Newman. By Form Order filed August 14, 2015, Judge Newman granted that motion and dismissed the Plaintiff claim for injunctive relief. Later, with respect to the remaining claim for declaratory relief, the Defendant County filed a motion for summary judgment. By Order filed October 24, 2016, that motion was granted in part and denied in part by Judge Clifton Newman. Judge Newman resolved three of the four FOIA requests. The fourth FOIA request sought the production of "a copy of the application and supporting documentation Richland County submitted to the USDA Rural

[1] This case is controlled by the Freedom of Information Act as it was codified in 2014, which was prior to the significant amendments to FOIA as adopted as part of 2017 Act No. 67, which became effective on May 19, 2017.

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Development for grant and loan funding for the Lower Richland Sewer Project." In his Order filed October 24, 2016, Judge Newman determined that "there appears to be a genuine issue of material fact in dispute that precludes the resolution of this claim at the summary judgment stage." That is the remaining claim for declaratory relief that proceeded to trial before this Court.

FACTS

After careful consideration of the testimony and exhibits presented at trial as well as the legal arguments of counsel both during the trial and in proposed orders, the Court makes the following findings of fact.

Prior to February 2013, Richland County applied for a loan and grant from the USDA Rural Development office to fund the majority of what is known as "Phase I" of the Lower Richland Sewer Project (hereinafter, the "Grant"), which includes planning, acquiring easements, and installing the infrastructure to provide Richland County sewer service to Lower Richland. (Transcript at 97, Salley Testimony). Richland County's utilities department, grants coordinator, and general administration had roles in applying for the Grant. (Transcript at 97, Salley Testimony; Transcript at 114, Metts Testimony).

On September 9, 2014, at a Richland County Council Meeting, Ms. Brawley submitted four (4) separate written South Carolina Freedom of Information Act ("FOIA") requests to the Defendant Richland County. (Transcript at 23-27 and 81, Brawley Testimony). Of the four requests, only one remains at issue; the one in which Ms. Brawley sought "a copy of the application and supporting documentation Richland County submitted to the United States Department of Agriculture (USDA) Rural Development for grant and loan funding for the Lower Richland Sewer Project" (hereinafter "Loan Documentation FOIA Request"). (Transcript at 28-29, Brawley Testimony; Exhibit 1).

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The Defendant informed Ms. Brawley by letter dated October 1, 2014 that they were researching her Loan Documentation FOIA Request and expected to have data available within the next few weeks. (Transcript at 29-31, Brawley Testimony; Exhibit 2). The October 1, 2014 letter provided, in part, "The information requested will be released." (Transcript at 83, Brawley Testimony; Exhibit 2).

a) The County's Response to Ms. Brawley's Loan Documentation FOIA Request

By letter dated October 8, 2014, Defendant informed Ms. Brawley that her request was forwarded to the Richland County Clerk of Council, Procurement Department, Utility Department, and Finance Department for review and that she would be provided documents as a response to the Loan Documentation FOIA Request. (Transcript at 32, Brawley Testimony; Exhibit 3). The October 8, 2014 letter also informed Ms. Brawley that "Richland County has no further information regarding this matter". (Exhibit 3). The October 8, 2014 letter included six (6) pages of documents consisting of the following:

a) A one (1) page Application for Federal Assistance on Form 424, as signed by County Administrator J. Milton Pope;
b) Two (2) pages of instructions for the SF-424 and SF-424c;
c) Two (2) pages of "assurances" dated March 16, 2010; and
d) A one (1) page budget.

(Hereinafter "Original Response Documents"). (Transcript at 33-34, Brawley Testimony; Exhibit 4).

The Application included with the Original Response Documents specifies the type of submission is "Non-Construction," the type of application is marked as a "Continuation," and the estimated federal funding requested was $20,961,360. (Exhibit 4). Further, the documents provide that "Continuation" is defined as "an extension for an additional funding/budget period for a project with a projected completion date." (Transcript at 93, Brawley Testimony; Exhibit 4).

On March 25, 2015, Ms. Brawley filed the instant lawsuit pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq* seeking the production of

ELECTRONICALLY FILED - 2020 Feb 13 4:46 PM - RICHLAND - COMMON PLEAS - CASE#2015CP4001805

all responsive documents to the Loan Documentation FOIA Request. On June 3, 2015, the Defendant produced 55 pages of additional documents. The documents provided were:

a) Application for Assistance dated July 18, 2012;
b) Instructions for the SF-424
c) Budget Information – Construction Programs;
d) Instructions for HUD-424C;
e) Richland County Utilities Department - Lower Richland Sewer System - Preliminary Engineering Report - July 2012 – Cost Estimate – Phase I;
f) SC WEP Guide 1 – Processing the Initial Application;
g) Certification of Outstanding Debts dated July 18, 2012;
    - Richland County – Ratios of Outstanding Debt by Type – Last Ten Fiscal Years;
    - Richland County – Direct and Overlapping Governmental Activities Debt– As of June 30, 2011;
    - Richland County – Legal Debt Margin – Last Ten Fiscal Years;
    - Richland County – Ratios of General Bonded Debt Outstanding – Last Ten Fiscal Years;
h) Lower Richland Sewer Revenue/Expenditure Projections;
i) Balance Sheet (Governmental Funds; Capital Projects Fund; Water/Sewer Enterprise Fund) and related documents;
j) Lower Richland Water/Sewer – Statement of Net Assets;
k) Hopkins Utility System Enterprise Fund – Statement of Net Assets;
l) Letter dated October 20, 2010 to the United States Department of Agriculture Rural Development from Richland County;
m) Memorandum entitled "Richland County for Richland County/Utilities Department" dated February 23, 2007;
n) Memorandum entitled "Information Needed for Organizational Review"
o) Minutes of a Meeting Hopkins Community Water Project – Hopkins Park – Monday 28 August 2006;
p) Letter dated April 12, 2010 to the United States Department of Agriculture Rural Development from South Carolina Budget and Control Board;
q) Memorandum entitled "Lower Richland Community Sewer System Project";
r) Memorandum entitled "Development of a Richland County Owned and Operated Sewer System to Serve Lower Richland County";
s) Lower Richland Sewer – Monthly User Fee and New Customer Connection Rate Comparison;
t) Three (3) USDA Memoranda with Subject referring to "Richland County Utilities Department – Lower Richland County Sewer Project";

(Transcript at 42-57, Brawley Testimony; Exhibit 5) (Hereinafter "June 2015 Discovery Documents").

ELECTRONICALLY FILED - 2020 Feb 13 4:46 PM - RICHLAND - COMMON PLEAS - CASE#2015CP4001805

In February 2016, Ms. Brawley was allowed inspection of Richland County's Lower Richland Sewer Project file at Mr. Lindemann's office as part of discovery process for this action. (Transcript at 57-58, 88, Brawley Testimony). In reviewing the County's files, Ms. Brawley identified roughly 120 pages of additional, relevant documents which were not produced during the original Loan Documentation FOIA Request, or as part of the June 2015 Discovery Documents. (Transcript at 57-58, Brawley Testimony).

The newly discovered documents found by Ms. Brawley included:

a) "New" Application for Federal Assistance SF-424 for Sewer System Improvements, Hopkins Service Area (Exhibit 7);
b) "New" Application for Federal Assistance for Sewer System Improvements, Hopkins Service Area dated July 18, 2012 (Exhibit 17);
c) "Continuation" Application for Federal Assistance SF-424 for project affecting "Hopkins Community, Lower Richland Community, Town of Eastover" (Exhibit 8);
d) "New" Construction Application for Federal Assistance for Lower Richland County Sewer System, that included (i) Budget Information – Construction Programs, (ii) Certification Regarding Debarment, Suspension, and Other Responsibility Matters, and (iii) Certification of Outstanding Debts (Exhibit 9);
e) "Continuation" Non-Construction Application for Federal Assistance for Sewer System Improvements for Hopkins Community, that included Budget Information – Construction Programs dated March 16, 2010 (Exhibit 10);
f) Letter of Transmittal dated June 7, 2010 from Wilbur Smith indicating sending (i) Environmental Assessment for USDA (client copy); (ii) HUD Modified Environmental Assessment (client copy), among other items (Exhibit 11);
g) South Carolina Rural Infrastructure Authority Grant Checklist (Exhibit 18);
h) Letter from the USDA to Richland County dated January 5, 2011 providing comments to the revised "PER dated July 2012" (Exhibit 19);
i) Letter from the USDA to Richland County dated August 2, 2012 providing comments to the revised "PER dated July 10" (Exhibit 13);
j) Letter from the USDA to Richland County dated January 30, 2013, 21 pages in total, providing conditions which Richland County "must understand and agree to before further consideration may be given to [Richland County's] application." (Exhibit 21);
k) Letter from Richland County to the USDA dated February 4, 2014 confirming Richland County is moving forward with the sewer project and is working to meet all "items contained in the Letter of Conditions dated January 30, 2013" (Exhibit 23);

(Transcript at 59-81, Brawley Testimony) (Hereinafter "February 2016 Located Documents").

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b) Richland County's Efforts in Responding to Loan Application FOIA

At trial, Sara Salley, the former grants coordinator for Richland County, testified that she accumulated and provided the documents that were given to Ms. Brawley in the Original Response Documents provided on October 8, 2014**.** (Transcript at 101, Salley Testimony). Ms. Salley testified that the documents she provided were from a collection of what was in her office, but her office did not have the "full application file". (Transcript at 101 and 98, Salley Testimony). Ms. Salley's office was not in the same building as the Utilities Department and Salley did not search files in the Utilities Department or Finance Department. (Transcript at 99-100, Salley Testimony).

The Plaintiff also presented the testimony of Andy H. Metts. Mr. Metts is the former Director of Richland County Utilities and was involved in locating the documents responsive to the Plaintiff's FOIA request at issue. Mr. Metts testified that files on the Grant "could have been" in the finance department office, procurement department office, and administration. (Transcript at 108, Metts Testimony). Mr. Metts is listed on both applications as point of contact for Richland County. (Transcript at 177-178, Metts Testimony; Exhibit 8; Exhibit 4). Mr. Metts testified that he was aware of the following:

a) A Grant application and supporting documentation were given to the USDA prior to August 18, 2010. (Transcript at 133, Metts Testimony).
b) The County submitted a USDA Application in July 2012 related to the Grant. (Transcript at 142-145, Metts Testimony; Exhibit 17).
c) In August 2012, USDA requested additional information and explanations, which were likely provided by Richland County. (Transcript at 152-155, Metts Testimony).
d) Richland County obtained and submitted preliminary engineering reports and revised preliminary engineering reports as part of the Grant. (Transcript at 150-152, Metts Testimony).
e) In July 2012, Richland County received and Metts reviewed a 21-page letter from the USDA with requirements and conditions that must be met prior to the USDA further considering the Grant request. (Transcript at 158-162, Metts Testimony; Exhibit 21).
f) Likely correspondence between Richland County and the USDA regarding the USDA's need for proof that Richland County held public meetings about the project. (Transcript

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at 175, Metts Testimony).

g) The County's full application included numerous documents provided as part of the June 2015 Discovery Documents. (Transcript at 197, Metts Testimony).

In regards to Richland County record keeping practices, Mr. Metts further testified as follows:

a) Documents and correspondence created as early as June 7, 2010 as part of the Grant were likely kept as part of Richland County's file. (Transcript at 129, Metts Testimony).
b) Metts general mode of operation involved printing off important emails and keeping them in his files. (Transcript at 141, Metts Testimony).
c) Metts likely did not destroy preliminary engineering reports obtained by Richland County for the Grant and submitted to the USDA, and such is "sure" to be somewhere in the Utilities Department's files. (Transcript at 150-151, Metts Testimony).
d) Mr. Metts further admitted that he possessed miscellaneous documents associated with the Grant and submitted to the USDA as part of the application on his computer that he never deleted, which were not part of the Original Response Documents. (Transcript at 211-212, Metts Testimony).

Mr. Metts further testified that he interpreted the Loan Documentation FOIA Request made by the plaintiff on September 9, 2014 to be seeking just "the USDA application that was signed and submitted". (Transcript at 256, Metts Testimony). Accordingly, in response to the Loan Documentation FOIA Request, after Mr. Metts and his staff could not locate a USDA application in records within the Utilities Department, Mr. Metts contacted Ms. Salley. (Transcript at 112, 166, Metts Testimony). After obtaining the aforementioned pages from Ms. Salley, Mr. Metts and Richland County provided the Original Response Documents to Ms. Brawley as their complete and final response. (Transcript at 222, Metts Testimony). Mr. Metts did testify that in his search for the grant application within the records of the Utilities Department, that he found documents related to the application which were not produced to Ms. Brawley as part of the Original Response Documents. (Transcript at 206-208, 211-215, 226-227, 231-234, 266, and 272 Metts Testimony).

As such, Ms. Brawley seeks a declaration that FOIA requests are deemed approved, that Richland County failed to fully provide the Loan Documentation FOIA, immediate FOIA responses for the Plaintiff, and that the Plaintiff is entitled to recover costs and reasonable attorney fees.

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LEGAL ANALYSIS

In the present case, the central question is whether Richland County's response to Ms. Brawley's Loan Documentation FOIA Request violated the South Carolina Freedom of Information Act (FOIA). The South Carolina Freedom of Information Act requires disclosure of records held by a "public body" unless the documents fall within enumerated exemptions set forth in S.C. Code Ann. § 30-4-40(a). *See, Burton v. York County Sheriff's Department*, 358 S.C. 339, 594 S.E.2d 888, 892 (Ct. App. 2004). "FOIA was designed to guarantee the public reasonable access to certain activities of the government" with the purpose of "protect[ing] the public by providing for the disclosure of information." 594 S.E.2d at 893. S.C. Code Ann. § 30-4-15 (2014) provides as follows:

> The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

Our supreme court has found that the clear legislative intent is for FOIA to be liberally construed to carry out its purpose. *Pope v. Wilson*, 427 S.C. 377, 384-385, 831 S.E.2d 442, 446 (Ct. App. 2019) (*quoting Evening Post Publ'g. Co. v. Berkeley Cty. Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011)).

Pursuant to S.C. Code Ann. § 30-4-30(a) (2014), "Any person has a right to inspect or copy any public record of a public body . . . in accordance with reasonable rules concerning time and place of access." S.C. Code Ann. § 30-4-30(c) (2014) further provides:

> Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the

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> receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

As such, the clear language of the "FOIA creates an affirmative duty on the part of public bodies to disclose information." *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991).

1. Defendant Failed to Provide All Responsive Documentation.

a) Richland County Failed to Produce all Documents in its Possession in Response to the Loan Documentation FOIA

The record demonstrates Richland County failed to provide the application and supporting documents in their possession in response to the Loan Documentation FOIA Request. In replying to the Loan Documentation FOIA Request, Richland County informed Ms. Brawley that, "The information requested will be released." (Transcript at 83, Brawley Testimony; Exhibit 2). Per S.C. Code Ann. § 30-4-30(c) (2014), the County's response constitutes the final opinion of the public body. As such, Ms. Brawley was entitled to receive or have access to "a copy of the application and supporting documentation" related to the Lower Richland Sewer Project per her request.

Richland County provided a total of 6 pages in response to the request and informed Ms. Brawley "Richland County has no further information regarding this matter". (Exhibit 3). Exhibits 5-15, 17, and 19-23, are all responsive FOIA documents which were not provided to Ms. Brawley in the Original Response Documents. S.C. Code Ann. § 30-4-20(c) (2014), defines a "Public record" to include "all . . . documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body." Accordingly, this Court finds the Defendant failed to provide all of the documentation that was contained in its files at the

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time of the Loan Documentation FOIA Request. In addition, during discovery Richland County also provided Ms. Brawley a June 2015 Discovery Documents that included the July 18, 2012 Application for Federal Assistance, that was not part of the Original Response Documents.

b) The Defendant's Contention that its FOIA Response was Sufficient is without merit.

Richland County contends that it did not violate FOIA, arguing that it is only required to produce those documents it created or retained, and is not required to obtain documents from a third-party or to duplicate or to re-create documents. In support of this argument, Defendant cites *Trask v. South Carolina Dept. of Public Safety*, 2012 WL 10864175 (S. C. Ct. App. 2012) (unpublished), which references, *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980) (indicating FOIA "does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained"). Defendant's reliance on *Trask* and *Kissinger* concerning the recreation of documents is inapplicable to the facts before this Court.

First, the Defendant has asserted that the June 2015 Discovery Documents were obtained from the USDA after the instant suit was brought. There is no testimony or evidence before this Court supporting the origin for June 2015 Discovery Documents. Defendant's reliance on its own counsel's transmittal letter for the June 2015 Discovery Documents is not evidence establishing the origin of these documents. Furthermore, neither Defendant's counsel, nor any witness, testified that the June 2015 Discovery Documents originated from the USDA.

Second, the February 2016 Located Documents which were not produced to Ms. Brawley prior to filing suit, but are unique from the June 2015 Discovery Documents, and are responsive to the Loan Documentation FOIA Request. The Defendant contends that the Plaintiff cannot establish

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that the February 2016 Located Documents were in the Defendant's possession at the exact moment that it responded to her FOIA request. However, the law places no such burden on the Plaintiff.

In a civil case, proof of circumstances warranting a given inference is sufficient to prove a fact. *See generally*, *Eickhoff v. Beard-Laney*, 20 S.E.2d 153, 155 (S.C. 1942) (*citing Leek v. New South Exp. Lines*, 192 S.C. 527, 7 S.E.2d 459). "In the absence of a statute or a valid contractual provision to the contrary, circumstantial evidence is regarded by law as competent to prove any given fact in issue in a civil case *and is sometimes as cogent and irresistible as direct and positive testimony." Id*. (*quoting* Am. Jur, Volume 20 at 259-260) (emphasis included in original) (*see also*, *Graves v. CAS Med. Sys., Inc.,* 401 S.C.63, 80, 735 S.E.2d 650, 658 (2012) (providing "the general rule is any fact can be shown through circumstantial evidence, and it is up to the trier of fact to determine whether it alone is worth as much merit as direct evidence.") The testimony in the present case provides that the loan application documentation involved numerous submittals and documents, that Richland County Utilities Department generally kept copies of important documents, that supporting documentation was likely within Richland County's files and that these very same documents were present in the Defendant's file when Ms. Brawley was allowed to search it in February 2016. No evidence or testimony was presented by Richland County to the contrary.

Finally, the legislative intent is that FOIA "must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings" (S.C. Code Ann. § 30-4-15 (2014)). FOIA is to be liberally construed to carry out its purpose (*Pope*, 427 S.C. at 384-38). As such, under FOIA, a public body should make reasonable and diligent efforts to locate and/or identify the location of public records requested.

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Accordingly, based on the foregoing, I find that in failing to conduct a reasonable investigation to obtain and/or locate all relevant documents, the Defendant committed a violation of the South Carolina Freedom of Information Act (FOIA). Federal law supports this analysis. In *Ethyl Corp. v. U.S. Envtl. Prot. Agency*, 25 F.3d 1241, 1246 (4th Cir.1994), the Court held that "in judging the adequacy of an agency search for documents the relevant question is . . . whether the agency has demonstrated that it has conducted a search reasonably calculated to uncover all relevant documents." (citations and quotations omitted). In *Ethyl Corp*., the Court found that to comply with FOIA the agency must demonstrate that the search conducted include a search of all files likely to contain responsive materials; the agency cannot merely aver that the search was consistent with customary practices and procedures. *Id.* at 1246-47. Accordingly, based on the foregoing, I find that FOIA in South Carolina requires that a public body take, at a minimum, must undertake reasonable investigative measures to provide requested public records.

2. Richland County is ordered to provide all applicable documents.

Per section 30-4-100(a) (2014) of the South Carolina Code, A violation of FOIA is "considered to be an irreparable injury for which no adequate remedy at law exists." "The court may order equitable relief as it considers appropriate." *Id*. I hereby order that the Defendant conduct a reasonable examination of its records for any heretofore unidentified, responsive documents and produce those to Ms. Brawley within **15 days** of the date of this order.

3. The Plaintiff is entitled to Attorney's Fees.

Per section 30-4-100(b) (2014) of the South Carolina Code, Ms. Brawley is entitled to reasonably attorney's fees incurred herein. *Sloan v. Friends of Hunley, Inc*., 393 S.C. 152, 157-158, 711 S.E.2d 895, 897-898 (2011). Accordingly, the Plaintiff is to submit a schedule of fees and a motion to support the amount of fees and costs incurred herein. The Defendant will have **15**

days to respond to the Plaintiff's motion.

IT IS SO ORDERED!

The Honorable DeAndrea Gist Benjamin
Presiding Circuit Court Judge
Fifth Judicial Circuit

February 13, 2020
Columbia, South Carolina

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Richland Common Pleas

Case Caption: Hopkins And Lower Richland Citizens United Inc , plaintiff, et al vs Richland County

Case Number: 2015CP4001805

Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 **CP-** 40 - 1805

Wendy Brawley
PLAINTIFF(S)

Richland County, South Carolina
DEFENDANT(S)

Submitted by: Judge DeAndrea Benjamin	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered..

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: The Defendant's Motion to Alter or Amend Judgement is granted in part and denied in part. Please see the attached order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge | **Judge Code** | **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Richland Common Pleas

Case Caption: Hopkins And Lower Richland Citizens United Inc , plaintiff, et al vs Richland County

Case Number: 2015CP4001805

Type: Order/Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Wendy Brawley,	)	
	)	Civil Action No. 2015-CP-40-1805
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
Richland County, South Carolina,	)	
	)	
Defendant.	)	
	)	

THIS MATTER CAME BEFORE THE COURT on September 5, 2019 for a hearing on the merits pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq*.[1] Present at the trial and appearing on behalf of Plaintiff Wendy Brawley ("Ms. Brawley") were Shaun C. Blake, Esq. and Jenkins M. Mann, Esq. Present at the bench trial and appearing on behalf of Defendant Richland County was Andrew F. Lindemann, Esq. A Final Order on the merits of the trial was filed on February 13, 2020. On February 24, 2020, the Defendant filed a Motion to Amend. After additional review of the record and relevant case law, this Court now addresses each of the grounds outlined in the Defendant's Motion to Amend.

1) **The Defendant contends that the Court awarded injunctive relief which was no longer before the court at trial.**

This Court ordered that the Defendant conduct a reasonable examination of its records and produce those to Ms. Brawley within 15 days of the date of the order. This Court also ordered the Defendant to pay attorney's fees.

Per section 30-4-100(a) of the South Carolina Code, any citizen may apply to the Court

[1] This case is controlled by the Freedom of Information Act as it was codified in 2014, which was prior to the significant amendments to FOIA as adopted as part of 2017 Act No. 67, which became effective on May 19, 2017.

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for declaratory judgement, injunctive relief, or both. *See* S.C. Code Ann. § 30-4-100(a) (2014). The court may order equitable relief as it considers appropriate. *Id*. However, in 2016, Judge Newman determined that only a declaratory judgement proceeded to trial before this Court. As such, this Court will remove the injunctive relief requiring Richland County to provide the documents to the Plaintiff. The Plaintiff, Ms. Brawley, is still entitled to reasonably attorney's fees incurred herein. *Sloan v. Friends of Hunley, Inc*., 393 S.C. 152, 157-158, 711 S.E.2d 895, 897-898 (2011). Accordingly, the Plaintiff is to submit a schedule of fees and a motion to support the amount of fees and costs incurred. The Defendant will have **15 days** to respond to the Plaintiff's motion.

2) **The Defendant contends that the Court failed to recognize that the burden of proof rests with the Plaintiff and the court erred in concluding there was circumstantial evidence to support the Plaintiff's claim.**

a) Burden of Proof

The Defendant asserts that the Court failed to recognize that the burden of proof rests with the Plaintiff. In an action under the Federal Freedom of Information Act (FOIA), state courts generally recognize that the public body has the burden of justifying the nondisclosure of requested records. *See generally* 37A Am. Jur. 2d Freedom of Information Acts § 514. In order to discharge this burden, the agency *1383 "must prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." *National Cable Television Ass'n, Inc. v. Federal Communications Comm'n*, 479 F.2d 183, 186 (D.C.Cir.1973).

In the present case, the Defendant wants the Plaintiff to prove that Richland County had the requested documents. However, since the requesting party (Plaintiff) did not have the documents, "placing the burden of proof upon the agency puts the task of justifying the

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withholding of the records on the only party able to explain the withholding." 37A Am. Jur. 2d Freedom of Information Acts § 514. As such, this Court finds that the Defendant's burden shifting argument is meritless.

b) Circumstantial Evidence

The Defendant also asserts that the court erred in concluding there was circumstantial evidence to support the Plaintiff's claim. In a civil case, proof of circumstances warranting a given inference is sufficient to prove a fact. *See generally*, *Eickhoff v. Beard-Laney*, 20 S.E.2d 153, 155 (S.C. 1942) (*citing Leek v. New South Exp. Lines*, 192 S.C. 527, 7 S.E.2d 459). The adequacy of an agency's search for requested documents is judged by a standard of reasonableness, i.e., "the agency must show beyond material doubt ... that it has conducted a search reasonably calculated to uncover all relevant documents." *Miller v. U.S. Dep't of State*, 779 F.2d 1378, 1383 (8th Cir. 1985).

At trial, the main Richland County contact for the United States Department of Agriculture (hereafter USDA), Mr. Andy Metts, as well as the Richland County Grants Coordinator, Sara Salley, both testified on the record that documents may have been stored in other locations. However, per their testimony neither reached out to other offices to obtain records for the FOIA request by the Plaintiff. Moreover, given the nature of the information the Plaintiff was seeking (an application for a loan), the testimony by Mr. Metts and Ms. Salley (Transcript at 98-100, Salley Testimony), it seems likely that responsive documents would have been in other offices, such as finance, that were not included in the search. Therefore, this Court finds on the basis of the record and circumstantial evidence presented, it would have been reasonable for other offices with responsive documents to have been part of the search as provided by law.

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3) The defendant asserts that the Court failed to consider or address the threshold in the case.

The defendant contends the threshold issue of this case was the scope of the request itself and whether the request was reasonably described such that the agency could understand what was requested. S.C. Code Ann. § 30-4-110(A) states that "[a] public body may file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests. . ." Additionally, S.C. Code Ann. § 30-4-30 states that each public body, upon written request shall within ten days of the receipt of the request, notify the person making the request of its determination [to provide the documents]. This determination must constitute the final opinion of the public body as to the public availability of the requested public record. S.C. Code Ann. § 30-4-30 (2014).

In the present case, the Defendant informed Ms. Brawley by letter dated October 1, 2014 that "[t]he information requested will be released." (Transcript at 83, Brawley Testimony; Exhibit 2). No question concerning vagueness was made, nor did the Defendant file a request to the circuit court seeking relief from an overly broad request. Rather, the Defendant responded to the request with 6 pages of responsive information. Ms. Brawley, then brought the instant action. As such, the central question in the present case is whether Richland County's response to Ms. Brawley's Loan Documentation FOIA Request violated the South Carolina Freedom of Information Act (FOIA) as stated in the original order.

4) Moreover, the Defendant asserts that the Court should reject any contention that engineering reports and environmental studies associated with the project were also "supporting documentation" within the meaning and scope of the request.

The Defendant contends that the Court should reject any contention that engineering reports and environmental studies associated with the project were within the meaning and scope of the request. The definition section of the South Carolina Freedom of Information Act codified

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at S.C. Code Ann. § 30-4-20, states that a ""[p]ublic record" includes *all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials* regardless of physical form or characteristics prepared, owned, used, in the possession of, *or retained* by a public body." To reject the contention that engineering reports and environmental studies *retained by the Defendant* are documentary materials that should be considered "supporting documentation" would go against the plain language of the FOIA statute. In the present case, testimony by witness Mr. Andy Metts specifically stated that there was "some form of the preliminary engineering report" that was reviewed in connection with the application and *retained* by the Defendant that was not provided to Ms. Brawley. (Transcript at 148-150, Metts Testimony). As such this Court, does not feel that the position that engineering reports and environmental studies were "supporting documentation" within the scope of the request requires amendment.

5) **The Defendant has also asked the Court to make those specific findings of the documents that were reasonably responsive to the FOIA request.**

Per the first ground for this Motion to Amend, injunctive relief has been removed. Since the injunctive relief requiring Richland County to provide the documents to the Plaintiff is no longer requisite, this Court finds no need to make specific findings regarding the documents that were to be provided to the Plaintiff per the injunctive relief order.

6) **The Defendant asserts that with respect to the Application for Federal Assistance dated July 18, 2012, there was no evidence presented that a copy of that application was retained and existed when the FOIA request was made.**

The Defendant contends that with respect to the Application for Federal Assistance dated July 18, 2012 (hereafter July 2012 Application), the Plaintiff presented no evidence that a copy of that application was retained and existed when the FOIA request was made. Mr. Andy Mett's testified that a copy of the July 2012 Application was not in *his* office's file at the time of the request (Transcript at 252, 257, Metts Testimony). He did not state whether the application was

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or was not stored in the file of any other Richland County office. Further, upon Ms. Brawley's June 2015 review of the County files during the discovery process, the July 18, 2012, a copy of the application was found.

Counsel for the Defendant contends that during the discovery process for the present case, the County made a request to the USDA Rural Development Office to learn what was in their file. According to the Defendant, it is the information that was provided to the County from the USDA that Ms. Brawley found during discovery. However, there is no evidence in the record to support this origin of the documents found by Ms. Brawley.

As stated by the defense in the Motion to Amend, the Rules of Professional Conduct disallow counsel for the defense, to testify as to the origin of July 18, 2012 application and that USDA employees cannot be called as witnesses in judicial proceedings per 7 C.F. R. §§ 1.210 - 1.219. However, the 2012 application was found in the files during discovery and no evidence, other than Mr. Mett's testimony about his specific office, was presented to aid in determination of when the July 2012 application was added to the file. The Defendant's argument concerning burden of proof has been addressed above in Section 2 of this order. Therefore, conclusions by the court regarding the "June 2015 Discovery Documents" do not require amendment.

7) The Defendant contends that the Court erred in concluding that the Defendant failed "to conduct a reasonable investigation to obtain and/or locate all relevant document."

For the reasons outlined in the Section 2(a) of this order regarding Burden of Proof, this Court finds that the original language regarding the search stands. In *Ethyl Corp. v. U.S. Envtl. Prot. Agency*, 25 F.3d 1241, 1246 (4th Cir.1994), the Court held that "in judging the adequacy of an agency search for documents the relevant question is . . . whether the agency has demonstrated that it has conducted a search reasonably calculated to uncover all relevant

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documents." (citations and quotations omitted). Further, in *Ethyl Corp*., the Court found that to comply with FOIA the agency must demonstrate that the search conducted include a search of all files likely to contain responsive materials."

At trial, the Defendant did not provide any information from other Richland County (other than Andy Metts and Sara Salley) officials to show "a search reasonably calculated to uncover all relevant documents" was completed, despite testimony from both Ms. Salley (Transcript at 97- 100, Salley Testimony) and Mr. Metts (Transcript at 164, Metts Testimony) stating that there was other documentation that the County likely had but was not included in the 6 pages provided to Ms. Brawley. While the Defendant asserts that the Richland County Ombudsman office may have played a role in the search, the Defendant did not provide a witness from the Ombudsman office to that effect. Therefore, this Court finds that the original language regarding the search does not require amendment.

8) The Defendant asserts that the Court erred in overlooking or otherwise disregarding the applicable law that FOIA does not require a party to obtain documents from a third-party source to satisfy a request.

The Defendant contends that the Court erred in overlooking or otherwise disregarding the applicable law that FOIA does not require a party to obtain documents from a third-party source to satisfy a request. In the Motion to Amend filed before this Court, the Defendant's argument centers on *Kissinger v. Reporters Comm. for Freedom of the Press,* 445 U.S. 136, 100 S. Ct. 960, 63 L. Ed. 2d 267 (1980). In *Kissinger*, the U.S. Supreme Court held that under the FOIA, the U.S. State Department did not "improperly withhold" documents consisting of notes of telephone conversations of Secretary of State where, at time of request, such documents had been removed from State Department and donated to Library of Congress. The Supreme Court's rationale was

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that the U.S. State Department did not have control of the documents, as at the time of the request, the documents were in possession of the Library of Congress.

In the present case, the Defendant is trying to make the argument that the USDA application was not in their possession to allow request response. However, no testimony was provided by the County that any documents found by Ms. Brawley during the discovery process had been removed from the Defendant's control at the time of the request, other than the grounds presented in Section 6 of this order. Therefore, the aforementioned ground regarding obtaining documents from third-parties does not necessitate amendment.

9) **The Defendant also contends that the Court erred in disregarding the applicable law that "[a] challenge to any agency's search because it did not locate documents that may never have been created in the first instance, or may never have been retained as agency records, cannot succeed."**

The Court also erred in overlooking applicable law that "[a] challenge to any agency's search because it did not locate documents that may never have been created in the first instance, or may never have been retained as agency records, cannot succeed." For the above-referenced ground, the Defendant relies on *Saldana v. Fed. Bureau of Prisons*, 715 F. Supp. 2d 10 (D.D.C. 2010), to question whether the requested documents were ever created. In *Saldana*, the Court held there was no reason to think that some of the documents the Plaintiff sought ever existed. Specifically, in *Saldana*, the Plaintiff (an inmate) presumed that a deputy marshal made handwritten notes of an alleged conversation with a judge that allegedly occurred approximately ten years before his FOIA request. However, in *Saldana*, there was no evidence of such notes being created. In the present case, testimony from both Andy Metts and Sara Salley, indicated that there were additional documents retained outside of the documents that were provided to Ms. Brawley. Therefore, the argument concerning creation does not require amendment.

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10. The Defendant claims this Court also erred in disregarding the applicable law that "a mere technical error may not constitute a violation of the Act.

The Defendant claims this Court also erred in overlooking that "a mere technical error may not constitute a violation of the Act. For this argument, the Defendant relies on *Piedmont Public Service District v. Cowart*, 319 S.C. 124, 459 S.E.2d 876, 878 (Ct. App. 1995) and *Multimedia, Inc. v. Greenville Airport Commission*, 287 S.C. 521, 339 S.E.2d 884, 887 (Ct. App. 1996) to uphold its argument that a technical error does not constitute a violation of the FOIA Act. In *Piedmont*, the "technical error" reviewed by the Court was the act of Petitioner voting to terminate employment of the Respondent during an executive session meeting which was prohibited by a 1987 amendment to the FOIA statute. *See generally Piedmont Public Service District v. Cowart*, 319 S.C. 124, 459 S.E.2d 876, 878 (Ct. App. 1995). Similarly, in *Multimedia*, the Commission violated FOIA by holding its monthly April meeting without notice. However, the actions at the April meeting was reconsidered at a properly noticed May meeting. As such, reconsideration of the Commission's decision at the properly held May meeting cured any prior FOIA violation. This Courts review of the case law cited by the Defendant illustrates that "mere technical error" are procedural errors. Such small errors differ greatly from failing to provide multiple pages of responsive documents to a FOIA requester, which is the main goal of the FOIA process. Therefore, the argument based on "mere technical error" does not require amendment.

IT IS SO ORDERED!

_____

The Honorable DeAndrea Gist Benjamin
Presiding Circuit Court Judge
Fifth Judicial Circuit

July 10, 2020
Columbia, South Carolina

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Richland Common Pleas

Case Caption: Hopkins And Lower Richland Citizens United Inc , plaintiff, et al vs Richland County

Case Number: 2015CP4001805

Type: Order/Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL
COUNTY OF RICHLAND	)	CIRCUIT
	)	
WENDY BRAWLEY,	)	**C/A No. 2015-CP-40-1805**
PLAINTIFF,	)	
	)	
	)	**ORDER AWARDING PLAINTIFF**
v.	)	**ATTORNEY'S FEES AND COSTS**
	)	
RICHLAND COUNTY, SOUTH CAROLINA,	)	
DEFENDANT.	)	

This matter comes before Judge DeAndrea Gist Benjamin to issue an order determining a fair and reasonable amount of attorney's fees and costs to Plaintiff, Wendy Brawley. The Court issues the following order awarding Plaintiff attorney's fees and costs in the amount of $81,264.96.

Plaintiff's award of attorney's fees and costs stems from Plaintiff's four (4) FOIA request to the Defendant at the meeting of the Richland County Council held on September 9, 2014. On March 25, 2015, Plaintiff filed a Complaint seeking declaratory and injunctive relief. By Form Order filed August 14, 2015, Judge Clifton Newman dismissed Plaintiff's claim for injunctive relief. Subsequently, the Defendant filed a motion for summary judgement as to the remaining claim for a declaratory judgement. By Order filed October 24, 2016, Judge Newman granted in part and denied in part Defendant's motion for summary judgement resolving three (3) of the four (4) FOIA request. A bench trial was held on September 5, 2019, regarding the remaining claim for declaratory relief. By Order filed February 13, 2020, this Court found in favor of Plaintiff and specifically awarded reasonable attorney's fees and costs.

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The Supreme Court of South Carolina has set forth the factors to be considered in awarding attorney' fees. These factors include nature, extent, and difficulty of the legal services rendered; the time and labor necessarily devoted to the case; the professional standing of counsel; the contingency of compensation; the customary fees charged in the locality for similar services; and the beneficial result obtained. *Dede v. Stickland*, 414 S.E.2d 134 (S.C. 1992). Plaintiff's counsel secured the production of documents by Richland County on behalf of Wendy Brawley after several hearings with Judge Clifton Newman; a bench trial with Judge Benjamin; extensive discovery; and multiple pre- and post-trial motions and arguments. This matter was handled on a contingency basis by Shaun Blake and Jenkins Mann of Rogers, Lewis, Jackson, Mann & Quinn, LLC, who have practiced in the area of civil litigation since 2006. The attorney's fees submitted were based on the customary rate of $300 per hour or more charged for legal services by firms in the Midlands. The complaint in this matter was filed on March 25, 2015, and approximately three hundred five (305) billable hours were devoted to this case. Upon review of these factors, this Court finds that the attorney's fees and costs requested are fair and reasonable in light of the nature of the legal services rendered.

Defendants allege that this Court lacks subject matter jurisdiction to award any such relief. First, Defendants argue that the February 13, 2020 Order of this Court required Plaintiff to submit a motion to support the amount of fees and costs incurred. Under South Carolina law, "the only perquisite to an award of attorney's fees and cost is that the party seeking relief must prevail, in whole or in part." *Cockrell by Cockrell v. Trustees of Dist. 20 Constituent School Dist.*, 299 S.C. 155, 382 S.E.2d 923 (S.C. 1989). Thus, since Plaintiff prevailed on her request for declaratory relief, it is within this Courts discretion to award attorney's fees and costs to Plaintiffs. Furthermore, there is no prejudice to Defendant as a result of Plaintiff filing an

affidavit of attorney's fees rather than a motion. Plaintiff requested attorney's fees in its complaint and reasserted this request at trial.

Defendants also assert that by law Plaintiff's had ten (10) days after a final order on the merits to file a motion for attorney's fees and cost. On February 24, 2020, Defendant filed a motion to alter or amend the February 13, 2020 Order of this Court. This vested the Court with continuing jurisdiction over the case until a final order on the merits was issued and attorney's fees and costs determined. By Order filed July 16, 2020, this Court issued an Amended Order. Within ten (10) days, on July 27, 2020, Plaintiff filed an affidavit of attorney's fees and costs.

Defendant further alleges that Plaintiff's counsel expended some of the attorney's fees and cost in question representing a prior co-Plaintiff Hopkins and Lower Richland Citizens United, Inc. Upon review of Plaintiff's counsel billing records and itemized costs (**Exhibit A**) this Court finds that the fees and costs requested result from work done specifically on behalf of Plaintiff Wendy Brawley.

Pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §30-4-10, *et seq*., Plaintiff is entitled to reasonable attorney's fees incurred herein. The Court held multiple hearings and considered the oral arguments of counsel. In addition, the Court reviewed the filings by counsel. Upon consideration, this Court finds that an award of attorney's fees and costs in the amount of $81,264.96 are fair and reasonable.

IT IS SO ORDERED THAT

Plaintiff is awarded attorney's fees and costs in the amount of $81,264.96. Within ninety (90) days of the date of this Order, Defendant shall pay to Plaintiff, the sum of $81,264.96.

AND IT IS SO ORDERED.

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The Honorable DeAndrea Gist Benjamin
Presiding Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina
November 25, 2020

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Exhibit A

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Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main Street, Suite 1200 Columbia, SC 29201

803-256-1268 EI N: [redacted]

Wendy Brawley/Hopkins and Lower Richland Citizens

INVOICE

Date Nov 2020
Terms Net 30
Service Thru Nov 2020
Invoice No. 94144
Matter # 13614

In Reference To: Lower Richland Water/Sewer

(Legal Services)

Date	By	Services	Hours	Rates	Amount
Mar-03-15	SB	Review public records, news releases, articles, and county files in prepareation for client meeting; attend meeting with clients.	3.80	$300.00	1,140.00
Mar-12-15	SB	Travel to Hopkins and attend meeting with clients and witnesses to discuss issues with the County and efforts to address the same.	3.20	$300.00	960.00
Mar-12-15	JM	ATTEND MEETING WITH CLIENT AND WITNESSES IN PREPARATION FOR SUIT	3.20	$300.00	960.00
Mar-13-15	SB	Emails from and to Wendy Brawley re: next steps.	0.40	$300.00	120.00
Mar-16-15	SB	Emails from and to Wendy Brawley re: county council meeting.	0.30	$300.00	90.00
Mar-17-15	SB	Review county council records and FOIA requests, as well as county responses, in anticipation of county council meeting; travel to County Council Meeting and attend with Ms. Brawley; meeting before-hand to discuss her intentions to ask to be heard by the County during the meeting.	1.80	$300.00	540.00
Mar-18-15	JM	TELEPHONE CONFERENCE AND EMAILS WITH WENDY BRAWLEY RE: MEDIA AND COUNTY COUNCIL MEETING; DISCUSSION WITH MEDIA RE: SAME;	2.50	$300.00	750.00
Mar-23-15	JM	PREPARE FOR MEETING WITH HELEN BRADLEY, PAUL AND WENDY BRAWLEY; MEET WITH SAME;	1.80	$300.00	540.00

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Mar-23-15	SB	Prepare for and attend meeting with officers of HLRCU re: proceeding with FOIA litigation.	2.00	$300.00	600.00
Mar-23-15	SB	Telephone call from and conference with Cameo Green of HLRCU re: today's meeting on FOIA litigation.	0.10	$300.00	30.00
Mar-23-15	SB	Communications and coordination with client re: allegations of the Complaint	1.20	$300.00	360.00
Mar-25-15	JM	PREPARE CIVIL ACTION COVER SHEET, COVER LETTER AND EXHIBITS FOR FILING SUMMONS AND COMPLAINT; INSTRUCT RUNNER ON THE SAME	1.00	$300.00	300.00
Mar-25-15	SB	Finalize draft and completion of Summons and Complaint.	1.80	$300.00	540.00
Mar-26-15	MG	RESEARCH AND PHONE TO OMBUDMANS OFFICE AND TO CLERK OF COURT TO VERIFY WHO WILL ACCEPT SERVICE FOR RICHLAND COUNTY	0.40	$105.00	42.00
Mar-26-15	MG	Review and organize documents for file; instruct runner to create physical file	0.10	$105.00	10.50
Mar-26-15	SB	Email to client re: filed Complaint and discussion of service.	0.10	$300.00	30.00
Mar-27-15	JM	CONFERENCE WITH SARAH ELLIS RE: ARTICLE ON DISAGREEMENT; EMAIL RE: SAME;	1.40	$300.00	420.00
Mar-27-15	MG	CONFER WITH SHAUN AND TYLER ON SERVICE OF PROCESS	0.10	$105.00	10.50
Mar-30-15	MG	INSTRUCT ON SERVICE ON FRIDAY; CALENDAR DATES ACCORDINGLY	0.10	$105.00	10.50
Mar-30-15	SB	Receive email from Wendy Brawley and respond to same.	0.10	$300.00	30.00
Apr-01-15	MG	REVIEW OF EMAIL CORRESPONDENCE; FORWARDED FILED SUMMONS AND COMPLAINT TO CHRIS TRAINOR	0.10	$105.00	10.50
Apr-07-15	JM	TELEPHONE CALL FROM AND TO SARA MARTIN RE: LOWER RICHLAND SEWER PROJECT;	0.20	$300.00	60.00
Apr-08-15	SB	Receive, evaluate and respond to email from	0.20	$300.00	60.00
Apr-13-15	JM	RECEIVE AND REVIEW SURVEY; MEET WITH SHAUN BLAKE AND WES JACKSON RE: RESPONSE TO SURVEY; EMAILS WITH WENDY	0.50	$300.00	150.00

		BRAWLEY RE: SAME AND PROCESS FOR INJUNCTION;			
Apr-13-15	MG	CONFERENCE WITH COUNSEL RE SURVEY SENT BY RICHLAND COUNTY; NEEDS RE TEMPORARY INJUNCTION AND ADDITIONAL FOIAs	0.30	$105.00	31.50
Apr-13-15	WJ	Meeting with Shaun and Jenkins regarding survey and response to survey and possible injunction	0.40	$300.00	120.00
Apr-16-15	SB	Email from Wendy re: additional residents being refused record requests.	0.20	$300.00	60.00
Apr-21-15	SB	Emails with Wendy re: April County council meeting	0.20	$300.00	60.00
Apr-24-15	MG	DRAFTED AFFIDAVIT OF SERVICE FOR FILING	0.70	$105.00	73.50
Apr-24-15	SB	Receive letter from A. Lindeman and follow-up emails with legal team re: service.	0.20	$300.00	60.00
Apr-27-15	MG	FINALIZED AFFIDAVIT OF SERVICE;	0.30	$105.00	31.50
Apr-28-15	AS	ASSIST WITH AFFIDAVIT OF SERVICE; NOTARIZE SAME	0.10	$105.00	10.50
Apr-28-15	MG	REVIEW OF EMAIL CORRESPONDENCE RE RALLY AND COUNCIL MEETING; CALENDAR ACCORDINGLY; FINALIZED AOS FOR FILING	0.60	$105.00	63.00
Apr-28-15	SB	Receive and evaluate letter from opposing counsel; internal emails with Jenkins and Mary re: affidavit of service.	0.20	$300.00	60.00
Apr-30-15	MG	REVIEW OF EMAIL CORRESPONDENCE BETWEEN ATTORNEY AND CLIENT; CALENDAR ACCORDINGLY	0.10	$105.00	10.50
May-01-15	JM	ANSWER AND MOTION TO DISMISS;	0.20	$300.00	60.00
May-01-15	SB	Receive and evaluate answer and motion to dismiss from Andrew Lindemann.	0.20	$300.00	60.00
May-04-15	JM	PREPARE AFFIDAVITS; MEET WITH WENDY BRAWLEY, PAUL BRAWLEY AND HELEN;	2.50	$300.00	750.00
May-04-15	MG	CALENDAR UPCOMING COUNTY COUNCIL MEETING	0.10	$105.00	10.50
May-04-15	SB	Receive and evaluate filed certificate of service.	0.10	$300.00	30.00
May-04-15	SB	Meeting with Wendy Brawley and her husband, Paul Brawley to discuss	1.00	$300.00	300.00

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		case following Andrew Lindemann's appearance in the action.			
May-12-15	MG	Review of correspondence between Attorney and Client; calendar accordingly	0.10	$105.00	10.50
May-18-15	JM	PREPARE AFFIDAVITS OF CITIZENS. ATTEND MEETING WITH SAME;	1.50	$300.00	450.00
May-20-15	JM	TELEPHONE CALLS AND EMAILS WITH LEDONNA BEEKER;	0.40	$300.00	120.00
May-20-15	SB	Emails with Wendy Brawley re: media outreach regarding action against Richland County.	0.20	$300.00	60.00
May-22-15	SB	Prepare Motion for Preliminary Injunction; email to Wendy re: need for additional materials; follow up emails re: latest FOIA response; draft affidavit for Wendy Brawley; email to leadership of HLRU re: draft materials for filing.	1.80	$300.00	540.00
May-28-15	SB	Emails with Wendy re: changes to her affidavit.	0.20	$300.00	60.00
Jun-03-15	JM	RECEIVE DOCUMENTS AND REVIEW SAME IN RESPONSE TO USDA FOIA;	0.50	$300.00	150.00
Jun-18-15	SB	Call to Wendy Brawley, left message.	0.10	$300.00	30.00
Jun-19-15	MG	REVIEW OF CORRESPONDENCE BETWEEN ATTORNEY AND CLIENT; CALENDAR ACCORDINGLY	0.20	$105.00	21.00
Jun-19-15	SB	Emails and coordination with client re: inspecting county records under discovery.	1.10	$300.00	330.00
Jun-22-15	JM	TELEPHONE CONFERENCE WITH CLIENT RE: DISCOVERY DOCUMENTS;	1.10	$300.00	330.00
Jun-24-15	JM	PREPARE DISCOVERY REQUESTS TO COUNTY; TELEPHONE CALL FROM ANDREW LINDEMANN;	1.50	$300.00	450.00
Jun-24-15	MG	PREPARE WRITTEN SUPPORT DOCUMENTS FOR REQUEST TO PRODUCE; SAME SERVED	0.50	$105.00	52.50
Jun-24-15	CB	Draft Requests to Produce to Defendant.	0.50	$175.00	87.50
Jul-08-15	SB	Receive email from Jennifer Baker re: order of protection for Andrew Lindemann.	0.10	$300.00	30.00
Jul-31-15	SB	Communicate and coordinate with Wendy re: efforts to get the records that Richland won't produce from USDA.	0.30	$300.00	90.00

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Aug-05-15	SB	Receive email, letter, and memorandum from Andrew Lindemann.	0.30	$300.00	90.00
Aug-10-15	JM	REVIEW FILE IN PREPARATION FOR HEARING: ATTEND SAME:	1.90	$300.00	570.00
Aug-10-15	MG	REVIEW OF CALENDAR AND DISCOVERY REQUEST; CORRESPONDENCE WITH ATTORNEY RE THE SAME	0.20	$105.00	21.00
Aug-10-15	MG	CORRESPONDENCE WITH ATTORNEY RE DISCOVERY REQUEST; DRAFT MOTION TO COMPEL WARNING LETTER TO OPPOSING COUNSEL; TO ATTORNEY FOR FURHTER REVIEW; SAME SERVED	0.20	$105.00	21.00
Aug-12-15	SB	Receive, evaluate and respond to inquiry from Wendy re; status of discovery production, need for motion to compel, and purpose of Rule 11 consultation with opposing counsel.	0.50	$300.00	150.00
Aug-13-15	JM	EMAILS WITH WENDY BRAWLEY RE: MOTION HEARING, MOTION TO COMPEL AND OTHER MATTERS;	0.50	$300.00	150.00
Aug-25-15	JM	MOTION TO COMPEL AGAINST COUNTY;	0.80	$300.00	240.00
Aug-25-15	MG	DRAFT MOTION TO COMPEL DISCOVERY AND OTHER WRITTEN SUPPORT DOCUMENTS; TO ATTORNEY FOR REVIEW; SAME SERVED	0.60	$105.00	63.00
Nov-10-15	CB	Call with clerk of court re Motion to	0.20	$175.00	35.00
Dec-11-15	SB	Receive and evaluate memorandum from Andrew Lindemann; emails to and from Wendy Brawley re: issues motion and plans for inspection.	0.80	$300.00	240.00
Jan-25-16	JM	EMAIL FROM JENNIFER BAKER RE: COORDINATING INSPECTION; EMAILS WITH CLIENT BRAWLEY REGARDING THE SAME.	0.30	$300.00	90.00
Jan-25-16	SB	Emails with Wendy Brawley re: inspection.	0.20	$300.00	60.00
Feb-09-16	SB	Follow up to determine whether County has produced the copies of records marked during the inspection; communication with Wendy Brawley regarding the same.	0.20	$300.00	60.00
Feb-10-16	WJ	On-site document review.	6.50	$300.00	1,950.00

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Feb-29-16	WJ	Review documents. Email correspondence with Wendy regarding same.	0.60	$300.00	180.00
Mar-01-16	SB	Draft proposed scheduling order; prepare correspondence to Andrew Lindemann re: question why we have not received the documents flagged during inspection, request for scheduling order to allow time for county to produce, depositions to be take, and mediation to	0.50	$300.00	150.0
Mar-02-16	JM	TELEPHONE CONFERENCE WITH WENDY BRAWLEY, SHAUN BLAKE AND OTHERS RE: STATUS UPDATE;	1.40	$300.00	420.00
Mar-09-16	JM	LETTER TO DHEC SUMMARIZING SUIT AGAINST COUNTY AND ENCLOSING COMMENT FROM CLIENT;	0.80	$300.00	240.00
Mar-17-16	TK	prepare and finalize Scheduling Order, get check, finalize Ltr and COS	0.90	$105.00	94.50
Mar-18-16	TK	prepare and finalize Scheduling Order, Ltr and COS	1.80	$105.00	189.00
Apr-29-16	SB	Review file materials and prepare email to Wendy Brawley re Need for her to begin to organize issues with production in a manner for us to put in an affidavit; receive evaluate and respond to follow up from Ms. Brawley.	1.00	$300.00	300.00
May-02-16	SB	Emails from and to Ms. Brawley re: her review of copies of documents made during inspection.	0.60	$300.00	180.00
Jun-15-16	SB	Receive and evaluate letter and Motion for Summary Judgment from Andrew Lindemann.	0.40	$300.00	120.00
Jul-01-16	SB	Receive email and letter from Andrew Lindemann's office.	0.10	$300.00	30.00
Jul-05-16	JM	PREPARE LETTER TO CLIENT RE: MOTION FOR SUMMARY JUDGMENT AND NEED TO RESPOND TO THE SAME AND EXPECTATIONS FOR TRIAL.	0.40	$300.00	120.00
Jul-12-16	SB	Conference with Jenkins Mann and teleconference with Andrew Lindemann re: trial.	0.50	$300.00	150.00
Jul-13-16	SB	Receive and evaluate email and proposed consent order from Andrew Lindemann.	0.20	$300.00	60.00
Jul-15-16	SB	Receive, evaluate and respond to email from Wendy Brawley re: long list of items that have been discovered following the County's production of records.	0.30	$300.00	90.00

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Jul-19-16	SB	Receive and evaluate email and letter from Andrew Lindemann's office to Judge Benjamin.	0.10.	$300.00	30.00
Jul-19-16	SB	Emails with Wendy Brawley re: picking up records for trial.	0.20	$300.00	60.00
Jul-19-16	SB	Receive email from Jennifer Baker forwarding message from Jasmine Wyman, Judge Benjamin's law clerk; follow-up emails regarding roster meeting.	0.40	$300.00	120.00
Jul-20-16	SB	Receive email from Judge Benjamin's office requesting attendance at roster meeting; notice to client regarding the same.	0.10	$300.00	30.00
Jul-22-16	JM	CALL TO ANDREW LINDEMANN; CONFERENCE WITH SHAUN BLAKE RE: TRIAL;	0.50	$300.00	150.00
Jul-22-16	SB	Conference call with Andrew Lindemann re: case issues; meeting with Jenkins to discuss how to proceed with case.	0.50	$300.00	150.00
Jul-25-16	JM	ROSTER MEETING; EMAILS, Other MATTERS;	1.50	$300.00	450.00
Jul-25-16	SB	Travel to and from and attend roster meeting.	0.70	$300.00	210.00
Jul-29-16	TK	prepare and finalize Notice of Hearing, Correspondence with Shaun Blake re Notice of Hearing	0.30	$105.00	31.50
Aug-17-16	TK	Review and print records in file for WJ and JM review. Organize file	1.10	$105.00	115.50
Aug-17-16	SB	Receive and evaluate letter and affidavit from Andrew Lindemann re: affidavit of Judy Carter; receive email and memorandum of law from Andrew Lindemann re: motion for summary judgment; meeting with litigation team to discuss response and affidavit of Wendy Brawley.	0.80	$300.00	240.00
Aug-18-16	JM	PREPARE AFFIDAVIT OF WENDY BRAWLEY; EMAIL TO WENDY BRAWLEY RE: SAME;	2.40	$300.00	720.00
Aug-18-16	TK	prepare and finalize Affidavit of J Brawley, Prepare Ltr to court for Filing, Scan and Save to our file	0.60	$105.00	63.00
Aug-18-16	CB	Travel to and from W Brawley's Office; notarize Affidavit; prepare same for filing; attempt to file same.	1.50	$175.00	262.50
Aug-19-16	SB	Receive and evaluate email from Andrew Lindeman re: affidavit of Wendy Brawley; instruction to litigation team regarding the same.	0.20	$300.00	60.00

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Aug-21-16	WJ	Prepare for Summary Judgment hearing tomorrow.	6.70	$300.00	2,010.00
Aug-21-16	SB	Meeting with Wes Jackson to assist him in preparing for oral argument on Motion for Summary Judgment.	1.40	$300.00	420.00
Aug-22-16	WJ	Continue preparation for Summary Judgment. Attend and argue summary judgment. Office conference with partners regarding same. Update client regarding outcome of same	2.70	$300.00	810.00
Aug-22-16	TK	Receive and catalog correspondence from W Brawley and JM SB	0.40	$105.00	42.00
Aug-22-16	CB	Confer with W Brawley re: hearing.	0.10	$175.00	17.50
Aug-23-16	SB	Email from Andrew Lindemann re: proposed order addressing the Motion to Dismiss heard by Judge Clifton Newman previously; evaluate order and email to Andrew regarding the same.	0.40	$300.00	120.00
Aug-23-16	SB	Finalize assisting Wes in preparing for oral argument today; receive update from hearing and prepare written correspondence updating Ms. Brawley on results of the motion and the affect on this litigation, the need for mediation, and the goal of trial.	2.00	$300.00	600.00
Aug-24-16	SB	Receive and review Defendant's Notice of Motion to transfer case to Non-Jury Docket.	0.10	$300.00	30.00
Aug-25-16	SB	Emails from Jazmon Kearse, law clerk to Judge Newman and Andrew Lindemann.	0.10	$300.00	30.00
Aug-26-16	SB	Receive, evaluate and respond to email from client re: Summary Judgment hearing.	0.20	$300.00	60.00
Aug-26-16	SB	Conference call with Wendy Brawley re: options for case and recommendations; emails following teleconference with Ms. Brawley regarding the same.	1.30	$300.00	390.00
Aug-26-16	CB	Receive and review filed Affidavit of W. Brawley.	0.10	$175.00	17.50
Aug-31-16	TK	Catalogue and Calendar dates from the Court	0.30	$105.00	31.50
Sep-07-16	JM	EMAILS WITH ANDREW LINDEMANN RE: DEPOSITIONS.	0.20	$300.00	60.00
Sep-07-16	TK	Correspondence with Opposing counsel, Telephone call with Paralegal J Baker regarding availability of opposing counsel, follow up w/ j baker after error in dates available	1.00	$105.00	105.00

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Sep-07-16	SB	Prepare correspondence to Jennifer Baker and Andrew Lindmann re: 30(b)(6) topics.	0.40	$300.00	120.00
Sep-08-16	JM	TELEPHONE CONFERENCE WITH WENDY BRAWLEY AND OTHER RE: MOTION FOR SUMMARY JUDGMENT AND UPCOMING MEDIATION;	1.20	$300.00	360.0
Sep-09-16	TK	Follow Up with Opposing counsel regarding dates for Depositions and Mediation	0.40	$105.00	42.00
Sep-20-16	SB	Receive and review Order denying Motion for Summary Judgment.	0.10	$300.00	30.00
Sep-23-16	JM	EMAILS WITH ANDREW RE: NEED TO DISCUSS DISCOVERY AND MEDIATION.	0.20	$300.00	60.00
Sep-26-16	JM	MEDIATION EMAILS AND PHONE CALLS (WENDY AND LINDEMANN);	0.80	$300.00	240.00
Sep-26-16	TK	Correspondence with Opp counsel regarding Continuation of Trial	0.20	$105.00	21.00
Sep-26-16	SB	Conference call with Andrew Lindemann; receive email and proposed letter to Judge from Andrew following call.	0.30	$300.00	90.00
Sep-28-16	TK	Catalog Correspondence from Court	0.10	$105.00	10.50
Sep-28-16	SB	Receive email from Jennifer Baker enclosing letter to Judge Benjamin.	0.10	$300.00	30.00
Sep-30-16	JM	RECEIVE, EVALUATE, AND RESPOND TO EMAIL FROM JENNIFER BAKER RE:PROPOSED ORDER PER JUDGE BENJAMIN'S REQUEST	0.20	$300.00	60.00
Oct-06-16	TK	Receive and Catalog Correspondence From opposing counsel regarding Proposed Order	0.20	$105.00	21.00
Oct-06-16	SB	Emails with Andrew Lindemann and Judge Newman's chambers re: Motion for Summary Judgment.	0.50	$300.00	150.00
Oct-10-16	JM	PREPARE FOR HEARING ON NON-JURY TRANSFER; MOTION HEARING ON SAME	3.50	$300.00	1,050.00
Oct-10-16	TK	Receive and Catalog Correspondence and Motion/Order from Opposing Counsel	0.60	$105.00	63.00
Oct-13-16	TK	Receive and catalog filed documents received from the court, Correspondence with client and Attorney regarding the filed documents	0.50	$105.00	52.50

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Oct-18-16	WJ	Work on affidavit for Ms. Brawley. Email correspondence with Tyler and Ms. Brawley regarding same.	0.80	$300.00	240.00
Oct-20-16	SB	Receive, evaluate and respond to emails from Wendy Brawley asking for update.	0.30	$300.00	90.00
Oct-25-16	SB	Prepare letter to Wendy re: expectations of mediation.	0.50	$300.00	150.00
Oct-28-16	TK	receive and catalog documents from court, email correspondence with Client regarding date for trial	0.40	$105.00	42.00
Nov-02-16	TK	Correspondence with Multiple mediators regarding availbility, send to opposing counsel for confirmation	0.80	$105.00	84.00
Nov-03-16	TK	Correspondence with opposing counsel and client regarding mediation and confirmation	0.80	$105.00	84.00
Nov-03-16	SB	Email from Jazmon Kearse in Judge Newman's chambers.	0.10	$300.00	30.00
Nov-04-16	TK	Correspondence with Client and opposing counsel regarding mediation location	0.40	$105.00	42.00
Nov-04-16	SB	Correspondence with Wendy Brawley re: choice of mediators, calendar conflicts of those previously recommended, and issues for mediation itself.	0.40	$300.00	120.00
Nov-06-16	SB	Receive, evaluate and respond to email from Mrs. Brawley.	0.20	$300.00	60.00
Nov-07-16	TK	Correspondence with Mediator T. Lydons Office to set Mediation, Correspondence with Opposing counsel and Client to confirm	1.40	$105.00	147.00
Nov-14-16	JM	PREPARE FOR MEDITATION; MEDIATE CASE; PREPARE SETTLEMENT DOCUMENTS;	8.90	$300.00	2,670.00
Nov-14-16	SB	Meet with Wendy to prepare for mediation; travel to and from and conduct mediation; perform exhibit analysis to application for federal assistance; draft proposed Affidavit for signature by the county to resolve litigation.	10.10	$300.00	3,030.00
Nov-15-16	SB	Emails with Wendy re: time sensitivity of approving the affidavit in lieu of trial.	0.20	$300.00	60.00
Nov-16-16	JM	REVISE AFFIDAVIT FOR SETTLEMENT; EMAILS WITH WENDY BRAWLEY RE: SAME; EMAILS WITH ANDREW LINDEMANN RE: SAME;	3.00	$300.00	900.00
Nov-16-16	SB	Emails with Wendy re: concerns re: costs payment by the County in lieu of trial.	0.30	$300.00	90.00

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Nov-18-16	JM	EMAILS WITH ANDREW LINDEMANN RE: SETTLEMENT POSITION; EMAIL TO COURT RE: CONTINUANCE AND STATUS CONFERENCE; PREPARE MOTION FOR CONTINUANCE;	1.50	$300.00	450.00
Nov-18-16	TK	Draft and Prepare Motion for Continuance for filing with court, correspondence with Opposing counsel regarding Motion	1.20	$105.00	126.00
Nov-21-16	TK	Finalize and File Motion for Continuation with court, Send to Opposing counsel	0.80	$105.00	84.00
Nov-21-16	TK	Receive and Catalog Correspondence from Judge Benjamins Law Clerk	0.20	$105.00	21.00
Nov-22-16	JM	EMAILS WITH MEDIATOR RE: ATTEMPTING TO RESOLVE DISPUTE AND AGREE UPON AFFIDAVIT IN LIEU OF TRIAL	0.20	$300.00	60.00
Dec-09-16	TK	Receive and Catalog Correspondence from Court Regarding Trial, Calendar Dates and Send to Client, UPDATE New docs from Court re New Date and Time for Trial, Update Client update calendar	0.80	$105.00	84.00
Dec-21-16	TK	Phone Conference with Non-Jury coordinator regarding date for trial	0.30	$105.00	31.50
Dec-26-16	SB	Emails with Tommy Lydon re: efforts to get the case settled instead of trial.	0.20	$300.00	60.00
Dec-27-16	JM	CALL WITH TOMMY LYDON RE: SETTLEMENT;	0.50	$300.00	150.00
Dec-27-16	TK	Draft, Prepare, and Finalize trial subpoenas for Witnesses, send to attorney for final review	2.00	$105.00	210.00
Dec-27-16	SB	Conduct conference call with Tommy Lydon as mediator for cas; follow-up emails regarding the same with Tommy; review file and instructions to staff re: issuance of trial subpoenas to witnesses I have designated.	0.90	$300.00	270.00
Dec-28-16	TK	Draft Trial Subpoenas, Send to Attorney for Approval, Call with Client regarding subpoenas	1.50	$105.00	157.50
Dec-29-16	TK	Correspondence with Client and CIA regarding Service of Subpoenas	0.30	$105.00	31.50
Dec-30-16	JM	TELEPHONE CONFERENCE WITH ANDREW LINDEMANN RE: POSSIBLE RESOLUTION;	0.50	$300.00	150.00
Jan-03-17	JM	PREPARE MOTION FOR CONTINUANCE; PREP CLIENT FOR POSSIBLE TRIAL; CONFERENCE WITH ANDREW LINDEMANN;	2.30	$300.00	690.00

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Jan-03-17	TK	Receive and Catalog Correspondence from Process Server regarding Service of Subpoenas to Two individuals	0.20	$105.00	21.00
Jan-03-17	TK	Prepare and Finalize Joint Motions, Send to Attorney for Review,	1.20	$105.00	126.00
Jan-03-17	SB	Receive voice message from Andy Metts regarding unavailability for trial; instruction to staff regarding the same; determine status of service on Sara Salley and Judy Carter; review and revise letter to Judge Newman re: trial and the unavailability of witnesses.	0.60	$300.00	180.00
Jan-04-17	JM	EMAILS WITH CLIENT RE: CONTINUANCE OF TRIAL.	0.20	$300.00	60.00
Jan-12-17	JM	EMAILS WITH CLIENT RE: RESPONDING TO UPDATE ON RESCHEDULING OF TRIAL.	0.20	$300.00	60.00
Mar-02-17	JM	STATUS UPDATE WITH CLIENT VIA EMAIL RE: TRIAL DATE; INSTRUCTIONS TO STAFF RE: FOLLOW-UP WITH THE COURT.	0.20	$300.00	60.00
Jun-13-17	JM	RECEIVE ROSTER NOTICE; INSTRUCTION TO STAFF RE: PLACING WITNESSES BACK UNDER TRIAL SUBPOENA.	0.40	$300.00	120.00
Jul-06-17	SB	Receive update on call between Jenkins Mann and Andrew Lindemann; draft letter, proposed order and motion for continuance; email to Andrew Lindemann re: objecting to using Rep. Brawley's official title in court documents; respond to the same; email to Judge Manning and Ms. Henley.	1.10	$300.00	330.00
Jul-07-17	JM	EMAIL FROM ANDREW LINDEMANN; CALL WITH JUDGE'S CHAMBERS; EMAIL TO LINDEMANN RE: APPROVAL OF CONTINUANCE; EMAILS WITH ANDREW RE; GETTING DATE CERTAIN FROM JUDGE MANNING IF POSSIBLE.	0.60	$300.00	180.00
Jul-07-17	SB	Receive, evaluate and respond to email from Andrew Lindemann.	0.20	$300.00	60.00
Jul-09-17	JM	RECEIVE, EVALUATE AND RESPOND TO EMAIL FROM ANDREW RE: INABILITY TO ATTEND ROSTER MEETING TOMORROW.	0.20	$300.00	60.00
Jul-19-17	SB	Receive and evaluate email from Jennifer Baker re: order of protection.	0.10	$300.00	30.00

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Sep-12-17	TK	Receive and Catalog Notice from the Court regarding Trial Date, Calendar deadline dates, Prepare Email Correspondence to client regarding trial dates and availability.	0.60	$105.00	63.00
Sep-12-17	SB	Receive roster notice; instructions to staff re: lining up client for trial.	0.20	$300.00	60.00
Sep-28-17	TK	Review file, Prepare Motion for Continuance, send to attorney for review	0.80	$105.00	84.00
Oct-02-17	JM	INSTRUCTIONS TO STAFF RE: REQUIREMENTS FOR MOTION FOR CONTINUANCE.	0.20	$300.00	60.00
Oct-02-17	TK	Prepare and finalize Motion for Continuance for filing, Order, Ltr and Service documents Service of Docs on all parties	1.20	$105.00	126.00
Oct-04-17	JM	PREPARE WRITTEN LETTER TO CLIENT RE: TRIAL	0.30	$300.00	90.00
Oct-05-17	TK	Receive and Catalog Correspondence from the Court Re New Trial Date, Calendar Deadlines and Roster Meeting	0.20	$105.00	21.00
Oct-09-17	TK	Prepare and finalize Trial subpoenas, Receive and Catalog Correspondence from Process Server re Service of documents on Parties, Receive and catalog Correspondence from Process server confirming service	1.20	$105.00	126.00
Oct-20-17	JM	EMAILS WITH ANDREW RE: BACKUP DOCKET AND PROPOSAL TO TRY THE CASE ON WEDNESDAY DURING THE TERM.	0.40	$300.00	120.00
Oct-24-17	TK	Receive and Catalog Affidavits of Service, File Affidavits with the clerk	0.40	$105.00	42.00
Oct-25-17	TK	Review and Prepare file for Meeting with Client, Trial Prep	1.00	$105.00	105.00
Oct-26-17	TK	prepare and Finalize Subpoena to sparty Hammett	0.60	$105.00	63.00
Oct-26-17	TK	Receive and Catalog Correspondence from Client re Subpoena instructions	0.10	$105.00	10.50
Oct-26-17	SB	Meeting with client re: trial; instructions to Tyler Koester re; additional subpoena needed for trial to ensure Sparty Hammett can attend.	1.00	$300.00	300.00
Oct-30-17	SB	Travel to and from and attend roster meeting.	0.80	$300.00	240.00
Nov-14-17	JM	EMAILS WITH CLIENT RE: MISTAKEN REPRESENTATIONS BY COUNTY	0.40	$300.00	120.00

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		OFFICIALS THAT THE LAWSUIT IS NOT STILL GOING FORWARD.			
Apr-14-18	JM	RECEIVE, EVALUATE AND RESPOND TO EMAIL FROM WENDY BRAWLEY RE; UPDATE ON TRIAL DATE.	0.20	$300.00	60.00
Apr-16-18	TK	Receive and Catalog Correspondence with Court and Client re upcoming Trial dates	0.40	$105.00	42.00
Apr-17-18	TK	Prepare, draft, and finalize Trial Subpoenas to three witnesses, Service of Subpoenas, corr with Process Server re Rush Service	1.60	$105.00	168.00
Apr-17-18	SB	Receive roster notice; instructions to staff re: re-issuance of trial subpoenas in advance of roster meeting.	0.30	$300.00	90.00
Apr-19-18	TK	Receive and Catalog Correspondence from Process Server re Service of All subpoenas on Witnesses, Meet with attorneys to discuss the same	0.80	$105.00	84.00
Apr-19-18	SB	Receive, evaluate and respond to emails from Andrew re: trial date and conflicts; email with Paul Gunter re: trial date and conflicts and asking for a date certain trial date due to legislative conflicts with Judge Brawley.	0.80	$300.00	240.00
Apr-20-18	JM	EMAILS WITH ANDREW LINDEMANN RE: ROSTER MEETING AND TRIAL OF CASE; ROSTER MEETING;	1.50	$300.00	450.00
Apr-20-18	JM	EMAIL TO ANDREW RE: FOLLOWING UP ON JUDGE HOOD'S REQUEST FOR DATES FOR A DATE CERTAIN ORDER.	0.20	$300.00	60.00
Apr-20-18	TK	Telephone conference with Witness Salley re Trial Dates,	0.20	$105.00	21.00
Apr-26-18	TK	Receive and Catalog Affidavits of Service and Invoices for three Trial Subpoenas served, prepare invoice(s) for payment	0.60	$105.00	63.00
Jun-25-18	TK	Receive and Catalog Notice of Trial date from court, Correspondence with client regarding availability.	1.00	$105.00	105.00
Jul-05-18	TK	Prepare and Finalize Three Trial Subpoenas for service on the named individuals, Correspondence with Process Server regarding the same	1.40	$105.00	147.00
Jul-05-18	SB	Coordination with staff on having trial subpoenas served on witnesses.	0.10	$300.00	30.00
Jul-05-18	CB	Execute trial subpoenas.	0.10	$175.00	17.50
Jul-10-18	TK	Begin Trial prep work with File, Confirm service of subpoenas with Process Server	1.40	$105.00	147.00

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Jul-12-18	TK	Prepare file and docs for trial prep	1.60	$105.00	168.00
Jul-19-18	JM	TRIAL PREP; COMMUNICATIONS WITH ANDREW LINDEMANN RE:	1.00	$300.00	300.00
Jul-20-18	JM	COMMUNICATIONS FROM AND TO WENDY BRAWLEY RE: TRIAL.	0.50	$300.00	150.00
Jul-20-18	SB	Receive email from Jennifer Baker re: Andy Metis' availability for date certain.	0.10	$300.00	30.00
Jul-20-18	CB	Phone call wi Andy Metis re: upcoming trial.	0.10	$175.00	17.50
Jul-21-18	JM	RECEIVE, EVALUATE AND RESPOND TO EMAILS FROM ANDREW LINDEMANN RE: TRIAL CONFLICTS FOR WITNESSES.	0.40	$300.00	120.00
Jul-23-18	TK	Receive, upload, and catalog Affidavits of Service and Invoices for service of trial subpoenas, Prepare invoices for payment	0.90	$105.00	94.50
Jul-23-18	TK	Call with Witness Salley re confirmed New trial date and time	0.30	$105.00	31.50
Jul-23-18	SB	Travel to and attend status conference with Judge Hood; advise client that case is now set for a date certain on September 6, 2018.	0.80	$300.00	240.00
Aug-03-18	SB	Instructions to staff re: serving trial subpoenas by August 20, 2018.	0.10	$300.00	30.00
Aug-20-18	TK	Prepare update and Finalize Trial Subpoenas, Send to Process Server for Service on all Witnesses	1.30	$105.00	136.50
Aug-24-18	TK	Receive and Catalog Service updates on all trial subpoenas, send update to attorneys	0.40	$105.00	42.00
Aug-24-18	SB	Follow-up with Tyler to confirm service of trial subpoenas; confirm service.	0.10	$300.00	30.00
Aug-27-18	TK	Receive and Catalog Affidavit of Service and invoices Regarding service of subpoenas	0.30	$105.00	31.50
Aug-28-18	TK	Receive and Catalog Correspondence to client re Meeting to review file	0.20	$105.00	21.00
Sep-04-18	TK	Receive and Catalog Remaining affidavits of Service received today, Call with Clerk of Court Regarding trial date, Call with client regarding trial date moved. Telephone call with Witness re update on trial date	0.20	$105.00	21.00
Sep-04-18	SB	Receive, evaluate and respond to email from Andrew Lindemann re: whether trial is proceeding; email from Andrew to Judge Hood's chambers regarding the	0.40	$300.00	120.00

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		date certain and whether the court has rescheduled for some reason; instructions to staff to notify witnesses that trial is not going forward asap.			
Sep-05-18	TK	Telephone conference with client regarding trial moved, call with clerk to confirm the same, Telephoen call with witnesses to confirm new trial date and time, Follow up with client regarding the same	0.80	$105.00	84.00
Oct-09-18	JM	REVIEW DRAFT OF MOTION FOR CONTINUANCE FROM TYLER KOESTER; PROVIDE INSTRUCTIONS FOR REVISIONS BEFORE FILING.	0.20	$300.00	60.00
Oct-09-18	TK	Draft, Edit, Finalize, and File Motion for Continuance per Attorney	2.00	$105.00	210.00
Oct-10-18	SB	Instructions to associate Boguski for status conference.	0.10	$300.00	30.00
Oct-16-18	JM	PREPARE CORRESPONDENCE TO CATHERINE IN JUDGE HOOD'S OFFICE RE: REQUEST FOR CONTINUANCE BY CONSENT; FOLLOW UP EMAILS REGARDING THE SAME.	0.40	$300.00	120.00
Oct-17-18	SB	Receive order executed by Judge Hood and ensure case continuance; notice to client regarding the same.	0.20	$300.00	60.00
Nov-16-18	TK	Prepare, update, finalize Subpoenas to witnesses. Correspondence with Process Server regarding service of the same	1.20	$105.00	126.00
Nov-27-18	TK	Receive, upload, and catalog Affidavit of Service and invoices for service of Trial Subpoenas, Prepare AOS on all three subpoenas for filing with court	0.30	$105.00	31.50
Dec-03-18	JM	EMAILS WITH ANDREW LINDEMANN RE: TRIAL DATES.	0.30	$300.00	90.00
Dec-05-18	JM	CONDUCT CONFERENCE CALL WITH CLIENT AND ATTORNEY BLAKE; FOLLOW UP EMAILS WITH REP. BRAWLEY TO DETERMINE JANUARY TRIAL DATES.	0.70	$300.00	210.00
Dec-05-18	SB	Status update and call with client re: how to proceed with case.	0.50	$300.00	150.00
Feb-13-19	JM	RECEIVE EMAIL FROM LAST EVENING FROM ANDREW LINDEMANN; COORDINATE VIA EMAIL WITH ANDREW, CLIENT, AND LITIGATION TEAM FOR TRIAL DATE.	0.80	$300.00	240.00

Feb-15-19	JM	RECEIVE AND RESPOND TO EMAILS FROM ANDREW RE: TRIAL WITNESSES.	0.30	$300.00	90.00
Feb-19-19	JM	EMAILS WITH ANDREW, JUDGE NEWMAN'S CHAMBERS, AND CLIENT RE: SCHEDULING OF TRIAL	0.70	$300.00	210.00
Feb-20-19	JM	RECEIVE, EVALUATE AND RESPOND TO CLIENT QUESTIONS VIA EMAIL.	0.30	$300.00	90.00
Mar-18-19	SB	Emails to and from Andrew Lindemann re: upcoming trial date and witness availability; emails with client regarding trial.	0.70	$300.00	210.00
Mar-20-19	JM	PREPARE EMAIL TO PAUL GUNTER ASKING FOR TRIAL DATE NEXT FRIDAY.	0.10	$300.00	30.00
Mar-21-19	SB	Receive email from Andrew Lindemann confirming Judy Carter's availability for March 29.	0.10	$300.00	30.00
Mar-25-19	SB	Travel to and attend roster meeting; receive notice of the court's intention to move trial to summertime; advise client of the court's decision; email to Andrew Lindemann advising of the same; receive emails from client re: summer availability; receive email from Andrew Lindemann re: roster.	1.20	$300.00	360.00
Jun-24-19	JM	RECEIVE ROSTER NOTICE; EMAIL TO ANDREW RE: AVAILABILITY OF LAWYERS AND WITNESSES FOR TRIAL WEEK OF JULY 15.	0.20	$300.00	60.00
Jun-24-19	SB	Receive court roster and internal conference re: trial.	0.20	$300.00	60.00
Jun-28-19	JM	RECEIVE, EVALUATE AND RESPOND TO EMAIL FROM ANDREW LINDEMANN AND INSTRCUTIONS TO STAFF.	0.30	$300.00	90.00
Jul-09-19	JM	RECEIVE AND EVALUATE EMAIL FROM ANDREW LINDEMANN RE: WITNESSES AND NEED FOR PROTECTIVE ORDER; PREPARE RESPONSIVE COMMUNICATION; RECEIVE COURT FILINGS FROM ANDREW LINDEMANN.	0.30	$300.00	90.00
Jul-11-19	JM	EMAILS WITH REP. BRAWLEY RE; TRIAL DATE.	0.20	$300.00	60.00
Jul-12-19	JM	RECEIVE, EVALUATE AND RESPOND TO EMAILS FROM ANDREW LINDEMANN.	0.20	$300.00	60.00
Jul-15-19	JM	FOLLOW-UP EMAILS TO CLIENT DISCUSSING THE REASONS TRIAL	0.30	$300.00	90.00

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		GOT MOVED AND CHECKING ON AVAILABILITY FOR WEEK OFAUGUST 12.			
Jul-17-19	SB	Emails with Andrew re: Judge Newman's request for motions of continuance in lieu of motions for protective orders.	0.20	$300.00	60.00
Aug-02-19	SB	Receive email from Andrew Lindemann; draft and prepare motion for continuance and file the same.	0.50	$300.00	150.00
Aug-05-19	SB	Receive order from Judge Newman entering continuance.	0.10	$300.00	30.00
Aug-15-19	JM	RECEIVE, EVALUATE AND RESPOND TO EMAILS FROM CLIENT ABOUT TRIAL DATE; ADVISE OF NEW TRIAL DATE OF SEPTEMBER 3; CONFIRM AVAILABILITY WITH CLIENT.	0.40	$300.00	120.00
Aug-29-19	JM	EMAILS WITH ANDREW LINDEMANN RE: WITNESS AVAILABILITY FOR TRIAL THE LATTER HALF OF THE TERM.	0.20	$300.00	60.00
Aug-29-19	SB	Receive, evaluate and respond to email from A. Lindemann re: trial the latter half of the week and confirming my availability.	0.20	$300.00	60.00
Sep-03-19	JM	ATTEND ROSTER MEETING; CORRESPONDENCE WITH WITNESSES AND CLIENTS RE: SAME; REVIEW TRIAL BRIEF FROM ANDREW LINDEMANN; EMAILS WITH ANDREW LINDEMANN; PRELIMINARY TRIAL PREPARATION;	2.20	$300.00	660.00
Sep-03-19	CKR	Receiving Defendant's pre-trial brief forward for Attorney review.	0.10	$105.00	10.50
Sep-03-19	SB	Emails with the court and opposing counsel re: preparing for trial this week; receive trial brief from Andrew Lindemann; division of duties in trial prep with litigation team; begin review of records and instructions to staff re: begnning to copy exhibits; begin preparation of caselaw and materials that will be needed to address statements, arguments, and motions during trial.	6.80	$300.00	2,040.00
Sep-04-19	JM	PREPARE TRIAL BRIEF; PREPARE FOR TRIAL; TELEPHONE CONFERENCE WITH WITNESSES IN PREPARATION FOR TRIAL;	9.70	$330.00	3,201.00
Sep-04-19	CKR	Electronically file Trial Brief per Attorney's instructions.	0.50	$105.00	52.50

ELECTRONICALLY FILED - 2020 Nov 30 2:04 PM - RICHLAND - COMMON PLEAS - CASE#2015CP4001805

Sep-04-19	DC	prepare documents for Attorney review; pre trial prep	0.70	$105.00	73.50
Sep-04-19	DC	prepare documents for trial	0.70	$105.00	73.50
Sep-04-19	SB	Meet with client re: preparation of trial testimony; revise and provide input on trial brief; continued review of file materials; instruction and oversight of document and exhibit preparation with staff; outline examinations of witnesses for trial and organize trial	11.80	$300.00	3,540.00
Sep-05-19	JM	FINALIZE TRIAL PREPARATION; ATTEND TRIAL OF CASE;	11.80	$300.00	3,540.00
Sep-05-19	JM	EMAILS WITH ANDREW LINDEMANN AND CATHERINE ORTMANN, JUDGE HOOD'S LAW CLERK, RE: TRIAL.	0.60	$300.00	180.00
Sep-05-19	DC	prepare documents for trial	0.20	$105.00	21.00
Sep-05-19	SB	Finalize preparation of trial materials; pre-trial communications with client; travel to and from courthouse and conduct trial of case.	12.00	$300.00	3,600.00
Sep-06-19	SB	Emails with Andrew Lindemann and Jennifer Baker re: trial transcript request and payment for the same.	0.20	$300.00	60.00
Nov-11-19	JM	PREPARE EMAIL TO ANDREW REQUESTED THAT WE HAVE UNTIL DECEMBER 6 TO SUBMIT PROPOSED ORDER DUE TO TRAVEL CONFLICT WITH CURRENT DEADLINE.	0.20	$300.00	60.00
Nov-11-19	SB	Receive and review trial transcript; instructions to staff and legal team regarding the same.	1.20	$300.00	360.00
Nov-13-19	JM	EMAILS WITH ANDREW LINDEMANN AND JUDGE BENJAMIN'S CHAMBERS.	0.20	$300.00	60.00
Nov-15-19	JM	EMAILS WITH COURT AND CLIENT RE: STATUS UPDATE AND DATE PROPOSED ORDERS ARE DUE	0.30	$300.00	90.00
Nov-15-19	JM	EMAILS WITH JUDGE BENJAMIN'S CHAMBERS RE: PROPOSED ORDERS; EMAILS WITH WENDY BRAWLEY RE: ANSWERING REQUEST FOR UPDATE ON CASE.	0.40	$300.00	120.00
Dec-03-19	SB	Receive emails from Andrew Lindemann and Hazel Bridges re: Andrew's request for ten additional days	0.20	$300.00	60.00
Dec-12-19	JM	BEGIN PROPOSED ORDER;	3.20	$300.00	960.00

ELECTRONICALLY FILED - 2020 Nov 30 2:04 PM - RICHLAND - COMMON PLEAS - CASE#2015CP4001805

Dec-17-19	CS	Conferred with JM regarding proposed Order; Began reviewing file documents and drafting Order.	2.50	$225.00	562.50
Dec-18-19	CS	Continued drafting proposed Order; Review of Transcript, Case Law and FOIA Statute.	5.10	$225.00	1,147.50
Dec-19-19	CS	Began to research and draft proposed Order; Conferred with JM regarding the same.	3.30	$225.00	742.50
Dec-19-19	JM	REVIEW AND REVISE ORDER;	1.50	$300.00	450.00
Dec-20-19	CS	Continued to research and draft proposed Order; Reviewed Trial Transcript and case law; Conferred with JM regarding the same; Revised proposed Order per comments from JM.	5.60	$225.00	1,260.00
Dec-20-19	JM	PREPARE/FINALIZE ORDER ON MERITS;	6.70	$300.00	2,010.00
Dec-21-19	SB	Receive and evaluate Andrew Lindemann's proposed order.	0.30	$300.00	90.00
Dec-23-19	CKR	Processing and filing Proposed Order on Merits per Attorney's request.	0.40	$105.00	42.00
Dec-23-19	SB	Perform final review and analysis of proposed order for client following trial; approve and file the same.	0.80	$300.00	240.00
Dec-27-19	SB	Receive email from Ms. Bridges in Judge Benjamin's office confirming receipt of all orders.	0.10	$300.00	30.00
Feb-13-20	JM	RECEIVE AND REVIEW EXECUTED ORDER; COMPARE TO PROPOSED ORDER; TELEPHONE CONFERENCE WITH WENDY BRAWLEY RE: SAME;	1.30	$300.00	390.00
Feb-13-20	DC	receive and catalog electronic filed Final Order on the Merits; Calendar deadlines re Final order	0.20	$105.00	21.00
Feb-25-20	DC	receive and catalog electronic file notice of motion to alter amended	0.10	$90.00	9.00
Mar-05-20	CS	Reviewed Motion to Alter or Amend; Reviewed Final Order; Began drafting Response to Motion.	2.30	$275.00	632.50
Mar-06-20	CS	Finished drafting Response Motion; Conferred with JM regarding the same.	2.00	$275.00	550.00
Mar-11-20	JM	REVIEW/REVISE MEMO IN OPPOSITION TO RULE 59(E) MOTION;	2.90	$300.00	870.00

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Jul-16-20	JM	REVIEW ORDER ON 59E;	0.40	$300.00	120.00
Jul-16-20	DC	receive and catalog electronic filed order and judgment	0.10	$90.00	9.00
Jul-20-20	JM	TELEPHONE CONFERENCE WITH WENDY BRAWLEY RE: ORDER ON 59E MOTION; EMAIL TO WENDY BRAWLEY RE: SAME;	0.60	$300.00	180.00
Jul-23-20	JM	PREPARE AFFIDAVIT OF ATTORNEY'S FEES AND MOTION FOR SAME;	2.10	$300.00	630.00
Jul-24-20	SB	Review initial order and revised order and consider whether any issue needs to be preserved by another Rule 59(e), or whether all issues have been raised and ruled upon.	1.20	$300.00	360.00
Jul-27-20	SB	Teleconference with legal team agreeing not to pursue additional rule 59(e); review of affidavit of attorneys fee and bill to ensure proper submission per court's order.	0.80	$300.00	240.00
Jul-28-20	DC	receive and catalog electronic filed attorneys fees	0.10	$90.00	9.00
Aug-12-20	JM	RECEIVE, REVIEW MEMORANDUM IN OPPOSITION TO ATTORNEY'S FEES; BEGIN RESEARCHING AND FORMULATING RESPONSE TO SAME;	1.80	$300.00	540.00
Aug-17-20	JM	RECEIVE, REVIEW NOTICE OF APPEAL; RESEARCH ISSUE OF PROCEDURAL STANDING OF ATTORNEY'S FEES ISSUE WITH APPEAL; TELEPHONE CONFERENCE WITH COURT OF APPEALS CLERK RE: SAME; EMAIL TO JUDGE BENJAMIN RE: SAME; PREPARE NOTICE OF APPEAL;	3.50	$300.00	1050.00
Aug-18-20	JM	CONDUCT LEGAL RESEARCH RE: JURISDICTION OF COURT TO HEAR ATTORNEY'S FEES ARGUMENT;	1.10	$300.00	330.00
Aug-18-20	DC	draft letter to Clerk of Court re Filing fee for Notice of Appeal	0.30	$90.00	27.00
Aug-19-20	DC	catalog, prepare and finalize correspondence letter re filing fee; email correspondence to opposing counsel re same	0.30	$90.00	27.00
Aug-20-20	JM	DRAFT MOTION TO HOLD IN ABEYANCE FOR LIMITED REMAND;	2.10	$300.00	630.00
Aug-21-20	JM	PREPARE AND REVISE MOTION TO HOLD IN ABEYANCE FOR LIMITED REMAND; CONDUCT LEGAL	2.70	$300.00	810.00

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		RESEARCH REGARDING CLAIM THAT FAILURE TO FILE MOTION IS DISPOSITIVE;			
Aug-21-20	DC	receive and catalog letter from Court of Appeals re initial letter	0.10	$90.00	9.00
Aug-23-20	JM	FINALIZE MOTION WITH EXHIBITS;	1.10	$300.00	330.00
Aug-24-20	JM	PREPARE TRANSMITTAL LETTER, COSAND FILE APPEAL;	0.70	$300.00	210.00
Aug-24-20	DC	receive and catalog attorney research documents; bateslabel Motion to Hold in Abeyance as an Exhibit	0.40	$90.00	36.00
Aug-24-20	DC	draft transmittal letter and certificate of service	0.50	$90.00	45.00
Aug-25-20	JM	CORRESPONDENCE WITH COURT AND ALL PARTIES RE: CONFIRMATION OF FILING OF MOTION BECAUSE OF FIREWALL ISSUE;	0.40	$300.00	120.00
Aug-25-20	DC	call to court of appeals re filed Moton to Hold in Abeyance; receive and catalog filed Motion to Hold in Abeyance	0.30	$90.00	27.00
Aug-26-20	DC	draft transmittal letter to Court of Appeals re fee for filing Motion; prepare and finalize correspondence re same; email correspondence copy to opposing counsel	0.40	$90.00	36.00
Sep-04-20	KM	Review/analyze Review appellate court rules to establish timeline for Reply to Appellant's Return to client's motion and confirm the lack of a "mail rule"	0.20	$175.00	35.00
Sep-04-20	DC	receive and catalog Return to Motion	0.10	$90.00	9.00
Sep-05-20	KM	Review/analyze Review appellate court rules to establish whether weekends and holidays are counted when the deadline for a Reply is less than seven days	0.10	$175.00	17.50
Sep-14-20	DC	receive and catalog filed Reply to Return	0.10	$90.00	9.00
Oct-05-20	JM	EMAIL FROM JUDGE BENJAMIN'S CLERK RE: ATTORNEY'S FEES AFFIDAVIT AND JURY TRIAL DEMAND; TELEPHONE CONFERENCE WITH ASSATA HERBERT RE: SAME; FOLLOW UP EMAIL WITH MS. HERBERT RE: SAME;	0.30	$300.00	90.00
Oct-07-20	DC	receive and catalog electronic filed Order from Court of Appeals	0.10	$90.00	9.00

Oct-14-20	JM	PREPARE REPLY MEMORANDUM TO RICHLAND COUNTYOS MEMO IN OPPOSITION TO AWARD OF ATTORNEYOS FEES	4.50	$300.00	1350.00
Oct-15-20	JM	CONTINUE PREPARING REPLY MEMORANDUM TO RICHLAND COUNTYOS MEMO IN OPPOSITION TO AWARD OF ATTORNEYOS FEES;	3.50	$300.00	1050.00
Oct-16-20	JM	CONTINUE PREPARING REPLY MEMORANDUM TO RICHLAND COUNTYOS MEMO IN OPPOSITION TO AWARD OF ATTORNEYOS FEES;	5.50	$300.00	1650.00
Oct-19-20	JM	FINALIZE MEMO AND EXHIBITS FOR FILING;	2.10	$300.00	630.00
Oct-19-20	CKR	Preparing and processing documents to be filed; prepare same for Attorney review; once documents are filed download and send all to Judge's law clerk for review.	1.00	$105.00	105.00
Nov-9-20	SB	Review court filings, applicable case law, and prepare for and conduct extensive oral argument on Motion for Fees and Costs; update litigation team on court request for post-hearing submissions by Friday and ensure calendaring of the same.	5.20	$300.00	1560.00

Total Legal Services $88,425.50

Expenses

Mar-25-15	Richland County Clerk of Court for Filing Fees.	150.00
Apr-28-15	Postage	1.65
Aug-25-15	Richland County Clerk of Court for Filing Fees.	25.00
Aug-31-15	Postage	4.19
Mar-17-16	Richland County Clerk of Court for Motion Filing Fee	25.00
Nov-21-16	Richland County for Filing Fee	25.00
Jan-03-17	Richland County for Filing Fees	25.00
Jan-26-17	Carolina Investigative Associates for Service on Andy H. Metts	105.00
Jan-26-17	Carolina Investigative Associates for Service on Judy A. Carter Richland County Ombudsman	105.00
Jan-26-17	Carolina Investigative Associates for Service on Sara Salley	105.00
Jun-26-17	Carolina Investigative Associates, LLCfor Service on Judy A. Carter, Richland County Ombudsman	80.00
Jun-26-17	Carolina Investigative Associates, LLCfor Service on Sara Salley	80.00
Jun-26-17	Carolina Investigative Associates, LLC for Service on Andy H. Metts	80.00
Jul-05-17	Richland County for Filing Fee	25.00

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Oct-02-17	Richland County for Motion Filing Fee	25.00
Nov-07-17	Serve-One of SC, LLC for Fee for Service on Judy A. Carter on 10/13/17	65.00
Nov-07-17	Serve-One of SC, LLC for Fee for Service on Sara Salley on 10/13/17	65.00
Jan-31-18	Serve-One of SC, LLC for Service on Andy H. Metts	105.00
Apr-27-18	Serve-One of SC, LLC for Fee for Service on Judy A. Carter	100.00
Apr-27-18	Serve-One of SC, LLC for Fee for Service on Andy H. Metts	100.00
Apr-27-18	Serve-One of SC, LLC for Fee for Service on Sara Salley	100.00
Jul-11-18	US Postal Service	0.89
Aug-15-18	Serve-One of SC, LLC for Fee for Service of Trial Subpoenas	195.00
Sep-07-18	Serve-One of SC, LLC for Fee for Service on Sara Salley	65.00
Sep-07-18	Serve-One of SC, LLC for Fee for Service on Andy H. Metts	65.00
Sep-07-18	Serve-One of SC, LLC for Fee for Service on Judy A. Carter	65.00
Oct-11-18	Richland County for Filing Fee	31.74
Jan-21-19	Serve-One of SC, LLC for Fee for Service on Andy H. Metts	65.00
Jan-21-19	Serve-One of SC, LLC for Fee for Service on Judy A. Carter	65.00
Jan-21-19	Serve-One of SC, LLC for Fee for Service Sara Salley	65.00
Nov-12-19	Deborah M. McCurdy, RPR for Transcript	819.75
Dec-23-19	Richland County for Filing Fee	31.74
Aug-18-20	South Carolina Court of Appeals for Filing Fees	250.00
Aug-19-20	U.S Postal Service	0.50
Aug-26-20	South Carolina Court of Appeals for Filing Fees	50.00
Aug-26-20	U.S Postal Service	1.00
	Total Expenses	**$3,166.46**
	Total Invoice Amount	**$91,591.96**
	Balance (Amount Due)	**$91,591.96**

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Carolina Investigative Associates, LLC
1643 B Savannah Hwy.
#138
Charleston, SC 29407
Phone: (843) 595-4627
Fax: (843) 595-4627

INVOICE

Invoice #SLW-2016000162
1/4/2017

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, Suoth Carolina

Served: 12/30/2016 6:07 pm
To be served on: Andy H. Metts

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Metro Rush	1.00	105.00	105.00
TOTAL CHARGED:			$105.00
BALANCE DUE:			**$105.00**

PLEASE INCLUDE OUR INVOICE NUMBER WITH YOUR PAYMENT.

This invoice represents an extension of credit to you. Payment is due on or before 15 days from invoice date.
Payments not received by due date will incur a $25.00 late fee or 10% of balance greater than $250.00.

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Carolina Investigative Associates, LLC
1643 B Savannah Hwy.
#138
Charleston, SC 29407
Phone: (843) 595-4627
Fax: (843) 595-4627

INVOICE

Invoice #SLW-2016000163
1/4/2017

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Non-Served: 12/30/2016
To be served on: Judy A. Carter Richland County Ombudsman

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Metro Rush	1.00	105.00	105.00
TOTAL CHARGED:			$105.00
BALANCE DUE:			**$105.00**

PLEASE INCLUDE OUR INVOICE NUMBER WITH YOUR PAYMENT.

This invoice represents an extension of credit to you. Payment is due on or before 15 days from invoice date.
Payments not received by due date will incur a $25.00 late fee or 10% of balance greater than $250.00.

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Serve-One of SC, LLC
512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018001139
7/17/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 7/10/2018 6:58 am
To be served on: Andy H. Metts

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
TOTAL CHARGED:			$65.00
BALANCE DUE:			**$65.00**

PLEASE INCLUDE LAST FOUR DIGITS OF THE INVOICE NUMBER ON YOUR CHECK. Federal Tax #81-1892866. INVOICES ARE DUE UPON RECEIPT. A $5.00 LATE FEE WILL BE ADDED TO ALL INVOICES NOT PAID WITHIN 30 DAYS. AN ADDITIONAL $10.00 WILL BE ADDED FOR EACH 30 DAYS THEREAFTER. WE APPRECIATE YOUR BUSINESS.

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Serve-One of SC, LLC
512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018001140
7/17/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 7/12/2018 8:39 am
To be served on: Sara Salley

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
TOTAL CHARGED:			$65.00
BALANCE DUE:			**$65.00**

PLEASE INCLUDE LAST FOUR DIGITS OF THE INVOICE NUMBER ON YOUR CHECK. Federal Tax #81-1892866. INVOICES ARE DUE UPON RECEIPT. A $5.00 LATE FEE WILL BE ADDED TO ALL INVOICES NOT PAID WITHIN 30 DAYS. AN ADDITIONAL $10.00 WILL BE ADDED FOR EACH 30 DAYS THEREAFTER. WE APPRECIATE YOUR BUSINESS.

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512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018001138
7/13/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 7/9/2018 11:25 am
To be served on: Judy A. Carter

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
TOTAL CHARGED:			$65.00
BALANCE DUE:			**$65.00**

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Serve-One of SC, LLC
512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018001492
8/29/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 8/22/2018 11:28 am
To be served on: Sara Salley

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
TOTAL CHARGED:			$65.00
BALANCE DUE:			**$65.00**

PLEASE INCLUDE LAST FOUR DIGITS OF THE INVOICE NUMBER ON YOUR CHECK. Federal Tax #81-1892866. INVOICES ARE DUE UPON RECEIPT. A $5.00 LATE FEE WILL BE ADDED TO ALL INVOICES NOT PAID WITHIN 30 DAYS. AN ADDITIONAL $10.00 WILL BE ADDED FOR EACH 30 DAYS THEREAFTER. WE APPRECIATE YOUR BUSINESS.

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Serve-One of SC, LLC
512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018001494
8/29/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 8/24/2018 8:05 am
To be served on: Andy H. Metts

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
TOTAL CHARGED:			$65.00
BALANCE DUE:			**$65.00**

PLEASE INCLUDE LAST FOUR DIGITS OF THE INVOICE NUMBER ON YOUR CHECK. Federal Tax #81-1892866. INVOICES ARE DUE UPON RECEIPT. A $5.00 LATE FEE WILL BE ADDED TO ALL INVOICES NOT PAID WITHIN 30 DAYS. AN ADDITIONAL $10.00 WILL BE ADDED FOR EACH 30 DAYS THEREAFTER. WE APPRECIATE YOUR BUSINESS.

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Serve-One of SC, LLC
512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018001493
8/24/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 8/21/2018 2:37 pm
To be served on: Judy A. Carter

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
TOTAL CHARGED:			$65.00
BALANCE DUE:			**$65.00**

PLEASE INCLUDE LAST FOUR DIGITS OF THE INVOICE NUMBER ON YOUR CHECK. Federal Tax #81-1892866. INVOICES ARE DUE UPON RECEIPT. A $5.00 LATE FEE WILL BE ADDED TO ALL INVOICES NOT PAID WITHIN 30 DAYS. AN ADDITIONAL $10.00 WILL BE ADDED FOR EACH 30 DAYS THEREAFTER. WE APPRECIATE YOUR BUSINESS.

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Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

used J Mann Credit Card

Receipt Contact Information

Contact Name	Richland County Common Pleas Court	**Contact Phone**	(803) 576-1951	**Contact Address**	PO Box 2766 Columbia, SC 29202-2766

#3614

Transaction Summary

Receipt Confirmation

Description	Amount
Richland County - Common Pleas - E-Filing	$30.00
SC.GOV Total	**$31.74**

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

Customer Information

Customer Name	Jenkins McMillan Mann	**Receipt Date**	10/11/2018
		Receipt Time	04:52:52 PM EDT
Local Reference ID	F_1136079_2416		

Payment Info

Payment Type	Credit Card	**Credit Card Num...**	[redacted]
Credit Card Type	VISA	**Order ID**	64117290
		Name on Credit...	Rogers Lewis Jackson Mann Quinn

Billing Information

Billing Address	PO Box 11803	**Phone Number**	803-978-2831
Billing City, State	Columbia, SC		
ZIP/Postal Code	29211	**This receipt has been emailed to the address below.**	
Country	US		
		Email Address	jmann@rogerslewis.com

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13614

Serve-One of SC, LLC
512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018002031
1/21/2019

Original Date: 11/26/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 11/19/2018 7:43 pm
To be served on: Andy H. Metts

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
TOTAL CHARGED:			$65.00
BALANCE DUE:			**$65.00**

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#13614

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Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018002033
1/21/2019

Original Date: 11/26/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 11/19/2018 1:30 pm
To be served on: Judy A. Carter

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
TOTAL CHARGED:			$65.00
BALANCE DUE:			**$65.00**

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Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018002035
1/21/2019

Original Date: 11/30/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 11/27/2018 8:47 am
To be served on: Sara Salley

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
TOTAL CHARGED:			$65.00
BALANCE DUE:			**$65.00**

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State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

Deborah M. McCurdy
Circuit Court Reporter
Registered Professional Reporter

November 11, 2019

1403 Geiger Avenue
Columbia, SC 29201
803.771.4401
dmccurdy@sccourts.org

Shaun C. Blake, ESQ.
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main Street
Suite 1200
Columbia, SC 29201
sblake@rogerslewis.com

RE: TRANSCRIPT OF RECORD
WENDY BRAWLEY V. RICHLAND COUNTY, SOUTH CAROLINA
2015-CP-40-1805
SEPTEMBER 5, 2019
RICHLAND COUNTY COURT OF COMMON PLEAS
BEFORE THE HONORABLE DEANDREA G. BENJAMIN

1 Original + 1 Copy	306 Pages @	$5.25	$1606.50
1 Word Index of	33 Pages @	$1.00	$ 33.00
			$1639.50

½ to be split with Defense counsel -- YOUR TOTAL $ 819.75

I DO HEREBY CERTIFY

that the above bill is true and accurate.

MAKE PAYABLE TO:

s/Deborah M. McCurdy
Deborah M. McCurdy, RPR
Circuit Court Reporter

THANK YOU!

13614
Brawley v Richland Co
(Hopkins/Lower Richland)

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Skip to main content

Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

Receipt Contact Information

Contact Name	Richland County Common Pleas Court	**Contact Address**	PO Box 2766 Columbia, SC 29202-2766
Contact Phone	(803) 576-1951		

Transaction Summary

Receipt Confirmation

Description	Amount
Richland County - Common Pleas - E-Filing	$30.00
SC.GOV Total	**$31.74**

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

Customer Information

Customer Name	Shaun C. Blake	**Receipt Date**	12/23/2019
Local Reference ID	F_2362554_3030	**Receipt Time**	09:32:37 AM EST

Payment Info

Payment Type	Credit Card	**Credit Card Num...**	[redacted]
Credit Card Type	VISA	**Order ID**	85061508
		Name on Credit ...	Christian Rogers

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Billing Information

Billing Address	1901 Main Street	**Phone Number**	803-256-1268
Address 2	Suite 1200	**This receipt has been emailed to the address below.**	
Billing City, State	Columbia, SC		
ZIP/Postal Code	29201		
Country	US	**Email Address**	sblake@rogerslewis.com

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Carolina Investigative Associates, LLC
1643 B Savannah Hwy.
#138
Charleston, SC 29407
Phone: (843) 595-4627
Fax: (843) 595-4627

INVOICE

Invoice #SLW-2016000164
1/4/2017

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Non-Served: 1/3/2017
To be served on: Sara Salley

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Metro Rush	1.00	105.00	105.00
TOTAL CHARGED:			$105.00
BALANCE DUE:			**$105.00**

PLEASE INCLUDE OUR INVOICE NUMBER WITH YOUR PAYMENT.

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Carolina Investigative Associates, LLC
1643 B Savannah Hwy.
#138
Charleston, SC 29407
Phone: (843) 595-4627
Fax: (843) 595-4627

INVOICE

Invoice #SLW-2017000035
6/22/2017

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 6/19/2017 11:08 am
To be served on: Judy A. Carter Richland County Ombudsman

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Metro Routine	1.00	80.00	80.00
TOTAL CHARGED:			$80.00
BALANCE DUE:			**$80.00**

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Carolina Investigative Associates, LLC
1643 B Savannah Hwy.
#138
Charleston, SC 29407
Phone: (843) 595-4627
Fax: (843) 595-4627

INVOICE

Invoice #SLW-2017000036
6/22/2017

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 6/20/2017 10:30 am
To be served on: Sara Salley

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Metro Routine	1.00	80.00	80.00
TOTAL CHARGED:			$80.00
BALANCE DUE:			**$80.00**

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Carolina Investigative Associates, LLC
1643 B Savannah Hwy.
#138
Charleston, SC 29407
Phone: (843) 595-4627
Fax: (843) 595-4627

INVOICE

Invoice #SLW-2017000037
6/21/2017

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 6/19/2017 8:35 pm
To be served on: Andy H. Metts

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Metro Routine	1.00	80.00	80.00
TOTAL CHARGED:			$80.00
BALANCE DUE:			**$80.00**

PLEASE INCLUDE OUR INVOICE NUMBER WITH YOUR PAYMENT.

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512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2017001272
10/16/2017

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 10/13/2017 10:32 am
To be served on: Judy A. Carter

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
TOTAL CHARGED:			$65.00
BALANCE DUE:			**$65.00**

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512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2017001271
10/16/2017

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 10/13/2017 10:12 am
To be served on: Sara Salley

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
TOTAL CHARGED:			$65.00
BALANCE DUE:			**$65.00**

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512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2017001273
1/29/2018

Original Date: 10/18/2017

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 10/17/2017 11:40 am
To be served on: Andy H. Metts

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Additional Address Loyal Customer	1.00	30.00	30.00
Service Fee Loyal Customer	1.00	65.00	65.00
Late Fee	1.00	10.00	10.00
TOTAL CHARGED:			$105.00
BALANCE DUE:			**$105.00**

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Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018000640
4/23/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 4/18/2018 12:35 pm
To be served on: Judy A. Carter

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
Rush Fee Loyal Customer	1.00	35.00	35.00
TOTAL CHARGED:			$100.00
BALANCE DUE:			**$100.00**

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512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018000842
4/23/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Koester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 4/17/2018 9:29 pm
To be served on: Andy H. Metts

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
Rush Fee Loyal Customer	1.00	35.00	35.00
TOTAL CHARGED:			$100.00
BALANCE DUE:			**$100.00**

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512 Pettigru Street
Greenville, SC 29601
Phone: (864) 235-7766
Fax: (864) 232-8420
81-1892866

INVOICE

Invoice #SJB-2018000641
4/23/2018

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29211

Your Contact: Tyler Keester
Case Number: Richland 2015-CP-40-1805

Plaintiff:
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley

Defendant:
Richland County, South Carolina

Served: 4/18/2018 12:19 pm
To be served on: Sara Salley

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Service Fee Loyal Customer	1.00	65.00	65.00
Rush Fee Loyal Customer	1.00	35.00	35.00
TOTAL CHARGED:			$100.00
BALANCE DUE:			**$100.00**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL
COUNTY OF RICHLAND	)	CIRCUIT
	)	
WENDY BRAWLEY,	)	**C/A No. 2015-CP-40-1805**
PLAINTIFF,	)	
	)	
	)	**AMENDED ORDER AWARDING PLAINTIFF**
v.	)	**ATTORNEY'S FEES AND COSTS**
	)	
RICHLAND COUNTY, SOUTH CAROLINA,	)	
DEFENDANT.	)	

This matter comes before Judge DeAndrea Gist Benjamin to issue an order determining a fair and reasonable amount of attorney's fees and costs to Plaintiff, Wendy Brawley. The Court issues the following order awarding Plaintiff attorney's fees and costs in the amount of $80,845.71.

PROCEDURAL HISTORY

Plaintiff's award of attorney's fees and costs stems from Plaintiff's four (4) FOIA request to the Defendant at the meeting of the Richland County Council held on September 9, 2014. On March 25, 2015, Plaintiff filed a Complaint seeking declaratory and injunctive relief. By Form Order filed August 14, 2015, Judge Clifton Newman dismissed Plaintiff's claim for injunctive relief. Subsequently, Defendant filed a motion for summary judgement as to Plaintiff's remaining claim for a declaratory judgement. By Order filed October 24, 2016, Judge Newman granted in part and denied in part Defendant's motion for summary judgement resolving three (3) of the four (4) FOIA request. A bench trial was held on September 5, 2019, regarding the

ELECTRONICALLY FILED - 2021 Jan 19 10:18 AM - RICHLAND - COMMON PLEAS - CASE#2015CP4001805

remaining claim for declaratory relief. By Order filed February 13, 2020, this Court found in favor of Plaintiff and specifically awarded reasonable attorney's fees and costs.[1]

FINDINGS OF FACT

After careful consideration of the testimony and evidence presented at trial as well as the legal arguments of counsel during trial, hearings, and in various motions, the Court makes the following findings of fact.

I. THIS COURT HAS JURISDICTION OVER THE AWARD OF ATTORNEY'S FEES AND COSTS

This Court overrules Defendant's objection asserting the Court no longer has subject matter jurisdiction to consider the Plaintiff's attorney's fees affidavit filed on July 27, 2020, or to make any award of attorney's fees and costs. First, Defendant argues that the February 13, 2020 Order of this Court required Plaintiff to submit a motion to support the amount of fees and costs incurred. Under South Carolina law, "the only perquisite to an award of attorney's fees and cost is that the party seeking relief must prevail, in whole or in part." *Cockrell by Cockrell v. Trustees of Dist. 20 Constituent School Dist*., 299 S.C. 155, 382 S.E.2d 923 (S.C. 1989). Thus, since Plaintiff prevailed in part on her request for declaratory relief, it is within this Courts discretion to award attorney's fees and costs to Plaintiff. Furthermore, there is no prejudice to Defendant as a result of Plaintiff filing an affidavit of attorney's fees rather than a motion. Plaintiff requested attorney's fees in its complaint and reasserted this request at trial.

[1] The Defendant has asked the court to consider *Ballard v. Newberry County*, No. 2017-002429, 2021 WL 116345 (S.C. App. January 13, 2021), decided by the Court of Appeals January 13, 2020. In its decision, the Court of Appeals held that a public body does not violate FOIA when it fails to produce documents it did not retain. This Court finds this case to be distinguishable. In Ballard, the documents requested no longer existed and could not be reproduced. Here, the County failed to provide responsive documentation both in its possession and/or previously in its possession which could have been obtained.

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Defendant also asserts that by law Plaintiff had ten (10) days, or until February 24, 2020, to file for attorney's fees pursuant to Rule 54(d), SCRCP. However, on February 24, 2020, Defendant filed a Notice of Motion and Motion to Alter or Amend Order seeking to alter the February 13, 2020 Order of this Court. This vested the Court with continuing jurisdiction over the case until a final order on the merits was issued and attorney's fees and costs, if any, were determined. "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." *Culbertson v. Clemens*, 322 S.C. 20, 23 471 S.E.2d 163, 164. By Order filed July 16, 2020, this Court issued an amended and final order on the merits. Within ten (10) days, on July 27, 2020, Plaintiff filed an affidavit of attorney's fees and costs. Defendant emphasizes that the South Carolina Supreme Court has held that "**[g]enerally**, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 633 S.E.2d 722, 730 (2006) (emphasis added). To support its argument that this Court no longer has jurisdiction over this FOIA related attorney's fees and costs matter, the Defendant cites to case law construing the South Carolina Frivolous Proceedings Sanctions Act. In response, the Court emphasizes "the award of fees and costs to the prevailing person or entity in a suit brought pursuant to section 30-4-100(a) is entrusted to the discretion of the trial court." *Sloan v. S.C. Dep't of Revenue*, 409 S.C. 551, 556, 762 S.E.2d 687, 690 (2014) (J. Pleicones, concurring in part and dissenting in part) (citing S.C. Code Ann. §30-4-100(b)(2007)). This Court may exercise its discretion in regard to an award of fees and costs.

Finally, Defendant contends that Plaintiff did not submit its billing records while the record was open and did so only at the request of Judge Benjamin. This Court finds that the evidentiary record remained open when Plaintiff's affidavit was filed July 27, 2020, and that the

ELECTRONICALLY FILED - 2021 Jan 19 10:18 AM - RICHLAND - COMMON PLEAS - CASE#2015CP4001805

Court asking the Plaintiff provide supplemental information for evidentiary purposes is not *sua sponte* action by the Court. Furthermore, the billing records were provided by Plaintiff only to supplement the affidavit previously filed on July 27, 2020.

II. PLAINTIFF'S BILLING RECORDS WERE AUTHENTICATED

Defendant alleges that Plaintiff submitted billing records **(Exhibit A)** without the proper authentication. This Court finds that an attorney's sworn testimony as to the validity of the records is sufficient for authentication purposes. The most direct way of authenticating billing records is the taking of testimony from a witness who has knowledge that the records are what they are claimed to be. An affidavit or additional testimony to authenticate the records is not required.

III. PLAINTIFF MAY RECOVER ATTORNEY'S FEES AND COSTS FOR WORK DONE BY SUPERVISED OFFICE STAFF

Without legal authority, Defendant asserts that S.C. Code Ann. §30-4-100(b) does not provide for the recovery of fees charged for paralegals or staff. Plaintiff contends that "reasonable attorney's fees" includes fees charged for work done by supervised office staff including paralegals. As such, Plaintiff has submitted billing records including fees recoverable for work done by supervised paralegals. Defendant has provided no support for the excluding fees charged for supervised staff. This Court finds that a trial judge has discretion to consider and include in its award of attorney's fees the services expended by paralegals if it is reasonable to do so.

IV. DISMISSED PLAINTIFF HOPKINS AND LOWER RICHLAND CITIZENS UNITED, INC. ("HLRCU") AND PLAINTIFF WENDY BRAWLEY ARE THE SAME

Defendant alleges that Plaintiff's counsel expended some of the attorney's fees and cost in question representing a prior co-Plaintiff Hopkins and Lower Richland Citizens United, Inc.

("HLRCU"). A review of the record reflects that HLRCU is Ms. Brawley's 501(c)(3).[2] Additionally, HLRCU was not formed at the time of the time entries in question and thus Plaintiff could not have been representing the non-existent entity. Upon review of Plaintiff's counsel billing records and itemized costs this Court finds that the fees and costs requested result from work done primarily on behalf of Plaintiff Wendy Brawley.

V. THE COURT IN ITS DISCRETION MAY PORPORTION THE AWARD OF ATTORNEYS FEES AND COST

The Court has taken into consideration the that Judge Newman granted Defendant's Motion to Dismiss and Motion for Summary Judgement on three of the four FOIA claims at issue. Nonetheless, this Court does not find that the fact Plaintiff did not prevail on the entirety of her injunctive relief claim calls for a significant reduction in the award of attorney's fees and costs. "If the person or entity prevails in part, **the court may in its discretion** award him reasonable attorney's fees or an appropriate **portion of those attorney's fees**." Section §30-4-100 (emphasis added).

STANDARD OF REVIEW

The Supreme Court of South Carolina has set forth the factors to be considered in awarding attorney' fees. These factors include nature, extent, and difficulty of the legal services rendered; the time and labor necessarily devoted to the case; the professional standing of counsel; the contingency of compensation; the customary fees charged in the locality for similar services; and the beneficial result obtained. *Dedes v. Stickland*, 414 S.E.2d 134 (S.C. 1992). This Court finds that Plaintiff's counsel is entitled to attorney's fees pursuant to the Dedes factors. Plaintiff's counsel secured the production of documents by Richland County on behalf of Wendy

[2] Judge Newman dismissed Plaintiff Hopkins and Lower Richland Citizens United, Inc. by Order filed October 24, 2016 because the 501(c)(3) had not been formed.

ELECTRONICALLY FILED - 2021 Jan 19 10:18 AM - RICHLAND - COMMON PLEAS - CASE#2015CP4001805

ELECTRONICALLY FILED - 2021 Jan 19 10:18 AM - RICHLAND - COMMON PLEAS - CASE#2015CP4001805

Brawley after several hearings with Judge Clifton Newman; a bench trial and hearings with Judge Benjamin; extensive discovery; and multiple pre- and post-trial motions and arguments. This matter was handled on a contingency basis by Shaun Blake and Jenkins Mann of Rogers, Lewis, Jackson, Mann & Quinn, LLC, who have practiced in the area of civil litigation since 2006. This Court finds that the Plaintiff's hourly rates for partners, associates, and paralegals are reasonable and represent the customary legal fees for the type of work performed in this case. The complaint in this matter was filed on March 25, 2015, and approximately three hundred five (305) billable hours[3] were devoted to this case. Upon review of these factors, this Court finds that the attorney's fees and costs requested are fair and reasonable in light of the nature of the legal services rendered.

CONCLUSION

Pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §30-4-10, *et seq*., Plaintiff is entitled to reasonable attorney's fees incurred herein. The Court held multiple hearings and considered the oral arguments of counsel. In addition, the Court reviewed the filings by counsel. Plaintiff submitted billing records indicating attorney's fees and costs in the amount of $91,591.96 have accrued since March 3, 2015. The Court finds that it is not required to make evidentiary findings as to each billing entry; however, after careful review, the Court has deducted attorney's fees and expenses relating to Plaintiff's injunctive relief claim, Defendant's Motion to Dismiss, and appellate matters. Furthermore, the Court finds a fifty-percent (50%) reduction in attorney's fees and costs incurred prior to August 10, 2015 to be fair and reasonable to account for time allocated to the representation of dismissed co-Plaintiff

[3] Plaintiff's billing records do not include all hours devoted to the case.

HLRCU. Upon consideration, this Court finds that an award of attorney's fees in the amount of $77,980.75 and costs in the amount of $2,864.96 are fair and reasonable.

IT IS SO ORDERED THAT

Plaintiff is awarded, and Defendant shall pay to Plaintiff, $77,980.75 in attorney's fees and $2,864.96 in costs, for a total of $80,845.71.

AND IT IS SO ORDERED.

_____

The Honorable DeAndrea Gist Benjamin
Presiding Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina
January 15, 2021

ELECTRONICALLY FILED - 2021 Jan 19 10:18 AM - RICHLAND - COMMON PLEAS - CASE#2015CP4001805

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Richland Common Pleas

Case Caption: Hopkins And Lower Richland Citizens United Inc , plaintiff, et al vs Richland County

Case Number: 2015CP4001805

Type: Order/Attorney Fees

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2021-01-15 15:15:35 page 8 of 8

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	))))	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2015-CP- -
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley, Plaintiffs, v. Richland County, South Carolina, Defendant.	))))))))))	**SUMMONS**

RICHLAND COUNTY FILED
2015 MAR 25 PM 4:53
JEANNETTE W. WALTERS
C.C.&C.P. R.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer on the subscribers at their offices, 1330 Lady Street, Suite 400, Columbia, SC 29201 or Post Office PO Box 11803, Columbia, SC 29211, within thirty (30) days after the service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the court for judgment by default for the relief demanded in the Complaint.

Jenkins M. Mann
Shaun C. Blake
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1330 Lady Street, Suite 400
PO Box 11803 (29211)
Columbia, SC 29201
Tel.: (803) 256-1268
Fax: (803) 253-3653
Email: sblake@rogerslewis.com
jmann@rogerslewis.com

March 25, 2015

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
		CIVIL ACTION NO.: 2015-CP- -
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley,	)	
Plaintiffs,	)	**COMPLAINT**
v.	)	
Richland County, South Carolina,	)	
Defendant.	)	

2015 MAR 25 PM 4:50

Plaintiffs, complaining of the Defendant, would respectfully show unto this Court the following:

INTRODUCTION

1. This is an action pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, etc. Plaintiffs submitted FOIA requests on September 9, 2014, in order to

   a. inform the citizens residing in Hopkins and Lower Richland County of Richland County's actions and representations to the United States Department of Agriculture ("USDA") regarding a proposed plan to impose a County sewer system on the residents of Hopkins and Lower Richland County ("Lower Richland Sewer Project"); and

   b. inform the citizens of Hopkins and Lower Richland County on whether Richland County Council has in fact approved the "tap fee waivers" that it touts will be available for certain citizens that agree (but only prior to construction beginning) that they will sign up for County sewer service.

2. Since July 2014, the members of Hopkins and Lower Richland Citizens United, Inc. have publically opposed the Lower Richland Sewer Project for numerous reasons, including:

a. Phase I of Lower Richland Sewer Project will place five (5) sewer pumping stations in the heart of Hopkins and near churches, schools, daycares, and homes, and these pump stations will be unsightly, noxious nuisances to the lower Richland community;

b. The sewage of approximately 1,370 City of Columbia sewer customers will be redirected into the Lower Richland sewage system;

c. The tap fees that many Hopkins and Lower Richland residents will be mandated to incur will cost $4,000.00. This cost is in addition to the cost homeowners will be required to incur for running lines to the tap, converting homes to plumbing that is compatible with the sewer system, and the monthly usage fee.

d. The purpose of the Lower Richland Sewer Project is to encourage development, and this development will destroy the rural nature of the Plaintiffs' homes over the objection of the Plaintiffs and the more than 1,100 citizens of Hopkins and Lower Richland County that have signed Plaintiffs' petition in opposition to the Lower Richland Sewer Project.

3. Plaintiffs have received belated, incomplete, and non-responsive documents from the County even while the County moves forward with the Lower Richland Sewer Project over the strong objections and outcry by the citizens of Hopkins and Lower Richland County

JURISDICTION AND VENUE

4. Defendant is a political subdivision of the State of South Carolina and is a "public body" as defined in S.C. Code Ann. § 30-4-20(a).

5. Plaintiff Hopkins and Lower Richland Citizens United, Inc. is a domestic non-profit corporation duly formed and existing under the laws of South Carolina with its principal place of business in Richland County, South Carolina. Hopkins and Lower Richland Citizens United, Inc. is the successor to the unincorporated association of citizens in Hopkins and Lower Richland who previously acted together under the name "Hopkins and Lower Richland Citizens United" until their formal incorporation in March 2015, and Hopkins and Lower Richland Citizens United, Inc. has continued to do business as "Hopkins and Lower Richland Citizens United" since its incorporation.

6. Plaintiff Wendy Brawley ("Brawley") has been a duly appointed spokesperson for Hopkins and Lower Richland Citizens United since July 2014, and she continues to act as its duly appointed spokesperson and registered agent.

7. This court possesses subject matter jurisdiction over this dispute pursuant to Article V, § 11 of the South Carolina Constitution and pursuant to S.C. Code Ann. § 30-4-100.

8. Venue is proper in Richland County, South Carolina pursuant to S.C. Code Ann. § 30-4-100.

FACTS

9. Prior to February 2013, Richland County applied for a loan and grant from the USDA Rural Development office to fund the majority of what is known as "Phase I" of the Lower Richland Sewer Project.

10. Phase I of the Lower Richland Sewer Project includes planning, acquiring easements, and installing the infrastructure to provide Richland County sewer service to the Lower Richland neighborhood, Hopkins Middle School, and Hopkins Elementary School, Franklin Park Subdivision, and approximately 1370 existing City of Columbia sewer customers on Garners Ferry Road. Under Phase I sewage will be transported for treatment at Richland County's Wateree waste water treatment facility in Eastover, South Carolina.

11. In a "draft" letter attached to the official agenda for the February 19, 2013 Richland County Council Meeting, in response to an application by Richland County, the USDA proposed to provide funding for the Lower Richland Sewer Project not to exceed $9,359,000 of loan funds and $2,279,800 of grant funds.

12. In July 2014, Hopkins and Lower Richland Citizens United began operating as an unincorporated association that has been formed by hundreds of citizens residing in Hopkins and lower Richland County in order to educate their community regarding the many issues surrounding the Lower Richland Sewer Project.

13. On September 9, 2014, Wendy Brawley, acting on behalf of Hopkins and Lower Richland Citizens United, submitted four (4) separate written South Carolina Freedom of Information Act ("FOIA") requests to Defendant. A copy of these FOIA requests are attached as Exhibit A and are incorporated by reference.

14. Wendy Brawley, acting on behalf of Hopkins and Lower Richland Citizens United, also read these four (4) requests into the record during the Richland County Council meeting that occurred on September 9, 2014. A copy of the minutes of the Richland County

Council meeting dated September 9, 2014 are attached as Exhibit B and are incorporated by reference.

15. Defendant failed to respond to any of these requests within the time required under S.C. Code Ann. §30-4-30.

16. As a result, the Plaintiffs requests dated September 9, 2014 must be considered approved under S.C. Code Ann. §30-4-30(c).

17. On October 1, 2014, Defendant provided an interim response stating that the "information requested will be released." A copy of this response is attached as Exhibit C and is incorporated by reference.

18. This response acknowledged the Defendant's date of receipt and establishes the untimely nature of Defendant's response.

19. On or about October 7, 2014, Defendant provided a belated response to two of the requests that may or may not be complete:

a. It sent an email confirming that there has been no third reading or approval given for the Lower Richland Sewer Project.

b. It provided a copy of what the Defendant represents to be the MOU between the City of Columbia and the Defendant regarding the sewer services agreement for the housing developments located off Rabbit Run and other adjacent properties behind Lower Richland High School. Plaintiffs lack information regarding whether this is a complete response.

20. Defendant failed to respond properly to two (2) of the FOIA requests served on September 9, 2014.

21. Specifically, it failed to provide a complete copy of the application and supporting documentation submitted by Defendant to the USDA for grant and loan funding for the Lower Richland Sewer Project. Rather, it provided Plaintiffs with merely a one (1) page "continuation" application, not the original application, and one (1) page document with "Budget Information." The remaining few pages were merely instructions boilerplate.

22. Specifically, it failed to provide a copy of the minutes from the Richland County Council meeting when funds were approved by Council for waivers of tap on fees for the Lower Richland Sewer Project. A review of the records produced do not address any such approval.

23. On March 17, 2015, more than six (6) months after this request, Richland County officials and council members noted on the record during the Richland County Council Meeting that they were unsure whether Plaintiffs' FOIA requests had been properly responded to or not and agreed to look into this issue further.

24. At least two (2) of the four (4) belated responses by the Defendant demonstrate, on their face, that the Defendant has still failed to comply with Plaintiffs' requests as required by S.C. Code Ann. § 30-4-10, et seq.

25. On September 9, 2014, as a result of the concerns raised by Plaintiffs with Richland County Council, the Defendant voted to defer the third reading item related to the initial portion of the Lower Richland Sewer Project: "An Ordinance Amending the Fiscal Year 2014-2015 General Fund Annual Budget to appropriate $60,000.00 of General Fund Unassigned Balance to be used for Engineering Design and Easement Acquisition for the Lower Richland Sewer Project." (the "Ordinance").

26. Richland County Council voted to defer until the following information is obtained: (a) Overall financial impact; (b) When will residents have to start paying the tap fees after the project goes to a bid process; (c) The downsized project scope; (d) community input; and (e) Definition a failing septic system; (f) Council submit additional questions/information to Mr. Metts by September 12th.

27. Defendant adopted these limitations through the unanimous vote of Richland County Council. See Exhibit B.

28. This vote placed, as a condition precedent, the opportunity for community input on the project prior to proceeding to acquiring real property interest from the members of Hopkins and Lower Richland Citizens United.

29. Defendant's failure to respond has deprived Plaintiffs of the information necessary to advise themselves and the public and allow for meaningful community input.

30. Defendant improperly disregarded its own conditions by giving the Ordinance Third Reading approval on February 10, 2015, without complying with any of the conditions precedent established on September 9, 2014.

31. As a result of Defendant's refusal to provide the information sought in the FOIA requests, Plaintiffs are unable to evaluate whether the Defendant is complying with the USDA requirements for the grants and loans.

32. For example, pursuant to 42 U.S.C. 4655, as a condition of receiving the USDA grant and loan, Defendant must assure the USDA that it has complied with the requirements of Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which requires, in 42 U.S.C. 4651, that the Defendant to

obtain an appraisal of the value of the easements Defendant now seeks prior to negotiating with the Plaintiffs' members and the residents of Hopkins and Lower Richland.

33. As a result of Defendant's refusal to provide the information sought in the FOIA requests, Plaintiffs are unable to provide adequate, meaningful community input to the Lower Richland Sewer Project.

34. As a re a result of Defendant's refusal to provide the information sought in the FOIA requests, Plaintiffs are unable to provide the public with information regarding the truthfulness of statements regarding tap fee waivers that Defendant proposes to include in certain community surveys that it indicated would be sent during its March 17, 2015 County Council meeting.

AS A FIRST CAUSE OF ACTION
(Declaratory Judgment – S.C. Code Ann. 30-4-100)

35. Plaintiff re-alleges each paragraph of this Complaint herein.

36. An actual controversy exists between the parties regarding whether the Defendant has properly and completely responded to the Plaintiff's four (4) FOIA requests dated September 9, 2014.

37. Plaintiff respectfully requests that this court issue a declaration that:

a. As a result of the Defendant's conduct, including its belated response, Plaintiffs FOIA requests are considered approved;

b. Defendants have failed to properly and fully reply to Plaintiffs' FOIA requests dated September 9, 2014;

c. Plaintiffs are entitled to immediately receive full and complete responses;

d. Plaintiffs are entitled to recover costs and reasonable attorneys' fees associated with compelling the Defendants complete responses in an

amount approved by this court upon a finding that Plaintiffs are entitled to prevail under S.C. Code Ann. 30-4-100(b).

AS A SECOND CAUSE OF ACTION
(Temporary and Permanent Injunction – S.C. Code Ann. 30-4-100)

38. Pursuant to S.C. Code Ann. § 30-4-100(a), a violation of S.C. Code Ann. § 30-4-100 "must be considered to be an irreparable injury for which no adequate remedy at law exists."

39. If the Court does not issue a temporary restraining order, a preliminary injunction, and ultimately, a permanent injunction, Plaintiffs and the public will continue to be deprived, will continue to be subject to irreparable injury, including being subject to misleading community surveys, being deprived of meaningful community input, and being deprived of the ability to confirm the Defendant's compliance with USDA loan and grant requirements.

40. As a result of Defendant's failure to provide complete FOIA responses, Plaintiffs pray for temporary and permanent injunctive relief as follows:

a. Enjoining Defendant from sending surveys to residents that make any representation that Richland County will provide all residents that reside within 200 feet of the proposed Phase I sewer line a full waiver of tap or connection fees;

b. Enjoining Defendant from entering into negotiations with residents of Hopkins and Lower Richland for the acquisition of easements;

c. Enjoining Defendant from providing third reading to the Lower Richland Sewer Project.

41. Plaintiffs are likely to prevail in its claim under S.C. Code Ann. § 30-4-100 because there is no valid dispute that Plaintiffs requests are accepted without qualification

and that Defendant's FOIA responses are incomplete and include non-responsive materials.

42. Injunctive relief is in the public interest.

43. Pursuant to S.C. Code Ann. § 30-4-100(b), Plaintiffs are entitled to and requests an award of costs and expenses, including reasonable attorneys' fees, in connection with pursuing this injunctive relief.

DEMAND FOR JURY TRIAL

44. Plaintiffs demand a jury trial its first cause of action.

PRAYER FOR RELIEF

WHEREFORE, having duly complained of each Defendant, Plaintiffs pray the court to enter judgment against Defendant and award the Plaintiffs the injunctive and declaratory relief set forth herein as for such other and further relief, reasonable costs and attorneys' fees, and such other relief as the Court deems just and proper upon the facts.

Jenkins M. Mann
Shaun C. Blake
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1330 Lady Street, Suite 400
PO Box 11803 (29211)
Tel.: (803) 256-1268
Fax: (803) 253-3653
Email: sblake@rogerslewis.com
jmann@rogerslewis.com

March 25, 2015

Attorneys for Plaintiffs

EXHIBIT A

Wendy C. Brawley
217 Sagemont Drive
Hopkins, SC 29061
(803) 776-9286

Mr. Tony McDonald
Richland County Administrator
P.O. Box 192
2020 Hampton Street
Columbia, SC 29202

Sept. 9, 2014

RE: FOIA Request - Council Third Reading Approval Date for Lower Richland Sewer Project

Dear Mr. McDonald:

Please provide me with a copy of the minutes from Richland County Council's meeting when the Council gave Third Reading Approval for the Lower Richland Sewer Project. I am requesting this information pursuant to the Freedom of Information Act. If there is a cost to provide the copies of the information requested, please advise by contacting me at (803) 776-9286.

Sincerely,

Wendy C. Brawley

Wendy C. Brawley
217 Sagemont Drive
Hopkins, SC 29061
(803) 776-9286

Mr. Tony McDonald
Richland County Administrator
P.O. Box 192
2020 Hampton Street
Columbia, SC 29202

Sept. 9, 2014

RE: FOIA Request - Copy of Richland County's MOU-City of Columbia Sewer Services

Dear Mr. McDonald:

Please provide me with a copy of the MOU between Richland County and the City of Columbia regarding the sewer services agreement for the housing developments located off Rabbit Run Rd and other adjacent properties behind Lower Richland High School. I am requesting this information pursuant to the Freedom of Information Act. If there is a cost to provide the copies of the information requested, please advise by contacting me at (803) 776-9286.

Sincerely,

Wendy C. Brawley

Wendy C. Brawley
217 Sagemont Drive
Hopkins, SC 29061
(803) 776-9286

Mr. Tony McDonald
Richland County Administrator
P.O. Box 192
2020 Hampton Street
Columbia, SC 29202

Sept. 9, 2014

RE: FOIA Request - Date and Vote for Lower Richland Sewer Project Tap On Fee Waiver Funds

Dear Mr. McDonald:

Please provide me with a copy of the minutes from the Richland County Council meeting when funds were approved by Council for waivers of tap on fees for the Lower Richland Sewer Project. I am requesting this information pursuant to the Freedom of Information Act. If there is a cost to provide the copies of the information requested, please advise by contacting me at (803) 776-9286.

Sincerely,

Wendy C. Brawley

Wendy C. Brawley
217 Sagemont Drive
Hopkins, SC 29061
(803) 776-9286

Mr. Tony McDonald
Richland County Administrator
P.O. Box 192
2020 Hampton Street
Columbia, SC 29202

Sept. 9, 2014

RE: FOIA Request - Copy of Richland County's USDA Rural Development Application for Loan and Grant Funding Lower Richland Sewer Project

Dear Mr. McDonald:

Please provide me a copy of the application and supporting documentation Richland County submitted to the USDA Rural Development for grant and loan funding for the Lower Richland Sewer Project. I am requesting this information pursuant to the Freedom of Information Act. If there is a cost to provide the copies of the information requested, please advise by contacting me at (803) 776-9286.

Sincerely,

Wendy C. Brawley

EXHIBIT B

RICHLAND COUNTY COUNCIL
SOUTH CAROLINA

REGULAR SESSION MINUTES

September 9, 2014
6:00 PM
County Council Chambers

In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, persons requesting notification, and was posted on the bulletin board located in the lobby of the County Administration Building

CALL TO ORDER

Mr. Jackson called the meeting to order at approximately 6:01 PM

INVOCATION

The Invocation was given by the Honorable Julie-Ann Dixon

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by the Honorable Julie-Ann Dixon

APPROVAL OF MINUTES

Ms. Dickerson moved, seconded by Ms. Dixon, to approve the minutes as distributed. The vote in favor was unanimous.

ADOPTION OF THE AGENDA

Ms. Dickerson moved, seconded by Ms. Dixon, to adopt the agenda.

Mr. Washington moved, seconded by Mr. Malinowski, to add a motion to appoint a Budget Committee. The vote in favor was unanimous.

Ms. Dickerson moved, seconded by Ms. Dixon, to adopt the agenda as amended. The vote in favor was unanimous.

REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION ITEMS

Mr. Smith stated that the following items were potential Executive Session Items:

a. **Personnel Matter**

b. **Contractual Matter: Phase II ESA and Appraisal**

Council Members Present

Norman Jackson, Chair
Joyce Dickerson, Vice Chair
Julie-Ann Dixon
Damon Jeter
Paul Livingston
Bill Malinowski
Jim Manning
Greg Pearce
Torrey Rush
Seth Rose
Kelvin E. Washington, Sr.

Others Present:

Tony McDonald
Sparty Hammett
Roxanne Ancheta
Warren Harley
Nancy Stone-Collum
Larry Smith
Anna Lange
Laura Taylor
Christy Swofford
Chad Fosnight
Dante Driggers
John Dixon
Dale Welch
Justine Jones
Monique Walters
Rob Perry
Brandon Madden
Beverly Harris
Nelson Lindsay
Tommy DeLage
Andy Metts
Michelle Onley
Monique McDaniels

REPORT OF THE COUNTY ADMINISTRATOR

a. **Public Information Office Award** – Mr. McDonald stated that the Public Information Office won an award from the SC Chapter of the International Association of Business Communicators for a collection of Richland County news releases.

b. **Employee Introduction: Procurement Director** – Mr. McDonald introduced Ms. Cheryl Patrick to Council.

c. **SCE&G LED Projects – Check Presentation** – Mr. McDonald stated that Richland County received grants from the State Energy Office and SCE&G for the LED retrofits at Public Works and a portion of the Alvin S. Glenn Detention Center. The grant from the State Energy Office was in the amount of $5,000 and the SCE&G grant was in the amount of $10,750. A $1,300 reduction in billing has been realized in the first quarter due to the retrofits.

CITIZENS' INPUT

Mr. Willie Washington spoke regarding Benedict College's budget increase request.

Ms. Helen Taylor Bradley and Ms. Wendy Brawley spoke regarding the following motion: "Remove the requirements placing a lien on property if owners do not pay sewer bill". Ms. Brawley presented four (4) FOIA requests to County Council and staff.

REPORT OF THE CLERK OF COUNCIL

a. **Kingsville Annual Reunion and Festival** – Ms. McDaniels stated that the Kingsville Annual Reunion and Festival will be held on September 12-14 at Wilson Lake House in Gadsden.

b. **Councilwoman Dixon's Birthday** – Ms. McDaniels stated that Ms. Dixon's birthday is tomorrow.

REPORT OF THE CHAIRMAN

a. **Personnel Matter** – This item was taken up in Executive Session.

PUBLIC HEARINGS

- **An Ordinance Amending the Richland County Code of Ordinances, Chapter 2; Administration; Article X, Purchasing by adding Section 2-591, to authorize County Council to determine which purchasing decisions regarding purchasing made exclusively with monies raised through the penny tax are of such County-wide significance that County Council has the authority to make the final and conclusive determination to whom to award the contracts** – No one signed up to speak.

- **An Ordinance Amending the Fiscal Year 2013-2014 Township Capital Projects budget to add Nine Hundred Fifty Six Thousand Dollars** – No one signed up to speak.

- **An Ordinance Amending the Fiscal Year 2014-2015 General Fund Annual Budget to appropriate $60,000 of General Fund Unassigned Balance to be used for Engineering Design and Easement Acquisition or the Lower Richland Sewer Project** – Ms. Ruthyne Scott, Mr. Arnold Young, Ms. Donzetta Taylor Lindsay, Ms. Rhonda Daniels Myers, Ms. Linda McRant, Mr. Micheal Robinson, Ms. Muriel Henderson, Ms. Paige Peters, Ms. Jackie Brown, Ms. Rena Grant, Bettye House, Ms. Rosa Davis and Mr. Laura Grant spoke against this item.

- **An Ordinance Authorizing pursuant to Title 4, Chapter 1, Section 170; Title 4, Chapter 1, Section 175; and Title 4, Chapter 29, Section 68 of the Code of Laws of South Carolina, 1976, as amended, the execution and delivery of an amendment to a Special Source Revenue Credit Agreement between Richland County, South Carolina and WNS Global Services Inc.; and matters relating thereto** – No one signed up to speak.

APPROVAL OF CONSENT ITEMS

- **An Ordinance Amending the Richland County Code of Ordinances, Chapter 2; Administration; Article X, Purchasing by adding Section 2-591 to authorize County Council to determine which purchasing decisions regarding purchasing made exclusively with monies raised through the penny tax are of such County-wide significance that County Council has the authority to make the final and conclusive determination to whom to award the contracts [THIRD READING]**

- **An Ordinance Amending the Fiscal Year 2013-2014 Township Capital Project s budget to add Nine Hundred Fifty Six Thousand Dollars [THIRD READING]** – Mr. Pearce moved, seconded by Mr. Livingston, to reconsider this item. The motion failed.

- **An Ordinance Authorizing pursuant to Title 4, Chapter 1, Section 170; Title 4, Chapter 1, Section 175; and Title 4, Chapter 29, Section 68 of the Code of Laws of South Carolina, 1976, as amended, the execution and delivery of an amendment to a Special Source Revenue Credit Agreement between Richland County, South Carolina and WNS Global Services Inc.; and matters relating thereto [SECOND READING]**

Mr. Livingston moved, seconded by Mr. Washington, to approve the consent items. The vote in favor was unanimous.

THIRD READING ITEM

An Ordinance Amending the Fiscal Year 2014-2015 General Fund Annual Budget to appropriate $60,000.00 of General Fund Unassigned Balance to be used for Engineering Design and Easement Acquisition for the Lower Richland Sewer Project – Mr. Washington moved, seconded by Mr. Jackson, to approve the $60,000 budget amendment for the engineering design and easement acquisition; and all tap fees be waived for all customers to sign up for the connection prior to the project going to bid. Similarly to the Hopkins Water Project, in compliance with previous approved Rural Development letter of condition. This includes the construction of sewer service line up to 200 feet and the elimination of the septic tanks. A discussion took place.

Mr. Malinowski moved, seconded by Mr. Pearce, to defer until the following information is obtained: (a) Overall financial impact; (b) When will residents have to start paying the tap fees after the project goes to a bid process; (c) The downsized project scope; (d) community input; and (e) Definition a failing septic system; (f) Council submit additional questions/information to Mr. Metts by September 12th. The vote in favor was unanimous.

SECOND READING ITEM

An Ordinance Authorizing, pursuant to Title 12, Chapter 44, South Carolina Code of Laws, 1976, as amended, the execution and delivery of a Fee Agreement between Richland County, South Carolina, Project Aquarius, a corporation organized and existing under the laws of the State of Delaware, and sponsor affiliate, a corporation organized and existing under the laws of the State of Delaware ("Companies") concerning a new project; authorizing and providing with respect to an existing project for the conversion of an arrangement for fee-in-lieu of tax payments between Richland County and the companies under Title 4, Chapter 12, South Carolina Code of Laws, 1976, as amended to an arrangement under Title 12, Chapter 44, South Carolina Code of Laws, 1976, as amended; and matters relating thereto – Mr. Livingston moved, seconded by Mr. Rush, to approve this item. The vote was in favor.

REPORT OF ECONOMIC DEVELOPMENT COMMITTEE

Ordinance Authorizing an Amendment to the Master Agreement governing the I-77 Corridor Regional Industrial Park by and between Fairfield County, South Carolina and Richland County, South Carolina, in order to expand the boundaries of the park to include certain property located in Fairfield County (Enor Corporation SC, LLC), and other matters related thereto – Mr. Livingston stated that the committee recommended approval of this item. The vote in favor was unanimous.

REPORT OF RULES AND APPOINTMENTS COMMITTEE

I. NOTIFICATION OF VACANCIES

a. **Business Service Center Appeals Board – 1** – Mr. Malinowski stated that the committee recommended advertising for this vacancy. The vote in favor was unanimous.

b. **Central Midlands Council of Governments – 2** – Mr. Malinowski stated that the committee recommended advertising for these vacancies. The vote in favor was unanimous.

c. **Historic Columbia Foundation – 1** – Mr. Malinowski stated that the committee recommended advertising for this vacancy. The vote in favor was unanimous.

II. NOTIFICATION OF APPOINTMENTS

a. **Accommodations Tax Committee – 2** – Mr. Malinowski stated that the committee recommended re-advertising for these vacancies. The vote in favor was unanimous.

b. **Board of Zoning Appeals – 1** – Mr. Malinowski stated that the committee recommended re-advertising for this vacancy. The vote in favor was unanimous.

c. **Building Codes Board of Appeals – 3** – Mr. Malinowski stated that the committee recommended re-advertising for these vacancies. The vote in favor was unanimous.

d. **East Richland Public Service Commission – 1** – Mr. Malinowski stated that the committee recommended re-appointing Dr. John H. Hudgens.

Mr. Washington moved to appoint Mr. Henry "Gary" Anderson, III. The motion died for lack of a second.

e. **Employee Grievance Committee – 1** – Mr. Malinowski stated that this item was retained in committee.

f. **Historic Columbia Foundation – 1** – Mr. Malinowski stated that the committee recommended appointing Ms. Dawn Mills Campbell. The vote in favor was unanimous.

g. **Library Board – 6** – Mr. Malinowski stated that the committee recommended re-appointing Mr. Nate Barber, Dr. Ida Thompson and Alethia Rearden, and appointing Mr. Ed Garrison, Dr. Johnny Ray Noble, and Ms. Yvonne Stocker. The vote in favor was unanimous.

h. **Procurement Review Panel – 2** – Mr. Malinowski stated that the committee recommended appointing Ms. Willa Martin Bailey and re-advertising for the other position. The vote in favor was unanimous.

i. **Township Auditorium Board – 1** – Mr. Malinowski stated that the committee recommended appointing Ms. Megan Pinckney.

Mr. Washington moved to divide the question. The motion failed.

The vote in favor was unanimous to appoint Ms. Megan Pinckney.

REPORT OF THE RICHLAND COUNTY OFFICE OF SMALL BUSINESS OPPORTUNITY AD HOC COMMITTEE

a. **Mission Statement** – This item was deferred until the September 16th Council meeting.

OTHER ITEMS

A Resolution to appoint and commission Thomas E. DeLage, Jr., as a Code Enforcement Officer for the proper security, general welfare, and convenience of Richland County – Mr. Pearce moved, seconded by Ms. Dixon, to approve this item. The vote in favor was unanimous.

CITIZENS' INPUT

Ms. Vi Hendley requested Council's financial support toward the construction of a new Olympia Fire Station.

Mr. Paul Brawley spoke regarding the treatment of the Hopkins citizens.

Mr. Barry Green spoke regarding his disappointment with County Council members.

EXECUTIVE SESSION

a. **Contractual Matter: Phase II ESA and Appraisal** – Mr. Pearce moved, seconded by Mr. Malinowski, to direct the County Administrator to proceed with first right of refusal on a parcel of land the County is interested in obtaining. The vote in favor was unanimous.

MOTION PERIOD

a. Move to have Richland County identify funds to match the City of Columbia's commitment of $500,050 to begin the process of securing a site and planning a new Olympia Fire Station [ROSE] – This item was referred to the Fire Ad Hoc Committee.

b. Move to direct the Economic Development Director to explore incentives for economic development opportunities that could be in the identified priority investment areas that are outlined in the comprehensive plan [WASHINGTON] – This item was referred to the Economic Development Committee.

c. Move to fund "Famously Hot" New Year's Celebration at $50,000 [DIXON] – This item was referred to the A&F Committee.

d. Green Apple Day of Service Resolution [DICKERSON] – Ms. Dickerson moved, seconded by Ms. Dixon, to adopt the Green Apple Day of Service resolution. The vote in favor was unanimous.

e. Move to direct staff to review microphone mute options for Council Chambers [WASHINGTON] – This item was referred to the D&S Committee.

f. Resolution Honoring Carolyn Cliett [JACKSON] – Mr. Pearce moved, seconded by Ms. Dixon, to adopt a resolution honoring Ms. Carolyn Cliett. The vote in favor was unanimous.

g. Diversity Tech Resolution [JACKSON] – Mr. Livingston moved, seconded by Ms. Dixon, to adopt a Diversity Tech resolution. The vote in favor was unanimous.

h. Move to send the Palmetto Capital City Classic request for additional funding in the amount of $30,000 to committee for a recommendation [JACKSON] This item was referred to the A&F Committee.

i. Resolution for Richland County Soil and Water Chairman John Green [ROSE] – Mr. Washington moved, seconded by Ms. Dixon, to adopt a resolution honoring Richland County Soil and Water Chairman John Green. The vote in favor was unanimous.

j. Remove the requirements placing a lien on property if owners do not pay sewer bill or maintain overgrown lots [JACKSON] – This item was referred to the D&S Committee. Mr. Washington requested clarity regarding the Sheriff's Departments authority with regard to abandoned buildings.

Ms. Dickerson moved, seconded by Ms. Dixon, to reconsider all of the resolutions adopted during the motion period. The motion failed.

ADJOURNMENT

The meeting adjourned at approximately 7:55 PM.

_____
Norman Jackson, Chair

Joyce Dickerson, Vice-Chair	Julie-Ann Dixon
Damon Jeter	Paul Livingston
Bill Malinowski	Jim Manning
Greg Pearce	Seth Rose

Torrey Rush

Kelvin E. Washington, Sr.

The Minutes were transcribed by Michelle M. Onley, Deputy Clerk of Council

EXHIBIT C

RICHLAND COUNTY OMBUDSMAN'S OFFICE

2020 Hampton Street Suite 3061 Columbia, SC 29204
Phone: (803)929-6000 Fax: (803)929-6009

ONE-CALL RESPONSE

October 1, 2014

Wendy C. Brawley
217 Sagemont Dr
Hopkins, SC 29061

RE: Freedom of Information Act (FOI) Request

Copies of Lower Richland Sewer Project records & sewer services agreement records for the Lower Richland Area & Rabbit Run Rd

Dear Mrs. Brawley,

Your request for information pursuant to the Freedom of Information Act, S.C. Code § 30-4-10 *et. seq.*, was received in the Richland County Ombudsman's Office on September 10, 2014.

This letter confirms Richland County understands your request for a copy of the minutes from the Richland County Council meeting when Council approved funds for waivers of tap on fees for the Lower Richland Sewer Project (LRSP); a copy of the application and supporting documentation Richland County submitted to USDA Rural Development for grant and loan funding for the LRSP; a copy of the minutes from County Council's meeting when the Council gave third reading approval for the LRSP and a copy of the MOU between the county and the City of Columbia regarding the sewer services agreement for the housing developments located off Rabbit Run Rd & other adjacent properties behind Lower Richland High School. The information requested will be released. The data is being researched and it is expected to be available within the next few weeks, at which time will be sent to you via US Mail. If you have additional questions, please feel free to call me anytime.

Sincerely,

Judy A. Carter

Judy A. Carter /nms
County Ombudsman

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley,	)	Civil Action No. 2015-CP-40-1805
Plaintiffs,	)	
v.	)	**ANSWER**
Richland County, South Carolina,	)	
Defendant.	)	

RICHLAND COUNTY
FILED
2015 APR 30 AM 9:53
JEANNETTE W. WALTERS
C.C.P. & G.S.

The Defendant Richland County, reserving all rights pursuant to the Motion to Dismiss filed contemporaneously herewith, answers the Plaintiffs' Complaint herein as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Plaintiffs' Complaint not hereinafter specifically admitted, qualified, or explained.

2. The allegations set forth in the first sentence of Paragraph 1 of the Plaintiffs' Complaint are admitted as merely a characterization or description of the Plaintiffs' lawsuit. The remaining allegations set forth in Paragraph 1 are denied.

3. The allegations set forth in Paragraph 2 of the Plaintiffs' Complaint are denied to the extent that the Plaintiff Hopkins and Lower Richland Citizens United, Inc. did not even incorporate until March 17, 2015. As to the remaining allegations set forth in Paragraph 2, the Defendant admits generally that there has been opposition to the Lower Richland Sewer Project and that some of the viewpoints are similar to what is articulated in subparts (a) through (d). The

Defendant does not admit that the viewpoints as articulated in subparts (a) through (d) are valid or correct but agrees that citizens are entitled to have opposing views and opinions.

4. The allegations set forth in Paragraph 3 of the Plaintiffs' Complaint are denied.

5. The allegations set forth in Paragraph 4 of the Plaintiffs' Complaint are admitted.

6. As to the allegations set forth in Paragraph 5 of the Plaintiffs' Complaint, the Defendant admits, upon information and belief, that the Plaintiff Hopkins and Lower Richland Citizens United, Inc. was formed and incorporated as a non-profit corporation under South Carolina law on March 17, 2015. The Defendant lacks sufficient information to accertain the truth of the remaining allegations of Paragraph 5.

7. As to the allegations set forth in Paragraph 6 of the Plaintiffs' Complaint, the Defendant admits only that Wendy Brawley is the registered agent for the Plaintiff Hopkins and Lower Richland Citizens United, Inc. The Defendant lacks sufficient information to accertain the truth of the remaining allegations of Paragraph 6.

8. The allegations set forth in Paragraph 7 of the Plaintiffs' Complaint are denied.

9. The allegations set forth in Paragraph 8 of the Plaintiffs' Complaint are admitted.

10. The allegations set forth in Paragraph 9 of the Plaintiffs' Complaint are admitted.

11. As to the allegations set forth in Paragraph 10 of the Plaintiffs' Complaint, the Defendant admits that Phase I of the Lower Richland County Sewer System Project includes the planning, design and construction of the intrastructure for providing sewer service to the Lower Richland neighborhood, Hopkins Middle School, and Hopkins Elementary School, Franklin Park Subdivision, as well as the acquisition of existing City of Columbia customers on Garners Ferry Road. The Defendant further admits that the wastewater will be transported for treatment to the Wateree Wastewater Treatment Facility.

12. As to the allegations set forth in Paragraph 11 of the Plaintiffs' Complaint, the Defendant admits that the agenda for the February 19, 2013 Richland County Council Meeting included a "draft" and undated copy of a Letter of Conditions from the United States Department of Agriculture Rural Development State Office to which the Defendant craves reference for the specific language of that letter.

13. As to the allegations set forth in Paragraph 12 of the Plaintiffs' Complaint, the Defendant lacks sufficient information to admit or deny those allegations.

14. As to the allegations set forth in Paragraph 13 of the Plaintiffs' Complaint, the Defendant admits only that the Plaintiff Wendy Brawley presented four separate Freedom of Information Act (FOIA) requests to Richland County at the September 9, 2014 meeting of Richland County Council. The Defendant further admits that those four requests are attached as Exhibit A to the Plaintiffs' Complaint and specifically craves reference to those requests for their content.

15. As to the allegations set forth in Paragraph 14 of the Plaintiffs' Complaint, the Defendant craves reference to the minutes for the September 9, 2014 meeting of Richland County Council which state that "Ms Brawley presented four (4) FOIA request to County Council and staff." Any allegations inconsistent with those minutes are denied. The Defendant admits that Exhibit B is a copy of the minutes for the September 9, 2014 meeting of Richland County Council.

16. The allegations set forth in Paragraph 15 of the Plaintiffs' Complaint are denied.

17. The allegations set forth in Paragraph 16 of the Plaintiffs' Complaint are denied because the Defendant denies that the FOIA requests are deemed approved by operation of S.C. Code Ann. § 30-4-30(c). Further answering, this allegation is immaterial given that the Defendant Richland County did not raise any statutory exemptions to prevent the disclosure of the public records requested by the Plaintiff Wendy Brawley.

18. As to the allegations set forth in Paragraph 17 of the Plaintiffs' Complaint, the Defendant admits that Judy A. Carter, who is the Richland County Ombudsman, sent the Plaintiff Wendy Brawley a letter on October 1, 2014, informing her that the "information requested will be released." The Defendant admits that Exhibit C is a copy of the October 1, 2014 letter. Further answering, the Defendant avers that a previous letter dated September 12, 2014, was sent by the Ombudsman's Office to Wendy Brawley acknowledging the receipt of a FOIA request by the Ombudsman's Office.

19. As to the allegations set forth in Paragraph 18 of the Plaintiffs' Complaint, the Defendant admits that the October 1, 2014 letter states the date of receipt of the FOIA requests but denies the remaining allegations of Paragraph 18.

20. The allegations set forth in Paragraph 19 of the Plaintiffs' Complaint are denied as stated. Further answering, by letter dated October 3, 2014, the Defendant provided a response to three of the four FOIA requests made by the Plaintiff Wendy Brawley.

21. The allegations set forth in Paragraph 20 of the Plaintiffs' Complaint are denied. Further answering, by letter dated October 3, 2014, the Defendant provided a response to three of the four FOIA requests made by the Plaintiff Wendy Brawley, and by letter dated October 8, 2014, the Defendant provided a response to the fourth FOIA request made by the Plaintiff Brawley.

22. The allegations set forth in Paragraph 21 of the Plaintiffs' Complaint are denied as stated. Further answering, the Defendant provided what its staff reasonably believed to be the information in its files that was responsive to the request. That response included the Application for Federal Assistance dated March 16, 2010, as signed by County Administrator J. Milton Pope, which based upon due diligence, is believed to be the initial application for funding submitted to the United States Department of Agriculture. The Defendant acknowledges that the "type of

application" block is checked "continuation," but upon information and belief, that is believed to have been done in error. The Defendant specifically avers that its response in this regard is in substantial compliance with the requirements of the Freedom of Information Act.

23. The allegations set forth in Paragraph 22 of the Plaintiffs' Complaint are denied as stated because the Defendant has no obligation to produce a public record that did not exist. Further answering, by letter dated October 3, 2014, the Defendant provided available information responsive to the tap fee waiver issue and further advised that there had not been a specific vote by County Council to authorize funds for the waiver of tap fees. The Defendant produced minutes from the February 19, 2013 Richland County Council Meeting where Council passed a resolution accepting the Letter of Conditions from the United States Department of Agriculture Rural Development State Office, which includes language regarding the waiver of tap fees. The Defendant also produced minutes from the June 3, 2014 Richland County Council Meeting where Council approved the Richland County Utilities Tap Fee Assistance Program. The Defendant specifically avers that its response in this regard is in substantial compliance with the requirements of the Freedom of Information Act.

24. As to the allegations set forth in Paragraph 23 of the Plaintiffs' Complaint, the Defendant craves reference to the minutes for the March 17, 2015 meeting of Richland County Council as the best evidence of what was addressed therein.

25. The allegations set forth in Paragraph 24 of the Plaintiffs' Complaint are denied.

26. As to the allegations set forth in Paragraphs 25, 26, 27, and 28 of the Plaintiffs' Complaint, the Defendant craves reference to the minutes for the September 9, 2014 meeting of Richland County Council as the best evidence of what was addressed therein as well as the vote taken.

27. The allegations set forth in Paragraph 29 of the Plaintiffs' Complaint are denied.

28. The allegations set forth in Paragraph 30 of the Plaintiffs' Complaint are denied.

29. The allegations set forth in Paragraph 31 of the Plaintiffs' Complaint are denied.

30. As to the allegations set forth in Paragraph 32 of the Plaintiffs' Complaint, the Defendant craves reference to the Letter of Conditions from the United States Department of Agriculture Rural Development State Office regarding requirements for compliance with the Relocation and Real Property Acquisition Act.

31. The allegations set forth in Paragraph 33 of the Plaintiffs' Complaint are denied.

32. The allegations set forth in Paragraph 34 of the Plaintiffs' Complaint are denied.

33. As to the allegations set forth in Paragraph 35 of the Plaintiffs' Complaint, the Defendant reiterates and realleges each corresponding paragraph of this Answer set forth herein.

34. The allegations set forth in Paragraph 36 of the Plaintiffs' Complaint are denied.

35. As to the allegations set forth in Paragraph 37, including subparts, of the Plaintiffs' Complaint, the Defendant denies that the Plaintiffs are entitled to the declaratory relief, attorney's fees and costs as requested. The Defendant further denies that this Court has jurisdiction to award the declaratory relief, attorney's fees and costs as requested.

36. As to the allegations set forth in Paragraph 38 of the Plaintiffs' Complaint, the Defendant craves reference to S.C. Code Ann. § 30-4-100(a).

37. The allegations set forth in Paragraph 39 of the Plaintiffs' Complaint are denied.

38. As to the allegations set forth in Paragraph 40, including subparts, of the Plaintiffs' Complaint, the Defendant denies that the Plaintiffs are entitled to the injunctive relief, attorney's fees and costs as requested. The Defendant further denies that this Court has jurisdiction to award the injunctive relief, attorney's fees and costs as requested.

39. The allegations set forth in Paragraph 41 of the Plaintiffs' Complaint are denied.

40. The allegations set forth in Paragraph 42 of the Plaintiffs' Complaint are denied.

41. The allegations set forth in Paragraph 43 of the Plaintiffs' Complaint are denied.

42. As to the allegations set forth in Paragraph 44 of the Plaintiffs' Complaint, the Defendant denies that the Plaintiffs are entitled to a jury trial for either cause of action.

43. The allegations and relief as set forth in the prayer for relief are denied.

FOR A SECOND DEFENSE

44. The Plaintiffs' Complaint fails to state a cause of action upon which relief may be granted. The Defendants reserve their right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

45. The Plaintiffs' Complaint fails to set forth a claim that is ripe for adjudication.

FOR A FOURTH DEFENSE

46. The claims set forth in the Plaintiffs' Complaint are moot.

FOR A FIFTH DEFENSE

47. The Plaintiffs lack standing to assert their claims for declaratory and injunctive relief.

FOR A SIXTH DEFENSE

48. The Plaintiffs' Complaint presents non-justiciable political questions.

FOR A SEVENTH DEFENSE

49. The injunctive relief sought by the Plaintiffs would constitute a violation of the separation of powers doctrine as embodied in Article I, Section 8 of the South Carolina Constitution.

WHEREFORE, the Defendant Richland County prays that the Plaintiffs' Complaint be dismissed with prejudice; for the denial of all declaratory and injunctive relief as sought; for the costs of this action; and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Defendant Richland County

Columbia, South Carolina

April 27, 2015

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley,	)	Civil Action No. 2015-CP-40-1805
Plaintiffs,	)	
v.	)	**NOTICE OF MOTION AND MOTION TO DISMISS**
Richland County, South Carolina,	)	
Defendant.	)	

RICHLAND CO. FILED
2015 APR 30 AM 9:52
JEANNETTE W. WALKER
C.C.P. & G.S.

TO: JENKINS M. MANN, ESQUIRE AND SHAUN C. BLAKE, ESQUIRE, COUNSEL FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant Richland County will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 12(b)(1) and Rule 12(b)(6), SCRCP, dismissing the Plaintiff's Complaint for lack of a justiciable controversy, for lack of standing, and for failure to state a claim upon which relief may be granted.

The Defendant's motion is based on the following grounds:

1. This action is brought pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq*. S.C. Code Ann. § 30-4-100(a) allows a court to issue "a declaratory judgment and injunctive relief to enforce the provisions of this chapter." Therefore, the available relief is limited to the enforcement of the provisions of FOIA. Based upon existing precedent, a court may invalidate an ordinance that was enacted in violation of

FOIA or order the disclosure of public records that are not exempt from disclosure and have been wrongfully withheld. However, in this case, the Plaintiffs seek injunctive relief that does not enforce the provisions of FOIA and is much broader than the relief contemplated or allowed under S.C. Code Ann. § 30-4-100(a). The injunctive relief sought in Paragraph 40 of the Plaintiffs' Complaint is not relief contemplated or authorized under S.C. Code Ann. § 30-4-100(a).

2. The injunctive relief sought in Paragraph 40 of the Plaintiffs' Complaint, if granted, would constitute a violation of the separation of powers doctrine as embodied in Article I, Section 8 of the South Carolina Constitution. As the South Carolina Supreme Court has recently explained, "[i]n our constitutional system of government with its separation of powers, courts exercise the limited constitutional function of the 'judicial power.' Accordingly, courts are limited to resolving cases and the powers inherent in that function. Courts are not bodies for the resolution of public policy and generalized grievances." *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846, 853 (2014). It is well settled that legislative power includes "the sole prerogative to make policy decisions." *Hampton v. Haley*, 403 S.C. 395, 743 S.E.2d 258, 262 (2013).

3. The Plaintiffs are not contending that the Defendant's contemplated actions to be enjoined, as pled in Paragraph 40 of the Plaintiffs' Complaint, are illegal, unlawful, or unconstitutional. Instead, the Plaintiffs contend that they have been denied the opportunity to offer "adequate, meaningful community input" to their elected representatives and, in essence, to mount an opposition to what the Plaintiffs anticipate to be future legislative and executive action. The Plaintiffs are not permitted by law to use FOIA as a mechanism to block or delay by judicial action the exercise of legislative and executive powers that are legal, lawful and constitutional and to block or delay a legislative agenda that has been determined by elected representatives to

be in the best interests of the public at large and necessary for carrying out and effectuating the public policy and the public welfare.

4. The Plaintiffs' claims for injunctive relief raise what are quintessentially non-justiciable political questions over which this Court lacks subject matter jurisdiction. As the South Carolina Supreme Court has held, "courts will not rule on questions that are exclusively or predominantly political in nature rather than judicial." *Segars–Andrews v. Judicial Merit Selection Commission*, 387 S.C. 109, 691 S.E.2d 453, 460 (2010).

5. The Plaintiffs' claims for injunctive relief are not ripe for adjudication.

6. The Plaintiffs lack standing to assert their claims for injunctive relief as that relief is described in Paragraph 40 of the Plaintiffs' Complaint.

The Defendant's motion is based upon the pleadings filed in this case, a supporting memorandum of law to be filed, rules of court, and such other matters as may be properly presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Defendant Richland County

Columbia, South Carolina

April 27, 2015

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley, Plaintiffs, v. Richland County, South Carolina, Defendant.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A NO: 2015-CP-40-1805 **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL**

RICHLAND COUNTY FILED
2015 AUG 27 AM 10:40
JEANETTE W. WALKER C.C.P. & G.S.

TO: ANDREW LINDEMANN, ESQ., ATTORNEY FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Plaintiffs will move this Honorable Court pursuant to Rule 37 of the South Carolina Rules of Civil Procedure for an Order compelling the Defendant Richland County, South Carolina to respond to Plaintiffs Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley's First Set of Requests for Production of Documents to the Defendant.

The grounds for this motion are that the Defendants have not responded to requests for production that were served on June 24, 2015. Copies of said discovery requests are attached as Exhibit A.

WHEREFORE, Plaintiff requests this Court to enter an Order compelling full response and production to Plaintiff's discovery requests and for such other relief that this Court finds appropriate.

Respectfully submitted,

Jenkins M. Mann (SC Bar # 74894)
ROGERS LEWIS JACKSON MANN & QUINN, LLC.
1330 Lady Street, Suite 400 (29201)
PO Box 11803
Columbia, SC 29211
P: 803-978-2831
F: 803-252-3953
jmann@rogerslewis.com
Attorney for Plaintiff

August 28, 2015
Columbia, South Carolina

EXHIBIT A

ROGERS LEWIS

ATTORNEYS AT LAW

Mary Gigliotti, Paralegal
Direct Dial (803) 978-1972
mgigliotti@rogerslewis.com

June 24, 2015

Via U.S. Mail
Davidson & Lindemann, P.A.
Andrew F. Lindemann
PO Box 8568
Columbia, SC 29202

Re: Hopkins and Lower Richland Citizens United, Inc., and Wendy Brawley, vs.
Richland County, South Carolina
C/A NO: 2015-CP -40-1805

Dear Mr. Lindemann,

Please find enclosed and hereby served upon you, Plaintiffs' First Set of Request for Production to Defendant in the above-referenced action.

With best regards, I am

Sincerely,

Mary E. Gigliotti
Paralegal for Jenkins M. Mann

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley, Plaintiffs, v. Richland County, South Carolina, Defendant.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT C/A NO: 2015-CP-40-1805 **PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANT**

TO: ANDREW F. LINDEMANN, ATTORNEY FOR DEFENDANT:

Pursuant to Rule 26 and 34 of the South Carolina Rules of Civil Procedure, Plaintiffs Hopkins and Lower Richland Citizens United, Inc., and Wendy Brawley, (collectively, the "**Plaintiffs**") hereby serves upon Richland County, South Carolina, (the "**Defendant**"), the following First Set of Requests for Production to be answered separately and in writing within the time allowed under the Rules after the service of these Requests:

DEFINITIONS AND INSTRUCTIONS

A. The terms "you", "your", or "Defendant" means Richland County, South Carolina and its agents, representatives, and attorneys.

B. The term "person" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, a joint venture, a government or governmental agency, and/or any other incorporated or unincorporated business, government, or social entity.

C. The terms "document" and "documentation" are used in their broadest sense and include graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, or produced or reproduced by any means. The terms "document" and "documentation" include, but are not limited to, records, emails, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, work papers, statements, summaries, journals, billing records, and invoices. The terms "document" and "documentation" also include every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data

processing techniques, and the written information necessary to understand and use such materials. The terms "document" and "documentation" are further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

D. The term "electronically stored information" ("ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" in-tact and shall include both "documents" that are live on a computer or server and those that are in storage or stored either via a remote system, back-up system, hard drive or tape of any kind.

E. The term "metadata" is used in these discovery requests to include information embedded in a "native file" that is not ordinarily viewable or printable from the application that generated, edited, or modified such "native file"; and information generated automatically by the operation of a computer or other information technology system when "native file" is created, modified, transmitted, deleted or otherwise manipulated by a user of such system.

F. The term "native file(s)" and/or "native form" means " "ESI" in the electronic format of the application in which such " ESI" is normally created, viewed and/or modified.

G. "Static Image(s)" means a representation of "ESI" produced by converting a "native file" into a standard image format capable of being viewed and printed on standard computer systems. In the absence of agreement of the parties or order of Court, a "static image" should be provided in either Tagged Image File Format (TIFF, or .TIF files) or Portable Document Format (PDF). If load files were created in the process of converting "native files" to "static images", or if load files may be created without undue burden or cost, load files should be produced together with "static images".

H. The phrase "possession, custody, or control", means a "document" or "ESI" in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document or ESI on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document or ESI on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document or ESI.

I. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the production request.

J. References to the singular include the plural, and references to the plural include the singular.

K. The past verb tense includes the present verb tense, and the present verb tense includes the past tense.

L. A document or ESI that "relates to" any given subject means any document or ESI that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents or ESI concerning the preparation of other documents or ESI.

M. To "produce" means to permit the inspection of originals, and to supply complete copies or to permit copying at a convenient facility.

N. Produce a privilege log for all documents that are requested but not produced, providing the reasons therefor and indicating all applicable privileges including the work product doctrine.

O. The term "Lower Richland Sewer Project" shall mean that certain proposed plan to impose a County sewer system on the residents of Hopkins and Lower Richland County, as described further in Plaintiffs' Complaint.

REQUESTS FOR PRODUCTION

1. Produce a copy of the minutes from the Richland County Council meeting where the Richland County Council gave the Third Reading Approval for the Lower Richland Sewer Project.

2. Produce a copy of the MOU between Defendant and the City of Columbia regarding any agreement in connection with sewer services for any housing developments located off that certain road known as Rabbit Run Road in Richland County and for those certain properties located behind Lower Richland High School in Richland County.

3. Produce a copy of the minutes from the Richland County Council meeting where the Richland County Council approved waivers on tap fees for the Lower Richland Sewer Project.

4. Produce any and all documents, including, but not limited to, any applications, submitted to the United States Department of Agriculture Rural Development Office for grant and loan funding in connection with the Lower Richland Sewer Project.

5. Produce all documents provided to Defendant by the United States Department of Agriculture Rural Development Office in connection with the Lower Richland Sewer Project.

6. Produce all documents contained in Defendant's Utilities Project file for the Lower Richland Sewer Project.

If you contend any item need not be produced, identify such item and set forth the basis for your failure to produce same.

Jenkins M. Mann
Shaun C. Blake
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1330 Lady Street, Suite 400
PO Box 11803 (29211)
Tel.: (803) 256-1268
Fax: (803) 253-3653
Email: jmann@rogerslewis.com;
sblake@rogerslewis.com
Attorneys for Plaintiffs

Columbia, South Carolina
June 24, 2015

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley, Plaintiffs, v. Richland County, South Carolina, Defendant.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT C/A NO: 2015-CP-40-1805 **Certificate of Service**

The undersigned hereby certifies that she did cause to have served by U.S. Postal Service, regular mail with postage prepaid and return address clearly indicated, Plaintiff's First Request for Production to Defendant in the above-captioned case, to be served on the parties listed below:

Davidson & Lindemann, P.A.
Andrew F. Lindemann
PO Box 8568
Columbia, SC 29202

June 24, 2015
Columbia, SC

Mary E. Gigliotti
ROGERS LEWIS JACKSON MANN & QUINN, LLC

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley,	)	Civil Action No. 2015-CP-40-1805
Plaintiffs,	)	
v.	)	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
Richland County, South Carolina,	)	
Defendant.	)	

RICHLAND COUNTY
FILED
2016 JUN 15 PM 1:59
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO: JENKINS M. MANN, ESQUIRE AND SHAUN C. BLAKE, ESQUIRE, COUNSEL FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant Richland County will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 56, SCRCP, granting summary judgment to the Defendant Richland County.

The Defendant's motion is based on the following grounds:

1. The Plaintiff Wendy Brawley presented four separate Freedom of Information Act (FOIA) requests to Richland County at the September 9, 2014 meeting of Richland County Council. The Plaintiff Brawley was sent correspondence regarding her FOIA requests on September 12, 2014 and October 1, 2014. Thereafter, by letter dated October 3, 2014, the Defendant provided a response to three of the four FOIA requests made by the Plaintiff Wendy Brawley, and by letter

dated October 8, 2014, the Defendant provided a response to the fourth FOIA request made by the Plaintiff Brawley. The Defendant's responses are in compliance with the requirements of the Freedom of Information Act. The Plaintiff Brawley has been provided all of the documents that she sought in the FOIA requests as was in the possession of the Defendant or otherwise was in existence.

2. The Plaintiffs have not presented any evidence showing that they have not been provided any documents responsive to the Plantiff Brawley's four FOIA requests at issue. Likewise, the Plaintiffs have not presented any evidence showing that the Defendant denied producing any documents responsive to the Plantiff Brawley's four FOIA requests that were available and in the possession of the Defendant when the requests were made and answered.

3. The remaining claims set forth in the Plaintiffs' Complaint are moot.

4. The Plaintiff Hopkins and Lower Richland Citizens United, Inc. did not incorporate until March 17, 2015, and thus has no standing to claim a violation of any FOIA requests that were submitted and answered prior to its incorporation. The FOIA requests at issue where not submitted by Hopkins and Lower Richland Citizens United, Inc.

5. The Plaintiffs are not entitled to any remaining relief sought including an award of attorney's fees and costs.

The Defendant's motion is based upon the pleadings filed in this case, a supporting memorandum of law and affidavits to be filed, rules of court, and such other matters as may be properly presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Defendant Richland County

Columbia, South Carolina

June 15, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
		CIVIL ACTION NO.: 2015-CP-40-1805
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley,	)	**AFFIDAVIT OF WENDY BRAWLEY**
Plaintiffs,	)	
v.	)	
Richland County, South Carolina,	)	
Defendant.	)	

RICHLAND COUNTY FILED
2016 AUG 22 PM 3:17
JEANNETTE W. WALKER CLERK OF COURT

PERSONALLY APPEARED BEFORE ME WENDY BRAWLEY who, first being duly sworn, deposes and says the following, based on personal knowledge:

1. I am a resident of Richland County, South Carolina and an elected spokesperson for Hopkins and Lower Richland Citizens United, Inc. I have direct knowledge of the information stated herein.
2. In July 2014, Hopkins and Lower Richland Citizens United originally began operating as an unincorporated association formed by citizens residing in Hopkins and Lower Richland County in order to educate our community regarding the many issues surrounding the Lower Richland Sewer Project.
3. On September 9, 2014, acting on behalf of myself and Hopkins and Lower Richland Citizens United, I submitted four (4) separate written South Carolina Freedom of Information Act ("FOIA") requests to Defendant. A copy of these FOIA requests are attached as Exhibit A to this Affidavit.

4. I also read these four (4) requests into the record during the Richland County Council meeting that occurred on September 9, 2014. A copy of the minutes of the Richland County Council meeting dated September 9, 2014 are attached as Exhibit B to this Affidavit.
5. Richland County failed to respond to any of these requests within the time required by law.
6. On October 1, 2014, Richland County provided me an interim response stating that the "information requested will be released." A copy of this response is attached as Exhibit C to this Affidavit.
7. On or about October 7, 2014, Richland County provided me a response to two of the requests that were incomplete:
    a. It mailed me a copy of an email confirming that there has been no third reading or approval given for the Lower Richland Sewer Project;
    b. It mailed me a copy of what Richland County represents to be the MOU between the City of Columbia and the Defendant regarding the sewer services agreement for the housing developments located off Rabbit Run and other adjacent properties behind Lower Richland High School.
8. Richland County failed to provide complete responses to the other two (2) of the FOIA requests that I served on September 9, 2014.
9. Specifically, Richland County failed to provide me a complete copy of the application and supporting documentation submitted by it to the USDA for grant and loan funding for the Lower Richland Sewer Project. Rather, it provided me with merely a one (1) page "continuation" application, not the original application, and one (1) page document with "Budget Information." The remaining few pages were merely instructions that came with the USDA form.

10. Also, Richland County failed to provide me a copy of the minutes from the Richland County Council meeting when funds were approved by Council for waivers of tap on fees for the Lower Richland Sewer Project. A review of the records produced do not address any such approval.

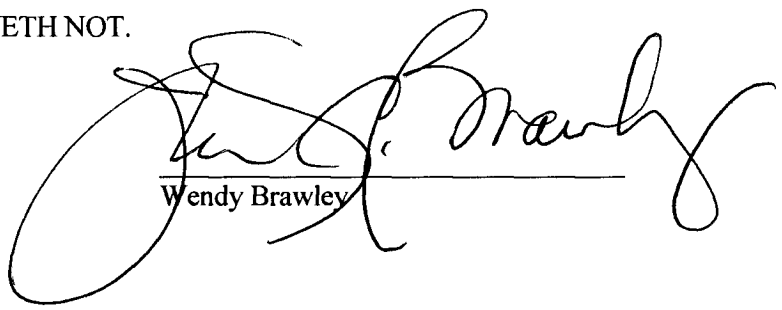
11. On March 17, 2015, more than six (6) months after this request, Richland County officials and council members noted on the record during the Richland County Council Meeting that they were unsure whether my FOIA requests had been properly responded to or not and agreed to look into this issue further.

12. On February 10, 2016, pursuant to discovery requests in this lawsuit, Richland County provided me access to the documents they claim constituted the entire file relating to the Lower Richland Sewer Project.

13. I personally reviewed the documents and found multiple documents that were not produced in response to my FOIA requests. These documents are attached as Exhibit D to this Affidavit.

14. Therefore, through the discovery process of this lawsuit, I became aware of and attained possession of documents that were responsive to my FOIA requests, that were in the possession of Richland County, but that were not provided in response to my FOIA requests.

FURTHER AFFIANT SAYETH NOT.



Wendy Brawley

Sworn and Subscribed To Before Me This

18th Day of August, 2016

Notary Public of South Carolina
My Commission Expires: 9/22/2020

CHRISTOPHER BOGUSKI
Notary Public, State of South Carolina
My Commission Expires 9/22/2020

Exhibit A

Wendy C. Brawley
217 Sagemont Drive
Hopkins, SC 29061
(803) 776-9286

Mr. Tony McDonald
Richland County Administrator
P.O. Box 192
2020 Hampton Street
Columbia, SC 29202

Sept. 9, 2014

RE: FOIA Request - Council Third Reading Approval Date for Lower Richland Sewer Project

Dear Mr. McDonald:

Please provide me with a copy of the minutes from Richland County Council's meeting when the Council gave Third Reading Approval for the Lower Richland Sewer Project. I am requesting this information pursuant to the Freedom of Information Act. If there is a cost to provide the copies of the information requested, please advise by contacting me at (803) 776-9286.

Sincerely,

Wendy C. Brawley

Wendy C. Brawley
217 Sagemont Drive
Hopkins, SC 29061
(803) 776-9286

Mr. Tony McDonald
Richland County Administrator
P.O. Box 192
2020 Hampton Street
Columbia, SC 29202

Sept. 9, 2014

RE: FOIA Request - Copy of Richland County's MOU-City of Columbia Sewer Services

Dear Mr. McDonald:

Please provide me with a copy of the MOU between Richland County and the City of Columbia regarding the sewer services agreement for the housing developments located off Rabbit Run Rd and other adjacent properties behind Lower Richland High School. I am requesting this information pursuant to the Freedom of Information Act. If there is a cost to provide the copies of the information requested, please advise by contacting me at (803) 776-9286.

Sincerely,

Wendy C. Brawley

Wendy C. Brawley
217 Sagemont Drive
Hopkins, SC 29061
(803) 776-9286

Mr. Tony McDonald
Richland County Administrator
P.O. Box 192
2020 Hampton Street
Columbia, SC 29202

Sept. 9, 2014

RE: FOIA Request - Date and Vote for Lower Richland Sewer Project Tap On Fee Waiver Funds

Dear Mr. McDonald:

Please provide me with a copy of the minutes from the Richland County Council meeting when funds were approved by Council for waivers of tap on fees for the Lower Richland Sewer Project. I am requesting this information pursuant to the Freedom of Information Act. If there is a cost to provide the copies of the information requested, please advise by contacting me at (803) 776-9286.

Sincerely,

Wendy C. Brawley

Wendy C. Brawley
217 Sagemont Drive
Hopkins, SC 29061
(803) 776-9286

Mr. Tony McDonald
Richland County Administrator
P.O. Box 192
2020 Hampton Street
Columbia, SC 29202

Sept. 9, 2014

RE: FOIA Request - Copy of Richland County's USDA Rural Development Application for Loan and Grant Funding Lower Richland Sewer Project

Dear Mr. McDonald:

Please provide me a copy of the application and supporting documentation Richland County submitted to the USDA Rural Development for grant and loan funding for the Lower Richland Sewer Project. I am requesting this information pursuant to the Freedom of Information Act. If there is a cost to provide the copies of the information requested, please advise by contacting me at (803) 776-9286.

Sincerely,

Wendy C. Brawley

Exhibit B

RICHLAND COUNTY COUNCIL
SOUTH CAROLINA

REGULAR SESSION MINUTES

September 9, 2014
6:00 PM
County Council Chambers

In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, persons requesting notification, and was posted on the bulletin board located in the lobby of the County Administration Building

CALL TO ORDER

Mr. Jackson called the meeting to order at approximately 6:01 PM

INVOCATION

The Invocation was given by the Honorable Julie-Ann Dixon

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by the Honorable Julie-Ann Dixon

APPROVAL OF MINUTES

Ms. Dickerson moved, seconded by Ms. Dixon, to approve the minutes as distributed. The vote in favor was unanimous.

ADOPTION OF THE AGENDA

Ms. Dickerson moved, seconded by Ms. Dixon, to adopt the agenda.

Mr. Washington moved, seconded by Mr. Malinowski, to add a motion to appoint a Budget Committee. The vote in favor was unanimous.

Ms. Dickerson moved, seconded by Ms. Dixon, to adopt the agenda as amended. The vote in favor was unanimous.

REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION ITEMS

Mr. Smith stated that the following items were potential Executive Session Items:

a. **Personnel Matter**

b. **Contractual Matter: Phase II ESA and Appraisal**

Council Members Present

Norman Jackson, Chair
Joyce Dickerson, Vice Chair
Julie-Ann Dixon
Damon Jeter
Paul Livingston
Bill Malinowski
Jim Manning
Greg Pearce
Torrey Rush
Seth Rose
Kelvin E. Washington, Sr.

Others Present:

Tony McDonald
Sparty Hammett
Roxanne Ancheta
Warren Harley
Nancy Stone-Collum
Larry Smith
Anna Lange
Laura Saylor
Christy Swofford
Chad Fosnight
Daniel Driggers
John Hixon
Dale Welch
Justine Jones
Monique Walters
Rob Perry
Brandon Madden
Beverly Harris
Nelson Lindsay
Tommy DeLage
Andy Metts
Michelle Onley
Monique McDaniels

REPORT OF THE COUNTY ADMINISTRATOR

a. **Public Information Office Award** – Mr. McDonald stated that the Public Information Office won an award from the SC Chapter of the International Association of Business Communicators for a collection of Richland County news releases.

b. **Employee Introduction: Procurement Director** – Mr. McDonald introduced Ms. Cheryl Patrick to Council.

c. **SCE&G LED Projects – Check Presentation** – Mr. McDonald stated that Richland County received grants from the State Energy Office and SCE&G for the LED retrofits at Public Works and a portion of the Alvin S. Glenn Detention Center. The grant from the State Energy Office was in the amount of $5,000 and the SCE&G grant was in the amount of $10,750. A $1,300 reduction in billing has been realized in the first quarter due to the retrofits.

CITIZENS' INPUT

Mr. Willie Washington spoke regarding Benedict College's budget increase request.

Ms. Helen Taylor Bradley and Ms. Wendy Brawley spoke regarding the following motion: "Remove the requirements placing a lien on property if owners do not pay sewer bill". Ms. Brawley presented four (4) FOIA requests to County Council and staff.

REPORT OF THE CLERK OF COUNCIL

a. **Kingsville Annual Reunion and Festival** – Ms. McDaniels stated that the Kingsville Annual Reunion and Festival will be held on September 12-14 at Wilson Lake House in Gadsden.

b. **Councilwoman Dixon's Birthday** – Ms. McDaniels stated that Ms. Dixon's birthday is tomorrow.

REPORT OF THE CHAIRMAN

a. **Personnel Matter** – This item was taken up in Executive Session.

PUBLIC HEARINGS

- **An Ordinance Amending the Richland County Code of Ordinances, Chapter 2; Administration; Article X, Purchasing by adding Section 2-591, to authorize County Council to determine which purchasing decisions regarding purchasing made exclusively with monies raised through the penny tax are of such County-wide significance that County Council has the authority to make the final and conclusive determination to whom to award the contracts –** No one signed up to speak.

- **An Ordinance Amending the Fiscal Year 2013-2014 Township Capital Projects budget to add Nine Hundred Fifty Six Thousand Dollars** – No one signed up to speak.

- **An Ordinance Amending the Fiscal Year 2014-2015 General Fund Annual Budget to appropriate $60,000 of General Fund Unassigned Balance to be used for Engineering Design and Easement Acquisition or the Lower Richland Sewer Project** – Ms. Ruthyne Scott, Mr. Arnold Young, Ms. Donzetta Taylor Lindsay, Ms. Rhonda Daniels Myers, Ms. Linda McRant, Mr. Micheal Robinson, Ms. Muriel Henderson, Ms. Paige Peters, Ms. Jackie Brown, Ms. Rena Grant, Bettye House, Ms. Rosa Davis and Mr. Laura Grant spoke against this item.

- **An Ordinance Authorizing pursuant to Title 4, Chapter 1, Section 170; Title 4, Chapter 1, Section 175; and Title 4, Chapter 29, Section 68 of the Code of Laws of South Carolina, 1976, as amended, the execution and delivery of an amendment to a Special Source Revenue Credit Agreement between Richland County, South Carolina and WNS Global Services Inc.; and matters relating thereto –** No one signed up to speak.

APPROVAL OF CONSENT ITEMS

- **An Ordinance Amending the Richland County Code of Ordinances, Chapter 2; Administration; Article X, Purchasing by adding Section 2-591 to authorize County Council to determine which purchasing decisions regarding purchasing made exclusively with monies raised through the penny tax are of such County-wide significance that County Council has the authority to make the final and conclusive determination to whom to award the contracts [THIRD READING]**

- **An Ordinance Amending the Fiscal Year 2013-2014 Township Capital Project s budget to add Nine Hundred Fifty Six Thousand Dollars [THIRD READING] –** Mr. Pearce moved, seconded by Mr. Livingston, to reconsider this item. The motion failed.

- **An Ordinance Authorizing pursuant to Title 4, Chapter 1, Section 170; Title 4, Chapter 1, Section 175; and Title 4, Chapter 29, Section 68 of the Code of Laws of South Carolina, 1976, as amended, the execution and delivery of an amendment to a Special Source Revenue Credit Agreement between Richland County, South Carolina and WNS Global Services Inc.; and matters relating thereto [SECOND READING]**

Mr. Livingston moved, seconded by Mr. Washington, to approve the consent items. The vote in favor was unanimous.

THIRD READING ITEM

An Ordinance Amending the Fiscal Year 2014-2015 General Fund Annual Budget to appropriate $60,000.00 of General Fund Unassigned Balance to be used for Engineering Design and Easement Acquisition for the Lower Richland Sewer Project – Mr. Washington moved, seconded by Mr. Jackson, to approve the $60,000 budget amendment for the engineering design and easement acquisition; and all tap fees be waived for all customers to sign up for the connection prior to the project going to bid. Similarly to the Hopkins Water Project, in compliance with previous approved Rural Development letter of condition. This includes the construction of sewer service line up to 200 feet and the elimination of the septic tanks. A discussion took place.

Mr. Malinowski moved, seconded by Mr. Pearce, to defer until the following information is obtained: (a) Overall financial impact; (b) When will residents have to start paying the tap fees after the project goes to a bid process; (c) The downsized project scope; (d) community input; and (e) Definition a failing septic system; (f) Council submit additional questions/information to Mr. Metts by September 12th. The vote in favor was unanimous.

SECOND READING ITEM

An Ordinance Authorizing, pursuant to Title 12, Chapter 44, South Carolina Code of Laws, 1976, as amended, the execution and delivery of a Fee Agreement between Richland County, South Carolina, Project Aquarius, a corporation organized and existing under the laws of the State of Delaware, and sponsor affiliate, a corporation organized and existing under the laws of the State of Delaware ("Companies") concerning a new project; authorizing and providing with respect to an existing project for the conversion of an arrangement for fee-in-lieu of tax payments between Richland County and the companies under Title 4, Chapter 12, South Carolina Code of Laws, 1976, as amended to an arrangement under Title 12, Chapter 44, South Carolina Code of Laws;, 1976, as amended; and matters relating thereto – Mr. Livingston moved, seconded by Mr. Rush, to approve this item. The vote was in favor.

REPORT OF ECONOMIC DEVELOPMENT COMMITTEE

Ordinance Authorizing an Amendment to the Master Agreement governing the I-77 Corridor Regional Industrial Park by and between Fairfield County, South Carolina and Richland County, South Carolina, in order to expand the boundaries of the park to include certain property located in Fairfield County (Enor Corporation SC, LLC), and other matters related thereto – Mr. Livingston stated that the committee recommended approval of this item. The vote in favor was unanimous.

REPORT OF RULES AND APPOINTMENTS COMMITTEE

I. NOTIFICATION OF VACANCIES

a. **Business Service Center Appeals Board – 1** – Mr. Malinowski stated that the committee recommended advertising for this vacancy. The vote in favor was unanimous.

b. **Central Midlands Council of Governments – 2** – Mr. Malinowski stated that the committee recommended advertising for these vacancies. The vote in favor was unanimous.

c. **Historic Columbia Foundation – 1** – Mr. Malinowski stated that the committee recommended advertising for this vacancy. The vote in favor was unanimous.

II. NOTIFICATION OF APPOINTMENTS

a. **Accommodations Tax Committee – 2** – Mr. Malinowski stated that the committee recommended re-advertising for these vacancies. The vote in favor was unanimous.

b. **Board of Zoning Appeals – 1** – Mr. Malinowski stated that the committee recommended re-advertising for this vacancy. The vote in favor was unanimous.

c. **Building Codes Board of Appeals – 3** – Mr. Malinowski stated that the committee recommended re-advertising for these vacancies. The vote in favor was unanimous.

d. **East Richland Public Service Commission – 1** – Mr. Malinowski stated that the committee recommended re-appointing Dr. John H. Hudgens.

Mr. Washington moved to appoint Mr. Henry "Gary" Anderson, III. The motion died for lack of a second.

e. **Employee Grievance Committee – 1** – Mr. Malinowski stated that this item was retained in committee.

f. **Historic Columbia Foundation – 1** – Mr. Malinowski stated that the committee recommended appointing Ms. Dawn Mills Campbell. The vote in favor was unanimous.

g. **Library Board – 6** – Mr. Malinowski stated that the committee recommended re-appointing Mr. Nate Barber, Dr. Ida Thompson and Alethia Rearden, and appointing Mr. Ed Garrison, Dr. Johnny Ray Noble, and Ms. Yvonne Stocker. The vote in favor was unanimous.

h. **Procurement Review Panel – 2** – Mr. Malinowski stated that the committee recommended appointing Ms. Willa Martin Bailey and re-advertising for the other position. The vote in favor was unanimous.

i. **Township Auditorium Board – 1** – Mr. Malinowski stated that the committee recommended appointing Ms. Megan Pinckney.

Mr. Washington moved to divide the question. The motion failed.

The vote in favor was unanimous to appoint Ms. Megan Pinckney.

REPORT OF THE RICHLAND COUNTY OFFICE OF SMALL BUSINESS OPPORTUNITY AD HOC COMMITTEE

a. **Mission Statement** – This item was deferred until the September 16th Council meeting.

OTHER ITEMS

A Resolution to appoint and commission Thomas E. DeLage, Jr., as a Code Enforcement Officer for the proper security, general welfare, and convenience of Richland County – Mr. Pearce moved, seconded by Ms. Dixon, to approve this item. The vote in favor was unanimous.

CITIZENS' INPUT

Ms. Vi Hendley requested Council's financial support toward the construction of a new Olympia Fire Station.

Mr. Paul Brawley spoke regarding the treatment of the Hopkins citizens.

Mr. Barry Green spoke regarding his disappointment with County Council members.

EXECUTIVE SESSION

a. **Contractual Matter: Phase II ESA and Appraisal** – Mr. Pearce moved, seconded by Mr. Malinowski, to direct the County Administrator to proceed with first right of refusal on a parcel of land the County is interested in obtaining. The vote in favor was unanimous.

MOTION PERIOD

a. Move to have Richland County identify funds to match the City of Columbia's commitment of $500,050 to begin the process of securing a site and planning a new Olympia Fire Station [ROSE] – This item was referred to the Fire Ad Hoc Committee.

b. Move to direct the Economic Development Director to explore incentives for economic development opportunities that could be in the identified priority investment areas that are outlined in the comprehensive plan [WASHINGTON] – This item was referred to the Economic Development Committee.

c. Move to fund "Famously Hot" New Year's Celebration at $50,000 [DIXON] – This item was referred to the A&F Committee.

d. Green Apple Day of Service Resolution [DICKERSON] – Ms. Dickerson moved, seconded by Ms. Dixon, to adopt the Green Apple Day of Service resolution. The vote in favor was unanimous.

e. Move to direct staff to review microphone mute options for Council Chambers [WASHINGTON] – This item was referred to the D&S Committee.

f. Resolution Honoring Carolyn Cliett [JACKSON] – Mr. Pearce moved, seconded by Ms. Dixon, to adopt a resolution honoring Ms. Carolyn Cliett. The vote in favor was unanimous.

g. Diversity Tech Resolution [JACKSON] – Mr. Livingston moved, seconded by Ms. Dixon, to adopt a Diversity Tech resolution. The vote in favor was unanimous.

h. Move to send the Palmetto Capital City Classic request for additional funding in the amount of $30,000 to committee for a recommendation [JACKSON] This item was referred to the A&F Committee.

i. Resolution for Richland County Soil and Water Chairman John Green [ROSE] – Mr. Washington moved, seconded by Ms. Dixon, to adopt a resolution honoring Richland County Soil and Water Chairman John Green. The vote in favor was unanimous.

j. Remove the requirements placing a lien on property if owners do not pay sewer bill or maintain overgrown lots [JACKSON] – This item was referred to the D&S Committee. Mr. Washington requested clarity regarding the Sheriff's Departments authority with regard to abandoned buildings.

Ms. Dickerson moved, seconded by Ms. Dixon, to reconsider all of the resolutions adopted during the motion period. The motion failed.

ADJOURNMENT

The meeting adjourned at approximately 7:55 PM.

_____
Norman Jackson, Chair

_____	_____
Joyce Dickerson, Vice-Chair	Julie-Ann Dixon
_____	_____
Damon Jeter	Paul Livingston
_____	_____
Bill Malinowski	Jim Manning
_____	_____
Greg Pearce	Seth Rose

Torrey Rush

Kelvin E. Washington, Sr.

The Minutes were transcribed by Michelle M. Onley, Deputy Clerk of Council

Exhibit C

RICHLAND COUNTY OMBUDSMAN'S OFFICE

2020 Hampton Street Suite 3061 Columbia, SC 29204
Phone: (803)929-6000 Fax: (803)929-6009

ONE-CALL RESPONSE

October 1, 2014

Wendy C. Brawley
217 Sagemont Dr
Hopkins, SC 29061

RE: Freedom of Information Act (FOI) Request

Copies of Lower Richland Sewer Project records & sewer services agreement records for the Lower Richland Area & Rabbit Run Rd

Dear Mrs. Brawley,

Your request for information pursuant to the Freedom of Information Act, S.C. Code § 30-4-10 *et. seq.*, was received in the Richland County Ombudsman's Office on September 10, 2014.

This letter confirms Richland County understands your request for a copy of the minutes from the Richland County Council meeting when Council approved funds for waivers of tap on fees for the Lower Richland Sewer Project (LRSP); a copy of the application and supporting documentation Richland County submitted to USDA Rural Development for grant and loan funding for the LRSP; a copy of the minutes from County Council's meeting when the Council gave third reading approval for the LRSP and a copy of the MOU between the county and the City of Columbia regarding the sewer services agreement for the housing developments located off Rabbit Run Rd & other adjacent properties behind Lower Richland High School. The information requested will be released. The data is being researched and it is expected to be available within the next few weeks, at which time will be sent to you via US Mail. If you have additional questions, please feel free to call me anytime.

Sincerely,

Judy A. Carter

Judy A. Carter /nms
County Ombudsman

Exhibit D

Letter of Transmittal

Date: June 7, 2010

To: Mr. Andy H. Metts, Director
Richland County Utilities
7525 Broad River Road
Irmo, South Carolina 29063

Subject Lower Richland Sewer System Environmental Assessments

We are sending the following items:

☒ Attached ☐ Under separate cover Via _____
☐ Shop drawings ☐ Prints ☐ Drawings
☐ Samples ☐ Specifications ☐ Copy of letter
☐ Other

Copies	Date	Description	Code
1	5/28/10	Environmental Assessment for Rural Dev. Final – Client's copy	
1	5/27/10	HUD Modified Environmental Assessment, Final – Client's copy	
1	6/01/10	Public meeting documents submitted to Rural Dev – Client's copy	
1	4/26/06	Hopkins School CWS Env Rpt – borrowed copy being returned	
1		Hopkins School CWS Env Rpt – scanned copy on CD including maps	

These are transmitted as checked below:

☐ For distribution A. ☐ Approved E. ☐ No exceptions taken
☒ For your use B. ☐ Approved as noted F. ☐ Exceptions noted
☐ As requested C. ☐ Revise and resubmit G. ☐ Rejected
☐ For approval D. ☐ Not approved

Remarks:

Signed: _____
Richard E. Culler

C: File

PO Box 92 Columbia, South Carolina 29202-0092 1301 Gervais Street (29201)
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RICHLAND COUNTY
Department of Utilities
7525 Broad River Road
Irmo South Carolina 29063

Andy H. Metts, Director

Phone: (803) 401-0050
Facsimile: (803) 401-0030

Maintenance: (803) 401-0050
Billing: (803) 576-2094

MEMORANDUM
April 18, 2012

TO: Councilman Malinowski
D&S Committee Members

FROM: Andy H. Metts, Director of Utilities

SUBJECT: Pending D&S Committee Items -
Sewer Tap Fee Assistance LMIH Households

The following is provided as an update on the action to date on the D&S Committee motion by Mr. Malinowski as stated below:

> **Motion:**
> Based on the new sewer planned for the Lower Richland County area and the possibility of assistance being provided to Low/Middle Income Households (LMIH), I move that staff create an ordinance that sets forth criteria for qualifications to receive assistance and that it will apply equally to all LMIH throughout Richland County (A&F, November 2010).

The Utilities Department has drafted a document which establishes a "Sewer Tap Fee Assistance Program Criteria". This document will be reviewed and refined as part of the financial plan developed to fund the Lower Richland Sewer Project. A final version of this program will be incorporated into an Ordinance document and presented to County Council for review and approval.

The financial plan for the Lower Richland Sewer Project should be finalized by July 2012 and be presented to County Council for consideration shortly thereafter. The Sewer Tap Fee Assistance Program will be incorporated into this request for consideration by County Council. It will be at County Council's discretion as to whether or not to adopt the Sewer Tap Fee Assistance Program, and if adopted to determine if the program will apply countywide.

If you would like additional information on this subject prior to it being presented to the D&S Committee, please contact me.

AHM/swd

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:
Application ☐ Construction ☑ Non-Construction
Pre-application ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: Richland County, South Carolina	Organizational Unit:
Organizational DUNS: 073709883	Department: WEP /RUS
Address:	Division: USDA, Rural Development
Street: ~~3500 Fernandina Road~~ 2020 Hampton Street Administration	Name and telephone number of person to be contacted on matters involving this application (give area code)
City: Columbia	Prefix: Mr. / First Name: Andy
County: Richland	Middle Name: H.
State: SC / Zip Code: ~~29210~~ 29204	Last Name: Mells
Country: USA	Suffix:
6. EMPLOYER IDENTIFICATION NUMBER (EIN): 57-6000398	Email: andymells@richlandonline.com
	Phone Number (give area code): 803/401-0042 / Fax Number (give area code): 803/401-0030

8. TYPE OF APPLICATION:
☐ New ☑ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.)
Other (specify)

7. TYPE OF APPLICANT: (See back of form for Application Types)
B - Other
Other (specify)

9. NAME OF FEDERAL AGENCY:
USDA, Rural Development

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:
10-760
TITLE (Name of Program):

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
Sewer System Improvements for Hopkins Community

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):
Hopkins Community, Richland County, SC

13. PROPOSED PROJECT
Start Date: / Ending Date:

14. CONGRESSIONAL DISTRICTS OF:
a. Applicant 02 / b. Project 06

15. ESTIMATED FUNDING:

a. Federal	$ 20,961,360
b. Applicant	$
c. State	$
d. Local	$
e. Other	$
f. Program Income	$
g. TOTAL	$ 20,961,360

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Yes. ☑ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE:
b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes" attach an explanation. ☑ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix: Mr. / First Name: J. Milton	Middle Name:
Last Name: Pope	Suffix:
b. Title: County Administrator	c. Telephone Number (give area code): 803. 576. 2050
d. Signature of Authorized Representative: J. Milton Pope	e. Date Signed:

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Standard Form 424 (Rev 9-2003)
Prescribed by OMB Circular A-102

Position 5

RUS BULLETIN 1780-27
(Automated 8-97)

FORM APPROVED
OMB. No. 0575-0015

LOAN RESOLUTION
(Public Bodies)

A RESOLUTION OF THE County Council

OF THE Richland County

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS Sewer

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE

WHEREAS, it is necessary for the Richland County
(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

NINE MILLION THREE HUNDRED FIFTY-NINE THOUSAND AND XX / 100 DOLLARS (9,359,000.00)

pursuant to the provisions of Revenue Bond Act for Utilities as amended ; and

WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of $10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0015), Washington, DC 20503.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities, and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed **$2,279,300** under the terms offered by the Government; that **Chairman** and **Clerk** of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

Yeas 9 Nays 1 Absent 1

IN WITNESS WHEREOF, the **County Council** of the **Richland County** has duly adopted this resolution and caused it to be executed by the officers below in duplicate on this **19th** day of **February**, **2013**.

(SEAL) (if applicable)

Attest:
Michelle Onley
Michelle Onley
Title **Clerk to Council**

Richland County
By
Kelvin Washington
Title **Chairman**

CERTIFICATION TO BE EXECUTED AT LOAN CLOSING

I, the undersigned, as Clerk to Council of the Richland County

hereby certify that the County Council of such Association is composed of

11 members, of whom 6 constituting a quorum, were present at a meeting thereof duly called and

held on the 19th day of February, 2013 that the foregoing resolution was adopted at such meeting

by the vote shown above. I further certify that as of _____,

the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been

rescinded or amended in any way.

Dated, this 20th day of February.

Michelle Onley

Michelle Onley

Clerk to Council of Richland County

South Carolina
DHEC
Department of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201

Commissioner: Michael D. Jarrett

Board: John B. Pate, MD, Chairman
William E. Applegate, III, Vice Chairman
John H. Burriss, Secretary

Toney Graham, Jr., MD
Richard E. Jabbour, DDS
Henry S. Jordan, MD
Currie B. Spivey, Jr

Promoting Health, Protecting the Environment

April 1, 1991

MEMORANDUM

TO: Concerned Parties

FROM: Michael D. Jarrett
Commissioner

SUBJECT: Declaration of "Imminent Health Hazard"
Sewage – Lower Richland Boulevard Community
Richland County, South Carolina

I am this day declaring the Community of Lower Richland Boulevard, Richland County, South Carolina, an "Imminent Health Hazard" because of sewage problems. This declaration is based on a Department of Health and Environmental Control survey of the area and comparison with other surveyed areas.

The Department of Health and Environmental Control, in cooperation with the Governor's Office, various Council of Government Offices, and others, has established this survey procedure which ranks environmentally distressed communities in order of severity for sewer and/or water needs.

This declaration may enable the community to be considered for funding assistance by various governmental agencies.

MDJ:RLH:it

cc: Senator Isadore E. Lourie
Representative James Cromer, Jr.
Mr. George M. Krausz
Mr. Sam Grant
Mr. Michael S. Gulledge
Dr. James E. Padgett, Jr.
Mr. Jack H. Vaughan, Jr.
Mr. Stephon Edwards
Mr. Olney England
Mr. Elwood Gerald

recycled paper

7-9-90 WRL

SOUTH CAROLINA DEPARTMENT of HEALTH
and ENVIRONMENTAL CONTROL
DIVISION OF GENERAL SANITATION

REQUEST FORM

COMMUNITY SURVEY FOR ASSESSING WATER/SEWER NEEDS

Please answer the following, providing as much detail as possible. (Incomplete or missing information may result in a delay in processing your request.)

1. Name of area to be surveyed. Lower Richland Boulevard - Bluff Rd.

2. County Richland

3. Exact location and boundaries of area. (In addition to describing the location, please attach a map clearly defining the boundaries of the area to be surveyed.)
Located off Bluff Rd. near the Hopkins Community

4. Requestor's Name Gregory Sanders
Title Assistant County Administrator
Address
Phone 748-4616

5. Before a survey can be initiated, an authorized management agency must be identified and willing to act as the grantee. Provide the following information regarding the management agency.

Name Gregory Sanders
Address 1701 Main St.
Columbia, S.C. 29202
Phone 748-4611

6. Attach a letter from the management agency, indicating their intention to serve as grantee.

7. Describe the problem(s) this community is having with water/wastewater. Malfunctions of septic tanks

Mail this completed request form and all attachments to:

South Carolina Department of Health and Environmental Control
Bureau of Environmental Sanitation
Division of General Sanitation
2600 Bull Street
Columbia, S.C. 29201

DHEC/BES/GS (4/87)
Exp. # 119

SUMMARY
SEWER NEEDS QUESTIONNAIRE

COMMUNITY LOWER RICHLAND BLVD. SURVEY DATE(S) JAN. 91
COUNTY RICHLAND DWELLINGS 47

		NUMBER DWELLINGS		WEIGHT		TOTAL INDEX
A.	Water under pressure, in-house water plumbing and central collection and treatment for sewage.	0	X	0	=	0
B.	Water under pressure, in-house water plumbing and an apparently functioning on-site disposal system.	13	X	1	=	13
C.	Water under pressure, in-house water plumbing and a non-functioning on-site disposal system.	31	X	4	=	124
D.	Water under pressure, in-house water plumbing and no apparent on-site system	2	X	5	=	10
E.	Water under pressure, no in-house water plumbing and no apparent on-site system	0	X	4	=	0
F.	No water under pressure, in-house water plumbing and no apparent on-site system	0	X	3	=	0
G.	No water under pressure, no in-house water plumbing and no apparent on-site system.	1	X	3	=	3

TOTAL DWELLINGS SURVEYED (TDS) 47

TOTAL SEWER SCORE (TSS) 160.00

TOTAL SEWER SCORE/DWELLING (TSS/D=TSS/TDS) 3.19

SUMMARY
WATER NEEDS QUESTIONNAIRE

COMMUNITY LOWER RICHLAND BLVD. SURVEY DATE(S) JAN. 91
COUNTY RICHLAND DWELLINGS 47

		NUMBER DWELLINGS		WEIGHT		TOTAL
A.	Water under pressure, in-house water plumbing.	46	X	1	=	46
B.	Water under pressure, no in-house water plumbing.	0	X	3	=	0
C.	No water under pressure, in-house water plumbing.	0	X	3	=	0
D.	No water under pressure, no in-house water plumbing.	1	X	5	=	5
	TOTAL DWELLINGS SURVEYED (TDS)	47				
	TOTAL WATER SCORE (TWS)					51

ADJUSTMENT FOR SOURCE AND AVAILABILITY OF WATER

		NUMBER DWELLINGS		WEIGHT		TOTAL
I.	SOURCE					
	A. Public System	0	X	0	=	0
	B. Well	47	X	3	=	141
	C. Other	0	X	5	=	0
II.	AVAILABILITY					
	A. In house	47	X	0	=	0
	B. In yard	0	X	3	=	0
	C. Not on premises	0	X	5	=	0
	ADJUSTMENT SCORE (AS)					141.00
	ADJUSTMENT FACTOR (AF=AS/TDS)					3.00
	ADJUSTED WATER SCORE (AWS=TWS X AF)					153.00
	ADJUSTED WATER SCORE/DWELLING (AWS/D=AWS/TDS)					3.26

		YES	NO
A.	Is public water available at site?	0	47
B.	If YES, is structure connected?	0	47

ATTACHMENT TO RUS BULLETIN 1780-27
LOAN RESOLUTION (Public Bodies) Dated: 02-19-2013

BINDING COVENANT

NOW, THEREFORE, BE IT RESOLVED by Kelvin Washington, Chairman, Richland County Council that in order to provide for protection to valued and environmentally sensitive resources, Richland County offers and adopts the following in the form of a "Binding Covenant" as detailed in the Environmental Assessment prepared of the Lower Richland County Sewer System:

4.1 Mitigation for Land Use/Important Farmlands/Formally Classified Lands

Land Use / Important Farmland. The gravity sewers and force mains will be buried immediately upon completion of installation. Every effort will be made to complete the installation of the facilities in a timely manner to minimize the temporary impacts during installation. Construction of the facilities along the roadway rights-of-way will require Encroachment Permits from the South Carolina Department of Transportation (SCDOT) and the Richland County Roads Department. The encroachment permits should have conditions and restrictions that will lessen temporary impacts. This will be required in and enforced through the contractor's contract documents.

Richland County Planning and Development Services Department has in place a land development review process to ensure the zoning regulations are complied with. No building or other structure shall be erected, moved, added to, or structurally altered without a land development permit being issued by the County. In addition, a land development permit is also required for expansions of existing uses as well as for a change of use. Therefore any potential indirect and cumulative impacts discussed above will be addressed. Portions of the Richland County Land Development Code which address zoning are included in the Maps/Exhibits Section. Included are copies of the zoning maps with the project highlighted, "Article V. Zoning Districts and District Standards," Sec. 26-86. RU Rural District, and "Table 26-V-2 Table of Permitted Uses, Permitted Uses with Special Requirements, and Special Exceptions."

Formally classified lands.

Installations under streams will be installed by boring and other best management practices will be utilized during construction to minimize possible erosion and sedimentation that has the potential to impact Congaree National Park. These practices include, but are not limited to, utilizing silt fencing and straw bales to prevent siltation, backfilling trenches with the topsoil originally removed from the trenched area, returning the elevation to the pre-existing grade, and re-establishing vegetation as quickly as is feasible after construction. Every effort will be made to complete the installations of the sewers and force mains in a timely manner to minimize the impact. This will be required in and enforced through the contractor's contract documents.

Wild and Scenic Rivers / Nationwide Rivers Inventory.
The increased volume of effluent discharge to the Wateree River will require revision of the current NPDES permit; a process overseen by the South Carolina Department of Health and Environmental Control (SCDHEC). The National Park Service staff at the Congaree National Park must be provided the opportunity to view the environmental document and they reserve the option/right to comment on the NPDES permit through SCDHEC. When environmental assessment is reviewed and a Notice of Availability issued, Congaree National Park must be contacted regarding the availability.

The expansion of the treatment facility will be designed to meet regulatory requirements and will also have to be permitted by SCDHEC prior to construction. Once in operation the effluent will be monitored by SCDHEC which will also conduct annual inspections of the facility. Any violations of limits will be addressed through the existing SCDHEC enforcement program to ensure that any and all problems are corrected.

The replacement of the various existing discharges and malfunctioning septic tanks with a newly upgraded treatment facility designed to meet current requirements will improve the overall water quality in the region. Mitigation should not be required because the discharge will result in a net improvement of water quality in the region.

Richland County Planning and Development Services Department has in place a land development review process to ensure the zoning regulations are complied with.

4.2 Mitigation for Floodplains
To prevent possible erosion and sedimentation during construction, best management practices will be utilized to minimize temporary impacts. These practices include but are not limited to, utilizing silt fencing and straw bales to prevent siltation, backfilling trenches with the topsoil originally removed from the trenched area, returning the elevation to the pre-existing grade, and re-establishing vegetation as quickly as is feasible after construction. Every effort will be made to complete the installations of the sewers and force mains in a timely manner to minimize the impact. These practices and actions will be required in and enforced through the contractor's contract documents.

Richland County Planning and Development Services Department has in place a land development review process to ensure the regulations are complied with. No building or other structure shall be erected, moved, added to, or structurally altered without a land development permit being issued by the County. In addition, a land development permit is also required for expansions of existing uses as well as for a change of use. Therefore any potential indirect and cumulative impacts discussed above will be addressed. The Land Development Code requires that a floodplain development permit be requested for any development activities in the FP Overlay District to ensure compliance with all regulations concerning floodplain development. The County flood coordinator reviews all applications for floodplain development permits for danger to life, damage to property, safe access, among other considerations. A land disturbance permit will be required for all development and will not be issued until an approved SWPPP for the work is in place.

4.3 Mitigation for Wetlands

To avoid direct impacts on wetlands, the pipelines will be bored under the stream crossings and wetlands adjacent to existing roadways. Determination of the limits of the wetlands will be accomplished and drawings showing the locations of bore entrance and exit points will be provided to the USACE to allow a final determination of the necessity of permitting to be made. A complete Jurisdictional Determination package will be submitted to the USACE during design.

To prevent possible erosion and sedimentation during construction, best management practices will be utilized to minimize impacts. These practices include but are not limited to, utilizing silt fencing and straw bales to prevent siltation, backfilling trenches with the topsoil originally removed from the trenched area, returning the elevation to the pre-existing grade, and re-establishing vegetation as quickly as is feasible after construction. Every effort will be made to complete the installations of the force mains in a timely manner to minimize the impact. These practices and actions will be required in and enforced through the contractor's contract documents.

Richland County Planning and Development Services Department has in place a land development review process to ensure the regulations are complied with. No building or other structure shall be erected, moved, added to, or structurally altered without a land development permit being issued by the County. In addition, a land development permit is also required for expansions of existing uses as well as for a change of use. Therefore any potential indirect and cumulative impacts discussed above will be addressed. The Land Development Code requires that all submissions for SWPPP approval include wetlands maps and that all sediment and erosion control plans show locations of all waters of the U.S. and State (including wetlands). The County reviews all submittals to ensure requirements are met before approval. A land disturbance permit will be required for all development and will not be issued until an approved SWPPP for the work is in place.

4.4 Mitigation for Cultural Resources

No mitigation is included because there will be no adverse effects. The contracts will specify that if any previously unknown cultural and/or historical resources are located during construction, all construction activities in the immediate and adjacent areas will cease immediately and the proper authorities will be notified. The authorities to be notified will be the SHPO, Rural Development, all three Tribal Contacts, and Richland County. Construction in the area will not resume until concurrence is obtained from these entities.

4.5 Mitigation for Biological Resources

The only anticipated impacts to protected species are minimal and temporary if Best Management Practices are used. These practices will be required in and enforced through the contractor's contract documents, therefore mitigation is not required.

4.6 Mitigation for Water Quality Issues

To prevent possible erosion and siltation during construction, Best Management Practices will be utilized to minimize impacts. These practices include but are not limited to, utilizing silt fencing and straw bales to prevent siltation, backfilling trenches with the topsoil originally removed from the trenched area, returning the elevation to the pre-existing grade, and re-establishing vegetation as quickly as is feasible after construction. Every effort will be made to complete the installations of the facilities in a timely manner to minimize impacts. These practices and actions will be required in and enforced through the contractor's contract documents.

4.7 Mitigation for Coastal Resources
Mitigation will not be required because there will be no impacts to coastal resources.

4.8 Socio-Economic/ Environmental Justice Issues
Mitigation will not be required for construction and installation because there are no adverse impacts.

4.9 Mitigation for Air Quality
There may be temporary impacts due to the emissions of heavy equipment during construction. Every effort will be made to complete construction in a timely manner to minimize these impacts. Fugitive dust may be controlled by application of water from appropriate spray devices. Contractors will be required to control fugitive dust if construction occurs during dry periods. Construction and installation of the force mains along the roadway rights-of-way will require encroachment permits from the South Carolina Department of Transportation (SCDOT) and Richland County. The encroachment permits should have conditions and restrictions that should address safety issues from dust clouds. Compliance with these conditions and restrictions will be required in and enforced through the contractor's contract documents.

4.10 Mitigation for Solid and Hazardous Waste
Contractors will be required to dispose of solid waste in a manner that meets all state and federal requirements. This will be required in and enforced through the contractor's contract documents.

4.11 Mitigation for Transportation
Installation of the sewers and force mains will be conducted in as quick and as efficient a manner as possible to minimize the time of impact to transportation. Construction and installation of the facilities along the roadway rights-of-way will require encroachment permits from the South Carolina Department of Transportation (SCDOT) and Richland County. The encroachment permits should have conditions and restrictions that should address issues such as obstruction of traffic.

4.12 Mitigation for Noise
Construction and installation of the gravity sewers and force mains along the roadway rights-of-way will require encroachment permits from the South Carolina Department of Transportation (SCDOT) and Richland County. The encroachment permits should have conditions and restrictions that address issues such as noise. Such restrictions could

include limiting construction to daylight hours, limiting construction to weekdays, and using appropriate sound reduction devices such as mufflers on all equipment for which such devices are intended to be used. Other mitigation will not be required because impacts will be minimal and temporary. Compliance with these conditions and restrictions will be required in and enforced through the contractor's contract documents.

A meeting of County Council was duly called on and held on 02-19-2013 . The Council is composed of 11 members of whom 10 constituting a quorum, were present at the meeting. At the meeting, they adopted a resolution agreeing to comply with said "Binding Covenant"

The vote was: Yeas 9 Nays 1 Absent 1

(SEAL)

By: _____

Kelvin Washington, Chairman

Attest: _____

Michelle M. Onley, Clerk to Council

United States Department of Agriculture
Rural Development
State Office
Columbia, South Carolina

January 30, 2013

Richland County
Mr. Kelvin Washington, Chairman
2020 Hampton Street
Columbia, SC 29202

Dear Mr. Washington:

This letter will establish conditions which you must understand and agree to before further consideration may be given to your application. The State and Area staff of USDA, Rural Development (RD) will administer the loan and grant on behalf of the Rural Utilities Service (RUS). You must report any changes in project cost, source of funds, scope of services, or any other significant changes in the project to USDA, Rural Development for review and approval. A written amendment to this letter will be prepared for any changes approved. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The scope of the project consists of the Lower Richland County Sewer System Project Phase I. This Phase includes providing sewer service to the Lower Richland neighborhood, Hopkins Middle School, and Hopkins Elementary School, Franklin Park Subdivision, as well as the acquisitions of existing customers on Garners Ferry Road. Wastewater will be transported for treatment at the County's Wateree WWTF.

This letter is not to be considered as loan approval or as representation to the availability of funds. The RD proposed funding is not to exceed $9,359,000 of loan funds and $2,279,800 of grant funds.

You may be required to refinance (graduate) the unpaid balance of its RD loan, in whole or in part, upon the request of RD if at any time it shall be determined the authority is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access our web-site located at www.usda.gov/rus/water/ for the following:

a. RD Instruction 1780
b. RUS Bulletin 1780-13, "Agreement Between Owner and Contractor"
c. RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with RUS Financial Assistance"

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

You will be required to complete SF-5510, Authorization Agreement for Preauthorized Payments, if you participate for all new and existing indebtedness to RD. It will allow for your payment to be electronically debited from your account on the day your payment is due.

6. Reserves – Reserves must be properly budgeted to maintain the financial viability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs, and assist with debt service should the need arise. Reserves can also be established and maintained for the anticipated and expected expenses including but not limited to operation and maintenance, customer deposits, and depreciation of short-lived assets.

It has been determined as part of this funding proposal that you have sufficient funds to establish reserves for the following purposes and amounts:

Operation and Maintenance	$ 82,181

As a part of this RD loan proposal you must establish and fund monthly a debt service reserve fund equal to 10% of the monthly payment each month over the life of the loan until you accumulate one annual installment. This reserve is required to establish an emergency fund for maintenance and repairs and debt repayment should the need arise. Ten percent of the proposed loan installment would equal $3,183.00 per month.

7. Users – This letter of conditions is based upon you providing evidence or a certification that there will be at least 1,197 bona fide residential equivalent users (REUs) on the existing system when construction has been completed. If a number less than 1,197 is certified, Richland County shall adjust user rates to provide an equivalent revenue to match that which would be provided by 1,197 REUs at the initial user rate as established in the proposed rate schedule below. Evidence or certification must be provided on the final number of bona fide REUs and the associated final user fee when construction is complete.

Before RD can agree to the project being advertised for construction bids, you must provide evidence or a certification of the total number of bona fide users are currently using the system or signed up to use the system. You must provide evidence or a certification to show those users will actually be connected to the system when the project is completed and that the monthly sewage volume projected for each by the engineer is reasonable. In the event any of the large volume users discontinue the offered service, you must obtain enough additional revenue (i.e., increase in user rates, sign up of an adequate number of other users, reduction in project scope to reduce debt service and O&M, etc.) to make up the projected income that would be lost by not having those users on the system.

Wild and Scenic Rivers / Nationwide Rivers Inventory

The increased volume of effluent discharge to the Wateree River will require revision of the current NPDES permit; a process overseen by the South Carolina Department of Health and Environmental Control (SCDHEC). The National Park Service staff at the Congaree National Park must be provided the opportunity to view the environmental document and they reserve the option/right to comment on the NPDES permit through SCDHEC. When environmental assessment is reviewed and a Notice of Availability issued, Congaree National Park must be contacted regarding the availability.

The expansion of the treatment facility will be designed to meet regulatory requirements and will also have to be permitted by SCDHEC prior to construction. Once in operation the effluent will be monitored by SCDHEC which will also conduct annual inspections of the facility. Any violations of limits will be addressed through the existing SCDHEC enforcement program to ensure that any and all problems are corrected.

The replacement of the various existing discharges and malfunctioning septic tanks with a newly upgraded treatment facility designed to meet current requirements will improve the overall water quality in the region. Mitigation should not be required because the discharge will result in a net improvement of water quality in the region.

Richland County Planning and Development Services Department has in place a land development review process to ensure the zoning regulations are complied with.

Mitigation for Floodplains

To prevent possible erosion and sedimentation during construction, best management practices will be utilized to minimize temporary impacts. These practices include but are not limited to, utilizing silt fencing and straw bales to prevent siltation, backfilling trenches with the topsoil originally removed from the trenched area, returning the elevation to the pre-existing grade, and re-establishing vegetation as quickly as is feasible after construction. Every effort will be made to complete the installations of the sewers and force mains in a timely manner to minimize the impact. These practices and actions will be required in and enforced through the contractor's contract documents.

Richland County Planning and Development Services Department has in place a land development review process to ensure the regulations are complied with. No building or other structure shall be erected, moved, added to, or structurally altered without a land development permit being issued by the County. In addition, a land development permit is also required for expansions of existing uses as well as for a change of use. Therefore any potential indirect and cumulative impacts discussed above will be addressed. The Land Development Code requires that a floodplain development permit be requested for any development activities in the FP Overlay District to ensure compliance with all regulations concerning floodplain development. The County flood coordinator reviews all applications for floodplain development permits for danger to life, damage to property, safe access, among other considerations. A land disturbance permit will be required for all development and will not be issued until an approved SWPPP for the work is in place.

Mitigation for Wetlands

To avoid direct impacts on wetlands, the pipelines will be bored under the stream crossings and wetlands adjacent to existing roadways. Determination of the limits of the

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107-188 (Bioterrorism Act) amended the Safe Drinking Water Act (SDWA) to require all medium-sized and large-sized community water systems (serving populations greater than 3300) to assess vulnerability to terrorist attack and develop emergency plans for and response to such attacks. The Environmental Protection Agency (EPA) maintains responsibility for vulnerability assessments (VAs) and emergency response plans (ERPs) under the Bioterrorism Act. Rural Development (RD) and EPA share the objective of ensuring safe, reliable and affordable drinking water and wastewater for residents of rural areas. Protection of rural America's water and wastewater systems will be enhanced through the implementation of the RD Water and Environmental Program Homeland Security Initiative. RD will assist systems, especially those servicing populations of less than 3300, in completing VAs and ERPs. The County will provide Rural Development with the certifications on VA and ERP or other documentation that the system has taken appropriate steps to ensure public safety. The VA and ERP should not be offered and will not be accepted by Rural Development.

21. **Civil Rights & Equal Opportunity** - You should be aware of and will be required to comply with other federal statute requirements including but not limited to:

Section 504 of the Rehabilitation Act of 1973 – Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RD financial assistance.

Civil Rights Act of 1964 – All borrowers are subject to, and facilities must be operated in accordance with, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and subpart E of part 1901 of this title, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by paragraph 1901.202(e) of this title.

Prior to the closing of the loan and grant or the beginning of construction, whichever occurs first, it will be necessary that our Rural Development Area Office conduct a user certification and compliance review. The user Certification will include the review of the user agreements, collected tap fees and service declination statements. Your office's full cooperation will be necessary in accomplishing this certification and review. At the time of the review, it will be necessary for your office to furnish to the representative of the Rural Development Area Office evidence that the County has the users and has adopted the rate schedules required in item #8 of this letter. During the review, the representative of the Rural Development Area Office will complete and execute Form RD 400-8, "Compliance Review." So as to assist the Rural Development

Area Office with the Compliance Review, you will need to have available a ***numerical breakdown*** of your required users into the following categories:

RESIDENTIAL USERS	☐ **COMMERCIAL USERS**
Ethnicity:	
☐ Hispanic or Latino	
☐ Not Hispanic or Latino	☐ **INDUSTRIAL USERS**
Race:	
☐ White	
☐ Black or African American	
☐ American Indian or Alaskan Native	
☐ Native Hawaiian or Other Pacific Islander	
☐ Asian	

The same breakdown data will be needed for applications of persons wishing to become users and for the County's water/sewer employees and Board.

The nondiscrimination poster, "And Justice For All," is to be displayed at your offices and facilities.

The Americans with Disabilities Act (ADA) of 1990 – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications. Title II of the Act applies to facilities operated by State and local public entities which provides services, programs and activities. Title III of the Act applies to facilities owned, leased, or operated by private entities which accommodate the public.

Age Discrimination Act of 1975 – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

RD financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap.

22. **Permits** - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits may include but are not limited to the following:
    - SC Department of Health and Environmental Control
    - Corps of Engineers

23. **Contract Documents, Final Plans and Specifications**
    a. The contract documents should consist of the EJCDC Construction Documents as indicated in RUS Bulletin 1780-26 or other approved form of

"legacy" systems: Central Contractor Registration (CCR), Federal Agency Registration (FedReg), Online Representations and Certifications Application (ORCA), and the Excluded Parties List System

Where Can I Find SAM?
SAM is online at http://sam.gov. The legacy systems will redirect users to this address.

Where Can I Get Help?
SAM.gov contains quick start guides, webinars, a User Guide and other materials that provide all the information you need to get started using SAM. For other questions, beginning Monday, July 30, the help desk for SAM will be the Federal Service Desk (FSD). You can reach them at http://fsd.gov.

You as the recipient must maintain the currency of your information in the CCR. This requires that you review and update the information at least annually after the initial registration.

26. **Cost Overruns** – Cost overruns must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means prior to consideration by Rural Development for subsequent funding. Such requests will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.

27. **Use of Remaining Funds** – Applicant contributions, in the form of waived tap fees for LMI homes, will be considered the first funds expended in the project. Tap fees collected by the applicant must be contributed towards the project but will not be required until the system is operational and the tap fee has been paid by the customer. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

- Remaining funds may be used for eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work, the request is made within 60 days of project completions, and the purpose of the loan and grant must remain the same.
- RD loan funds that are not needed will be applied as an extra payment on the RD indebtedness unless other disposition is required by the bond ordinance, resolution, or State statue.
- Grant funds not approved for authorized purposes will be cancelled within 60 days of project completion. Prior to actual cancellation, you and your attorney and engineer will be notified of RD's intent to cancel the remaining funds and given appropriate appeal rights.

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley,	)	Civil Action No. 2015-CP-40-1805
Plaintiffs,	)	
v.	)	**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**
Richland County, South Carolina,	)	
Defendant.	)	

RICHLAND COUNTY FILED
2016 AUG 23 AM 10: 07
JEANETTE W. McBRIDE C.C.P. & G.S.

The Plaintiffs have brought this action pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq.*[1] The Plaintiff Wendy Brawley presented four separate FOIA requests to the Defendant Richland County at the meeting of Richland County Council held on the evening of September 9, 2014. The Plaintiff Brawley was sent correspondence regarding her FOIA requests on September 12, 2014 and October 1, 2014. Thereafter, by letter dated October 3, 2014, the Defendant County provided a response to three of the four FOIA requests , and by letter dated October 8, 2014, the County provided a response to the fourth FOIA request . The County's responses are in compliance with the requirements of the Act. As discussed below, the Plaintiff Brawley has been provided all of the documents, as sought in her FOIA requests, that were in existence and in the County's possession at the time of the FOIA responses made in early October 2014.

[1] The Plaintiff Hopkins and Lower Richland Citizens United, Inc. did not incorporate until March 17, 2015, and thus has no standing to claim a violation of any FOIA requests that were submitted and answered prior to its incorporation. The FOIA requests at issue where not submitted by Hopkins and Lower Richland Citizens United, Inc.

Moreover, it is important to note that the burden of proof rests with the Plaintiffs to prove more than a technical error of the Act. Yet, to date, the Plaintiffs have made no showing of any responsive documents that were actually in the County's possession but were not then disclosed in response to the FOIA requests.

In the four FOIA requests, the Plaintiff Brawley sought documents as follows:

(1) a copy of the minutes from the Richland County Council meeting when funds were approved by Council for waivers of tap on fees for the Lower Richland Sewer Project;

(2) a copy of the minutes from Richland County Council's meeting when the Council gave Third Reading Approval for the Lower Richland Sewer Project;

(3) a copy of Richland County's USDA Rural Development Application for Loan and Grant Funding Lower Richland Sewer Project; and

(4) a copy of Richland County's MOU with City of Columbia regarding the sewer services agreement.

See, Complaint, Ex. 1; Carter Aff., ¶ 2, Ex. A .

As discussed in the affidavit of Judy A. Carter, the Richland County Ombudsman, the County conducted an appropriate investigation to identify and gather the documents responsive to these FOIA requests. *See*, Carter Aff., ¶¶ 3, 6. In addition, the County provided timely correspondence to the Plaintiff Brawley and did not assert any statutory exemptions to the requested information. *See*, Carter Aff., ¶¶ 4-5. Thereafter, by letters dated October 3, 2014 and October 8, 2014, available documents – to the extent they existed – were provided to the Plaintiff Brawley, and where no such documents existed, that explanation was provided. *See*, Carter Aff., ¶¶ 7-10.[2]

[2] The Plaintiffs claim that the October 1, 2014 correspondence from the Ombudsman's Office was one day late because Wendy Brawley had hand delivered the FOIA requests during an evening meeting of the Richland County Council. The Ombudsman's Office received the FOIA requests the following day, and all correspondence reflects that the

Minutes of County Council Meeting re: Waiver of Tap Fees

On October 3, 2014, the County produced minutes from the February 19, 2013 Richland County Council Meeting where Council passed a resolution accepting the Letter of Conditions from the United States Department of Agriculture Rural Development State Office, which includes language regarding the waiver of tap fees. *See*, Carter Aff., ¶ 7. The County also produced minutes from the June 3, 2014 Richland County Council Meeting where Council approved the Richland County Utilities Tap Fee Assistance Program. *See*, Carter Aff., ¶ 7. In addition, the Plaintiff Brawley was provided an email response from Andy Metts, who was at that time the Director of Richland County Utilities, which advised her that there had not been a specific vote by County Council to authorize funds for the waiver of tap fees. *See*, Carter Aff., ¶ 10, Ex. F. That was accurate in that County Council did not actually vote to authorize funds for the waiver of tap fees until Council meetings occurring on March 17, 2015 and June 2, 2015. Thus, the vote and the minutes reflecting such a vote were not in existence when the Plaintiff Brawley's FOIA requests were answered in October 2014. *See*, Carter Aff., ¶ 11, Ex. G.

Minutes of County Council Meeting re: Third Reading

The October 3, 2014 letter to the Plaintiff Brawley included a copy of an email response from S. Monique McDaniels, the Clerk to Council, and with that email, Brawley was advised that there had not been a third reading for the Lower Richland Sewer Project. *See*, Carter Aff., ¶ 8, Ex. D.

Ombudsman's Office treated September 10, 2014 as the date of receipt. Therefore, if the October 1, 2014 letter was sent one day late, that is at worst a technical error and not an actionable violation of the Act that requires any prospective relief. *Piedmont Public Service District v. Cowart*, 319 S.C. 124, 459 S.E.2d 876, 878 (Ct. App. 1995) ("a mere technical error may not constitute a violation of the Act"). It should be noted that the County did not assert any statutory exemptions and the Plaintiff Brawley received a timely response to her requests. In addition, the Ombudsman's Office had previously corresponded with the Plaintiff Brawley by letter dated September 12, 2014. *See*, Carter Aff., ¶ 4, Ex. B.

Richland County's USDA Rural Development Application

The letter dated October 8, 2014 included a copy of the Application for Federal Assistance dated March 16, 2010, as signed by County Administrator J. Milton Pope, which is the responsive document. Ultimately, it was determined that there was a second such Application for Federal Assistance dated July 18, 2012, but that document could not be located in the County's files. A copy was later obtained from the United States Department of Agriculture Rural Development Office and was made available to the Plaintiff Brawley through her counsel by letter dated June 3, 2015. *See*, Responses to Plaintiffs' First Set of Requests for Production, #4; Letter dated June 3, 2015 (attached).

Richland County's MOU with City of Columbia

The October 3, 2014 letter to the Plaintiff Brawley included a copy of the Lower Richland Sewer Service Agreement entered between the County and the City of Columbia, which is the responsive document.

In conclusion, the evidence reflects that Richland County provided all available documents in response to the four FOIA requests. There were no documents responsive to the two requests for minutes because no such votes had yet been taken by County Council, and the Plaintiff Brawley was provided that explanation. The County-City MOU was produced which fully complied with another request. Finally, the County provided the copy of the Application for Federal Assistance that was in its possession. The Act does not require a party to obtain documents from a third-party source to satisfy a FOIA request.[3] Nonetheless, after suit was filed, the County

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[3] *See*, *Kissinger v. Reporters Commission for Freedom of the Press*, 445 U.S. 136, 152 (1980) (indicating FOIA "does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained") (as cited in *Trask v. South Carolina Dept. of Public Safety*, 2012 WL 10864175, *1 (S.C. Ct. App. 2012) (unpublished).

made inquiry to and obtained a second Application for Federal Assistance from the USDA Rural Development Office and made that available to the Plaintiff.

Based on this record, the Defendant County submits that it has fully complied -- or in the alternative substantially complied[4] -- with the four FOIA requests at issue, and as a result, the Plaintiff is not entitled to any declaratory or injunctive relief. Accordingly, the County requests that its motion for summary judgment be granted and this action be dismissed with prejudice.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Defendant Richland County

Columbia, South Carolina

August 17, 2016

[4] "[A] mere technical error may not constitute a violation of the Act." *Piedmont Public Service District v. Cowart*, 319 S.C. 124, 459 S.E.2d 876, 878 (Ct. App. 1995). "[S]ubstantial compliance with the Act will satisfy its requirements where a technical violation has no demonstrated effect on a complaining party." *Multimedia, Inc. v. Greenville Airport Commission*, 287 S.C. 521, 339 S.E.2d 884,887 (Ct. App. 1996). *See also, Donohue v. City of North Augusta*, 412 S.C. 526, 773 S.E.2d 140 (2015).

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley,	)	Civil Action No. 2015-CP-40-1805
Plaintiffs,	)	
v.	)	**RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION**
Richland County, South Carolina,	)	
Defendant.	)	

TO: JENKINS M. MANN, ESQUIRE AND SHAUN C. BLAKE, ESQUIRE, COUNSEL FOR PLAINTIFFS

Pursuant to Rule 34, SCRCP, the Defendant responds to the Plaintiffs' First Set of Requests for Production as follows:

1. Produce a copy of the minutes from the Richland County Council meeting where the Richland County Council gave the Third Reading Approval for the Lower Richland Sewer Project.

RESPONSE #1:

None. The fact that no such minutes exist and that no such vote has been taken was provided in response to one of FOIA requests at issue by letter dated October 3, 2014, from Judy A. Carter (Richland County Ombudsman) to the Plaintiff Wendy C. Brawley, which included an email with that information.

2. Produce a copy of the MOU between Defendant and the City of Columbia regarding any agreement in connection with sewer services for any housing developments

located off that certain road known as Rabbit Run Road in Richland County and for those certain properties located behind Lower Richland High School in Richland County.

RESPONSE #2:

The document requested herein was previously produced to the Plaintiffs in response to one of the FOIA requests at issue. That document was produced by letter dated October 3, 2014, from Judy A. Carter (Richland County Ombudsman) to the Plaintiff Wendy C. Brawley.

3. Produce a copy of the minutes from the Richland County Council meeting where the Richland County Council approved waivers on tap fees for the Lower Richland Sewer Project.

RESPONSE #3:

The minutes for Richland County Council meetings are available online on the County's website. The Plaintiffs are directed to the minutes for the following meetings: March 17, 2015 and June 2, 2015.

4. Produce any and all documents, including, but not limited to, any applications, submitted to the United States Department of Agriculture Rural Development Office for grant and loan funding in connection with the Lower Richland Sewer Project.

RESPONSE #4:

The Plaintiffs are referred to the letter dated June 3, 2015, from Andrew F. Lindemann to Jenkins M. Mann, whereby the Defendant has already produced these documents which are Bates numbered RC-0001 through RC-0055. As that letter states, "those documents appear to include a subsequent Application for Federal Assistance dated July 18, 2012, which Richland County had not located in its files at the time of the FOIA responses but which has now been obtained from Rural Development." In addition, the Application for Federal Assistance dated March 16, 2010, was previously produced to the Plaintiffs in response to one of the FOIA requests at issue. That document was produced by letter dated October 8, 2014, from Judy A. Carter (Richland County Ombudsman) to the Plaintiff Wendy C. Brawley.

5. Produce all documents provided to Defendant by the United States Department of Agriculture Rural Development Office in connection with the Lower Richland Sewer Project.

RESPONSE #5:

The Plaintiffs are referred to the letter dated June 3, 2015, from Andrew F. Lindemann to Jenkins M. Mann, whereby the Defendant has already produced these documents which are Bates numbered RC-0001 through RC-0055.

6. Produce all documents contained in Defendant's Utilities Project file for the Lower Richland Sewer Project.

RESPONSE #6:

The Plaintiffs are referred to the letter dated June 3, 2015, from Andrew F. Lindemann to Jenkins M. Mann, whereby the Defendant agreed to make the Richland County Utilities project file available for inspection and copying. The Plaintiffs, through counsel, have made no attempt to schedule a time for the proposed inspection and copying. While the information requested in this request is not relevant to the issues actually framed by this litigation, the Defendant nonetheless again offers to make the Richland County Utilities project file available for inspection and copying at a mutually agreed time.

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Defendant Richland County

Columbia, South Carolina

September 6, 2015

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley,	)	Civil Action No. 2015-CP-40-1805
Plaintiffs,	)	
v.	)	**CERTIFICATE OF SERVICE**
Richland County, South Carolina,	)	
Defendant.	)	

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Defendant, does hereby certify that service of the **Responses to Plaintiffs' First Set of Requests for Production** in the above-captioned matter was made upon Plaintiffs' counsel by placing copies in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 6th day of September 2015:

Jenkins M. Mann, Esquire
Rogers, Lewis, Jackson, Mann & Quinn, LLC
Post Office Box 11803
Columbia, South Carolina 29211

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

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William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
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*Also Admitted In North Carolina
†Certified Mediator

Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell
David A. DeMasters
Steven R. Spreeuwers
Todd R. Flippin

Of Counsel
Kenneth P. Woodington

Writer's Email: alindemann@dml-law.com

June 3, 2015

Via Email and US Mail
Jenkins M. Mann, Esquire
Rogers, Lewis, Jackson,
Mann & Quinn, LLC
Post Office Box 11803
Columbia, South Carolina 29211

RE: Hopkins and Lower Richland Citizens United, Inc. and Wendy Brawley v.
Richland County, South Carolina
Civil Action Number: 2015-CP-40-1805
Our File Number: 314.9670

Dear Jenkins:

In investigating the allegations of the Plaintiffs' Complaint, we reached out to the United States Department of Agriculture Rural Development Office to try to determine what was in their files that may be responsive to the prior FOIA requests presented by the Plaintiff Wendy Brawley at the September 9, 2014 meeting of Richland County Council. I am attaching the documents that have been provided to the County by Rural Development as a result of this inquiry. I have Bates-numbered those documents RC-0001 through RC-0055. Those documents appear to include a subsequent Application for Federal Assistance dated July 18, 2012, which Richland County had not located in its files at the time of the FOIA responses but which has now been obtained from Rural Development. There are other documents as well that do not appear to be responsive to any FOIA requests, but I am furnishing those to you so that you can make that determination and so that you have access to what the County has received. Please recognize that some of those documents were created or generated by Rural Development personnel and not by the County, but I am furnishing those anyways because they have now been obtained by the County.

In addition, Richland County has authorized me to extend to you and your clients the offer to review the entire Richland County Utilities (RCU) project file for the Lower Richland County Sewer System Project at a time that is convenient to both sides. While there has not been any formal discovery undertaken as yet in this litigation, I would propose that we treat this as a document production with some fairly simple ground rules and safeguards. I fully recognize that this information goes far beyond what your clients have sought through their FOIA requests, but

this offer is being made so that your clients may feell confident that they have access to and are permitted to review the full project file that the County has in its possession. Attempts have been made to search for all RCU records pertaining directly to this project and consolidating those in the RCU project file which we are offering for your review.

If your clients are interested in reviewing the RCU project file, I would propose that we agree on a mutually convenient date and that we limit the participants in the review to counsel and perhaps up to two other individuals. We would ask that an attorney for the Plaintiffs be present at all times during the review. The County will also have someone present, likely an attorney or paralegal from my office. You and your clients will be allowed to review those records and mark any records for copying. Those records will then be either photocopied or scanned to a CD, Bates-numbered for reference, and provided to you within a reasonable time for those duplication process to be completed.

Please give me a call after you have a chance to review this letter with your clients and we can work out the logistics and other details. We can also discuss any questions that you may have.

Sincerely,

DAVIDSON & LINDEMANN, P.A.

Andrew F. Lindemann

AFL/
Enclosures

2012 WL 10864175
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of South Carolina.

L. Paul TRASK, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated, Appellant,
v.
SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY; Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner, Curtis Copeland, in his official capacity; and Beaufort County Sheriff, P.J. Tanner, in his official capacity; Respondents.

Appellate Case No. 2009–145927.
|
No. 2012–UP–623.
|
Submitted Oct. 2, 2012.
|
Decided Nov. 21, 2012.

Appeal from Beaufort County; Carmen T. Mullen, Circuit Court Judge.

Attorneys and Law Firms

Stephen Peterson Groves, Sr., and Thomas S. Tisdale, Jr., both of Nexsen Pruet, LLC, of Charleston, for Appellant.

Robert W. Achurch, Mary Bass Lohr, and Jason F. Ward, all of Howell, Gibson & Hughes, P.A., of Beaufort, for Respondents Beaufort County, Beaufort County Management Information Systems, Beaufort County Coroner, Curtis Copeland, in his official capacity, and Beaufort County Sheriff, P.J. Tanner, in his official capacity; William H. Davidson, II, and Andrew F. Lindemann, both of Davidson & Lindemann, P.A., of Columbia, for Respondent South Carolina Department of Public Safety.

Opinion

PER CURIAM.

*1 Paul Trask, Jr., appeals the circuit court's grant of summary judgment in favor of all respondents in this case brought pursuant to section 30–4–100(a) of the South Carolina Code (2007). We dismiss the appeal as to the South Carolina Department of Public Safety because Trask failed to properly serve the notice of appeal. *See* Rule 203(b)(1), SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.").

We affirm as to the remaining respondents pursuant to Rule 220(b)(1), SCACR, and the following authorities: Rule 56(c), SCRCP (indicating a trial court may grant a party's motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"); S.C.Code Ann. § 30–4–100(a) (2007) (setting the statute of limitations for Freedom of Information Act (FOIA) claims as "one year following the date on which the alleged violation occurs"); *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 478 (2006) (finding a party's FOIA claims moot because once all relevant documents in a FOIA case have been provided, "there is no continuing violation of FOIA upon which the trial court [can issue] a declaratory judgment"); *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980) (indicating FOIA "does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained").

DISMISSED IN PART, AFFIRMED IN PART.

SHORT, KONDUROS, and LOCKEMY, JJ., concur.

All Citations

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STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Wendy Brawley,	)	
	)	Civil Action No. 2015-CP-40-1805
Plaintiff,	)	
	)	
v.	)	**NOTICE OF MOTION AND MOTION TO ALTER OR AMEND ORDER**
	)	
Richland County, South Carolina,	)	
	)	
Defendant.	)	
	)	

TO: THE HONORABLE DEANDREA GIST BENJAMIN

JENKINS M. MANN AND SHAUN C. BLAKE, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Richland County will move before the Honorable DeAndrea Gist Benjamin at such time and place as may be set by the Court, for an Order, pursuant to Rule 52(b) and Rule 59(e), SCRCP, altering, amending, and reconsidering the Final Order on the Merits filed on February 13, 2020.

The Defendant Richland County's counsel received written notice of entry of the Final Order on the Merits filed on February 13, 2020.

The Defendant Richland County's motion is based on the following grounds:

1. The Court awarded injunctive relief which was no longer before the Court at trial. As the Court was correct in initially recognizing, "[b]y Form Order filed August 14, 2015, Judge Newman granted that motion [to dismiss] and dismissed the Plaintiff's claim for injunctive relief." The Court even recognized that only a "claim for declaratory relief" remained for trial. The Court, however, did not apply that law of the case. The Court proceeded to award injunctive

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relief despite the fact that Judge Clifton Newman had dismissed the claim for injunctive relief, and all that remained was a claim for declaratory relief. The Court is requested to reconsider its Order and delete the award of injunctive relief.

2. In the order filed February 13, 2020, the Court failed to recognize that the burden of proof rests with the Plaintiff to prove a violation of the Freedom of Information Act (FOIA). It is, therefore, incumbent on the Plaintiff to show that any reasonably responsive documents were actually in the Defendant Richland County's possession at the time the FOIA request was made but were not then disclosed in response. The Court is requested to amend its Order to find that the Plaintiff did not sustain her burden of proof in this regard. Moreover, the Court erred in concluding that there was circumstantial evidence to support the Plaintiff's claim. The fact that documents were in the County's project file on February 10, 2016, is not direct or circumstantial evidence that those documents were present and available in September 2014, when the FOIA request was made. With respect to Plaintiff's Exhibits 7, 8, 9, 10, 11, 13, 17, 18, 19, 21, and 23, which the Court refers to as the "February 2016 Located Documents," the Plaintiff only offered evidence that those documents were in the project file on February 10, 2016. She was unable to testify that those documents were in the County's possession in September 2014, when she made her FOIA request. (Tr. 92). Whether the documents were in the County's possession in February 2016 is not the dispositive issue and is immaterial to the ultimate question before the Court. The Court also erred in shifting the burden of proof by stating that "no evidence or testimony was presented by Richland County to the contrary."

3. The Court failed to consider or address the threshold issue in the case. As the County argued, the threshold issue is the scope of the request itself and whether the request was reasonably described such that the agency could understand what was requested. As a corollary

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of that requirement, the Plaintiff had the burden of showing that a reasonable agency would understand that the contested documents were within the scope of the search. As the federal courts have explained, "[b]efore addressing the adequacy of the search under FOIA, a court must first ascertain the scope of the request itself." *Judicial Watch v. United States Department of State*, 681 Fed. Appx. 2, 3-4 (D.C. Cir, 2017). "A requester bears the burden of reasonably describing the records its seeks such that the agency is able to determine precisely what records are being requested." 681 Fed. Appx. at 4. "A FOIA request must reasonably describe the records requested." *Landmark Legal Foundation v. Environmental Protection Agency*, 272 F.Supp.2d 59, 64 (D.D.C. 2003). "The agency's obligation to search is limited to the four corners of the request." *Id*. "Where a FOIA request is unclear, an agency processing a FOIA request is not required to divine a requester's intent." *Id*.

Therefore, as a threshold issue, the Court was required to assess the reasonable meaning and scope of the Plaintiff's FOIA request for "a copy of the application and supporting documentation Richland County submitted to the USDA Rural Development for grant and loan funding for the Lower Richland Sewer Project." The Court failed to engage in such analysis and made no findings of fact or conclusions of law in that regard. The Plaintiff sought an application submitted to the USDA Rural Development and "supporting documentation," the latter being the term that on its face is unclear and is subject to varying interpretations. Had the Court examined the plain and ordinary meaning of that request, it would be immediately recognized that there is no temporal aspect to the Plaintiff's request. In other words, the Plaintiff did not make it clear whether she was requesting solely documents that accompanied the application or whether she was seeking all documentation that was submitted to the USDA, regardless of whether the materials accompanied the application or were submitted at different times, separate and apart

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from the application itself. The Court should have recognized that the lack of clarity in the request has given rise to the controversy between the parties. Andy Metts is the only witness who was questioned about his interpretation and understanding of the request.[1] Mr. Metts explained that he understood the request as seeking the Application for Federal Assistance as submitted to the USDA and the documents that accompanied that submission. (Tr. 256). He did not conclude that the request required the production of the following exhibits placed into evidence by the Plaintiff from her February 2016 review of the project file:

* A timeline that he did not prepare and was never submitted to the USDA (Pl. Ex. 6) (Tr. 237-238).

* Unsigned, incomplete and draft copies of applications that were never submitted to the USDA (Pl. Ex. 7-9) (Tr. 242-245).

* Letter of Transmittal not directed or sent to the USDA (Pl. Ex. 11) (Tr. 245)

* Emails from USDA personnel and between USDA personnel which were not submitted by the County to the USDA (Pl. Ex. 12-15, 19-20) (Tr. 245-248).

* USDA internal checklist (Pl. Ex. 18) (Tr. 124-127).

* Letter of Conditions dated January 30, 2013 from USDA to Richland County (Pl. Ex. 21). (Tr. 249).

* Loan Resolution (Pl. Ex. 22) (Tr. 249).

* February 4, 2014 letter (Pl. Ex. 23). (Tr. 249-250).

As a result, the Court should find that an objectively reasonable person attempting to respond to the Plaintiff's FOIA request as it was articulated would not conclude that the foregoing

[1] Sara Salley was not questioned as to her understanding of the meaning and scope of the Plaintiff's FOIA request.

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documents were responsive to the request for "supporting documentation." Accordingly, the Plaintiff did not sustain her burden of proving that the County personnel should have properly determined that the documents at issue were responsive to her request and were withheld by the County in violation of FOIA.

4. Moreover, the Court should reject any contention that engineering reports and environmental studies associated with the project were also "supporting documentation" within the meaning and scope of the request. Unless those documents were submitted with the application and not at a later time, it was reasonable for the County personnel responding to the request to not consider engineering reports and environmental studies to be responsive to the request as "supporting documentation" of the application. The engineering reports and environmental studies were not presented as evidence, and as a result, the Court had no basis to determine if there was a sufficient temporal correlation to treat those documents as "supporting documentation" as a reasonable person would construe the term.

5. The Court identifies in the "Facts" section of the Order a list of the so-called "June 2015 Discovery Documents" consisting of twenty documents that made up Plaintiff's Exhibit 5. In the "Facts" section, the Court also specifically identifies Plaintiff's Exhibits 7, 8, 9, 10, 11, 13, 17, 18, 19, 21, and 23, which the Court refers to as the "February 2016 Located Documents" and calls them "additional, relevant documents." The Court never explains in the "Facts" section which of those 32 documents that the Court actually found were reasonably responsive to the FOIA request. The Court is respectfully asked to make those specific findings. By calling documents "additional" and "relevant" that may or may not mean that the Court ruled they were reasonably responsive to the FOIA request. In that regard, based on the testimony of Andy Metts, the Court should find that the "June 2015 Discovery Documents," with the

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exception of the Application for Federal Assistance dated July 18, 2012, were not reasonably responsive to the FOIA request. Moreover, there is no evidence to support the Plaintiff's position that the "February 2016 Located Documents" fell within the reasonable meaning and scope of the Plaintiff's FOIA request for the reasons already discussed above. Later, in the "Legal Analysis" section, the Court does refer to "Exhibits 5-15, 17, and 19-23" as "all responsive FOIA documents which were not provided to Ms. Brawley in the Original Response Documents." There, the Court refers to more documents that what was addressed in the "Facts" section, which creates an inconsistency that should be reconsidered. The Court should make clear findings as to which documents it found to be responsive to the FOIA request and why. That will allow for meaningful appellate review. To reiterate, the Defendant submits that the Court erred in determining that Exhibits 5-15, 17, and 19-23 fall within the reasonable meaning and scope of the Plaintiff's FOIA request for "a copy of the application and supporting documentation Richland County submitted to the USDA Rural Development for grant and loan funding for the Lower Richland Sewer Project."

6. With respect to the different Application for Federal Assistance dated July 18, 2012, there was no evidence presented that a copy of that application was retained and existed in the County's files in September 2014, when the FOIA request was made. Andy Metts testified that, based upon the search conducted of the files, a copy of this application had not been retained and was not in the County's possession at that time. (Tr. 252, 257). The Plaintiff presented no evidence to contradict this. During the discovery process in this litigation, the County made a request to the USDA Rural Development Office to learn what was in their file. The County provided that information received from the USDA to the Plaintiff as part of discovery. The origin of those documents are clearly stated in discovery responses, but the Court

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erroneously ruled that there was no evidence "supporting the origin for June 2015 Discovery Documents." The Court, however, improperly shifts the burden of proof here and requires the Defendant -- not the Plaintiff -- to prove whether those documents were in the County's possession in September 2014, when the FOIA request was made. The burden of proof lies with the Plaintiff, and the Plaintiff has not shown that the July 2012 application was in the County's possession in September 2014, such that a diligent search would have revealed its existence and the need for production. In short, the Court did not need to decide whether Defendant's representations made in discovery responses is evidence or not. However, the Court should not have shifted the burden of proof -- particularly to the extent that the Court is critical that defense counsel did not testify about the origin of documents produced in discovery. Of course, defense counsel is prohibited by the Rules of Professional Conduct from testifying. Additionally, as a matter of law, the Defendant was precluded by Federal law from being able to call an employee of the United States Department of Agriculture as a witness. *See*, January 3, 2017 letter from USDA Office of General Counsel.

7. The Court also erred in concluding that the Defendant failed "to conduct a reasonable investigation to obtain and/or locate all relevant documents." The Court overlooked that such a claim was not pled by the Plaintiff in her Complaint and thus was not an issue or claim for the Court to consider or adjudicate. Additionally, to the extent the issue was properly to be considered, the Court overlooked that the Plaintiff had the burden of proof on that issue or claim; yet, she presented only two witnesses, Andy Metts and Sara Salley, involved in the process of compiling the FOIA response. The record reflects that other persons, including employees of the Ombudsman's Office, were also involved in the process, but no other witnesses involved in the search for responsive documents were presented by the Plaintiff. Clearly, the

Plaintiff did not meet her burden of proof on a claim or issue that was not pled and should not have formed the basis for the Court's ruling.

8. The Court erred in overlooking or otherwise disregarding the applicable law that FOIA does not require a party to obtain documents from a third-party source to satisfy a request. *See*, *Kissinger v. Reporters Commission for Freedom of the Press*, 445 U.S. 136, 152 (1980) (indicating FOIA "does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained") (as cited in *Trask v. South Carolina Dept. of Public Safety*, 2012 WL 10864175, *1 (S.C. Ct. App. 2012) (unpublished). "FOIA is only directed at requiring agencies to disclose those 'agency records' for which they have chosen to retain possession or control." *Kissinger*, 445 U.S. at 151-152. "It is well settled that a FOIA request pertains only to documents in the possession of the agency at the time of the FOIA request." *Landmark Legal Foundation v. Environmental Protection Agency*, 272 F.Supp.2d 59, 66 (D.D.C. 2003). An agency "is under no obligation to obtain a duplicate or to re-create a record in order to fulfill a FOIA request." *James v. United States Secret Service*, 811 F.Supp.2d 351, 358 (D.D.C. 2011). Consequently, the County was under no legal duty imposed by the FOIA to obtain any documents not in its possession from third parties or to try to re-create such records in response to a FOIA request.

9. The Court also erred in overlooking or otherwise disregarding the applicable law that "[a] challenge to any agency's search because it did not locate documents that may never have been created in the first instance, or may never have been retained as agency records, cannot succeed." *Saldana v. Federal Bureau of Prisons*, 715 F.Supp.2d 10, 23 (D.D.C. 2010). "An agency's failure to find a particular document does not necessarily indicate that its search was inadequate." *Id*. "In any case, an agency is not required to conduct interviews, to search in

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places where the requested documents are not likely to be found, or to search exhaustively." *Id*.

10. The Court also erred in overlooking or otherwise disregarding the applicable law that "a mere technical error may not constitute a violation of the Act." *Piedmont Public Service District v. Cowart*, 319 S.C. 124, 459 S.E.2d 876, 878 (Ct. App. 1995). "[S]ubstantial compliance with the Act will satisfy its requirements where a technical violation has no demonstrated effect on a complaining party." *Multimedia, Inc. v. Greenville Airport Commission*, 287 S.C. 521, 339 S.E.2d 884, 887 (Ct. App. 1996). *See also*, *Donohue v. City of North Augusta*, 412 S.C. 526, 773 S.E.2d 140 (2015).

The Defendant Richland County's motion is based upon the pleadings filed in this case; the trial transcript and exhibits; the attached exhibits; the rules of court; and such other matters as may be properly presented to the Court at or before the time of the hearing.

The Defendant Richland County respectfully requests oral argument.

LINDEMANN, DAVIS & HUGHES, P.A.

BY: *s/ Andrew F. Lindemann*

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Counsel for Defendant Richland County

February 24, 2020

USDA United States Department of Agriculture
Office of the General Counsel

Eastern Region
1718 Peachtree Street, NW, Suite 576
Atlanta, Georgia 30309-2437

Telephone: 404-347-1060
Facsimile: 844-217-8320

January 3, 2017

Via facsimile transmission to (803) 806-8855

Andrew F. Lindemann
Davidson & Lindemann, P.A.
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568

Re: *Wendy Brawley v. Richland County, South Carolina*
Civil Action No. 2015-CP-40-1805
Common Pleas Court in the County of Richland, South Carolina
Trial Date: Wednesday, January 4, 2017, 9:00 a.m. (EDT)

Subpoena for Testimony and Document Production at Trial
Michele Cardwell, Acting State Director, Rural Development, USDA
Columbia, South Carolina

Dear Mr. Lindemann:

This office provides legal representation to United States Department of Agriculture ("USDA") agencies and personnel located in the southeastern United States, including Rural Development ("RD"). RD has contacted us in connection with a subpoena issued by you, or upon your request, commanding the appearance and testimony of a USDA employee in the above referenced action, as well as the production of certain documents. For the reasons outlined below, we request that the subpoena be withdrawn.

Please confirm your withdrawal of the subpoena in writing, by fax or email to the employee or agency contact. Their contact information is:

Agency Contact Name: Marty Bright-Rivera
Agency Contact Phone No.: (803) 253-3993
Agency Contact Fax No.: (855) 565-9479
Agency Contact Email: Martha.BrightRivera@sc.usda.gov

Employee's Name: Michele Cardwell
Employee's Phone No.: (803) 765-5138
Employee's Fax No.: (855) 565-9479
Employee's Email: michele.cardwell@sc.usda.gov

USDA's Touhy Regulations

Regulations governing appearances by USDA employees as witnesses in judicial or administrative proceedings are published in the Code of Federal Regulations at 7 C.F.R. §§

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1.210-1.219. These regulations are authorized by 5 U.S.C. § 301 (formerly 5 U.S.C. § 22). *United States ex rel Touhy v. Ragen*, 340 U.S. 462, 71 S.Ct. 416, 95 L.Ed. 417 (1951); *Moore v. Armour Pharmaceutical Co.*, 927 F.2d 1194, 1196-1197 (11th Cir. 1991).

> The purpose of [these regulations] is to ensure that employees' official time is used only for official purposes, to maintain the impartiality of [USDA] among private litigants, to ensure that public funds are not used for private purposes and to establish procedures for approving testimony or production of documents when clearly in the interests of [USDA].
>
> * * *
>
> The policy behind such prohibitions on the testimony of agency employees is to conserve governmental resources where the United States is not a party to a suit, and to minimize governmental involvement in controversial matters unrelated to official business. *Reynolds Metals*, 572 F. Supp. at 290. Because of the nature of the duties it exercises and programs it administers, the [USDA] is particularly vulnerable to the demands of private parties seeking information acquired as a result of official investigations concerning incidents such as that in the case *sub judice*. If [USDA officials] were routinely permitted or compelled to testify in private civil actions, significant loss of manpower hours would predictably result and agency employees would be drawn from other important agency assignments.

Boron Oil Co. v. Downie, 873 F.2d 67 (4th Cir. 1989).

Subpoenas *ad testificandum*

A USDA employee served with a subpoena or otherwise requested to appear as a witness on behalf of a party other than the United States, in a judicial or administrative proceeding to which the United States is not a party, may appear only if such an appearance has been authorized by the head of the employing USDA agency, with the concurrence of the General Counsel, based upon a determination that such an appearance is in USDA's interest. 7 C.F.R. § 1.214(b)(1). Such a determination is made by reference to the factors enumerated at 7 C.F.R. § 1.214(e) and any other relevant factors. An employee who testifies without such authorization violates the regulations and is subject to disciplinary action. 7 C.F.R. § 1.218.

The agency has reviewed the above-referenced subpoena and has determined that the employee's appearance is not in USDA's interest and is consequently not authorized. Should you elect not to withdraw the subpoena, the employee will be directed to appear at the stated time and place, produce a copy of the cited regulations, and respectfully decline to offer any testimony. The employee will also be instructed to demand payment of any and all appropriate fees and expenses in connection with the appearance. *See* 7 C.F.R. § 1.214(c). A federal employee may not be compelled to obey a subpoena contrary to instructions given by a federal employer pursuant to valid agency regulations. *Touhy, supra*, 340 U.S. 462, 71 S.Ct. 416, 95 L.Ed. 417; *Moore, supra*, 927 F.2d 1194, 1197; *Boron Oil Co. v. Downie*, 873 F.2d 67, 69 (4th Cir. 1989).

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Subpoenas *duces tecum*

Pursuant to federal regulations published at 7 C.F.R. § 1.215, subpoenas *duces tecum* for USDA records in judicial or administrative proceedings to which the United States is not a party are deemed to be requests for records under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552. FOIA requests to USDA agencies are processed in accordance with regulations published at 7 C.F.R. §§ 1.1-1.23.

A USDA employee served with an otherwise valid subpoena *duces tecum* is directed to appear at the stated time and place, respectfully decline to produce the records sought on the ground that such production is prohibited by 7 C.F.R. § 1.215, and state that the subpoena *duces tecum* will be processed by the agency as a FOIA request. *See* 7 C.F.R. § 1.215(b). A federal employee may not be compelled to obey a subpoena contrary to instructions given by a federal employer pursuant to valid agency regulations. *United States ex rel Touhy v. Ragen*, 340 U.S. 462, 71 S.Ct. 416, 95 L.Ed. 417 (1951); *Moore v. Armour Pharmaceutical Co.*, 927 F.2d 1194, 1196-1197 (11th Cir. 1991), *Boron Oil Co. v. Downie*, 873 F.2d 67, 69 (4th Cir. 1989).

In response to a FOIA request, a USDA agency will supply those documents, if any, which are responsive to the request and not exempted from disclosure. If the agency determines that the requested documents are exempted from disclosure, the requesting party will be notified of that determination and of his/her administrative appeal rights. *See* 5 U.S.C. § 552(a)(6)(A)(i). Should such a determination be upheld on administrative appeal, the requesting party would be notified of his/her right to seek judicial review. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

If the subpoenas *ad testificandum* and *duces tecum* are not withdrawn, the United States may elect to remove the above-referenced action to federal district court and move to quash the subpoena.

We anticipate your prompt withdrawal of these subpoenas. Should you have any questions, please feel free to contact me at 404.347.1076. With best regards, I am

Sincerely yours,

Dorian Henriquez-Simons
Attorney

cc: Marty Bright-Rivera, Administrative Programs Director, Rural Development, Columbia, South Carolina

Michele Cardwell, Acting State Director, Rural Development, Columbia, South Carolina.

DHS/

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Wendy Brawley, Plaintiff, v. Richland County, South Carolina, DEFENDANT	IN THE MAGISTRATE'S COURT CIVIL CASE NO.: 2015-CP-40-01805 **AFFIDAVIT AS TO ATTORNEY'S FEES AND COSTS**

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PERSONALLY APPEARED BEFORE ME, the undersigned attorney Jenkins M. Mann, who, being first duly sworn, deposes and says as follows:

1. Rogers Lewis Jackson Mann & Quinn, LLC was retained by the Plaintiff in the above-captioned action to pursue an action under the authority of 15-53-10, et seq., Code of Laws, known as the Uniform Declaratory Judgment Act, and 30-4-10 et. Seq., Code of Laws of South Carolina, as amended, known as the Freedom of Information Act ("FOIA"). FOIA provides that the Plaintiff is entitled to the recovery of attorneys' fees and costs as the instant action was necessitated by Defendant's conduct.

2. My law partner Shaun Blake and I are the attorneys who have primarily handled the filing and pursuit of action on behalf of Plaintiff, and as such I am aware of the attorneys' fees and court costs incurred in this regard.

3. Since the inception of our representation of the Plaintiff in this case, my law firm has, without limitation, undertaken the following actions:

a) Meeting with Client on Multiple Occasions to Assess Possible FOIA Action;

b) Reviewing Document History and FOIA Requests filed with Richland County;

c) Conducting Legal Research Regarding FOIA Actions in South Carolina;

d) Assessing the Merits and Potential Success of FOIA Action;

e) Drafting and Filing of the Summons and Complaint;

f) Serving of the Summons and Complaint on Richland County, South Carolina;

g) Reviewing and Assessing Richland County, South Carolina's Responsive Pleading, Defenses Raised and its Motion to Dismiss;

h) Attend hearing on Defendant's Motion to Dismiss Complaint;

i) Handling All Correspondence Between Counsel for Defendant and Plaintiff for Duration of Case;

j) Conducting Written Discovery Between Parties, Including the Review o Thousands of Documents Made Available by Richland County in Response to Discovery Requests;

k) Preparing Motions to Compel Written Discovery;

l) Preparing Documents in Opposition to Defendant's Motion for Summary Judgment;

m) Preparing for and Appearing to Defend Defendant's Motion for Summary Judgment;

n) Preparing for and Attending Mediation of Case;

o) Preparing Extremely Lengthy Post-Mediation Proposed Settlement Documents;

p) Attending Numerous Status Conferences with Court;

q) Preparing All Trial Documents, Including Trial Brief, Witness Subpoenas and Trial Exhibits;

r) Meeting and Conferring with Trial Witness Prior to Trial;

s) Reviewing All Documents, Pleadings, Discovery and Motions in Preparation for Trial;

t) Conducting Legal Research Regarding All Matters Relevant to Trial

u) Conducting Trial of Case;

v) Preparing Lengthy Proposed Order on the Merits, Including Legal Research as to All Issues of Law Raised at Trial; and

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w) Reviewing and Assessing Defendant's Proposed Order on the Merits, the Court's Order on the Merits, the Defendant's Post Judgment Motions, and the Court Subsequent Amended Order;

4. Under Dede v. Strickland, 414 S.E.2d. 134 (S.C. 1992), the Supreme Court of South Carolina has set forth the factors to be considered in an award of attorney's fees. These factors include nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied in this case, are as follows:

a. Nature, Extent, and Difficulty of the Legal Services Rendered. Paragraph 3, *supra*, outlines the nature and extent of the legal services rendered and the level of contest the Defendant presented in defending Plaintiff's claims against it.

b. Time and Labor Necessarily Devoted to the Case. Approximately three hundred five (305) billable hours by attorneys and paralegals. The time and labor devoted to this case were necessary to properly prepare and try this case.

c. Professional Standing of Counsel. Shaun Blake and I are a licensed member of the Bar of the State of South Carolina and United States District Court for the District of South Carolina and have "AV" Ratings from Martindale Hubell and have been recognized by Super Lawyers. Both Shaun Blake and I completed law school in 2006, and have practiced law in the area of civil litigation since that time. Accordingly, I submit that both Mr. Blake and I have a high professional standing in general and in this area of practice.

d. Contingency of Compensation. This matter was handled on a contingency basis, in that fees were to be paid to counsel based upon the court's awarding of the same.

e. Customary Fee Charged on the Locality for Similar Services. I am aware from discussions with clients, other attorneys in the Midlands region of South Carolina, and from my general familiarity with the legal profession that the fees charged by attorneys with equivalent experience is $300.00 per hour or more. We have applied that hourly rate to the services rendered in this case in formulating the reasonable attorney's fees herein.

f. Beneficial Results Obtained. We obtained beneficial results for the Plaintiff in this action by securing the production of the documents Richland County

failed to produce in response to the Plaintiff's FOIA request and by prevailing at trial.

6. After due consideration of the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit that an award of attorney's fees to the full extent set forth in this Affidavit is appropriate; therefore, Plaintiffs are entitled to recover Seventy-Eight Thousand Four Hundred and 00/100 ($78,400.00) Dollars.

7. In conjunction with this Affidavit, Plaintiff's counsel submits the costs actually incurred to date are $2,864.96, comprised of filing fees, service of process fees, postage, and transcript costs.

8. Accordingly, the reasonable attorney's fees in this case total Eighty One Thousand Two Hundred Sixty Four and 96/100 ($81,264.96) Dollars.

Jenkins M. Mann, Esq

"I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt."

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2015-CP-40-1805
	)	
Wendy Brawley,	)	
Plaintiff	)	**REPLY MEMORANDUM TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO AWARD OF ATTORNEY'S FEES AND COSTS**
	)	
v.	)	
	)	
Richland County, South Carolina,	)	
	)	
Defendant.	)	

Wendy Brawley ("Rep. Brawley") respectfully submits this Reply Memorandum to Defendant's Memorandum in Opposition to this Court's Award of Attorney's Fees and Costs ("Memorandum") for the Court's consideration.

INTRODUCTION

Richland County, South Carolina ("Richland Co.") attempts to convince this court, without any actual authority whatsoever establishing their position, that Rep. Brawley was required to file a document captioned as a "Motion" within 10 days of the this Court's February 13, 2020 Order ("First Order on the Merits"); otherwise, this court "lost subject matter jurisdiction," ignoring the fact that: 1) the case was stayed at the time Richland Co. alleges Rep. Brawley failed to file support for her attorney's fees award while this court was deliberating over Richland Co.'s Motion to Alter or Amend the First Order on the Merits; 2) Rep. Brawley's attorney's fees continued to run through the filing of the Richland Co.'s Motion to Alter or Amend the First Order on the Merits (and still continues; 3) this court upheld Rep. Brawley's Award of Attorney's Fees in its subsequent July 20, 2020 Order ("Amended Order"); 4) Rep. Brawley **timely** filed her Affidavit of Attorney's fees following this court's Amended Order on the Merits; 5) Richland Co. timely filed its Memorandum Opposing Award of Attorney's Fees, without even the first suggestion of prejudice as a result of

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Rep. Brawley filing the support for her award of attorneys' fees as an "Affidavit" rather than a "Motion"; 6) Rep. Brawley's Affidavit of Attorney's Fees met every requirement of a Motion under the South Carolina Rules of Civil Procedure; and 7) this court continues to retain jurisdiction over the Award of Attorney's Fees as both Orders on the Merits were interlocutory, with further adjudication of the rights of the parties to be determined.

ARGUMENT

To navigate the maze of Richland Co.'s position, the following timeline is instructive:

- March 25, 2015 – Rep. Brawley filed the instant action, requesting Attorney's fees pursuant to SC CODE ANN. §30-4-100(b) in three separate places in the Complaint; A copy of the Complaint is attached hereto as **Exhibit A.**
- September 5, 2019 – The Parties tried the instant case before Judge Benjamin, wherein on multiple occasions Rep. Brawley moved for attorney's fees, including at the outset of the trial:

  > MR. MANN: Your Honor, we are here today asking that the Court issue a declaratory judgment ordering that they produce all responsive documents to Ms. Brawley's September 9, 2014, FOIA request, and **that they award her attorney's fees and costs associated with having to bring this action** …

  (Transcript dated Sept. 5, 2019, p. 9, filed herewith for the court's convenience; **Exhibit B)**
- February 13, 2020 – This Court entered the First Order on the Merits, finding in favor of Rep. Brawley on her FOIA action against Richland Co. and specifically awarding Rep. Brawley reasonable attorney's fees and costs, finding that the Rep. Brawley **"is entitled to reasonable attorney's fees incurred herein."** First Order on the Merits, p. 12 (emphasis added). A copy of the First Order on the Merits is attached hereto as **Exhibit C.**

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- February 24, 2020 – Richland Co. filed a Notice of Motion and Motion to Alter or Amend Order ("Motion to Alter or Amend"), seeking to alter or amend the First Order on the Merit's determination that Richland Co. violated FOIA and therefore, by extension, owed Rep. Brawley attorney's fees. The filing of this motion, of course, continued the accrual of Rep. Brawley's attorney's fees. A copy of the Motion to Alter or Amend is attached hereto as **Exhibit D.**
- July 16, 2020 – This Court issued its Amended Order, addressing the issues raised in Richland Co. Motion to Alter or Amend, modifying the First Order on the Merits regarding Rep. Brawley's entitlement to injunctive relief yet again, awarding attorney's fees to Rep. Brawley, finding that Rep. Brawley is "**still entitled to reasonably[sic] attorney's fees incurred herein**." A copy of the Amended Order is attached hereto as **Exhibit E.**
- July 27, 2020 – On the tenth day after the July 16, 2020, Rep. Brawley filed and served an affidavit of attorney's fees and costs ("Affidavit"), setting forth: 1) the caption in this action; 2) the nature of the action; 3) twenty-three (23) distinct categories of representation undertaken in connection with the representation of Rep. Brawley in this matter; 4) citation to the South Carolina case law by which awarded attorney's fees in South Carolina are determined, e.g. Dedes v. Strickland, 414 S.E.2d 134; 5) the application of each element of the six-part test from Dedes v. Strickland to the representation of Rep. Brawley; 6) a submission "that an award of attorney's fees to the full extent set forth in this Affidavit is appropriate;" 7) the request that "Plaintiffs [sic] are entitled to recover" the "reasonable attorney's fees in this case total[ling] Eighty One Thousand Two Hundred Sixty Four and 96/100

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($81,264.96) Dollars"; and 8) the signature of the undersigned counsel for Rep. Brawley ("Affidavit of Attorney's Fees and Costs"). A copy of the Affidavit of Attorney's Fees and Costs is attached hereto as **Exhibit F.**

- August 11, 2020 – Richland Co. timely filed its 11-page Memorandum Opposing Award of Attorney's Fees, predominantly arguing for a technical "gotcha" but never once asserting that any aspect of Rep. Brawley's attorney's fees request caused any prejudice whatsoever to Richland Co. A copy of the Memorandum Opposing Award of Attorney's Fees is attached hereto as **Exhibit G.**

A. Another formal motion was unnecessary because Rep. Brawley submitted numerous prior requests for an award of attorneys' fees and costs in this case.

In its Memorandum Opposing Award of Attorney's Fees, Richland Co. argues that Judge Benjamin's First Order on the Merits and the Amended Order requested that Rep. Brawley submit "a schedule of fees and a motion to support the amount of fees and costs incurred herein" and that because Rep. Brawley's detailed four-page Affidavit was not captioned a "Motion," Rep. Brawley has forever waived her right to Attorney's Fees. Richland Co.'s arguments are without any citation to any South Carolina case law on point and, more importantly, ignore the fact that Richland Co. had repeated and ample notice both of Rep. Brawley's numerous requests for attorneys' fees and costs and Judge Benjamin's repeated orders stating that Rep. Brawley was entitled to an award of attorneys' fees and costs, all prior to Rep. Brawley's submission of the Affidavit, which constituted her application for the specific amount of reasonable attorneys' fees and costs.

1. The Complaint demanded the statutory award of Attorney's Fees and Costs.

Richland Co. received notice of Rep. Brawley's multiple requests for a judgment that included three specific requests for reasonable costs and attorneys' fees under SC CODE ANN. §30-4-100(b) when Rep. Brawley sought that relief in her Complaint itself. Under Rep. Brawley's

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"Prayer for Relief," the Complaint states: "WHEREFORE, having duly complained of each Defendant, Plaintiffs pray the court to enter judgment against Defendant and award the Plaintiffs … reasonable costs and attorneys' fees…." Both the first and second causes of action note "Plaintiffs are entitled to recover costs and reasonable attorney's fees associated with compelling the Defendants complete responses in an amount approved by this court upon a finding that Plaintiffs are entitled to prevail under SC CODE ANN. §30-4-100(b)." Richland Co. has never argued that the Complaint fails to sufficiently set forth a claim of relief for attorneys' fees and costs under Rule 8(a), SCRCP, and so the sufficiency of the claim for relief in Rep. Brawley's Complaint is the law of this case.

Rep. Brawley's prayer for a judgment that includes reasonable attorneys' fees and costs under the Act against Richland Co. is not "an application to the court for an order" that even requires a Motion under Rule 7, SCRCP. Richland Co. obfuscates the law by implying that there is precedent requiring a formal post-trial motion under the Freedom of Information Act when Richland Co. cites to caselaw instead construing the South Carolina Frivolous Proceedings Sanctions Act ("FCPSA"). *See* Memorandum in Opposition to Award of Attorney's Fees, p. 2, **Exhibit G,** citing *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014) and *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 570 S.E.2d 187 (Ct. App. 2002). Richland Co.'s Response fails to disclose that our Legislature expressly mandated a post-proceeding motion for an award of attorneys' fees under the FCPSA. S.C. Code Ann §15-36-10(C)(1) ("At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, **upon motion of the prevailing party**, the court shall proceed to determine if the claim or defense was frivolous.") (emphasis added). The Legislature included no

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such requirement under SC CODE ANN. §30-4-100(b).

2. Rep. Brawley sought reasonable attorney's fees and cost in open court at trial.

Not only did Richland Co. receive proper notice of Rep. Brawley's claim for reasonable attorneys' fees and costs through her Complaint, Rep. Brawley specifically requested in open court for an award of attorney's fees as permitted by Rule 7(b)(1), SCRCP. Moreover, Rep. Brawley specifically asked permission to submit proof of attorneys' fees by "Affidavit" after Judge Benjamin determined the prevailing party. Judge Benjamin agreed that proof could be submitted following her final ruling and that another hearing would be had on the issue of attorneys' fees:

> MR. MANN: Your Honor, we are here today asking that the Court issue a declaratory judgment ordering that they produce all responsive documents to Ms. Brawley's September 9, 2014, FOIA request, and **that they award her attorney's fees and costs associated with having to bring this action** …….
>
> MR. BLAKE: Your Honor, I put this in the pretrial brief, because obviously a request for attorney's fees and costs, can we preserve that as a post-order motion? I don't want to have to pull together all that, because we have to redact a lot of the time that was spent representing the other Defendant or the other Plaintiff in the case. **So can we submit our affidavit in support of fees and costs after you rule on who the prevailing party is? Or would you like it in the proposed order?**
>
> THE COURT: Well –
>
> MR. LINDEMANN: Part of the problem with that, Your Honor, from my perspective, even if Your Honor rules in their favor on this particular FOIA request, I mean, a substantial amount -- parts of this case we were the prevailing party, already are the prevailing party, on three out of four FOIA requests, plus the total injunctive relief cause of action. So, you know, ultimately we are going to be -- want to be able to argue to you that, you know, even if they prevail on that one particular issue, they are entitled to no or very limited attorney's fees and costs.
>
> THE COURT: All right. So what we'll do is wait, because I have got to review the cases.
>
> MR. BLAKE: Right. True.
>
> THE COURT: And Mr. Lindemann says there are none in South Carolina other than -- and he cited a Supreme Court case, and we'll do some research. Is it Kissinger?

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> MR. LINDEMANN: Kissinger. Would you like a copy of that, Your Honor?
>
> THE COURT: If you have a copy, that would be great. And any other cases you all want me to review, you can go ahead and send those with your proposed orders. **So what we'll do is wait for the ruling. And then once we get the ruling, if I rule in your favor, I'm sure we will have to have another hearing about attorney's fees**.
> (Transcript dated Sept. 5, 2019, p. 9 & pp. 303-304, **Exhibit B** (emphasis added)).

"The award of fees and costs to the prevailing person or entity in a suit brought pursuant to section 30–4–100(a) is entrusted to the discretion of the trial court." Sloan v. S.C. Dep't of Revenue, 409 S.C. 551, 556, 762 S.E.2d 687, 690 (2014) (J. Pleicones, concurring in part and dissenting in part) (citing S.C. Code Ann. § 30–4–100(b) (2007)). Following the trial, Judge Benjamin exercised her discretion - twice, once on February 13, 2020 and again on July 16, 2020 - and announced that she was awarding attorneys' fees and costs to Rep. Brawley. **(First Order on the Merits Exhibit C and Amended Order Exhibit E.)**

B. Richland Co.'s contention this court lost jurisdiction prior to the filing of the Affidavit is baseless.

1. There is no ten -day requirement to file a "motion" without jeopardizing the court's jurisdiction in this instance; the Amended Order vested this court with continuing jurisdiction over the issue of attorney's fees until it issued a final order on that issue.

Under South Carolina law this court retained, and to this date continues to retain, jurisdiction over the attorney's fees determination. It is black letter law in South Carolina that "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final" *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996). Here, the Court's First Order on the Merits and Amended Order found that Rep. Brawley **"is entitled to reasonable attorney's fees incurred herein"** and Brawley is "**still entitled to reasonably[sic] attorney's fees incurred herein**" respectively, and specifically

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further held that Rep. Brawley would submit her "schedule of fees" to be addressed by Richland Co. As a result, both orders were interlocutory, leaving a further act to be done respective to the parties' right, and as such the Court could not be divested of jurisdiction until such determination was made. *Culbertson*, 322 S.C. at 23, 471 S.E.2d at 164.

2. Even if a ten-day submission requirement existed, Rep. Brawley satisfied it.

Perhaps the most perplexing part of Richland Co.'s twisted maze of logic is the assertion that Rep. Brawley failed to file the Affidavit within the ten-day window Richland Co. alleges (erroneously) that she had to do so. This, of course, is simply false. On the tenth[1] day following Judge Benjamin's Amended Order, Rep. Brawley submitted both the schedule of fees and the support for the fees sought in her Affidavit on July 27, 2020, pursuant to the request she made in open court at trial and both subsequent Orders of this court. Therefore, even if this court believes some additional application under Rule 7, SCRCP, was required within the ten (10) day period that Rep. Brawley possessed to file a motion for reconsideration of the Order dated July 16, 2020, the Affidavit was timely, was signed by counsel, included both the schedule of fees and the legal and factual basis for the award of fees, and otherwise met all of the requirements of an application to the court contemplated by Rule 7, SCRCP [*see infra* for further discussion].

a. Rep. Brawley's Affidavit satisfies all of the requirements of a Motion.

Richland Co.'s argument that this court has lost subject matter jurisdiction over the attorney's fees dispute because Rep. Brawley did not file a document entitled "Motion" is the perhaps the ultimate example of its efforts to elevate form over substance to date in this case. Rule 7(b) of the South Carolina Rules of Civil Procedure governs the form requirements of a motion.

[1] The tenth day technically fell on a Sunday, July 25, 2020, and so the Affidavit was filed and served on the following day.

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Per Rule 7(b) SCRCP, a motion shall: 1) "be in writing;" 2) "state with particularity the grounds therefor;" and 3) "set for the relief or order sought." Rep. Brawley's Affidavit more than meets these requirements. It is, of course, in writing and it unquestionably sets forth, with particularity, the grounds for the attorney's fees sought: 1) detailing the twenty-three (23) distinct categories of representation performed by Rep. Brawley's attorneys in connection with their representation of Rep. Brawley in this matter; 2) citing controlling South Carolina case law by which awarded attorney's fees in South Carolina are determined, *Dedes v. Strickland*, 414 S.E.2d 134; and 3) applying each element of the six-part test from *Dedes v. Strickland* to the representation of Rep. Brawley and the attorney's fees sought therefor. Likewise, the Affidavit "sets forth the relief or order sought," explicitly noting that "an award of attorney's fees to the full extent set forth in this Affidavit is appropriate" and that "Plaintiffs [sic] are entitled to recover" the "reasonable attorney's fees in this case total[ling] Eighty One Thousand Two Hundred Sixty Four and 96/100 ($81,264.96) Dollars." And again, it bears the signature of the undersigned counsel for Rep. Brawley.

The South Carolina Supreme Court has taken up the issue of efforts by one party to elevate form over substance in the very similar context of technical compliance with Rule 7(b) in *Camp v. Camp*, 689 S.E.2d 634, 635, 386 SC 571 (2010). In *Camp*, the Defendant filed a motion for reconsideration that simply said, in its entirety:

> PLEASE be advised that the Defendant through his undersigned attorney, will move before the Honorable David Sawyer, Jr., to reconsider the ruling in his Order dated July 26, 2006, in awarding Plaintiff, William James Camp's college expenses and costs.

Id. Addressing specifically whether this "motion" met the particularity requirements of Rule 7(b), the *Camp* Court held that it did, reasoning:

> Applying an overly technical analysis in this instance would not reduce prejudice

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> to either party nor would it assure the court that it would be able to deal with the motion fairly. In our view, neither party was prejudiced by Father's motion for reconsideration, and it appears from the record the court was able to both comprehend the motion and deal with it fairly.

Id. at 636-637. Ultimately, the *Camp* Court concluded: "When neither party is prejudiced and the court is able to deal fairly with a motion for reconsideration, **applying an overly technical reading of the rules does not serve the purpose of Rule 7(b)(1)** SCRCP." *Id.* (emphasis added). *See also Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 189, 801 S.E.2d 401, 404 (Ct. App. 2017) (holding that when a letter contains the same information required by a particular form, the ALC mistakenly elevated form over substance); *Gordon v. Busbee*, 367 S.C. 116, 120-21, 623 S.E.2d 857, 859-60 (Ct. App. 2005) (reversing the circuit court's dismissal of an action for failure to file a specific probate court form when the appellant's filing accomplished precisely what the probate court form required, and to affirm would be to elevate form over substance where the purpose of the form, to provide notice of a claim against the estate, was satisfied.)

Here, the analysis is identical. Rep. Brawley requested attorney's fees in her complaint and repeatedly in open court in this action prior to filing the Affidavit with the Court and the Court and in two written orders the Court held Rep. Brawley **"is entitled to reasonable attorney's fees incurred herein"** and Rep. Brawley is "**still entitled to reasonably[sic] attorney's fees incurred herein**." First Order on the Merits, p. 12, **Exhibit C** (emphasis added); Amended Order, p. 2, **Exhibit E** (emphasis added). Rep. Brawley's Affidavit of Attorney's Fees contained every element required of a motion by Rule 7(b), SCRCP, and Richland Co. timely filed its response to Rep. Brawley's Affidavit without even a hint that it was somehow prejudiced by the lack of a motion. In short, for Richland Co. to even argue that a document that otherwise meets all requirements of a motion under the South Carolina Rules of Civil Procedure, but was not entitled such, deprives Rep. Brawley of attorney's fees provided to her by statute is epitome of arguing form over

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substance and runs counter to South Carolina Supreme Court precedent on the application of Rule 7(b) SCRCP.

b. Rep. Brawley Prevailed on Every Contested Issue, Including Establishing the County's Conduct Repeatedly Violated FOIA and Forcing Richland County to Respond Meaningfully to her Request.

Richland Co. attempts to argue that Rep. Brawley only prevailed on "a fraction of her claims." Frankly, this is laughable, particular when one compares the denials of the Complaint and the numerous defenses stated by Richland Co. in its Answer dated April 27, 2015 to what actually transpired in the course of this case. At the time Rep. Brawley was forced to file her FOIA action, she had received only a six-page response to her FOIA request and, recognizing this was of course incomplete, on March 25, 2015, Rep. Brawley was forced to file the instant lawsuit pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq*. seeking, *inter alia*, the production of all responsive documents to the Loan Documentation FOIA Request and the attorney's fees and costs provided for under the Act. On June 3, 2015, after suit was filed, Defendant produced 55 pages of additional responsive documents. The documents provided were:

a) Application for Assistance dated July 18, 2012;

b) Instructions for the SF-424

c) Budget Information – Construction Programs;

d) Instructions for HUD-424C;

e) Richland Co. Utilities Department - Lower Richland Sewer System - Preliminary Engineering Report - July 2012 – Cost Estimate – Phase I;

f) SC WEP Guide 1 – Processing the Initial Application;

g) Certification of Outstanding Debts dated July 18, 2012;

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- Richland Co. – Ratios of Outstanding Debt by Type – Last Ten Fiscal Years;
- Richland Co. – Direct and Overlapping Governmental Activities Debt– As of June 30, 2011;
- Richland Co. – Legal Debt Margin – Last Ten Fiscal Years;
- Richland Co. – Ratios of General Bonded Debt Outstanding – Last Ten Fiscal Years;

h) Lower Richland Sewer Revenue/Expenditure Projections;

i) Balance Sheet (Governmental Funds; Capital Projects Fund; Water/Sewer Enterprise Fund) and related documents;

j) Lower Richland Water/Sewer – Statement of Net Assets;

k) Hopkins Utility System Enterprise Fund – Statement of Net Assets;

l) Letter dated October 20, 2010 to the United States Department of Agriculture Rural Development from Richland Co.;

m) Memorandum entitled "Richland County for Richland County/Utilities Department" dated February 23, 2007;

n) Memorandum entitled "Information Needed for Organizational Review"

o) Minutes of a Meeting Hopkins Community Water Project – Hopkins Park – Monday 28 August 2006;

p) Letter dated April 12, 2010 to the United States Department of Agriculture Rural Development from South Carolina Budget and Control Board;

q) Memorandum entitled "Lower Richland Community Sewer System Project";

r) Memorandum entitled "Development of a Richland County Owned and Operated Sewer System to Serve Lower Richland County";

s) Lower Richland Sewer – Monthly User Fee and New Customer Connection Rate Comparison;

t) Three (3) USDA Memoranda with Subject referring to "Richland County Utilities Department – Lower Richland County Sewer Project";

(*See* First Order on the Merits; **Exhibit C**; *See* July 16, 2020 Order **Exhibit E**) (Hereinafter "June 2015 Discovery Documents").

Recognizing Richland Co.'s production was still incomplete, in February 2016, nearly a year and a half after the Loan Documentation FOIA Request was originally submitted, Rep. Brawley insisted on the inspection of Richland Co.'s Lower Richland Sewer Project file at Mr. Lindemann's office as part of discovery in this action. *Id.* In reviewing Richland Co.'s files, Rep. Brawley identified roughly 120 pages of unique and relevant documents which Richland Co. refused to produce either originally or as a part of the June 2015 Discovery Documents. *Id.* The newly discovered documents Rep. Brawley found included the following:

a) "New" Application for Federal Assistance SF-424 for Sewer System Improvements, Hopkins Service Area;

b) "New" Application for Federal Assistance for Sewer System Improvements, Hopkins Service Area dated July 18, 2012;

c) "Continuation" Application for Federal Assistance SF-424 for project affecting "Hopkins Community, Lower Richland Community, Town of Eastover";

d) "New" Construction Application for Federal Assistance for Lower Richland County Sewer System, that included (i) Budget Information – Construction Programs, (ii) Certification Regarding Debarment, Suspension, and Other Responsibility Matters, and (iii) Certification of Outstanding Debts;

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e) "Continuation" Non-Construction Application for Federal Assistance for Sewer System Improvements for Hopkins Community, that included Budget Information – Construction Programs dated March 16, 2010;

f) Letter of Transmittal dated June 7, 2010 from Wilbur Smith indicating sending (i) Environmental Assessment for USDA (client copy); (ii) HUD Modified Environmental Assessment (client copy), among other items;

g) South Carolina Rural Infrastructure Authority Grant Checklist;

h) Letter from the USDA to Richland Co. dated January 5, 2011 providing comments to the revised "PER dated July 2012";

i) Letter from the USDA to Richland Co. dated August 2, 2012 providing comments to the revised "PER dated July 10";

j) Letter from the USDA to Richland Co. dated January 30, 2013, 21 pages in total, providing conditions which Richland Co. "must understand and agree to before further consideration may be given to [Richland Co.'s] application.";

k) Letter from Richland Co. to the USDA dated February 4, 2014 confirming Richland Co. is moving forward with the sewer project and is working to meet all "items contained in the Letter of Conditions dated January 30, 2013";

Id.

Thereafter, Rep. Brawley was never offered <u>any</u> reimbursement of the attorney's fees and costs she had incurred to obtain the documentation this course has now repeatedly determined were both in Richland Co.'s possession and should have been produced to Rep. Brawley in response to her FOIA. Instead, Rep. Brawley was forced to try the case and forced to prove, and did prove:

a) That Rep. Brawley's FOIA application was sufficiently specific that Richland Co.

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knew or should have known that the documents she subsequently discovered after filing suit were responsive to her request;

b) That Richland Co. failed to undertake a reasonable search to locate responsive documents;

c) That, at most, Richland Co. undertook "minimal efforts" to locate said documents;

d) That Richland Co.'s violation of FOIA was more than "a mere technical error;"

e) That Richland Co. understood numerous other documents were related to the Rep. Brawley's FOIA application;

f) That Richland Co. possessed the additional responsive documents at the time it failed to produce them to Rep. Brawley in response to her FOIA application; and

g) That as a matter of law in South Carolina a public body, at a minimum, must undertake reasonable investigative measures to provide requested public records.

These failures by Richland County to respond to Representative Brawley's FOIA request, and further recalcitrance to simply own that failure and forthrightly resolve it, resulted in the attorney's fees currently proffered to the Court, as outlined in Representative Brawley's Affidavit of Attorney's Fees.

c. Rep. Brawley's Affidavit Sufficiently Describes the work Completed and the Basis for her Award of Attorney's Fees

Finally, Richland Co. contends that Rep. Brawley's Affidavit of Attorney's fees does not sufficiently set forth information by which this Court may evaluate the reasonableness of her claim. This is simply false. The Affidavit sets forth the following 23 categories of representation by the undersigned of Rep. Brawley in this action:

a) Meeting with Client on Multiple Occasions to Assess Possible FOIA Action;

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b) Reviewing Document History and FOIA Requests filed with Richland Co.;

c) Conducting Legal Research Regarding FOIA Actions in South Carolina;

d) Assessing the Merits and Potential Success of FOIA Action;

e) Drafting and Filing of the Summons and Complaint;

f) Serving of the Summons and Complaint on Richland Co., South Carolina;

g) Reviewing and Assessing Richland Co., South Carolina's Responsive Pleading, Defenses Raised and its Motion to Dismiss;

h) Attend hearing on Defendant's Motion to Dismiss Complaint;

i) Handling All Correspondence Between Counsel for Defendant and Plaintiff for Duration of Case;

j) Conducting Written Discovery Between Parties, Including the Review of Thousands of Documents Made Available by Richland Co. in Response to Discovery Requests;

k) Preparing Motions to Compel Written Discovery;

l) Preparing Documents in Opposition to Defendant's Motion for Summary Judgment;

m) Preparing for and Appearing to Defend Defendant's Motion for Summary Judgment;

n) Preparing for and Attending Mediation of Case;

o) Preparing Extremely Lengthy Post-Mediation Proposed Settlement Documents;

p) Attending Numerous Status Conferences with Court;

q) Preparing All Trial Documents, Including Trial Brief, Witness Subpoenas and Trial Exhibits;

r) Meeting and Conferring with Trial Witness Prior to Trial;

s) Reviewing All Documents, Pleadings, Discovery and Motions in Preparation for Trial;

t) Conducting Legal Research Regarding All Matters Relevant to Trial

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u) Conducting Trial of Case;

v) Preparing Lengthy Proposed Order on the Merits, Including Legal Research as to All Issues of Law Raised at Trial; and

w) Reviewing and Assessing Defendant's Proposed Order on the Merits, the Court's Order on the Merits, the Defendant's Post Judgment Motions, and the Court Subsequent Amended Order;

Further, the Affidavit provides the application of each of the six (6) *Deeds* factors used in determining the reasonableness of the attorney's fee claim, as well as providing that Rep. Brawley's attorneys and paralegals recorded more than 305 billable hours of time in prevailing over Richland Co. in her FOIA action. Each of the above 23 described categories of representation, and the 305 billable hours Representative Brawley's attorneys devoted to this case resulted in the successful outcome outlined above, all of which would have been absolutely unnecessary had Richland County simply complied with FOIA. Therefore, in light of Rep. Brawley's success on the merits and for the reasons stated in this court's Orders, the Affidavit, and herein, Rep. Brawley respectfully requests an award of reasonable attorneys' fees and costs against Richland Co.

s/ Jenkins M. Mann
Jenkins M. Mann (SC Bar No: 74894)
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ATTORNEYS FOR PLAINTIFF

October 19, 2020

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STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Wendy Brawley,	)	
	)	Civil Action No. 2015-CP-40-1805
Plaintiff,	)	
	)	
v.	)	**NOTICE OF MOTION AND MOTION TO ALTER OR AMEND ORDER**
	)	
Richland County, South Carolina,	)	
	)	
Defendant.	)	
	)	

TO: THE HONORABLE DEANDREA GIST BENJAMIN

JENKINS M. MANN AND SHAUN C. BLAKE, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Richland County will move before the Honorable DeAndrea Gist Benjamin at such time and place as may be set by the Court, for an Order, pursuant to Rule 52(b) and Rule 59(e), SCRCP, altering, amending, and reconsidering the Order Awarding Plaintiff Attorney's Fees and Costs filed on November 30, 2020.

The Defendant Richland County's counsel received written notice of entry of the Order Awarding Plaintiff Attorney's Fees and Costs filed on November 30, 2020.

The Defendant Richland County's motion is based on the following grounds:

1. In its Order Awarding Plaintiff Attorney's Fees and Costs, the Court failed to fully consider and address the subject matter jurisdiction issue raised by the Defendant County. In a conclusory manner, the Court states that it retained jurisdiction until the attorney's fees and costs were determined. But the Court does not consider or address the precedents from our

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appellate courts that state otherwise. Specifically, the South Carolina Supreme Court has held that "[g]enerally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." *Russell v. Wachovia Bank*, N.A., 370 S.C. 5, 633 S.E.2d 722, 730 (2006). Both appellate courts have consistently held that a motion for attorney's fees is a post-trial motion and must be filed within ten days of the entry of final judgment. *See e.g.*, *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014); *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 570 S.E.2d 187 (Ct. App. 2002).[1] As the Court of Appeals explained in *Pitman*, "[a]bsent specific statutory language vesting the trial judge with continuing jurisdiction, we refuse to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days after entry of the judgment. Such an interpretation would run counter to our established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." 570 S.E.2d at 190. *See also, Rutland v. Holler, Dennis, Corbett, Ormond, & Garner*, 371 S.C. 91, 637 S.E.2d 316, 319 (Ct. App. 2006) ("because a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCP, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment"). Importantly, the FOIA does not vest the trial judge with continuing jurisdiction. *See*, S.C. Code Ann. § 30-4-100(b). Moreover, it is well settled that the ten-day deadline for filing post-trial motions is an "absolute deadline" and is not subject to extension by the trial court. *Overland, Inc. v. Nance*, 423 S.C. 253, 815 S.E.2d 431, 433 (2018).

In this case, this Court entered final judgment in favor of Wendy Brawley on February 13, 2020. Thus, Brawley had ten days, or until February 24, 2020, to file a motion for attorney's fees. She did not do so. Richland County did file a timely Rule 52(b) and Rule 59(e) motion

[1] This is also consistent with Rule 54(d), SCRCP, which includes a ten-day limit for filing a motion for costs.

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which allowed this Court to continue to exercise jurisdiction *over that post-trial motion and only until that motion was decided*. However, once that motion was decided by this Court on July 16, 2020, the Court's jurisdiction ended. As the Court of Appeals has held, "a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." *Pitman*, 570 S.E.2d at 190. That occurred by July 16, 2020, and in fact, that is the date on which the thirty days for filing an appeal began to run -- which is further indication that that is the date on which this Court was necessarily divested of jurisdiction. To repeat, by July 16, 2020, Brawley had filed no motion for attorney's fees. Her lawyer filed an Affidavit as to Attorney's Fees and Costs on July 27, 2020, but by that time this Court had lost its jurisdiction.

2. In its Order Awarding Plaintiff Attorney's Fees and Costs, the Court awards $81,264.96 in attorney's fees and costs. However, the Court provides no fact-finding or explanation as to how that amount was determined. Also, the Court does not even differentiate between fees awarded and costs awarded. Thus, it is impossible to determine whether the costs awarded are properly taxed under Rule 54, SCRCP.

3. In its Order Awarding Plaintiff Attorney's Fees and Costs, the Court failed to consider or address that the Plaintiff did not fully prevail on all of her FOIA claims. The record is undisputed that the Plaintiff only prevailed in part. The Plaintiff did not prevail on her injunctive relief claim, including her attempt to use FOIA to enjoin the County from proceeding with the planning and construction of the Lower Richland Sewer Project. That claim was soundly rejected by Judge Clifton Newman when he granted the County's Motion to Dismiss. Additionally, the litigation challenged the County's responses to four different FOIA requests. The record is clear that the County prevailed at summary judgment on three of the four FOIA claims. In sum, the Plaintiff was not the prevailing party on the *entirety of her injunctive relief*

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claim and on 75% of her declaratory judgment claim. While that may qualify the Plaintiff as a prevailing party, that relief obtained -- particularly when compared to the relief actually sought when the Complaint was filed -- was extremely minimal. Yet, the Court did not address this issue at all and did not give any consideration to the fact that the Plaintiff did not prevail on much of her lawsuit. In refusing to even consider or address this issue, the Court has abused its discretion. Moreover, the Court erred in failing to discount any of the claimed attorney's fees and costs for work done on the Plaintiff's unsuccessful claims, which is also an abuse of discretion.

4. The Court failed to consider or address any of the issues raised by the Defendant County in the Objections to Plaintiff's Billing Records filed November 20, 2020. There is no mention of any of those objections or issues in the Court's Order. In particular, the County objected to the Court's *sua sponte* request for the Plaintiff to supplement the evidentiary record with the Plaintiff's counsel's billing records, where the Court *sua sponte* re-opened the record to accept additional evidence that the Plaintiff, who bears the burden of proof, refused to submit into the evidentiary record when it had the proper opportunity.[2] Nonetheless, as the County explained in its objections, the Court, as an impartial arbiter, should not make evidentiary decisions for the parties. Under our adversarial system, the parties -- not the Court -- make the decisions as to what evidence to present.

Moreover, at the close of the hearing held on November 9, 2020, the County stated an objection on the record to any re-opening of the evidentiary record, and the Court indicated that it was taking under advisement any ruling on the admission of the new evidence. The Court indicated that it would state its ruling on the admissibility of the billing records. However, in its Order

[2] Without offering any explanation for doing so, the Court even made those billing records an attachment to the Court's Order filed November 30, 2020.

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Awarding Plaintiff Attorney's Fees and Costs, the Court fails to make any such evidentiary ruling and specifically fails to address the objections raised by the County. In addition to arguing that the *sua sponte* re-opening of the evidentiary record to aid the Plaintiff was a violation of the Court's role as an impartial arbiter who should not make evidentiary decisions in aid of one party and to the detriment of another, the County also asserted an evidentiary objection on the basis that the Plaintiff submitted the billing records without any affidavit to authenticate the records or to provide an appropriate foundation for their admissibility. The Court did not consider or address any of those evidentiary objections -- despite advising the parties that the admissibility of the billing records was taken under advisement at the hearing.

5. To reiterate, the Court failed to consider or address any of the issues or specific objections to the billing entries raised in the Objections to Plaintiff's Billing Records filed by the Defendant County on November 20, 2020. The Court fails to explain what billing entries are awarded and why. Similarly, the Court fails to explain what costs are awarded and why. The billing records clearly include entries for work on the injunctive relief claims on which the County prevailed, including time spent defending the Defendant's motion to dismiss and attending that hearing on August 10, 2015. The Plaintiff did not prevail on those issues and should not recover the attorney's fees or costs associated therewith. Additionally, a review of the billing entries that pre-date the August 10, 2015 hearing reflect that the vast majority of the fees incurred were for meetings with members of the dismissed Plaintiff Hopkins and Lower Richland Citizens United, Inc. ("HLRCU") (see March 23, 2015 entry), meetings with other Lower Richland citizens who are not parties to this litigation (numerous entries in March and April 2015); preparation for such meetings including review of documents unrelated to the FOIA requests (see March 3, 2015 entry), preparation of a motion for preliminary injunction that was never filed and

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likely was not FOIA-related (see May 22, 2015 entry), reviewing and responding to "surveys" which is not FOIA-related, and a conference with a Sarah Ellis (perhaps of the *The State* newspaper) regarding "article on disagreement" (see March 27, 2015 entry), to name just a few specific examples. The Defendant objected to all time entries prior to August 10, 2015, that do not relate directly to the filing of the Complaint, and even the time for the preparation of the Complaint should be allocated between the one FOIA request on which the Plaintiff prevailed and the injunctive claims and three FOIA requests on which she did not prevail. The Court failed to consider or address any of these points. Similarly, the billing records include time entries related to the Defendant's motion for summary judgment that should have been closely scrutinized and an appropriate allocation and deductions should have been made for the three FOIA requests on which the Defendant prevailed at summary judgment. That was not considered or addressed by the Court.

6. The Defendant County also argued that S.C. Code Ann. § 30-4-100(b) allows for the recovery of attorney's fees. The rule does not provide for the recovery of fees charged for paralegals or other staff. The Plaintiff made no attempt to delete the time entries of non-attorneys whose fees are not awardable. The Court made no affirmative ruling that it was or was not including the billable time claimed for paralegals or other staff.[3] The Court just awarded a flat sum of $81,264.96 without offering any evidentiary explanation for that amount, including no discussion as to whether non-lawyer time may be awarded under S.C. Code Ann. § 30-4-100(b). The Court is respectfully requested to address this issue of law and to delete from its award any fees charged by non-lawyer personnel.

[3] The billing records as submitted fail to identify the persons who performed the work for each time entry. There are numerous different persons identified by initials only. The Plaintiff has not identified those persons by name or distinguished whether they are attorneys or paralegals or legal assistants or some other non-professional staff members.

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7. In reference to the billing records, the Defendant County also raised objections because many examples of time entries that are simply not reasonable. The Court did not consider or address those objections. As the County pointed out as prime examples, the Plaintiff is claiming thirty minutes (0.5) for electronically filing a trial brief -- not writing it but rather filing it which the Court know takes literally a couple of minutes. (See September 4, 2019 entry). The Plaintiff is claiming fees for repeatedly issuing and re-issuing the same trial subpoenas, the latter versions requiring only a change of date to a previous version of the same subpoenas. (See December 28, 2016, October 9, 2017, April 17, 2018, August 20, 2018, and November 16, 2018 entries).

8. There is no indication that the Court did any careful review of the billing records and the time entries contained therein. In a conclusory fashion, the Court declares that the attorney's fees and costs as claimed are "fair and reasonable." In the affidavit submitted, the Plaintiff claimed in a conclusory manner that "approximately 305 billable hours" were expended, and it is presumed that the Court awarded just that -- 305 billable hours. However, a simple accounting from the billing records shows that the Plaintiff's counsel had not incurred 305 hours at the time that affidavit was prepared and submitted on July 27, 2020. The billing records reflect less than that number of hours. Thus, even if the Court's intent was to award precisely what the Plaintiff was claiming through July 27, 2020 -- which is unknown because the Order does not specify -- the Court awarded fees in excess of what even the billing records show.

9. In its Order Awarding Plaintiff Attorney's Fees and Costs, the Court mandated that the Defendant County pay the award of $81,264.96 in attorney's fees and costs within 90 days of the date of the Order. The Court, however, has no authority under FOIA or any other statutory authority to place a time limitation on the County's payment. Instead, the award should be entered as a judgment and should be treated as any other judgment is treated under South

Carolina law. Moreover, the Court has no authority to circumvent the County's ability to appeal that judgment by placing a time limitation on the County's ability to satisfy the judgment. That time-payable provision in the Order is an abuse of discretion and respectfully should be stricken.

The Defendant Richland County's motion is based upon the pleadings filed in this case; the trial transcript and exhibits; the rules of court; and such other matters as may be properly presented to the Court.

LINDEMANN & DAVIS, P.A.

BY: *s/ Andrew F. Lindemann*

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December 10, 2020

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	
Wendy Brawley,	)	
	)	Civil Action No. 2015-CP-40-1805
Plaintiff,	)	
	)	
v.	)	**MEMORANDUM OPPOSING AWARD OF ATTORNEY'S FEES AND COSTS**
	)	
Richland County, South Carolina,	)	
	)	
Defendant.	)	
	)	

The Plaintiff Wendy Brawley brought this action pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq*.[1] The Plaintiff presented four separate FOIA requests to the Defendant Richland County at the meeting of Richland County Council held on the evening of September 9, 2014. The Plaintiff was sent correspondence regarding her FOIA requests on September 12, 2014 and October 1, 2014. Thereafter, by letter dated October 3, 2014, the Defendant provided a response to three of the four FOIA requests, and by letter dated October 8, 2014, the Defendant provided a response to the fourth FOIA request.

The remainder of the procedural history of the case -- which is critical to a proper examination of attorney's fees that may be properly claimed and awarded -- is discussed below. As also addressed below, there is not a proper or timely motion that has been filed. In fact, there is no motion before the Court. For all of the reasons discussed below, the Defendant Richland County opposes any award of attorney's fees and costs.

[1] A second Plaintiff -- Hopkins and Lower Richland Citizens United, Inc. -- was dismissed for lack of standing by Order filed October 24, 2016.

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LEGAL ANALYSIS

I. This Court no longer has subject matter jurisdiction to consider the Plaintiff's attorney's fees affidavit filed on July 27, 2020, or to make any award of attorney's fees and costs.

The Plaintiff's affidavit for attorney's fees and costs is untimely and procedurally improper. The Court currently lacks subject matter jurisdiction to award any such relief. By Order filed February 13, 2020, this Court entered a final judgment in favor of the Plaintiff. In that Order, the Court ruled that the Plaintiff "is entitled to reasonable attorney's fees incurred herein" and directed the Plaintiff "to submit a schedule of fees ***and a motion*** to support the amount of the fees and costs incurred herein." *See*, Order filed February 13, 2020, p. 12. (Emphasis added). The Plaintiff, by law, had ten days, or until February 24, 2020, in which to file a motion for attorney's fees and costs as directed by the Court. The Plaintiff has never filed a motion and did not even file the affidavit of her lawyer until July 27, 2020. By that date, this Court had lost subject matter jurisdiction, and therefore, now lacks the jurisdiction to make an award of any attorney's fees and costs.

The South Carolina Supreme Court has held that "[g]enerally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." *Russell v. Wachovia Bank*, N.A., 370 S.C. 5, 633 S.E.2d 722, 730 (2006). The appellate courts have consistently held that a motion for attorney's fees is a post-trial motion and must be filed within ten days of the entry of final judgment. *See e.g., Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014); *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 570 S.E.2d 187 (Ct. App. 2002). As the Court of Appeals has made clear, "established case law" holds "that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." *Pitman*, 570 S.E.2d at 190.

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Although this Court did not set a ten-day deadline in its Order for the Plaintiff to file a motion for attorney's fees, that deadline is set by rule and, like any other jurisdictional requirement, cannot be enlarged by the Court for any reason. The Plaintiff should have been aware of the foregoing case law as well as Rule 54(d), SCRCP, which includes a ten-day limit for filing a motion for costs.

In this case, the Court entered final judgment in favor of the Plaintiff on February 13, 2020. Thus, the Plaintiff had ten days, or until February 24, 2020, to file a motion for attorney's fees. The Defendant did file a timely Rule 52(b) motion which allowed this Court to continue to exercise jurisdiction until that post-trial motion was decided. However, that motion was decided by the Court on July 16, 2020, and it was on that date that this Court no longer had subject matter jurisdiction over this case. As the Court of Appeals has held, "a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." *Pitman,* 570 S.E.2d at 190. That occurred on July 16, 2020, and in fact, that is the date on which the thirty days for filing an appeal began to run. Here, the Plaintiff did not file an affidavit of her lawyer -- but not even a motion as required by the Court -- until July 27, 2020, but that was too late. This Court had lost jurisdiction by then. For this reason, the Court has no choice but to deny the request made for attorney's fees and costs.[2]

II. Even if the Court has jurisdiction to award attorney's fees and costs, the Plaintiff prevailed, at most, on only a fraction of the claims pled in her Complaint and received none of the relief that she actually sought in her Complaint.

In the event the Court determines that jurisdiction exists and the absence of a timely post-trial motion for attorney's fees is not fatal, the Defendant submits that the Plaintiff has failed to

[2] The Court may also deny the request for attorney's fees because the Plaintiff never even filed a motion as required by the Court's order or by Rule 54(d), SCRCP. The Plaintiff only filed an unsupported affidavit. In short, there was no post-trial motion even filed, let alone a timely one.

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present sufficient evidence by which this Court could even make a fair determination of reasonable attorney's fees. Section 15-78-100(b) of the Freedom of Information Act governs a discretionary award of attorney's fees:

> If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. ***If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof***.

S.C. Code Ann. § 30-4-100(b). As the highlighted language indicates, a court must initially determine whether the party seeking attorney's fees qualifies as a prevailing party, and if so, then the court must determine the extent to which the party prevailed.

That is critically important in this case as borne out by the procedural history of the case. The Plaintiffs brought this FOIA action in an attempt to enjoin the Lower Richland Sewer Project. In their Complaint, the Plaintiffs sought the following temporary and permanent injunctive relief:

> a. Enjoining Defendant from sending surveys to residents that make any representation that Richland County will provide all residents that reside within 200 feet of the proposed Phase I sewer line a full waiver of tap or connection fees;
>
> b. Enjoining Defendant from entering into negotiations with residents of Hopkins and Lower Richland for the acquisition of easements; and
>
> c. Enjoining Defendant from providing third reading to the Lower Richland Sewer Project.

See, Complaint, ¶ 40. As Judge Clifton Newman agreed, the injunctive relief as sought by the Plaintiffs is not relief contemplated or allowed under FOIA. Judge Newman granted the Defendant's motion to dismiss *in toto* by Order entered August 14, 2015. *Noticeably absent in the Complaint is any claim for injunctive relief seeking the documents that the Plaintiffs contend have not been provided by the Defendant.* Initially, in its Order entered February 13, 2020, this Court granted such injunctive relief despite it never being sought in the Complaint, but that was

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corrected in the Order entered on July 16, 2020, where this Court "remove[d] the injunctive relief requiring Richland County to provide the documents to the Plaintiff." *See*, Order filed July 16, 2020, p. 2.

S.C. Code Ann. § 30-4-100(a) allows a court to issue "a declaratory judgment and injunctive relief to enforce the provisions of this chapter."[3] Therefore, the available relief is limited to the enforcement of the provisions of FOIA. Based upon existing precedent, a court may presumably invalidate an ordinance that was enacted in violation of FOIA's open meeting requirements or order the disclosure of public records that are not exempt from disclosure and have been wrongfully withheld. However, in this case, the Plaintiffs sought injunctive relief that does not enforce the provisions of FOIA and which is much broader than the relief contemplated or allowed under S.C. Code Ann. § 30-4-100(a). Therefore, it is clear that the Plaintiff's claims for injunctive relief -- which was the heart of this litigation -- were denied in August 2015. The Defendant thus prevailed *in toto* on the injunctive relief claims.

That left *only* the declaratory relief claims for further adjudication. Those claims involved four separate and distinct FOIA requests. In those four requests, the Plaintiff sought documents as follows:

> (1) a copy of the minutes from the Richland County Council meeting when funds were approved by Council for waivers of tap on fees for the Lower Richland Sewer Project;
>
> (2) a copy of the minutes from Richland County Council's meeting when the Council gave Third Reading Approval for the Lower Richland Sewer Project;

[3] The Court is respectfully reminded that this case is controlled by the Freedom of Information Act as it was codified in 2014, which was prior to the significant amendments to FOIA as adopted as part of 2017 Act No. 67, which became effective on May 19, 2017. In its Order filed February 13, 2020, this Court correctly applied the pre-2017 version of FOIA, as noted in footnote #1 of that Order. However, in its Order filed July 16, 2020, the Court erroneously applied the 2017 version of the Act in unfairly criticizing the Defendant for failing to utilize the new provisions of S.C. Code Ann. § 30-4-110(a), which were not even in existence in 2014. *See*, Order filed July 16, 2020, p. 4.

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(3) a copy of Richland County's USDA Rural Development Application for Loan and Grant Funding Lower Richland Sewer Project; and

(4) a copy of Richland County's MOU with City of Columbia regarding the sewer services agreement.

See, Complaint, Ex. 1. Those four FOIA claims were considered by Judge Clifton Newman on the Defendant's motion for summary judgment which was heard on August 23, 2016. As Judge Newman found:

> At the commencement of the hearing, counsel for the Plaintiffs conceded that the County fully responded to three of the four FOIA requests, specifically the request seeking a copy of the minutes from the Richland County Council meeting when funds were approved by Council for waivers of tap on fees for the Lower Richland Sewer Project, the request seeking a copy of the minutes from Richland County Council's meeting when the Council gave Third Reading Approval for the Lower Richland Sewer Project, and the request seeking a copy of Richland County's MOU with City of Columbia regarding the sewer services agreement. As a result, summary judgment is granted to the Defendant Richland County with respect to those three FOIA requests.

See, Order filed October 24, 2016, p. 2.

Thus, Judge Newman granted summary judgment on three of the four FOIA claims at issue. In fact, the Plaintiff conceded on those three claims after well over a year of litigation. Thus, the Plaintiff was not the prevailing party on the *entirety of her injunctive relief claim* and on 75% of her declaratory judgment claim. While that may qualify the Plaintiff as a prevailing party, that relief obtained -- particularly when compared to the relief actually sought when the Complaint was filed -- was ***extremely minimal***.[4]

[4] Recall also that the Defendant successfully obtained the dismissal of the Plaintiff Hopkins and Lower Richland Citizens United, Inc. Although not addressed in the Plaintiff's counsel's affidavit, there were obviously attorney's fees and costs expended in representing that Plaintiff as well through October 2016.

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The Court should also factor in the fact that the Court, in issuing the February 13, 2020 Order, substantially altered the nature of the case and, in essence, decided a case that was never even brought. In essence, the Plaintiff is claiming to have won a claim that was never pled. In its February 13, 2020 Order, the Court made a declaration that the Defendant failed "to conduct a reasonable investigation to obtain and/or locate all relevant documents." *See*, Order filed February 13, 2020, p. 12. In its Rule 52(b) motion, the County pointed out that "[t]he Court overlooked that such a claim was not pled by the Plaintiff in her Complaint and thus was not an issue or claim for the Court to consider or adjudicate." In its Order entered July 16, 2020, the Court still disregarded what was actually pled and still did not comment on this point. However, for purposes of determining the extent that the Plaintiff prevailed, this point should not continue to be disregarded. This claim of an "unreasonable or inadequate investigation" was never pled and should never have been decided by the Court. It is contrary to the basic precepts of due process and the FOIA itself to award attorney's fee to a plaintiff on a claim that was never even brought.

Therefore, the Court is urged to closely examine the "relief" that was awarded in this case. The Plaintiff lost on three out of four FOIA claims at issue. She lost completely on her claims for injunctive relief -- which was the real purpose for bringing this action, i.e. to stop the Lower Richland Sewer Project. She prevailed only on a declaratory relief claim that, in fairness, was never even pled. This is not the type of case where the taxpayers should be required to pay attorney's fees -- and certainly not in excess of $80,000. The Court is respectfully requested to deny all attorney's fees and costs, which is well within its discretion per the language of S.C. Code Ann. § 30-4-100(b). However, in the alternative, the Court, if it awards attorney's fees, that award should be minimal and reflect that the Plaintiff lost on the *vast majority* of the case that she brought in her Complaint.

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III. The Court should further find that the Plaintiff has failed to provide the necessary support for any award of reasonable attorney's fees and costs. The Plaintiff failed to file a motion as directed by the Court, but even the untimely affidavit that was filed provides the Court and the opposing litigant with no information from which a fair, just, and reasonable determination of attorney's fees and costs may even be made.

In addition, even if this Court is inclined to award attorney's fees, the Court has not been provided sufficient information to address the required factors or, more importantly, to make an assessment of the reasonableness of the attorney's fees sought in the affidavit filed by Plaintiff's counsel. In *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004), which was a FOIA case, the Court of Appeals explained:

> There are six factors for the trial court to consider when determining an award of attorney's fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Upon request for attorneys fees that are authorized by contract or statute, the trial court should make specific findings of fact on the record for each of these factors.

594 S.E.2d at 898.

In addition, S.C. Code Ann. § 30-4-100(b) requires that a prevailing party may only be awarded "reasonable attorney's fees." This is also consistent with the Court's Order finding that the Plaintiff "is entitled to *reasonable attorney's fees* incurred herein." *See*, Order filed February 13, 2020, p. 12. (Emphasis added).

However, in order to make a determination of reasonableness of the attorney's fees, the Court needs to have contemporaneous billing records, which have not been submitted. Moreover, to determine what attorney's fees were expended on issues or claims on which the Plaintiff did not prevail, the Court needs contemporaneous billing records, which have not been submitted.

The Defendant submits that the attorney's fees opinions of the United States Supreme Court, while possible not controlling in state court, should provide this Court with compelling authority in

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evaluating what a court should require to assess the reasonableness of attorney's fees being claimed by a prevailing party. Specifically, in the leading case of *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the United States Supreme Court explained that "the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." 461 U.S. at 437. "Where documentation of hours is inadequate, the district court may reduce the award accordingly." 461 U.S. at 433. In addition, the Supreme Court instructs courts to exclude "hours that were not reasonably expended." 461 U.S. at 434. The *Hensley* Court further held that "[t]he applicant should exercise 'billing judgment' with respect to hours worked and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims." 461 U.S. at 437. Elaborating on the concept of "billing judgment," the Supreme Court explained:

> Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. In the private sector, "billing judgment" is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority.

461 U.S. at 434. (Citation omitted). Thus, as *Hensley* teaches, "fee claimants must submit documentation that reflects 'reliable contemporaneous recordation of time spent on legal tasks that are described with reasonable particularity,' sufficient to permit the court to weigh the hours claimed and exclude hours that were not 'reasonably expended.'" *Guidry v. Clare*, 442 F.Supp.2d 282, 294 (E.D. Va. 2006), citing *Hensley*, 461 U.S. at 433. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley*, 461 U.S. at 433.

Here, the Plaintiff has not sustained her burden of proving to this Court that attorney's fees in the amount of $78,400 are reasonable. In fact, not only does the absence of billing records make it impossible for the Court to determine reasonableness, it also violates the Defendant's rights to due

process. Based on the affidavit of Plaintiff's counsel alone, which is naturally self-serving, the Defendant has been denied any ability to make an independent assessment of the attorney's fees claimed. Because the affidavit is purely conclusory in stating that "approximately 305 billable hours" was expended, the Defendant cannot assess and comment on whether the hours were reasonable, whether the work performed was reasonable and necessary, and most importantly, whether the hours were expended on claims on which the Plaintiff actually prevailed -- as opposed to all the claims on which the Plaintiff lost.[5] Thus, because the Plaintiff has failed to meet its burden of presenting sufficient evidence for the Court to make a fair, just, and reasonable award of attorney's fees, the Plaintiff's affidavit (recall there is no motion to grant or deny) should be rejected.

The same is true as to the Plaintiff's request for costs of $2,864.96. The Plaintiff made no attempt to comply with Rule 54(d), SCACR. There is no itemized list of costs, with accompanying receipts, to show this Court for what the $2,864.96 was spent. The affidavit simply says the expenses were for "filings fees, service of process fees, postage, and transcript costs." Not all of those items qualify as taxable costs under Rule 54(e), SCRCP. Again, the failure to provide the Court with the proper showing of costs claimed should result in a denial of that claim as well.

[5] The Plaintiff has also failed to provide the Court with a copy of the fee agreement that will show the hourly rate or other arrangement that was agreed upon with the Plaintiff.

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CONCLUSION

Based on the foregoing, the Court is respectfully requested to reject the Plaintiff's request for attorney's fees and costs totaling $81,264.96. The Court lacks subject matter jurisdiction to award those attorney's fees and costs, and there has been no motion even filed seeking this relief. But even if the Court reaches the merits, the Plaintiff has simply not carried her burden of proving what a reasonable amount of attorney's fees and costs may be given the *very limited degree of success* that she actually achieved in this litigation.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES, P.A.

BY: *s/ Andrew F. Lindemann*

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August 11, 2020

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	
Wendy Brawley,	)	Civil Action No. 2015-CP-40-1805
Plaintiff,	)	
v.	)	**DEFENDANT'S OBJECTIONS TO PLAINTIFF'S BILLING RECORDS**
Richland County, South Carolina,	)	
Defendant.	)	

At the hearing held on November 9, 2020, the Court requested that the Plaintiff Wendy Brawley provide the Court with copies of her attorneys' billing records within five days after the hearing and after the close of the evidentiary record on the Plaintiff's request for attorney's fees. The Defendant Richland County stated an objection on the record to any re-opening of the evidentiary record, and the Court indicated that it was taking under advisement any ruling on the admission of the new evidence. The Court also allowed the Defendant to state its objections in writing after receipt of the billing records.

The Defendant Richland County submits the following objections to the admission of the billing records submitted to the Court on November 13, 2020:

1. In its Memorandum Opposing Award of Attorneys' Fees and Costs, filed August 11, 2020, the Defendant argued "the Plaintiff has failed to provide the necessary support for any award of reasonable attorney's fees and costs." *See*, Opposition Mem., p. 8. The Defendant explained that "the absence of billing records make it impossible for the Court to determine reasonableness" and "most importantly, whether the hours were expended on claims on which the Plaintiff actually

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prevailed -- as opposed to all the claims on which the plaintiff lost." *See*, Opposition Mem., pp. 9-10. The Plaintiff then filed a reply over two months later on October 19, 2020, and in that reply, the Plaintiff took the position that the Jenkins Mann affidavit (as filed on July 27, 2020) is sufficient for the Court to evaluate the reasonableness of the fees and that the County's position to the contrary is "simply false." *See*, Reply, p. 15. The Plaintiff had the opportunity to supplement the record at that point and failed to do so, confirming her position that the record was sufficient without billing records. Thus, the evidentiary record was closed and, with all due respect to the Court, should remain closed. The Plaintiff took the position that the reasonableness and allocation of the attorney's fees should be determined based on the Mann affidavit alone. If the Court disagrees with the Plaintiff on this point, as it should, it is not the Court's prerogative to take corrective action in favor of the Plaintiff.

In sum, in requesting that the Plaintiff supplement the evidentiary record with billing records, the Court has *sua sponte* re-opened the record to accept additional evidence that the Plaintiff, who bears the burden of proof, refused to submit. The Court, as an impartial arbiter, should not make evidentiary decisions for the parties. Under our adversarial system, the parties -- not the Court -- make the decisions as to what evidence to present. The Court should remain neutral, particularly in a scenario as here where the Court is also the factfinder. There was no motion made by the Plaintiff to re-open and supplement the record. Instead, at the hearing's close, the Court *sua sponte* requested the billing records to be submitted. If those billing records are now admitted into evidence and considered by the Court, that will respectfully take the Court beyond its role as an impartial arbiter in contravention of our adversarial system. The Plaintiff had the opportunity to present the billing records as evidence before the record was closed and chose not to do so -- while affirmatively arguing that the Defendant's position is "simply false." The Court

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should not make evidentiary decisions for a party which favor one side and are to the detriment to the other. The granting or denial of attorney's fees simply do not rise to the level of a miscarriage of justice mandating the Court to intercede. To the contrary, there is no authority in South Carolina jurisprudence allowing a court to intervene and upset the adversarial process in this manner.

2. The Plaintiff submitted the billing records without any affidavit authenticating the evidence. The billing records are not self-authenticating. As the Defendant cites in its Opposition Memorandum filed August 11, 2020, the law requires that "fee claimants must submit documentation that reflects 'reliable contemporaneous recordation of time spent on legal tasks that are described with reasonable particularity,' sufficient to permit the court to weigh the hours claimed and exclude hours that were not 'reasonably expended.'" *Guidry v. Clare*, 442 F.Supp.2d 282, 294 (E.D. Va. 2006), citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The Plaintiff submitted billing records without any affidavit to authenticate the records or to provide an appropriate foundation for their admissibility. The Plaintiff presents no explanation as to whether those records were contemporaneous or prepared only in response to the Court's request at the November 9, 2020 hearing. Notably, the time entries and amounts claimed do not match up with the hours and total fees claimed in the Plaintiff's affidavit for attorney's fees and costs filed July 27, 2020. Because the Plaintiff failed to authenticate or lay a proper foundation for the billing records, they should be ruled inadmissible.

3. As reflected in the Complaint, the Plaintiffs, which included the dismissed Hopkins and Lower Richland Citizens United, Inc. ("HLRCU"), were attempting to use this FOIA action as a means to obtain an injunction to stop or at least impede the progress of the Lower Richland Sewer Project. *See*, Complaint, ¶ 40. By Order entered August 14, 2015, Judge Clifton Newman granted the Defendant's motion to dismiss and denied all injunctive relief.

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Nonetheless, the Plaintiff still presents billing records for work on those injunctive relief claims including time spent defending the Defendant's motion to dismiss and attending that hearing on August 10, 2015. The Plaintiff did not prevail on those issues and should not recover the attorney's fees or costs associated therewith. Additionally, a review of the billing entries that pre-date the August 10, 2015 hearing reflect that the vast majority of the fees incurred were for meetings with members of the dismissed Plaintiff HLRCU (see March 23, 2015 entry), meetings with other Lower Richland citizens who are not parties to this litigation (numerous entries in March and April 2015); preparation for such meetings including review of documents unrelated to the FOIA requests (see March 3, 2015 entry), preparation of a motion for preliminary injunction that was never filed and likely was not FOIA-related (see May 22, 2015 entry), reviewing and responding to "surveys" which is not FOIA-related, and a conference with a Sarah Ellis (perhaps of the *The State* newspaper) regarding "article on disagreement" (see March 27, 2015 entry), to name just a few specific examples. The Defendant objects to all time entries prior to August 10, 2015, that do not related directly to the filing of the Complaint, and even the time for the preparation of the Complaint should be allocated between the one FOIA request on which the Plaintiff prevailed and the injunctive claims and three FOIA requests on which she did not prevail.

4. The times entries related to the Defendant's motion for summary judgment should also be closely scrutinized and an appropriate allocation and deductions should be made for the three FOIA requests on which the Defendant prevailed at summary judgment.

5. The billing records as submitted fail to identify the persons who performed the work for each time entry. There are numerous different persons identified by initials only. The Plaintiff has not identified those persons by name or distinguished whether they are attorneys or paralegals or legal assistants or some other staff members. S.C. Code Ann. § 30-4-100(b) allows for the recovery

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of attorney's fees. The rule does not provide for the recovery of fees charged for paralegals or other staff. The Plaintiff has made no attempt to delete the time entries of non-attorneys whose fees are not awardable.

6. There are many examples of time entries that are simply not reasonable. For instance, the Plaintiff is claiming thirty minutes (0.5) for electronically filing a trial brief -- not writing it but rather filing it which the Court know takes literally a couple of minutes. (See September 4, 2019 entry). The Plaintiff is claiming fees for repeatedly issuing and re-issuing the same trial subpoenas, the latter versions requiring only a change of date to a previous version of the same subpoenas. (See December 28, 2016, October 9, 2017, April 17, 2018, August 20, 2018, and November 16, 2018 entries).

7. Starting with the entry on August 17, 2020, the Plaintiff is claiming attorney's fees related solely to appellate matters, specifically the appeal filed by the County and the Plaintiff's cross-appeal, including the preparation of appellate documents, motions, other filings, and appeal-related research. The appeals are still pending. The Plaintiff has not been determined to be the prevailing party on appeal. Moreover, attorney's fees incurred in appellate matters are recoverable only from the appellate courts under Rule 222, SCACR, and are capped by Supreme Court Order dated January 17, 2018. It is improper for the Plaintiff to be claiming appeal-related fees in this Court. Likewise, the costs associated with an appeal, as set forth in Rule 222(b), which includes trial transcript costs and filing fees, are recoverable only from the appellate courts under Rule 222, SCACR. It is improper for the Plaintiff to seek the recovery of costs of $819.75 for a trial transcript and $250 for the filing fee for the Plaintiff's cross-appeal.

Respectfully submitted,

LINDEMANN & DAVIS, P.A.

BY: *s/ Andrew F. Lindemann*

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November 20, 2020

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STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2015-CP-40-1805

Wendy Brawley,
Plaintiff,
vs.
Richland County, South Carolina,
Defendant.

TRANSCRIPT OF RECORD

September 5, 2019
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

A P P E A R A N C E S:

JENKINS M. MANN, ESQ.
SHAUN C. BLAKE, ESQ.
Attorneys for the Plaintiff

ANDREW F. LINDEMANN, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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SEPTEMBER 5, 2019

(WHEREUPON, the hearing began at 9:42 a.m.)

THE COURT: All right. This is the case of 2015-CP-40-1805, Wendy Brawley v. Richland County. And we are here for purposes of a bench trial pursuant to an action brought by the Plaintiff. I believe they were regarding a FOIA request?

MR. LINDEMANN: That's correct.

THE COURT: There were four initially, three were -- summary judgment was granted by Judge Newman.

MR. LINDEMANN: Clifton Newman, yes, ma'am.

THE COURT: And this final one, there was an issue of fact, and so therefore it is scheduled for a date certain this week, is that correct? Well, maybe not a date certain.

MR. LINDEMANN: Not a date certain. It has been on and off the dockets for quite some time. This case is a 2015 case.

THE COURT: All right. So I will be glad to -- just procedurally, if you all want to make some type of opening statement or give me some background, I'll give each one of you an opportunity to do so, and then we'll go ahead and

call your witnesses.

MR. LINDEMANN: That would be great.

THE COURT: Yes, sir. I'm sorry, and for the Plaintiff is Mr. Shaun Blake and Mr. Jenkins Mann?

MR. MANN: That's correct.

THE COURT: And for the Defendant Richland County is Mr. Lindemann, Mr. Andrew Lindemann?

MR. LINDEMANN: Yes. Thank you, Your Honor.

MR. MANN: Good morning, Your Honor. Thank you for hearing us this morning. I'll be very, very brief. I think the trial altogether will be very brief today as well.

We represent Representative Wendy Brawley, who has brought this action, and here today we are here on her individual behalf. The FOIA she brought originally, she was the Plaintiff, and the community, incorporated community that she represents out in Hopkins was the Plaintiff as well, but as Your Honor discussed earlier, Judge Newman removed the LLC as a Plaintiff from this action.

Ms. Brawley, Representative Brawley has been for several years now representing as a community organizer folks out in the Hopkins and Lower Richland area who oppose the county's Lower

Richland Sewer Project, a project to bring water and sewer to the east end of the county. The folks out there don't want it. Ms. Brawley can explain to you more why, but they don't want it. And there is a significant number of them who are opposed to the project.

Representative Brawley has been a spokesperson on their behalf for quite some time. In September of 2014, Ms. Brawley read into the record at a County Council meeting four FOIA requests. Three of them are not at issue today. The fourth, which is at issue today, was a request for all loan applications and supporting documentation submitted to the USDA for grant and loan funding for the project.

The community wanted to see this information because they thought it was germane to their grass roots efforts to resist the sewer project out on the east end of the county and, in fact, it contained information that they believed would help them organize against it and speak out and assert their rights against it.

Approximately 30 days later on October 8th, the county produced six pages in response to a FOIA request, that FOIA request, for all loan

documentation and supporting -- or loan applications and supporting documentation from the county.

Your Honor, it is a moving target to tell you how much this loan and grants are for, but it is tens of millions of dollars. And so when they got this, Representative Brawley and the community realized that of course they did not have the entire loan application or all supporting documentation for it or the grant from the USDA. So they sought counsel. We filed a lawsuit on their behalf on March 25th, I believe it was, of 2015. And that is the action we are here about today.

In June of 2015, approximately two and half months -- June 3rd, 2015, approximately two and a half months after we filed the FOIA action, the county produced an additional 55 pages of documents.

Now, the county has taken the position that those documents were not in their possession at the time of the October -- or the October 8th, 2014, production. We disagree with that assessment. They have also taken the position that that was a complete production of all documents in their

possession that were responsive to that loan application. Of course, we also disagree with that assessment as well.

Your Honor, we are here today asking that the Court issue a declaratory judgment ordering that they produce all responsive documents to Ms. Brawley's September 9, 2014, FOIA request, and that they award her attorney's fees and costs associated with having to bring this action for the production of those same documents.

THE COURT: All right. Yes, sir?

MR. LINDEMANN: May it please the Court? Good morning, Your Honor. Andrew Lindemann, on behalf of Richland County.

Let me give you a little bit additional background information. I agree to disagree with parts of what Mr. Mann just indicated.

Your Honor, this case did originally consist of four FOIA requests that were, as Mr. Mann indicated, read into the record at a County Council meeting. Ultimately, they were turned over in written form to the ombudsman's office the next day, September 10. They were processed. And you will probably hear testimony today as to how those four FOIA requests were processed and ultimately

answered.

The county takes the position that it fully complied with FOIA and responded to those FOIA requests.

Ultimately, Your Honor -- and let me back up to one point. The Plaintiff in this case is Wendy Brawley. And I recognize that since this action was filed she was elected to the General Assembly. Mr. Mann refers to her as Representative Brawley, which obviously that is her position at the current time. I just want to make sure the Court is aware she was not a member of the General Assembly when any of the actions were ongoing in this litigation, and this is not a lawsuit that is brought in her capacity as a representative. She was a private citizen. Mr. Mann made references to a group called the Hopkins and Lower Richland Citizens United, Incorporated. They were originally a Plaintiff in this case. Judge Newman dismissed them as a Plaintiff. So the sole remaining Plaintiff in this case is Wendy Brawley in her personal capacity. So I did want to make that distinction and note it for the record for Your Honor to be aware that.

In addition, Your Honor, as I was indicating,

she made four separate FOIA requests. They were treated as a group by the county. The county ultimately responded to all four of them, first with a letter dated October 1st, 2014, and then provided documents responsive to three of the four on October 3rd, 2014, and documents responsive to the final request, which is the one at issue before Your Honor, on October 8th, 2014.

And, Your Honor, ultimately, the Plaintiff did file suit several months later on March 25th, 2016. The lawsuit was designed, I would submit, if you look at it, it was designed with an injunction relief claim as well as a declaratory relief claim.

What is important for this Court to be aware of is the injunctive relief claim has been resolved and has been dismissed by Judge Newman. I have copies of both of Judge Newman's orders -- and they were both Judge Clifton Newman, for the record, Your Honor. Judge Newman dismissed the injunctive relief claim on August 4, 2015. So this argument that they are asking the Court to award additional documents, that has been taken care of, Your Honor. The only thing that is remaining before Your Honor is declaratory judgment, the first cause of action, and not any type of injunctive prospective relief

in that regard.

The second order was issued by Judge Newman on October 24, 2016, and that was granting partial summary judgment to the county. As indicated by Your Honor in your opening statements, three of the four FOIA requests were dismissed by Judge Newman at that particular point. And so the Court doesn't have to dig through your file, I'm happy to hand up copies of those two orders.

THE COURT: And I have already reviewed those. Somebody sent them, maybe you, or somebody sent them over.

MR. LINDEMANN: I believe I sent the second of the two orders yesterday. I may not have sent the first one, which is just a form order, Your Honor.

THE COURT: I have it.

MR. LINDEMANN: At any rate, Your Honor, the remaining issue involves a FOIA request that asks for, quote, a copy of the application and supporting documentation Richland County submitted to the USDA Rural Development for grant and loan funding for the Lower Richland Sewer Project.

What we believe the evidence will show, Your Honor, is that we produced a copy of the application that we were able to find in our

records, which was a 2010 application.

Ultimately, Your Honor, after the suit was brought and a challenge was made as to whether or not that was a complete response, what the county ultimately did was they went to Rural Development. We didn't have any other information in our records, so we went to Rural Development and asked them what did they have in their records. And, ultimately, Rural Development, which is part of the United States Department of Agriculture, provided us those 55 pages of documents Mr. Mann referenced, some of which are responsive to a loan application, most of which is not, but in good faith, we just turned over those 55 pages of documents to the Plaintiff.

The bottom line, Your Honor, is our position, and I believe the law supports this, is that under FOIA -- and this is a legal question that Your Honor is ultimately going to have to decide that is at the heart of this case -- FOIA requires the governmental entity to produce the documents that are actually in their possession. There is no duty outlining FOIA. There is no duty outlining the case law that requires a party to do what we ultimately did in good faith, which was try to get

them from a third party. But there is no responsibility for a governmental entity to respond to a FOIA request to produce or try to recreate any documents that are no longer in their possession for whatever reason or to go to a third party in order to obtain documents that are no longer in their possession.

And in our pretrial brief we cited some case law to Your Honor that I want to touch on real quickly. As I indicated, there is no South Carolina case directly on point. There is the Trask v. South Carolina Department of Public Safety case, which admittedly is an unpublished decision of the Court of Appeals, but we have identified that case in our pretrial brief. It cites to a United States Supreme Court case of Kissinger v. Reporters Commission for Freedom of the Press.

And in that Kissinger case, and the South Carolina Court of Appeals cited favorably to the Kissinger case, and why the Kissinger case, Your Honor, is very helpful, is the United States Supreme Court, granted, it was not interpreting South Carolina FOIA, but was granting -- was interpreting federal FOIA. They indicated -- and this is a quote -- FOIA is only directed at

requiring agencies to disclose those agency records for which they have chosen to retain possession or control. The act does not obligate agencies to create or retain documents, it only obligates them to provide access to those which it in fact has created and retained.

So in this particular case, Your Honor, what we believe the evidence will show is that we produced a copy of the application in support of the documentation that were in the county's possession at the time that FOIA request was made.

Ultimately, there was a second application that we did not retain a copy of that was obtained after suit was brought obtained from Rural Development, and that was produced. That was produced, as I indicated, in good faith. It was not produced because it was required by FOIA to be produced. And that is a legal issue that I believe is going to be dispositive of this case, whether or not there is a responsibility on the part of the county in this instance to go out to a third party and obtain documents that it did not retain itself and have in its possession.

And we believe that the federal case law fully supports our position on that, and that that

certainly should be very persuasive to this Court.

But, ultimately, those are the issues that are before Your Honor. I don't think there is any question that the 2012 application has been produced to the Plaintiff. So that should certainly moot that issue. I don't know what additional documents they contend that they haven't been provided. Certainly that hasn't come out in discovery in the four years that this case has been pending.

However, I would add one additional point. As part of the discovery in this case, the county allowed Ms. Brawley access to our entire project file, which include bankers boxes about three or four feet long. And they had access to it. Ms. Brawley was there, another person was with her, as well as one of her lawyers, I believe, if I recall correctly. We are going so far back in time. That was in February of 2016. And they marked any documents that they wanted copies of, and we provided copies of those documents.

Again, that is not something that was required by FOIA for us to do, but that was something that we did in attempt to deal with this particular litigation.

So they have had access to the full project file at this point in time, Your Honor.

Thank you, Your Honor.

THE COURT: All right. Are you ready?

MR. MANN: Thank you, Your Honor. We call representative Wendy Brawley.

(Witness approaches.)

THE BAILIFF: Place your left hand on the Bible, and raise your right hand, please.

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Please have a seat in witness stand.

(Witness seated.)

THE CLERK: State your full name for the record.

THE WITNESS: Good morning. My name is Wendy Carla Brawley.

WENDY C. BRAWLEY,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MANN:

Q Good morning, Ms. Brawley. Tell me a little bit, if you would, about your background in Hopkins and your background with the Lower Richland Sewer Project.

A Well, I have lived in Hopkins for 40 plus years. And as a resident of Hopkins, I have been pretty much involved in a lot of the things that our community was engaged in. The Lower Richland Sewer Project was something that came to our community's attention first in July of 2014. It was the Monday of the 4th of July weekend. And that was when the first meeting was held in our community.

I was not in town. Most people were not. I think about 25 people attended that meeting. The then representative for County Council, Mr. Kelvin Washington, presented to the community the project. He said to them -- and this was recorded in news reports as well -- that the project was pretty much a done deal.

MR. LINDEMANN: Your Honor, I hate to object. I know this is non-jury. But, No. 1, she is testifying to hearsay. No. 2, I don't know what all of this background has to do with a FOIA request and how it was responded to.

The reasons for her submitting the FOIA request I don't think have any relevance whatsoever to this case.

MR. MANN: Your Honor, I believe that the background and the amounts and level of the community's resistance to the FOIA -- I mean, to the Lower Richland Sewer Project -- in part had to do with what we allege and claim was a stonewall response by Richland County in responding to the FOIA.

THE COURT: All right. So, of course, you know, even though this is non-jury, she can't testify to hearsay.

MR. MANN: Sure.

THE COURT: You will have to redirect the question.

MR. MANN: Sure.

THE COURT: So that objection is sustained. As to -- I will allow her to give some background as to what led her to --

MR. MANN: Sure.

THE COURT: But I do find that that is relevant.

MR. LINDEMANN: Your Honor, I'm not challenging your ruling. If I could make one

additional point.

To the extent that they are arguing that this was a FOIA request that was made for the community, that has already been resolved by Judge Newman. He dismissed as a party Hopkins and Lower Richland Citizens United, Inc., so whatever that entity, what its position was, what the community's position was, none of that is relevant to this case. It has already been dealt with. This is solely Ms. Brawley's personal FOIA request.

THE COURT: All right. And I am going to allow her to testify as to what -- give some background as to how she -- how we got here.

MR. MANN: And, Your Honor, that is all I'm asking for.

THE COURT: As to her filing a FOIA request, that objection is overruled as to the relevance of that. But the Court does make a note that the Lower Richland -- Hopkins and Lower Richland Citizens United Corporation was dismissed by Judge Newman.

MR. LINDEMANN: Along those same lines, Judge, I don't think she can then rule what the community wanted and what the community believed. And I think, just judging from Mr. Manning's opening,

that is where we are going with this, but, I mean, I can object to that when -- if she goes into that.

MR. MANN: Your Honor, she --

THE COURT: If she can -- because she is the sole Plaintiff now, she'll need to speak on --

MR. MANN: Her knowledge or involvement.

THE COURT: What was going on that led her to file the FOIA.

MR. MANN: That's right. Just her involvement.

BY MR. MANN:

Q Ms. Brawley, if you would proceed.

A Well, then I will go to our July 10th meeting, because I was present at that meeting, and it was a community meeting. There were about 100 people in attendance. It was then conducted by the same County Council person. He did have staff from the county at this meeting to explain the Lower Richland Sewer Project to the community and to myself. And we -- and I -- objected. No one in the room supported it. And --

MR. LINDEMANN: Your Honor, no one in the room supported it. That is absolutely hearsay. She is testifying as to what the community members thought and believed. It is not relevant. She is not able

to testify to it.

MR. MANN: If I may address the hearsay. None of this is being asserted for the truth therein. She is simply giving the background. We are not asserting this as a truth therein. In fact, she is simply giving the Court a background on her perception of the community resistance and her role in leading up to the FOIAs on September 9, 2014.

THE COURT: All right. I'm going to sustain the objection. She can testify to her role.

MR. MANN: Sure.

THE COURT: But she can't speak for the community and who was in opposition. She can say what she did. She can say what she did, what she said, and what actions she took as the Plaintiff in the case.

BY THE WITNESS:

A Okay. I think I've got it. We were asked to sign up for the sewer project. There was a sheet for anyone interested to sign up. We were given -- I was given that opportunity. I did not sign up. There were no names on the sheet at the end of the meeting. As a result, not being able to really mention the community, but the requests were made. I made the request, as you all have read into the

record, to have information about this project.
Q What was the basis of your opposition to the project?
A The project in our community, Lower Richland, required those people who signed up to have a $4,000 tap-on fee. The project required those who signed up to be willing to release to the county certain property rights that they had. The project would require those who could not or did not pay the fee to have liens placed against their property. The project would have required all of 1,000 plus homes' sewer to be sent in through the Hopkins community and pumping stations to be placed by churches, schools, daycares. Those thousand homes and their sewer would have come across Garners Ferry Road into the Hopkins community and then down to the expanded site that would be in Eastover, as opposed to going from their community straight to Eastover.

I objected to that because, you know, the health concerns, the asthma, the environmental concerns that that placed on me and those in my community was a problem for me.

Q Okay.
A So those and other objections were really of

tantamount concern. And, if I might, and I'm sure I will be objected to if it is not correct, moderate incomes -- and I could have fallen, if you look at just me solely, into that category -- would have made it very impossible for people like myself and the people who are of lesser income to --

MR. LINDEMANN: Object again. She is talking about other people now. She, in fact, knew she was going to do that because she essentially almost objected to her own response. None of this is relevant, Your Honor, to whether or not a request was made and whether it was responded to properly. This is a FOIA case.

THE COURT: All right.

THE WITNESS: But the --

THE COURT: Hold on one second. All right. So the -- I think that is like two objections in one.

MR. LINDEMANN: Sorry.

THE COURT: The objection is sustained as to -- she can talk about herself. She is the Plaintiff. She can talk about what led her to do this or what she thought the potential impact on her would be.

And then the second objection is -- I'm going

to overrule that and allow them to get in some background, and hopefully we'll get to why she --

MR. MANN: Very quickly, Your Honor.

THE COURT: The FOIA.

MR. MANN: Just setting the stage, the basis for the FOIA, and why the information was relevant.

THE COURT: Yes. The FOIA information, why she requested it.

MR. MANN: Why she requested the FOIA and why we believe --

THE COURT: Yes.

MR. LINDEMANN: And that is not in issue. She can ask for anything she wants. It doesn't have to be relevant to anything. So this is all -- I hate to say, this is all immaterial.

THE COURT: I think she can testify to what it was that she was looking for and what y'all didn't -- she is saying y'all didn't turn over something. So for that reason I'll allow it as being relevant.

MR. MANN: Thank you, Your Honor.

BY MR. MANN:

Q So, Ms. Brawley, to recap where we are, you had concerns about the sewer project, and you were one of the members of the community who was opposed to

the sewer project, correct?
A That's correct.
Q And one of your concerns, I believe you said, was the debt that was being incurred by the county that would have to be repaid by you and perhaps other members of the community, correct?
A That's correct.
Q Okay. And as part of your resistance to the sewer project, you and others attended County Council meetings for various readings on the project, correct?
A That's correct.
MR. LINDEMANN: Your Honor, I don't know why all of sudden he is leading.
THE COURT: All right.
MR. LINDEMANN: But the last three questions were all leading.
MR. MANN: Your Honor, I can't win for losing here. I'm trying to move very quickly.
THE COURT: You know we have got to follow the rules. The objection is sustained. Please don't lead.
MR. MANN: All right. Thank you.
BY MR. MANN:
Q So did you attend County Council meetings?

A I did, multiple meetings.
Q And at one of those County Council meetings on September 9, did you read multiple FOIAs into the record?
A I did.
Q Okay. And I am going to show you -- how many do you recall that you read into the record that day?
A I read four into the record, and I had them printed to deliver to the county clerk.
Q Printed as well, correct?
A Yes.
Q Take a look at that, if you would, and tell me if you recognize that document.
A This is the request that I read, one of the four that I read on that date.
Q And I believe this was the fourth of the four requests, is that correct?
A It was.
Q And this is, in fact, the document that you submitted, correct?
A It is.
MR. MANN: Your Honor, we move to admit this as Plaintiff's Exhibit 1.
THE COURT: Any objection?
MR. MANN: No objection.

(WHEREUPON, Plaintiff's Exhibit No. 1 was marked for identification and received into evidence.)

BY MR. MANN:

Q Can you tell me what it is exactly that you are requesting that the county produce to you in response to this FOIA?

A My statement reads: Please provide me a copy of the application and supporting documentation Richland County submitted to the USDA Rural Development for grant and loan funding for the Lower Richland Sewer Project. I am requesting this information pursuant to the Freedom of Information Act.

Q Okay. So, specifically, if we boil it down, you are asking for a copy of the application and supporting documentation that Richland County submitted to the USDA Rural Development for grant and loan funding for the Lower Richland Sewer Project, correct?

A That's correct.

Q And the date on this is September 9, 2014, correct?

A That's correct.

Q Okay. All right. I show you this document. And before I move on, Exhibit 1 got read into the

County Council record at the meeting on September 9, correct?
A It did.
Q All right. Now, looking at the second letter that I have handed you, can you tell me what this document is?
A This is an interim response from the county ombudsman acknowledging her office's receipt of the four FOIA requests that I submitted.
Q All right. And the date on this letter is what?
A October 1st, 2014.
Q Okay. And the letter is penned by whom?
A Judy Carter, County Ombudsman.
Q And this is a true and accurate copy of the letter that you received on or about October 1, 2014?
A It is.
Q Okay.

MR. MANN: Your Honor, we move to admit this as Plaintiff's Exhibit 2.

THE COURT: Any objection?

MR. LINDEMANN: No objection.

THE COURT: All right. It will be entered without objection.

(WHEREUPON, Plaintiff's Exhibit No. 2 was marked for identification and

received into evidence.)
BY MR. MANN:
Q All right. In this letter -- I will try to move you quickly through this -- in this letter are all four FOIAs that you read into the record and submitted addressed in the body of the letter as we received these and processing that information?
A Let me read through it again.
Q Actually, you know what, I can move you quicker than this.
A It doesn't appear to reference the FOIA in question.
Q Well, if you will look at the third line in the second full paragraph. You see: This letter confirms Richland County understands your request for a copy of -- and then it goes through.
A Uh-huh.
Q And it says: A copy of the application and supporting documentation Richland County submitted to USDA Rural Development for grant and loan funding of the LRSP.
A Okay. I see that now.
Q Okay. So, to your mind, this letter is an acknowledgment of the receipt of the FOIA we just marked as Exhibit 1?

A A receipt of all of them, yes.
Q Right. Okay. And, in particular, since we are here today about the loan application FOIA, the loan application FOIA as well, correct?
A Yes.
Q Okay. And does it say whether or not the information will be released by the county?
A It does say that: The data is being searched and it is expected to be available within the next few weeks, at which time it will be sent to you via U.S. mail.
Q Okay. But the sentence prior to that says what?
A The information requested will be released.
Q Okay. So nothing in this letter speaks to you that there was an objection to produce the material that you requested in the FOIA that we are here about today?
A No.
Q Is that correct?
A That's correct.
Q Okay. I show you a third letter here. I will let you take a look at that. Tell me when you have read it over.
A Okay.
Q Can you tell me what this is?

A This was another response from Ms. Carter, the county ombudsman. And she is telling me that: The request for information pursuant to the FOIA request concerning the above-referenced matter -- and that matter is listed as the U.S. -- the Richland County's USDA Rural Development application for loan and grant funding for the Lower Richland Sewer Project -- that that information was received by her office, that request on September 10, and was forwarded to the Clerk of Council's Procurement Department, Utility Department, and the Finance Department for review.

Q Okay. And the next paragraph tells you what?

A Please find the enclosed documents which contain information regarding the above-mentioned request. Richland County has no further information regarding this matter.

Q Okay. And is this a true and accurate copy of the document that you received on or about October 8, 2014?

A It is.

MR. MANN: Your Honor, we move to admit this as Plaintiff's Exhibit 3.

THE COURT: Any objection?

MR. LINDEMANN: Your Honor, my only objection

is the documents that were attached to this letter when they were produced are not attached here.

MR. MANN: They are coming in next. They are Exhibit 4.

MR. LINDEMANN: All right. Just so the record will be clear, this is just a cover letter, the transmittal letter, but I have no objection to that coming in.

THE COURT: All right. It will be entered without objection. The cover letter is entered without objection.

(WHEREUPON, Plaintiff's Exhibit No. 3 was marked for identification and received into evidence.)

BY MR. MANN:

Q All right. And, as promised, I ask you to flip through those documents, Ms. Brawley, and tell me if you recognize them as well?

A I do.

Q Can you tell me what those are?

A It is the application. It says -- it has in the box non-construction checked. It appears to be signed by the then County Administrator, Milton Pope. The front of the application has no date signed, and it has some information regarding the

application.
Q And are these the documents you received along with what we marked as Exhibit 3, the letter from Judy Carter, on October 8?
A It is.
Q Okay. This is all the documents that you received on or about October 8, correct?
A Yes, on that date, in response to this letter.
Q Okay.
MR. MANN: Your Honor, we would move to admit this as Plaintiff's Exhibit 4.
THE COURT: Any objection?
MR. LINDEMANN: I do, Your Honor, because I don't believe it is complete. What I have here is a copy of the cover letter. And the cover letter, I would submit to the Court, included that copy of Ms. Brawley's request, a copy of an e-mail that was provided to Ms. Brawley showing the responses to information that was provided, as well as these six documents. And I believe that is what Ms. Brawley received as opposed to just these six pages.
MR. MANN: Your Honor, rather than argue about that, I'm fine to make those two documents pages on this exhibit as well. It makes no difference whether they are admitted as part of this exhibit

or not. So I am happy to include those. I have copies of them right here. I can include them.

THE COURT: Is there any objection to that?

MR. LINDEMANN: Not with that agreement. I have no objection.

THE COURT: Those would be entered without objection.

(WHEREUPON, Plaintiff's Exhibit No. 4 was marked for identification and received into evidence.)

MR. MANN: If you would add that.

So, Your Honor, just for clarification, I handed up an e-mail that Mr. Lindemann is referencing. We can include -- it might be cleaner for the record if I include what Mr. Lindemann is saying what is marked as Exhibit 1 is also included in the response that we are marking as Exhibit 4. I don't have a clean copy of that. If you do, I am happy to enter that as well.

MR. LINDEMANN: I have a clean copy of the whole letter and all of the attachments if you want to make that an exhibit.

MR. MANN: Well, let's take the letter off. We have already marked the letter as Exhibit 3, right?

THE COURT: The letter is already in.

MR. MANN: Yes, the letter is already in. So let's just take the letter off, and then I'll hand up the, what we marked as Exhibit 1, this email that she now has a copy of, and we will call that Exhibit 4.

THE COURT: Any objection?

MR. LINDEMANN: None, Your Honor.

BY MR. MANN:

Q So with that clarification, that is the entirety of all the documents that you received on or about October 8, 2014, in response to the loan application FOIA that you read into the record and submitted on September 9, 2014?

A I have to go through it again. Yes.

Q Okay. And did you review that loan application when you received it?

A I did.

Q Tell me what, if anything, you noticed about it when you got it?

A The first thing I noticed is that it wasn't signed on the front and it wasn't -- that it had some things scratched off with respect to the address. There wasn't any information that I could see about the reasons that I was told why this particular

project was being really kind of mandated for Lower Richland. There was no health information about the community. And I was told at the July 10th meeting that that was a major issue.

MR. LINDEMANN: Object to the hearsay, Your Honor.

THE COURT: All right, so the objection is sustained. So she can just testify -- you can only testify as to what you said or what you did.

THE WITNESS: Okay.

THE COURT: Not what anybody else said to you or what your response was to what somebody may have said.

BY THE WITNESS:

A The application did not have information I believed to be relevant for the application process under the USDA requirements.

Q Okay. And based on this document that we have marked as Exhibit 4, was it your understanding that the applicant was seeking -- Richland County was seeking as much as $20,961,000 in funding?

A Yes.

Q -- $961,360 in funding?

A Yes.

Q And, again, your FOIA request was for the loan

application and all supporting documentation for it and the grants, correct?
A That's correct.
Q Okay. And when you received this, did you think that this was, in fact, the county's entire universe of responsive documents to your FOIA request?
A I did not.
Q Okay. And did you notice on this document whether or not the type of submission was for construction or new construction -- or not construction -- non-construction? Let me hand up this document.
A On this version of the application --
Q Yes?
A -- it has non-construction.
Q Non-construction. But your understanding was this was for the construction of the Lower Richland Sewer Project, correct?
A That's what we asked for, the application for the Lower Richland Sewer Project funding from the USDA.
Q Okay. And then if we go down to what is marked as Box No. 8 on the front here, it says that -- is it a new application or is it a continuation application?
A Well, it is checked as a continuation application.

Q Okay. And what was your understanding when you received this of what that may mean?
A Was that there was another --
MR. LINDEMANN: Your Honor, object to the question. I don't know that she is laying the foundation that she would know what the continuation means.
MR. MANN: Your Honor, she can testify as to whether or not the document is -- it marks that it is not a new application, it is a continuation of another document. She can testify that that tipped her off that this was an incomplete response.
MR. LINDEMANN: Again, I have a problem with leading the witness and coaching the witness, No. 1. But, No. 2, Your Honor, he hasn't established that she has the expertise to interpret what words in this form mean to be able to educate the Court on that.
THE COURT: All right. So the objection is sustained as to leading. Rephrase the question. She can testify to what she saw, what she read. She can testify to what she thought and what she did as a result of that.
MR. MANN: That's all I'm asking, Your Honor.
BY MR. MANN:

Q All right. So, Ms. Brawley, when you saw that this was a continuation application, what was your response? What did you think in response to that?
A Well, my thought was, I think, as any normal person would be, a continuation means that there is something that came prior to this application that I did not have.
Q And did you see anything in the seven pages of documents that were produced to you that you believed this was a continuation of?
A Well, the application itself said it was a continuation, so if it wasn't a continuation, I could only assume from what it said it was that it was a continuation to an original application that I did not have.
Q Okay. And this application was signed by whom down at the bottom left?
A Signed by the County Administrator, Milton Pope, J. Milton Pope.
Q Milton Pope. And if we go to the back page, the date on this application, as we know, is what?
A Well, the date on the front is not signed. It is not indicated. But at the back of the series of papers, it does have a date, and that date is March 16th, 2010.

Q Okay. No other date, though, on the application that you saw?
A No.
Q All right. And the budget information, which I believe is Page 5 of the documents you are holding?
A Okay. I have it.
Q Okay. Can you just tell me how much the, quote, total amount requested is?
A $20,961,380.
Q 380 or is it 360?
A It is hard to tell.
Q It is hard to tell.
A It could be a 6, $360.
Q I will represent to you that you filed the lawsuit we are here about today on March 25, 2015. You just established that you received the documents we just discussed on October 8th, 2014?
A Yes.
Q Did you receive any other documents from Richland County in response to the loan application FOIA between October 8th, the Exhibit 4, and filing the lawsuit on March 25th, 2015?
A No.
Q I show you those. Tell me when you have had an

opportunity to thumb through those.
A It is pretty extensive, but, yes, I think I'm ready.
Q They are Bates range on the bottom right-hand corner, RC-0001 through RC-0055, is that correct?
A That's correct.
Q Do you know what these documents are?
A Well, the cover says that it too was an application for the -- submitted to the USDA from Richland County. It does not indicate the type of submission, whether it is construction, non-construction.
Q We'll get to that in a second. I'm just asking more generally, were these documents produced before or after you filed the lawsuit on March 25th, 2015?
A There were after.
Q Okay. These were documents produced by Richland County after March 25, 2015, correct?
A That's correct.
MR. MANN: Your Honor, we would move to admit these as Exhibit 5.
THE COURT: Do y'all have a copy? Or you can pass the exhibits. If she is using them, I can't have them.

MR. MANN: Sure. And I can hand them up to you, Your Honor, as I go through them if you like.

THE COURT: Yes. So I can see what she is referring to in the documents. Any objection?

MR. LINDEMANN: Your Honor, my only objection is this. There is a cover letter that goes with those documents. I believe that for these documents, since they are post-litigation, to come into evidence they should include the cover letter transmitting them. You know, obviously they were transmitted to Mr. Mann rather than directly to Ms. Brawley. I don't want to be in a position where either Mr. Mann or myself are going to be made witnesses, but I think it is only fair for the Court to have the transmittal letter from myself and Mr. Mann sending those documents as a document as well.

MR. MANN: Your Honor --

MR. LINDEMANN: And if he is going to insist that I become a witness in the case, I am going to have to ask for a continuance so that somebody else can try this.

MR. MANN: Your Honor, unfortunately I would, because the letter contains representations regarding the documents regarding how the documents

were located, all of which would be nothing more than Mr. Lindemann's testimony in this case. The documents, whether or not they came on the dates that they came is immaterial. There is no dispute that they came after the date of the lawsuit. They came on June 3, 2015, a fact I would think that we could simply stipulate to. But the representations made in that letter, including how the documents were discovered, et cetera, were all made solely by Mr. Lindemann and would be testimony in this case if we were to admit them as evidence in this case.

So if he is going to insist the transmittal letter be included with the documents, then we would absolutely insist that he be made a witness in this case.

THE COURT: Okay. So, for purposes of authentication, I'm not sure she can authenticate your letter that was the cover letter. She can testify to the documents she received.

MR. LINDEMANN: I don't know that she can authenticate the documents, then, Your Honor, because they weren't sent to her, they were sent to Mr. Mann. So if we are going to play that game, he is going to be a witness as well, and we need a continuance and retry this case with other counsel,

Your Honor.

MR. MANN: Your Honor, they are Bates labeled and produced by the Defendant. This is nothing more than an effort to get in his testimony in the transmittal letter. I'm happy if you want to put in a fully redacted transmittal letter that has: Dear Jenkins, Andrew -- enclosed documents -- Andrew Lindemann. That is fine. I'm happy to do that. I am not, however, happy to introduce any testimony, his testimony, regarding the character of these documents, which is not at issue in this case. And if it is, then I am allowed to cross-examine him on it.

MR. LINDEMANN: Well, Your Honor, it is a critical part of this case. We attempted to subpoena someone from Rural Development to be here. Federal government applied federal regulations do not allow federal employees to be subpoenaed in the state court. So, ultimately, if this can't be stipulated to, where they came from, because they came from Rural Development after an inquiry was made, as I indicated in my opening, Your Honor.

MR. MANN: Absolutely.

MR. LINDEMANN: We will need to present this in a different way. Both Mr. Mann and I will

become witnesses. But that seems a little absurd in a non-jury case like this, but --

MR. MANN: We absolutely cannot.

MR. LINDEMANN: If that is going to be the Court's ruling, I am going to move for a continuance to be able to get alternate counsel who will be able to provide the Court that background.

MR. MANN: Your Honor, we absolutely cannot stipulate these came from the USDA. And, you know, again, I don't know what the character of Mr. Lindemann's testimony would be, but unless he got it directly himself from the USDA, which he may have, I don't know, but his testimony in the issue would also not be relevant. I'm not sure why the county couldn't testify since the letter makes a representation they are the ones that got it. I'm not sure why the county couldn't testify -- the county representative is here today -- as to how they did or did not obtain these documents. But the testimony in that letter is absolutely inadmissible in this court unless we are allowed to cross-examine Mr. Lindemann on it. I don't believe it is necessary. These are documents that he produced in discovery to us. I'm happy to put a fully redacted transmittal letter that simply says:

Enclosed are the documents of this date. That is fine. But as far as the underlying testimony in that letter, we, Your Honor, we can't concede that.

THE COURT: All right. So how are you getting the documents in through her? Did she receive them as a result of the litigation in this case?

MR. MANN: She received them from my office. And they are Bates labeled by the county. I am happy to call the county witness and ask them if these are the documents they pulled on or about June 3, 2015, as a supplemental production in response to the FOIA. Your Honor, there is no dispute --

THE COURT: Why don't you --

MR. LINDEMANN: Your Honor, the documents were produced as part of this litigation. Mr. Metts, who is here, was the utilities director, but he had left by that time. He had left the county by that time. I mean, I can certainly publish our responses to requests for production, which have asked for these documents, and provide that exact same information. I think that is appropriate to publish responses to requests for production if he is saying these should be submitted simply on the basis that we produced them to him.

THE COURT: All right. So what I'm thinking is you could probably -- since this is a FOIA case, so the issue is documents, so --

MR. LINDEMANN: But the issue of where they came from --

THE COURT: But how are you going to get them in? I think you can mark them for ID purposes, ask her about them. You want to get into the details of the documents, or you just want to ask her if she received these as a result of the litigation? Because if that is the case, you can mark them for ID purposes, and then you can enter them through the county personnel who actually received them.

MR. MANN: Mr. Lindemann is saying perhaps we cannot. He is saying perhaps Andy Metts isn't, making it all the more necessary that I would have to call Mr. Lindemann as a witness.

MR. LINDEMANN: It is certainly possible that Ms. Carter could admit them, but Ms. Carter was not the person who actually received them. The county did receive them as part of -- as well as I -- as part of our post-litigation investigation in an attempt to try to work this out. I mean, in essence, it probably is actually settlement negotiations, for lack of -- if we are going to get

real technical on the evidence here. It was sent to them in attempt to try to resolve the litigation. I mean, we went -- what this shows, Your Honor, is we went to a third party, we went to Rural Development and asked them for a copy of what they had in their file so we could supplement what had previously been provided to Ms. Brawley.

MR. BLAKE: Your Honor, if I may?

MR. LINDEMANN: There is no evidence that they came from our files, Your Honor. So without that background, they shouldn't be admissible.

MR. BLAKE: Your Honor, Mr. Lindemann is repeatedly testifying on this subject now after admitting he does not have a witness here today capable of testifying where these records were acquired from, other than himself. It was inappropriate for it to be raised and mentioned by him in his opening and it is inappropriate for it to continue to be hammered upon now if he, in fact, does not have a witness prepared to come here today and testify about the origination of these records, where they came from, after he opened explaining that after the lawsuit was filed these records were produced in the course of the discovery.

So we are in a situation where he has opened

the door in his opening about getting these records to the Plaintiff in response to her FOIA and is now saying he doesn't have a witness other than himself -- other than himself to establish that fact. So I don't know how he can both open on it and now object to those records coming in after saying he has no valid witness to authenticate, other than himself.

MR. LINDEMANN: Your Honor, No. 1, I don't think it is proper for two lawyers to make the arguments. I don't think this is Mr. Blake's witness.

No. 2, Your Honor, I never said this was done to supplement her FOIA request. It was done as part of discovery in this litigation. So to the extent that they want to argue that this is part of discovery, well, then the responses to requests for production should be read to the Court.

MR. MANN: Your Honor --

MR. LINDEMANN: Excuse me.

THE COURT: Hold on one second. Hold on one second, please.

MR. LINDEMANN: You can't use discovery to make attorneys witnesses to a case. Either the documents are going to come in because they have

been produced and the parties stipulate to their authenticity and where they came from or they don't. So at this point I'm going to object to these documents coming into evidence without the proper foundation laid as to where they came from and what their original source was.

MR. BLAKE: Your Honor, just to be clear, these records were produced prior to the county responding to discovery responses.

MR. LINDEMANN: They are addressed -- served -- and I can find them -- and I addressed those in the answers to requests for production.

MR. BLAKE: Weeks after they were served. Correct, counsel?

MR. LINDEMANN: Well, I don't know the dates of it, but it was provided during discovery in this litigation. I mean, I think it is just ludicrous that we are arguing over these points when it is very clear where it came from.

THE COURT: So are y'all going to stipulate that came from --

MR. MANN: Your Honor, I am perfectly willing to stipulate that these documents were produced by the county in this litigation. I'm not willing to stipulate that these documents came from the USDA,

as represented by only Mr. Lindemann in his letter, which he is seeking to admit as evidence in this case.

THE COURT: All right. So you would stipulate that the documents came from the county, but you don't want to stipulate that these are the ones that came from USDA?

MR. MANN: The documents, without any question, came from the county. There is no question they came from the county. The only question is whether or not they went through the USDA to the county and then to us. But he is not arguing that they didn't come from the county, he is simply arguing that he is allowed to introduce by fiat in the letter in this case that they ultimately originated back at the USDA because there were no documents in their file that were responsive. And that is what I'm objecting to. The authenticity of these documents he is not objecting to. He is simply saying that along with the introduction of these documents he is allowed to testify by letter that they ultimately had to originate at the USDA.

MR. LINDEMANN: Here is the problem, Your Honor. What they need to be able to establish in

this case, and there is no foundation laid for that, is that these documents were in the county's possession at the time the FOIA request was made. That is the key issue for this Court to decide, not whether they became -- got into our possession later on. We contend it was by us requesting them from a third party. But even if Your Honor doesn't allow that in, they can't put these documents in because they cannot lay the foundation, certainly not with Ms. Brawley, that these documents were in the county's possession on September 9, 2014, when the FOIA request was made.

THE COURT: But I think he can --

MR. MANN: And I'm not --

THE COURT: He can -- if you put up one of the witnesses from the county, he can ask them, Are you familiar with these documents? And they can say yay or nay. And he can ask the question, Were these in your possession on September when the FOIA came in, and they can answer the question then. I mean --

MR. LINDEMANN: Again, I don't have the burden of proof, he does. So I think the problem is that he can't lay that foundation of putting these documents in.

THE COURT: I think he can call witnesses from the county.

MR. LINDEMANN: Sure. He can do that. But it is his burden of proof, so it is not something that I have to negate.

THE COURT: All right. So, for purposes of this witness, Ms. Brawley --

MR. MANN: I would only have her testify that these are the documents that she received as part of this litigation after she filed suit. I agree with Mr. Lindemann that for the purposes of her testimony alone, she cannot establish whether or not these 55 pages were in the county's records on September 9 through October 8, 2014. But she can establish that these are the authentic documents produced by Mr. Lindemann and Richland County to her as part of this litigation.

THE COURT: All right. So for that purpose, I think you can mark the -- you can't enter them through her because she doesn't know. She can't authenticate them. But you can ask her did she receive these, mark them for ID, and then you will have to try to get them in through somebody at the county.

MR. MANN: Okay. All right. Well, let's mark

these for identification purposes only at this point as Plaintiff's No. 5.

(WHEREUPON, Plaintiff Exhibit No. 5 was marked for identification only.)

BY MR. MANN:

Q Ms. Brawley, are these among -- these documents we are looking at here that we have marked for identification as Exhibit 5, can you tell me the date on this first application for federal assistance document?

A On the application it is dated July 18th, 2012.

Q July 18th, 2012. So the application itself is, in fact, dated, correct?

A This one is, yes.

Q Okay. And what we looked at in Exhibit 4, it was not dated, correct?

A No, just the last sheet of the supplemental information.

Q Okay. And who is it -- if we look at the bottom left-hand corner, who is the signatory on this application?

A It looks like Andy Metts.

Q Okay. And the date, again, on the bottom right-hand corner?

A July 18th, 2012.

Q Okay. And this is a different signatory and different date than on the previous document, correct?
A Yes. Yes, it is.
Q All right. And if we look at Page 3, the budget information and construction programs, the amount budgeted for in there is zero dollars, is that correct?
A That is what this page has, yes.
Q As opposed to the roughly $21 million we looked at on last exhibit?
A That's correct.
Q All right. And then there are a series of preliminary engineering reports and other financial documents contained in here, correct?
A Yes.
Q Okay. Is any of these documents that we have marked here the same as the documents that you received on or about October 8, 2014?
A No. I mean, other than the application being similar.
Q Similar?
A But it is not the same document.
Q They are not the same document. Okay.
MR. LINDEMANN: Your Honor, if I could? These

documents haven't been entered. I'm not sure why she is presenting testimony as to what they say.

THE COURT: All right. The objection is sustained. But with that being said, I think she can testify to that last question. She can say -- ask her to identify the documents. She can testify if these were the same documents she received on October --

MR. MANN: 8th.

THE COURT: -- 8th. But as to the details of the document, it is not in evidence, so she cannot testify.

MR. MANN: That's fine, Your Honor.

BY MR. MANN:

Q Ms. Brawley, as part of this litigation, were you offered the opportunity in February of 2016 to go and review the county -- Richland County's files to determine if there were documents in those files that were responsive to your FOIA requests?

A I was offered the opportunity to go to the attorney's office, not to Richland County, where documents were on a big conference table, yes, to review.

Q Okay. And at the time that you went, did you identify documents in Richland County's file that

you believed were responsive to your FOIA?
A In part, yes, I did see documents that I thought I should have gotten earlier.
Q Okay. I'm going to go through those documents, then, with you and ask you if you recognize them.
THE COURT: Make sure you mark them for identification.
MR. MANN: Well, these, Your Honor, I believe we can introduce these. She personally went and reviewed Richland County's file and pulled these documents herself. They were then produced to her by Richland County. So, Your Honor, I am going to ask her if she recognizes this document. If she does, I am going to move to admit on that basis.
THE COURT: Go ahead and lay the foundation.
BY MR. MANN:
Q Do you recognize that document?
A Yes. It is a list of the things that we saw that day.
Q And is that -- is this the same document that you located in Mr. Lindemann's office on February, I believe 10, of 2016 when you were offered an opportunity to review the entire project file for the Lower Richland Sewer Project?
A I think this is.

Q Okay.

MR. MANN: Your Honor, we would move to admit this as Plaintiff's Exhibit 6.

THE COURT: Any objection?

MR. LINDEMANN: Your Honor, I don't know what the relevance of this document is, so I have an objection on the basis of relevance. Simply because she found this in our project file, I don't know how it is relevant to this case.

MR. MANN: Your Honor, we will examine other witnesses as to the relevance of these documents. We are laying the foundation for their production.

THE COURT: All right, it will be entered over the objection of the Defendant.

(WHEREUPON, Plaintiff's Exhibit No. 6 was marked for identification and received into evidence.)

MR. MANN: Your Honor, in order to save time, I am going through a series of documents and doing the same thing, showing her the same exact documents that she identified on the same exact day and which have been produced to us in the same exact manner. I can do all of those at once, or we can do them one by one.

THE COURT: I'm assuming -- have you shown --

MR. MANN: I am going to give him copies of every one of them.

THE COURT: And he is going to object to all of them? Do you want to enter them all as one document?

MR. MANN: No, I want to enter them all as separate exhibits. I just simply, I'm going to go through the same line of questions about when she discovered this document, et cetera. I can just hand them all to her, let her look at them, and confirm that each of these documents is the one that she saw on February 10.

THE COURT: Are you going to mark them as --

MR. MANN: Separate exhibits. I'll do each. I'll do each. It's fine.

MR. LINDEMANN: Your Honor, if I can? I'm sorry the record is getting so confusing here. But, obviously, Your Honor, if you look at -- I don't know if he handed up a copy --

THE COURT: I don't have it.

MR. LINDEMANN: What was the last exhibit number?

THE COURT REPORTER: Six.

MR. LINDEMANN: Exhibit 6. I mean, Your Honor, it is a timeline, the last entries of which

are July of 2014. You know, Your Honor, that doesn't establish that this document was in the county's possession and in existence at the relevant time period. And certainly that is going to be a potential issue with these other documents as well. They have to lay the foundation that these documents were in the possession of the county and were responsive to the FOIA request at the time the FOIA request was made.

MR. MANN: Your Honor, why else would they have produced them in discovery, for starters.

Second of all, I'm not asking her to testify that they were in the possession of the county at the time of the FOIA production, I'm asking her to testify that these were the documents that were produced to her, made available, that she inspected and she identified, and that she has subsequently had produced by the county to us as part of this litigation that were made available by the county to us in response to our discovery requests for documents in their file pertaining to the project that should have been responded to under FOIA.

MR. LINDEMANN: No, it was --

THE COURT: And so, but she can't -- so, for purposes of relevance, the objection is overruled.

You all -- she can't testify that the county had these. She can say, I found -- these are the documents that I received on this date. She can't testify that they had them in their possession at the time of the FOIA because she doesn't know that.

MR. MANN: She can testify that they had them in their possession on February 10, 2016.

THE COURT: That's it.

MR. MANN: Correct.

MR. LINDEMANN: That is not relevant to this case, Your Honor. February 10, 2016, is a year and a half after that FOIA response.

MR. MANN: Your Honor --

MR. LINDEMANN: This was done in an effort to try to resolve these issues with Ms. Brawley. We made our entire project file available to her. We didn't pick these documents and produce them to her. She and her lawyer went through thousands of documents and selected the ones they wanted copies of. We made copies and provided them to them.

MR. MANN: That were produced to us in response to our requests for production.

THE COURT: All right. I will allow him to enter them over the objection of the Defense. But she cannot testify -- I clearly understand what the

issue is.

MR. MANN: Sure.

THE COURT: Mr. Lindemann is saying, Yes, she was given these documents, but she cannot say one way or the other if they had the documents in their possession at the time of the FOIA request.

I'm assuming you are going to ask somebody from the county regarding the same documents, if they were in the possession at the time of the FOIA requests.

MR. MANN: Yes.

THE COURT: And we will have to see what they say.

MR. LINDEMANN: She selected these documents, they were not produced by us. She went through the entire file and she selected what she wanted, so --

THE COURT: Well, you produced the entire file, and these are documents that are produced. These are documents that she pulled.

MR. LINDEMANN: Right. I just want the record to be clear. We are not suggesting that these were responsive and were providing them to her after the fact.

MR. BLAKE: I don't know how much he is going to testify.

THE COURT: One second. One second. One second. Mr. Mann, if Mr. Blake is the one that is directly examining the witness, the rules do not allow but one attorney to speak as to -- and if it is his witness, I have to hear from him regarding. So I think the objection is -- well, I'll hear from you as to the objection regarding -- I thought the objection was that Mr. Lindemann could not testify.

MR. MANN: Yes. Continues to testify in this case. Yes, that is my objection.

THE COURT: All right, let's try not to, Mr. Lindemann, place yourself as a potential witness in the case.

MR. LINDEMANN: It is not testifying, Your Honor, it is explaining the discovery process in the case. I think lawyers do that all the time in cases. This is being presented to the Court differently than what is the case. This was a discovery matter during existing litigation, and so to suggest that we produced these documents is not correct, Your Honor. We produced the entire file and she chose, along with her counsel, what they wanted copies of, and that then was copied for her and provided to her.

MR. MANN: Your Honor --

MR. LINDEMANN: That is not testimony, that is explaining how the discovery process works.

MR. MANN: That is production, Your Honor. That is making the documents available for inspection and copy is production under Rule 34.

MR. LINDEMANN: In the litigation. It is not production as a FOIA response.

THE COURT: I understand. I understand. So let's continue on. I think I put the ruling on the record.

BY MR. MANN:

Q Ms. Brawley, do you recognize this document that I just handed you?

A Yes.

Q Okay. And is this a true and accurate copy of the document that you identified on February 10, 2016, out of the Richland County Lower Richland Sewer Project file?

A Yes.

MR. MANN: Your Honor, we would move to admit this as Exhibit 7.

THE COURT: Over the objection? You are objecting to this one also?

MR. LINDEMANN: Yes, Your Honor. It is irrelevant.

THE COURT: You are objecting to all of them?
MR. LINDEMANN: I don't know what else he has in his folder, but most likely if they came from this same source it would be based on an objection lack of foundation as to essentially establishing relevance, Your Honor.
THE COURT: So No. 7 will be entered over the objection of the Defense.
(WHEREUPON, Plaintiff's Exhibit No. 7 was marked for identification and received into evidence.)
BY MR. MANN:
Q Let's go ahead. Let's look at -- I ask you to take a look at that document. Is this a true and accurate copy of the document that you identified in the Richland County Lower Richland Sewer Project filed on or about February 10, 2016, when the document was produced by Richland County?
MR. LINDEMANN: Same objection, Your Honor.
A Yes.
THE COURT: This is 8?
MR. MANN: Yes.
THE COURT: It will be entered over objection.
(WHEREUPON, Plaintiff Exhibit No. 8 was marked for identification and received

into evidence.)
Q Tell me when you have had a chance to look at this.
A Okay.
Q Is this document a true and accurate copy of the document that you reviewed and marked for production on or about February 10, 2016, from Richland County's Lower Richland Sewer Project fund?
A Yes.
THE COURT: That is?
MR. MANN: That is Exhibit 9.
THE COURT: Same objection?
MR. LINDEMANN: Same objection.
THE COURT: It will be entered over the objection from the Defense as to relevance.
(WHEREUPON, Plaintiff's Exhibit No. 9 was marked for identification and received into evidence.)
BY MR. MANN:
Q Ms. Brawley, please let me know when you have had an opportunity to review this.
A I'm ready.
Q Okay. And can you tell me whether or not this is a true and accurate copy of a document that you reviewed and marked for production on or about

February 10, 2016, from Richland County's project file for the Lower Richland Sewer Project?

A It is.

MR. MANN: Your Honor, we would move to admit as I believe 10.

THE COURT: Same objection?

MR. LINDEMANN: Same objection. Actually, Your Honor, I withdraw that objection. This is the same document that was produced as part of the pleadings.

THE COURT: All right. That one will be entered without objection.

(WHEREUPON, Plaintiff's Exhibit No. 10 was marked for identification and received into evidence.)

BY MR. MANN:

Q Ms. Brawley, please, looking at Exhibit 10 and contrasting it before we move on here -- what I have handed you, Ms. Brawley, is going to be Exhibit 11. However, I wish you to look back at the document we just handed you that was Exhibit 10.

A Uh-huh.

Q Ms. Brawley contrasting Exhibit 10 and Exhibit 4, can you tell me if the documents from Exhibit 4

marked as instructions for the SF-424 are included in Exhibit 10?
A No.
Q All right. And then looking from Exhibit 4, can you tell me if the documents marked Exhibit 4 instructions for the SF-424C and assurances construction program, those two pages of documents, are included in what we marked as Exhibit 10?
A Can you repeat those?
Q Yes. Can you tell me if the two documents from Exhibit 4, marked at the top as instruction for the SF-424C, and the next page, assurances construction programs, are included in Exhibit 10?
A No. Okay, the last page is for the assurances, but the pages -- the first page of the assurances is not, as is the instruction sheet is not.
Q Okay, thank you. That's all I've got on that document.
MR. LINDEMANN: Your Honor, the problem with this testimony is they are contending that Plaintiff's 10 is different than Plaintiff's 4. Well, they are the ones who chose what pages to copy out of our file.
MR. MANN: He is testifying again.
MR. LINDEMANN: I'm not testifying. I am

giving an explanation --

THE COURT: All right. You can -- but Mr. Lindemann, you will have an opportunity to cross-examine the witness, so.

MR. LINDEMANN: I understand, but I'm stating my objection, Your Honor, because the bottom line is simply because they can select a document they want doesn't mean that those documents were not in that project file.

MR. MANN: Your Honor, it is not an objection, it is a question for cross-examination.

THE COURT: The objection is overruled. I'll give you an opportunity to cross. You will be able to ask questions on cross-examination.

Yes, sir?

BY MR. MANN:

Q Okay. The document that I handed you before I interrupted you and asked you to go back to Exhibit 10, have you reviewed that, the letter of transmittal from June 7, 2010?

A I have. I see it.

Q Okay. And that document, is that a true and accurate copy of a document that you marked for production -- that you reviewed and marked for production on or about February 10, 2016, at

Mr. Lindemann's office as part of the county's production of its complete Lower Richland Sewer Project file?

A Yes.

MR. MANN: Your Honor, we would move to admit as Plaintiff's Exhibit 11.

MR. LINDEMANN: Same objection. Lack of foundation and relevance.

THE COURT: Entered over the objection.

(WHEREUPON, Plaintiff's Exhibit No. 11 was marked for identification and received into evidence.)

BY THE WITNESS:

A Okay.

Q All right. Have you had an opportunity to review this document?

A I have.

Q And is it a true and accurate copy of a document that you reviewed and marked for production on or about February 10, 2016, at Mr. Lindemann's office as part of the county's production of its entire Lower Richland Sewer Project file?

A It is.

MR. MANN: Your Honor, we would move to admit as Exhibit 12.

MR. LINDEMANN: Same objection.
THE COURT: Any objection? It will be entered over the objection.
(WHEREUPON, Plaintiff Exhibit No. 12 was marked for identification and received into evidence.)
BY THE WITNESS:
A I'm ready.
Q Okay. Have you reviewed this document?
A We did.
Q Do you recognize it?
A I do.
Q And is it a true and accurate copy of the document that you reviewed and marked for production on or about February 10, 2016, as part of Richland County's production of its entire Lower Richland Sewer Project file?
A It is.
MR. MANN: Your Honor, we would move to admit as Plaintiff's 13.
THE COURT: Same objection?
MR. LINDEMANN: Same objection, lack of relevance, lack of foundation.
(WHEREUPON, Plaintiff's Exhibit No. 13 was marked for identification and

received into evidence.)
BY THE WITNESS:
A I'm ready.
Q Do you recognize this document?
A I do.
Q Is it a true and accurate copy of the document you reviewed and marked for production on or about February 10, 2016, from the county's Lower Richland Sewer Project file?
A It is.
MR. MANN: Your Honor, we would move to admit Exhibit 14.
THE COURT: Same objection?
MR. LINDEMANN: Same objection, Your Honor. And for the record, am I protected by just saying same objection?
THE COURT: Yes. I think you noted that the objection -- your objection to all of these are relevance and foundation.
MR. LINDEMANN: Thank you.
MR. MANN: And we would stipulate that he is repeating verbatim his prior objection.
(WHEREUPON, Plaintiff's Exhibit No. 14 was marked for identification and received into evidence.)

BY MR. MANN:
Q Do you recognize this document?
A I do.
Q Is it a true and accurate copy of a document you reviewed and marked for production on or about February 10, 2016, out of Richland County's Lower Richland Sewer Project file?
A It is.
MR. MANN: Your Honor, we would move to admit as Plaintiff's 15.
MR. LINDEMANN: Same objection, Your Honor.
THE COURT: All right. Over the objection of the Defense.
(WHEREUPON, Plaintiff Exhibit No. 15 was marked for identification and received into evidence.)
BY THE WITNESS:
A I'm ready.
Q Do you recognize this document?
A I do.
Q Is this a true and accurate copy of a document that you reviewed and marked for production on or about February 10, 2016?
A It is.
Q As part of the county's production of its Lower

Richland Sewer Project file?
A It is.
MR. MANN: Your Honor, we would moved to admit as Plaintiff's Exhibit 16.
THE COURT: Same objection?
MR. LINDEMANN: Yes, Your Honor.
THE COURT: It will be entered over the objection.
(WHEREUPON, Plaintiff's Exhibit No. 16 was marked for identification and received into evidence.)
BY MR. MANN:
Q Have you reviewed this document?
A I have.
Q Do you recognize it?
A I do.
Q Is it a true and accurate copy of the document you reviewed and marked for production on or about February 10, 2016, from Defendant Richland County's Lower Richland Sewer Project file?
A I did.
MR. MANN: Your Honor, we would move to admit as Plaintiff's 17.
THE COURT: Same objection?
MR. LINDEMANN: Yes, Your Honor.

THE COURT: It will be entered over the objection.

(WHEREUPON, Plaintiff's Exhibit No. 17 was marked for identification and received into evidence.)

BY MR. MANN:

Q Ms. Brawley, do you recognize this document?

A I do.

Q Is it a true and accurate copy of the document you reviewed and marked for production on or February 10, 2016, as a review of the county's Lower Richland Sewer Project file?

A It is.

MR. MANN: Your Honor, we would move to admit as Plaintiff's 18.

THE COURT: Objection?

MR. LINDEMANN: Same objection, Your Honor.

THE COURT: It will be entered over the objection.

(WHEREUPON, Plaintiff's Exhibit No. 18 was marked for identification and received into evidence.)

MR. LINDEMANN: And, Your Honor, if I can just add an additional objection? The Bates numbers on these don't even match up with what was produced as

part of the production they are talking about. These are documents that were part of the documents that the Court is not admitting but have simply marked. It has RC-007 through RC-009. That was part of the previous production of documents.

MR. MANN: Your Honor, we'll elicit testimony on that later.

MR. LINDEMANN: The same is actually true for Exhibit 16 as well, Your Honor.

MR. MANN: Well, 16 is marked for identification. I believe it is 16, or is it 18?

MR. LINDEMANN: Sixteen and 17 are Bates numbered from the first production, not from the production from that period of time when they had access to that entire file.

MR. MANN: Sixteen and 18 --

THE COURT: Are not entered? They are for ID purposes?

MR. MANN: Yes, 16 and 18 are for ID purposes.

THE COURT: All right. So we'll have all this correct in the record.

BY MR. MANN:

Q Ms. Brawley, do you recognize the documents I handed you?

A I do.

Q And is that a true and accurate copy of a document that you reviewed and marked for identification on or about February 10, 2016, from Richland County's Lower Richland Sewer Project file?
A It is.
MR. MANN: Your Honor, we would move to admit as Plaintiff's 19.
THE COURT: Objection?
MR. LINDEMANN: Same objection, Your Honor.
THE COURT: Entered over the objection of the Defense.
(WHEREUPON, Plaintiff's Exhibit No. 19 was marked for identification and received into evidence.)
BY MR. MANN:
Q Do you recognize this document?
A Yes.
Q Is this document a true and accurate copy of a documents that you reviewed and marked for identification in production on or about February 10, 2016, from the Defendant's Lower Richland Sewer Project file?
A It is.
Q Okay.
MR. MANN: We would move to admit as

Plaintiff's 20.

MR. LINDEMANN: Same objection, Your Honor.

THE COURT: It is entered over the objection.

(WHEREUPON, Plaintiff's Exhibit No. 20 was marked for identification and received into evidence.)

BY MR. MANN:

Q Do you recognize this document?

A I do.

Q Is this document a document that you reviewed and marked for identification on or about February 10, 2016, from the Lower Richland Sewer Project file?

A It is.

MR. MANN: Your Honor, we would move to admit as Exhibit 21.

THE COURT: Same objection?

MR. LINDEMANN: Yes, Your Honor.

THE COURT: It will be entered over the objection.

(WHEREUPON, Plaintiff's Exhibit No. 21 was marked for identification and received into evidence.)

BY MR. MANN:

Q Do you recognize this document?

A I do.

Q Is it a true and accurate copy of the document that you reviewed and marked for production on or about February 10, 2016, from the Lower Richland Sewer Project file by the county?
A I do.
Q Or of the county.
MR. MANN: Your Honor, we would move to admit Plaintiff's Exhibit 22.
THE COURT: Same objection?
MR. LINDEMANN: Same objection, Your Honor.
THE COURT: It will be entered over the objection.
(WHEREUPON, Plaintiff's Exhibit No. 22 was marked for identification and received into evidence.)
BY MR. MANN:
Q Last one. Do you recognize this document?
A I do.
Q Is it a true and accurate copy of the document you reviewed and marked for production on or about February 10, 2016, from the Richland County's Lower Richland Sewer Project file?
A It is.
MR. MANN: Your Honor, we would move to admit as Plaintiff's Exhibit 23.

THE COURT: Same objection?
MR. LINDEMANN: Same objection, Your Honor.
THE COURT: It will be entered over the objection of the Defense.
(WHEREUPON, Plaintiff's Exhibit No. 23 was marked for identification and received into evidence.)
MR. MANN: Your Honor, if I might have a minute to confer with co-counsel?
THE COURT: Yes, sir.
(Pause.)
MR. MANN: That's all we have, Your Honor.
THE COURT: Yes, sir, Mr. Lindemann?
MR. LINDEMANN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. LINDEMANN:

Q Ms. Brawley, you made four FOIA requests to the county, is that right?
A That's correct, the four that were in question, yes.
Q And they were all submitted on the same time during a Council meeting that was occurring at night on September 9th, 2014, is that right?
A That's correct.
Q Did you then receive a confirmation letter from the

ombudsman's office that those FOIA requests had been received?
A I did.
Q Okay. Are these the first FOIA requests you ever made?
A I don't -- I have to think about that. I'm not sure. This has been an ongoing issue. I'm not sure if these were the first that I had made for the group, but I'm not allowed to talk about the group.
Q Let me show you a document and ask if you can identify that, please?
A Okay.
Q Are you familiar with that document?
A I am.
Q Is that a letter you received from the Richland County Ombudsman's Office?
A It is.
Q And that is dated September 12, 2014?
A It is.

MR. LINDEMANN: Your Honor, I would move that in as Defendant's Exhibit Number 1, please.

THE COURT: Any objection?

MR. MANN: No objection.

(WHEREUPON, Defendant's Exhibit No. 1

was marked for identification and received into evidence.)

BY MR. LINDEMANN:

Q And, Ms. Brawley, I believe we have already put in evidence, you have the documents in front of you, Plaintiff's Exhibit No. 2 is a letter, then, that you received from Ms. Carter indicating that your FOIA request would be responded to, is that correct?

A Exhibit 2? Yes.

Q If you look at the third line from the bottom, it says, The information requested will be released, does it not?

A It does say that.

Q Okay. And it is referring to your various FOIA requests in the remaining or the previous portion of that second paragraph of the letter, correct?

A Can you repeat that?

Q It was referring, then, to your various FOIA requests, which are described in the first part of that paragraph, correct?

A Yes.

Q All right. And as far as the FOIA requests that we are here about today, it was described as a copy of the application and supporting documentation

Richland County submitted to the USDA Rural Development for grant and loan financing, for funding for the Lower Richland Sewer Project? And that is the way you phrased your request, correct?
A It is.
Q All right. And then on October 8 you received the responsive documents to that request, correct?
A Well, I received a response.
Q And it provided you documents responsive to your request, correct?
A It provided -- stated that it was providing those documents.
Q All right. And Exhibit 4, I think we agreed, was the documents that were provided to you, was it not? Do you have Exhibit 4 in front of you?
A I'm looking through it now.
Q Okay. Is that what you were provided with that October 8, 2014, letter?
A It appears that that was the information that came with that.
Q And you would agree with me that that was responsive to your request?
A I would not agree to that.
Q So you were asking for applications, and that is an application, is it not?

A I asked for the application and the supporting documentation that was submitted for grant funding and the loan for the Lower Richland Sewer Project.
Q I wasn't asking if you take the position that that was fully responsive, but I'm asking you, is that a document that you believe was responsive to your request?
A It is a document that was responding to my request. I don't think it was responsive.
Q Okay. But it provided you an application, did it not?
A It did provide an application.
Q All right. And you mentioned that that application was not dated, but actually on the last page of that 6-page document it is actually dated March 16, 2010, is it not?
A Well, the application -- the application form where it lists a date, there is none on the application. The document that you are referencing that had a date was included in that packet, but it was not the application, it was part of the -- in the documents that I have it was part of the assurances.
Q All right. And that would represent to you to be a part of the supporting documentation provided,

correct?
A Yes.
Q And it included a date?
A That did include a date. The application did not.
Q You were asked a question regarding the checkmark of continuation. Ma'am, you have never applied for a federal grant with USDA, have you?
A I have not.
Q Okay. So you don't have any specialized knowledge or expertise as to what those terms of art mean in these applications, is that correct?
A That is not correct.
Q That is not correct?
A I can read --
Q You have expertise?
A I can read it. The expertise -- this is a simple application. It asks you to check the box to describe whether this is the beginning construction, a continuation, and it was checked a continuation. So if reading is an expertise, I have that expertise.
Q So is it your position, ma'am, that continuation is not a specific term of art for the USDA?
A It is my contention that a continuation means exactly what it says, that this is not a new

application, because that was an option, it was a continuation application.

Q So is it fair to say that you are applying what you believe to be the plain and ordinary meaning to that word, but you don't have any independent expertise as to what that word means or how it is applied pursuant to USDA regulations, do you?

A I presume the answer that you want me to give you is not the one that I'm giving you, but I do understand what continuation means, and that was what was checked on the box.

Q Are you familiar -- have you ever personally filled out one of these applications?

A What is one of these applications?

Q A USDA application for grant or loan?

A No, I have not.

Q Have you ever had any dealings with the USDA regarding a application for grants or loans?

A No.

Q Have you ever reviewed regulations that are in place or policies or practices in place for the USDA and associated with these forms?

A Well, I reviewed the information in association with this case, those forms and regulations that are required. It is stated in some of those

documentation that you have here.
Q You are saying you have reviewed federal regulations?
A I have, in compliance with this application.
Q Okay. Was there a term of -- continuation a term of art which you reviewed, ma'am? Or did you even look for that?
A I did not look for that, other than where it was on the page.
Q All right. Let me ask you about making the entire Richland County utility file, project file, available to you. You reviewed that file on February 10, 2016, in my office, is that correct?
A I reviewed a file. I reviewed a lot of files. I don't know if it was the entire file. That is the whole issue. It was a bunch of papers on a conference room desk.
Q It was about a bankers box about 3-foot, 4-foot long, was it not?
A It was way more than that.
Q It was way more than that?
A Uh-huh.
Q Okay. And you were there together with one of your lawyers, is that correct?
A And another community member that I can't mention,

yes.
Q Okay. And who was that other community member?
A Helen Bradley.
Q Excuse me?
A Helen Bradley.
Q Allen Bradley.
A Helen.
Q Helen Bradley. Thank you. And you reviewed all the documents made available to you?
A We tried as best we could to go through everything.
Q All right. And you were asked to mark what you wanted copied, is that not correct?
A Exactly. We were.
Q And so how did you mark those?
A How did we mark them?
Q Yes?
A We pulled out what should be copied.
Q And you actually put post-it notes on them, did you not?
A Yes, we did. We put post-it sheets on them. I don't know if we actually wrote on the notes, but, yes.
Q Right. You marked each thing with a post-it note that you wanted copies of, is that correct?
A Yes, we stuck a post-it note on it and that was the

mark.
Q And you received copies of what you marked, did you not?
A Yes.
Q And those were all then Bates numbered, were they not?
A I don't know that they were. I'm assuming that they were. There are numbers on them, so I am assuming that they were.
Q I show that they were Bates numbered, starting with RC-56 through RC-373. I don't know the answer to that.
A I did not number them, so I cannot, you know, answer that question, to be honest with you.
Q But you obtained copies that were numbered, correct?
A I did receive copies that were numbered.
Q Okay. And was everything that you marked for copying on February 10, 2016, were those all then Bates numbered?
A Again, I didn't put the numbers on them, so I can't -- I can't testify to that.
Q All right. How is it that you were able to testify today in looking at the various documents, I think Exhibits, I think it was 6 through 23 were

documents that you looked at and marked for copying on February 10, 2016?
A Because I recall those documents. Not that I recall the numbers. The Bates numbers that you keep referencing means nothing to me, but the documents mean --
Q So you are saying from two and a half years later you actually recall every document that you marked for copying?
A All the ones that I reviewed, yes. I mean, with this case, it has gone on for some time. It is etched in my mind.
Q You have those committed to memory?
A I have recollection, and I think that was what I was asked, are those documents being the documents that I had reviewed that day.
Q Did you not rely on the fact that they were Bates numbered at the bottom to be able to testify that those were ones that you looked at on that day?
A The Bates numbers really mean nothing to me. I was looking at the documents. I didn't do the numbering of the documents. I don't even know what the word Bates means. But I do know what I saw, and that is what I remember.
Q And, Ms. Brawley, you would agree with me, would

you not, that you are not aware of what documents were in the county's possession on September 9, 2014, is that correct?

A That was the whole request for the FOIA. That was why I requested that information, because I did not know what they had. We were asking for what they had.

Q And for all of these documents that you just went through, Plaintiff's Exhibits 6 through 23, you can't say whether the county was in possession of those documents on the date of your FOIA request or not, can you?

A I can only say that I didn't get them in response to my original FOIA request.

Q But you can't say that they were in existence or in possession on that day, can you?

A I cannot. I don't work for the county.

Q That's all the questions I have. Thank you, ma'am.

THE COURT: Yes, sir?

REDIRECT EXAMINATION

BY MR. MANN:

Q Ms. Brawley, very briefly. Would you look back at Exhibit 4?

A 4?

Q Yes, please.

A I have it.
Q I believe that the copy that you have, the first page is going to be -- is the first page your FOIA request itself and the second page is the e-mail from Andy Metts, is that correct?
A Yes, it is.
Q All right. If you would, go to Page 4 of your exhibit.
A Okay. I have it.
Q Okay. A lot was made about continuation, your understanding of the term continuation, that was a term of art that federal regulations -- do you recall those questions Mr. Lindemann was just asking you?
A Yes.
Q Okay. Would you read to me from Subsection 8 down there that particular part regarding what continuation means as defined by the document itself?
A Continuation means an extension for an additional funding budget period for the project with a projected completion date.
Q Okay. And was that your understanding of exactly what continuation meant when you saw it?
A Yes. Well --

MR. LINDEMANN: Object to form, Your Honor. Leading.

BY MR. MANN:

Q Was that your understanding of what continuation meant when you saw it?

A It was the understanding, my understanding that continuation meant just that, an additional application.

Q Okay.

MR. MANN: Your Honor, I have no further questions.

THE COURT: All right. You may step down.

(Witness steps down.)

THE COURT: We are going to take about five minutes so our court reporter can have a restroom break.

(WHEREUPON, a break was taken at 11:39 a.m.)

(WHEREUPON, the hearing resumed at 11:53 p.m.)

THE COURT: Call your next witness.

MR. BLAKE: Your Honor, first I would like to move for sequestration since the Defense, all the remaining witnesses are county employees. We think sequestration is proper -- is perfect for the

situation.

THE COURT: All right. Yes, sir?

MR. LINDEMANN: Your Honor, first of all, they are not county employees. They are former county employees, but they are not county employees. I think a sequestration request should have been made at the beginning of the trial. It is a little late at this particular point in time.

THE COURT: All right. Well, I am going to grant the motion. She is the only witness that testified as the Plaintiff. And she, of course, is allowed to stay, and whoever is your representative from the county is allowed to stay.

MR. BLAKE: Thank you, Your Honor. We call Sara Salley to the stand.

THE COURT: All right. So the other witness will have to go outside.

(Remaining witnesses sequestered.)

(Witness approaches.)

THE BAILIFF: Place your left hand on the Bible, and raise your right hand, please.

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the

truth, so help you God?

THE WITNESS: Yes.

THE CLERK: Thank you. Have a seat in the witness stand. State your full name for the record. Please spell your last name.

(Witness seated.)

THE WITNESS: Sara Jane Salley.

THE CLERK: Please spell your last name.

THE WITNESS: S-A-L-L-E-Y.

SARA J. SALLEY,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLAKE:

Q Good morning, Ms. Salley. My name is Shaun Blake. I know we have spoken on the phone a couple of times trying to coordinate getting you here for this trial, and we appreciate you showing up today.

When did you work for Richland County?

A I started late September of 2009, and my last day was May 1st of '15.

Q 2015. And, as a part -- how about just explain to the Court, if you would, what your job responsibilities were?

A So I had kind of a split job. The majority of my job was running the accommodations and hospitality

and discretionary grant programs. And then the other was coordinating grants with the different departments within the county. There are state and federal grants. I was kind of the -- I don't even know how you would call it, but kind of -- not the clearinghouse, but I had the national list of what grants were open. I worked with each department, was the intermediary between like finance and administration. So I compiled the grants budget every year because each grant had to be approved by Council. So I handled that piece.

Q That's great. Thank you. At some point you become aware that there was an application for both a loan and a grant submitted to the USDA by Richland County in connection with the Lower Richland Sewer Project, is that correct?

A Yes.

Q Tell me when you became aware of that.

A That project was in the works when I got to the county. I don't know what stage funding was in at that time, but I was aware of the project as soon as I started and throughout my tenure.

Q Did you complete the application?

A No.

Q Did you maintain the application?

A I had some files in my office that, if something was e-mailed to me, like if they were built as my years played out, but it was not a full application file, or a full really grant file. Also, because it was a loan, and that really wasn't a grant responsibility.
Q Right. And so where was the office -- or how about, who was really in charge of those records for seeking --
A Each department managed their own grants.
Q Okay. Which department was this?
A That would have been under the utilities department, but because it was a loan, I am assuming that finance would have some of those records as well. I just don't know who had what, because I wasn't a part of that.
Q Sure. To be clear, you were not a part of the finance department, correct?
A No, I was in administration.
Q Right. And you weren't part of the utilities department, were you?
A No, I wasn't.
Q Were you located in the same office building as the utilities department?
A No.

Q So you saw Mr. Metts out in the --
A Yes.
Q -- crowd today? Were you in the same office as Mr. Metts?
A No.
Q Where were you physically located at?
A At Hampton Street in the main administration office.
Q And where was Mr. Metts located at during 2014?
A Their office was up I-26. I can't remember what road.
Q And at some point did you get asked to take a role in responding to a FOIA request submitted by Representative Brawley?
A Yes. I think I responded. I remember compiling information from my records in response to a FOIA request.
Q Right.
A I don't remember who submitted it.
Q In response to that, you did not go out to Mr. Metts' office, --
A No.
Q -- did you?
A No, I did not.
Q Okay. Did you go over to the finance office and

gather their records?
A No, I did not.
Q We have marked, entered into evidence Exhibit 4 in this case. Do you have Exhibit 4 in front of you?
A All of these pages?
Q Yes. If you have them, I want to draw your attention to the e-mail that I believe is Page 3, 2 or 3 of that exhibit. It says at the top Navisala --
A Yes.
Q Okay. If you would for me, read Paragraph 2 of Mr. Metts' e-mail dated Monday, September 15th, 2014.
A Application and supporting documentation RC submitted to the USDA Rural Development for grant and loan funding for the Lower -- or LR Sewer Project. A copy of the application as provided by Sara Salley's office is attached.
Q Now, you were present in the courtroom earlier when Mr. Lindemann elicited testimony from Representative Brawley about this large bankers box at least worth of records sitting on the table of his office, correct?
A Yes.
Q Did your office have at least four feet of banker

boxes of records on this application?
A No, it did not.
Q Okay. Where, given your dealings with the county at this time and this project, where do you believe those records were actually at?
A Most likely -- I honestly don't know, but most likely within the department.
MR. LINDEMANN: Your Honor, if she doesn't know. Lack of foundation. Asking her about a record she doesn't have responsibility for.
THE COURT: All right. The objection is overruled. Let her answer the question. I think she can answer and say she didn't know.
BY THE WITNESS:
A I don't know.
Q Thank you. Thank you. Aside from providing what application documentation you may have had, did you have any other role in gathering together information to provide to Representative Brawley in response to her FOIA request for the loan and grant application and supporting documentation?
A No. I just got what was in my -- provided what was in my office when asked.
Q Okay. And later, after the lawsuit happened, were you involved in any way in providing any additional

responses to Representative Brawley?
A No.
Q Okay. All the questions I have. Thank you so much for your patience.
THE COURT: All right. Yes, sir?
MR. LINDEMANN: I have no questions. Thank you.
THE COURT: All right, you may step down.
(Witness steps down.)
THE COURT: Call your next witness.
MR. BLAKE: Your Honor, if it is okay, we will go ahead and call Mr. Andy Metts.
THE COURT: What is his name?
MR. BLAKE: Andy Metts. He went to get him.
(Witness approaches.)
THE BAILIFF: Place your left hand on the Bible, and raise your right hand, please.
(Witness complies.)
THE CLERK: Do you swear or affirm the testimony you give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?
THE WITNESS: I do.
THE CLERK: Thank you. Please have a seat in the witness stand. State your full name for the