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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

John A. Massalon, Esquire, Limited Special Referee

RECEIVED

MAR 11 2016

SC Court of Appeals

Case No. 2010-CP-10-10495 / Case No. 2012-CP-10-5093

Charleston County School District,Respondent,

v.

Clemson University and City of North Charleston,Defendants,

Project: Intermodal Container Transfer Facility Tract: 11

South Carolina Department of Commerce, Division of Public Railways,Appellant,

v.

Clemson University,Appellant,

and

Charleston Naval Complex Redevelopment Authority, City of North Charleston, Commissioners of Public Works for the City of Charleston, North Charleston Sewer District, Bellsouth Telecommunications, Inc., Business Telecom, Incorporated, South Carolina Electric & Gas Company and Charleston County School District, Other Condemnees.

**Respondent Charleston County School District's
Motion to Dismiss Appellants' Notices of Appeal**

NOW INTO COURT, through undersigned counsel, comes the Respondent, Charleston County School District, respectfully submitting this Motion to Dismiss Appellant Clemson University's two Notices of Appeal and Appellant South Carolina Department of Commerce's Notice of Appeal (collectively Appellants hereinafter) in the above-captioned consolidated matter.

Appellants filed the Notices of Appeal on the same grounds verbatim. As stated in the Notices of Appeal, Appellants contend as follows:

While the Consent Order of Limited Special Reference and Scheduling Order in this case provided that "any Order of the Limited Special Referee deciding those issues would not be appealable until the entire actions are resolved by the Circuit Court," that language conflicts with the statutory provisions on appeals from special referees.

See also Consent Order of Limited Reference and Scheduling Order (Exhibit A). Specifically, the Appellant refers this Honorable Court to S.C. Code Ann. §14-11-85, which provides:

When some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action, and an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals as provided by the South Carolina Appellate Court Rules. A matter may not be referred to a master or referee for the purpose of making a report to the circuit court.

Additionally, the Appellant cites Rule 53(e) of the South Carolina Rules of Civil Procedure as potentially conflicting with the Consent Order of Limited Special Reference and Scheduling Order in the matter. Rule 53(e), SCRCR states:

When a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Both S.C. Code Ann. §14-11-85 and Rule 53(e), SCRCR simply designate the appellate procedure for causes of action and matters referred to a master or special referee. Neither is

vague, confusing, nor in need of clarification. Moreover, neither conflicts with the Consent Order of Limited Special Reference and Scheduling Order.

The Appellants readily and voluntarily agreed to all terms contained within the Consent Order of Limited Special Reference and Scheduling Order, including a very clear waiver of appeal until all actions are resolved by the Circuit Court. This agreement was reduced to writing, signed by Appellants and Respondent's respective counsel and the Honorable Stephanie P. McDonald, and duly filed.

Rule 43(k), SCRCF provides,

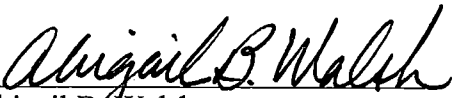
No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.

"The rule requiring agreements between counsel to be entered into court's records or acknowledged in open court and noted on the record is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation." Motley v. Williams, 374 S.C. 107, 647 S.E.2d 244 (Ct.App. 2007); Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 627 S.E.2d 724 (2006); Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 567 S.E.2d 514 (Ct.App. 2002); Ashfort Corp. v. Palmetto Const. Group, Inc., 318 S.C. 492, 458 S.E.2d 533 (1995).

Rule 43(k), SCRCF further promotes efficiency in resolving litigation by allowing parties to agree to terms affecting the proceedings. It is precisely for this reason that the parties herein agreed to refrain from appealing each and every Order of the Special Referee until the entire actions are resolved by the Circuit Court. For the Appellants to now claim confusion is disingenuous. By consent and order of the Circuit Court, this appeal is premature and the Appellants have failed to cite to any authority that prohibits sophisticated parties from

voluntarily waiving any rights afforded under the South Carolina Rules of Civil Procedure and Code of Laws during litigation.

For the reasons stated herein, Respondent requests an Order from the Court of Appeals dismissing Respondents' respective Notices of Appeals in this consolidated matter.


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March 9, 2016

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Charleston County School District,)
)
 Plaintiff,)
)
 v.)
)
 Clemson University and City of North)
 Charleston,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2012-CP-10-5093

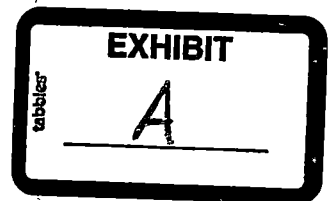
**CONSENT ORDER OF
 LIMITED REFERENCE
 AND SCHEDULING ORDER**

BY _____
 JULIE J. ARMSTRONG
 CLERK OF COURT
 APR 25 AM 9:47

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Project: Intermodal Container)
 Transfer Facility)
 Tract: 11)
)
 South Carolina Department of Commerce,)
 Division of Public Railways,)
)
 Condemnor,)
)
 v.)
)
 Clemson University,)
)
 Landowner,)
 and)
)
 Charleston Naval Complex Redevelopment)
 Authority,)
 City of North Charleston,)
 Commissioners of Public Works of the City)
 of Charleston,)
 North Charleston Sewer District,)
 BellSouth Telecommunications, Inc.,)
 Business Telecom, Incorporated,)
 South Carolina Electric & Gas Company,)
 and Charleston County School District,)
)
 _____)
 Other Condemnees.)

CIVIL ACTION NO. 2010-CP-10-10495



The two above-captioned actions involve related matters. The first action, initiated by the Charleston County School District ("District"), involves its claim to certain real property where the District previously operated its Academic Magnet High School. The other action, which is a condemnation case initiated by the South Carolina Department of Commerce, Division of Public Railways ("Railways"), includes not only the same property at issue in the action initiated by the District, but also additional property. In the condemnation case, Clemson University ("Clemson") is listed as the Landowner in the caption, and the District is one of eight Other Condemnees.

There are several issues which are critical to deciding both of these cases. The parties all agree that in 1996, a sublease was entered into between the Charleston Naval Complex Redevelopment Authority ("RDA") and the District concerning the Academic Magnet High School. However, there are various issues about which the parties do not agree, and they are presented as follows: (1) whether the sublease expired; (2) how much property was covered by the sublease ("Property"); (3) whether the District had any rights to the Property after it was conveyed from the RDA to the City of North Charleston ("North Charleston"); (4) whether the District had any rights in the Property after the Property was conveyed from North Charleston to Clemson; and (5) whether the District had any rights in the Property at the time of the filing of the Notice of Condemnation in December of 2010.

The parties all agree that judicial economy and issue resolution consistency dictate that both cases should be stayed until these questions are answered. The parties have all also agreed that the matters at issue in this Order should be referred to a Limited Special Referee. The parties have all agreed that John Massalon, Esquire should be appointed as the Limited Special Referee, and he has agreed to this appointment. However, the parties agree this Court shall

maintain jurisdiction over and authority to hear discovery matters pertaining to these cases in the event the same should arise via Motion to Compel or otherwise even while these actions are stayed pending the outcome of the Limited Special Referee Hearing.

This list of issues to be referred to the Limited Special Referee may be amended by written agreement signed by all the parties hereto without further order from the Circuit Court. Once decided, these issues can then be applied in both the above-captioned actions. The role of the Limited Special Referee shall be to resolve only these specific issues, unless the list is expanded or limited, as set forth above. The parties recognize, and I concur, that since the purpose of this Order is to resolve specific issues which are germane to the above-captioned actions, any Order of the Limited Special Referee deciding those issues would not be appealable until the entire actions themselves are resolved by the Circuit Court.

While the parties have been conducting discovery for some time, they agree that discovery should only continue at this time on those matters relevant to this reference. To that end, they have agreed on the following scheduling deadlines:

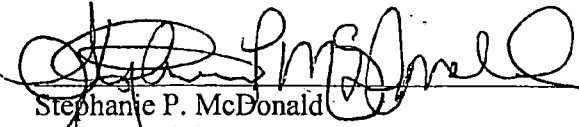
1. The District shall identify all expert witnesses to be called in the reference hearing no later than April 4, 2014;
2. Railways, Clemson, and North Charleston shall identify all expert witnesses to be called in the reference hearing no later than April 11, 2014;
3. Discovery concerning the matters at issue in this reference shall be completed by July 12, 2014;
4. The hearing by the Limited Special Referee shall be held not before August 1, 2014;
5. Within 15 days after the Limited Special Referee has issued his final order, the

parties shall contact this Court and advise the Court as to their positions as to the impact of the Special Referee's decision on each of these cases, what issues remain in either of these cases, and a proposed scheduling order to complete discovery on those cases, including a date for mediation.

IT IS THEREFORE ORDERED THAT:

1. John Massalon, Esquire shall be appointed as Limited Special Referee in deciding the issues set forth above;
2. The scheduling deadline set forth above are adopted by this Court;
3. Both of the above-captioned actions are stayed, except for the matters assigned to the Limited Special Referee;
4. This Court shall maintain jurisdiction over and authority to hear discovery matters pertaining to these cases in the event the same should arise via Motion to Compel or otherwise even while these actions are stayed pending the outcome of the Limited Special Referee Hearing; and,
5. Within 15 days after the Limited Special Referee has issued his final order, the parties shall contact this Court and advise the Court as to their positions as to the impact of the Limited Special Referee's decision on each of these cases, what issues remain in either of these cases, and a proposed scheduling order to complete discovery on those cases, including a date for mediation.
6. The Scheduling Order may be altered or amended by written consent of all parties, with the exception of the Limited Special Referee hearing date, which shall not be altered unless ordered by the Court.

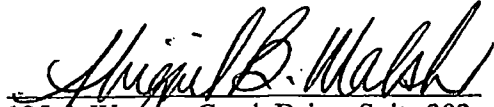
AND IT IS SO ORDERED this 23rd day of April, 2014.


Stephanie P. McDonald
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina
April 23, 2014

**WE SO MOVE AND CONSENT IN
CIVIL ACTION NO. 2012-CP-10-5093:**

WALSH & WILLIAMS, LLC
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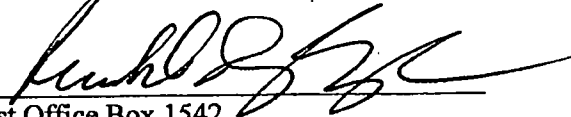


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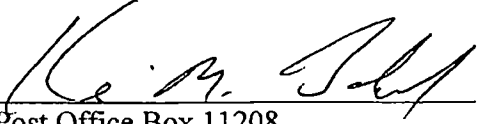
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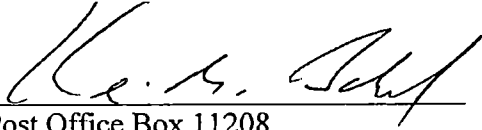
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CIVIL ACTION NO. 2010-CP-10-10495:**

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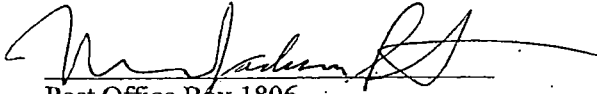
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A handwritten signature in black ink, appearing to read 'Newman Jackson Smith', written over a horizontal line.

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WE CONSENT:

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A handwritten signature in cursive script that reads "Wilbur E. Johnson". The signature is written in black ink and is positioned above a horizontal line.

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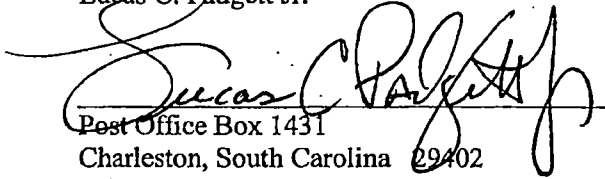
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A handwritten signature in cursive script, appearing to read "Richard D. Bybee", written over a horizontal line.

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A handwritten signature in cursive script, appearing to read "Lucas C. Padgett Jr.", written over a horizontal line.

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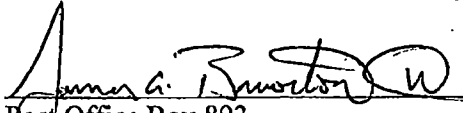
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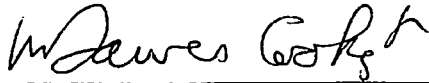
Commissioners of Public Works of the City of Charleston

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~~David C. Jennings~~ James A. Buorton IV

A handwritten signature in black ink, appearing to read "James A. Buorton IV". The signature is written in a cursive style with a large initial "J" and a distinct "W" at the end.

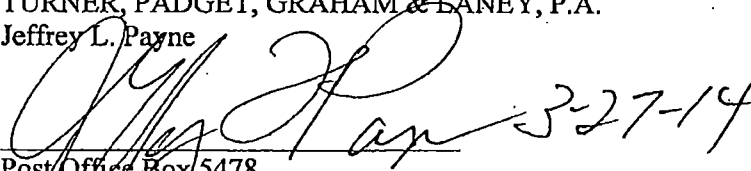
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M. Dawes Cooke, Jr.



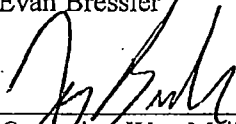
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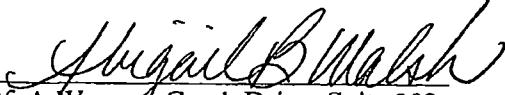
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As To ^{CASE No:} 2010-CP-10-10295

-and-

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April 18, 2014

The Honorable Julie Armstrong
Charleston County Clerk of Court
106 Judicial Center
100 Broad Street
Charleston, SC 29401

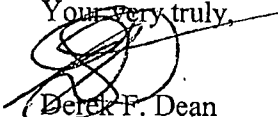
RE: *City of North Charleston v. South Carolina Department of Commerce, Division of Public Railways, et al., Civil Action No.: 2011-CP-10-491 (Tract 11)*

Charleston County School District v. Clemson University, City of North Charleston and the South Carolina Department of Commerce, Division of Public Railways, Civil Action No.: 2012-CP-10-5093

Dear Julie:

Please find enclosed the original and one copy of a Consent Order of Limited Reference and Scheduling Order, a Motion and Order Information Cover Sheet and our firm's check in the amount of \$25.00 for the filing fee. Upon filing, please return a clocked in copy to me in the self-addressed, stamped envelope included herein for your convenience. If you have any questions, please do not hesitate to contact me.

————— With best regards, I am

Yours very truly,

Derek F. Dean

DFD/dc
Enclosures