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THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Marvin H. Dukes, III

Appellate Case No.: 2017-000620

RECEIVED
OCT 27 2017
SC Court of Appeals

BURTON FIRE DISTRICT.....Respondent,

vs.

CITY OF BEAUFORT.....Appellant.

And

BURTON FIRE DISTRICT.....Respondent,

vs.

TOWN OF PORT ROYAL.....Appellant.

RECORD ON APPEAL
VOLUME I

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-07-01463 (2013-CP-07-01464)

BURTON FIRE DISTRICT

CITY OF BEAUFORT, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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:

THIS CAME BEFORE ME ON CITY OF BEAUFORT'S MOTION FOR SUMMARY JUDGMENT FILED 10/16/2013 IN CASE 13-1463 AND ON TOWN OF PORT ROYAL'S MOTION FOR SUMMARY JUDGMENT FILED 10/18/2013 IN CASE 13-1464 WHICH IS NOW CONSOLIDATED INTO CASE 13-1463. AFTER HEARING FROM ALL PARTIES AND FURTHER REVIEW OF THE FILES AND DOCUMENTS I HEREBY DENY BOTH MOTIONS FOR SUMMARY JUDGMENT.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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

3069

Judge Code

2/9/15
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:

H. FRED KUHN

WILLIAM B. HARVEY III

MARY BASS LOHR

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-07-1463

BURTON FIRE DISTRICT

CITY OF BEAUFORT

BURTON FIRE DISTRICT

TOWN OF PORT ROYAL

PLAINTIFF(S)

2016 OCT 24 AM 10:47

DEFENDANT(S)

Submitted by: H. Fred Kuhn, JERRI ANN ROSENEAU BEAUFORT COUNTY, S.C. CLERK OF COURT	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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : CASE # 2013-CP-07-1464 WAS CONSOLIDATED INTO 2013-CP-07-1463

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)
BURTON FIRE DISTRICT	CITY OF BEAUFORT	\$91,458.07
BURTON FIRE DISTRICT	TOWN OF PORT ROYAL	\$178,618.20
		\$

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

Judge Code

October 24,
2016
Date

For Clerk of Court Office Use Only

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

H. Fred Kuhn, Jr.

P.O. Drawer 507

Beaufort, SC 29901

ATTORNEY(S) FOR THE PLAINTIFF(S)

Mary B. Lohr

P. O. Box 40

Beaufort, SC 29901

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	2015 OCT 24 CIVIL ACTION NO.: 2013-CP-07-01463
BURTON FIRE DISTRICT,	)	
	)	JERRI ANN ROSENEAU
	)	BEAUFORT COUNTY, S.C.
	)	CLERK OF COURT
Plaintiff,	)	
	)	FINAL ORDER
vs.	)	OF JUDGMENT
	)	
CITY OF BEAUFORT,	)	
	)	
Defendant.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2013-CP-07-01464
BURTON FIRE DISTRICT	)	(Consolidated into 2013-CP-07-01463)
	)	
Plaintiff,	)	
	)	FINAL ORDER
vs.	)	OF JUDGMENT
	)	
TOWN OF PORT ROYAL,	)	
	)	
Defendant.	)	

These consolidated breach of contract cases were commenced by the filing of Summonses and Complaints in the Beaufort County Court of Common Pleas on June 4, 2013. In its Complaints, the Plaintiff Burton Fire District ("Burton") alleges that the Defendant City of Beaufort ("Beaufort") and the Defendant Town of Port Royal ("Port Royal") breached a Settlement Agreement entered into between the parties on September 2, 2010 by failing and refusing to pay to Burton the full amount of the annual payments mandated by the Settlement Agreement. The



Defendants take issue with the Plaintiff's interpretation of the Settlement Agreement. These consolidated cases were tried before me on December 1 and 2, 2015. Based upon the admitted allegations of the pleadings, the stipulations of the parties, and the evidence properly admitted at trial, I find and conclude that judgment should be entered in favor of the Plaintiff Burton, as hereinafter set forth.

PROCEDURAL HISTORY

Civil Action Number 2013-CP-07-1463 was commenced by the filing of a Summons and Complaint against the Defendant City of Beaufort on June 4, 2013. The Defendant Beaufort was duly served and filed its Answer on July 9, 2013.

Civil Action Number 2013-CP-07-1464 was commenced by the filing of a Summons and Complaint against the Defendant Town of Port Royal on June 4, 2013. The Defendant Port Royal was duly served and filed its Answer on July 11, 2013.

On January 23, 2014, pursuant to motion of the Defendant Port Royal and with the consent of all parties, the foregoing two (2) cases were consolidated under Case Number 2013-CP-07-1463.

On October 2, 2015 these consolidated cases were referred to me as the Beaufort County Master-In-Equity in accordance with Section 14-11-85 of the South Carolina Code of Laws.

This matter came to be heard before me on December 1 and 2, 2015 in the Beaufort County Court of Common Pleas for the purpose of conducting a final trial. Present at the hearing on behalf of the Plaintiff was its attorney H. Fred Kuhn, Jr., Esquire. Present and appearing on behalf of the Defendants Beaufort and Port Royal was their attorney Mary B. Lohr, Esquire. Numerous witnesses testified on behalf of the parties, and I personally observed each witness'



demeanor and weighed the credibility of his or her testimony. At the conclusion of the trial, I took the matter under advisement at the request of the parties, as they desired to further explore the possibility of settlement. The parties, through their respective attorneys, have now reported to me that, despite extensive settlement talks and negotiations, they have been unable to reach a settlement to this dispute and request my final ruling.

Having carefully considered the admitted allegations of the pleadings, the stipulations of the parties, and the properly admissible testimony and evidence rendered at trial, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Plaintiff, Burton Fire District ("Burton"), is a public service district existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

2. The Defendant, City of Beaufort ("Beaufort"), is a municipality of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

3. The Defendant, Town of Port Royal ("Port Royal"), is a municipality of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

4. On September 2, 2010 the parties entered into a contract entitled "Settlement Agreement," which requires Beaufort and Port Royal to make annual payments to Burton. These annual payments are due on March 1st of each year, commencing on March 1, 2011 and ending on March 1, 2018.

5. The dispute these parties concerns the amount of each annual payment. Burton contends that the payment due each year should be calculated utilizing the assessed value of the

subject annexed properties. Beaufort and Port Royal contend that the amount of each annual payment should be calculated utilizing the taxable value of the subject annexed subject properties, which results in a lower payment amount.

6. For the reasons set forth herein, I find and conclude that the annual payments owed to Burton by Beaufort and Port Royal are to be calculated based upon the assessed value of the subject properties. Accordingly I enter judgment in favor of Burton.

7. Burton is a public service district that provides fire protection, firefighting, and first response emergency medical services to the properties located within its district. Beaufort and Port Royal are municipalities that are adjacent to and border Burton's district.

8. Over the years, both Port Royal and Beaufort have annexed into their respective municipalities properties that were formerly located in Burton's district.

9. The Settlement Agreement that is the subject of this lawsuit recites that Burton is indebted to the federal government by virtue of loan awarded to it in 1993 by the Farmers Home Administration, now the Rural Development Authority. A federal statute, 7 U.S.C. § 1926(b), provides certain protections to the service area of a federal debtor from certain aspects of municipal annexation while this federal loan remains outstanding.

10. The Settlement Agreement further recites that Sections 5-3-310 through 5-3-313 of the South Carolina Code of Laws, which went into effect on May 1, 2000, provide that upon annexation of a portion of a special purpose district, the annexing municipality and the effected special purpose district must devise a plan to provide for the continuation and/or transfer of services, which plan must balance the equities between the municipality and the special purpose district so that each can efficiently and effectively serve their respective constituents.



11. In 1996, Burton instituted an action in the Court of Common Pleas in Beaufort County, *Burton Fire District v. City of Beaufort and Town of Port Royal*, Case Number 2006-CP-07-0551, seeking a declaration of its rights under the aforementioned federal statute. This litigation resulted in a settlement by way of consent orders that governed the relationship between the parties through July 16, 2010.

12. In apparent anticipation of the pending expiration of the foregoing consent orders, Burton instituted an action in 2009 in the Beaufort County Court of Common Pleas, *Burton Fire District v. City of Beaufort and Town of Port Royal*, Case Number 2009-CP-07-3020 (hereinafter "Burton Litigation"). This action, Burton sought a declaration of its rights under both the aforementioned federal statute and state statutes.

13. Shortly thereafter, Port Royal and Beaufort filed their own action in the Beaufort County Court of Common Pleas, *City of Beaufort and Town of Port Royal v. Burton Fire District*, case Number 2009-CP-07-4008. In this suit, Beaufort and Port Royal sought to maintain the status quo with respect to the provision of fire service and emergency medical service by and among Port Royal, Beaufort and Burton, pending the disposition of the recently filed Burton Litigation.

14. Once again, the parties were able to resolve their differences and on September 2, 2010 memorialized the terms of their agreement in the Settlement Agreement that is the subject of these lawsuits. In connection with the negotiation, drafting and execution of the Settlement Agreement, each of the parties was independently represented by experienced and competent counsel.

15. In the Settlement Agreement, Burton acknowledges the right of Port Royal and Beaufort to annex property out of Burton's service area. In turn, Port Royal and Beaufort

acknowledge the right of Burton to be compensated **both** for the loss of tax revenue as a result of annexation **and** for providing services to Beaufort and Port Royal as set forth in the Agreement.

16. Attached to the Settlement Agreement¹ as an exhibit thereto is a list of all the properties subject to the Settlement Agreement that had been annexed by Port Royal out of Burton's district ("Port Royal Annexed Properties"). A similar exhibit lists all of the properties subject to the Settlement Agreement that had been annexed by Beaufort out of Burton's district ("Beaufort Annexed Properties"). On these exhibits each annexed property is separately listed and identified by its PIN or Property Identification Number. For each annexed property three columns, labeled "Appraised" "Assessed" and "Taxable VA," show the appraised, assessed, and taxable values for each annexed property.

17. Ordinarily, once a municipality annexes property into its jurisdiction, that municipality assumes responsibility for providing municipal services, such as fire protection, to the annexed property. Pursuant to the terms of the parties' Settlement Agreement, however, Burton is required to provide first response fire and emergency medical services to all of the Port Royal Annexed Properties and to all of the Beaufort Annexed Properties throughout the term of the Agreement.

18. The Settlement Agreement mandates that Port Royal will pay Burton for providing first response fire and emergency medical services to the Port Royal Annexed Properties. The payment is an annual, lump sum payment that is due on March 1st of each year during term of the Settlement Agreement. The Settlement Agreement mandates that the following formula will be used to calculate the amount of each annual payment by Port Royal:

"Burton Total Millage X Assessed Value of Port Royal Annexed Properties X 25%"

¹ The parties have stipulated that there were four (4) Exhibits to the Settlement Agreement: "A", which is a 6 page document headed "STADDRESS", "B" which is actually marked "Exhibit 2 City Inside", "C" which is marked "Exhibit 4 Town Inside", and "D" "Cooperation Poices (sic) and Procedures".

(emphasis mine). There is a footnote following the phrase "Assessed Value" which provides as follows:

"Defined as the **assessed value** of each subject property for the applicable service year. For example, the March 1, 2011 payment for services in, and cumulative annexations through, calendar year 2009 will use the **assessed value** established for the October 16, 2010 Beaufort County property tax bills.

(emphasis mine).

19. The Settlement Agreement contains similar provisions regarding Beaufort's payment to Burton for the first response fire and emergency medical services provided by Burton to the Beaufort Annexed Properties, *i.e.*, an annual lump sum payment due March 1st of each year. The Settlement Agreement mandates that the following formula will be used to calculate the amount of each annual payment by Beaufort:

Burton Total Millage X **Assessed Value** of Beaufort Annexed Properties X 19%.

(emphasis mine). As can be seen, the formulas for calculating the annual payment to Burton by Beaufort and Port Royal, except for the final percentage multiplier, are identical. Significantly, both formulas are based upon the "Assessed Value" of each municipalities' annexed properties.

20. Pursuant to the terms of the Settlement Agreement, Burton provided first response fire and emergency medical services to all of the Beaufort and Port Royal Annexed Properties, and has continued to satisfactorily fulfill its obligations under the Settlement Agreement through the date of the trial.

21. The initial payment by Beaufort and Port Royal to Burton was due no later than March 1, 2011. At that time, Beaufort paid \$195,456.39 to Burton, while Port Royal paid \$154,493.34. At some point thereafter, a disagreement arose as to the accuracy of the payment

under the settlement agreement. The process involved in calculating the amount due is somewhat complex, as evidenced by the sheer number of annexed properties involved. The parties initially communicated directly with each other without involving their respective attorneys in an attempt to ascertain the source of the discrepancy in their calculations. The parties eventually concluded that Beaufort and Port Royal were calculating their annual payment by utilizing the taxable values of the Annexed Properties, while Burton was calculating the annual payment based upon the assessed values of the Annexed Properties. Each of the parties re-involved their respective attorneys in an attempt to resolve the dispute. These negotiations were unsuccessful and eventually culminated in the filing of this lawsuit.

22. Through the March 1, 2015 payment, the City of Beaufort has paid the following amount towards each annual payment:

<u>Amount Paid</u>	<u>Due Date</u>
\$195,456.39	March 1, 2011
\$187,850.44	March 1, 2012
\$197,831.98	March 1, 2013
\$188,561.11	March 1, 2014
\$189,904.15	March 1, 2015

Each of the forgoing payments by the City of Beaufort was calculated by Beaufort utilizing the taxable values of the Beaufort Annexed Properties, as opposed to the assessed values.

23. If the payments by Beaufort to Burton for each of the foregoing years had been calculated utilizing the assessed values of the Beaufort Annexed Properties, then the payments for 2011, 2012 and 2013 would have been \$13,477.90 higher each year, and the payments for

2014 and 2015 would have been \$14,905.18 higher each year, resulting in a total shortfall of \$70,244.06 through March 1, 2015 (Beaufort County underwent a reassessment between tax years 2013 and 2014).

24. Through the March 1, 2015 payment, the Town of Port Royal has paid the following amount towards each annual payment:

<u>Amount Paid</u>	<u>Due Date</u>
\$154,493.34	March 1, 2011
\$167,346.21	March 1, 2012
\$170,752.14	March 1, 2013
\$186,765.37	March 1, 2014
\$199,007.20	March 1, 2015

Each of the foregoing payments by the Town of Port Royal, like those paid by the City of Beaufort, was calculated by Port Royal utilizing the taxable values of the Port Royal Annexed Properties, as opposed to the assessed values.

25. If the payments by Port Royal to Burton had been calculated utilizing the assessed values of the Port Royal Annexed Properties, then the annual payments for 2011, 2012 and 2013 would have been \$25,117.37 higher each year, and the payments for 2014 and 2015 would have been \$31,361.43 higher each year, resulting in a total shortfall of \$138,194.97 through March 1, 2015.

26. The dispute between these parties centers on their construction of the Settlement Agreement's formulas for calculating the annual payment. Burton contends the annual payment is calculated utilizing the assessed values of the Annexed Properties, while Beaufort and Port Royal contend that the annual payment is calculated utilizing the taxable values of the Annexed



Properties. Although the formulas expressly recite that the "Assessed Value" is to be used, Beaufort and Port Royal contend that as used in the Settlement Agreement this phrase is intended to mean taxable, as opposed to assessed, value.

27. Critical to my analysis of the agreement is the undisputed fact that the compensation is for more than simply just the loss of revenue. Without this fact, it would be difficult to reconcile the Plaintiff's interpretation of the Settlement Agreement with common sense. *Why would the Defendants pay Burton for loss of revenue that Burton was not actually losing?* With this fact, however, it is reasonable that the provision of services portion of the Settlement Agreement was in an amount that would balance out this phantom loss.

28. The cardinal rule of contract interpretation is "to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Schulmeyer vs. State Farm Fire and Casualty Company*, 353 S.C. 491, 495, 579, SE 2nd 132, 134 (2003). "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. *Id.*, 235 S.C. at 495, 579 SE 2nd at 134. "When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the Court must construe it according to its plain, ordinary and popular meaning. *Ellie, Inc. vs. Miccichi*, 358 S.C. 78, 93, 594 SE 2nd 485, 493 (Ct App 2004). "Where an agreement is clear and capable of legal interpretation, the Court's only function is to interpret its lawful meaning, discover the intention of the parties **as found within the agreement**, and give effect to it." *Heins vs. Heins*, 244 S.C. 146, 158, 543 SE 2nd 224, 230 (Ct App 2001)(emphasis added).

29. The Settlement Agreement plainly, clearly, and explicitly requires that the annual payment be calculated using the "Assessed Value" of the Annexed Properties. The Beaufort County Assessor, Gary N. James, was called as a witness by Burton and testified as to the

generally accepted meaning of the term "assessed value." The assessed value of properties is calculated by multiplying the fair market value of a property by its assessment ratio.² The assessed value is then multiplied by the millage rate to determine the property tax owed for that property. In most cases, the assessed value of a property is the same as the taxable value. Certain types of properties, however, such as churches or government owned properties, are entitled to tax exemptions, which reduce the property's assessed value to a lower "taxable" value. In short, the term "assessed value" has a well-established and well understood meaning which is separate and distinct from "taxable value." I find the Beaufort County Tax Assessor's testimony to be credible.

30. The Tax Assessor's testimony is consistent with South Carolina's statutory and case law. See, e.g., *Beaufort County v. State*, 353 S.C. 240, 243-44, 577 S.E. 2d 457,459 (2003)(multiplying the fair market value of a property by its assessment ratio results in the assessed value).

31. The fact that the parties were aware that the terms assessed value and taxable value have separate and distinct meanings is reinforced by the exhibits of Beaufort Annexed Properties and Port Royal Annexed Properties which are part of the Agreement. As to each annexed property, a value is given not only for the appraised or fair market value of the property, but each property's assessed value and taxable value is listed separately. A fairly cursory examination of this list shows that often the assessed and taxable values are the same, but for some properties the taxable value is substantially less than the assessed value or in some instances is zero.

² Different classes of properties have different assessment ratios. *S.C. Const. Art. X, § 1*

32. Beaufort and Port Royal argue that footnote #3 found on page 3 of the Settlement Agreement support their interpretation of the contract. This footnote, which immediately follows the phrase "Assessed Value" found in the formula for calculating Port Royal's annual payment, indicates that "Assessed Value" is "defined as the **assessed value** of each subject property for the applicable service year." This footnote then states that, "(f)or example, the March 1, 2011 payment for services in, and cumulative annexations through, calendar year 2009 will use the **assessed values** established for the October 16, 2010 Beaufort County Property Tax Bills." (emphasis mine).

Accordingly, contrary to the arguments of Burton and Port Royal, this footnote twice redundantly defines and reinforces the fact that "Assessed Value" as utilized in the formula means "assessed value."

33. Testimony was presented at the trial that it was the intention of Beaufort and Port Royal that the formula for calculating their annual payments should be based upon taxable values as opposed to assessed values. Although I find their testimony and intent to be truthful and credible, for the purposes of interpreting this contract, the testimony is immaterial. As previously noted, in order to ascertain the intention of a contract, the Court must first resort to the language of the contract, and if the language is perfectly plain and capable of legal construction, then the *language of the contract* determines the force and effect of the instrument **and** the intentions of the parties. See, e.g., *Blakeley vs. Rabon*, 266 S.C. 68, 72, 221 SE 2nd 767, 769 (1976). See also *Kable vs. Simmons*, 217 S.C. 161, 60 SE 2nd 79 (1950) ("Parties are governed by their outward expressions and the Court is not at liberty to consider their secret intentions.")

34. Beaufort and Port Royal also argue that their interpretation of the contract is supported by referring to certain property tax bills which were admitted into evidence. I have

examined these bills and I do not find that they support the interpretation of Beaufort and Port Royal that "Assessed Value" as used in the Settlement Agreement has a definition equivalent to "taxable value." In their Settlement Agreement, the parties agreed to a relatively simple formula for the annual payment which expressly references "Assessed Value." If the parties had meant "taxable value," it would have been very easy to have so stated. The simple fact is that the phrase "taxable value" is not referenced or found anywhere within the four corners of the Settlement Agreement, much less within the formula for the annual payment. While footnote #3 to the Settlement Agreement contains a reference to "the October 16, 2010 Beaufort County Tax Bills," this same footnote twice redundantly reiterates that "assessed values" as used in the formula means "assessed value." Furthermore, there is nothing in the Settlement Agreement which indicates that the language "...assessed value established for..." as used in footnote #3 in referring to the October 16, 2010 Property Tax bills is in conflict with Exhibits B and C of the Settlement Agreement, which plainly and clearly recognize the difference between "assessed value" and "taxable value." A contract is read as a whole document so that one may not, by pointing out a single sentence or a clause, create an ambiguity. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009); *Southern Atlantic Financial Services, Inc. vs. Middleton*, 356 S.C. 444, 597 SE 2d 27 (2003).

Additionally, any individual tax bill is extrinsic evidence, the footnote having referred generally to tax bills and not including or attaching any example. The parties have stipulated that the Settlement Agreement is unambiguous³. Even in the absence of their stipulation, I find and conclude that the Settlement Agreement is unambiguous. When a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by

³ The parties previously filed cross motions for summary judgment arguing that the agreement was unambiguous.



its plain terms. *Bates vs. Lewis*, 311 S.C. 158, 162, fn. 1, 427 SE 2nd 907, 909, fn. 1 (1993). The tax bills, accordingly, are inadmissible.

35. Finally, Beaufort and Port Royal argue that utilization of the assessed values of the annexed properties in calculating the annual payments is unfair, Beaufort and Port Royal reason that if a property has a taxable value of zero due to its exempt status, it is unfair for them to pay Burton for that annexed property since that property pays no property taxes. As previously discussed, this argument overlooks the fact that the Settlement Agreement is designed to compensate Burton "...both for the loss of properties to annexation and for providing services...." (Settlement Agreement page 2, emphasis mine). This is significant in that a reasonable, plain language interpretation of this sentence is that Burton would receive an amount that exceeds its total "loss" of tax revenue as a result of annexation in the form of additional compensation for providing the agreed upon first response fire and emergency medical services to all of the Port Royal and Beaufort annexed properties. Indeed, the section of the Settlement Agreement in which the annual payment formula is set forth is entitled "Payment for Service" (emphasis mine) and the paragraph introducing the formulas for both Port Royal and Burton provides that said payment is "for the services provided to the (Port Royal or Beaufort) annexed properties" (Settlement Agreement, pages 3 and 4, emphasis mine).. It is clear from reading the Settlement Agreement that the annual payment is designed as much to compensate⁴ Burton for continuing to provide first response fire and emergency medical services to all of the properties annexed by Beaufort and Port Royal, as much as for the lost revenue suffered by Burton as a result of these annexations.

⁴ Burton also received non-monetary compensation in the form of municipal services to the Burton properties listed on Exhibit A.



36. "The Court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or failure to guard their rights carefully." *Blakely vs. Rabon*, 266 S.C. 68, 73, 221 SE 2nd 767, 769 (1976). This is basically a complex service agreement in which both side have contracted to serve property in each other's district. It is only partially about Burton's loss of revenue due to annexation. These are sophisticated entities, with decades of experience in this field. The Settlement Agreement is the result of extended and careful settlement negotiations in which all parties were represented by competent and experienced counsel.

37. In the final analysis, I am not at liberty to rewrite the contract, and it is my duty to enforce the contract as written and executed by the parties. The formula expressly calls for "Assessed Value" to be used and the word "assessed" has a well-established meaning. As noted in Finding of Fact and Conclusion of Law, Beaufort owes Burton as additional \$70,244.06 and Port Royal owes Burton an additional \$138,194.97 for the March 1, 2011 through March 1, 2015 payments.

38. In its Complaints, Burton prays for prejudgment interest on the past due amounts owed by Beaufort and Port Royal. Section 34-31-20 of the South Carolina Code of Laws provides that in "all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum."

39. The proper test for determining whether prejudgment interest may be awarded is whether the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at time the claim arose. *GTR Rental, LLC v. DalCanton*, 547 F.Supp.2d 510 (D.S.C. 2008). The fact that the sum due is disputed does not render the claim unliquidated for purposes



of awarding of prejudgment interest. *Id.* See also, *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010) (The fact that the amount due is disputed does not render the claim unliquidated for purposes of awarding prejudgment interest; rather, the proper test is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose). Prejudgment interest may be awarded when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010).

40. In the case *sub judice*, the precise amount of each annual payment was capable of calculation to the penny with certainty, was fixed by the conditions existing at the time of payment, and had a precise due date. An itemization of the prejudgment interest as to each annual payment by each municipality was introduced into evidence at trial. The amount of prejudgment interest owed by Beaufort through the date of trial is \$21,214.01 and the amount of prejudgment interest owed by Port Royal through the date of trial is \$40,543.23.

41. As of the date of trial, the amount owed to Burton by Beaufort for the annual payments due from March 1, 2011 through March 1, 2015, including principal (\$70,244.06) and prejudgment interest (\$21,214.01), is \$91,458.07.

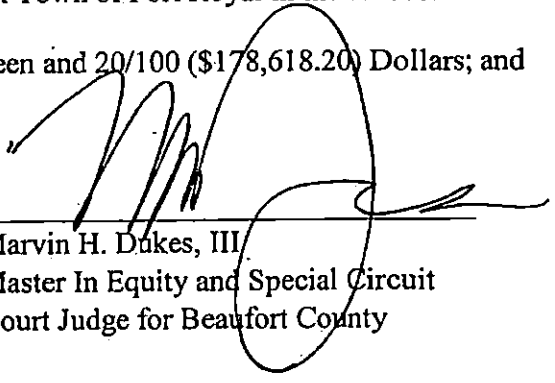
42. As of the date of trial, the amount owed to Burton by Port Royal for the annual payments due from March 1, 2011 through March 1, 2015, including principal (\$138,194.97) and prejudgment interest (\$40,543.23), is \$178,618.20.

IT IS, THEREFORE, ORDERED that judgment shall be and is hereby entered in favor of the Plaintiff Burton Fire District against the Defendant City of Beaufort in the amount of Ninety One Thousand Four Hundred Fifty Eight and 07/100 (\$91,458.07) Dollars; and



IT IS, THEREFORE, ORDERED that judgment shall be and is hereby entered in favor of the Plaintiff Burton Fire District against the Defendant Town of Port Royal in the amount of One Hundred Seventy-Eight Thousand Six Hundred Eighteen and 20/100 (\$178,618.20) Dollars; and

IT IS SO ORDERED.



Marvin H. Dukes, III
Master In Equity and Special Circuit
Court Judge for Beaufort County

10/24/16
~~Thursday, October 20, 2016~~
Beaufort, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-07-01463 (2013-CP-07-01464)

BURTON FIRE DISTRICT

CITY OF BEAUFORT, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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:

This came before me on Defendants' Motion for Reconsideration, filed November 7, 2016. After hearing from the parties and review of the file, I hereby deny the motion. Specifically, to the extent not addressed in the Final Order of the Court:

The Court rejects the Defenses of waiver, estoppel and laches under the facts presented. Further, the Court rejects the "Ultra Vires" defense.

Further, the Order is amended to modify that portion in which it is asserted that the parties "stipulated" to the unambiguity of the Settlement Agreement. While the motion correctly asserts that no technical "stipulation" occurred, in cross Summary Judgment motions (both denied) both parties argued that the Agreement, as a matter of law, should be interpreted in a manner consistent with unambiguity. While not a stipulation, and not the deciding factor in the Final Order, I find the parties' positions in that matter to be relevant.

Any other relief not specifically granted is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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.**

	3069	
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:

H. FRED KUHN

WILLIAM B. HARVEY III

MARY BASS LOHR

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A



Beaufort Common Pleas

Case Caption: Burton Fire District VS Beaufort City Of , defendant, et al
Case Number: 2013CP0701463
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2017-03-08 13:44:32 page 3 of 3

ELECTRONICALLY FILED - 2017 Mar 08 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2013CP0701463

000024

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Burton Fire District

Plaintiff(s)

vs.

City of Beaufort and Town of Port Royal

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009-CP - 07-3020

2009 JUN 24

PM 4:08

ELIZABETH H. SMITH
BEAUFORT COUNTY, S.C.
CLERK OF COURT

(Please Print)

Submitted By: H. Fred Kuhn, Jr., Esquire

Address: PO Drawer 507

Beaufort, SC 29901

SC Bar #: 3576

Telephone #: 843-524-3373

Fax #: 843-524-1302

Other:

E-mail: fred@mossandkuhn.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☒ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions

- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements

- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief

- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

Appeals

- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Sexual Predator (510)

Submitting Party Signature

Date: 06-17-09

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

000025

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

☐ SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
2009-CP-07-_____

BURTON FIRE DISTRICT,

Plaintiff,

vs.

CITY OF BEAUFORT and TOWN
OF PORT ROYAL,

Defendants.

SUMMONS

ELIZABETH M. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT

2009 JUN 24 PM 4:08

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer upon the subscribed at his office, Post Office Drawer 507/1501 North Street, Beaufort, South Carolina 29901, within thirty (30) days from the service hereof, exclusive of the day of such service; and if you fail to Answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded.

MOSS, KUHN & FLEMING, P.A.

By: _____

Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff

Beaufort, South Carolina
June 17, 2009

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
2009-CP-07-_____

BURTON FIRE DISTRICT,
Plaintiff,

vs.

CITY OF BEAUFORT and TOWN
OF PORT ROYAL,
Defendants.

COMPLAINT
(NON-JURY)

ELIZABETH A. SMITH
BEAUFORT COUNTY, S.C.
CLERK OF COURT

2009 JUN 24 PM 4: 08

The Plaintiff would respectfully show unto this Honorable Court as follows:

1. The Burton Fire District is a political subdivision of the State of South Carolina, being a special public service district created by the General Assembly of the State of South Carolina and charged with the responsibility of providing fire fighting, fire prevention, and related fire protection services within the geographical boundaries of the District, which is located within Beaufort County, South Carolina.

2. The City of Beaufort and the Town of Port Royal are duly created municipal corporations or political subdivisions of the State of South Carolina, and each is located within Beaufort County, South Carolina.

3. The City of Beaufort and the Town of Port Royal are contiguous to and geographically adjoin the Burton Fire District.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

4. This action is filed, in part, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §15-53-10 et seq. (2009).

5. The Burton Fire District, as a rural fire protection district, provides an essential community service and qualifies as an "association" within the meaning of 7 U.S.C. 1926(a), entitling it to receive loans from the United States Secretary of Agriculture, acting through the Farmer's Home Administration pursuant to the Consolidated Farm and Rural Development Act of 1961 (hereinafter "FHA Loan").

6. The Burton Fire District is currently the recipient of an FHA Loan which is still outstanding.

7. On or about July 20, 1983 the Burton Fire District obtained a loan from the Farmer's Home Administration for the purchase of fire trucks and related equipment and the purchase of land and the construction of a fire station, said loan secured by a General Obligation Bond issued by the District, pledging the full faith, credit and taxing power of the District, and said loan is current, in good standing, with a balance remaining due and owing.

8. As the recipient of an FHA Loan, the Burton Fire District is entitled to the protection of 7 U.S.C. 1926(b), which provides:

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body . . . during the term of said loan

9. Any repeal of the foregoing statute is prospective only, and does not apply retroactively to any loans that were made while the statute was in full force and effect, including the FHA Loan of the District.

10. The City of Beaufort and the Town of Port Royal, during the term of the Burton Fire District's FHA Loan have curtailed and limited the service provided and made available by the Burton Fire District by bringing portions of the area served by the District

within the City of Beaufort and the Town of Port Royal by way of annexation.

11. The justiciable controversy created by the foregoing facts was previously raised between these parties in an action captioned *Burton Fire District v. City of Beaufort and Town of Port Royal*, filed in the Beaufort County Court of Common Pleas bearing Civil Action No. 96-CP-07-551, and resolved by way of Consent Orders of Settlement, true and accurate copies of which are attached hereto and incorporated herein as fully as if repeated verbatim.

12. The foregoing Consent Orders of Settlement, by their express terms, expire on July 16, 2010.

13. There presently exists between these parties a justiciable controversy as to the effect upon the parties of the expiration of the Consent Orders of Settlement on July 16, 2010 and the parties need for this Court to declare their respective rights, status and legal relations in this regard.

FOR A SECOND CAUSE OF ACTION

14. The Plaintiff is a special purpose district as defined by S.C. Code Ann. §6-11-1610 (2009).

15. The Defendants have annexed into their respective municipalities parts of the areas of the District, within the meaning of §5-3-310 of the South Carolina Code of Laws.

16. As a direct and proximate result of the annexation by the Defendants into their respective municipalities of portions of the area of the Plaintiff, the provisions of §5-3-300 through §5-3-315 of the South Carolina Code of Laws have been triggered and the parties are obligated to formulate a plan governing the transfer of service rights over the annexed areas.

17. The foregoing plan contemplated by §5-3-300 through §5-3-315 of the South Carolina Code of Laws may be formulated by agreement of the District and the annexing municipalities, and pursuant to the Consent Orders attached hereto the parties reached a temporary agreement, but by its express terms this temporary agreement expires on July 16, 2010.

18. The parties have been unable to reach an agreement as to the plan contemplated by the §5-3-300 through §5-3-315 of the South Carolina Code of Laws following the expiration of the Consent Orders, and accordingly, §5-3-311 requires that the District and each of the municipalities appoint a committee to formulate such a plan in accordance with the requirements of said statute.

19. Upon information and belief the Plaintiff is entitled to an Order of this Court directing the Defendants to proceed with the implementation of the procedure set forth in §5-3-300 through §5-3-315 of the South Carolina Code of Laws and proceed with the selection of a committee and the formulation of a plan in accordance with this statutory scheme.

WHEREFORE, the Plaintiff prays as follows:

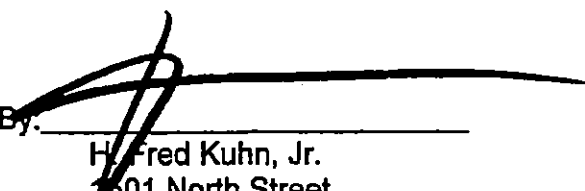
a. That the Court inquire into the matters set forth herein and as to the first cause of action declare the respective rights, responsibilities and obligations of the parties; and

b. As to the second cause of action direct the Defendants to each proceed with implementation of the statutory scheme and formulation of the plan provided for in §5-3-500 through 5-3-315 of the South Carolina Code of Laws; and

c. Such other and further relief as this Honorable Court may deem to be just

and proper.

MOSS, KUHN & FLEMING, P.A.

By. 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff

Beaufort, South Carolina
June 17, 2009

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BURTON FIRE DISTRICT

IN THE COURT OF COMMON PLEAS

2013 JUN -4 PM 4: 04

CIVIL ACTION COVERSHEET

Plaintiff(s)
JOHN A. ROSENEAU
BEAUFORT COUNTY S.C.
CLERK OF COURT

2013-CP - 07- 1463

vs.

CITY OF BEAUFORT

Defendant(s)

Submitted By: H. Fred Kuhn, Jr.
Address: PO Drawer 507
Beaufort, SC 29901-0507

SC Bar #: 3576
Telephone #: 843-524-3373
Fax #: 843-524-1302
Other:
E-mail: fred@mossandkuhn.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

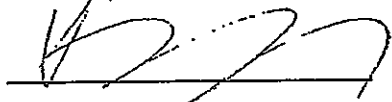
**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20____-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:



Date: 06-04-13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

000033

F. MANDATED ADR COUNTIES OF

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

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1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BURTON FIRE DISTRICT,

Plaintiff,

vs.

CITY OF BEAUFORT,

Defendant.

2013 JUN -4 PM 4:04 IN THE COURT OF COMMON PLEAS

FILED AND RECORDED 2013:CP-07-1 1443
BEAUFORT COUNTY, S.C.
CLERK OF COURT

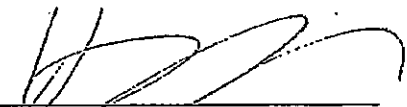
SUMMONS

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer upon the subscribed at his office, Post Office Drawer 507/1501 North Street, Beaufort, South Carolina 29901, within thirty (30) days from the service hereof, exclusive of the day of such service; and if you fail to Answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded.

MOSS, KUHN & FLEMING, P.A.

By:


H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff

Beaufort, South Carolina
June____, 2013

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BURTON FIRE DISTRICT,

Plaintiff,

vs.

CITY OF BEAUFORT,

Defendant.

2013 JUL -4 PM 4:04 IN THE COURT OF COMMON PLEAS

JEROME R. ROBERTS 2013-CP-07-1463
BEAUFORT COUNTY, S.C.
CLERK OF COURT

COMPLAINT
(NON-JURY)

The Plaintiff, Burton Fire District, would respectfully show unto this Honorable Court as follows:

1. The Plaintiff, Burton Fire District, is a public service district existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

2. The Defendant, City of Beaufort, is a municipality of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

3. In resolution of prior actions filed in this Court captioned *Burton Fire District v. City of Beaufort and Town of Port Royal*, Case Number 2009-CP-07-3020 and *City of Beaufort and Town of Port Royal v. Burton Fire District*, Case Number 2009-CP-07-4008, the Plaintiff and the Defendant entered into a Settlement Agreement on September 2, 2010, a true and accurate copy of which is attached hereto and incorporated herein by reference as fully as if repeated verbatim.

4. The Settlement Agreement calls for an annual payment to be made by the City of Beaufort to Burton Fire District pursuant to a formula contained within the Agreement in Section 3(B) which provides as follows:

For the services provided by Burton to the Beaufort Annexed Properties per Paragraph 2, Beaufort shall pay Burton, on an annual basis and on or before March 1 of the applicable year, a sum equivalent to:

Burton Total Millage X Assessed Value of Beaufort Annexed Properties
X 19%.

Any sum not paid by the due date (March 1) shall incur penalties and interest equal to the penalties and interest imposed by Beaufort County to property taxes that were not paid when due on January 16th of that same calendar year.

(Emphasis added).

5. The above formula expressly provides that it is based upon the "assessed value" of the subject properties.

6. With respect to the payments due from the City of Beaufort to the Burton Fire District on March 1, 2012 and on March 1, 2013, the City of Beaufort failed to abide by the aforesaid Settlement Agreement and failed to tender funds based upon the "assessed value" of the subject properties.

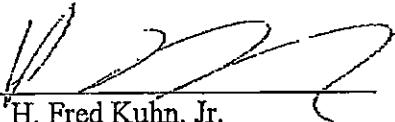
7. Upon information and belief, the payments made by the City of Beaufort to the Burton Fire District which were due on the aforesaid dates were based upon the "taxable value" of the subject properties, which results in a lower payment.

8. Upon information and belief, the City of Beaufort has breached its Settlement Agreement with the Burton Fire District by failing and refusing to make payment based upon the "assessed values" of the subject properties, and instead, making payment based upon the "taxable values" of the subject properties.

9. As a direct and proximate result of the aforesaid breach of the Settlement Agreement by the City of Beaufort, Burton Fire District has been damaged in that it has not been paid in full the sums due on the aforesaid dates under the terms of the Settlement Agreement.

WHEREFORE, Burton Fire District prays that the Court inquire into the matters set forth herein and render judgment in favor of Burton Fire District against the City of Beaufort in the amount of the difference resulting by utilizing assessed values of the subject property, as opposed to taxable values, together with prejudgment interest at the rate allowed by law, and such other and further relief as this Honorable Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: 
H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff

Beaufort, South Carolina
June ____, 2013

STATE OF SOUTH CAROLINA)
) SETTLEMENT AGREEMENT
COUNTY OF BBAUFORT)

This Settlement Agreement is concluded by and between the Town of Port Royal, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina (herein "Port Royal"), the City of Beaufort, a municipal corporation organized and existing under the laws of the State of South Carolina (herein "Beaufort"), and the Burton Fire District, a special purpose district organized and existing under the laws of the State of South Carolina (herein "Burton").

RECITALS

WHEREAS, Burton is indebted to the federal government by virtue of a loan awarded it in 1993 by the Farmers Home Administration, now the Rural Development Authority; and

WHEREAS, federal law, specifically 7 U.S.C. § 1926 (b), protects the service area of a federal debtor from certain aspects of municipal annexation while the federal loan remains outstanding; and

WHEREAS, S.C. Code Ann. §§ 5-3-310 through 5-3-313 (2004), effective as of May 1, 2000, provide that, upon annexation of a portion of a special purpose district, the annexing municipality and the affected special purpose district must devise a plan to provide for the continuation and/or transfer of services, which plan is to balance equities between the municipality and the special purpose district so that each can efficiently and effectively serve their respective constituents; and

WHEREAS, Port Royal and Beaufort have annexed properties in the service area of Burton; and

WHEREAS, in 1996, Burton instituted an action in the Court of Common Pleas of Beaufort County, the same styled "Burton Fire District v. City of Beaufort and Town of Port Royal", bearing Case No.: 2006- CP-07-0551, seeking a declaration of its rights under the aforementioned federal statute, which litigation resulted in Consent Orders of Settlement that governed the relationship between the parties under the federal statute through July 16, 2010; and

WHEREAS, in 2009, Burton instituted an action in the Court of Common Pleas of Beaufort County, the same styled "Burton Fire District v. City of Beaufort and Town of Port Royal", bearing Case No.: 2009-CP-07-3020, whereby Burton sought a declaration of its rights under both aforementioned federal and state statutes (herein "Burton Litigation"); and

WHEREAS, Port Royal and Beaufort instituted an action in the Court of Common Pleas of Beaufort County styled "City of Beaufort, South Carolina and Town of Port Royal, South Carolina v. Burton Fire District", bearing Case No.: 2009-CP- 07-04008, seeking to maintain the status quo with respect to the provision of fire service by and among Port Royal, Beaufort and Burton, pending the disposition of the Burton lawsuit (herein "Municipal Litigation"); and

WHEREAS, the parties have resolved their differences and execute this Settlement Agreement to memorialize the terms of their agreement.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, and in further consideration of the sum of One (\$1.00) Dollar, the receipt and sufficiency of which is acknowledged by Burton, it is agreed, by and between the parties, as follows:

1. Annexation: Burton acknowledges the right of Port Royal and Beaufort to annex properties in its service area, and Port Royal and Beaufort acknowledge the right of Burton to be compensated both for the loss of properties to annexation and for providing services to Beaufort and Port Royal as set forth herein. The annexations subject to this Settlement Agreement,

however, shall only be those consummated by Port Royal and Beaufort from 1995 through the term¹ of this Agreement (herein, respectively "Port Royal Annexed Properties" and "Beaufort Annexed Properties") as set forth on Exhibits B and C and further defined in Paragraph 3(D), supra.

2. Fire/Emergency Response Services: Burton shall provide first response fire and emergency medical services to all Port Royal Annexed Properties and Beaufort Annexed Properties throughout the term of this agreement. The level of these services provided by Burton to these properties shall be equal to that provided by Burton to its own constituency.

Beaufort shall provide first response fire and emergency medical services to those properties in the Burton service area as described in Exhibit A, attached hereto and made a part hereof. The level of these services provided by Beaufort to these properties shall be equal to that provided by Beaufort to its own constituency.

3. Payment for Service:

A. For the services provided to the Port Royal Annexed Properties per Paragraph 2, Port Royal shall pay Burton, on an annual basis and on or before March 1 of the applicable year, a sum equivalent to:

Burton Total Millage² X Assessed Value³ of Port Royal Annexed Properties X 25%.

¹ As set forth in Paragraph 7, supra.

² Defined as the millage established by Burton and Beaufort County for Beaufort County Property Tax purposes for the applicable service year. For example, the March 1, 2011 payment for services in, and cumulative annexations through, calendar year 2009 will use the Burton millage established for the October 16, 2010 Beaufort County property tax bills.

³ Defined as the assessed value of each subject property for the applicable service year. For example, the March 1, 2011 payment for services in, and cumulative annexations through, calendar year 2009 will use the assessed value established for the October 16, 2010 Beaufort County property tax bills.

Any sum not paid by the due date (March 1) shall incur penalties and interest equal to the penalties and interest imposed by Beaufort County to property taxes that were not paid when due on January 16th of that same calendar year.

B. For the services provided by Burton to the Beaufort Annexed Properties per Paragraph 2, Beaufort shall pay Burton, on an annual basis and on or before March 1 of the applicable year, a sum equivalent to:

Burton Total Millage X Assessed Value of Beaufort Annexed Properties X 19%.

Any sum not paid by the due date (March 1) shall incur penalties and interest equal to the penalties and interest imposed by Beaufort County to property taxes that were not paid when due on January 16th of that same calendar year.

C. Burton shall not be required to pay Beaufort for the first response services Beaufort is to provide to the properties described in Exhibit A.

D. The parties acknowledge that real property taxes are paid in arrears and further acknowledge that properties annexed by Port Royal and Beaufort are not transferred to the tax rolls of those municipalities until the year following annexation, to wit: a property annexed in 2009 will not be transferred to the municipal tax rolls until January 2010. As real property taxes are paid in arrears, the tax bills generated in October 2010 will reflect the status of properties as of December 31, 2009. Thus, the first payment due per subparts (A) and (B) of this paragraph will be based on properties annexed in 2009 (as well as, of course, all properties annexed after 1995 as identified on Exhibits B and C). Properties annexed in 2010 will be included in the tax notices issued in 2011, and so on. To provide a baseline of the properties subject to subparts (A) and (B) of this paragraph, lists of the Port Royal Annexed Properties and the Beaufort Annexed Properties and their respective assessed values as of the date of this agreement are attached hereto as

Exhibits B and C and made a part hereof. To allow the parties to maintain a current count of properties subject to subparts (A) and (B) of this paragraph, Port Royal and Beaufort agree to provide Burton copies of ordinances annexing property in the Burton service area as those annexations occur.

4. Cooperative Efforts: The parties acknowledge that public safety is of paramount concern to each, and to enhance and further the safety of the public, each will cooperate with the other in responding to fire emergencies in accordance with the procedures and policies set forth in Exhibit D, attached hereto and made a part hereof.

5. Dismissal of Litigation: The parties shall enter and file a Stipulation of Dismissal of the Burton Litigation and the Municipal Litigation, as described in the Recitals.

6. Federal/State Law: The parties acknowledge that the terms of this Settlement Agreement shall serve to satisfy the obligations of each under 7 U.S.C. 1926 (b) and S.C. Code Ann. §§ 5-3-310 through 313.

7. Term: This Agreement shall be deemed to have commenced on July 1, 2010. The first payment will be due on or before March 1, 2011, and will be calculated using those properties listed on Exhibits B and C, as well as the property tax assessed values for those properties and millage from the tax bills that are scheduled to be sent out on October 16, 2010. Burton's and Beaufort's obligation to provide services as set forth in Paragraph 2, *infra*, and Burton's agreement not to challenge the right of Beaufort or Port Royal to annex into its service area as set forth in Paragraph 1, *infra*, shall terminate at midnight December 31, 2017; provided however, the last payment due under this agreement shall be paid no later than March 1, 2018.

10. Entire Agreement: This Agreement represents the entire agreement and understanding of the parties.

11. Governing Law: This Agreement shall be governed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties set their hands and seals on the day and year as indicated.

WITNESS:

Samuel E. M. [Signature]

TOWN OF PORT ROYAL

By: [Signature]

Its: Town Manager

Date: 9/2/10

WITNESS:

[Signature]

CITY OF BEAUFORT

By: [Signature]

Its: City Manager

Date: 9-2-10

WITNESS:

[Signature]

BURTON FIRE DISTRICT

By: [Signature]

Its: COMMISSION CHAIRMAN

Date: 9-2-10

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BURTON FIRE DISTRICT,

Plaintiff,

vs.

CITY OF BEAUFORT and TOWN OF PORT
ROYAL,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 96-CP-07-551

CONSENT ORDER OF SETTLEMENT

99 SEP - 7 AM 9:4
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

The Plaintiff and the Defendant City of Beaufort have reached a settlement of the issues in this case, as follows:

1. In consideration for the Automatic Aid Agreement and the services provided in the past, Beaufort pays Burton \$25,000 immediately.

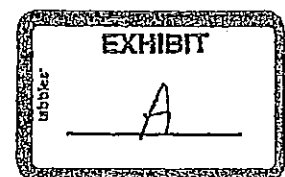
2. The Automatic Aid agreement between Beaufort and Burton will remain in effect, with the exception that Beaufort will pay Burton \$15,000 immediately for July, 1999, and then \$15,000 annually each July 16th thereafter until July 16, 2010, inclusive, increased each year by the Consumer Price Index.

3. As to all future annexations, commenced after the date of this agreement and until July 16, 2010, of property in the Burton Fire District, Beaufort will pay Burton 1.25 times that proportion of the tax revenue collected by the City that the previous year's annual budget of the City fire department bears to the previous year's general fund revenue of the City.

4. All parties reserve all rights under all laws and statutes, subject to the fact that this agreement settles all issues currently pending between the City and Burton in Civil Action No.: 96-CP-07-551 at least until July 16, 2010. The action, as between the Plaintiff and the City be and is dismissed, with prejudice.

This agreement shall become the Order this Court and shall be enforceable as such upon Motion of either party.

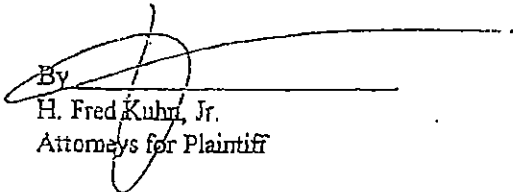
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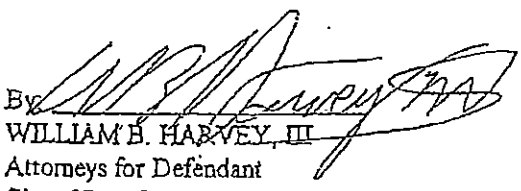
000045


Thomas Kemmerlin, Jr.
Master In Equity and Special Circuit Judge

Moss & Kuhn, P.A.

By 
H. Fred Kuhn, Jr.
Attorneys for Plaintiff

HARVEY & BATTEY, P.A.

By 
WILLIAM B. HARVEY, III
Attorneys for Defendant
City of Beaufort

Beaufort, South Carolina

DATED: 9/7/ 1998

2
9/11/98

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CASE NO.: 98-CP-07-551

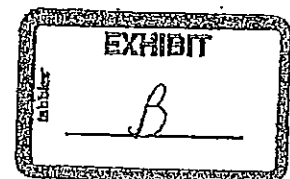
BURTON FIRE DISTRICT,)
Plaintiff,)
vs.)
CITY OF BEAUFORT and TOWN)
OF PORT ROYAL,)
Defendants.)

CONSENT ORDER OF SETTLEMENT

The Plaintiff and the Defendant, Town of Port Royal (TOPR) have reached a settlement of the issues in this case as follows:

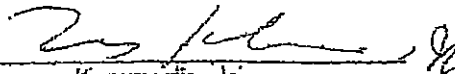
1. In consideration for services provided in the past, TOPR pays Burton \$4,000.00 immediately.
2. An Automatic Aid agreement between TOPR and Burton will be executed at no cost to TOPR.
3. As to Annexations from 1995 to the present, as well as all future annexations, commenced after the date of this agreement and until July 16, 2010, of property in the Burton Fire District, TOPR will pay Burton 1.0 times that proportion of the tax revenue collected by the TOPR on said property that the previous year's annual budget of the TOPR's Fire Department bears to the previous year's general fund revenue of the TOPR.
4. All parties reserve all rights under all laws and statutes, subject to the fact that this agreement settles all issues currently pending between the TOPR and Burton in Civil Action No.: 98-CP-07-551 at least until July 16, 2010.

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T11/98

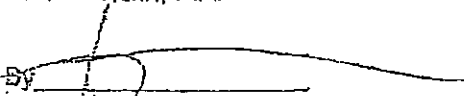


The action, as between the Plaintiff and the TOPR be and is dismissed, with prejudice.

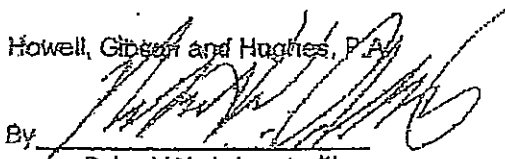
This agreement shall become the Order this Court and shall be enforceable as such upon Motion of either party.


Thomas Kemmerlin, Jr.
Master in Equity and Special Circuit Judge

Moss & Kuhn, P.A.

By 
H. Fred Kuhn, Jr.
Attorney for Plaintiff

Howell, Gibson and Hughes, P.A.

By 
Robert W. Achurch, III
Attorneys for Defendant
Town of Port Royal

Beaufort, South Carolina

September 21, 1999

2
11 99

2013 JUN -4 PM 4:05

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BURTON FIRE DISTRICT,

Plaintiff,

vs.

TOWN OF PORT ROYAL,

Defendant.

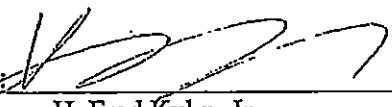
RECEIVED
BEAUFORT COUNTY S.C.
CLERK OF COURT
2013-CP-07-1464

SUMMONS

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer upon the subscribed at his office, Post Office Drawer 507/1501 North Street, Beaufort, South Carolina 29901, within thirty (30) days from the service hereof, exclusive of the day of such service; and if you fail to Answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff

Beaufort, South Carolina
June _____, 2013

000049

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BURTON FIRE DISTRICT,

Plaintiff,

vs.

TOWN OF PORT ROYAL,

Defendant.

) IN THE COURT OF COMMON PLEAS

) 2013 JUN -4 PM 4:05 1464
) 2013-CP-07-05

) JEREMY ROSENEAU
) BEAUFORT COUNTY, S.C.
) CLERK OF COURT

) COMPLAINT
) (NON-JURY)
)
)
)
)
)
)

The Plaintiff, Burton Fire District, would respectfully show unto this Honorable Court as follows:

1. The Plaintiff, Burton Fire District, is a public service district existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

2. The Defendant, Town of Port Royal, is a municipality of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

3. In resolution of prior actions filed in this Court captioned *Burton Fire District v. City of Beaufort and Town of Port Royal*, Case Number 2009-CP-07-3020 and *City of Beaufort and Town of Port Royal v. Burton Fire District*, Case Number 2009-CP-07-4008, the Plaintiff and the Defendant entered into a Settlement Agreement on September 2, 2010, a true and accurate copy of which is attached hereto and incorporated herein by reference as fully as if repeated verbatim.

4. The Settlement Agreement calls for an annual payment to be made by the Town of Port Royal to Burton Fire District pursuant to a formula contained within the Agreement in Section 3(A) which provides as follows:

For the services provided to the Port Royal Annexed Properties per Paragraph 2, Port Royal shall pay Burton, on an annual basis and on or before March 1 of the applicable year, a sum equivalent to:

Burton Total Millage X Assessed Value of Port Royal Properties X 25%.

Any sum not paid by the due date (March 1) shall incur penalties and interest equal to the penalties and interest imposed by Beaufort County to property taxes that were not paid when due on January 16th of that same calendar year.

Footnotes omitted. (Emphasis added).

5. The above formula expressly provides that it is based upon the "assessed value" of the subject properties.

6. With respect to the payments due from the Town of Port Royal to the Burton Fire District on March 1, 2012 and on March 1, 2013, the Town of Port Royal failed to abide by the aforesaid Settlement Agreement and failed to tender funds based upon the "assessed value" of the subject properties.

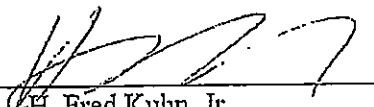
7. Upon information and belief, the payments made by the Town of Port Royal to the Burton Fire District which were due on the aforesaid dates were based upon the "taxable value" of the subject properties, which results in a lower payment.

8. Upon information and belief, the Town of Port Royal has breached its Settlement Agreement with the Burton Fire District by failing and refusing to make payment based upon the "assessed values" of the subject properties, and instead, making payment based upon the "taxable values" of the subject properties.

9. As a direct and proximate result of the aforesaid breach of the Settlement Agreement by the Town of Port Royal, Burton Fire District has been damaged in that it has not been paid in full the sums due on the aforesaid dates under the terms of the Settlement Agreement.

WHEREFORE, Burton Fire District prays that the Court inquire into the matters set forth herein and render judgment in favor of Burton Fire District against the Town of Port Royal in the amount of the difference resulting by utilizing assessed values of the subject property, as opposed to taxable values, together with prejudgment interest at the rate allowed by law, and such other and further relief as this Honorable Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.

1501 North Street

Post Office Drawer 507

Beaufort, South Carolina 29901

(843)524-3373

(843)524-1302 (FX)

Attorney for the Plaintiff

Beaufort, South Carolina

June ____, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2013-CP-07-1463

BURTON FIRE DISTRICT,

Plaintiff,

v.

CITY OF BEAUFORT,

Defendant.

2013 JUL -9 AM 10:18
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Defendant above-named, answering the Complaint of the Plaintiff herein, would allege as follows:

FOR A FIRST DEFENSE

1. Admits paragraph 1.
2. Admits paragraph 2.
3. Admits so much of paragraph 3 as may allege that the Plaintiff and Defendant, and the Town of Port Royal, in Civil Action Numbers 2009-CP-07-3020 and 2009-CP-07-4008, entered into a Settlement Agreement on September 2, 2010. However, Defendant denies that the copy attached to the Complaint is an accurate copy, as it omits exhibits B & C to the Agreement. Defendant would crave reference to the Settlement Agreement, with all referenced exhibits thereto, for the full terms and conditions thereof, and would deny any allegation inconsistent therewith.
4. Answering paragraph 4, Defendant would crave reference to the Settlement Agreement, with all referenced exhibits thereto, for the full terms and conditions thereof, and would deny any allegation inconsistent therewith.

19. The Defendant would plead the doctrine of waiver as a complete bar to the Plaintiff's claims.

FOR A SIXTH DEFENSE

20. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

21. That by the Plaintiff's actions, it is estopped and/or has waived any rights it has against these Defendants.

FOR A SEVENTH DEFENSE

22. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

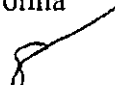
23. The Defendant would plead actions of the Plaintiff are ultra vires, as they are outside the authority granted to the Plaintiff in its enabling legislation. Therefore, this contract is void *ab initio*.

WHEREFORE, having fully answered the Complaint, Defendant prays that the same be dismissed, with costs and attorneys fees, and for such other and further relief as this Court may deem just and proper.

HARVEY & BATTEY, P.A.

By: 
WILLIAM B. HARVEY, III
Post Office Box 1107
Beaufort, South Carolina 29901-1107
843-524-3109 telephone
843-524-6973 telefax
bharvey@harveyandbattey.com
Attorneys for City of Beaufort

Beaufort, South Carolina

Dated: July , 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2013-CP-07-1464

BURTON FIRE DISTRICT,
Plaintiff,

vs.

TOWN OF PORT ROYAL,
Defendant.

ANSWER

2013 JUL 12 PM 2:29
JERRY A. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Defendant, Town of Port Royal, answering the Complaint of the Plaintiff would allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation contained in the Plaintiff's Complaint not specifically admitted hereinafter is denied and strict proof demanded thereof.

2. The Defendant admits the allegations contained in Paragraph 1 of the Plaintiff's Complaint.

3. The Defendant admits the allegations contained in Paragraph 2 of the Plaintiff's Complaint.

4. The Defendants admits only so much of Paragraph 3 as may allege that the Plaintiff and Defendant, and the City of Beaufort, in Civil Action Numbers 2009-CP-07-3020 and 2009-CP-07-4008, entered into a Settlement Agreement on September 2, 2010. However, the Defendant denies that the copy attached to

the Complaint is an accurate copy, as it omits exhibits A, B, and C to the Agreement. The Defendant would crave reference to the Settlement Agreement, with all referenced exhibits thereto, for the full terms and conditions thereof, and would deny any allegation inconsistent therewith.

5. In answering Paragraph 4 of the Plaintiff's Complaint, the Defendant would crave reference to the Settlement Agreement, with all referenced exhibits thereto, for the full terms and conditions thereof, and would deny any allegations inconsistent therewith.

6. The Defendant denies the allegations contained in Paragraph 5 of the Plaintiff's Complaint, and would show that the terms and intent of the Agreement reflect that the tax recoupment formula was based upon the property tax assessed values for the referenced properties, which is the basis upon which all payments have been made by the Defendant.

7. The Defendant denies the allegations contained in Paragraph 6 of the Plaintiff's Complaint, and demands strict proof thereof.

8. The Defendant admits that, in accord with the language of Paragraph 7 of the Agreement, and the clear intent of the settlement with the Plaintiff, all payments to the Plaintiff have been made based upon the property tax assessed values for the referenced properties. The Defendant denies the remaining allegations contained in Paragraph 7 of the Plaintiff's Complaint, and demands strict proof thereof.

9. The Defendant denies the allegations contained in Paragraph 8 of the Plaintiff's Complaint, and demands strict proof thereof.

10. The Defendant denies the allegations contained in Paragraph 9 on the Plaintiff's Complaint, and demands strict proof thereof.

FOR A SECOND DEFENSE

11. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

12. The purpose of the underlying litigation in Civil Action Number 2009-CP-07-3020, and the statutes cited by the Plaintiff in the Complaint in that action, was to seek recoupment of the tax revenues allegedly lost by the Plaintiff by annexation of properties formerly within the service area of the Plaintiff.

13. The tax revenue allegedly lost by the Plaintiff by such annexations were clearly predicated upon the property tax assessed values of such properties as established by the Beaufort County Tax Assessor. This is reflected in Exhibits B & C to the Settlement Agreement which are the inventories of the properties upon which the Agreement was based, and the taxable assessed values of said properties.

14. Consistent with this purpose and intent, Paragraph 7 of the Settlement Agreement provides, in part, as follows:

This Agreement shall be deemed to have commenced on July 1, 2010. The first payment will be due on or before March 1, 2011, and will be calculated using those properties listed on Exhibits B & C, as well as the property tax assessed values for those properties and mileage from the tax bills that are scheduled to be sent out on October 16, 2010. (emphasis added)

15. The Defendant has made all payments due under the agreement, in accord with the language of Paragraph 7 of the Agreement, as set forth above,

and the terms and intent of the Settlement Agreement. As such, this action should be summarily dismissed.

FOR A THIRD DEFENSE

16. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

17. The Defendant would plead the doctrine of laches a complete defense to this action.

FOR A FOURTH DEFENSE

18. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

19. The Defendant would plead the doctrine of waiver as a complete bar to the Plaintiff's claims.

FOR A FIFTH DEFENSE

20. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

21. That by the Plaintiff's actions, it is estopped and/or has waived any rights it has against these Defendants.

FOR A SIXTH DEFENSE

22. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

23. The Defendant would plead actions of the Plaintiff are *ultra vires*, as they are outside the authority granted to the Plaintiff in its enabling legislation. Therefore, this contract is void *ab initio*.

FOR A SEVENTH DEFENSE

24. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

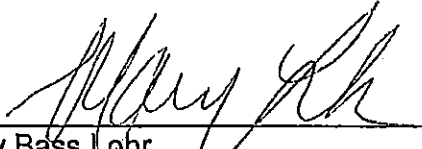
25. The Plaintiff has filed a similar action against the City of Beaufort, alleging breach of the same Settlement Agreement – a copy of that Complaint is attached as Exhibit 1 hereto.

26. The Defendant prays that these actions be consolidated for purposes of judicial economy and to avoid inconsistent results.

WHEREFORE, the Defendant prays this Honorable Court inquire into the matters set forth herein, and enter its Order dismissing this matter, with an award of attorneys fees and costs to the Defendant.

SIGNATURE PAGE FOLLOWS

HOWELL, GIBSON & HUGHES, P.A.

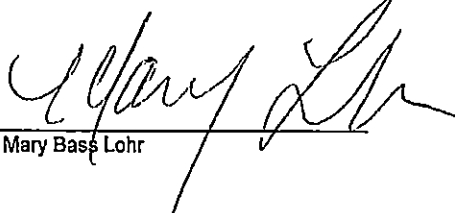
By: 
Mary Bass Lohr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendant

Beaufort, South Carolina

July 11, 2013

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 11 day of July, 2013.

By: 
Mary Bass Lohr

2013 JUL 12 PM 2:29
JERRY ANN ROSEMEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BURTON FIRE DISTRICT.

☐ Plaintiff

v.

City Of Beaufort

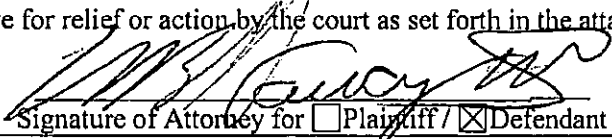
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-07-1463

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: H. Fred Kuhn, Jr., Esquire , Bar No. Address: phone: fax: e-mail: other:		Defendant's Attorney: William B. Harvey, Iii, Bar No. 2792 Address: P.O. Box 1107, Beaufort, SC 29901 phone: 843-524-3109 fax: 843-524-6973 e-mail: bharvey@harveyandbattey.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: FOR SUMMARY JUDGMENT Estimated Time Needed: 30 minutes. Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion Type			
☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant			October 15, 2013 Date submitted
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2013-CP-07-1463

BURTON FIRE DISTRICT,

Plaintiff,

v.

CITY OF BEAUFORT,

Defendant.

MOTION FOR SUMMARY JUDGMENT

TO: THE PLAINTIFF ABOVE NAMED AND ITS COUNSEL FRED KUHN,
ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that on the 10th day after service hereof, or as soon thereafter as counsel may be heard, the Defendant, City of Beaufort, by and through its undersigned attorney, will move the Court for an Order, pursuant to Rule 56 SCRPC, granting the Defendant Summary Judgment as a matter of law.

This Motion will be based upon the pleadings in this case, the settlement agreement at issue herein, the affidavits to be submitted, and upon such law as may be appropriate, and is made on the grounds that the settlement agreement itself states, in paragraph 7, that the payments made pursuant thereto "*will be calculated using those properties listed on Exhibits B & C, as well as the property tax assessed values for those properties and millage from the tax bills that are scheduled to be sent out on October 16, 2010.*" This is the manner in which the Defendant has calculated all payments made to the Plaintiff, and is directly contrary to

the allegations of the Complaint herein. Hence, there is no issue of material fact and Defendant is therefore entitled to judgment as a matter of law.

HARVEY & BATTEY, P.A.

By: 

WILLIAM B. HARVEY, III

Post Office Box 1107

Beaufort, South Carolina 29901-1107

843-524-3109 telephone

843-524-6973 telefax

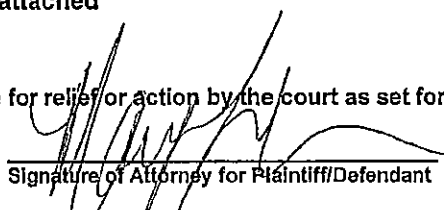
bharvey@harveyandbattey.com

Attorneys for Defendant City of Beaufort

Beaufort, South Carolina

Dated: October 15, 2013

IN THE COURT OF COMMON PLEAS

Burton Fire District Fire & Rescue ☐ Plaintiff, vs. Town of Port Royal ☒ Defendant Check box above indicating submitting party.		Civil Action No: 2013-CP-07-1464 MOTION INFORMATION FORM AND COVER SHEET	
Name, SC Bar No. and address of Plaintiffs/Opposing attorney: H. Fred Kuhn, Jr. Post Office Drawer 507 Beaufort, SC 29901-0507 (843) 524-3373		Name, SC Bar No. and address of Defendant's attorney Mary Bass Lohr SC Bar No: 16927 P.O. Box 40, Beaufort, SC 29901 hghpa@islc.net 843-522-2400 843-522-2429 fax	
☒ MOTION HEARING REQUESTED (attach written motion and complete Sections I and III) ☐ FORM MOTION, NO HEARING REQUESTED (completed SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 15 minutes Court Reporter Needed: NO			
SECTION II: Motion Type ☒ Written Motion attached ☐ Form Motion – I hereby move for relief or action by the court as set forth in the attached motion and/or proposed order.  Signature of Attorney for Plaintiff/Defendant October 16, 2013			
SECTION III: Motion Fee ☒ PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in child or spousal support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of Court; or, reduced in writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		CODE: _____ DATE: _____	
CLERK'S VERIFICATION Collected by: _____ (print name) ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____			

000064

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2013-CP-07-1464

BURTON FIRE DISTRICT FIRE &
RESCUE,

Plaintiff,

vs.

TOWN OF PORT ROYAL,

Defendant.

)
)
)
) MOTION FOR SUMMARY JUDGMENT
)
)
)
)

13 OCT 18 PM 1:30
CLERK OF COURT
BENJAMIN R. COLEMAN, JR.

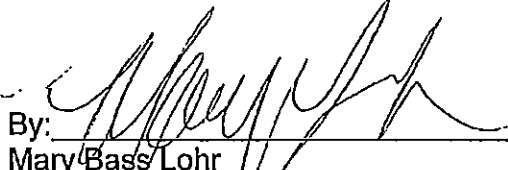
TO: H. FRED KUHN, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT the Defendant will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order of this Court granting Summary Judgment to this Defendant, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

This Motion will be based upon the pleadings in this case, the settlement agreement at issue herein, the affidavits to be submitted, and upon such law as may be appropriate, and is made on the grounds that the settlement agreement itself states, in paragraph 7, that the payments made pursuant thereto "*will be calculated using those properties listed on Exhibits B & C, as well as the **property tax assessed values** for those properties and millage from the tax bills that are scheduled to be sent out on October 16, 2010.*" This is the manner in which the Defendant has calculated all payments made to the Plaintiff, and is directly contrary to the allegations of the Complaint herein. Hence, there is no

issue of material fact and the Defendant is therefore entitled to judgment as a matter of law.

HOWELL, GIBSON & HUGHES, P.A.

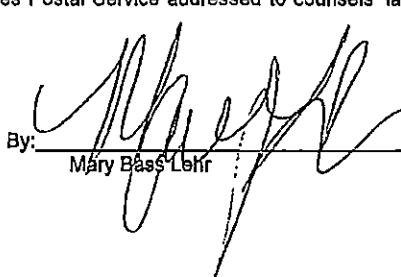
By: 
Mary Bass Lohr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendant

Beaufort, South Carolina

October 16, 2013

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion for Summary Judgment upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 16 day of October, 2013.

By: 
Mary Bass Lohr

13 OCT 18 PM 1:30
CLERK OF COURT
JUDICIAL DEPT. S.C.

RULE 11 CERTIFICATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that

- ☐ I have consulted with opposing counsel and have been unable to resolve the matter.
- ☐ Consultation with opposing counsel would serve no useful purpose, or is not required.
- ☐ Consultation with opposing counsel could not be timely held
- ☒ I certify that there is no duty of consultation for the attached motion (to dismiss, for summary judgment, for new trial, for judgment NOV, in real estate foreclosures, or with pro se litigants.)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2013-CP-07-01464

MOTION INFORMATION FORM AND COVER SHEET

Name, SC Bar No. and address of Defendant's attorney

Mary Bass Lohr SC Bar No: 16927
P.O. Box 40, Beaufort, SC 29901
MLohr@hghpa.com
843-522-2400
843-522-2429 fax

2016 NOV -7 . PM 2:43
JEROME ROSENEAU
REAFORT COUNTY, S.C.
CLERK OF COURT

Nature of Motion: Motion for Reconsideration
Estimated Time Needed: 15 minutes **Court Reporter Needed:** YES

☒ Written Motion attached
☐ Form Motion –

November 03, 2016

Signature of Attorney for Plaintiff/Defendant

X PAID - AMOUNT: \$25.00

☐ **EXEMPT:** ☐ Rule to Show/Cause in child or spousal support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of Court; or, reduced in writing from
motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

CODE: DATE:

DATE FILED:

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2013-CP-07-01463

BURTON FIRE DISTRICT FIRE &
RESCUE,

Plaintiff,

vs.

CITY OF BEAUFORT,

Defendant.

MOTION TO RECONSIDER

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2013-CP-07-01464

BURTON FIRE DISTRICT FIRE &
RESCUE,

Plaintiff,

vs.

TOWN OF PORT ROYAL,

Defendant.

2016 NOV -7 PH 2:43
JEREMY A. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: H. FRED KUHN, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendants, City of Beaufort and Town of Port Royal, by and through their undersigned counsel, Howell, Gibson and Hughes, P.A., will appear before the Presiding Judge, Beaufort County Court of Common Pleas, on the tenth (10th) day after service hereof, or at such other time and place as may be directed by the Court, and then and there

move for reconsideration and appropriate alteration and/or amendment of the Court's Order of October 24, 2016.

The Court should reconsider and alter its Order dated 10/24/16 for the following reasons:

1. The court failed to consider the import of Footnote Three of the Settlement agreement where the term assessed value is specifically defined by reference to the 2010 tax bill. A review of the 2010 tax bills submitted into evidence clearly demonstrates that the term assessed value, as testified to by Gary James, does not have the same meaning as it did on the 2010 Beaufort County tax bills referenced by the Settlement Agreement.
2. The court failed to consider the express language of the settlement agreement contained in paragraph 7 of the contract referencing tax assessed values. That section provides:

This Agreement shall be deemed to have commenced on July 1, 2010. The first payment will be due on or before March 1, 2011 and will be calculated using those properties listed on Exhibits B and C, as well as the ***property tax assessed values*** for those properties and millage ***from the tax bills that are scheduled to be sent out on October 16, 2010.***
(emphasis added.)

This section, like Footnote 3, clearly references the 2010 tax bills and the **property tax assessed values** contained on those bills.

3. The court failed to consider and address the affirmative defenses of the Defendants. The Defendants asserted affirmative defenses of waiver, estoppel and laches in the respective answers. Additionally,

the Defendants asserted that the actions of the Burton Fire District were ultra vires, as they were outside the authority of the fire district's enabling legislation, and, therefore, the contract is void ab initio. Lastly, the Defendants moved for reformation of the contract at trial, which was granted by the court. The order of the court fails to address any of these defenses.

4. The court erred in finding there was a stipulation that the contract was unambiguous.

a. A review of the transcript of the trial of this matter clearly demonstrates no such stipulation. The transcript does reflect that the Defendants, while arguing the statute was unambiguous pursuant to the meaning of assessed value as defined Footnote 3 with reference to the 2010 tax bill, alternatively argued that if the court did not find that Footnote 3 was clear, it at least created an ambiguity in the Settlement Agreement requiring review of extrinsic material. The court specifically acknowledges this in its ruling as to the amendment to add reformation of the contract as a defense and to allow in extrinsic evidence that occurred at the end of the trial.

b. Additionally Footnote 3 to the Court's Order references the cross motions for summary judgment. There is no such stipulation in the Motions for Summary Judgment, or in the affidavits that were filed in support thereof. There is no record

of the hearing, so there is no record stipulation. Importantly, the cross summary judgment motions were denied. A denial of a summary judgment motion does not create any substantive ruling—or if anything is an indication that the court did NOT believe that the agreement was unambiguous.

5. The court erred in applying prejudgment interest in this matter. The Plaintiff waived its right to prejudgment interest for the tax year 2011 by accepting payment without objection. The issue of underpayment was not raised to Beaufort until June 2012 and not raised to Port Royal until the filing of this matter in June 2013. No demand for the sums allegedly underpaid in 2011 occurred until June 2013.

The within motion, made pursuant to the provisions of the statutory and common laws of the State of South Carolina and Rules 52 and 59, South Carolina Rules of Civil Procedure and factual and legal argument set forth in a memorandum of law to be filed in support of this motion.

HOWELL, GIBSON & HUGHES, P.A.

By: T. Budelf (for)
Mary Bass Lohr
Post Office Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Defendants

Beaufort, South Carolina

November 3, 2016

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion for Reconsideration upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 3 day of November, 2016.

By: M. Bass Lohr (for)
Mary Bass Lohr

RULE 11 CERTIFICATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that

- ☐ I have consulted with opposing counsel and have been unable to resolve the matter.
- ☒ Consultation with opposing counsel would serve no useful purpose, or is not required.
- ☐ Consultation with opposing counsel could not be timely held
- ☐ I certify that there is no duty of consultation for the attached motion (to dismiss, for summary judgment, for new trial, for judgment NOV, in real estate foreclosures, or with pro se litigants.)

2016 NOV -7, PM 2:43
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

1 State of South Carolina) Court of Common Pleas
2 County of Beaufort) 14th Judicial Circuit
) No.: 2013-CP-07-0146

3 Burton Fire District)
4 Fire & Rescue,)

5 Plaintiff,)

6 vs.)

7 City of Beaufort, and)
8 Town of Port Royal,)

9 Defendants.)

HEARING

January 26, 2016

10 Hearing reported by Deborah S. Thomas,
11 Certified Verbatim Reporter and Notary Public in and
12 for the State of South Carolina; said hearing held
13 before the Honorable Marvin H. Dukes, III, Beaufort
14 County Master in Equity and Special Circuit Court
15 Judge in accordance with the South Carolina Rules of
16 Civil Procedure, at the Beaufort County Courthouse,
17 102 Ribaut Road, Room 212, Beaufort, South Carolina,
18 on January 26, 2016, at the hour of 9:15 a.m.

19
20 THOMAS REPORTING SERVICES
21 156 Argent Way
22 Bluffton, South Carolina 29909
23 (803) 206-7390
24
25

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Appearances

Representing the Plaintiff:

H. FRED KUHN, JR., ESQUIRE
Moss Kuhn & Fleming, PA
Post Office Drawer 507
Beaufort, South Carolina 29901
fred@mossandkuhn.com

Representing the Defendant:

MARY BASS LOHR, ESQUIRE
Howell Gibson & Hughes, PA
Post Office Box 40
Beaufort, South Carolina 29901
mlohr@hghpa.com

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Hearing

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* * * * *

EXHIBIT INDEX

Exhibits: Marked at Page

(Exhibits retained by Clerk of Court.)

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13	(withdrawn)	
14	(withdrawn)	
15	(withdrawn)	
16	(withdrawn)	
17	(withdrawn)	
18	(withdrawn)	
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* * * * *

1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good morning. We are
4 here on 13-CP-07-1463, consolidated with 1464, the
5 cases having been referred to me pursuant to Order
6 of Reference filed October 2nd, 2015.

7 I understand the parties have previously attempted
8 to settle this both through mediation and through
9 attempts to settle, and those have been futile so I
10 suppose it's time to move ahead.
11 Any pretrial motions or issues that we might need to
12 take up before beginning, Ms. Lohr?

13 MS. LOHR: Yes, Your Honor. I would
14 move to amend our answers to conform with the
15 evidence in this case at this point. Basically, all
16 the evidence in that regard has been submitted on
17 the record previously to the Court with regard to
18 affidavits and exhibits to the affidavits, so
19 counsel for the Plaintiff has had them.

20 We would move for reformation of the
21 contract, and we would also plead mutual mistake by
22 the parties.

23 JUDGE DUKES: All right. Mr. Kuhn?

24 MR. KUHN: I would object to amending
25 the pleadings and changing the whole nature of the

1 case on the eve of trial. The pleadings have been
2 clear. This case has been pending a long time.
3 It's a simple breach of contract case. There has
4 been no evidence to conform the pleadings to at this
5 point.

6 JUDGE DUKES: I tell you what I might
7 do is -- of course, that motion can be made at the
8 conclusion of the testimony as well.

9 MS. LOHR: Yes, Your Honor. I didn't
10 want the Plaintiff to argue that they were
11 prejudiced somehow by not being able to put in
12 certain evidence; although, I feel like those two
13 issues go on the heart of the matter anyway. It's
14 just a matter of -- technical matter of conforming
15 the contract if Your Honor finds that the language
16 of the contract isn't exactly what it should be.

17 I don't think that this substantially
18 changes any of the issues in this case. And, as a
19 matter of fact, it relates completely with the
20 summary judgment motion that was filed previously in
21 the case.

22 JUDGE DUKES: I think what I'll do is
23 we can try the case and put the evidence in as
24 though I had granted the motion, but I'm not
25 necessarily granting the motion right now. I'm take

1 it under advisement. And you are welcome to
2 re-bring it in case I somehow forget toward the end
3 of the trial. So -- but to the extent that Mr. Kuhn
4 might object to that as though it had not been
5 brought in I'm going to -- your objections are
6 preserved and I'll allow it in.

7 All right. Anything else?

8 MS. LOHR: Your Honor, I do think
9 there is an issue with regard to -- I think it would
10 simplify the case. There is an issue with regard as
11 to whether we can bring in parole evidence in this
12 case. Previously Your Honor has ruled that the
13 contract was ambiguous. There were cross motions
14 for summary judgment in the case.

15 And in order to rule the way Your Honor
16 did, you had to find there was an ambiguity
17 otherwise you were going to rule on the face of the
18 contract. If there is an ambiguity then obviously
19 the Court has to look to the intent of the contract.
20 And the intent of the contract can be found through
21 parole evidence.

22 So I think we need to address that issue,
23 Your Honor, prior to starting the trial.

24 JUDGE DUKES: Well, and I think that
25 actually goes hand in hand with your other motion I

1 suppose. And I was thinking about this the other
2 day. Does the denial of cross summary judgments
3 necessarily mean something other than the fact that
4 there was maybe a scintilla both ways or something.
5 I don't know. I mean, the premise is it has to be
6 ambiguous because I didn't grant summary judgment.

7 I'm not sure if that is necessarily the
8 law, but I mean I know where you are going. And --

9 MS. LOHR: I think you might ought --
10 I thought that that language was in your order.

11 JUDGE DUKES: It might have been. I
12 haven't read the order in a long time, but --

13 MS. LOHR: But I think we were both
14 arguing that on the face -- there was no scintilla
15 of evidence otherwise. We were both arguing on the
16 face of the contract there was no ambiguity.

17 JUDGE DUKES: Right.

18 MS. LOHR: And Your Honor ruled that
19 there -- had to have ruled that there was an
20 ambiguity in order to get us here today otherwise
21 there is no point in us being here.

22 JUDGE DUKES: I agree. I agree. I'm
23 just -- I was just thinking -- but all right. So
24 Mr. Kuhn?

25 MR. KUHN: May it please the Court,

1 Your Honor, the standard in summary judgment and the
2 standard here today are apples and oranges. A
3 summary judgment, as Your Honor has pointed out, the
4 standard is is there a scintilla of evidence that
5 would justify denying the summary judgment motion?
6 A scintilla of evidence that there might be genuine
7 issue of material fact.

8 Here the standard would be by the greater
9 weight or preponderance of the evidence is the
10 contract ambiguous? Respectfully, those are two
11 different standards. So the summary judgment has no
12 bearing at all on how we proceed today.

13 JUDGE DUKES: But, I mean, you all
14 are both saying that parole evidence is appropriate
15 then?

16 MR. KUHN: No, sir.

17 JUDGE DUKES: You are not? Okay.

18 MR. KUHN: I'm saying the contract is
19 clear, unambiguous. The terms involved,
20 particularly the material assessed, has a definite,
21 well-understood meaning. It's not ambiguous. It's
22 well-defined.

23 JUDGE DUKES: All right. But that
24 would be the same as simply arguing the summary
25 judgment motion, again. So, I mean ---

1 MR. KUHN: You all intend to put in
2 parole evidence at the summary judgment motion stage
3 over my objection.

4 JUDGE DUKES: All right. I'm going
5 to do this. I'm going to allow it subject to Mr.
6 Kuhn's objection. And I may very well at the end of
7 the day come back and decide that it's not
8 ambiguous. I don't know. But I think it's
9 important to make a clean and complete record just
10 because, first of all, it's non-jury so I can forget
11 those things hopefully that I didn't need to hear.

12 And second of all, because appeals are so
13 likely out of Beaufort County. So let's make a good
14 record in case I get it wrong somebody above me can
15 sort it out from the record if necessary.

16 Again, and Mr. Kuhn's objections are noted
17 for the record. All right. Anything else?

18 MS. LOHR: Nothing from me, Your
19 Honor.

20 MR. KUHN: Nothing from the
21 Plaintiff, Your Honor.

22 JUDGE DUKES: Have you all had an
23 opportunity to agree on an order or anything with
24 regard to the documents? I mean, the documents
25 obviously are no secret at this point. We've got

1 the ones that we've seen before which was, I guess,
2 a mutual aid agreement or something. I can't
3 remember what it's called, but it's probably going
4 to be Number 1, I suppose. Maybe not.

5 Have you all thought about pre-marking?
6 We could even take a minute with Deborah here, might
7 sort some things out as to those things that are not
8 going to be objectionable? And as to those that
9 are, Mr. Kuhn, if you would just point out those
10 fall under the objection you previously made and we
11 can deal with them one at a time if you would like
12 or in mass. So would that make some sense or you
13 all tell me?

14 MR. KUHN: Because I have them right
15 here, Your Honor, I can pre-mark them now and show
16 them to Ms. Lohr.

17 JUDGE DUKES: Does that suit you?
18 And there are copies for me and that sort of thing?
19 If not, maybe we can make those.

20 MS. LOHR: Your Honor, I have mine
21 witness by witness. So I would have to go through
22 and kind of break any notebook apart to get them
23 out, but I can do that if we take a few minutes.

24 JUDGE DUKES: Why don't we -- taking
25 a few minutes now might save us a lot of minutes

1 later. So if you all don't mind, why don't we just
2 take a second and -- so we will be off the record
3 for a second while you all try to --

4 (RECESS 9:21 TO 9:51.)

5 (PRE-MARKED PLAINTIFF'S EXHIBIT NOS.
6 1 THROUGH 8.)

7 (PRE-MARKED DEFENDANT'S EXHIBIT NOS.
8 1 THROUGH 23.)

9 JUDGE DUKES: All right. Back on the
10 record. Let me clarify something I said inartfully
11 before I had my third cup of coffee which I'm now
12 halfway into. And that is I think that not granting
13 summary judgment to either party earlier does not
14 necessarily preclude me from finding that the
15 contract is unambiguous at some point in the trial.

16 I don't know if you all agree or disagree
17 with that, but that is my understanding for purposes
18 later on.

19 MS. LOHR: Your Honor, I would only
20 pray reference to the order itself. I think if you
21 ruled in the order that it's ambiguous. And I think
22 we are stuck with that, all of us.

23 JUDGE DUKES: I think I just denied
24 summary judgment. Didn't I? I'll have to look,
25 but --

1 MS. LOHR: I can't remember exactly
2 what the language of the summary judgment order
3 said. I apologize. I don't have it with me.

4 JUDGE DUKES: Let's see.

5 MR. KUHN: I think you've got to read
6 it in the context of what kind of order it is, Your
7 Honor.

8 JUDGE DUKES: No, it just says I deny
9 summary judgment.

10 MS. LOHR: Okay.

11 JUDGE DUKES: So I'm not saying that
12 is what I'm going to do. I'm just saying I think in
13 the world of options available to me I don't think I
14 have precluded or foreclosed that as an option. And
15 so now I've said that and preserved it for appeal
16 purposes one way or another. They can say it's
17 wrong or right.

18 MR. KUHN: While we are on that if I
19 could just add that denying a summary judgment, of
20 course, is not appealable. So if the Defendant's
21 reasoning were applicable that means that a judge
22 could make almost any kind of ruling denying the
23 summary judgment motion --

24 JUDGE DUKES: Right.

25 MR. KUHN: -- and we would be stuck

1 with it and have no recourse which I'm sure is not
2 the law.

3 JUDGE DUKES: All right. I think
4 that is fair. All right then. If you all have
5 openings you would like for me to hear, I'm happy to
6 hear them or we can launch right into Plaintiff's
7 first witness, whatever you all would like to do.

8 MR. KUHN: As much as I'm sure Your
9 Honor would love to hear my opening, I'll waive
10 openings.

11 MS. LOHR: I'm fine with waiving
12 openings, Your Honor. I think you will remember
13 quickly what this is all about.

14 JUDGE DUKES: I mean, going through
15 the file and yesterday briefly I looked at it. And
16 it all has to do with assessed value and what in the
17 heck does that mean and a couple of other things.
18 So -- but, yes. So no openings is just fine with
19 me. And I'm happy to hear from your first witness
20 then.

21 MR. KUHN: May it please the court,
22 Your Honor, call Gary James.

23 JUDGE DUKES: Come on around, please.
24 Come on around here if you would and just hold your
25 right hand up for me. Do you swear or affirm to

1 tell the truth, the whole truth, and nothing but the
2 truth so help you God?

3 MR. JAMES: I do.

4 JUDGE DUKES: All right. Have a seat
5 please. Answer any questions Mr. Kuhn may have.

6 MR. KUHN: Of course, Your Honor, I
7 would move to introduce the Plaintiff's Exhibits 1
8 through 7. I think there is an objection to Number
9 8.

10 JUDGE DUKES: One through 7 without
11 objection; is that correct?

12 MS. LOHR: Yes, sir.

13 JUDGE DUKES: Okay.

14 WHEREUPON:

15 GARY JAMES, being duly sworn and
16 cautioned to speak the truth, the whole truth and
17 nothing but the truth, testifies as follows:

18 DIRECT EXAMINATION

19 BY MR. KUHN:

20 Q. Would you state your full name, please,
21 sir.

22 A. Gary Niles James.

23 Q. Okay. Mr. James, are you employed?

24 A. Yes, I am.

25 Q. By who are you employed?

1 A. Beaufort County.

2 Q. And what is your position with Beaufort
3 County?

4 A. The assessor.

5 Q. What are your duties as assessor?

6 A. We determine the taxable value of property
7 in Beaufort County. We determine the market value
8 of that property. And we deal with all handlings
9 associated with that.

10 Q. If I can show you what has been introduced
11 as Plaintiff's Exhibit 1 -- how have I lost them
12 already?

13 JUDGE DUKES: And is there an extra
14 copy for me when you find them?

15 MR. KUHN: Yes, Your Honor.

16 JUDGE DUKES: Thank you.

17 BY MR. KUHN:

18 Q. Mr. James, if you would turn to Page 3 of
19 6. You will see under the paragraph enumerated
20 Number 3 it starts off Payment for Service?

21 A. Yes.

22 Q. Are you with me? And then under
23 Subparagraph A that starts off, for the services
24 provided in the Port Royal annexed properties. You
25 will see there is a formula that is in that

1 paragraph?

2 A. Yes, sir.

3 Q. And the formula reads, Burton total
4 millage times assessed value of Port Royal annexed
5 properties times 25 percent. Do you see that
6 formula?

7 A. Yes, I do. Yes.

8 Q. The word assessed value, does that mean
9 anything to you?

10 A. Yes, it does.

11 Q. Is that a term that has a clear
12 definition?

13 A. To the best of my knowledge, yes.

14 Q. Okay. And as the assessor do you deal
15 with assessed values?

16 A. Yes, we do.

17 Q. And what is assessed value? What does
18 that mean for property tax purposes?

19 A. Okay. I would like to use -- I guess you
20 have to put this into exhibit -- Exhibit 8 which I
21 prepared which is I have pulled definitions and
22 paragraphs from either accepted documents in the
23 field written by the A.A.A. -- I.A.A.O., which is
24 the International Association of Assessing Officers,
25 or the Dictionary of Property Appraisal, the

1 Dictionary of Real Estate Appraisal or from South
2 Carolina Code of Laws.

3 Q. Okay. Stop you right there. As to those
4 first two --

5 MS. LOHR: Your Honor, I would object
6 to his -- I'm happy for the assessor to testify as
7 to what he knows assessed value to mean. I would
8 object to him relying on any outside sources. And
9 there hasn't been any expert witness designated in
10 this case. I'm sure the assessor knows what the
11 assessed value would mean, but I would object to any
12 kind of reference to an outside source. That's
13 certainly -- particularly references to statutes and
14 learned treaties.

15 JUDGE DUKES: Well, let me ask you
16 all this. There is no dispute but that this
17 contract intended assessed value -- and I understand
18 assessed value one way our the other, but whatever
19 it means, it's what it meant in Beaufort County; is
20 that right.

21 MS. LOHR: Well, that is part of the
22 parole evidence issue, Your Honor. Assessed value
23 can mean different things in different places.

24 JUDGE DUKES: But this is a Beaufort
25 County contract, so the -- it was what did it mean

1 here, right?

2 MS. LOHR: Expect, Your Honor, there
3 is parole evidence to show that it meant something
4 different.

5 JUDGE DUKES: I guess we are back
6 to --

7 MS. LOHR: But I'm happy for him to
8 testify what it means in Beaufort County, but he
9 doesn't need a learned treatises to go do that.

10 JUDGE DUKES: And the proposed
11 witness' exhibit is simply a compilation of
12 definitions from other places? Is that essentially
13 what it is?

14 MS. LOHR: It's a -- my understanding
15 is it's a compilation of what definitions were
16 utilized from other places, pulled from the statute.
17 So I'm happy -- I want Your Honor to limit this
18 testimony only to mean what assessed value means in
19 Beaufort County if that is what the purpose of his
20 testimony is here today.

21 JUDGE DUKES: Okay. Mr. Kuhn, how
22 about that?

23 MR. KUHN: The witness can testify to
24 what assessed value means. And I think he's
25 entitled to explain why he says it means that. And

1 he's said that there are two -- about to get in it.
2 Two nationally recognized organizations which have a
3 definition as well as the South Carolina Code of Law
4 has a definition. And that definition is applicable
5 to Beaufort County. I think the witness can testify
6 to the basis of his definition. This isn't
7 something he made up.

8 JUDGE DUKES: I'm happy to hear him
9 lay some sort of a foundation as to how he comes up
10 with the definition of assessed value that he relies
11 on every day as an assessment professional or
12 something. I don't know about the putting an
13 exhibit in necessarily, but if you wanted to lay a
14 foundation of how do you know what assessed means
15 and how do you -- where do you get that from and
16 that sort of thing, I'm happy to hear that
17 testimony. I think -- was the offer to put the
18 exhibit in? I've lost track of what the exhibit --

19 MR. KUHN: No, sir. I didn't offer
20 it yet. I just --

21 MS. LOHR: Your Honor, he was
22 indicating that he was going to read from the form.
23 And I was objecting --

24 JUDGE DUKES: That part is sustained.
25 If he wants to not read from the form, but tell us

1 where he gets his information and how he -- what he
2 relies on.

3 MR. KUHN: I think he can use it to
4 refresh his memory, Your Honor.

5 JUDGE DUKES: He can use it to
6 refresh his memory. I don't think -- okay. So
7 overruled as to using it to refresh his memory. And
8 maybe you can lay a little foundation as to why he
9 even has the thing.

10 BY MR. KUHN:

11 Q. Mr. James, in Beaufort County what does
12 assessed value for property tax purposes mean?

13 A. Okay. I would like to start with the
14 definition of how we come up with value for
15 property, and that is market value. And market
16 value is synonymous with appraised value in Beaufort
17 County.

18 So we determine market value. And there
19 are many, many definitions throughout the country
20 that are sort of different ways of saying the same
21 thing. Realtors will have a specific definition,
22 but what we in the assessor's office look at is
23 basically the price that is determined for -- I'm
24 sorry. Not the price. The value of a property as
25 determined by what a willing buyer and a willing

1 seller would determine without force, et cetera.

2 That is defined in South Carolina Code of
3 Laws, Section 12-37-930. I'm not going to quote it,
4 but I'm paraphrasing essentially what that means.
5 Market value or appraised value, which in South
6 Carolina we appraise -- excuse me. We appraise all
7 of our properties at market value.

8 That then forms the basis for the assessed
9 value. The assessed value is a ratio or a
10 percentage of the market value that we apply to that
11 property. And in South Carolina it's one of two
12 major values, either a four percent or a six
13 percent. And then there are exemptions that are
14 applied to those assessed values.

15 If you qualify for the four percent you
16 may or may not be allowed to be exempt from school
17 taxes, et cetera, but the assessed value is either
18 four percent or six percent of that market value.

19 So that is the way we come up with the
20 assessed value. It's that -- it's that ratio. So
21 when you get your tax bill you will see the
22 appraised value which is what we have determined to
23 be in the assessor's office market value times that
24 ratio of four or six percent. That is the -- then
25 determines the assessed value for that property.

1 And that is what you are then taxed on.

2 Q. Is the assessed value something that can
3 be easily determinable for a piece of property? In
4 other words, if I pointed to a piece of property in
5 Beaufort County and said what was the assessed value
6 on this property for tax year of 2015, would that be
7 a finite number?

8 A. It should be in most cases if you have
9 what is actually taxable. That is another term that
10 can be a little fuzzy, what is taxable. Any real
11 property -- I'm not going to go into personal
12 property, but any real property is subject to
13 being -- is subject to ad valorem taxation.

14 If it's taxable it means it's not exempt.
15 And I'm not trying to run circles around, but nobody
16 really defines what taxable is except that it's
17 subject to tax. So as long as the property is
18 subject to be taxed either in whole or in part --
19 and when I say in part because portions of property
20 may not be taxable.

21 I'll give an example of that. If you have
22 a church with a steeple and a cell company has put a
23 cell tower inside their steeple, the church may be
24 exempt from taxes because it's a charitable or
25 religious organization, but the cell tower is

1 taxable.

2 So you may find that you will have a total
3 value of the property may be \$2 million. I'm just
4 using that as an example. I'm not picking on any
5 particular property, but the -- and the assessed
6 value may be multiplied times that portion which is
7 taxable. And let's say the cell tower has \$200,000
8 in value in that property. Then the taxable amount
9 is the assessed value which is the assessed ratio
10 times the taxable portion. So that would be 200,000
11 times that because the other portion of the church
12 is exempt.

13 So in typical fashion a property is worth
14 a million dollars, it's taxed at six percent, then
15 the assessed value is \$60,000. You multiply that
16 times the millage. That is where you get back to
17 Page 3 of 6 where you take the millage times the
18 assessed value in this particular case in the
19 example the assessed value would be 60,000. And
20 that would fall into that property. I hope I'm
21 clear on how that is determined.

22 Q. So the piece of property for tax
23 purposes -- for property tax purposes will have an
24 appraised value --

25 A. Correct.

1 Q. -- which is the fair market value. And
2 then it will have an assessed value which is derived
3 from the appraised value; is that correct?

4 A. That's correct.

5 Q. And then if that property, depending on
6 its use, qualifies for certain exemptions, it may
7 have a taxable value that is different from the
8 assessed value?

9 A. That's correct.

10 Q. Okay. So if it was a hundred percent
11 exempt, a government office building for example, it
12 may be appraised at a million dollars, assessed at
13 40,000 or whatever, 60,000, but the taxable value
14 may be zero because they don't have to pay taxes?

15 A. That's correct.

16 Q. Okay. And these definitions are -- are
17 these definitions you made up?

18 A. No, sir.

19 Q. Are these well understood definitions in
20 your field?

21 A. Yes, sir.

22 Q. These are definitions that apply in
23 Beaufort County?

24 A. Yes, sir.

25 MR. KUHN: That is all the questions

1 I have. Thank you.

2 CROSS EXAMINATION

3 BY MS. LOHR:

4 Q. Thank you, Mr. James. I just have a
5 couple questions. Do you -- do you know if every
6 county in the state utilizes the same forms and
7 definitions on their tax bill that Beaufort County
8 does?

9 A. I can't speak for other counties and what
10 they do. I can just -- I know that we are -- we are
11 directed to follow the State laws and how they
12 interpret their -- and apply the laws. I can't
13 speak to how the assessors do it. It's my knowledge
14 from attending classes and conventions and speaking
15 with other assessors that we all follow the same
16 laws and apply them as closely as we can to the same
17 way.

18 Q. So do you know if -- is there a statutory
19 definition for taxable value as it appears in the
20 Beaufort County Tax Code?

21 A. I couldn't find a definition of taxable
22 anywhere from the Constitution to the Code of Laws.
23 It all says, if it's taxable, but it doesn't
24 specifically say what taxable is other than subject
25 to ad valorem tax.

1 Q. Okay. And was there an assessed value
2 defined?

3 A. Yes, sir. Yes, ma'am.

4 Q. And what -- do you recall what that
5 definition was?

6 A. Basically it's the application of the --
7 either the ratio or a percentage to the market value
8 that is determined by the assessor's office.

9 Q. Okay. And in terms of the -- Beaufort
10 County collects tax revenues for other municipal
11 entities and fire districts for instance; do they
12 not?

13 A. Correct.

14 Q. And are those revenues that those entities
15 in Beaufort County can expect, are they based on the
16 assessed value or the taxable value?

17 A. It's based on the -- generally speaking, I
18 can't speak for every property because I'm not the
19 auditor or the treasurer --

20 Q. Just generally.

21 A. -- who does the collections, the taxable
22 value generally is the last step. You determine
23 market value. You apply the -- well, it depends on
24 when you apply, whether it's taxable or not, to
25 determine whether there is any actual assessed

1 value. If it's exempt, we have the market value
2 which is the appraised value. And immediately if
3 it's exempt, it's zero times -- the ratio is still
4 zero. So whether you apply the exemption to it
5 before or after the assessed -- so taxable does
6 summarize what then does get taxed.

7 Q. So that's what -- the taxable revenue is
8 what -- for instance, Beaufort Fire District -- when
9 the County is doing the bills for Beaufort Fire
10 District -- Burton Fire District, they would be not
11 expecting revenues based on just millage times
12 assessed value. They would be expecting millage
13 times taxable value. That would be what they would
14 be expecting to come in?

15 A. I would assume that would be correct. I
16 mean, you don't get any revenue for exempt
17 properties. And if you have an assessed portion of
18 the -- my example of the church. It's assessed at
19 let's say 60,000, but 200 of that million is
20 non-taxable then that drops that down to being less
21 than the 60,000 that is assessed. And I haven't
22 done the calculations. It's, what, a fifth of that
23 so it would be 48. Then times the millage.

24 MS. LOHR: Okay. Thank you, Mr.
25 James. That is all the questions I have.

1 JUDGE DUKES: Anything else?

2 MR. KUHN: No redirect, Your Honor.

3 JUDGE DUKES: All right. Thank you
4 very much, sir.

5 THE WITNESS: Okay.

6 MR. KUHN: Your Honor, may this
7 witness be excused? No objection, Ms. Lohr?

8 MS. LOHR: I have no objection.

9 JUDGE DUKES: Yes. Thank you so
10 much.

11 THE WITNESS: Thank you. Do you want
12 to keep this in evidence? And I believe this is
13 your copy.

14 MR. KUHN: May it please the Court,
15 call Gary Bright, Your Honor.

16 JUDGE DUKES: All right. Come on
17 around, please. How are you, sir?

18 MR. BRIGHT: How are you doing?

19 JUDGE DUKES: Hold your right hand up
20 for me, please. Do you swear or affirm to tell the
21 truth, the whole truth, and nothing but the truth so
22 help you God?

23 MR. BRIGHT: I do.

24 JUDGE DUKES: All right. Have a seat
25 if you would.

1 MR. KUHN: May it please the Court?

2 JUDGE DUKES: Yes. Go ahead, please.

3 WHEREUPON:

4 GARY BRIGHT, being duly sworn and
5 cautioned to speak the truth, the whole truth and
6 nothing but the truth, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. KUHN:

9 Q. Would you state your full name, please,
10 sir.

11 A. Gary Reed Bright, Junior.

12 Q. What is your address?

13 A. 12009 Gail Street.

14 Q. That is Beaufort, South Carolina?

15 A. Yes, sir.

16 Q. Are you employed?

17 A. Yes, sir.

18 Q. By whom are you employed?

19 A. B&T Auto Machine.

20 Q. And what is your job duty there?

21 A. I own and operate a machine shop,
22 automotive repair, engine rebuilds.

23 Q. Do you have any connection with the Burton
24 Fire District?

25 A. Yeah. I'm currently Chairman of the

1 Burton Fire Commission.

2 Q. And the Commission, is that what governs
3 the Burton Fire District?

4 A. Yes, sir.

5 Q. And how do you get on the Commission?

6 A. Apply and be appointed by County council.

7 Q. Okay. For how long have you served on the
8 Commission?

9 A. On the Commission since 1991.

10 Q. And for how long have you served as
11 Chairman?

12 A. Since 1992.

13 Q. And how many Commissioners are there?

14 A. Five normally. We are currently at four.

15 Q. And what does the Burton Fire District do?

16 A. Provide fire service and emergency
17 response service to the residents of the Burton Fire
18 District.

19 Q. And where is the Burton Fire District
20 located just geographically? Roughly what are its
21 boundaries?

22 A. From the boundaries of the City of
23 Beaufort and Port Royal, all unincorporated areas of
24 Port Royal Island.

25 Q. That would be north of the Broad River

1 Bridge roughly south of the Whale Branch Bridge?

2 A. Yes, sir.

3 Q. Okay. And did you -- have you had any
4 other roles or employment with the Burton Fire
5 District other than served as a commissioner?

6 A. I started out as a volunteer and rose up
7 through the ranks to assistant chief.

8 Q. So for how long have you been associated
9 with the Burton Fire District?

10 A. Thirty-five years.

11 Q. Okay. Over the years has the City of
12 Beaufort and Town of Port Royal annexed properties
13 of the Burton Fire District into either the city or
14 the town?

15 A. Yes, sir.

16 Q. And as a result of that, did Burton Fire
17 District file a lawsuit many years ago against the
18 town and the city?

19 A. Yes, sir.

20 Q. If I could show you Plaintiff's Exhibits 6
21 and 7. Do you --

22 JUDGE DUKES: Do you have copies?

23 BY MR. KUHN:

24 Q. -- recognize what those are?

25 A. This appears to be the previous settlement

1 agreements between Burton Fire District and the City
2 of Beaufort and the Town of Port Royal.

3 Q. These were actually consent orders that
4 were issued in a case that was filed back in 1996;
5 is that correct?

6 A. Yes, sir.

7 Q. And this is -- these consent orders expire
8 on July 16th, 2010; is that correct?

9 A. Yes, sir.

10 Q. As July 16, 2010, approached, did you on
11 behalf of the Burton Fire District approach the City
12 of Beaufort and the Town of Port Royal to determine
13 what would take place once these documents expired?

14 A. Yes, sir.

15 Q. And the result of that was the agreement
16 we are here about today?

17 A. In a roundabout way, yes, sir.

18 Q. If I could show you Plaintiffs Exhibits 1,
19 2, and 3.

20 MS. LOHR: Fred, can you tell me what
21 documents those are?

22 MR. KUHN: The agreements --

23 MS. LOHR: I don't have these marked.
24 I don't know what 1, 2, and 3 are?

25 JUDGE DUKES: And I've got 1. And I

1 have 6 and 7, but I don't have copies of 2 and 3.

2 Great. Thank you.

3 BY MR. KUHN:

4 Q. If you would turn to the signature page of
5 Exhibit 1?

6 A. I'm there.

7 Q. Is that your signature?

8 A. Yes, sir.

9 Q. Under the Burton Fire District line where
10 you signed this as Commission Chairman?

11 A. Yes, sir.

12 Q. And that was on September 2nd, 2010?

13 A. Yes, sir.

14 Q. And when you signed this document do you
15 recall the circumstances, where you were and who was
16 present?

17 A. I believe when we actually signed the
18 document we were at the Beaufort City Headquarter
19 Fire Station.

20 Q. And do you recognize who executed on
21 behalf of the Town of Port Royal and the City of
22 Beaufort?

23 A. Yes. Mr. Sam Murray.

24 Q. Is he the witness or did he sign?

25 A. I'm sorry. He's the witness. That's

1 correct.

2 Q. And who signed on behalf of the Town of
3 Port Royal?

4 A. Kind of hard to read the writing.

5 Q. What was his position?

6 A. Town Manager.

7 Q. Okay. And Mr. Murray, what was his role,
8 if any, with the Town of Port Royal?

9 A. Mayor.

10 Q. And with respect to the City of Beaufort,
11 do you know who signed as City Manager on behalf of
12 the City of Beaufort?

13 A. I don't recognize the writing. I mean --

14 Q. Do you recognize the witness?

15 A. Billy Keyserling, the Mayor.

16 Q. The Mayor of?

17 A. City of Beaufort.

18 Q. Okay. And he also witnessed your
19 signature?

20 A. That's correct.

21 Q. This document references exhibits. If you
22 turn to Page 3 at the very top it references Port
23 Royal annexed properties and Beaufort annexed
24 properties as set forth on Exhibits B and C. And
25 are those what we've marked Exhibits 1 and 2 for

1 this trial?

2 A. Yes, sir. I see those two documents are
3 with it.

4 Q. Under this agreement the Burton Fire
5 District is obligated to do what?

6 A. Provide fire service to the areas of
7 Beaufort and Port Royal that were annexed after
8 1995.

9 Q. And you are talking about the City of
10 Beaufort now and the Town of Port Royal?

11 A. Yeah. City of Beaufort, Town of Port
12 Royal, properties annexed in the Burton Fire
13 District.

14 Q. And are those the properties that are
15 listed on Exhibits 2 and 3?

16 A. As far as I know.

17 Q. Okay.

18 A. It's a long list.

19 Q. And since that date, has the Burton Fire
20 District provided fire protection services for those
21 properties?

22 A. Yes, sir.

23 Q. Even though these properties are no longer
24 part of the Burton Fire District and are now in the
25 City of Beaufort and Town of Port Royal?

1 A. That's correct.

2 Q. This has a formula by which you are to be
3 paid. I'm referring to Paragraph 3-A on Page 3. Do
4 you see the formula?

5 A. Yes, sir.

6 Q. Burton total millage times assessed value
7 of the Port Royal annexed properties times
8 25 percent. That is the formula by which Port Royal
9 is to pay Burton each year for providing fire
10 protection services to the Port Royal properties
11 listed on their exhibit?

12 A. Yes, sir.

13 Q. If you turn to Page 4, there is a similar
14 property for the -- similar formula for the services
15 that Burton provides to the City of Beaufort
16 properties; is that correct?

17 A. Yes, sir.

18 Q. And the formula is identical except the
19 multiplier is 19 percent instead of 25 percent; is
20 that correct?

21 A. Yes, sir.

22 Q. And since that date has Burton Fire
23 District provided fire protection services to the
24 City of Beaufort?

25 A. Yes, sir.

1 Q. In accordance with the terms of the
2 agreement?

3 A. Yes, sir.

4 Q. Okay. Before you signed this agreement
5 did you read it?

6 A. Yes, sir.

7 Q. Is there any part of it you did not
8 understand?

9 A. No, sir.

10 Q. The use of the term assessed, was that
11 intentional or accidental?

12 A. Speaking for ourself -- myself only,
13 intentional, yes, sir.

14 Q. Okay. Was this agreement negotiated at
15 all prior to being executed?

16 A. Yes, sir.

17 Q. Over how long a period of time did these
18 negotiations take place?

19 A. An exact time is really hard to pin down.
20 We tried to negotiate or at least set up a meeting
21 to negotiate for probably a year and a half, almost
22 two years.

23 Q. And did we actually file a suit?

24 A. We did. We felt that --

25 Q. Did we actually have a suit filed against

1 us?

2 A. Yes. We felt they were unresponsive and
3 we thought it was important enough to work it out
4 before the previous agreement expired. And when it
5 looked like that wasn't going to happen we did file
6 suit.

7 Q. And the concern was that all of a sudden
8 there would be uncertainty as to who was providing
9 fire protection services for all of these
10 properties?

11 A. That's correct. Yeah, there was a lot of
12 concern.

13 Q. Were lawyers involved in the negotiation
14 of this agreement?

15 A. Yes, sir.

16 Q. On all sides? All three sides?

17 A. Yes, sir. On all three sides.

18 Q. And were Town of Port Royal officials and
19 City of Beaufort officials involved?

20 A. Yes, sir.

21 Q. And did we actually go through a couple --
22 at least two mediation sessions to try to hammer out
23 an agreement?

24 A. Yes, sir.

25 Q. End result of all of that was these

1 documents?

2 A. That's correct.

3 MR. KUHN: That is all the questions
4 I have, Your Honor.

5 JUDGE DUKES: All right. Thank you.
6 Ms. Lohr?

7 CROSS EXAMINATION

8 BY MS. LOHR:

9 Q. Have you received payments from the Town
10 of Port Royal and the City of Beaufort with regard
11 to the -- this contract?

12 A. Yes, ma'am.

13 Q. Okay. I'm going to show you --

14 MS. LOHR: You've already entered
15 this, haven't you, Fred? The payments?

16 MR. KUHN: That is entered. I
17 haven't shown it to him, but it's entered.

18 MS. LOHR: Okay.

19 BY MS. LOHR:

20 Q. Do you know the amount of the payments
21 that you've received?

22 A. Not exactly, no, ma'am.

23 Q. Okay. All right. Did you enter into a
24 press release after the settlement agreement?

25 A. I believe I did, yes, ma'am.

1 Q. Okay. And in that settlement agreement --
2 hold on?

3 MS. LOHR: I would move to enter
4 Defendant's Exhibit 1 --

5 BY MS. LOHR:

6 Q. Well, here. Tell me if this is the press
7 release. I'm getting ahead of myself.

8 A. Yeah, this appears to be correct.

9 Q. Okay. And you've had an opportunity to
10 review that press release prior to it being sent out
11 to the press, didn't you?

12 A. I don't think I actually reviewed the
13 whole document. I was asked questions. And I knew
14 they were going to be part of a press release.

15 Q. Okay. John -- you don't believe John
16 Williams sent you a copy of this document for you to
17 review and approve prior to sending it out?

18 A. This is the first time that I've seen that
19 document.

20 Q. Okay. You didn't receive any language in
21 an e-mail?

22 A. It's possible I may have then. I mean, if
23 it was an e-mail it would have gone to the --
24 probably the headquarters at Burton.

25 MS. LOHR: Okay. I would move to

1 enter this into evidence at this time, Your Honor.

2 JUDGE DUKES: Mr. Kuhn?

3 MR. KUHN: He hasn't really
4 identified it, Your Honor.

5 JUDGE DUKES: That is kind of what I
6 was thinking.

7 BY MS. LOHR:

8 Q. So you are saying that you don't know
9 whether you reviewed this document or not?

10 A. The one you are holding?

11 Q. Yeah.

12 A. I don't remember reviewing that. Like I
13 said, they asked me questions for a press release
14 and I answered questions. And I'm sure my answers
15 are incorporated in that, but I never saw that until
16 you just gave it to me.

17 Q. Okay. And you didn't see anything written
18 out that you had to approve? You didn't see this
19 written out in some text form that you had to
20 approve it's okay to go out by the Burton Fire
21 District?

22 A. Not in written form, no, ma'am.

23 Q. Okay. Do you know if Burton Fire District
24 raised any objections to the payments in 2011 you
25 received from the City of Beaufort or the Town of

1 Port Royal?

2 A. Specifically, I really can't recall.
3 We've had issues almost every year with the payments
4 as far as the timing when they were received and the
5 amounts, but as far as a specific one -- probably
6 all of them.

7 Q. You think you objected to all of them?

8 A. Not objected. You asked issues.

9 Q. Or objected to the amount that you
10 received?

11 A. We had questions about it.

12 Q. In 2011 you did?

13 A. As far as I can tell because every year we
14 have to go back and check the figures. And it's
15 kind of a complicated process, so --

16 Q. Okay. I'm going to ask you how does --
17 what is the authority of the Commission to act on
18 behalf of the people of Burton to provide services?

19 A. Well, as far as fire service that is our
20 primary job.

21 Q. But is there -- how do you -- how did you
22 get that authority historical? How was the Fire
23 District created, do you know?

24 A. Our original charter.

25 Q. Okay. And I'm going to hand you what has

1 been marked as Defendant's Exhibit 2. You tell me
2 if you recognize this document.

3 A. Yeah. This looks like a copy of our
4 enabling act.

5 Q. Okay. And is that the document that gives
6 you authority from the Legislature to do what you
7 do?

8 A. Well, this document sets up the Fire
9 District. I don't know that it specifically gives
10 me or doesn't give me any authority.

11 Q. Well, how do you think you got that
12 authority then?

13 A. Well, the enabling agreement combined with
14 I'm sure other legislation over the years and
15 guidance from County Council.

16 Q. What other legislation? Do you know
17 specifically of other legislation other than this?

18 A. I've just heard talk about it in some of
19 our meetings, but nothing -- being not an attorney,
20 I can't tell you specifically which ones.

21 MS. LOHR: Your Honor, I would move
22 to have the enabling legislation entered into
23 evidence.

24 MR. KUHN: The only objection is
25 relevance, Your Honor. I mean, it's the enabling

1 legislation. It has nothing to do with the case.

2 JUDGE DUKES: I don't see that it's
3 irrelevant. I'm not sure -- is there -- is there
4 some sort of allegation that perhaps they are not
5 authorized to --

6 MS. LOHR: Yes, sir, there is. In
7 the answers there upon we allege (inaudible) that
8 they weren't allowed -- they didn't have the
9 authority to enter into this contract in the first
10 place.

11 MR. KUHN: And my response to that,
12 Your Honor, is it's not accurate, Number 1. And
13 Number 2, they can't contract with us, receive the
14 benefit of our services, and then claim, well,
15 whoops, we knew you weren't authorized to sign it so
16 we want to get out of it. We've ratified the
17 contract repeatedly year after year, ratified
18 Mr. Bright's authority. I think they are estopped
19 from taking that position.

20 JUDGE DUKES: That very well may be
21 true, but I think I'll allow it. I'll put it in
22 in --

23 MS. LOHR: Okay.

24 BY MS. LOHR:

25 Q. Tell me -- I'm going to hand this document

1 to you.

2 JUDGE DUKES: Can you read the --

3 MS. LOHR: It's multipage so --

4 JUDGE DUKES: Okay. Well, I meant
5 the section. It's what number on top?

6 MS. LOHR: Oh, the section is -- this
7 is act -- oh, shoot. Act 54, Number 566.

8 JUDGE DUKES: From what year?

9 MS. LOHR: 1973.

10 JUDGE DUKES: Okay.

11 BY MS. LOHR:

12 Q. Show me in here -- look at Section 3.
13 Does that set forth the powers of the Fire
14 Commission for Burton?

15 A. It lists, yes, several of them.

16 Q. Okay. And A. is to buy such firefighting
17 equipment as the Board deems necessary for the
18 purposes of controlling fires within the money
19 allocated and made available to the Board for such
20 purposes; is that correct?

21 A. Yes, ma'am.

22 Q. B. is to select and procure the sites and
23 places within the area where the firefighting
24 equipment shall be kept; is that correct?

25 A. Yes, ma'am.

1 Q. C. is to provide and select in
2 coordination with the fire chief, the drivers, and
3 other volunteer firemen to man such equipment who
4 shall service without compensation; is that correct?

5 A. Yes, ma'am.

6 Q. D. is to procure and supervise in
7 coordination with the fire chief the training of
8 volunteer firemen selected to ensure that the
9 equipment shall be utilized for the best interest of
10 the area; is that correct?

11 A. Yes, ma'am.

12 Q. E. is to be responsible for the upkeep,
13 maintenance, and repairs of the trucks and
14 firefighting equipment and to that end shall as
15 often as deemed necessary inspect such equipment; is
16 that correct?

17 A. Yes, ma'am.

18 Q. F. is to promulgate such rules and
19 regulations as it may deem proper and necessary to
20 insure the equipment is being used to the best
21 advantage of the area; is that correct?

22 A. Yes, ma'am.

23 Q. G. is to construct the necessary buildings
24 to house the equipment authorized herein; is that
25 correct?

1 A. Yes, ma'am.

2 Q. H. is to borrow money on such terms as --
3 and for such a period as the Fire Control Board may
4 seem most beneficial for the Fire District in the
5 anticipation of taxes. The indebtedness shall be
6 evidenced by the note issued by the members of the
7 Board and the County Treasurer. The full faith and
8 taxing power of the Fire District is hereby
9 irrevocably pledged for the payment of the
10 indebtedness; is that correct?

11 A. Yes, ma'am.

12 Q. Okay. And under Section 4 it says the
13 auditor and treasurer of Beaufort County are hereby
14 directed to levy and collect the taxes, not more
15 than five mils to be determined by the Board of Fire
16 Control upon all taxable property of the District
17 for the purpose of defraying the expenses incurred
18 by the Board. All monies collected from this levy
19 shall be credited to this Fire District. Is that
20 what that Section 4 says?

21 A. Yes, ma'am.

22 Q. And under Section 1 on the front it says,
23 there is hereby created Burton Fire District in
24 Beaufort County which shall include all Beaufort
25 township except the area within the corporate

1 municipalities of Beaufort and Port Royal; is that
2 correct?

3 A. Yes, ma'am.

4 Q. Where in here does the legislature give
5 you all authority to provide fire services for
6 outside the boundaries as well as as to contract
7 with other governmental agencies?

8 A. I'm not sure this document does that.

9 Q. Okay. And is there a document that you
10 believe does allow you to do that?

11 A. If there is, I haven't seen it.

12 Q. Okay.

13 A. Appointed by County Council to operate on
14 their guidelines and guidance.

15 MS. LOHR: That is all the questions
16 I have for this witness, Your Honor.

17 JUDGE DUKES: Thanks. Anything else,
18 Mr. Kuhn?

19 MR. KUHN: No questions, Your Honor.
20 Thank you.

21 JUDGE DUKES: All right. Thank you
22 so much. You may step down. Let me bring something
23 up just for the record, and we probably talked about
24 this because I know both counsel pretty well. I was
25 on County Council during a period of time when

1 probably Mr. Bright was reappointed. I don't
2 remember, but I was on in '04. I don't know if that
3 is any kind of a conflict. We have, of course,
4 appointed and reappointed people dozens of times.

5 Additionally, Exhibit A, which I guess
6 I'll hear more about, to Plaintiff's 1 is a long
7 list of properties. I have an interest in a couple
8 of these properties. I don't know if it makes any
9 difference because I'm going to pay my tax one way
10 or the other, but --

11 MR. KUHN: Are you happy with your
12 fire protection?

13 JUDGE DUKES: I don't even know who
14 provides it, but I'm very happy with it. But -- and
15 I won't say which ones unless you all ask, but --
16 anyway. So let me do this. Let me do this right.
17 I'm going to step outside for a moment, let you all
18 confer. And come back in in a minute or so and let
19 you all tell me whether or not you waive any
20 potential conflict as a result of my ownership of
21 one or more properties on Exhibit A to Exhibit 1 and
22 my possible reappointment both for Mr. Bright at
23 some point over a decade ago.

24 (RECESS 10:33 TO 10:40.)

25 MS. LOHR: Your Honor, we don't have

1 any objection to you hearing the rest of this.

2 JUDGE DUKES: Okay. Did you get that.
3 part? So counsel has no objection to any of those
4 things brought up. I didn't think so, but I thought
5 I would make a nice clean record here. So everybody
6 needed a break anyway.

7 MR. KUHN: Appreciate Your Honor
8 disclosing that. There are no objections?

9 JUDGE DUKES: All right. Mr. Kuhn,
10 call your next witness, please.

11 MR. KUHN: May it please the court,
12 Your Honor, call Tom Webb.

13 JUDGE DUKES: Swear or affirm to tell
14 the truth, the whole truth, and nothing but the
15 truth so help you God?

16 MR. WEBB: I do.

17 JUDGE DUKES: Have a seat, please.

18 MR. KUHN: May it please the Court.

19 WHEREUPON:

20 THOMAS MARSHALL WEBB, being duly
21 sworn and cautioned to speak the truth, the whole
22 truth and nothing but the truth, testifies as
23 follows:

24 DIRECT EXAMINATION

25 BY MR. KUHN:

1 Q. Would you state your full name, please,
2 sir.

3 A. Thomas Marshall Webb.

4 Q. Mr. Webb, what is your address?

5 A. 70 Harding Street, Beaufort, South
6 Carolina.

7 Q. Are you employed?

8 A. I am.

9 Q. By whom are you employed?

10 A. Burton Fire District.

11 Q. What is your position there?

12 A. Deputy Chief.

13 Q. For how long have you been employed by the
14 Burton Fire District?

15 A. Since January of 2001.

16 Q. And for how long have you served as Deputy
17 Chief?

18 A. Approximately since 2006.

19 Q. What are your duties as Deputy Chief?

20 A. My main duty is the daily operations of
21 the organization, coordinating with the three
22 different shifts, maintenance, training division, as
23 well as assisting the Fire Chief with administrative
24 duties as he appoints.

25 Q. Is one of the things that the -- who is

1 the chief?

2 A. Chief Harry Roundtree.

3 Q. Is one of the things Chief Roundtree asked
4 you to do is double check the accuracy of payments
5 being received by the Burton Fire District from the
6 City of Beaufort and the Town of Port Royal in
7 accordance with the agreement that is Exhibits 1, 2,
8 and 3?

9 A. That is correct.

10 Q. And to do that what did you do?

11 A. I took the properties identified I believe
12 as Exhibit B and C in the contract that is furnished
13 to us through the assessor's office. They are
14 basically the properties outlined through the
15 geographical verbiage in there. And I took those,
16 checked the total amounts because they change every
17 year, just do a sum of the values and then times it
18 by the formula in the contract and come up with a
19 number. Did I answer you, Fred, or that was --

20 Q. Deputy Chief Webb, if I could show you
21 just as an example Exhibit 2 which are the -- been
22 identified as the Port Royal annexed properties.
23 And just looking at the first page, the top line,
24 there are 1, 2, 3, 4, 5 columns. The second column
25 is labeled PIN, P-I-N. And then underneath that,

1 for example, the first one is R11003400001470000.

2 What does that number represent?

3 A. The PIN is the property identification
4 number. And it's a specific number to that deeded
5 parcel of land.

6 Q. So is each parcel of real property in
7 Beaufort County, is that assigned a PIN number?

8 A. That is my understanding, yes, sir.

9 Q. So if we take this number, we can look on
10 the Beaufort County tax maps and locate that piece
11 of property; is that correct?

12 A. That is correct.

13 Q. All right. The second column is
14 appraised. Do you see that?

15 A. I do.

16 Q. And the next column is assessed. And the
17 next column is taxable. And the numbers here are
18 different. Appraised is 500, assessed is 30, and
19 taxable is just a blank, is zero. Do you know why
20 that is?

21 A. Specifically?

22 Q. No, sir.

23 A. Generally there is some type of exemption
24 or exception that has been imposed.

25 Q. And you heard the assessor talk about

1 appraised is fair market, assessed is after you
2 apply a multiplier to the appraised value, and then
3 for other reasons a property may be taxed at its
4 assessed value or may be exempt and taxed at zero.
5 Is that your understanding?

6 A. That is my understanding, yes, sir.

7 Q. Okay. When you ran the numbers and -- did
8 you find out that the -- what did you conclude so
9 far as whether or not the payments that were being
10 received from the City of Beaufort and the Town of
11 Port Royal pursuant to the contract were correct or
12 not?

13 A. When I initially ran the numbers I
14 realized that the checks -- the value did not add up
15 to what I had calculated they should be. After
16 doing it a few times and looking at it, trying to
17 make sure it wasn't a mistake on my part, I realized
18 that if you did it through the formula of taxable
19 value the number came out correct, but if you did it
20 through the formula of the contract is where the
21 difference was.

22 Q. You said if you read the numbers according
23 to the taxable value it came out correct. You mean
24 you came up with the amount that was paid by the
25 city and the town?

1 A. That the city and the town had paid,
2 correct.

3 Q. But you discovered those figures were
4 based upon taxable value as opposed to assessed
5 value?

6 A. That is correct.

7 Q. Did this take awhile to figure out?

8 A. Quite a few cups of coffee and a bottle of
9 aspirin.

10 Q. And did you figure out what the difference
11 was?

12 A. I did.

13 Q. And if I can show you -- do you remember
14 those numbers off the top of your head?

15 A. No, sir.

16 Q. Would it help if I can show you this?
17 Does this refresh your memory?

18 A. Okay. Yes, sir.

19 Q. Okay. What is it that I just showed you?

20 A. It's a document I just put together for
21 the Chief and Commission that showed what the --
22 well, there are several categories. One there is
23 the pre-reassessment and then there is a
24 post-reassessment category because of the tax
25 reassessments done in, I believe, 2012. So there

1 was two different values of property from the
2 assessor's office that they have calculated on. And
3 that being -- do you want me to go through these in
4 detail or --

5 Q. Yes, sir. If you would tell -- tell His
6 Honor what --

7 MR. KUHN: Well, I would move to
8 introduce this document, Your Honor.

9 MS. LOHR: That is fine.

10 JUDGE DUKES: Okay. Without
11 objection that will be Number --

12 MR. KUHN: Nine, I believe.

13 (MARKED PLAINTIFF'S EXHIBIT NO. 9.)

14 THE WITNESS: In my preparation --

15 BY MR. KUHN:

16 Q. Chief Webb, I've got all of your
17 calculations here if you need to refer to them.
18 This -- the sheet that you have in front of you is
19 just sort of the conclusion you reached; is that
20 correct?

21 A. That is correct. I was going to say this
22 is not my sheet, correct? Because this is somebody
23 else's.

24 Q. Yes, sir.

25 A. Mine is -- because there is a column

1 missing and my initials are actually written on mine
2 so I would know they were mine.

3 Q. The summary, Exhibit 9, that is your
4 document. You wrote that?

5 A. That is my document, yes, sir.

6 Q. Okay. And specifically what did you find
7 out?

8 A. Well, what I found out is basically
9 pre-reassessment of property values that there was a
10 total of \$1,155,315 of exempt properties. And
11 post-reassessment \$1,277,660 of exempt properties
12 that were not calculated -- that would be the
13 difference between the assessed value of the -- all
14 total properties and taxable value of all total
15 properties within the contractual area.

16 Q. Now, which entity are we talking about,
17 City of Beaufort or Town of Port Royal?

18 A. That was the City of Beaufort's amount.
19 Town of Port Royal is in the second paragraph there.

20 Q. And what was the difference there?

21 A. Pre-reassessment 1,636,311.
22 Post-reassessment \$2,043,090.

23 Q. Taking those figures, did you then
24 calculate how much the checks were short each year?

25 A. Yes, sir, I did. For the City of Beaufort

1 pre-reassessment difference between assessed and
2 taxable was \$13,477.90. Post-reassessment was
3 \$14,905.18.

4 Q. That is per year?

5 A. Per year.

6 Q. Okay.

7 A. The Town of Port Royal the
8 pre-reassessment was a difference of 25,117.37. And
9 post-reassessment was \$31,361.43.

10 Q. And you arrived at those figures by taking
11 the difference in the assessed taxable values and
12 applying the millage?

13 A. The millage formula from the contract.
14 That is the total Burton Fire millage which was 6.4
15 mils times 25 percent. So you take that 2 million
16 plus example times the 6.4 mils times 25 percent to
17 come up with that.

18 Q. And the 6.4 mills, where does that come
19 from?

20 A. The 6.1 -- 61.4 mil, that is our tax
21 millage set by Beaufort County.

22 Q. That is the millage that would have been
23 in effect at the times we are speaking about?

24 A. That's correct.

25 Q. If I can show you Plaintiff's Exhibit 4.

1 A. Thank you.

2 Q. Do you recognize what that document is?

3 A. I do.

4 Q. And what is that?

5 A. It's a record going back to 2006 of
6 payments received and dates deposited from the Town
7 of Port Royal and the City of Beaufort.

8 Q. And if we look at this list, some of these
9 payments predate the agreement that we are here
10 about today, correct?

11 A. That's correct. Everything from 2010 back
12 would have been under the old agreement.

13 Q. The two old consent orders that we talked
14 about earlier?

15 A. Yes, sir.

16 Q. Okay. And PR, that stands for Town of
17 Port Royal and CB stands for City of Beaufort?

18 A. That's correct.

19 Q. So the very first payment that is listed
20 here, that would have been pursuant to the agreement
21 that we are here about today would be the
22 January 12th, 2011, payment received or -- from the
23 City of Beaufort in the amount of \$195,456.39?

24 A. That's correct.

25 Q. Okay. Under the contract, payments are

1 due March 1st of each year; is that correct?

2 A. Yes, sir.

3 Q. Okay. And the second payment received was
4 the payment from Port Royal, a check dated
5 March 23rd, 2011, in the amount of \$154,493.34; is
6 that correct?

7 A. That's correct.

8 Q. The City of Beaufort payment was on time.
9 Port Royal payment was 22 days late. Am I
10 interpreting that correctly?

11 A. Yes, sir.

12 Q. The next year rolls around and we received
13 payments from the City of Beaufort and Town of Port
14 Royal. And they are late. They are both paid in
15 May?

16 A. April, sir.

17 Q. Excuse me. April.

18 MS. LOHR: Your Honor, I'm going to
19 object leading the witness. He can ask him the
20 question.

21 JUDGE DUKES: Please don't lead?

22 BY MR. KUHN:

23 Q. When did we receive the payments that were
24 due on March 1st of 2012?

25 A. Port Royal's was April 17th, 2012. City

1 of Beaufort's was April 18th, 2012.

2 Q. Okay. Is there a provision in the
3 contract that if a payment is late that there is an
4 additional amount owed?

5 A. Yes, sir, there is.

6 Q. And the next two payments, what do those
7 represent?

8 A. The Town of Port Royal on the May 24,
9 2012, paid the late fee or penalties for the payment
10 in April -- yes, April of 2012. And then July 10th
11 the City of Beaufort paid the penalty for the late
12 payment as well from what was paid in April 18th,
13 2012.

14 Q. And the next year, 2013, did we receive
15 the payments on time?

16 A. We did.

17 Q. And the next year, 2014, did we receive
18 those payments on time?

19 A. We received the City of Beaufort's in
20 January the 15th and Port Royal's March 7th.

21 Q. So it was a few days late, but we did not
22 request a late fee on that payment?

23 A. That is correct.

24 Q. And in 2015 we got the payments in
25 February?

1 A. That is correct.

2 Q. And in 2016, March 1st of this year,
3 another payment will be due?

4 A. Yes, sir, that's correct.

5 Q. Okay. If I can show you Plaintiff's
6 Exhibit 5. If we look at this document, this is
7 sort of a compilation. At the top referring to the
8 City of Beaufort. If we look at the check dates,
9 those are dates taken from the exhibit we were just
10 talking about; is that correct?

11 MS. LOHR: Your Honor, actually I do
12 have an objection to this document.

13 JUDGE DUKES: All right.

14 MS. LOHR: It has a calculation of
15 interest imposed in this column. And I would object
16 to that. That would be a determination referenced
17 in 34-31-20 which would be prejudgment interest. I
18 think that is for Your Honor to do. I don't think
19 any calculations would be appropriate submitted into
20 evidence of interest.

21 MR. KUHN: Ms. Lohr is correct. That
22 is a calculation for Your Honor to perform. I put
23 it on here just as a matter of --

24 JUDGE DUKES: Convenience?

25 MR. KUHN: Yes, sir.

1 JUDGE DUKES: All right. Your
2 concerns are noted and accurate and -- but I
3 don't -- so long as we all understand that, I don't
4 have a problem with the exhibit as it is so I'll
5 keep that in mind.

6 MS. LOHR: Okay. Thank you, Your
7 Honor.

8 JUDGE DUKES: Thank you.

9 BY MR. KUHN:

10 Q. Amount paid, that is taken from the prior
11 exhibit, the amount of the actual checks that were
12 paid by the City of Beaufort. If we compare those
13 numbers to the prior exhibit they match?

14 A. Right. Yes, sir, they do.

15 Q. Due date, that is taken just from the
16 contract?

17 A. That's correct.

18 Q. And the amount short, that jibes with
19 Exhibit 9. That is your calculations?

20 A. Yes, sir, that's correct.

21 Q. Okay. So, for example, the payment that
22 was due, take the top line, City of Beaufort, the
23 one payment was due on March 1st, 2011. They paid
24 \$195,456.39, but that check was short \$13,477.90.
25 Are we interpreting it -- am I interpreting this

1 correctly?

2 A. That is correct.

3 Q. Okay. Just need to run through this for
4 the record, Chief Webb, but the check that was due
5 March 1st, 2012, was short how much?

6 A. \$13,477.90.

7 Q. And the check that was due March 1st,
8 2013, was short by how much?

9 A. \$13,477.90.

10 Q. And the check that was due from the City
11 of Beaufort on March 1st, 2014, was short by how
12 much?

13 A. \$14,905.18.

14 Q. And the check that was due from the City
15 of Beaufort on March 1st, 2015, was short by how
16 much?

17 A. \$14,905.18.

18 Q. With respect to the Town of Port Royal the
19 check from the town that was due on March 1st, 2011,
20 was short by how much?

21 A. \$25,117.37.

22 Q. The check that was due March 1st, 2012,
23 short by how much?

24 A. \$25,117.37.

25 Q. The check that was due March 1st, 2013,

1 was short by how much?

2 A. \$25,117.37.

3 Q. The check that was due March 1st, 2014,
4 was short by how much?

5 A. \$31,361.43.

6 Q. The check that was due March 1st of last
7 year was short by how much?

8 A. \$31,361.43.

9 MR. KUHN: That is all the questions
10 I have. Please answer any Ms. Lohr may have.

11 CROSS EXAMINATION

12 BY MS. LOHR:

13 Q. Morning, Mr. Webb.

14 A. Good morning, ma'am.

15 Q. I don't think you told us specifically
16 when you made the calculations of the late fees. Or
17 not the late fees. The calculations of the
18 difference. Do you remember?

19 A. No, ma'am, I do not. Honestly I do not.

20 Q. Was it last year? More than --

21 A. No, ma'am.

22 Q. Several years ago?

23 A. It's been quite some years ago.

24 Q. Okay. Who is responsible for checking on
25 these amounts when they come in to make sure they

1 are accurate?

2 A. Ultimately I was.

3 Q. Okay. And did the Fire District have an
4 amount in its mind that it knew it should have been
5 receiving?

6 A. Not to my knowledge.

7 Q. Okay. So it wasn't part of your budgeting
8 process, these revenues that you were going to get
9 in?

10 A. No, ma'am.

11 Q. And do you know when the issue was first
12 raised to the Town of Port Royal and the City of
13 Beaufort that they were paying too little?

14 A. I have no knowledge.

15 Q. Okay. But you didn't send out any kind of
16 notice or bring it to anyone's attention when you
17 received the first payment, did you?

18 A. I brought it to Chief Roundtree's
19 attention as soon as I had figured out that is what
20 was occurring.

21 Q. Okay. What made you look?

22 A. He asked me to check the numbers -- the
23 value of the check against the numbers of the
24 property to ensure that it was accurate.

25 Q. Okay. And you don't know what tax year

1 that was in? You didn't do it the first -- do you
2 know if you did it the first year?

3 A. Honestly I don't even recall an exact
4 date. I think it was in 2012.

5 Q. Okay.

6 A. Again, I'm not positive for sure.

7 Q. Okay. But you know that you didn't put
8 the Town of Port Royal or the City of Beaufort on
9 notice that they -- that you thought they had a late
10 payment in 2011?

11 A. No, ma'am.

12 Q. Who -- do you have contact with the person
13 that does your accounting and your auditing?

14 A. Yes, ma'am.

15 Q. Okay. Who is that?

16 A. Now, our accounting or our auditing?

17 Q. Your auditing.

18 A. They are two separate --

19 Q. Oh, you have separate people who do your
20 accounting from your auditing, correct?

21 A. Auditing is handled by a third party. And
22 when you say contact, I say hello to Ms. Lisa, but I
23 don't -- Lisa Wexler.

24 Q. Okay. And do you trust Ms. Wexler?

25 A. I do.

1 Q. Okay. And did you -- did you have any
2 contact with Mr. Kuhn's office with regard to coming
3 up with the discrepancies in the -- the differences
4 between the assessed and taxable value?

5 A. I did have contact with his office at some
6 point, yes.

7 Q. Okay. Was that before or after you were
8 asked to figure out the differences?

9 A. No, it would have to be after.

10 Q. Okay. So you independently came up with
11 the thought that the assessed value versus the
12 taxable value, you ran your own calculation and then
13 told Mr. Kuhn?

14 A. No, ma'am. If I may, I ran the
15 calculations, figured out what was wrong. And then
16 I reported it to my boss, Chief Roundtree.

17 Q. Okay. And when did you have contact with
18 Mr. Kuhn in that process?

19 A. Sometime after that once they had brought
20 it to his attention I was asked to meet with Mr.
21 Kuhn and explain how I came up with the calculation.
22 Show him what I had used to figure it out.

23 Q. Okay. Do you know when this lawsuit was
24 filed?

25 A. No, ma'am, I don't.

1 Q. Do you remember a meeting with Sam Negron?

2 A. Quite a few of them.

3 Q. Pardon?

4 A. Had quite a few of them.

5 Q. Do you recall a meeting during the
6 negotiation process in this case?

7 A. Yes, ma'am.

8 Q. Okay. And do you recall what the subject
9 matter of that meeting was?

10 A. In this case when I met with Chief Negron
11 I believe it was to finalize or to determine the
12 exact geographical area of properties in which we
13 would be negotiating on.

14 Q. Okay. And you didn't talk specific
15 numbers with Chief Negron at that time?

16 A. Not to my knowledge, no. I don't have
17 that authority.

18 Q. You don't believe you -- you don't believe
19 that you came up with a set of values with Chief
20 Negron that would have been the values utilized by
21 the City of Beaufort, Town of Port Royal, and Burton
22 Fire District in negotiating this contract?

23 A. By identifying the geographical area of
24 what we are talking about, that is -- I mean, that
25 is how we come up with the value.

1 Q. So did you agree with him on a specific
2 set of numbers that day?

3 A. Numbers --

4 MR. KUHN: Your Honor, I'm going to
5 object. No matter what the Assistant Chief and Sam
6 Negrón would have agreed on, it was soon
7 superceded -- replaced by the written agreement
8 between the parties. I don't think it's relevant
9 what negotiation took place.

10 MS. LOHR: Your Honor, it's the
11 parole evidence we've been talking about all along.
12 It, coupled with other things, makes it relevant.

13 JUDGE DUKES: All right. I'll --
14 your objection is noted, Mr. Kuhn, but you can go
15 ahead.

16 THE WITNESS: Again, to answer your
17 question to the best of my ability, that meeting
18 was -- originally there was an area larger than what
19 we ended up contractually covering that we were
20 discussing and we were negotiating now are we
21 talking about all the way down -- I believe it's
22 Hogarth Street out or are we talking about west of
23 Mill Road. And that is what that meeting was for is
24 to determine what geographical area that you are
25 looking for Burton Fire District to take and provide

1 response to.

2 And by determining that you actually
3 get -- through the tax office you get the values.

4 BY MS. LOHR:

5 Q. Okay. But you don't remember discussing
6 specific numbers with Chief Negron?

7 A. No, ma'am, I do not.

8 Q. Or talking to your Commission about those
9 numbers?

10 A. No, ma'am, I don't.

11 MS. LOHR: Okay. That is all the
12 questions I have, Your Honor.

13 JUDGE DUKES: Anything else, Mr.
14 Kuhn?

15 MR. KUHN: I have no redirect, Your
16 Honor.

17 JUDGE DUKES: All right. Thanks.
18 You can sit back down. Let me ask you all -- the
19 attorneys a question real quick. So I've got
20 Exhibit 1. All right. And my Exhibit 1, I just
21 want to make sure I've got it, has an Exhibit A
22 attached to it. All right?

23 Exhibit A as I understand it are
24 properties that are going to be still serviced by
25 the County or serviced by the City?

1 MR. KUHN: Those are properties that
2 were in Burton Fire District that the City of
3 Beaufort was going to service.

4 JUDGE DUKES: The City of Beaufort is
5 going to service? Okay.

6 MR. KUHN: They are properties that
7 belong to or are in the Burton Fire District area,
8 but they are surrounded by the City of Beaufort.

9 JUDGE DUKES: So the City is going
10 to --

11 MR. KUHN: They agreed to cover those
12 properties.

13 JUDGE DUKES: Okay.

14 MR. KUHN: On Exhibit A.

15 JUDGE DUKES: Now, there is -- that
16 Exhibit A is attached to this, but then I've also
17 been given, of course, 2 and 3. These were not
18 attached; is that correct, to that?

19 MS. LOHR: Your Honor, those --

20 MR. KUHN: Originally they -- well,
21 originally they were, but they are not today.

22 MS. LOHR: Right. Those are
23 exhibits. The testimony will bear out later on,
24 Your Honor, that those are Exhibits B and C.

25 MR. KUHN: Plaintiff's Exhibit 2 is

1 Exhibit B to the agreement. And Plaintiff's
2 Exhibit 3 is Exhibit C to the agreement.

3 JUDGE DUKES: Okay. And that was
4 sort of my question. So when I have -- and just for
5 this record, I have Plaintiff's 1. And the
6 Plaintiff's 1 I have, is it accurate to say then
7 that it is not a true representation of the entirety
8 of the settlement agreement.

9 MR. KUHN: Plaintiff's 1, 2, and 3
10 are the entire agreement.

11 JUDGE DUKES: All right. So
12 Plaintiff's 1, 2, and 3 have to be combined to --
13 okay. That was part of my confusion, okay,
14 because -- all right. So Exhibit A is Exhibit A to
15 the agreement, the one that is attached?

16 MS. LOHR: Yes, Your Honor.

17 JUDGE DUKES: And then there is
18 attached to my Plaintiff's 1 something that says
19 Exhibit D. And so you are saying that B and C that
20 are missing in Plaintiff's 1 should actually be --

21 MS. LOHR: 2 and 3.

22 JUDGE DUKES: -- 2 and 3 that should
23 be inserted, but for purposes of today they've been
24 taken out.

25 MS. LOHR: Well, they were taken out

1 upon the filing. And nobody apparently had a copy
2 that was all put together. So we -- through
3 testimony and agreement agree that those documents
4 are B and C.

5 JUDGE DUKES: Okay. So -- and I
6 guess that is what I was getting to. So it's
7 stipulated, no question, that the settlement
8 agreement that is Plaintiff's A that was executed --
9 Plaintiff's 1, sorry, that was executed on or about,
10 what is that, September of 2010, included as two of
11 its exhibits what we have today as Plaintiff's 2 and
12 3.

13 MS. LOHR: Right.

14 JUDGE DUKES: That is accurate?
15 Okay. Good. I've got I think a little bit better
16 understanding of it now. All right. Call your next
17 witness please, Mr. Kuhn.

18 MR. KUHN: Call Harry Roundtree, Your
19 Honor.

20 JUDGE DUKES: All right. Good
21 morning. Almost afternoon. Do you swear or affirm
22 to tell the truth, the whole truth, and nothing but
23 the truth so help you God?

24 MR. ROUNDTREE: I do.

25 JUDGE DUKES: Have a seat, please.

1 MR. KUHN: May it please the Court.

2 JUDGE DUKES: Yes, sir, go ahead.

3 WHEREUPON:

4 HARRY ROUNDTREE, being duly sworn and
5 cautioned to speak the truth, the whole truth and
6 nothing but the truth, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. KUHN:

9 Q. Would you state your full name, please,
10 sir.

11 A. Harry Gresham Roundtree, Junior.

12 Q. What is your address?

13 A. I live at 4004 Dogwood Street, Beaufort,
14 South Carolina.

15 Q. Are you employed?

16 A. I am employed.

17 Q. By whom are you employed?

18 A. By the Burton Fire District.

19 Q. All right. For how long have you been
20 employed by the Burton Fire District?

21 A. Off and on since 1984.

22 Q. What is your position?

23 A. I am the Fire Chief.

24 Q. And how long have you been the Fire Chief?

25 A. I've been the Fire Chief since late 1996.

1 Q. What are your duties as the Fire Chief?

2 A. I have responsibility of the Fire
3 District; financially, administratively for the
4 fires. The buck stops here.

5 Q. Who do you report to?

6 A. I report to a civilian board called the
7 Burton Fire District Commission.

8 Q. And who --- how many people are on that
9 Commission?

10 A. There are five normally assigned to the
11 Commission. There are only four currently.

12 Q. Is there a chairman?

13 A. There is a chairman.

14 Q. That is Gary Bright?

15 A. Yes.

16 Q. Who testified earlier today?

17 A. Yes, sir.

18 Q. How are those Commissioners selected?

19 A. They are appointed. They apply to the
20 County. And then they are appointed by Beaufort
21 County Council.

22 Q. And do they receive any authority from
23 Beaufort County Council?

24 A. They have -- they are the top of my chain
25 of command. They hear everything from -- grievances

1 stop at the Commission.

2 Q. And does the Commission act pursuant to --
3 how involved is the County in running the Burton
4 Fire Commission?

5 A. They make the appointments to the
6 Commission. We report our finances -- I report our
7 finances to the Commission. We submit our budgets
8 to County Council to the Finance Committee. And we
9 have some contact with our council members, but
10 really it's budget time.

11 Q. And does the Burton Fire District collect
12 taxes?

13 A. We do not collect taxes.

14 Q. Tell me, the County sets the millage, the
15 County does everything; is that correct?

16 A. The County sets our millage. The County
17 collects the taxes.

18 Q. The Burton Fire Commission, does it hire
19 firefighters?

20 A. It does.

21 Q. And does it enter into contracts?

22 A. It does.

23 Q. And for how long has it done that?

24 A. As long as I've been here, since 1984.

25 And I would assume since its inception.

1 Q. Is all of that done with the approval of
2 County Council?

3 A. It is. Every budget that I've provided
4 that had an increase in personnel was approved by
5 County Council. An increase in the budget amount
6 was approved by County Council.

7 Q. The particular contract we are here about
8 today, did County Council review and approve that?
9 Did the County review and approve it?

10 A. The -- I can't say with any accuracy
11 whether they actually reviewed it, but I do know
12 that the dollar amounts that we anticipate that we
13 are going to spend are included in our budget. And
14 they are completely aware that we are in a contract
15 with the City of Beaufort and the Town of Port
16 Royal. I have to reveal those funds to them
17 annually.

18 Q. Okay. Were you involved in the
19 negotiating of that agreement?

20 A. I was, yes.

21 Q. How heavily negotiated was it?

22 A. It was a very long period of time. It
23 included mediation.

24 Q. This wasn't some form we pulled off the
25 internet and signed on the spot?

1 A. No, sir. In fact, there was -- it went
2 many, many different directions before we came up
3 with the final product.

4 Q. Did you ask Assistant Chief Webb or Deputy
5 Chief Webb when you received or first started
6 getting the first checks on this agreement to double
7 check the numbers?

8 A. The dollar amounts were different than the
9 previous contracts that we had. So when the first
10 check came in the very first thing I asked him to do
11 was make sure that -- as best he could that
12 everything was right.

13 Q. Okay. When you say it was different from
14 the previous contracts we've had, you are talking
15 about the prior consent orders which for the record
16 are Plaintiff's Exhibits 6 and 7?

17 A. Yes, sir. I'm referring to the prior
18 consent orders.

19 Q. Okay. And under those consent orders, if
20 we look at Plaintiff's Exhibit Number 4, we can see
21 that commencing with the agreement that we are here
22 about today there was a substantial increase in the
23 payments made by both the City and the Town of Port
24 Royal. Is that fair to say?

25 A. Yes, sir.

1 Q. Did you know immediately that the amounts
2 that were being paid were wrong?

3 A. Chief Webb came -- after I asked him to
4 check into that he came and took -- he came to my
5 office and told me that it appeared that they were a
6 little light.

7 Q. Okay. And let me ask you this. Why did
8 you ask him to double check that? Why didn't you
9 just take it at face value?

10 A. Well, I was just making sure. It's a
11 great deal of math and there was a great deal of
12 properties that were involved. And I just wanted to
13 make sure that the Burton Fire District was
14 receiving all the funds that they were suppose to
15 get.

16 Q. And I think this is fairly obvious, but is
17 it a fairly complex process to go through all of
18 those properties and figure out the values and apply
19 the millage and add them all up and see if the
20 amount was correct?

21 A. Yes, sir.

22 Q. It's not just you hit a button on a
23 computer and it spits it out instantly?

24 A. No, sir. It takes a bit of time to put
25 all of that math together.

1 Q. When Deputy Chief Webb reported back to
2 you that the amount was as you put it a little
3 light, what did you do?

4 A. Well, we had -- we discussed it at the
5 Commission level. I -- honestly the intent was to
6 attempt to see if we could fix the problem without
7 getting the lawyers involved, initially.

8 Q. Okay. So your initial step was to go to
9 your Commission and see what they wanted to do?

10 A. That is correct.

11 Q. And the Commission meets how often?

12 A. Now they meet every other month.

13 Q. And at that time in 2011?

14 A. Should have been every month. I believe
15 the last Wednesday of the month back in 2011.

16 Q. And after you had met with the Commission
17 and informed them of the situation, what did you do
18 next?

19 A. We attempted to make contact with the Fire
20 Chief and talk about some of the issues that we were
21 having.

22 Q. Okay. And did you do that personally?

23 A. I don't -- I can't recall if I did it
24 personally or if I asked Chief Webb to do it.

25 Q. And did that meet with positive results

1 from your point of view?

2 A. It did not solve the problem. I would say
3 that it -- you know, that we were talking. That we
4 were communicating. And, again, we were trying to
5 keep the lawyers out of it at that point, but, no,
6 we still ended up going through the attorneys, too.

7 Q. And do you know how long you tried to work
8 it out informally without contacting attorneys as
9 you said?

10 A. I can't say with any accuracy.

11 Q. Was it a fairly extended period of time?
12 A couple of days?

13 A. Yeah. Things were moving very slowly
14 initially when the contract first started.

15 Q. Okay. Eventually you contacted an
16 attorney and that would have been me?

17 A. Yes, sir.

18 MR. KUHN: Okay. That is all the
19 questions I have. Thank you.

20 CROSS EXAMINATION

21 BY MS. LOHR:

22 Q. Good morning, Chief Roundtree.

23 A. Good morning.

24 Q. I'm a little confused. Was your first
25 contact with Fred Kuhn to contact the Town -- the

1 City of Beaufort and the Town of Port Royal to tell
2 them that their payments were too light or was it to
3 tell them that their payment was late?

4 A. Was my first comment to see if it was late
5 or on time? Is that the question?

6 Q. Okay. Do you know when the Town of Port
7 Royal -- do you specifically recall talking to Chief
8 Negron yourself?

9 A. No, I do not.

10 Q. Okay. Do you recall any notice being sent
11 to Port Royal or the City of Beaufort in 2011 to let
12 them know, whether it was verbal or written, to let
13 them know that there was, you believe, a discrepancy
14 in the payment?

15 A. No. I was working through Chief Webb. So
16 I don't -- Chief Negron's and I's relationship when
17 this contract first started, we didn't communicate
18 very well. That matured over time, but initially we
19 talked, but I can't tell you with any accuracy
20 exactly what date we may have had that conversation.

21 Q. Do you know if it was in 2011 or 2012?

22 A. I would make the assumption that it was in
23 2011, but --

24 Q. Okay. You were talking earlier about
25 budgets, submitting budgets to the County. I'm

1 going to hand up to you what has been marked as
2 Burton Fire District -- I'm sorry. Exhibit 3?

3 A. Yes, ma'am.

4 Q. Do you recognize that document?

5 A. Yes, ma'am. It's our annual financial
6 audit for the year ended June 30th, 2011.

7 Q. Okay. And would you turn to Page 27 of
8 that document, please.

9 A. I'm there.

10 Q. Okay. There is a column that says,
11 original budget?

12 A. Yes, ma'am.

13 Q. And final budget and actual. Do you see
14 that?

15 A. Yes, ma'am.

16 Q. Okay. I'm sorry. I don't have a -- one
17 to display up there, but under that -- this is
18 captioned Revenues at the top of the page; is it
19 not?

20 A. Yes, ma'am.

21 Q. So that is money that you would be
22 expecting to bring in from multiple sources. Is
23 that a fair definition of what you understand
24 revenues to be?

25 A. Yes, ma'am. That is how I would define

1 revenues.

2 Q. Okay. And under that there is taxes and
3 automatic aid agreements. And there is also
4 interest income, miscellaneous, and total revenue.
5 Under the -- with the payments we are talking about,
6 is that what is defined as automatic aid agreements?

7 A. Yes, ma'am, I believe that is where they
8 would be put by the auditor.

9 Q. Okay. I notice that under original budget
10 and final budget -- this is 27. Under original
11 budget and final budget there is no -- there is no
12 numbers; is that correct?

13 A. Yes, ma'am. It's quite possible that we
14 didn't budget those funds that year.

15 Q. Okay. So you didn't -- when would you
16 have prepared this budget?

17 A. The budget for the year ending 2011 would
18 have been my '10/11 -- the '10/11 fiscal.

19 Q. Okay. And so you are saying you wouldn't
20 have budgeted any funds this year for the automatic
21 aid agreements?

22 A. I didn't receive any funds until -- I
23 mean, in 2011 -- in January of 2011 we received
24 those funds. And I would have had to have that
25 budget figure in by February of 2010 -- February or

1 March of 2010, I believe.

2 Q. Okay. But you did have -- you did have
3 payments for 2010, didn't you?

4 A. Yeah. There may have been money there,
5 yes, ma'am.

6 Q. But you didn't budget it, did you?

7 A. It's quite possible that I did not budget
8 it, no, ma'am. That would have been a capital
9 expense, not an operating expense. So it's quite
10 possible that maybe we had spent the money in that
11 manner.

12 Q. Well, we are talking about --

13 MR. KUHN: If I could object to this
14 line. I don't see what the amount they budget has
15 any bearing on what their -- what Burton budgets has
16 any bearing on what is due under the contract. I
17 mean, if we budgeted \$2 million, would they say they
18 owed us two million? If we budgeted zero, would
19 they say we owe them zero? I don't think our budget
20 has any relevance to the issues.

21 JUDGE DUKES: I think it has to do
22 with this parole evidence argument that they
23 believed that the contract meant one thing and you
24 all believe it meant something else I'm guessing,
25 but I'm happy to hear from --

1 MS. LOHR: That is exactly right,
2 Your Honor. It has to do what their expectations
3 were in terms of what they expected to receive from
4 the Town of Port Royal and the City of Beaufort.

5 JUDGE DUKES: And ultimately that may
6 or may not matter I acknowledge, but I'll allow it.
7 Go ahead, sir.

8 BY MS. LOHR:

9 Q. Well, I'm confused because when we were
10 talking about capital expenses -- we are talking
11 about capital expenses, right, not revenues? But
12 this money that comes in to you, that is a revenue.
13 And shouldn't it be shown under revenues?

14 A. Well, as you can see, according to this
15 audit there was 373,000.

16 Q. Right. That is the actual. That is
17 what -- that is reconciled -- that is reconciling,
18 correct?

19 A. Okay.

20 Q. That is the end of the year after all is
21 said and done?

22 A. That's right. At the end of the year,
23 that is the audit.

24 Q. Okay. But you didn't let County Council
25 know that you had any expectation of any funds

1 coming in for that year, did you?

2 A. Well, I don't know exactly what date we
3 signed the new contract. In fact, we were -- we had
4 had an issue during that fiscal where we were not
5 even responding.

6 Q. But you were receiving some funds?

7 A. Well, we received a check. Yes, we were
8 in 2000 -- I'm sorry. In 2010, March of 2010, we
9 got a check for -- it's very hard for me to see. It
10 looks like 56,000.

11 Q. Okay. But you budgeted -- you told the
12 County that you had no expectations of getting
13 anything in, didn't you?

14 A. No, I did not tell the County that we had
15 no expectation of getting any funds in.

16 Q. Well, by putting a zero value under your
17 budget, what are you telling them?

18 A. Well, I can't say with any accuracy that I
19 actually spent any of that money off the top of my
20 head.

21 Q. Well, we are not talking about what gets
22 spent, sir. We are talking about what you get
23 because ultimately aren't your mils determined by
24 your needs?

25 A. But I think -- yes, ma'am.

1 Q. Okay.

2 A. They are written by the amount that we
3 budgeted.

4 Q. So County Council determines how many mils
5 you get by your needs. And you submit the budget to
6 show them your needs, correct?

7 A. Yes, ma'am.

8 Q. And if you don't account for funds that
9 you expect to receive in, then you get set at a
10 higher mil; is that correct?

11 A. I never expect to receive the funds from
12 the City of Beaufort and the Town of Port Royal. In
13 fact, even -- they are now for the most part on
14 time. There have been times when they were late;
15 therefore, I could not budget because I had no idea
16 what the dollar amount. In fact, I work a year
17 behind now the money that I receive.

18 Q. Well, let me ask you weren't you -- didn't
19 you get paid in 2006?

20 A. We received some money in 2006, yes,
21 ma'am.

22 Q. You received about \$100,000.

23 A. Yes, ma'am. You are referring to --

24 Q. I'm talking about any payments from Port
25 Royal and the City of Beaufort.

1 A. Yes, ma'am.

2 Q. And you received over \$100,000 -- no.
3 About \$90,000 in 2007 and -- is that correct?

4 A. Yes, ma'am, I believe it is.

5 Q. And in 2009 it was over \$100,000; is that
6 correct?

7 A. Yes, ma'am.

8 Q. And in 2010 it looks like there is
9 quarterly payments in here, but it adds up to a
10 little over \$100,000 there, too, doesn't it? So
11 those were payments you were receiving --

12 A. Yes, ma'am.

13 Q. -- but you weren't telling County Council
14 that you were receiving anything; is that correct,
15 based on your budget?

16 A. Based on this audit, based on your
17 interpretation of what that audit says?

18 Q. Well --

19 A. No, ma'am.

20 Q. Is the audit not your document?

21 A. I've never hidden -- I feel like you are
22 accusing me of hiding funds from County Council and
23 that is not the case.

24 Q. I'm just asking you what -- I'm trying to
25 figure out what your expectations were. So for the

1 year 2011, did you expect -- in your budget, did you
2 show County Council that you that you expected to
3 receive any funds from these automatic aid
4 agreements?

5 A. I did not budget the money from the City
6 of Beaufort and the Town of Port Royal in the
7 original budget. It would appear that my actual
8 funds were 373.

9 Q. Okay. And --

10 A. It had nothing to do with my expectations
11 or whether I was revealing any information to the
12 County Council.

13 Q. Well, let me ask you about the next year.

14 A. Which year?

15 Q. That is 20 -- we are talking about 2011
16 now; is that right? Is that what I showed you?

17 A. Yes, ma'am.

18 Q. All right. So 2012. I'm going to hand
19 you what has been marked as Exhibit 4. Can you
20 identify that?

21 MS. LOHR: I would move this into
22 evidence, Your Honor, 2010.

23 JUDGE DUKES: All right.

24 MS. LOHR: I mean 2011. I'm sorry.

25 JUDGE DUKES: Other than the

1 objection --

2 MR. KUHN: The same objection, Your
3 Honor.

4 JUDGE DUKES: Okay. I'll allow it.

5 BY MS. LOHR:

6 Q. Do you recognize that document?

7 A. Yes, ma'am. It's our annual financial
8 report for the year ended 2012.

9 Q. And can you turn to Page 27 for me on that
10 document?

11 A. Yes, ma'am. I'm there.

12 Q. Okay. And can you tell me -- all right.
13 When would you have prepared this budget?

14 A. It would have been about March 2011.

15 Q. When is your budget submittals due to the
16 County?

17 A. They change annually. So sometimes they
18 are a little earlier, sometimes they are a little
19 later, but they -- normally between February and
20 April we have to have our submission in the files.

21 Q. Okay.

22 A. I start -- normally I start in January.
23 We start the drafts through the commission in
24 February. And usually by March we are submitting to
25 the County.

1 Q. Okay. So that would be -- when is your
2 final budget submitted to the County? There is an
3 original budget and a final budget. What is the
4 distinction between those two?

5 A. The original budget and the final budget?

6 Q. Uh-huh.

7 A. As far as the County goes?

8 Q. Yes.

9 A. Unless they come back and tell me to make
10 some changes, the figures that I submitted to them
11 are what usually carries.

12 Q. Okay. Do you ever have to amend if things
13 don't turn out -- have you ever had to do an amended
14 budget for -- say you get in some revenues you
15 weren't expecting you need to let them know about?

16 A. No.

17 Q. Okay.

18 A. No, I have not had to go amend my budget
19 for that.

20 Q. Do you know if that would be the proper
21 thing to do?

22 A. If I intended on spending them I guess it
23 probably would be, yes.

24 Q. Okay. What if you intended on just
25 keeping them in a bank account?

1 A. Then they would show in my audit.

2 Q. Okay.

3 A. I'm not hiding any.

4 Q. So in 2011 -- you would have -- is it safe
5 to say you would have prepared this budget around
6 March of 2011?

7 A. The one that you are referencing in this
8 audit?

9 Q. Uh-huh.

10 A. Yes, ma'am, I think that is right.

11 Q. Okay. Can you tell me how much you
12 budgeted under automatic aid agreements in this
13 document?

14 A. According to this document I budgeted
15 \$268,061.

16 Q. Okay. How much did you actually receive
17 the previous year in 2000 -- how much had you
18 received at that point from the Town of Port Royal
19 and the City of Beaufort?

20 A. I guess referencing that document on the
21 wall -- I couldn't tell you exactly what the amount
22 was in the bank, but the checks that we received
23 in --

24 MR. KUHN: Can I show him Exhibit 4,
25 Your Honor? It's the same thing on that. He might

1 be able to see it better.

2 THE WITNESS: Yeah, if you don't --
3 if that is okay.

4 JUDGE DUKES: Yes, please.

5 THE WITNESS: It is hard to read.

6 JUDGE DUKES: Just ignore my
7 scribbling.

8 THE WITNESS: Already have. Okay.

9 In January of 2011, we received -- we didn't deposit
10 until March 4th, but we received 195,000 from the
11 City of Beaufort. And then on March 23rd, this our
12 budget probably would have already been in by then,
13 we received a check for 154,493.

14 BY MS. LOHR:

15 Q. Okay. And you didn't -- tell me how then
16 you came up with the number 268,061?

17 A. It was based on the needs that I had at
18 the time, what I wanted to spend some of that money
19 on.

20 Q. It would have been -- so you are telling
21 County Council that you are -- under the automatic
22 aid agreements you are receiving money in based on
23 what you want to spend?

24 A. I have to budget what I'm going to spend,
25 yes.

1 Q. Wouldn't that be in expenditures as
2 opposed to in revenues? You have to tell -- that is
3 what -- the portion of the budget that is called
4 expenditures is for.

5 A. Well, when we did the deposition the other
6 day you had my budgets.

7 Q. Yes, well, I'm asking you -- I'm just
8 asking you what --

9 A. You are asking me to tell you exactly what
10 I had budgeted based on --

11 Q. I'm asking you what did your auditor
12 represent you had budgeted in 2011 --

13 A. Those figures would be sprinkled below on
14 the paragraphs of the expenditures and whether they
15 be personnel, administration, utilities, or
16 maintenance.

17 Q. But I'm asking what did you expect as your
18 revenue? What did you expect to get from the Town
19 of Port Royal and the City of Beaufort because
20 here --

21 A. I never know an exact amount of what I'm
22 going to get because it's based on annexations that
23 could occur throughout the year. So all I'm
24 spending is what I know I have in hand.

25 Q. By March 23rd you had in hand --

1 A. I can't tell you what my intentions --

2 JUDGE DUKES: You all go one at a
3 time if you would. Go ahead.

4 BY MS. LOHR:

5 Q. By March 23rd you had in hand \$371,931,
6 didn't you?

7 A. According to this audit, yes.

8 Q. Okay.

9 A. That I received throughout that entire
10 year.

11 Q. Well --

12 A. I may have not have had in hand the
13 220,068 on that paper.

14 Q. Well, do the math for me. You are looking
15 at that piece of paper. Tell me as of March 23rd --
16 tell me what you had received from the Town of Port
17 Royal and the City of Beaufort. You got two
18 payments, one from each, right?

19 A. On what dates, ma'am?

20 Q. One on January the 12th, 2001. That was
21 \$195,000, wasn't it?

22 A. Yes, ma'am. 195,456.35.

23 Q. And a check written on 3/23?

24 A. Yes, ma'am.

25 Q. For 154,493.31 from the Town of Port

1 Royal?

2 A. Yes, ma'am.

3 Q. Okay. So you had those two checks in
4 hand --

5 A. Not when I did my budget, no, ma'am. I
6 did not.

7 Q. Okay.

8 A. I would have had whatever I had in the
9 bank plus it appears that we deposited the City of
10 Beaufort's payment on March 4th. I did not deposit
11 the Town of Port Royal's payment until March, April,
12 May 20th.

13 Q. Wouldn't you have had some expectation
14 from your settlement negotiations as to what you
15 should have been receiving?

16 A. Some expectation? I'm sure.

17 Q. Well, you had numbers, didn't you, under
18 assessed value on Exhibits B and C?

19 A. Depending on exactly which parcels had
20 been annexed by the time all of that was done
21 (inaudible) is a year behind if I'm not mistaken.
22 So it's very difficult for me to say exactly what I
23 was suppose to have before I do my budget. That is
24 why I budget the cash that I have now. That is why
25 I budget the payment that I received the year

1 before.

2 Q. Okay. So you are telling me that by 3/23
3 you would have already submitted your budget?

4 A. I believe so, yes, ma'am.

5 Q. And why --

6 A. I would have had to have it in to the
7 County by then.

8 Q. Okay.

9 A. And I wouldn't have spent money that I
10 didn't have.

11 Q. Well, and you say that -- so you are
12 basing the 256 -- or I'm sorry -- 268,061, you are
13 basing that on money you had in hand for automatic
14 aid agreements?

15 A. Well, money that I had in either cash on
16 hand through whatever that revenue might have been.

17 Q. Well, that is not what this says. This
18 says automatic aid agreements, doesn't it?

19 A. Okay. Then automatic aid agreements.

20 Q. So how did you have 268 if you think you
21 submitted your budget --

22 A. I may not have spent some of the money
23 that I had the years previous.

24 Q. So your -- I thought that would go to the
25 general fund?

1 A. No, ma'am.

2 Q. You wouldn't put any excess money that you
3 had into your general fund balance?

4 A. That money is Burton Fire District's
5 money. That is not the --

6 Q. You wouldn't put that in your general fund
7 balance?

8 A. No. Some of that money stayed into our
9 bank, that's correct. Some of it goes to our fund
10 balance. Some of it -- no, we don't -- the only
11 money that goes into the fund balance is the money
12 that we either don't spend or is collected by taxes
13 or that we had cash -- basically we had accounts
14 that we -- when we received a check it goes into our
15 bank.

16 Q. Okay. But you would count that as revenue
17 from an automatic aid agreement?

18 A. Yes. Yes, ma'am.

19 Q. How much money did you get in that year?
20 What was the actual balance?

21 A. Which year?

22 Q. The 2012, the one you are looking at.

23 A. According to the audit the actual was
24 371,931.

25 Q. And that was for the year '11-'12, wasn't

1 it?

2 A. It was for the fiscal that ended
3 June 30th, 2012.

4 Q. Okay. And you had received \$373,000 the
5 previous year?

6 A. Are you referring to the other exhibit?

7 Q. Yeah. Or the payment sheet.

8 A. Yes, ma'am, I believe so. I didn't add it
9 up, but if that is what --

10 Q. So you had received -- I guess I'm just
11 curious why your numbers on your budget statements
12 as to what you should expect to be getting are in
13 one instance 105,000 -- \$103,000 difference --
14 different and in another instance \$373,000
15 different?

16 A. My budget is submitted the beginning of
17 the fiscal year, actually before the fiscal year
18 starts. And the audit is conducted at the end of
19 the fiscal year. So all monies that are received
20 during that fiscal year goes in the audit. That
21 doesn't necessarily mean that is what is in my
22 budget.

23 Q. But the money you received in 2011 when
24 you prepared your 2012 budget, wouldn't you have had
25 a good idea what you should have been receiving in

1 2011?

2 A. I'll remind you again that in 2011 the
3 payment came 23 days late from the Town of Port
4 Royal and was not even put in the bank until --
5 until May because we had issues obviously with the
6 dollar amount.

7 Q. And --

8 A. So there was no way I could budget for a
9 check that I didn't even cash until May into that
10 budget that had to be submitted by March.

11 Q. I'm just curious as to this idea that you
12 don't tell the County --

13 A. Ma'am, I do not hide anything from the
14 County.

15 MR. KUHN: I'm going to object to her
16 saying he doesn't tell the County.

17 MS. LOHR: I didn't get to finish my
18 sentence.

19 JUDGE DUKES: Go ahead and finish the
20 question and then we'll deal with the objection. So
21 go ahead.

22 MS. LOHR: You know, I don't have any
23 further questions for this witness. Well, actually,
24 hold on. I don't want to say that.

25 BY MS. LOHR:

1 Q. Did you talk to John Williams about a news
2 release by any chance?

3 A. John Williams is?

4 Q. He's a person who writes press releases.
5 Have you -- did you have any conversations with him
6 about a press release from this agreement?

7 A. Can you -- I don't know which press
8 release you are actually talking about.

9 Q. Do you recall a press release?

10 A. Do I recall a press release about this
11 agreement?

12 Q. Uh-huh.

13 A. Yes, ma'am, vaguely. I remember that
14 there was press on this event, yes, but the City of
15 Beaufort nor the Town of Port Royal cleared their
16 press releases through me.

17 Q. Okay. Would they have a cleared them
18 through somebody on the Fire Commission?

19 A. We don't have any control over what the
20 City of Beaufort and the Town of Port Royal puts in
21 the press.

22 Q. Okay. So you are saying you don't have
23 any recollection of talking to anyone who wrote a
24 press release?

25 A. I don't have any recollection of talking

1 to Mr. John Williams. If you want to put some other
2 names out there, I have spoken with John Robinson
3 throughout the years, but as far as relating to this
4 actual event, I don't have any recollection of
5 talking to anybody, but if you want to refresh my
6 memory on the release I'll be glad to look at it.

7 Q. Do you recall ever seeing the text in that
8 document?

9 A. I do actually recall seeing this release
10 in the paper. I don't know whether I actually saw
11 the -- I don't recall actually seeing this piece of
12 paper, but I do remember this article being out
13 there.

14 Q. Did you approve the language in that
15 release?

16 A. I don't recall actually approving this,
17 no, as far as signing off on exactly what it said.

18 Q. Did you disagree with anything that was in
19 the article that you read?

20 A. Could I read it again? I can't say that I
21 initially disagreed with anything. I thought things
22 were going very well.

23 MR. KUHN: Object to that.

24 JUDGE DUKES: What is the objection?

25 MR. KUHN: I mean, she can ask him a

1 question which is do you agree with anything in said
2 article.

3 MS. LOHR: Well, he said he read an
4 article, you know.

5 BY MS. LOHR:

6 Q. I'm just asking do you recall thinking
7 there is a problem with anything that you were
8 reading?

9 A. I can't say -- through the years I've had
10 issues with some of the releases, but I can't say
11 that I had any issue immediately with this one.

12 Q. Okay. Have you been operating
13 successfully on the funds that you've had since
14 2011?

15 MR. KUHN: I'm going to object.

16 JUDGE DUKES: Yeah. What is the
17 relevance of that?

18 MR. KUHN: That is just budgeting.

19 MS. LOHR: Okay.

20 BY MS. LOHR:

21 Q. What would happen with the funds that the
22 City of Beaufort -- if you are successful in the
23 lawsuit, the funds that you all are claiming, what
24 would you do with those funds?

25 MR. KUHN: I object to that, Your

1 Honor. Whether we are entitled to them or not, what
2 we are going to do with them, if we are going to
3 throw a Christmas party with them or buy a fire
4 truck, it doesn't matter a lick.

5 BY MS. LOHR:

6 Q. Okay. How about are you planning on doing
7 a tax refund?

8 MR. KUHN: Your Honor, I object. We
9 are either entitled to it or not. What we are going
10 to do with it has no bearing.

11 JUDGE DUKES: Yeah, that would seem
12 to be the case. They are either entitled to it or
13 not. What does it matter once they -- if they get
14 it or not?

15 MS. LOHR: Well, because -- I'll just
16 leave that open, Your Honor. Thanks.

17 JUDGE DUKES: All right. Thank you.
18 Anything else of this witness?

19 MR. KUHN: Yes, sir, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. KUHN:

22 Q. Chief, what is the Burton Fire District's
23 fiscal year? It runs from when to when?

24 A. It starts on July 1st and ends on
25 June 30th.

1 Q. Okay. So it's not a calendar fiscal year?

2 A. No, sir.

3 Q. You have to submit your budget to County
4 Council for approval prior to the beginning of the
5 fiscal year; is that correct?

6 A. That is correct.

7 Q. And you start that process around what
8 time?

9 A. I start it in-house in January. And then
10 it depends on when the County Administrator or the
11 Deputy Director of that unit decides that the
12 figures have to be in, but historically they are in
13 by -- in March.

14 Q. When you prepared the budget that is
15 Exhibit -- Defendant's Exhibit 5 -- excuse me.
16 Defendant's Exhibit 3, that is for the fiscal year
17 that ended June 30th of 2011; is that correct?

18 A. That is correct.

19 Q. So this covers the timeframe from July 1,
20 2010, to June 30, 2011; is that correct?

21 A. Yes, sir, that's correct.

22 Q. So this is a budget that you would have
23 started to prepare around January and February of
24 2010?

25 A. Yes, sir.

1 Q. At that time you -- the Burton Fire
2 District was operating under the prior consent
3 orders that Judge Kimmerlin had issued with respect
4 to City of Beaufort and Town of Port Royal; is that
5 correct?

6 A. I don't -- I'm going to say yes, but I
7 believe there was a time period where we were
8 functioning without a contract. And I don't recall
9 exactly what those dates were. I don't remember
10 when the expiration of that -- of those were and
11 that we were functioning without a contract.

12 Q. I will show them to you. They are
13 Exhibits 6 and 7. They may have acquired legs.
14 I'll show you copies if this refreshes your memory.
15 Those agreements expire in July 2010; is that
16 correct?

17 A. Yes, sir, you are correct. So we would
18 have been functioning out of these two consent
19 orders.

20 Q. And at that time was there any uncertainty
21 as to what was going to happen after July 2010?

22 A. Absolutely.

23 Q. So when you were preparing this budget
24 that we are talking about, you knew that the
25 agreements were getting ready to expire and there

1 was nothing in place after that; is that correct?

2 A. That's correct.

3 Q. Did you think that it would have been
4 fiscally prudent then not to count on money to be
5 received from a contract that was getting ready to
6 expire and no replacement existed?

7 A. Yes, sir.

8 Q. So if you don't know any money is coming
9 in, it's probably prudent to budget zero. Would you
10 agree with that?

11 A. Yes, sir.

12 Q. And we did not enter into this settlement
13 agreement that we are here today about -- I can show
14 you if you need to refresh your memory -- until
15 September 2010; is that correct?

16 A. Yes, sir, that's correct.

17 Q. At that point in time, you would have
18 submitted your budget for fiscal year 2010 through
19 2011 and that would be a done deal?

20 A. Yes, sir.

21 Q. After you got the first checks in from the
22 City of Beaufort and the Town of Port Royal during
23 that fiscal year in January and March of 2011 you
24 asked Deputy Chief Webb to double check the figures
25 if I'm correct in my recollection?

1 A. Yes, sir. Just to make sure ---

2 MS. LOHR: Your Honor, I'm going to
3 object to him continuously leading the witness.

4 JUDGE DUKES: Try not to lead so
5 much. Thanks.

6 BY MR. KUHN:

7 Q. What did you learn regarding the
8 correctness of the figures being paid by the City of
9 Beaufort and the Town of Port Royal after Deputy
10 Chief Webb reported back to you? Were those figures
11 that you were being paid correct or incorrect?

12 A. His opinion was that the figures were low.

13 Q. Okay. And did you then contact anybody on
14 behalf of the City or the Town to discuss the fact
15 that the payments were low?

16 A. Yes.

17 Q. And by the time --

18 A. Well, I did not personally. I believe I
19 asked Chief Webb to do that. I can't say with any
20 accuracy exactly how that happened.

21 Q. And as far as the fiscal budget that Ms.
22 Lohr was asking you about for the next year,
23 July 2011 to June 2012, around the time you received
24 these checks would that be about the time that you
25 were putting that budget together?

1 A. That is correct. They were late the next
2 year, so ---

3 Q. So in preparing your budget, were you
4 aware of the fact that there was a dispute between
5 Burton and the City and the Town regarding the
6 amount of their payments?

7 A. Yes.

8 Q. And did you feel it would be fiscally
9 prudent to be conservative in your estimates then?

10 A. Yes.

11 MR. KUHN: That is all the questions
12 I have.

13 RECROSS EXAMINATION

14 BY MS. LOHR:

15 Q. You were \$105,000 conservative, were you
16 not, compared to what you received the previous
17 year?

18 A. Say that to me one more time.

19 Q. You just said you thought it would be
20 prudent to be conservative.

21 A. He asked me if it would be prudent to be
22 conservative and I said yes.

23 Q. You were \$105,000 conservative. Is that
24 the difference?

25 A. I can't tell you what the difference is

1 off the top of my head.

2 Q. You budgeted 268 and some change, correct?

3 A. In 2011. The 2010-2011 we budgeted -- I
4 believe -- let me look just to make sure before I
5 say anything for sure. I've looked at a couple
6 fiscals so -- in 2010 and 2011 the figure was zero.
7 So in 2012 -- is that what you are referring to?

8 Q. Yes.

9 A. 268,061.

10 Q. And you had received approximately at the
11 same time about 373 or \$371,000?

12 A. I thought we went over this that it wasn't
13 exactly the same time?

14 Q. Well, by 3/23 you received it, didn't you?

15 A. We were comfortable in spending 268,061.

16 Q. And you didn't have your own calculations
17 or estimates as to what you should have been
18 getting?

19 A. As I told you before, I had no
20 expectations --

21 Q. Okay. You didn't feel the need --

22 A. -- on an exact dollar amount.

23 Q. -- to submit an amended budget once you
24 knew because you knew by May, I mean, you know. I'm
25 guessing you probably had it sometime between 3/23

1 and 5/20. You didn't feel the need to submit an
2 amended budget?

3 A. No.

4 MS. LOHR: Okay. That is all the
5 questions I have, Your Honor.

6 JUDGE DUKES: Anything else?

7 MR. KUHN: No, Your Honor. Thank
8 you.

9 JUDGE DUKES: You may step back down.
10 Who else do you have?

11 MR. KUHN: We rest, Your Honor.

12 JUDGE DUKES: All right. Let's see.
13 You had wanted to take Ms. Cantwell first?

14 MS. LOHR: Yes?

15 JUDGE DUKES: What is the timeframe
16 on that? Is that something we should --

17 MS. LOHR: I think -- I think I can
18 do Ms. Cantwell in about 30 minutes?

19 JUDGE DUKES: Why don't we go ahead
20 and do that? Maybe we will take a five-minute
21 break, but go ahead and do that because I'm worried
22 if we take lunch and we get back we will run out
23 of --

24 MS. LOHR: I would appreciate that,
25 Your Honor.

1 JUDGE DUKES: So why don't we break
2 for five or 10 minutes and then we will launch right
3 into her case, any motions, I'll be happy to hear
4 after the break.

5 MS. LOHR: Okay.

6 JUDGE DUKES: And I might want to
7 talk to you guys before we start back. Just hang
8 here for a second. Okay. So we will be off the
9 record for a minute.

10 (RECESS 11:49 TO 1:13.)

11 JUDGE DUKES: All right. Back on the
12 record in 13-CP-07-1463. Ms. Lohr, call your first
13 witness.

14 MS. LOHR: I call Frances Cantwell.

15 JUDGE DUKES: Do you swear or affirm
16 to tell the truth, the whole truth, and nothing but
17 the truth so help you God?

18 MS. CANTWELL: I do.

19 WHEREUPON:

20 FRANCES CANTWELL, being duly sworn
21 and cautioned to speak the truth, the whole truth
22 and nothing but the truth, testifies as follows:

23 DIRECT EXAMINATION

24 BY MS. LOHR:

25 Q. Good morning or good afternoon. We are in

1 afternoon now.

2 A. Good afternoon.

3 Q. Would you state your name for the record.

4 A. Frances I. Cantwell.

5 Q. What is your address?

6 A. 2220 Folly Road, Charleston, South
7 Carolina.

8 Q. Okay. And what do you do for a living?

9 A. I'm a lawyer.

10 Q. Okay. And have you ever had occasion to
11 represent the Town of Port Royal?

12 A. I have.

13 Q. Okay. And are you familiar with a case,
14 Burton Fire District versus City of Beaufort and
15 Town of Port Royal, Number 2009-CP-07-3020 and City
16 of Beaufort, Town of Port Royal versus Burton Fire
17 District Case Number 2009-CP-07-4008?

18 A. Yes.

19 Q. And what is your knowledge of that case?

20 A. Well, I was in private practice at the
21 time and I was representing Port Royal. And prior
22 to this case being filed, the parties, Port Royal
23 and Beaufort and Burton Fire District, were
24 operating under consent orders that had had it's --
25 their genesis in a previous case that was based on a

1 Federal statute which essentially says that if you
2 borrow money from the Rural Development Authority,
3 the R.D.A., and properties of a special purpose
4 district are annexed, then you have to account
5 between the parties for the potential loss of
6 revenue as a result of the annexation.

7 So in the prior case prior to the 2009,
8 the parties were operating under consent orders.
9 And then in 2009, and I don't recall what actually
10 spawned the litigation, but I think that those
11 consent orders were getting ready to expire. And I
12 don't know who came out of the box first, whether
13 Burton sued or -- I think Burton did sue.

14 And so that was to -- I guess to forge an
15 agreement going forward as to how the parties would
16 cooperate and operate with one another vis-a-vis
17 providing service and annexation by the two
18 municipalities.

19 Q. Okay. And based on your involvement of
20 the case -- in the case, were there settlement
21 negotiations ongoing?

22 A. There were. There were. We settled. We
23 tried to settle for a long period of time. We
24 ultimately ended up mediating. And I think that
25 ended -- I don't know if it ended up in an impasse,

1 but we cut off the session. And then we still
2 continued to talk. And then ultimately the parties
3 reached an agreement.

4 Q. Okay. And how did the parties arrive at
5 the agreement?

6 A. Well, from -- and I think that -- I can
7 speak to Port Royal for sure, but what we -- what we
8 were trying to do is that everybody recognized that
9 when a property is annexed from the public service
10 district, whether it be in Port Royal or whether it
11 be in Beaufort, that the Burton Fire District is
12 losing taxes, tax revenues, from those properties
13 because they were on the tax rolls of the cities and
14 not on Burton anymore.

15 And so what we were trying to do was to
16 satisfy two issues, the Federal statute as I
17 mentioned before and then the State statute that
18 came in 2000-ish which essentially said when you
19 annex you come to an agreement where you balance the
20 equities of the parties. You try to make -- come to
21 an arrangement to provide for the transfer of
22 services that is fair to both and that both can
23 provide service to their respective constituencies
24 efficiently.

25 And so what we came up with was a formula

1 whereby using Burton millage that they would be
2 entitled to a portion of the taxes that were
3 generated from the properties that were annexed.

4 MR. KUHN: Your Honor, I'm going to
5 object to any testimony that attempts to vary or
6 alter the terms of the written agreement. So I move
7 to strike that last answer.

8 JUDGE DUKES: All right. Now, let me
9 get the timeframe here. Are we talking about the
10 timeframe in which this agreement was put together
11 or are we talking about the negotiation period,
12 maybe that might make some difference to your
13 objection.

14 MS. LOHR: The -- we are talking -- I
15 think we are talking about what -- the time period
16 that they are negotiating this agreement and when
17 they reached the settlement of the agreement.

18 JUDGE DUKES: So this is before the
19 final agreement was put together and executed?

20 MS. LOHR: The draft -- before a
21 document was drafted. There was a parole agreement.

22 THE WITNESS: This was leading up to
23 the agreement, Your Honor, if that helps.

24 JUDGE DUKES: Okay. Leading up to
25 the agreement. Does that satisfy your --

1 MR. KUHN: No, sir. I have a further
2 objection that all negotiations are subsumed by the
3 agreement.

4 JUDGE DUKES: And, again, that might
5 be covered -- I understand your objection.

6 MR. KUHN: The agreement is a
7 culmination of the negotiations.

8 MS. LOHR: And, Your Honor, we've
9 argued continuously that there is ambiguity in the
10 contract that would then require parole evidence.

11 JUDGE DUKES: Okay. And I understand
12 the objection, and I'll -- I'm going to let her get
13 into it. I was just trying to figure out the
14 timeframe on what you were talking about. So thank
15 you. Go ahead, please.

16 BY MS. LOHR:

17 Q. And was there a set of properties that the
18 Town of -- that you were working with specifically
19 for the Town of Port Royal?

20 A. There was. That was the -- the list of
21 the properties were being compiled by the finance
22 directors, I think, of the three entities, but what
23 we were talking about as for Port Royal were
24 properties that were annexed that were formerly
25 within the Burton Fire District's jurisdiction. I

1 think the year was 1995 forward through the date
2 which was probably going in 2010, 2009, I can't
3 remember the specific dates.

4 Q. Okay. And I'm going to hand you what has
5 been marked as Plaintiff's Exhibit 2.

6 A. Okay.

7 Q. Do you recognize that document?

8 JUDGE DUKES: Is that this?

9 MS. LOHR: Yes.

10 THE WITNESS: I do.

11 BY MS. LOHR:

12 Q. And would you tell -- was this the
13 document that you were utilizing during the
14 negotiations of the settlement?

15 A. This was the document that represented
16 what properties from Burton Fire District had been
17 annexed to the Town of Port Royal. And it was from
18 this list of properties that -- we used this list of
19 properties to derive the formula for how we expected
20 to pay Burton for the loss of revenues that they
21 suffered as a result of the annexation.

22 Q. Okay. And was there a specific number
23 that Port Royal was utilizing with regard to the
24 negotiations?

25 A. Yeah. What happened was Port Royal -- we,

1 Port Royal, knew that we were probably going to have
2 to pay more money under the new agreement than we
3 did under the consent orders. And there was a
4 figure that we had in mind that we thought we could
5 stomach, for lack of a better word, that we could
6 pay.

7 And so what we did was we used this
8 document, which is -- you had given me as
9 Plaintiff's Exhibit 2. And from that we -- using
10 what is marked on here as a column called taxable
11 VA. If you added that up -- we added up that and we
12 figured that was the assessed values that was going
13 to be the basis for the payments that we made to
14 Burton.

15 And so because we could -- we knew we had
16 an end number in mind, we figured that we could pay
17 25 percent -- we could apply Burton's millage to
18 that number and pay 25 percent of that. And that
19 would -- and we could afford to do it, and we
20 thought it was fair to Burton because I think it was
21 significantly more than they had been receiving
22 prior.

23 Q. Okay. And were there numbers specifically
24 addressed with Burton in this negotiation?

25 A. Well, I would have to -- what do you mean

1 by that?

2 Q. Well, were you all talking -- do you
3 recall seeing any agreements --

4 A. I know that -- I believe that everybody
5 was operating off of these sheets. And obviously as
6 far as Port Royal was concerned we had added up what
7 we expected to be the basis for the calculation.
8 And it came out to \$10 million and some change. And
9 I don't think that was any surprise to anybody in
10 all the negotiations. I think that is what we were
11 trying to accomplish is that we were trying to give
12 them a portion of the money they would have received
13 but for the annexation.

14 And that is why this taxable VA column,
15 that is what -- in Beaufort any way that is what
16 they applied to the millage -- multiplied the
17 millage by in order to arrive at the money.

18 Q. Okay. And you said what they do in
19 Beaufort. Is your experience different?

20 A. Yes. And, you know, I think this is
21 probably the genesis of this whole issue is that
22 assessed value -- I've been in Charleston, use to
23 being with their records. And there is one assessed
24 value and that is the value that you use. You
25 multiply the millage by the assessed value, that

1 generates your taxes.

2 I did not appreciate the nuance on this
3 document where you had assessed and taxable VA. To
4 me assessed value meant the figure, if you will,
5 that was applied to the millage. And if it was
6 different on this, that nuance was lost on me. And
7 that is why I said assessed value when I
8 particularly -- what I was talking about obviously
9 was money generated from the properties which would
10 have to mean you would use the taxable VA.

11 Q. When you say assessed value --

12 MR. KUHN: Your Honor, if I could
13 note an objection to that. Her subjective intent
14 would not be relevant.

15 JUDGE DUKES: I guess we haven't
16 actually -- I know what is coming which is this
17 document was put together by Ms. Cantwell.

18 MS. LOHR: Right.

19 JUDGE DUKES: I don't think we've
20 actually got that in the record, yet.

21 MS. LOHR: I was going back. Yeah, I
22 was going back to that.

23 JUDGE DUKES: But so I don't know if
24 we are leaping ahead to that because we don't really
25 have that, yet. Or that is her understanding, but

1 then it gets put into an agreement at some point.

2 So maybe your objection is premature. I think --

3 MR. KUHN: I hate to keep saying it,
4 but I object to the whole line of testimony.

5 JUDGE DUKES: Oh, I understand.

6 MR. KUHN: It's against the parole
7 evidence rule. It's negotiations that led to a
8 contract. The contract is unambiguous. Can I just
9 note a continuing objection or --

10 JUDGE DUKES: Feel free to just to
11 preserve the record to stand up whenever you like,
12 but for the record I understand that you object to
13 this entire line of questioning, but I was thinking
14 that specific objection really had to do with
15 something about a document that we really haven't
16 gotten to yet, but your objection is noted and I'll
17 let her continue. So go ahead, please.

18 BY MS. LOHR:

19 Q. Were you on a conference call or was there
20 a call where everybody finally understood that there
21 was an agreement that had been reached?

22 A. Oh, boy. What I recall was that the Town
23 had reached -- we were satisfied with ourselves that
24 we had reached what -- let me put it this way. We
25 were in this with the City of Beaufort. They were

1 still working out their numbers. The Town was
2 satisfied with numbers we had worked out with the
3 formula that ended up in an agreement that you are
4 going to talk to me about in a minute.

5 And I think that we mediated and then we
6 adjourned the mediation session. And I'm sure that
7 there were conversations between Fred and me and
8 Bill. And I'm certain that we continued to talk
9 between like April and July when ultimately
10 everybody settled.

11 Q. All right. And were you tasked with
12 drafting the settlement documents at that time?

13 A. Yes.

14 Q. And what was your understanding when you
15 undertook to draft the settlement documents of the
16 agreement between the parties?

17 A. My understanding was --

18 MR. KUHN: Your Honor, I'm going to
19 object to any understanding different from what is
20 actually in the four corners of the document.

21 JUDGE DUKES: Okay. I'm going to let
22 her testify what she thought she was -- the
23 agreement was because obviously that is sort of the
24 fundamental document we've got. You can continue.
25 Thank you. Your objection is noted.

1 THE WITNESS: My understanding was
2 that as to the Town of Port Royal we were going to
3 apply -- the premise of the agreement, as I said
4 before, was to provide to Burton a portion of the
5 taxes generated by annexed properties that they no
6 longer received because the properties had been
7 annexed.

8 And so my understanding was that we would
9 take Burton's millage, apply it to assessed value
10 which my understanding of assessed value from my
11 experience in Charleston was that that was the
12 figure, if you will, that you apply to millage in
13 order to generate taxes. So that you would take the
14 Burton millage, apply it to the assessed value, here
15 taxable assessed value, to come up with a number.
16 And then which would have gone to Burton but for the
17 annexation.

18 And you multiply that by 25 percent factor
19 and that was the money that the Town was going to
20 pay Burton for the life of this agreement on an
21 annual basis. The same understanding with respect
22 to Beaufort. I mean, I think that the formulas were
23 based on the same platform if you will, but their
24 figure was not 25 percent. It was 19 percent. And
25 that was negotiated between Mr. Kuhn and Mr. Harvey.

1 BY MS. LOHR:

2 Q. Okay. But you understood at some point
3 what their agreement was because again you were
4 tasked with --

5 A. Yeah. I mean, I wrote it and sent it out
6 and said, Okay, here it is. And, you know, people
7 had suggestions and edits and what have you.

8 Q. Okay. And with regard to the document I
9 believe I previously handed you, you specifically
10 recall working with the numbers on the far right
11 hand of the column?

12 A. Yes.

13 Q. Because -- and that is evidenced by the
14 fact that there is totals on that column only?

15 A. That is evidenced by the fact that that
16 was the only column that the Town added up. And
17 it's also because that was -- we used that number to
18 apply to -- and used that number in the formula that
19 came up with the number that we knew we could stand.
20 And so that is how we got -- we backed into that
21 number from taking the column that was added up on
22 Plaintiff's 2, I think, applying Burton's millage.
23 And then what percentage of that gave us the number
24 that the Town could pay.

25 Q. Do you ever recall there being a dispute

1 between the parties with regard to assessed value
2 and taxable assessed value?

3 A. No, not until this came -- this issue came
4 up in this lawsuit.

5 Q. Was there ever a -- was there a dispute
6 about which property -- what -- the universe of
7 properties?

8 A. Well, I know that it was a long time.
9 And, again, this was more done with the finance
10 people -- I guess it was the finance people --
11 trying to get the list correct as to what properties
12 were in there. Once you got the properties in there
13 and then it was just a matter of the numbers are
14 what the numbers are.

15 Q. Okay. All right.

16 A. And I would say in fairness to everybody,
17 Your Honor, that, you know, these were annexations
18 that had occurred for over 10 years, so there were a
19 lot of properties.

20 Q. You took -- were you able to come up with
21 an agreement and write out the sheet or did it take
22 multiple --

23 A. Oh, it went through a number of
24 iterations.

25 MS. LOHR: Okay. Your Honor, I might

1 need some of the -- there are documents 13, 14, 15,
2 16, 17, 18 up there. Do you have --

3 JUDGE DUKES: I don't -- let's see.
4 What I've got is Plaintiff's --

5 COURT REPORTER: Here is 14.

6 JUDGE DUKES: -- 1, 2, 3 --

7 MS. LOHR: Yeah. I think they are
8 right here.

9 BY MS. LOHR:

10 Q. Okay. I'm going to hand you a document
11 that has been marked as Defendant's 13. And do you
12 recognize -- wait. Hold on. Let me see what that
13 is. Let me make sure that is -- I think we got them
14 out of order when I was having you -- all right. We
15 are going to put this right here.

16 All right. I'm handing you what has been
17 marked as Defendant's 14. And do you recognize that
18 document?

19 A. I do.

20 Q. And what is that document?

21 A. This was I believe an early iteration of
22 the settlement agreement that I drafted and sent to
23 the lawyers for them to chew on.

24 Q. Okay. And did you get any comments back?

25 A. I believe I did get some comments back

1 from Fred, Mr. Kuhn.

2 Q. Okay. I'm going to hand you what has
3 been --

4 MS. LOHR: I'm going to -- would move
5 to enter that into evidence at this time.

6 JUDGE DUKES: All right. Fred,
7 you've got it, I guess?

8 MR. KUHN: I think I know which
9 document she's talking about. I object to it. As I
10 understand it it's a proposal that was not executed,
11 not signed, and not agreed to. Again, it was
12 subsumed eventually by the agreement that everybody
13 did sign and agree to.

14 JUDGE DUKES: What is the -- I assume
15 there were a lot of these to everybody back and
16 forth when they finally reached the final one.

17 MS. LOHR: Right.

18 JUDGE DUKES: Is that --

19 MS. LOHR: Well, you know what, I can
20 skip ahead, Your Honor, and make short work of this.

21 JUDGE DUKES: Okay.

22 BY MS. LOHR:

23 Q. I'm going to hand you what has been marked
24 as 13.

25 A. Okay.

1 Q. Okay? And is that the final settlement
2 documents that were signed? I think it's the same
3 as Exhibit Number 1.

4 A. Well, 13 is blank, but attached to it is
5 17, but I don't -- it looks like a deposition
6 exhibit.

7 Q. Oh, yeah. Why don't we just use Exhibit 1
8 instead of this one because I think it's ultimately
9 the same thing. Okay. Would you look at Paragraph
10 Number 7?

11 A. On Exhibit 1?

12 Q. Yes.

13 A. All right. I'm there.

14 Q. Okay. Was that a portion of the document
15 Mr. Kuhn specifically asked for you to address?

16 A. He did.

17 Q. Okay. And do you -- tell me what the
18 language of that paragraph is.

19 A. What this language is, it sets out the
20 term of the agreement and when the payments would be
21 due. And it showed -- and it specifies how the
22 calculations or the properties that were used to
23 calculate the payments as well as their property tax
24 assessed by use.

25 Q. Okay. And that was language that Mr. Kuhn

1 asked to be added?

2 A. Well, I know specifically that he did ask
3 for -- he asked for -- yes, he did ask for this
4 language. And specifically that is his language
5 about -- the first payment will be due March 1,
6 2011, and be calculated using those properties
7 listed on Exhibits B and C as well as the property
8 tax assessed values for those properties and the
9 millage from the tax bills that are scheduled to be
10 sent out in October.

11 I specifically -- I know for a fact that
12 the property tax assessed values was a term that he
13 requested and I had no problem with.

14 Q. And why was it that you had no problem
15 with it?

16 A. Well, because to me, I mean, I was
17 operating from that to begin with. I thought that
18 we were talking about one assessed value. I didn't
19 know there was a nuance between an assessed value
20 and a whatever they call it. Property tax assessed
21 value. The calculation that I was working from and
22 that our settlement was based upon was figuring out
23 what those properties would have generated tax-wise
24 which would be the taxable assessed value,
25 multiplying that by the millage of Burton, and then

1 multiplying it by 25 percent which would be what the
2 Town was supposed to pay.

3 Q. Okay. What did property tax assessed
4 value mean to you?

5 A. Well, now -- now I know that it means here
6 apparently that there is an assessed value and then
7 there is a property tax assessed value. To me
8 before this lawsuit they were synonymous. It was
9 the same thing.

10 Q. Right.

11 A. Because of the nuance that exists here, I
12 was not familiar with it. And, you know, it's not
13 what I was used to from -- in my foreign county of
14 Charleston.

15 Q. Okay. And when you were adding that
16 language into the agreement, property tax assessed
17 value meant --

18 A. I thought it was consistent with
19 everything else that we had had in the agreement. I
20 didn't -- because I didn't appreciate that there was
21 a difference until this lawsuit came up. And,
22 frankly, had that been pointed out to me then I
23 certainly would have made it consistent throughout
24 the document because the intent, at least from our
25 perspective, was that we paid on taxes that the

1 properties generated, not on some number that they
2 didn't generate.

3 Q. Okay. So in your mind the entire time you
4 were working on that third column?

5 A. Absolutely. There is no question about
6 it.

7 Q. Okay. And the communications you had were
8 consistent in every respect with that third column?

9 A. They were. They were.

10 Q. And the numbers that you were trying to
11 get to using the percentages were consistent with --

12 A. They were based on that third column.

13 Q. -- using the third column? And, again,
14 tax assessed value, property tax assessed value, to
15 you didn't mean anything different?

16 A. To me that was the number that you applied
17 the millage to --

18 MR. KUHN: I'm going to object to --

19 THE WITNESS: -- in order to generate
20 what the taxes are.

21 MS. LOHR: Okay.

22 JUDGE DUKES: What was the objection?

23 MR. KUHN: Leading.

24 JUDGE DUKES: Okay.

25 BY MS. LOHR:

1 Q. Do you have any information with -- forget
2 that. When the settlement agreement was entered
3 into by all the parties and signed, did you have any
4 question in your mind as to the meaning?

5 A. I did not.

6 Q. Okay. And did you have any concerns that
7 you weren't going to be using that third column that
8 you had consistently --

9 A. No. No. I mean, that was just the honest
10 to God's truth. I mean, that is what the entire
11 formula was based on. And I believed that was the
12 entire -- that was the formula that Beaufort based
13 its numbers on as well. And I -- you know, I think
14 Mr. Harvey may have had more conversations with Mr.
15 Kuhn than I did on that topic, but it was clear to
16 me that we were not going to be paying moneys on a
17 formula to pay taxes that neither the Town nor the
18 City ever received. And so if you come -- operate
19 from the basis that you give them a portion of the
20 money that the properties generate, you would have
21 to use what is the fourth column.

22 Q. And what was your -- what was your
23 understanding of the entire intent of the document?

24 A. It's exactly that.

25 MR. KUHN: I'm going to object to her

1 understanding.

2 BY MS. LOHR:

3 Q. Okay. And what is the stated intent of
4 the document?

5 JUDGE DUKES: Hold on a second.

6 Your -- the objection was?

7 MR. KUHN: To her understanding of
8 the document. The document speaks for itself.

9 JUDGE DUKES: Well, that kind of goes
10 to the whole thing so I'll allow it. Your objection
11 is noted. Thank you.

12 BY MS. LOHR:

13 Q. What was the stated intent in the
14 settlement document? Is it set forth in the
15 document?

16 A. Well, I don't know if I can pinpoint it,
17 but I know that the stated intent was to try to iron
18 out something that was fair to both parties and that
19 would allow each to continue to serve their
20 respective constituencies safely and efficiently.

21 Q. Okay. Are you looking at the final
22 settlement agreement?

23 A. I've got it.

24 MS. LOHR: Okay. That is all the
25 questions I have.

1 JUDGE DUKES: Mr. Kuhn?

2 MS. LOHR: Oh, sorry. Hold on. I do
3 have one more if I can --

4 JUDGE DUKES: Yeah, go ahead.

5 BY MS. LOHR:

6 Q. Did you receive a letter from Mr. Kuhn in
7 2012? I'm going to hand you what has been marked as
8 Defendant's 22.

9 A. Yes.

10 Q. And what does that letter basically say?

11 A. All right. The first line was that -- the
12 first and second paragraph dealt with waiving the
13 late fee and the answer was no. And then the third
14 paragraph it says it appears that both the City of
15 Beaufort and the Town of Port Royal are based on the
16 payments on the taxable value of the subject
17 properties as opposed to assessed value. So both of
18 us were operating under the same formula.

19 And then it recites that the settlement
20 agreement expressly provides for the payment on
21 assessed value. And so they are saying that
22 additional payments would be owed and demand was
23 therefore made.

24 MS. LOHR: Okay. I move to have this
25 document entered into evidence at this time, Your

1 Honor.

2 MR. KUHN: I can't object to my own
3 stuff.

4 JUDGE DUKES: All right.

5 BY MS. LOHR:

6 Q. What is the date on that document?

7 A. This is June 29th, 2012.

8 Q. Okay. And was this the first time that
9 you had heard that there was an issue on the
10 payments?

11 A. There was and -- there was. And I'm just
12 looking at the date because I had rolled back into a
13 full-time position with the City of Charleston about
14 a month earlier in May of 2012. And that was the --
15 this was the first time I heard something like that.

16 MS. LOHR: Okay. All right. That is
17 all the questions I have.

18 JUDGE DUKES: Thanks. Mr. Kuhn?

19 MR. KUHN: May it please the court,
20 Your Honor.

21 CROSS EXAMINATION

22 BY MR. KUHN:

23 Q. Ms. Cantwell, from what undergraduate
24 institution did you receive your degree?

25 A. Marquette University.

1 Q. And your law degree is from where?

2 A. University of South Carolina.

3 Q. And you have been practicing law for how
4 long?

5 A. Since 1979.

6 Q. And your practice has an emphasis in
7 municipal law; is that correct?

8 A. Pretty much, yeah.

9 Q. You have represented other municipalities
10 other than the Town of Port Royal?

11 A. I have.

12 Q. Okay. You are experienced in that field?

13 A. Yes.

14 Q. We are backing up a lot. We are in this
15 situation because the Town of Port Royal and the
16 City of Beaufort annexed property out of the Burton
17 Fire District?

18 A. Correct.

19 Q. And there is, as you mentioned, a Federal
20 statute, 7 USC 1926(b), that protects the service
21 area of a Federal debtor from annexations by
22 municipalities; is that correct?

23 A. Correct.

24 A. Correct.

25 Q. And the Burton Fire District is a Federal

1 debtor entitled to the protection of that statute?

2 A. That is my understanding, yes.

3 Q. And that was the basis of the first suit,
4 the 2009 suit?

5 A. The 2009 suit?

6 Q. Yes, ma'am.

7 A. I think I was involved in the 2009 suit.
8 And I think my law partner was involved in the prior
9 suit where you were dealing with 1926(b).

10 Q. I'm talking about the first suit.

11 A. Yes.

12 Q. That was the basis of that?

13 A. Yes.

14 Q. And then this second lawsuit that led to
15 the settlement agreement that we are here about
16 today, we had both that Federal statute to deal with
17 and then in the interim there was State Statutes
18 5-3-310 through 313 that went into effect May 1st,
19 2000, that gave some additional protection to a
20 public service district if a municipality
21 incorporated into its area?

22 A. Well, I wouldn't say additional
23 protection. I just said I think the State statute
24 is designed to accommodate an easy transfer of
25 services between a district and an annexing

1 municipality and provisions to allow for that to
2 happen where neither one of them gets hurt too badly
3 financially. It's a transfer of service plan more
4 as where as I think the Federal statute is more
5 probably rooted in the debt as you indicated.

6 Q. The State statutes require the
7 municipality in the special purpose district to
8 formulate a plan --

9 A. Correct.

10 Q. -- for the transfer of services and
11 equities and finances, and so forth?

12 A. That's right.

13 Q. When this settlement agreement was
14 reached, you were the one tasked with the duty of
15 drafting it; is that correct?

16 A. I suppose so, yes.

17 Q. Okay. And the agreement that was finally
18 signed was drafted by you?

19 A. Correct, with your input.

20 Q. And there were -- if my memory is correct,
21 there were at least five iterations of this
22 settlement agreement before we all agreed on the one
23 that was signed. Does that sound right?

24 A. I think there was four. I don't know
25 about the fifth one. I remember A through D.

1 Q. I think you are correct. The one that was
2 finally signed was actually the fifth draft; is that
3 correct?

4 A. I don't know. I'll take your word for it.

5 Q. Okay. And each of these drafts when it
6 talks about the formula to be used, uses the term
7 assessed value?

8 A. Correct.

9 Q. That remained consistent throughout every
10 draft?

11 A. Correct.

12 Q. Okay. And that was language chosen by
13 you?

14 A. Correct.

15 Q. There is a footnote -- I'll put it on the
16 screen. Can you see that or --

17 JUDGE DUKES: I think there is a way
18 to -- there is a button on there.

19 MR. KUHN: Zoom does not work. We
20 tried it earlier.

21 JUDGE DUKES: How about right on the
22 unit itself?

23 MR. KUHN: Oh, we didn't try that
24 one. If all the lights go out -- much better.

25 BY MR. KUHN:

1 Q. Can you see that?

2 A. I can see.

3 Q. Oops. I'm cutting off the part I want to
4 talk about. Okay. You see where assessed value has
5 Footnote 3. And we are on Page 3 of 6 under Payment
6 of Services. There is a footnote by the term
7 assessed value. And can you read the footnote, the
8 first sentence? Or I'll read it for you.

9 Defined as the assessed value of each
10 subject property for the applicable service year; is
11 that correct?

12 A. Right.

13 Q. Who added that footnote?

14 A. I think I did.

15 MR. KUHN: That is all the questions
16 I have, Your Honor.

17 JUDGE DUKES: Any follow-up?

18 REDIRECT EXAMINATION

19 BY MS. LOHR:

20 Q. Did, in Paragraph 3, assessed value mean
21 anything different to you than what you had been --

22 A. No. What it meant to me was that that was
23 the number that you applied to the millage to
24 generate taxes. So that is what assessed value
25 means by statute. That is what I meant by it. And

1 had no idea that there was a difference or a nuance
2 in Beaufort County where they had something called
3 taxable assessed value. Just didn't know about it,
4 but as I said earlier, those were the numbers -- the
5 taxable assessed values were the numbers that we
6 were using throughout the negotiation and they were
7 the numbers that upon which the settlement proposal
8 was made and upon which the settlement proposal was
9 agreed upon.

10 Q. Do you know of any definition of taxable
11 assessed value?

12 A. I don't. I mean, other than what was --
13 what the gentleman said earlier today, I had never
14 heard of that.

15 MS. LOHR: Okay. That is all the
16 questions that I have. Oh, wait. Sorry. Hold on a
17 second. Your Honor, bear with me for a second,
18 please.

19 JUDGE DUKES: Yes. No problem.

20 MS. LOHR: Each one of these are a
21 little different.

22 BY MS. LOHR:

23 Q. Do you -- do you specifically recall
24 changes that were being made to Paragraph 7? I'm
25 not sure which one of these -- this one. I'm

1 handing you what has been marked 15?

2 A. Okay.

3 Q. And does that have some changes in it that
4 Mr. Kuhn had wanted?

5 A. Yes, it does.

6 Q. Okay.

7 A. And those changes, if I recall, they were
8 what is called put in bold and italicized so that
9 people could read and understand -- see where the
10 changes were.

11 Q. Okay. And specifically with regard to
12 Paragraph 7?

13 A. Okay.

14 Q. I want to make sure I'm on the same page
15 as you. There is a good bit of tax law language --

16 A. Correct.

17 Q. -- there. And specifically with
18 references to assessed values and millage from the
19 tax bills. Can you read that for me?

20 MR. KUHN: Your Honor, can I object
21 to the language in a version of the agreement that
22 was not signed.

23 JUDGE DUKES: Are we talking about
24 language that was --

25 MS. LOHR: This was negotiated.

1 Yeah. It was language that was in the contract. It
2 then was taken out of the contract during the course
3 of trying to come up with the final draft of the
4 agreement.

5 JUDGE DUKES: I mean, I've let so
6 much in to begin with. And the lucky thing about
7 non-jury is I can unring the bell. I guess the
8 point is going to be at some point it was -- the
9 draft changed several times and then we came up with
10 Exhibit 1, right? And somehow one of these drafts
11 was different?

12 MS. LOHR: Well, specifically there
13 is language that Mr. Kuhn requested to be added, and
14 variations of the language having to deal with
15 property tax assessed value as opposed to assessed
16 value. So the word tax got added in distinguishing
17 the difference between property -- the assessed
18 value and the tax assessed value which is key to our
19 contention that there is a distinction between the
20 two.

21 MR. KUHN: And if I could -- I
22 disagree with that totally.

23 JUDGE DUKES: What was the --

24 MR. KUHN: I would rather the witness
25 testify than Ms. Lohr.

1 THE WITNESS: This is what I recall.

2 MS. LOHR: Well, I was answering the
3 judge's question, in all fairness.

4 MR. KUHN: Okay.

5 JUDGE DUKES: I tell you what,
6 I'll -- subject to your objection and my concern a
7 little bit about this whole line of testimony, but
8 again subject to your objection I'll let -- what was
9 the question, again?

10 MS. LOHR: I was asking her if there
11 is a reference to assessed value in the language
12 that Mr. Kuhn added into that version of the draft.

13 THE WITNESS: There is.

14 BY MS. LOHR:

15 Q. Okay. And subsequently was that language
16 removed in lieu of some other language?

17 A. Yes. The final -- what we all signed,
18 Paragraph 7 was condensed, shortened significantly,
19 and that the language of tax -- you would have to
20 read it to me, but the property tax assessments,
21 that language was added. And I specifically recall
22 that language as being added by Mr. Kuhn. And the
23 reason that I testify that way, Your Honor, is that
24 I had given an affidavit previously in this case and
25 had attached to that affidavit various iterations of

1 the agreement that had my comments being F.C. and
2 Fred's comments being F.K. So that is why I
3 remember that it happened that way.

4 Q. And I'm going to show you what is marked
5 as 16.

6 A. Okay.

7 Q. Do you recognize that?

8 A. I do.

9 Q. And is that what you were just --

10 A. Yes. This was the -- this was the
11 iteration of the agreement where I got it back with
12 Fred's comments and sent it back out with a new
13 condensed Paragraph 7 that was provided by him. It
14 took me -- we showed the deletions and we showed
15 what was added.

16 Q. Okay. And at some point did the language
17 assessed value that he had suggested change to in
18 Paragraph 7 property tax assessed value?

19 A. It says -- actually not in this agreement.
20 Not in this one that I was looking at, but in the
21 final one it did.

22 Q. Okay. That is the -- that is one of the
23 drafts?

24 A. Correct.

25 Q. And then that is Exhibit --

1 A. This is 16.

2 Q. -- 16.

3 MS. LOHR: And I would move that into
4 the record, Your Honor.

5 JUDGE DUKES: So 16 is an unsigned --

6 THE WITNESS: Yes, sir.

7 JUDGE DUKES: -- draft that preceded
8 the actual signed agreement. And I guess part of my
9 problem, other than Mr. Kuhn's objections to some of
10 this, has to do with the exhibits that were attached
11 or perhaps not attached to the drafts that led up to
12 the final draft because I think what we discussed
13 earlier, the final draft, the one that was actually
14 signed, shouldn't call it the final draft. The
15 settlement agreement, Exhibit 1, actually included a
16 stack of things that were labeled assessed, but I'm
17 guessing 16 is just the paperwork that went back and
18 forth not including --

19 MS. LOHR: Right. It's the text of
20 the settlement agreement itself without exhibits.

21 JUDGE DUKES: Okay.

22 MS. LOHR: And maybe I can help you
23 with that, Your Honor.

24 BY MS. LOHR:

25 Q. With regard to the Exhibits B and C -- A,

1 B, C, and D. What were B and C?

2 A. B and C were the property -- the list of
3 properties that had been annexed by Beaufort and
4 annexed by Port Royal. And I don't know which one
5 was B and which one was C. I think Beaufort's was B
6 and Port Royal's was C, but I could have it
7 backwards.

8 Q. Did those documents ever change?

9 A. Not to my knowledge.

10 Q. Okay. So from the first draft of the
11 agreement, throughout all the drafts of the
12 agreement, Exhibit B and C would have been Exhibit B
13 and C as we know them in the final draft of the
14 settlement agreement?

15 A. That is my understanding, yes.

16 Q. Okay.

17 JUDGE DUKES: I guess it would be
18 consistent with my earlier rulings which -- so, I
19 mean, I'll allow it for kind of what it's worth,
20 subject, of course, to Mr. Kuhn's objections which
21 are well noted. Thank you.

22 BY MS. LOHR:

23 Q. So with regard to these versions of
24 each -- each version of the settlement agreement, at
25 one place in Paragraph 7 there is a reference to --

1 I believe it's on 15.

2 A. Well, I don't have -- I don't have the
3 executed one.

4 Q. Oh, I'm sorry. Let me hand you that.
5 One.

6 A. Plaintiff's 1. Okay.

7 Q. In the final agreement what is the
8 language in Paragraph 7 with regard to what the
9 millage is -- how the millage -- how the payments
10 are going to be calculated?

11 A. It will be calculated using those
12 properties listed on Exhibits B and C as well as the
13 property tax assessed values for those properties
14 and millage from the tax bills that are sent out
15 October 16, 2010, et cetera, et cetera.

16 Q. Okay. And the previous variations of
17 Paragraph 7 that we've talked about utilized the
18 term assisted value where as the final agreement
19 utilized the term property tax assessed value; is
20 that correct?

21 A. That's correct.

22 MS. LOHR: Okay. All right. I think
23 that is all I have, Your Honor. I don't want to
24 steal any of your exhibits.

25 RECROSS EXAMINATION

1 BY MR. KUHN:

2 Q. Just that last -- if I can approach you.
3 You may need to look at this to answer the
4 questions. Before the agreement was signed, there
5 were four drafts that you prepared; is that correct?

6 A. There were a number of drafts, yes.

7 Q. Okay. And the draft right before it was
8 put into final form, you testified there was some
9 language that I requested to be added to
10 Paragraph 7?

11 A. I think that's correct.

12 Q. Did I understand that correctly?

13 A. I think that's correct.

14 Q. Will you read to His Honor the language
15 that I suggested be added to Paragraph 7?

16 A. All right. I'm trying to get to where you
17 want me to be. There was language in Paragraph 7
18 that you added in -- that you requested that had
19 what we went over earlier which would have been --
20 not to confuse matters, but Exhibit B to my
21 supplemental affidavit. And this dealt with the
22 term of the agreement and when the payments were
23 going to be due.

24 Q. I'm talking about the version right before
25 the final agreement. So this would be, I think,

1 Exhibit D?

2 A. Exhibit --

3 Q. D as in dog.

4 A. -- D?

5 Q. Right before we came to -- everybody
6 agreed on the agreement.

7 A. You had a comment that can we add this
8 here. And this was Exhibit D with the change.

9 Q. Yes, ma'am.

10 A. And it said -- you want me to read it to
11 you?

12 Q. Please.

13 A. Okay. The parties acknowledge that real
14 property taxes are paid in arrears and further
15 acknowledge that properties annexed by Port Royal
16 and Beaufort are not transferred to the tax roles of
17 those municipalities until the year following the
18 annexation.

19 To wit, a property annexed in 2009 will
20 not be transferred to the municipal tax roles until
21 January of 2010. As real property taxes are paid in
22 arrears, the tax bills generated in October 2010
23 will reflect the status of properties as of
24 December 31, 2009.

25 That is the first payment for parts A and

1 B of this paragraph will be based on properties
2 annexed in 2009 and then as well as, of course, all
3 properties annexed after 1995 as identified on
4 Exhibits B and C. Properties annexed in 2010 will
5 be included -- excuse me. The tax notice issued in
6 2011 and so on. To provide a baseline of the
7 properties subject to Subparts A and B --

8 Q. If I could stop you right there, Ms.
9 Cantwell.

10 A. Okay.

11 Q. What was talking about is Paragraph 7 of
12 Exhibit D.

13 A. Seven.

14 Q. The paragraph that talked about the term.

15 A. Got it.

16 Q. Isn't there a sentence that I requested to
17 be added that talks about the property tax assessed
18 values?

19 A. Yes. You said --

20 Q. That is what I would like you to read.

21 A. I'm sorry. I read the wrong --

22 Q. Yes, ma'am.

23 A. Forgive me.

24 Q. It took me awhile to figure that out, what
25 you were reading from. I was going what?

1 A. I'm very sorry.

2 Q. What was the sentence that I asked to be
3 added?

4 A. All right. This first payment will be due
5 on or before March 1, 2011. It will be calculated
6 using those property lists on Exhibits B and C as
7 well as the property tax assessed values for those
8 properties and millage from the tax bills that are
9 attached to the bills that we sent out October 16,
10 2010.

11 Q. Just to be sure, from the tax bills that
12 are scheduled to be sent out on October 16, 2010?

13 A. Correct.

14 Q. Okay. If you look at the iteration of
15 Paragraph 7, before I requested that change is it
16 pretty much what Paragraph 7 says except that
17 sentence is not there.

18 A. Hold on.

19 Q. I believe that would be Exhibit C to your
20 supplemental affidavit.

21 A. That is what I'm looking for. No.
22 Paragraph 7 of Exhibit C --

23 Q. Does it talk about the term?

24 A. I want to make sure I'm right, yeah.

25 Q. Does it talk about the term?

1 A. We are over on Exhibit C to my
2 supplemental affidavit, correct?

3 Q. This would have been the prior --

4 A. Right.

5 Q. -- proposed draft. There is no mention at
6 all in there of assessed value; is that correct?

7 A. Yes. Correct.

8 MR. KUHN: Okay. That is all I have.
9 Thank you.

10 JUDGE DUKES: Anything else?

11 REDIRECT EXAMINATION

12 BY MS. LOHR:

13 Q. I'm sorry. Real quickly, back to the
14 copy -- the blocks.

15 A. Right. This would be Exhibit D to my
16 supplemental affidavit?

17 Q. Right.

18 A. Okay.

19 Q. There is language outside of Paragraph 7
20 that appears to have been deleted?

21 A. Correct.

22 Q. Was that language originally suggested by
23 Mr. Kuhn?

24 A. I would have to go back to the prior
25 iteration. And if my memory serves me correctly

1 that would have been correct because I believe that
2 this is bold faced and italicized. So that was the
3 suggestion that I think came from Mr. Kuhn. And
4 then when we got the next iteration we ended up with
5 what was in Paragraph 7 which I -- which is Exhibit
6 D. And I think that same Paragraph 7 is what ended
7 up into the file.

8 Q. Okay. And if you look in the portion that
9 was deleted, there is reference there to assessed
10 value --

11 A. Correct.

12 Q. -- as opposed to property tax assessed
13 value?

14 A. That's correct. So, yeah, they are
15 different. What was in -- the property tax assessed
16 value came in this final iteration, yes.

17 MS. LOHR: Okay. That is all I have,
18 Your Honor.

19 JUDGE DUKES: All right. Thank you
20 so much.

21 MS. LOHR: May this witness be
22 excused, Your Honor?

23 JUDGE DUKES: Absolutely. Thank you
24 so much. Have a safe trip back. We are going to
25 break for lunch. Is that the plan? You want to

1 take 45 minutes or so? Is that long enough?
2 Longer? You tell me.

3 MR. KUHN: That is good for me, Your
4 Honor.

5 JUDGE DUKES: Longer is good.
6 Whatever you all tell me because --

7 MS. LOHR: Maybe an hour.

8 JUDGE DUKES: Yeah, let's do it. So
9 why don't we --

10 MS. LOHR: If we can come back at --

11 JUDGE DUKES: 3:40, whatever that is.
12 Okay.

13 MR. KUHN: What time are we breaking
14 for her? Are we breaking --

15 JUDGE DUKES: Well, we have just done
16 that. I think we are -- because I think
17 Ms. Cantwell needed to leave by 2:30, so we
18 accomplished that.

19 MR. KUHN: Somebody else needed to
20 leave by 4:00.

21 JUDGE DUKES: Oh. You need to leave
22 by 4:00? I'm sorry. She needs to leave by 4:00.
23 I'm talking about witnesses.

24 MR. KUHN: The most important person
25 in the room.

1 JUDGE DUKES: Right. I'm so sorry,
2 Deborah.

3 MR. KUHN: Why don't we continue to
4 4:00 and then just break?

5 JUDGE DUKES: Is there anything we
6 would be able to accomplish -- who is your next
7 witness?

8 MS. LOHR: I will probably call Van
9 Willis next.

10 JUDGE DUKES: Why don't we try to get
11 back here at, what do you think, 3:20, and we will
12 talk and see what we've got going on. And we'll get
13 Deborah out of here by 4:00 o'clock.

14 MS. LOHR: If that is the case I may
15 call Sammy Negron next just so that he doesn't have
16 to come back another day, but we can --

17 JUDGE DUKES: Just understand that
18 Deborah has got to be rolling by 4:00 o'clock.

19 MS. LOHR: Okay.

20 JUDGE DUKES: All right. So we will
21 reconvene at 3:15, 3:20, something like that.

22 (LUNCH RECESS 2:15 to 3:13.)

23 JUDGE DUKES: Back on the record in
24 13-CP-07-1463. Ms. Lohr, call your next witness,
25 please.

1 MS. LOHR: Your Honor, we would call
2 Sammy Negron at this time.

3 JUDGE DUKES: Come on up, sir. Good
4 afternoon.

5 MR. NEGRON: Good afternoon, sir.

6 JUDGE DUKES: Do you swear or affirm
7 to tell the truth, the whole truth, and nothing but
8 the truth so help you God?

9 MR. NEGRON: I do.

10 JUDGE DUKES: All right. Have a
11 seat, please. Answer any questions Ms. Lohr may
12 have.

13 WHEREUPON:

14 SAMMY NEGRON, being duly sworn and
15 cautioned to speak the truth, the whole truth and
16 nothing but the truth, testifies as follows:

17 DIRECT EXAMINATION

18 BY MS. LOHR:

19 Q. Can you please state your full name for
20 the record.

21 A. Samuel Negron.

22 Q. Okay. And were you formally employed with
23 the City of Beaufort?

24 A. Yes.

25 Q. Okay. And what was your role?

1 A. Fire Chief of the department.

2 Q. Okay. And when did you leave the City?

3 A. The 16th of this month.

4 Q. Okay. And were you the -- how long were
5 you the Fire Chief?

6 A. I was the Fire Chief for just over six
7 years.

8 Q. Okay. And were you the Fire Chief in
9 2010?

10 A. I was.

11 Q. And do you -- let me ask you this first.
12 Have you ever heard from anyone at the Burton Fire
13 District prior to June of 2012 that there was an
14 underpayment being made by the City of Beaufort or
15 the Town of Port Royal to the Burton Fire District?

16 A. No.

17 Q. Were you ever contacted by Deputy Chief
18 Webb in that regard?

19 A. No. The only contact I ever had from the
20 Burton Fire District regarding an issue with payment
21 was related to the timing of the payment, but other
22 than that I never saw nothing.

23 Q. Okay. And that would have been the 2012
24 payment?

25 A. I recall it slightly.

1 Q. Okay. Do you recall the 2009 litigation ,
2 that the Burton Fire District brought and then the
3 City brought against -- the City and Town brought
4 against the Burton Fire District? They were mutual
5 lawsuits?

6 A. Sure do.

7 Q. Okay. And were you ever asked to sit down
8 with anyone from the Burton Fire District and work
9 out an agreement?

10 A. Yes.

11 Q. Okay. Could you tell me what you remember
12 about that meeting?

13 MR. KUHN: Your Honor, if I can
14 interpose an objection. As I said before,
15 negotiations leading up to this document would not
16 be relevant nor his understanding or interpretation
17 of what he thought it meant.

18 JUDGE DUKES: And we are talking
19 about the -- I know there were mutual disputes
20 through time, one of them we are talking about is
21 the one that ultimately led to the document we are
22 talking about today?

23 MS. LOHR: Yes, Your Honor. These
24 are settlement negotiations that were ongoing?

25 MR. KUHN: Again, my continued

1 objection to parole testimony that attempts to alter
2 the terms of the document.

3 JUDGE DUKES: And I'll allow her to
4 make a record on it. Your objection is noted.

5 BY MS. LOHR:

6 Q. Do you recall meeting with Chief Webb?

7 A. Yes. I recall meeting with him more than
8 once. And the reason for it was because as part of
9 the back and forward and identifying the parcels and
10 the properties that were going to eventually be used
11 to establish some sort of agreement or
12 understanding, I was tasked by the City Manager to
13 obtain all the parcel I.D.s of properties that might
14 be involved from the Finance Director of the City of
15 Beaufort and from the Town of Port Royal. And at
16 that time I sat down with my staff and we went ahead
17 and struck it down meaning that we sat down on the
18 table with maps and went through the painful process
19 of verifying each parcel to make sure we produced an
20 accurate list of all the parcels, which we did.

21 Once that was done, went ahead and shared
22 that with Chief Webb. And we sat down to go over
23 those parcels and the list as a whole because on our
24 side that translated to dollars.

25 Q. Okay. And was there an understanding as

1 to the number values relative to the City's parcels
2 and the Town's parcels?

3 A. Yes. And that understanding during the
4 course of those meeting was the taxable value of
5 those parcels because that is what you actually
6 collect dollars on.

7 Q. Okay. So was there any confusion that
8 what you were discussing with Chief Webb were the
9 taxable property value?

10 A. Not on my part. Again, the list was very
11 extensive. And we have copies of those lists here
12 as exhibits. And the bottom line was that every
13 single parcel on those lists amounted to a dollar
14 amount which was going to be the basis for
15 negotiating a settlement.

16 Q. I'm going to hand you what has been marked
17 as Defendant's Exhibit 23. And can you tell me if
18 you recognize that document?

19 A. I do.

20 Q. Okay. And what is the document?

21 A. The document is an e-mail from our City
22 Attorney, William Harvey to Fred Kuhn and I also
23 cc'd to the City Manager, the Finance Director for
24 both the City and myself, Frances Cantwell, who was
25 here earlier, the Town of Port Royal Manager

1 Mr. Willis, and Mayor Keyserling of the City.

2 Q. Okay. And what is the date of that
3 e-mail?

4 A. The date of that e-mail is Monday,
5 April 5th, 2010.

6 MS. LOHR: Okay. Your Honor, I would
7 move to enter this exhibit into evidence at this
8 time.

9 MR. KUHN: I would have the same
10 objections to it, Your Honor.

11 JUDGE DUKES: Okay. This is an
12 e-mail during the negotiating back and forth prior
13 to the execution of the final agreement; is that
14 right?

15 MR. KUHN: Months before.

16 MS. LOHR: Yes, sir.

17 JUDGE DUKES: And, again, subject to
18 your exception and my continuing concerns, I'll
19 allow it just so we have a full record. What number
20 is that? I'm sorry. It's Defendant's 23?
21 Twenty-four?

22 COURT REPORTER: I'm sorry. 23.

23 JUDGE DUKES: But we skipped over --
24 do we actually have numbers that go --

25 MS. LOHR: Yes.

1 JUDGE DUKES: All right. Do you have
2 an extra copy of that by chance?

3 MS. LOHR: I can get you an extra
4 copy real quick.

5 JUDGE DUKES: That's all right.

6 MS. LOHR: I might have a spare one
7 right here. I don't. Sorry about that.

8 BY MS. LOHR:

9 Q. Can you tell me what this document says?

10 A. This document makes mention to Fred Kuhn
11 that myself met with Deputy Chief Webb in an attempt
12 to reconcile the universe of taxable property values
13 for the properties annexed by the City and the Town.
14 You want me to just go through?

15 Q. Yes, could you just go through.

16 A. While there are some differences in the
17 numbers derived by the municipalities and the
18 numbers derived by the District, Chief Webb told
19 Sammy that the Commission had met and agreed to
20 waive these differences and to set the taxable value
21 numbers from the municipalities as the applicable
22 universe of properties for purposes of settlement
23 discussions.

24 Q. Okay. Let me stop you right there. Does
25 that accurately reflect your recollection of that

1 conversation?

2 A. Yes, because one thing that we want to
3 make sure aside from identifying all the properties
4 correctly and accurately was that number that we
5 were going to be dealing with.

6 Q. Okay. And were you about to do something
7 that made this meeting important? Was the City
8 about to undertake to do something that made this
9 meeting important on April 5th?

10 A. Aside from reading the contents of this
11 e-mail, I can't recollect exactly what was going on
12 then.

13 Q. Did you -- were you entering into a third
14 mediation session on April the 7th?

15 A. Most likely that was the -- what was going
16 on during those days.

17 Q. Okay. Would you continue reading? I
18 think you left off with settlement discussions.

19 A. From the final number sent to you by
20 e-mail of March 10, the taxable value of the
21 properties for the City is 70,055,504 and for the
22 Town 10,064,713. Please confirm your client's
23 agreement to accept these numbers for the purposes
24 of settlement discussions at the mediation on
25 Wednesday. Call me if you wish to discuss.

1 Q. Okay. And do you -- did you have any
2 information that these numbers were accepted by Mr.
3 Kuhn?

4 A. After and going through the mediation,
5 yes.

6 Q. Okay. And you recall the mediation -- the
7 mediation process?

8 MR. KUHN: I'm going to object to
9 this. If this is coming out of mediation that would
10 be confidential unless he heard it from me. It
11 would be hearsay.

12 BY MS. LOHR:

13 Q. Was this the numbers the City was
14 utilizing during the mediation process?

15 A. Yes. These are the numbers that we
16 produced and that Burton Fire District agreed.

17 Q. And wasn't the whole purpose of that
18 meeting was to solidify --

19 MR. KUHN: I'm going to object to
20 that statement to which the Burton Fire District
21 agreed. I would like to know the basis of that.
22 Obviously we didn't agree.

23 BY MS. LOHR:

24 Q. Well, was it your understanding that they
25 were agreeing -- that Burton Fire District after

1 your meeting with Chief -- Deputy Chief Webb that
2 they were agreeing not only with the list of
3 properties, but with the taxable numbers set forth
4 in this e-mail?

5 A. Yes, because if they were not agreeing to
6 these numbers, at least we would go back to do our
7 homework again.

8 Q. Okay.

9 A. And that was not the case.

10 Q. Okay. You are no longer a City employee,
11 are you?

12 A. I am on the City payroll.

13 Q. Okay. All right. What is your role now?

14 A. I am a consultant to the City manager.

15 Q. Okay.

16 A. Fire service relations.

17 Q. Okay. Did you -- were you present at the
18 subsequent mediation on April the 7th, on the
19 Wednesday?

20 A. I was present, yes.

21 Q. And were the numbers being utilized at
22 least by the City of Beaufort/Town of Port Royal,
23 the numbers set forth in this e-mail?

24 A. Correct.

25 MS. LOHR: That is all the questions

1 I have, Your Honor. .

2 JUDGE DUKES: Okay. Mr. Kuhn?

3 CROSS EXAMINATION

4 BY MR. KUHN:

5 Q. Did you physically come up a list as a
6 result of that meeting with Deputy Chief Webb? Did
7 you have a paper list?

8 A. Yes, we had a paper list that I shared
9 with him and -- the answer to your question is we
10 had one.

11 Q. And this took place in, what, April?

12 A. Well, the date of this e-mail is
13 April 5th. And he makes mention of the date. So I
14 met with Chief Webb that day, according to this
15 e-mail. And prior to that day I believe we met
16 probably a couple times.

17 Q. And then there were, if I understand it,
18 there were negotiations back and forth that
19 continued after that date?

20 A. There were as they related to drafting the
21 final contract for services and getting to the final
22 problem which is the contract that we have today.

23 MR. KUHN: That is all I have.

24 JUDGE DUKES: Thank you.

25 MS. LOHR: I have nothing further,

1 Your Honor.

2 JUDGE DUKES: I don't have any
3 questions. Thank you very much. I don't know if
4 there is time to do anyone else and finish them.

5 MS. LOHR: I don't know that we can
6 reliably say that we could be done so that she can
7 be out of here by 4:00.

8 JUDGE DUKES: We would rush
9 somebody's cross because of that. What is a good
10 time to start in the morning that works for
11 everybody's schedule?

12 MS. LOHR: 9:30, 9:00.

13 JUDGE DUKES: 9:30, 10:00.

14 MS. LOHR: We definitely won't
15 take -- I mean, it won't take a whole day tomorrow.

16 JUDGE DUKES: Is there anything for
17 the record today? Anything else for today's record.
18 We can conclude the record then.

19 (Whereupon, the hearing was adjourned
20 at 3:29 p.m.)

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3 Certificate of Reporter4 I, Deborah S. Thomas, Certified Verbatim
5 Reporter and Notary Public in and for the State of
6 South Carolina, do hereby certify that I reported
7 the hearing of Burton Fire District v. City of
8 Beaufort, et al, on the 26th day of January, 2016:
9 and that the foregoing 172 pages constitute a true
10 and correct transcription of the said hearing.11 I further certify that I am neither
12 attorney nor counsel for, nor related to or employed
13 by, any of the parties connected with this action,
14 nor am I financially interested in said cause.15 I further certify that the original of
16 said transcript shall be hereafter delivered to MARY
17 BASS LOHR, ESQUIRE, Howell Gibson & Hughes, PA, P.O.
18 Box 40, Beaufort, South Carolina.19 In witness whereof I set my hand and seal
20 this 21st day of September, 2016.21
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expires 1/4/18Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

State of South Carolina) Court of Common Pleas
) 14th Judicial Circuit
 County of Beaufort) No.: 2013-CP-07-01463

Burton Fire District)
 Fire & Rescue,)

Plaintiff,)

vs.)

City of Beaufort, and)
 Town of Port Royal,)

Defendant.)

HEARING

January 27, 2016

Hearing reported by Deborah S. Thomas,
 Certified Verbatim Reporter and Notary Public in and
 for the State of South Carolina; said hearing held
 before the Honorable Marvin H. Dukes, III, Beaufort
 County Master in Equity and Special Circuit Court
 Judge in accordance with the South Carolina Rules of
 Civil Procedure, at the Beaufort County Courthouse,
 102 Ribaut Road, Room 212, Beaufort, South Carolina,
 on January 27, 2016, at the hour of 9:41a.m.

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COPY

Appearances

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* * * * *

1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good morning. We are
4 back in 13-CP-07-1463 which is consolidated with
5 1464 in this case. Happy to hear from you.

6 MS. LOHR: Good morning, Your Honor.
7 May it please the court. I would Kathy Todd to the
8 stand.

9 JUDGE DUKES: Do you swear or affirm
10 to tell the truth, the whole truth, and nothing but
11 the truth so help you God?

12 MS. TODD: I do.

13 WHEREUPON:

14 KATHY TODD, being duly sworn and
15 cautioned to speak the truth, the whole truth and
16 nothing but the truth, testifies as follows:

17 DIRECT EXAMINATION

18 BY MS. LOHR:

19 (MARKED DEFENDANT'S EXHIBIT NOS. 24
20 THROUGH 26.)

21 Q. Can you state your full name for the
22 record, please.

23 A. Yes, ma'am. Kathy Todd.

24 Q. And what is your educational background,
25 Ms. Todd?

1 A. I have a degree in accounting. And I am a
2 certified public accountant since 1988.

3 Q. Okay. And where are you employed?

4 A. I'm currently employed with the City of
5 Beaufort.

6 Q. What jobs have you held with regard to
7 accounting and auditing?

8 A. Most of my 25 years prior to coming to the
9 City of Beaufort I was in public accounting working
10 on financial statement audits of local governments.

11 Q. Okay.

12 A. And then came on as a finance director for
13 the City of Beaufort.

14 Q. Okay. As part of your job, are you
15 charged with making the payments to -- on behalf of
16 the City of Beaufort or organizing the payments on
17 behalf of the City of Beaufort to the Burton Fire
18 District?

19 A. I am.

20 Q. And you were not involved in the
21 negotiations in this matter, were you?

22 A. No. I didn't start until September of
23 2011.

24 Q. Okay. When you first were tasked with the
25 job of determining what amounts were owed to Burton

1 Fire District during it would be tax year '12 would
2 be the first year you performed that job, correct?

3 A. Actually it was tax year '11, one year
4 behind the fiscal year.

5 Q. Okay.

6 A. So we would go to fiscal year 2012 which
7 would have been tax year 2011.

8 Q. Okay. How did you go about determining
9 what amounts were owed?

10 A. Well, the very first thing I did was look
11 for the data file that was used by my predecessor
12 for the calculation of the fiscal year 2011 payment
13 based on tax year 2010. That was the very first
14 step I did.

15 The second step I did was obtain the data
16 file from the County of the property taxes within --
17 every parcel I.D. number within the City and the
18 values for it. And then from there I was reading
19 the agreement. And some of the language in the
20 agreement wasn't matching consistently with the
21 information on the tax year 2010-2011 data files
22 that were used.

23 So I asked -- at that time David Starkey
24 was the Finance Director for the County. And I
25 asked him for a copy of a tax bill so that I could

1 see the language on the tax bill and then line that
2 up with the data file so I was working on the right
3 column in calculating the payment.

4 Q. Okay. I'm going to hand you what has been
5 marked Defendant's Exhibit 24.

6 MS. LOHR: And, Your Honor, I do have
7 a copy of that for you.

8 JUDGE DUKES: Thanks.

9 BY MS. LOHR:

10 Q. And on that tax bill what information was
11 important for you in determining the values that you
12 would be using?

13 A. What was the proper value to use that
14 lined up with the language in the agreement.

15 Q. And do you recall the language in the
16 agreement that you were looking for? Would it be
17 helpful if I handed --

18 A. The property tax assessed value.

19 Q. Okay.

20 A. Which was in Paragraph 7.

21 Q. Okay. And would you tell me what you did
22 when you looked at this bill? What was -- go
23 through your thought process as you looked at the
24 bill.

25 A. Okay. Well, I looked at the bill and I

1 found this parcel, Mr. Starkey had -- we whited it
2 out for protection purposes, but I looked at our
3 data file. I traced this property to that data
4 file. And then traced the numbers from this bill to
5 that data file noting that what the bill calls
6 assessed value on the data file is called taxable
7 assessed value. That is the way the numbers lined
8 up. So market value is the appraised value that
9 shows up on the data file.

10 The next column in the data file says
11 assessed value, but it lined up with the taxable
12 value on the bill. The exemptions are shown as
13 columns in the data file. And those agreed. And
14 then what is called taxable value here or assessed
15 value down below, which is after the ratio, is what
16 lined up as the taxable value on the data file.

17 Q. Okay. So was the assessed file a
18 pre-exemption number or a post-exemption number?

19 A. On the bill it's post-exemption.

20 Q. Okay. But on the spreadsheet you were
21 looking at it was --

22 A. Taxable value. It was identified in the
23 column heading by the County as taxable value.

24 Q. Okay.

25 A. But on the bills it showed as assessed

1 value.

2 MS. LOHR: Okay. Your Honor, at this
3 time I would move to have this file -- this document
4 entered into evidence.

5 JUDGE DUKES: No objection?

6 MR. KUHN: Yes, sir, I don't see why
7 one individual tax bill is relevant, but no harm, no
8 foul. I have no objection.

9 JUDGE DUKES: Okay. That would be
10 Defendant's Number --

11 COURT REPORTER: 24.

12 MS. LOHR: 24.

13 BY MS. LOHR:

14 Q. Is there a place on that document for
15 exemptions?

16 A. Yes, there is.

17 Q. Okay. And on that particular document
18 there are no exemption; is that right?

19 A. That is correct.

20 Q. Okay. Did you have -- have you
21 subsequently had an opportunity to cross reference
22 the information off of some of the properties
23 involved in this litigation?

24 A. Yes.

25 Q. With Beaufort County tax bills?

1 A. Yes.

2 Q. I'm going to hand you what is marked as
3 Defendant's Exhibit 25. Can you tell me what this
4 is --

5 MS. LOHR: Here, Your Honor.

6 BY MS. LOHR:

7 Q. Can you tell me what this is a -- what
8 this document is?

9 A. Yes. This is the property tax bill for
10 tax year 2011 of the air station.

11 Q. Okay. And can you run through these
12 numbers on this for the court?

13 A. Sure. First off, the air station is one
14 of the parcels that is within the data file that
15 calculates the Burton Fire District payments.

16 Q. Very quickly, can you find this document
17 on -- I was asking her if she could find that same
18 document in this -- in the list that was marked as
19 Exhibit 3, I believe?

20 MR. KUHN: The second to the last
21 page about a third of the way down.

22 JUDGE DUKES: There it is.

23 THE WITNESS: Okay.

24 BY MS. LOHR:

25 Q. Okay. Have you found it?

1 A. Yes. It is Number 4994 on Exhibit 3.

2 Q. Okay. And can you tell me what the
3 effect --

4 A. I'm sorry. Number 11, I mean.

5 Q. Can you tell me what the tax bill reflects
6 as the assessed value on that parcel?

7 A. Sure. The assessed value on the tax bill
8 shows zero. And on Exhibit 3 it shows taxable value
9 zero. So those are the --

10 Q. Okay. So was zero the number that was
11 utilized in payment?

12 A. Yes.

13 Q. Okay. Thank you. I'm going to hand you
14 another document that has been marked --

15 MS. LOHR: Oh, I move to enter this
16 document into evidence at this time, Exhibit 25.

17 JUDGE DUKES: No objection I presume
18 Mr. Kuhn?

19 MR. KUHN: No, I object to it on
20 relevance grounds, Your Honor, but --

21 JUDGE DUKES: Okay. I'll allow it.

22 BY MS. LOHR:

23 Q. All right. I'm going to hand you what has
24 been marked as Exhibit 26. Have you had an
25 opportunity to look at that document?

1 A. Yes, previously.

2 Q. And what is that document?

3 A. This is a property on real property tax
4 rolls for Port Royal.

5 Q. Okay. And I'll have you take a look real
6 quickly at what has been marked as Plaintiff's
7 Exhibit 2. And if you look down that -- about
8 three-quarters of the way down that page at Property
9 Number 2915. Is that the same PIN number that
10 corresponds with that tax bill?

11 A. It is.

12 Q. Okay. And what is the assessed value on
13 that bill?

14 A. On the bill the assessed value is \$55.

15 Q. Okay. What is the taxable value?

16 A. On Exhibit 2?

17 Q. On Exhibit 2.

18 A. \$55.

19 Q. Okay. And what would be the, what do they
20 call it, taxable value on the tax bill?

21 A. On the tax bill the taxable value is
22 23,000.

23 Q. Okay. So would it be safe to assume that
24 the value as it is written on the tax bill is the
25 post-exemption values as it's laid out in the

1 right-hand column of the tax bill?

2 A. It is.

3 MS. LOHR: Your Honor, did I hand one
4 of these up to you?

5 JUDGE DUKES: I have two of them. I
6 don't have the third one.

7 MS. LOHR: Okay. For sake of
8 reference there is 2915 written at the top of that
9 sheet of paper that correspondence with the number
10 on Exhibit 2.

11 BY MS. LOHR:

12 Q. Now, I'm going to hand you what has been
13 marked as Plaintiff's Exhibit 1. And would you look
14 at the formula that is set out for payment -- for
15 payment of the moneys to Burton Fire District?

16 A. Okay.

17 Q. Is this what you were looking at when you
18 prepared the payment for the City of Beaufort?

19 A. Yes.

20 Q. Okay. And is there a footnote?

21 A. Yes.

22 Q. All right. Assessed value is defined in
23 that footnote?

24 A. That is correct.

25 Q. Can you read the footnote for me?

1 A. Defined as the assessed value of each
2 subject property for the applicable service here.
3 For example, the March 1, 2011, payment for services
4 in cumulative annexations for calendar year 2009
5 will use the assessed value established for the
6 October 16, 2010, Beaufort County property tax
7 bills.

8 Q. Okay. So on the Marine Corps property
9 that we talked about previously, the City of
10 Beaufort property, 12020169, what would that value
11 be?

12 A. Zero.

13 Q. Okay. And on -- and is that the value
14 that was paid on that property by the City of
15 Beaufort, correct?

16 A. Yes.

17 Q. And then on our 112, what was the assessed
18 as per that footnote be?

19 A. \$55.

20 Q. Okay. And that is the post-exemption
21 value on that tax bill, correct?

22 A. Correct.

23 Q. Okay. When was the first time that you
24 knew that there was an issue with regard to the
25 discrepancy the parties believed in the values that

1 were part of this contract?

2 A. Myself and our City Attorney received
3 correspondence from Mr. Kuhn, I believe it may have
4 been May or June of 2012.

5 Q. Okay. I'm going to hand you what has been
6 marked as --

7 MS. LOHR: I would also move at this
8 time to move those documents into evidence,
9 Exhibits 24, 25, and 26.

10 JUDGE DUKES: All right. I think we
11 had 24 and 25 already. This is 26. So relevance?

12 MR. KUHN: The same objection, Your
13 Honor.

14 JUDGE DUKES: Okay. I'll allow it.

15 BY MS. LOHR:

16 Q. I'll be handing you what has been marked I
17 believe as Defendant's 19; is that correct?

18 A. Yes.

19 Q. Okay. Is this the letter?

20 A. No. Actually there was a letter that
21 preceded this one.

22 Q. Okay. I'll get the right one. Okay.
23 What is your recollection of the letter that
24 preceded this one?

25 A. It was addressed to me with a cc to our

1 City Attorney. It stated that our -- when I had
2 sent our payment, I knew it was late in accordance
3 with the agreement. And so I had sent
4 correspondence to Chief Roundtree asking, you know,
5 explaining the situation that I had just started,
6 that I had just found the agreement, that I
7 apologized for the delay and it being late. And
8 asked for mercy. And that the penalties and
9 interest would be waived and that all future
10 payments would be made on time.

11 And so the correspondence that I received
12 from Mr. Kuhn was denying the penalties and the
13 interest being waived.

14 Q. Let me stop you right there. Let's take a
15 look at this letter. Do you believe that you had
16 notice prior to this letter?

17 A. I actually -- I can't recall the date --
18 the specific date of the letter that I received from
19 Mr. Kuhn and the timing between that letter and this
20 letter.

21 Q. All right. So what is the date on that
22 letter?

23 A. This letter is April 12th, 2012.

24 Q. Okay. And --

25 A. I actually brought a copy.

1 Q. Okay. In that letter --

2 MS. LOHR: Your Honor, I would --

3 BY MS. LOHR:

4 Q. Did you receive a copy of this letter?

5 A. Yes, I believe I have a copy of this
6 letter.

7 MS. LOHR: Okay. I would move to
8 have this entered into evidence at this time.

9 MR. KUHN: I'm not sure -- until I
10 look at it, I'm not sure what --

11 MS. LOHR: It's your April --

12 MR. KUHN: It's just been referred to
13 as this letter.

14 MS. LOHR: April 12th letter to Bill.

15 MR. KUHN: No objection.

16 JUDGE DUKES: Okay. Do you have an
17 extra copy?

18 MS. LOHR: I think it's been entered
19 already.

20 JUDGE DUKES: I think Fred said he
21 couldn't object to his own letters.

22 MS. LOHR: Yeah, his own work.

23 JUDGE DUKES: But have you got an
24 extra copy or --

25 MS. LOHR: I'm sorry I don't.

1 BY MS. LOHR:

2 Q. In that letter, there is a reference as to
3 the preparing of the 2012 budget. If you would
4 flip -- I think it's the third paragraph. Can you
5 read that to me?

6 A. It says I would appreciate you checking
7 with the City and advising me as to the status of
8 the payment. My client has a budget submission due
9 to the County no later than April 23rd and needs to
10 know when payment can be expected as well as the
11 expected amount of the payment so that the budget
12 submission can be prepared accordingly. Time is
13 somewhat of the essence.

14 Q. Okay. So what does that tell you in terms
15 of the timing of the 2012 budget submission for
16 Burton Fire District?

17 A. That probably would have been their budget
18 submission for fiscal year '13 since it was being
19 done in April of 2012. And they were probably
20 wanting to know what the estimated payment was to
21 help them in estimating the revenues that they would
22 include on their 2013 budget submission.

23 Q. Okay. Well, let me ask you about that.
24 Do you prepare budgets?

25 A. Yes.

1 Q. Okay. Tell me what the normal process is
2 to prepare a budget for a governmental entity.

3 A. You know, you usually evaluate your
4 revenues historically over a period of time. And
5 then based on the evaluation of revenues you make
6 estimates of each and every revenue you are pretty
7 sure you are going to still be receiving in the
8 upcoming fiscal year. Certainly anything that is
9 property tax related, anything that has an agreement
10 associated to it that guarantees those payments, the
11 more reliable your estimation becomes.

12 Q. Okay. So would it be appropriate to base
13 it on what your estimated -- what would be the
14 appropriate amount to estimate if you have a
15 contract?

16 A. Whatever the contract value originated at,
17 and if there is no significant changes it would
18 probably remain the same.

19 Q. Would it ever be appropriate to
20 underestimate that value based on just the funds you
21 have in your account?

22 A. No, never.

23 Q. I'm going to hand you what has been marked
24 as Defendant's Exhibit 20. Do you recognize that
25 letter?

1 A. Yes.

2 Q. And what is that letter?

3 A. That is a letter addressed to myself
4 stating that they had received the payment, that
5 they would not waive the interest and the penalties,
6 and then indicating that the figures didn't match up
7 and could they -- could myself -- could I sit down
8 with Mr. Kuhn and go over the calculation that we
9 used.

10 Q. Okay. And what is the date of that
11 letter?

12 A. May 8th, 2012.

13 Q. Okay. And was --

14 MS. LOHR: I move to enter that into
15 evidence at this time.

16 JUDGE DUKES: Mr. Kuhn?

17 MR. KUHN: Let me just glance at it.

18 MS. LOHR: It's your handiwork.

19 MR. KUHN: No objection, Your Honor.

20 JUDGE DUKES: Okay. And that was the
21 same I think as Defendant's 20 from yesterday.

22 MS. LOHR: Oh, okay. I'm sorry.

23 JUDGE DUKES: The same as 19. That's
24 all right. No? Okay.

25 COURT REPORTER: When it was 22 you

1 made a comment yesterday so today it's going to
2 be --

3 JUDGE DUKES: All right. Nevermind.
4 All right.

5 BY MS. LOHR:

6 Q. Okay. And would this -- prior to
7 receiving this letter what was the -- what did you
8 understand to be the nature of the issue that Burton
9 Fire District had with their payment?

10 A. Say that again?

11 Q. Prior to receiving this letter what was --
12 what was the issue that you understood Burton Fire
13 District had with their letter -- with the payment?

14 A. That we were late. That we were just
15 late.

16 Q. Okay. And had you had any notice up until
17 this point that there was some discrepancy as to
18 value?

19 A. No, none whatsoever.

20 Q. Okay. And there had been a previous
21 year's payment, correct?

22 A. That is correct.

23 Q. And that was based again on the -- what
24 would appear in the column as taxable value on
25 Exhibits 2 and 3?

1 A. That is correct. That was one of the
2 validation steps that I made.

3 Q. Okay. But you had confirmed it would be
4 assessed value on the tax bill?

5 A. That is correct.

6 Q. Okay. Did you sit down --

7 MS. LOHR: I moved that into evidence
8 already. I'm sorry.

9 BY MS. LOHR:

10 Q. Would you -- did you sit down with Mr.
11 Kuhn?

12 A. Yes. Actually my first step was to
13 contact Mr. Harvey. Mr. Harvey and I met and then
14 we arranged to meet with Mr. Kuhn.

15 Q. Okay. Did you have any inkling what the
16 issue could have been at that point?

17 A. No, none whatsoever until we met.

18 Q. Okay. And when you met, did you
19 appreciate the nature of the issue at that point?

20 A. I still didn't. He just really wanted to
21 know how we did our calculation. And so I brought
22 up the data file. I explained to him the steps that
23 I had taken and the values that were utilized
24 incoming up with our payment calculation.

25 Q. Okay. Thank you. I'm going to have you

1 identify that document. Have you seen that document
2 before?

3 A. Yes.

4 Q. Okay. And what is that document?

5 A. It's an e-mail from Mr. Harvey -- from Mr.
6 Kuhn to it looks like myself and Sue Radford with a
7 cc to Mr. Harvey --

8 Q. Okay.

9 A. -- Chief Roundtree and Chief Webb.

10 MS. LOHR: And I would move this into
11 evidence at this time.

12 JUDGE DUKES: Mr. Kuhn?

13 MR. KUHN: I have not memorized all
14 of my e-mails. If I could look at it?

15 MS. LOHR: And I'm sorry, Fred, I
16 should have had copies for you. I think this is
17 part of Bill's affidavit.

18 MR. KUHN: No objection.

19 BY MS. LOHR:

20 Q. What -- when you got that letter, what did
21 you learn the first time or the e-mail? I'm sorry.

22 A. That is when we learned that they were
23 wanting the value calculated off of the assessed
24 value from the data file which didn't correspond to
25 the assessed value on the tax bill.

1 Q. Okay. And that was -- what was the date
2 on this?

3 A. This was dated May 21st.

4 Q. Okay. And I'm going to hand you a
5 document. I don't know if you've seen this document
6 before or not. Do you recognize that?

7 A. I believe that Mr. Harvey shared this
8 letter with myself and the City Manager.

9 Q. Okay. And what is the date on that
10 letter?

11 A. April 12th, 2012.

12 Q. Okay. And what does that letter -- what
13 is the subject of that letter?

14 A. The subject is --

15 MR. KUHN: I'm going to object.
16 We've got an anonymous letter that was shown to her
17 by her lawyer.

18 JUDGE DUKES: Who is the letter from,
19 again?

20 MR. KUHN: Who is it from and who is
21 it to? I know the date.

22 MS. LOHR: It was a letter to Bill
23 from Fred, but it was shown to her during the course
24 of all of this. I mean, I can wait and put it in
25 with Bill.

1 MR. KUHN: Okay.

2 JUDGE DUKES: Okay.

3 MR. KUHN: Is that the Exhibit 19
4 letter, April 12, 2012?

5 MS. LOHR: Oh, I'm sorry. That is
6 the wrong letter. I've handed you the wrong letter.
7 I'm sorry. There should be another letter in here.
8 There. Thank you. I put it in yesterday. Okay.
9 This is actually already in.

10 BY MS. LOHR:

11 Q. Do you know when the brief told when the
12 lawsuit was filed in this matter?

13 A. This lawsuit that we are speaking of?

14 Q. Uh-huh.

15 A. Yes.

16 Q. Okay. And when was that?

17 A. I don't recall the date, but it was
18 subsequent to May 2012.

19 Q. Okay. Had you paid the '13 payment by the
20 time the lawsuit was filed?

21 A. Yes.

22 Q. Okay. So you had made three years of
23 payments prior to this lawsuit ever being filed?

24 A. I don't recall the exact timing, but I'd
25 been making the payments since the 2012 payment.

1 MS. LOHR: Okay. That is all the
2 questions I have for Ms. Todd.

3 JUDGE DUKES: Mr. Kuhn?

4 MR. KUHN: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. KUHN:

7 Q. Ms. Todd, if I can -- if you will look at
8 Exhibit -- this Exhibit -- Plaintiff's Exhibit 3,
9 actually. These are the parcels in the City of
10 Beaufort. As I understand your testimony you
11 prepared the check that you sent to Burton based
12 upon the column that is labeled taxable; is that
13 correct?

14 A. That is correct.

15 Q. You did not use the column labeled
16 assessed; is that correct?

17 A. That is correct.

18 Q. All right. And the -- using the column
19 labeled taxable results in a lower amount than if
20 you use the column labeled assessed; is that
21 correct?

22 A. It does because it includes the
23 exemptions.

24 Q. All right. And when we met, one of the
25 reasons we met was so we could figure out why our

1 numbers -- Burton Fire numbers and the City's
2 numbers and the Town's numbers didn't jive. Is that
3 a fair statement?

4 A. I showed you how I came up with my
5 calculation, yes.

6 Q. And you had a spreadsheet similar to this
7 exhibit?

8 A. It had a few more columns, but yes.

9 Q. Okay. And we took all of that
10 information. And later on, as shown in my e-mail,
11 we realized what the problem so-to-speak was. You
12 were using taxable and we wanted you to use
13 assessed. Is that fair to say? Up until that time
14 we were trying to figure out what the problem was.

15 A. I was definitely using taxable value per
16 the data files presented to us by the County, yes.

17 Q. All right. And until we met Burton know
18 that. Until we met, you didn't know that we were
19 using the assessed Column; is that correct?

20 MS. LOHR: Objection, Your Honor. I
21 don't think Ms. Todd knows what Burton knew.

22 JUDGE DUKES: Yeah. Could you
23 rephrase that one?

24 MR. KUHN: I'll let her speak to --

25 BY MR. KUHN:

1 Q. It would be fair to say it took awhile to
2 figure out what the discrepancy was?

3 A. In my mind there was no discrepancy
4 because the taxable value column agreed to the tax
5 bill's assessed value. And so in my mind there was
6 no discrepancy.

7 Q. Let me show you exhibit -- a copy of
8 Exhibit --

9 MR. KUHN: Let me borrow this, again.

10 BY MR. KUHN:

11 Q. -- 24. And this is property that
12 belongs -- it's a little difficult to read. I'll
13 blow it up a little bit. To David and Susan B.
14 Starkey as joints tenants with rights of
15 survivorship. Do you see that?

16 A. Yes, I do.

17 Q. Okay. And Mr. and Ms. Starkey own this
18 property pursuant to this deed, for the record
19 recorded in Book 2723 at Page 1862. Do you see
20 where they purchased it from the Solomons for
21 \$305,000?

22 A. That is what the title states, yes.

23 Q. Okay. And this property has a Tax Map
24 12029A150. Do you see that?

25 A. Yes.

1 Q. If we then look at Exhibit 3 on the third
2 page we find that parcel of 12029A150. You see
3 where I've highlighted that?

4 A. Yes.

5 Q. According to their tax Bill there is a
6 market value of 271,663; is that correct?

7 A. Yes.

8 Q. And market value is your understanding
9 that is appraised value?

10 A. Yes.

11 Q. Okay. And then it shows an assessed value
12 of \$10,870. Do you see that?

13 A. That is correct.

14 Q. Okay. If we look on exhibit Plaintiff's
15 three, Page 3 at that property, those numbers are
16 entirely consistent. The 271, the 271, the 10,870
17 for assessed, the 10,870 for assessed, and this
18 property being a single family residence located at
19 26 Petigru Drive has no exemptions. Is that fair to
20 say?

21 A. That is correct.

22 Q. Okay. Were you involved in the
23 negotiating of the settlement agreement that we are
24 here about today?

25 A. No, I was not.

1 Q. So all of these tax bills that you've
2 referenced, when did you first see these bills?

3 A. The 2011 tax bill was given actually to me
4 by Mr. Starkey in the calculation of the 2012
5 payment to Burton.

6 Q. So this was roughly two years after the
7 agreement was signed in 2010?

8 A. What I was trying to do is validate what
9 column to be utilizing.

10 Q. Okay. And the other two bills, when did
11 you first pull those?

12 A. Just the other day.

13 Q. Okay. So there is no way you relied on or
14 anybody with the City or the Town relied on these
15 bills in negotiating this agreement. Would that be
16 fair to say to your knowledge?

17 A. I don't know what was agreed to in the
18 negotiations. All I know is it was agreed to the
19 data files in utilizing the proper column to
20 calculate the payment to Burton.

21 MR. KUHN: That is all I have, Your
22 Honor.

23 JUDGE DUKES: Anything?

24 MS. LOHR: Very quickly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. LOHR:

2 Q. With regard to that David Starkey bill?

3 A. Yes.

4 Q. Is there a place for exemptions to be
5 listed?

6 A. There is.

7 Q. And would the exemptions show up in a
8 decreased value under the assessed value?

9 A. They would.

10 Q. Okay. So did you appreciate that at the
11 time?

12 A. Absolutely, because assessed value on the
13 data file would have equaled the taxable value
14 because there were no exemptions. There are two
15 columns in the data file between the data files --
16 what the data file calls assessed and what the data
17 file calls taxable value. And those are the
18 exemptions. And if there were exemptions they would
19 have been in those two columns and they would have
20 shown up on the tax bill under the exemptions
21 producing that assessed value to the tax assessed
22 value as presented on the bill.

23 Q. Okay. And because you weren't part of the
24 negotiation what did you do in order to determine
25 what assessed value meant?

1 MR. KUHN: I'm going to object, Your
2 Honor. This isn't in response to anything on cross.
3 It could have been covered on direct like it was
4 covered on direct. She's told us what she thinks.

5 JUDGE DUKES: It's not, but I'll
6 allow it. If you want to get back into it, that is
7 fine.

8 BY MS. LOHR:

9 Q. What -- what did you -- how did you -- how
10 did you determine that Mr. Starkey's bill would
11 cause you to be using the taxable column as opposed
12 to the assessed column?

13 A. Because the taxable value was following
14 exemptions just as the assessed value on the
15 property tax bill comes after the exemptions. So
16 it's net of the exemptions is what -- so it's a play
17 on words on the tax bill versus the data file, but
18 the number is exactly the same. The taxable value
19 number is the assessed value number on the bill
20 because it's following the exemptions. That is what
21 is taxed by the millage rate that the entity
22 receives a tax from.

23 MS. LOHR: Okay. All right. That is
24 all the questions I have for Ms. Todd.

25 MR. KUHN: I've got one follow-up,

1 Your Honor.

2 I have no questions, Your Honor.

3 JUDGE DUKES: All right. Thank you
4 so much. You can step down.

5 MS. LOHR: Your Honor, if it is okay,
6 may this witness be dismissed?

7 JUDGE DUKES: Absolutely. Thank you
8 so much. You want to take a break or go on to
9 another one?

10 MS. LOHR: We can take a short break
11 if you don't mind.

12 JUDGE DUKES: No problem.

13 MS. LOHR: I only have -- actually
14 could I do one more witness? They are going to be a
15 very quick one and then we can take a break.

16 JUDGE DUKES: Absolutely.

17 MS. LOHR: Okay. I would like to
18 call John Williams.

19 JUDGE DUKES: All right. Good
20 morning.

21 MR. WILLIAMS: Good morning, Judge.

22 JUDGE DUKES: Do you swear or affirm
23 to tell the truth, the whole truth, and nothing but
24 the truth so help you God?

25 MR. WILLIAMS: I do.

1 WHEREUPON:

2 JOHN WILLIAMS, being duly sworn and
3 cautioned to speak the truth, the whole truth and
4 nothing but the truth, testifies as follows:

5 DIRECT EXAMINATION

6 BY MS. LOHR:

7 Q. Good morning, Mr. Williams.

8 A. Good morning.

9 Q. Could you state your name for the record,
10 please.

11 A. My name is John C. Williams.

12 Q. And where do you live?

13 A. I live on Ladys Island.

14 Q. Okay. And what do you do for a living?

15 A. I'm a public relations consultant.

16 Q. Okay. And who are some of your clients?

17 A. I currently have City of Beaufort, local
18 State charter school, Jasper County School District.
19 Those are my primaries.

20 Q. And do you have -- did you prepare a press
21 release on behalf of some governmental entities with
22 regard to the settlement of the 2009 Burton Fire
23 District versus City of Beaufort, Town of Port Royal
24 matter?

25 A. I did.

1 Q. Okay. And who hired you to do that?

2 A. City of Beaufort.

3 Q. Okay. And I'm going to -- there it is.

4 I'm going to hand you what has been marked as
5 Defendant's Exhibit 1. And do you recognize the
6 document I just handed you?

7 A. I do.

8 Q. Okay. What is that document?

9 A. This is a news release that I helped
10 prepare.

11 Q. Okay. And what is the subject of the news
12 release?

13 A. The headline is, fire service dispute ends
14 with contract between Beaufort, Port Royal, and
15 Burton Fire District.

16 Q. Okay. And were you -- did you have
17 contact with all three entities listed in the top
18 portion of that news release?

19 A. Yes, I did.

20 MS. LOHR: Okay. Your Honor, I would
21 like to have this document marked and entered as
22 Defendant's Exhibit I think it's 1.

23 MR. KUHN: I'll object to a news
24 release prepared by a public relations consultant
25 after apparently the settlement agreement was

1 consummated on several grounds. It's got to be
2 hearsay. It's not relevant to the issues. I don't
3 see how that sheds any light on any issue before the
4 court. It's a self-serving press release --

5 MS. LOHR: Your Honor --

6 MR. KUHN: -- made by one of the
7 parties to the lawsuit or their agent.

8 MS. LOHR: If I may?

9 JUDGE DUKES: Yeah, go ahead.

10 MS. LOHR: The press release is a --
11 is going to be used for purposes of impeachment of
12 Mr. Bright's testimony as well as parole evidence of
13 the intent of the parties as to the values that were
14 going to be utilized as part of the settlement
15 agreement.

16 MR. KUHN: So with that I would add
17 parole evidence as an objection.

18 JUDGE DUKES: You know, on the parole
19 evidence issue, of course we've talked about it. I
20 guess the only way really to try a case that --
21 where there is reformation of a contract or mutual
22 mistake or something is through parole evidence. So
23 I guess what I'm concerned about is the witness says
24 that he assisted in the preparation of this
25 document. What you are trying to get in I think is

1 that an individual told him they were counting on a
2 concern amount of revenue. I mean, is that -- that
3 is essentially the --

4 MS. LOHR: And that the document was
5 approved prior to -- by all parties prior to being
6 published.

7 JUDGE DUKES: I'll allow it, but --
8 okay. You can go ahead. The objection is noted.

9 BY MS. LOHR:

10 Q. With regard to this document, did you
11 speak to or have communications with all three
12 entities, and specifically all three individuals
13 listed at the top of the press release?

14 A. I did.

15 Q. Okay. And what was -- do you recall what
16 you asked those parties to do with regard to this
17 press release?

18 A. The way I formulated this press release is
19 the same way I use with all of my clients. I either
20 meet with the client prior to or we -- I ask them to
21 provide some bullet points so I can structure the
22 press release. And then draft it. Send it back to
23 the people involved. Ask them to review it and make
24 any corrections. Did I miss anything? Is there
25 anything I need to add? Check the quotes. And from

1 there we work until it reaches a final stage.

2 Q. Okay. And what -- on the second page of
3 the press release there is a statement as to the
4 expected payments. Can you read that paragraph for
5 me?

6 A. Yes. The first full paragraph, second
7 page, under the contract Beaufort will pay the
8 Burton Fire District an estimated 198,000 in 2011
9 for firefighting and emergency medical services to
10 Burton areas annexed into Beaufort since 1995. The
11 annual payment is calculated based on the assessed
12 value, Burton Fire District millage, and
13 predetermined percentages.

14 Q. Okay. Are there monetary values listed?

15 A. The next paragraph is Port Royal will pay
16 Burton Fire District an estimated 155,000 annually
17 for service of Burton land annexed into Port Royal
18 from 1995 onward.

19 Q. Okay. And is it your testimony that
20 Mr. Bright specifically was allowed to review and
21 approve this document -- and asked to review and
22 approve this document?

23 MR. KUHN: Objection to that as
24 leading.

25 MS. LOHR: Okay.

1 BY MS. LOHR:

2 Q. Who reviewed and approved the document?

3 A. Mr. Dadson, Mr. Van Willis, and
4 Mr. Bright.

5 Q. Okay. At your specific request? Did you
6 ask them for their approval?

7 A. Yes. And to elaborate, this was put out
8 as a joint news release with three different
9 entities listed across the top. So I would need all
10 three sign-offs for me to send it out. It was not a
11 City of Beaufort news release.

12 MS. LOHR: Okay. That is all the
13 questions I have for Mr. Williams at this time.

14 JUDGE DUKES: Mr. Kuhn?

15 CROSS EXAMINATION

16 BY MR. KUHN:

17 Q. When you say sign-off, Mr. Williams, you
18 mean that literally? There is something that
19 everybody signed off on?

20 A. No, sir. I either need a verbal
21 confirmation or preferably by e-mail.

22 Q. And how did you contact Mr. Bright?

23 A. I do not have those e-mails, so I do not
24 recall if it was by telephone or by e-mail.

25 Q. Did you look to see if you could find

1 e-mails?

2 A. Yes, sir, I did.

3 Q. You could not find anything?

4 A. Not on my server, no, sir.

5 Q. Why are you certain that you e-mailed him
6 then?

7 A. Because I would not have put out a joint
8 news release without his approval and because
9 Mr. Dadson was so insistent that this be a unified
10 news release.

11 Q. So do you have any independent
12 recollection of speaking with Mr. Bright or are you
13 just saying that was your standard procedure at the
14 time?

15 A. It was both my standard procedure and I
16 recall that he said it was okay.

17 Q. Over the telephone?

18 A. I do not recall if it was by telephone or
19 by e-mail.

20 Q. How can you recall he said it was okay if
21 you don't know if it was by reading an e-mail or
22 over the telephone?

23 A. Because I am comfortable that he had
24 approved it. I gave him a hard copy when we did the
25 presentation at the fire station. Everything was

1 okay as far as I knew.

2 Q. Okay. Who gave you those figures, those
3 estimated figures?

4 A. Those figures probably came from the City
5 Manager.

6 Q. The City of Beaufort?

7 A. Yes, sir.

8 Q. Okay. And those figures are estimated,
9 correct?

10 A. Yes, sir, an estimated.

11 Q. Okay. And who was it that told you that
12 those figures are based upon the assessed values of
13 the properties? That would be Mr. Dadson also?

14 A. I would imagine it was Mr. Dadson. It was
15 not attributed in the news release.

16 MR. KUHN: Okay. That is all I have.
17 Thank you.

18 MS. LOHR: I don't have any further
19 questions, Your Honor.

20 JUDGE DUKES: All right. You may
21 step down.

22 THE WITNESS: Thank you.

23 MS. LOHR: I would ask that this
24 witness be released at this time.

25 JUDGE DUKES: All right.

1 MR. KUHN: No objection.

2 MS. LOHR: Do you want to take a
3 short break?

4 JUDGE DUKES: Yeah, let's do that.
5 Let's take a short break. And I forgot to do this
6 when I walked in. I apologize. I was about 15
7 minutes late. I was on the phone with Chuck Simmons
8 who is the Greenville Master about this complicated
9 thing we are working on. And I let time sneak up on
10 me. I'm usually pretty punctual. So I apologize.
11 And, yeah, let's -- 15 minutes or so.

12 MS. LOHR: Thank you, Your Honor.

13 JUDGE DUKES: Thanks.

14 (RECESS 10:29 TO 10:42.)

15 JUDGE DUKES: Back on the record.

16 MS. LOHR: I would like to call Van
17 Willis at this time.

18 JUDGE DUKES: Good morning.

19 MR. WILLIS: Good morning.

20 JUDGE DUKES: Swear or affirm to tell
21 the truth, the whole truth, and nothing but the
22 truth so help you God?

23 MR. WILLIS: I do.

24 JUDGE DUKES: Have a seat.

25 WHEREUPON:

1 VAN WILLIS, being duly sworn and
2 cautioned to speak the truth, the whole truth and
3 nothing but the truth, testifies as follows:

4 DIRECT EXAMINATION

5 BY MS. LOHR:

6 Q. Good morning. Can you state your name for
7 the record, please.

8 A. Van Willis.

9 Q. And, Mr. Willis, what is your current
10 employment?

11 A. I'm the Town Manager at Port Royal.

12 Q. And how long have you been the manager at
13 Port Royal?

14 A. That will be 14 years in August.

15 Q. Okay. So were you the manager in Port
16 Royal when this settlement agreement was reached?

17 A. Yes, ma'am.

18 Q. Okay. And what is your education?

19 A. I have an undergraduate degree in
20 Political Science and a Masters in Public
21 Administration.

22 Q. Okay. And what is your previous
23 experience before coming to Port Royal?

24 A. I managed the Town of Irmo for three
25 years. Before that I managed the Town of Seabrook

1 Island. Prior to that was an inspector with
2 Charleston County.

3 Q. Okay. With regard to the -- you are
4 familiar then with the 2009 litigation that we are
5 here about today, the settlement agreement?

6 A. Yes, ma'am.

7 Q. And what was your understanding of the
8 agreement that Port Royal entered into?

9 MR. KUHN: Your Honor, if I could
10 enter an objection based on the parole evidence rule
11 and that his understanding is just not relevant.
12 Might as well my understanding.

13 JUDGE DUKES: And maybe I didn't put
14 the time together like I should have. Was
15 Mr. Willis involved --

16 MS. LOHR: The manager. He was the
17 manager and he was involved.

18 JUDGE DUKES: During the time the
19 agreement was put together?

20 MS. LOHR: Uh-huh.

21 JUDGE DUKES: Okay. And your
22 objection is noted, but --

23 MR. KUHN: If I could add, if he's
24 going to talk about settlement negotiations because
25 those are not admissible. And if he's going to get

1 into the mediation period, of course, that is
2 confidential.

3 JUDGE DUKES: I think right now we
4 are talking about the --- putting the agreement --
5 the settlement agreement together, but if we get
6 into that please feel free to voice those
7 objections.

8 MR. KUHN: Okay.

9 BY MS. LOHR:

10 Q. What was your understanding of the
11 obligations of Port Royal?

12 A. We were obviously -- with the annexations
13 into the Burton Fire District, we wanted to come up
14 with an equitable solution or formula for payment to
15 the Burton Fire District.

16 Q. Okay. And what was the basis of that
17 payment as you understand it?

18 A. Well, this particular settlement it had to
19 do with the values that were going to be protected,
20 the taxable property values times the percentage of
21 their millage.

22 Q. Okay.

23 MR. KUHN: I don't -- do I need to
24 object each time he starts talking about what his
25 understanding is? The same objections.

1 JUDGE DUKES: Why don't we just note
2 for the record that you object to his entire
3 testimony with regard to anything outside the
4 contract. And separate objections for in case we
5 get into the mediation or settlement negotiations.
6 I assume you are not going to ask him settlement
7 negotiation questions or mediation questions; is
8 that right?

9 MS. LOHR: Yes.

10 JUDGE DUKES: But if we get into
11 that, feel free to object again. But for right now,
12 let the record note that you object to his entire
13 testimony as parole evidence and anything outside
14 the four corners of the settlement agreement.

15 MR. KUHN: Thank you, Your Honor.

16 BY MS. LOHR:

17 Q. Was it ever a consideration for you to
18 base a payment to reimburse Burton Fire District on
19 a value that you could not collect?

20 A. No.

21 Q. Okay. Are there properties contained
22 in -- inside and outside as set forth on Exhibit
23 either B or C of the contract in Port Royal that
24 belong to the Federal government, the State
25 government, or the political subdivisions?

1 A. Yes.

2 Q. Okay. And if you were to add up the --
3 what is listed on the tax bill as taxable value or
4 actually what is listed on the spreadsheet as
5 taxable value -- assessed value, what would that add
6 up to, roughly? Do you have any idea?

7 A. Not off the top of my head, no.

8 Q. Okay. Would it be millions of dollars?

9 A. Yes. Yes.

10 Q. Okay. And is any government agency
11 capable of recouping moneys from those entities if
12 those properties are being used for the purpose
13 of -- public purpose?

14 A. No.

15 Q. Okay. Are you familiar with Mr. John
16 Williams?

17 A. Yes.

18 Q. Okay. And how do you know Mr. Williams?

19 A. He is contracted by the City of Beaufort
20 for media and press release issues. He's worked
21 with us several times.

22 Q. Are you familiar with the press release
23 with regard to the announcement of the negotiated
24 settlement in this matter?

25 A. Yes.

1 Q. And with regard to that press release were
2 you asked to approve?

3 A. Yes, I was.

4 Q. Okay. By Mr. Williams? Does that -- in
5 your experience is that common with Mr. Williams?

6 A. Yes, it is. It's ongoing, yes.

7 Q. Did the press release address the funds
8 that were to be paid -- estimated funds to be paid?

9 A. Yes.

10 Q. And with regard to the -- I'm going to
11 hand you what has been marked as Defendant's
12 Exhibit 1. Is that the press release you are
13 referring to?

14 A. Yes, it is.

15 Q. Okay. And how -- what are the funds to be
16 paid by the Town of Port Royal, estimated?

17 A. Estimated at about 155,000.

18 Q. Okay. Let's look at what has already been
19 entered into evidence, the payment record, 4.

20 JUDGE DUKES: Exhibit 4?

21 BY MS. LOHR:

22 Q. We are looking at the 2011 payment of Port
23 Royal. How much does that reflect was paid?

24 A. \$154,493.34.

25 Q. Okay. So within -- how close is that to

1 the estimate that is within the press release?

2 A. That is pretty accurate.

3 Q. Okay. And was it your understanding that
4 when the press release came to you that Burton Fire
5 District was joining in that press release with you
6 and the City of Beaufort?

7 A. Yes, ma'am.

8 MR. KUHN: Your Honor, I'm going to
9 object unless there a foundation is laid. Did he
10 speak with someone from Burton and they told him
11 that?

12 JUDGE DUKES: What was your question,
13 again?

14 MS. LOHR: I asked him was it his
15 understanding that the press release was a joint
16 press release from all three entities.

17 MR. KUHN: No. That it was approved
18 by Burton was the question before it was (inaudible)
19 --

20 JUDGE DUKES: (Inaudible) get into
21 the approval.

22 MR. KUHN: Unless he was there when
23 it happened.

24 JUDGE DUKES: Yeah. I don't know how
25 he knows.

1 MS. LOHR: Okay.

2 JUDGE DUKES: So withdrawn?

3 MS. LOHR: It's withdrawn.

4 JUDGE DUKES: Okay.

5 BY MS. LOHR:

6 Q. When was the first time the issue of under
7 payment by Port Royal was raised to you?

8 A. Our attorney Frances Cantwell made me
9 aware of it. And basically I think it was probably
10 around May or June of 2012.

11 Q. Okay. Previously were the 2011 and 2012
12 payments accepted without objection?

13 A. Yes. There was some concern about late,
14 and we dealt with that.

15 Q. Okay. But the objection -- the concern
16 was related to a late payment fine or fee?

17 A. Right. Uh-huh.

18 Q. Did you rely on this amount in passing
19 budgets, the amount that you understood was the
20 taxable value? Did you rely on that in passing
21 budgets for the Town of Port Royal?

22 A. Yes.

23 Q. Okay. And so not finding out that --
24 nevermind. Skip that. Strike that.

25 MS. LOHR: I think that is all the

1 questions I have for Mr. Willis.

2 JUDGE DUKES: Thank you. Mr. Kuhn?

3 MR. KUHN: I have no questions, Your
4 Honor. Thank you.

5 JUDGE DUKES: All right. Thank you
6 so much.

7 MS. LOHR: At this time I would like
8 to call Bill Harvey.

9 JUDGE DUKES: Do you swear or affirm
10 to tell the truth, the whole truth, and nothing but
11 the truth so help you God?

12 MR. HARVEY: I do.

13 WHEREUPON:

14 WILLIAM HARVEY, being duly sworn and
15 cautioned to speak the truth, the whole truth and
16 nothing but the truth, testifies as follows:

17 DIRECT EXAMINATION

18 BY MS. LOHR:

19 Q. Good morning, can you state your full name
20 for the record.

21 A. William B. Harvey, III.

22 Q. And can you tell me where you are
23 employed?

24 A. I'm a partner in the Harvey and Battey Law
25 Firm.

1 Q. Okay.

2 A. Here in Beaufort.

3 Q. And how long have you been practicing law?

4 A. Since 1980.

5 Q. Okay. And are you familiar with
6 litigation, Burton Fire District versus the City of
7 Beaufort and Town of Port Royal and City of Beaufort
8 and Town of Port Royal versus Burton Fire District
9 filed in 2009?

10 A. I've been involved in all of the Burton
11 Fire District litigation.

12 Q. Okay.

13 A. As the City Attorney for Beaufort.

14 Q. Okay. And what was your understanding of
15 the nature of this litigation?

16 A. We were involved in the 2000 -- I was
17 involved in the 2000 litigation which -- 1999
18 litigation which culminated in a contract for
19 service that was set to expire I think in 2009. And
20 there were some discussion -- there was a good deal
21 of discussion up until that time about further
22 service by Burton of properties that had been
23 annexed -- or further service by Beaufort of
24 properties that had been annexed by Beaufort that
25 had previously been in the Burton Fire District's

1 service area. And the payment to Burton by Beaufort
2 for the lost tax revenue of those properties.

3 And we were unable to reach a resolution
4 prior to the expiration of that 1999 contract, and
5 so there was litigation filed by Burton seeking a
6 determination -- a judicial determination of those
7 amounts against both the City and the Town.

8 And then there was a counter suit to
9 judicially enforce ongoing service during the period
10 of any litigation because the previous contract was
11 set to expire. And there was a court order actually
12 determining that -- in that countersuit determining
13 that the previous service would continue during the
14 period of litigation.

15 So the litigation was to deal with the
16 payment for services. The counter suit was to make
17 sure that the citizens of Beaufort County were not
18 deprived of fire service during that sort of
19 rancorous period of litigation.

20 Q. Okay. And were -- were there attempts to
21 work out these issues?

22 A. Yes. During the period we took -- I
23 recall taking Gary Bright's deposition. There was
24 some discovery that happened, but the issues were
25 fairly clear. And there actually were -- there

1 ultimately were three mediations. I can't go into
2 the substance of the mediations, but two mediations
3 that we had failed because we felt because we
4 couldn't agree on the universe of properties --

5 MR. KUHN: I'm going to object to the
6 discussion of what took place in mediations in any
7 form or fashion.

8 THE WITNESS: I realize that is
9 confidential and I'm just saying that they didn't
10 fail. There was no resolution in those mediations.
11 We felt that -- because again the mediation things
12 were confidential, but we felt that some of the
13 reasons why that we did not come to any sort of
14 resolution was because we could not agree on sort of
15 a baseline of properties and values from which to
16 move forward with a method of payment.

17 I mean, we talked about a lot of things in
18 the mediation, and I know I can't go there. But --
19 so the -- going -- in between the second and the
20 third mediation there was -- there was a real desire
21 on our part to define financially the taxable values
22 of the properties that we were dealing with. You
23 know, what were the -- what were the actual
24 properties, the list of properties, and what was the
25 taxable value of properties because we were dealing

1 with the lost tax revenue by Burton of properties
2 that had been annexed into the City. And so we had
3 to deal with some sort of plan for reimbursement.
4 And that was the whole -- the whole nature of the
5 litigation.

6 And so going into this third mediation it
7 was really important that we try and come to an
8 understanding. And so there was a series of
9 communications prior to the mediation that dealt
10 with that issue.

11 BY MS. LOHR:

12 Q. Okay. I'm going to hand you what has been
13 marked as Defendant's Exhibit 6. Do you recognize
14 that document?

15 A. Yes. This is an e-mail by me to Fred
16 Kuhn, copied to Frances Cantwell. It's got Dadson,
17 Van Willis, Shirley Hughes who was the Financial
18 Director for the City, Sammy Negron who was the Fire
19 Chief, and David McCormick who was the mediator,
20 dated March 10th, 2010. And this was from me.

21 Q. What is the -- what is the nature of the
22 e-mail?

23 A. Well, we were -- again, we were trying to
24 deal with the parcels -- and there was a segregation
25 of parcels because the 1990 agreement, or the 1999

1 agreement had dealt with what we call the automatic
2 aid agreement between the parties. It was automatic
3 aid which had actually a map. And so -- and since
4 1999 there had been a lot of annexations, more by
5 Port Royal than Beaufort, but there had been a lot
6 of annexations by both municipalities of properties
7 outside that map area of the automatic aid.

8 So what we decided to do was to quantify
9 the properties by virtue of the properties inside
10 and properties outside. And those are quantified by
11 inside the automatic aid map that was attached to
12 the 1999 agreement and the properties outside the
13 automatic aid map.

14 So in this e-mail I had gotten from
15 Shirley Hughes what we had referred to as the data
16 file. And the data file is the list of properties
17 that comprise the outside properties, the inside
18 properties for both the Town and the City.

19 And you will see that I attached those
20 files to this e-mail and sent them to Fred. And
21 actually Frances was in town that day. And we were
22 trying to get Fred to sit down with us and let's
23 begin discussion about reconciling the properties
24 and the values of the properties that we would use
25 going into the mediation.

1 We had set a mediation. As you will see,
2 we had set to meet -- well, we were trying to
3 schedule the third mediation for either April 6th,
4 7th, or 8th. And I think we ultimately scheduled it
5 for April 7th was the date that we finally agreed
6 upon, but this e-mail was trying to elicit some
7 dialogue regarding that.

8 MS. LOHR: Your Honor, I would move
9 to have this entered into the record at this point.

10 JUDGE DUKES: Mr. Kuhn? Was this --
11 did this e-mail post-date the settlement agreement?

12 THE WITNESS: No. No.

13 MS. LOHR: No. It's the basis upon
14 which the settlement -- it's the --

15 JUDGE DUKES: Okay. I just heard a
16 lot about mediation --

17 THE WITNESS: This is March 2010.
18 The agreement was September 2010.

19 JUDGE DUKES: Okay.

20 THE WITNESS: This e-mail is, what,
21 about six months before the --

22 MS. LOHR: Mediation --

23 JUDGE DUKES: All right.

24 MS. LOHR: This is between two
25 mediations.

1 JUDGE DUKES: Got you. Okay. But
2 anyway, it pre-dates Exhibit 1?

3 MS. LOHR: Right.

4 JUDGE DUKES: Okay. Good.
5 Objections, if any?

6 MR. KUHN: The same objections, Your
7 Honor. One of which is this e-mail has attachments
8 to it. And I would, if my objection is overruled,
9 request that the attachments come in with the e-mail
10 so it makes -- so it's complete.

11 JUDGE DUKES: That makes sense. What
12 are the attachments.

13 MR. KUHN: I have them right here.

14 THE WITNESS: The attachments were
15 the documents because the attachments were
16 referenced in other -- in further e-mails. The
17 attachments ultimately were the documents that had
18 been -- I think have been entered into evidence.

19 MS. LOHR: They have.

20 JUDGE DUKES: So the attachments are
21 2 and 3?

22 MS. LOHR: Right.

23 JUDGE DUKES: Plaintiff's 2 and 3; is
24 that right?

25 MR. KUHN: That is why I intend to

1 eventually elicit from Mr. Harvey is that his
2 attachments to this e-mail eventually became this
3 trial's Plaintiff's Exhibits 2 and 3 which are the
4 same as Exhibits B and C to the agreement if I stand
5 corrected.

6 THE WITNESS: Right. Correct.

7 JUDGE DUKES: Okay. That being
8 acknowledged, is there any objection other than the
9 parole evidence issue?

10 MR. KUHN: No.

11 JUDGE DUKES: Okay.

12 BY MS. LOHR:

13 Q. As a result of this e-mail, is it your
14 understanding there was a meeting that occurred?

15 A. A meeting?

16 Q. A meeting between somebody from the Town
17 and ---

18 A. There was a meeting -- I know that there
19 was discussion. And the Fire Chief and the Deputy
20 Fire Chief -- Fire Chief Negron and Deputy Fire
21 Chief Webb for the Town were scheduled to meet to
22 identify -- to address these issues.

23 Q. Okay. And did you -- do you know the
24 outcome of that meeting?

25 A. Well, there was an e-mail about that.

1 Q. Okay. I'm going to hand --

2 A. I had a conversation with -- I had a
3 conversation with Chief Negrón that afternoon
4 following his meeting.

5 Q. Okay. And as a result of that
6 conversation did you seek to confirm your
7 understanding of that conversation with anyone from
8 the Burton Fire District?

9 A. I did.

10 Q. I'm going to hand you what has been marked
11 as Defendant's Exhibit 7?

12 A. Okay.

13 Q. And can you tell me what that is?

14 A. Well, actually there was an earlier
15 e-mail.

16 Q. Wait. Did I hand you the wrong one?

17 A. The earlier e-mail was --

18 Q. What was the date --

19 A. -- April 5th. This is April 6th.

20 Q. Oh, I'm sorry. I've handed you the wrong
21 one. Sorry about that.

22 A. I think it's already into evidence.

23 Sammy -- Sammy testified about it.

24 Q. Oh, that's right. That's right. That is
25 why it's out of order. Is that your e-mail?

1 A. Yes. This is any e-mail to Fred Kuhn.
2 Again, Fred was the attorney for the Burton Fire
3 District. He was -- he was the one I was dealing
4 with. I was not having discussions with Chief Webb
5 or Gary Bright or anybody else. I was having
6 discussions with Fred. And I sent this e-mail to
7 Fred. And it says, Chief Sammy Negron met today.
8 The e-mail was at 3:04 in the afternoon, so it must
9 have been in the morning, with Deputy Chief Webb in
10 an attempt to reconcile the universe of taxable
11 property values.

12 And I use that -- let me just back up. I
13 use that word, taxable property values, very
14 affirmatively and very purposefully because when we
15 got the data files, these lists of properties, it
16 was clear. And -- because I had been involved, it
17 was clear that the Town -- the City had annexed the
18 air station. And the air station was shown on the
19 data file under appraised property, under assessed
20 property, and under taxable value property.

21 And, for instance, in the property outside
22 the -- outside the -- it says City outside, but it
23 shows -- I can find it on the exhibit if you want.

24 Q. Yeah.

25 JUDGE DUKES: I've got a copy if you

1 just want to say the page and --

2 THE WITNESS: Well, I don't have the
3 page. I can show --

4 BY MS. LOHR:

5 Q. Oh, wait, that's Fred's.

6 A. Here it is. It's the next to the last
7 page of that exhibit.

8 MR. KUHN: For the record, that is
9 Plaintiff's exhibit --

10 THE WITNESS: This is Plaintiff's
11 Exhibit 3. At the bottom it's got Exhibit 3, City
12 outside. You see that?

13 MR. KUHN: I see it.

14 THE WITNESS: Okay. If you go up --
15 I mean, this is just an example. But if you go up a
16 third of the way down you will see Property Number
17 11 on the left-hand column. And you will see
18 appraised value of \$46.6 million. That is the air
19 station property. That is the air station --
20 majority of the air station property. And you will
21 see in there that has an assessed value of
22 \$1,543,680, but yet neither -- first of all, neither
23 the City nor Burton ever collected any taxes from
24 the air station.

25 And more importantly, neither Burton nor

1 the City has ever provided any fire service to the
2 air station. So this is not an issue of -- you
3 know, this is not an issue of, well, we still
4 provide services because a lot of churches have no
5 taxable value and you provide services for them
6 still. So there is an issue there, but this is
7 just -- this was so stark that -- that we clearly
8 should not be using from this data file the assessed
9 value column because there were no taxes, there were
10 no services.

11 The air station is a Federal property.
12 And it's totally exempt from everything. And so it
13 was really important to me -- and if you look down,
14 as you go down, there are other properties that have
15 large appraised values, Property 59 has an appraised
16 value of \$2.4 million and has an assessed value of
17 \$131,000 and has zero. And all of those properties
18 that have zeros in that third column on that page
19 are air station properties. They are
20 government-owned properties.

21 So it was really important to me in
22 dealing with this and in sharing this information
23 with Fred Kuhn, and sharing the information with
24 everybody, that we at least on this document we very
25 affirmatively state that we were dealing with

1 taxable values or taxable assessed property values
2 because that third column was the only column that
3 we could deal with.

4 In other words, we were not going to pay
5 Burton for an assessed value for properties, one,
6 that we weren't collecting taxes for, that they
7 weren't collecting taxes for, and that no one was
8 providing service for. I mean, that would have been
9 crazy.

10 And so in this e-mail that we are talking
11 about now -- and that was -- that fact was -- I mean
12 it was -- my conversations with the City manager, my
13 conversations with Sammy Negrón, it was very
14 important that we clarify that that is the figure
15 that we were talking about. And so Sammy was tasked
16 to meet with Chief Webb to confirm that because we
17 heard through the grapevine, I forget exactly how we
18 heard it, that Burton -- Burton's universe of
19 properties was a little bit different than ours.

20 I don't recall exactly how the difference
21 was, but it was important that we reconcile that
22 difference both in terms of what properties we are
23 dealing with, and that -- this is the list of
24 properties we are dealing with, and what the value
25 of that property was because ultimately we were

1 going to be talking about numbers.

2 And so how we were dealing with taxable
3 values was really important. So this e-mail says
4 Chief Sammy Negrón met today with Deputy Chief Webb
5 in an attempt to reconcile the universe of taxable
6 property values for those properties annexed by the
7 City and the Town. While there are some differences
8 in the numbers derived by the municipality and the
9 numbers derived by the district, that was the
10 discrepancy that we understood existed, Chief Webb
11 told Sammy that the Commission had met and agreed to
12 waive those differences and to use our list which is
13 the list that we are dealing with, and to accept the
14 taxable value numbers.

15 Again, I'm just very, very affirmative in
16 always using taxable value numbers. From the
17 municipalities as the applicable universe of
18 properties for purposes of settlement discussions.
19 From the final numbers sent to you by my e-mail of
20 March 10. And that was the earlier March 10 e-mail,
21 the one we just now talked about with the four lists
22 that were now Exhibits 1 and 2.

23 From the final number sent to you by my
24 e-mail of March 10, the taxable value of the
25 properties for the City is \$17,055,504 and for the

1 Town \$10,064,713. And you will see that those are
2 the numbers -- the 17 million is this number right
3 here, \$14,083,674 which is the total of Column 3 for
4 inside and \$2,971,830 which is the column for the
5 City outside. You add those two numbers together
6 and it's \$17,055,504.

7 If you use the inside numbers, the
8 assessed numbers in Column 2, you would end up with
9 about 19 million or 19 million plus. So we were not
10 using that column. We were using the column,
11 Column 3. And those two numbers if you see -- you
12 see where I'm talking about? Those two numbers
13 equal \$17,055,000.

14 Now, with regard to the Town -- with
15 regard to the Town likewise the Town didn't even add
16 up the second -- the second column. The Town added
17 up -- just added up the third column. And that
18 number was \$7,290,083 for outside the automatic aid
19 agreement and \$2,774,630. If you add up those two
20 numbers, that number is \$10,064,713.

21 So those were the two numbers we had
22 agreed upon. And those are the two numbers that are
23 shown in the taxable assessed column on the data
24 sheet. Again, at the time -- at the time we were
25 dealing with all of this, this is the -- this is the

1 information I had.

2 I didn't -- I was not dealing with a tax
3 bill itself. This is the information I was dealing
4 with. And we were trying to determine the universe
5 of properties. And so that was the number that we
6 used.

7 And I said, please confirm your clients'
8 agreement to accept these numbers for the purpose of
9 settlement discussions at the mediation on
10 Wednesday. This was on Monday the 5th. And the
11 mediation was going to be on Wednesday the 7th. I
12 said, call me if you wish to discuss.

13 BY MS. LOHR:

14 Q. Okay. I'm going to hand you what has been
15 marked as Defendant's Exhibit 7.

16 A. Okay.

17 Q. Do you recognize that document?

18 A. Yes.

19 Q. And what is that document?

20 A. This was an e-mail to me -- by me. Excuse
21 me. E-mail by me to the City Manager Scott Dadson,
22 Shirley Hughes who was the Chief Financial Officer,
23 Sammy Negrón the Fire Chief, Mayor Billy Keyserling,
24 Van Willis for the Town, and Frances Cantwell who
25 was the attorney for the Town dated April 6 at

1 10:01 am. So it's 10:01 in the morning.

2 So before 10:00 o'clock, I had a telephone
3 conversation with Fred Kuhn about the e-mail that we
4 just now talked about, the 3:00 o'clock e-mail the
5 previous day. And Fred confirmed with me, because
6 this e-mail says, in a telephone conversation this
7 morning Fred Kuhn has confirmed my e-mail to him
8 yesterday. And the universe of annexed properties
9 have a taxable value -- again, I use taxable value,
10 of \$17,055,504 for the City and \$10,064,713 for the
11 Town of Port Royal.

12 Given the rancor and uncertainty that
13 occurred at the prior two mediation sessions this is
14 a huge step for us going forward. Major kudos to
15 Sammy, Shirley, and Linda -- Linda for the Town of
16 Port Royal, who had put together the list that we
17 are dealing with and Sammy who had talked about the
18 numbers. I said major kudos to all three of them
19 for their good work.

20 This provides us with a firm agreed upon
21 basis to move forward tomorrow. We will resume in
22 my office at 10:00 o'clock a.m. Thanks. See you
23 all.

24 Again, this was a confirmation e-mail --
25 not a confirmation e-mail, but a spontaneous e-mail

1 because I was elated when I hung up with Fred and --
2 Fred Kuhn and we had an agreement as to the universe
3 of properties, the value of the properties, the
4 basis upon which we were going to go into the
5 mediation the next day.

6 Q. Okay. And was this agreement basically
7 the keystone to the ultimate settlement agreement?

8 A. Yes.

9 MS. LOHR: I would move to enter into
10 evidence Defendant's Exhibit 7.

11 MR. KUHN: I have the same
12 objections, Your Honor.

13 JUDGE DUKES: Okay. I'll allow it.
14 BY MS. LOHR:

15 Q. All right. When did you finally reach an
16 understanding -- a firm understanding with Burton
17 Fire District?

18 A. Well, we left the mediation on the 7th
19 with the matter unresolved. It was unresolved for
20 the City. I think it was basically resolved for the
21 Town, but the City and the Town had an understanding
22 that the Town was not going to settle anything on
23 their own and leave the City kind of out there
24 without a resolution.

25 And so the Town had agreed to the

1 25 percent. And that number -- that percentage
2 translated into too much money for the City. And so
3 we were not going to accept 25 percent. And so
4 without getting into the meat of the mediation, we
5 resolved -- we adjourned unresolved because the City
6 would not accept the 25 percent figure percentage
7 of, you know, that was agreed to by the Town.

8 MR. KUHN: Your Honor, I need to
9 object to this testimony because we are getting
10 directly into what was discussed during mediation
11 and what took place during mediation.

12 JUDGE DUKES: All right. Yeah,
13 let's --

14 THE WITNESS: Okay.

15 BY MS. LOHR:

16 Q. Okay.

17 A. After the mediation concluded, there were
18 a lot of discussions from April 7th up until -- you
19 know, up until July 28th there were a number of
20 discussions between me and Fred about -- you know,
21 about resolution of the case. I mean, I have a --
22 you know, I have a sheet here that bears -- you know
23 that sort of has some of my notes regarding the
24 discussions.

25 Q. And I'm looking for that document. Give

1 me a second. I'm going to hand you what has been
2 marked as Defendant's Exhibit 12.

3 A. Yes.

4 Q. Is that the sheet you were referring to?

5 A. There are two sheets that I was referring
6 to, yes.

7 Q. Okay.

8 A. These are -- these are -- we had -- and I
9 forget exactly how these were prepared, but we were
10 discussing -- in my conversation with Fred, we were
11 discussing the percentages because, like I said, the
12 Town had agreed to the 25 percent. And 25 percent
13 for the City, again, utilizing on Exhibit 12 the
14 \$17,055,000, that is the number we were talking
15 about with the universe of properties --

16 MR. KUHN: Objection. These are
17 settlement negotiations of a lawsuit.

18 JUDGE DUKES: Yeah. I'm unclear on
19 the time. Are you --

20 THE WITNESS: This is between the
21 mediation and the final resolution of the case.
22 This is well before the settlement agreement that we
23 are talking about.

24 JUDGE DUKES: Okay. So this is not
25 during the mediation?

1 THE WITNESS: Not during the
2 mediation.

3 JUDGE DUKES: This is after the
4 mediation, but before the document we are --

5 MS. LOHR: It's ultimately, Your
6 Honor --

7 MR. KUHN: There is -- correct
8 though, and I may be wrong, if I am, we didn't
9 conclude the mediation. We recessed it. And we
10 stayed in touch with the mediator David McCormick.
11 And we continued with him and sometimes without him
12 on the phone to come to a resolution. So I think
13 this is still during the mediation process, although
14 I don't think the mediator was involved in every --
15 obviously in all back and forth, but --

16 JUDGE DUKES: I mean, at some point
17 the mediator issues a document saying there has been
18 an impasse. And usually it's dated and that kind of
19 thing. I don't know if that actually happened here.

20 THE WITNESS: I don't know that.

21 MR. KUHN: My recollection is he
22 stayed involved at least through July 28th.

23 THE WITNESS: That's right. Well, we
24 ultimately -- again, I'm just telling you how we
25 arrived at the 19 percent. I think that is

1 important because the City's percentage was
2 different than the Town's percentage. The Town's
3 percentage was 25 percent. The City's percent
4 resolution was 19 percent.

5 MS. LOHR: Ultimately -- I think
6 ultimately, Your Honor, this settlement agreement
7 was reached in two stages. The first agreement was
8 reached when we confirmed the properties and the
9 values were accepted, okay? So that is definitively
10 parole evidence to this agreement.

11 The second agreement was reached that
12 finalized the settlement when the percentages were
13 worked out. And so what Mr. Harvey is trying --
14 what he's trying to do is show you that that first
15 agreement was what he was utilizing during this to
16 reach the second part of the agreement.

17 MR. KUHN: Of course, our position is
18 only one agreement was reached, that was on
19 September 2nd, 2010, when everybody signed off on a
20 document. Everything that took place before then
21 was just give and take in settlement negotiations.

22 THE WITNESS: Well, we are getting
23 there. I mean, all of this -- all of this deals
24 with the language that was ultimately used because
25 that was the intent of the parties.

1 JUDGE DUKES: Okay. I'll let him
2 continue. Your objection is noted, Mr. Kuhn.

3 BY MS. LOHR:

4 Q. I'm going to hand you what has been marked
5 as Defendant's Exhibit Number 8. I'm sorry. I'm
6 sorry. With regard to these numbers --

7 A. Yeah. We were dealing with -- and very
8 similar to what Frances testified with regard to the
9 Town. We were dealing with an amount that the City
10 relative to what it had been paying, an amount that
11 the City -- and through our Finance Director and our
12 City Manager, an amount that the City could stomach
13 so-to-speak to use Frances' words.

14 That the City could agree upon and could
15 agree to pay to the Burton Fire District and how
16 that would translate into a percentage number for --
17 given the numbers we were talking about because,
18 again, my discussions with Fred were regarding
19 percentages. I mean, he wanted 25 percent. He
20 wanted the City to pay 25 percent which for the City
21 would have been \$261,000.

22 Q. At this point had an agreement been
23 reached between you, the City, the Town, and Mr.
24 Kuhn with regard to the value to be used?

25 A. Oh, absolutely.

1 Q. Okay.

2 A. We were all dealing with \$17,055,000 for
3 the City and \$10,064,000 for the Town because the
4 25 percent figure that they are talking -- that the
5 Town had agreed to was \$154,493.35 which is the
6 number that they agreed to. And so we were talking
7 about -- again going back, the 25 -- using the same
8 25 percent for the Town, we had previously I think
9 had been paying I want to say roughly around
10 \$140,000 or maybe \$130,000 to the Fire District.
11 And so there was going to be an increase, an annual
12 increase going forward for seven years of this
13 agreement.

14 And so \$261,000 was like double what we
15 had been paying. We were not going to pay that.
16 And so the task was to try to agree upon a number
17 that the City financially could live with and that
18 Burton would accept. I have here on Exhibit 12 that
19 on April 29th I have here that Scott will go to
20 \$192,000.

21 If you translate \$192,000, that sort of
22 fell in between 18 and 19 percent. And we
23 ultimately agreed to increase it to \$198,968 which
24 is 19 percent because that was the next percentage
25 up -- upwards from 192,000. And I recall that that

1 was a -- that was a real struggle for the Cit
2 above 192. They said 192 was their top dolla

3 And so we ultimately agreed to 19 percent.
4 And that is how we got there. That is why I'm
5 saying that is how we got there.

6 Q. And the values on that sheet again were
7 based on --

8 A. These were based on the taxable property
9 values. Again it says here, taxable property values
10 of \$17,055,000. There was never any question but
11 that that was the number we were dealing with. That
12 was the overall number. And that is how the
13 19 percent was derived by the parties. We offered
14 19 percent. The Fire District accepted 19 percent.
15 And the first number -- the first year number was
16 \$198,968.

17 A. And that was confirmed to you -- the
18 numbers were confirmed to you by e-mail -- well, by
19 telephone call from Fred Kuhn on April the 6th.

20 A. Right. Correct.

21 Q. I'm going to hand you what has been marked
22 as Defendant's --

23 MS. LOHR: Oh, I would like to move
24 this into the record at this time.

25 JUDGE DUKES: All right. Same

1 objections?

2 MR. KUHN: I don't think I've ever
3 seen that. If I could take a look at it, but
4 probably. I object for the same reason. It appears
5 this is just an internal personal document that was
6 never shared with Burton Fire.

7 THE WITNESS: We were using that at
8 the mediation. That was the basis upon which we
9 agreed to 19 percent.

10 JUDGE DUKES: So it's offered as to
11 Defendant's intent? Is that what it is?

12 MS. LOHR: And proof that the first
13 part of the settlement had already been reached
14 which was confirmed by e-mail on April the 8th that
15 reflects the confirmation by Fred Kuhn by telephone
16 that the values had already been set by all the
17 parties and that they were moving forward at that
18 point based on just figuring out what percentage to
19 be applied would be.

20 JUDGE DUKES: That seems like a
21 stretch for that one document, but as to intent what
22 the --

23 MR. KUHN: It's just part of the
24 process, Your Honor.

25 MS. LOHR: Part of -- yeah, it goes

1 to show the mental process --

2 JUDGE DUKES: Intent?

3 MS. LOHR: -- and the intent of the
4 Defendants.

5 JUDGE DUKES: I'll allow it for that.

6 BY MS. LOHR:

7 Q. Can you tell me what -- do you recognize
8 this document?

9 A. Yes. Exhibit 8 is an e-mail dated
10 July 28, 2010, at 9:52 in the morning. And it is an
11 e-mail from me to Scott -- City Manager Scott
12 Dadson, Shirley Hughes, Chief Negron, and Mayor
13 Keyserling. Lea Perry is shown as carbon copied.
14 She was my paralegal.

15 And it was an e-mail announcing to the
16 City officials that are shown addressed, it said, I
17 am pleased to report that we apparently have a
18 resolution of this matter. In a conference call
19 this morning with David McCormick late -- no, excuse
20 me. In a conference call with David McCormick late
21 yesterday afternoon --

22 MR. KUHN: Your Honor, I need to
23 object to this. This is definitely part of the
24 mediation process. It's a report of a meeting with
25 the mediator. And it's an e-mail from Mr. Harvey to

1 his people.

2 MS. LOHR: If you go further, it sets
3 forth the terms of the settlement agreement as
4 understood by the City.

5 MR. KUHN: But uncommunicated to us.

6 JUDGE DUKES: Yeah, I mean --

7 MR. KUHN: There is secret subjective
8 intent.

9 JUDGE DUKES: Maybe -- Mr. Kuhn might
10 even agree, maybe he won't, but that the City may
11 have had a whole different intent from what -- I
12 don't know. I don't know whether -- I mean, I think
13 I've certainly heard enough, and maybe I need to
14 hear more, that the City says they had a different
15 intent to maybe what got put on paper, maybe not,
16 because we have a back and forth on the ambiguity,
17 but is that what it is about, Ms. Lohr, just more of
18 the City intended to do -- the City intended to use
19 taxable value and not --

20 MS. LOHR: Well, it sets forth what
21 the understanding of the settlement was before it
22 was put to paper. And that they had reached -- that
23 they had reached an agreement. There weren't any
24 other negotiations after this agreement. And it
25 establishes that Frances was going to draft the

1 settlement agreement.

2 JUDGE DUKES: So, I mean, it -- from
3 the Defendant's perspective it establishes
4 understanding and intent?

5 MS. LOHR: Right.

6 JUDGE DUKES: Okay. And I guess the
7 question may be for Mr. Kuhn, maybe you can and
8 maybe you can't, stipulate that -- in fact, I think
9 part of your case is they might have intended or
10 understood something, but that is not ultimately
11 what was signed as I understand the Plaintiff's
12 case.

13 MR. KUHN: That's correct.

14 JUDGE DUKES: So my question, I
15 suppose, is do we need to get a whole lot more
16 testimony -- and we've got plenty of time. We've
17 got the rest of the day and take as long as you
18 want, but on what the Defendants intended and
19 understood.

20 THE WITNESS: This e-mail is the last
21 document, I think.

22 MS. LOHR: Yeah.

23 JUDGE DUKES: Okay. Probably talked
24 more than I needed to talk. So as to -- well, then
25 if you can -- can we redact -- there is apparently a

1 portion in there having to do with the mediation and
2 internal communications, is it possible to redact
3 that?

4 MS. LOHR: I guess. It just -- it
5 just states that they reached the agreement. That
6 is all it does. It doesn't talk about back and
7 forth in the mediation. It just says they've
8 reached an agreement.

9 THE WITNESS: It announces that we
10 have reached an agreement.

11 MR. KUHN: It probably would just
12 (inaudible) if we redacted it.

13 JUDGE DUKES: I'm sorry?

14 MR. KUHN: It probably would just
15 (inaudible) if we redacted parts.

16 JUDGE DUKES: Okay. Why don't we
17 just let it in. I mean, I think I can pick through
18 the parts that are post-mediation and all of that.
19 I think I get the point as far as trying to make any
20 language -- go ahead.

21 MS. LOHR: May I go ahead and move
22 this into evidence at this time?

23 JUDGE DUKES: Yeah. Fred objects on
24 parole evidence grounds, but overruled, so --

25 MS. LOHR: Okay.

1 BY MS. LOHR:

2 Q. What -- can you tell me what this e-
3 says?

4 A. Yes. It says that Burton Fire District
5 has accepted our offer of 19 percent of the tax
6 revenues of the annexed properties, parentheses,
7 currently \$198,960, closed paren, and Port Royal's
8 offer of 25 percent, parentheses, \$154,500, closed
9 paren, for a seven-year term of the agreement. The
10 term -- the terms will be July 1, 2010, with the
11 first payment as before in January or early February
12 when the tax revenues are reconciled and received
13 from the County.

14 The second paragraph says, Frances
15 Cantwell is going to take a stab at the first draft
16 of the settlement agreement which hopefully she will
17 circulate to me by Monday. I will be prepared to
18 appear before Council in executive session. And
19 then it goes on to say --

20 And then the third paragraph it says,
21 Sammy and Shirley, this settlement is based upon the
22 agreed upon list of properties and the current
23 taxable values of \$17,055,504 which came from our
24 calculation. We will need to retain all of the
25 research that led to this list and this calculation

1 for future reference as the 19 percent figure will
2 move up or down depending on changes in the taxable
3 values of these and other properties that are
4 annexed.

5 Q. All right. The remainder --

6 A. The remainder was that we had a hearing --
7 there was a hearing actually scheduled for the
8 following day on some motions and a preliminary
9 injunction that was in the case. And, of course,
10 once we had derived the settlement we canceled those
11 hearings.

12 Q. Okay. Initially a copy of the first draft
13 was sent to you and -- you and Frances reached an
14 agreement. And then a version of the settlement
15 agreement was forwarded on to Mr. Kuhn, correct?

16 A. Yes.

17 Q. And there are versions of the settlement
18 agreement which Frances discussed previously
19 yesterday with regard to the back and forth between
20 the parties, additions and subtractions; is that
21 right?

22 A. Right.

23 Q. Specifically do you remember what one of
24 those -- one of the issues was with regard to
25 assessed value and taxable -- property taxed

1 assessed value?

2 A. Well, again, going back as I think very
3 clearly stated in all of my e-mails both to and in
4 agreement with Fred, I was very affirmative in
5 clearly stating because, again, as far as I was
6 concerned, I was dealing with the data file
7 spreadsheets. It was very -- I was very affirmative
8 in establishing that what we were talking about was
9 the property tax values in Column 3.

10 So Paragraph 7 -- the changes that
11 occurred in Paragraph 7, I know that there have been
12 several iterations of the contract -- of the
13 settlement agreement that Ms. Cantwell talked about,
14 but I was very concerned that Paragraph 7 which
15 talks about the terms and the -- in previous
16 iterations before the final document there was
17 talked about assessed value.

18 And it turns out that assessed value on
19 the tax bill and taxable assessed value on the data
20 sheet are one in the same. So I don't think there
21 really is a difference -- is a distinction, but it
22 was very important to me that what we were talking
23 about in Paragraph 7 was the property tax assessed
24 value.

25 Q. Let me ask you very quickly -- just a

1 second. I don't have --

2 A. And it turns out that -- I don't recall
3 the specific conversation, but it turns out that
4 Fred accepted that because he wrote that in in his
5 final draft of the settlement agreement as Frances
6 talked about that I had a copy of. It was a crossed
7 out version that had F.K. by it on the change.

8 Q. Can you read -- I'm handing you what has
9 been marked as Defendants -- I mean Plaintiff's
10 Exhibit 1 which is a copy of the final settlement
11 agreement.

12 A. Sure.

13 Q. And can you look for me -- I've handed
14 you -- it's marked Paragraph B. I am not sure of
15 the subsection. It's on Page 6 of 4 --

16 A. Four of six.

17 Q. Four of six.

18 A. Uh-huh.

19 Q. What -- when you read this, what -- can
20 you tell me what the reference is to Exhibit A and
21 B?

22 A. Actually it talks about Exhibits B and C.

23 Q. I'm sorry. B and C?

24 A. B and C were the data files which have
25 been marked Exhibits 2 and 3 by Defendants.

1 Q. Okay.

2 A. Because those were Exhibits B and C. I
3 think B was for the City and C was for the Town or
4 vice versa. I'm not sure which ones.

5 Q. Okay. And these -- Exhibits B and C, does
6 that -- what does -- what is the purpose of Exhibits
7 B and C?

8 A. Because that is what we were talking about
9 all along. In all of the communications up to the
10 final signing of these documents we were talking
11 about B and C. And I think that is illustrative
12 here because on the City there were several
13 compilations, but on the Town there was just --
14 there was only the compilation of the third column
15 which is the taxable value. And that was -- you
16 know, that was Exhibit C to the --

17 Q. On Paragraph 7 --

18 A. -- to the agreement.

19 Q. -- on Page 5 of 6 --

20 A. Right.

21 Q. -- the -- can you read Paragraph 7 for me?

22 A. Sure. Under Terms it says, this agreement
23 shall be deemed to have commenced on July 1, 2010.
24 The first payment will be due on or before March 1,
25 2011, and will be calculated by using those

1 properties listed on Exhibits B and C as well as the
2 property tax assessed value.

3 Again, that was -- that was the wording
4 that I had used throughout my entire e-mails.
5 Property tax assessed values for the properties and
6 millage from the tax bills that are scheduled to be
7 sent out on October 16, 2010.

8 Q. And if you go back to Page 3 of 6, how is
9 "assessed value" defined?

10 A. In the footnote you mean?

11 Q. Yes.

12 A. Well, you see it says assessed value at
13 the bottom.

14 Q. Uh-huh.

15 A. It's got a footnote by it.

16 Q. Right.

17 A. And it says defined as the assessed value
18 on each subject property for the applicable service
19 year. For example, the March 1, 2011, payment for
20 the services in and cumulative annexations through
21 calendar year '29 will be the assessed value
22 established for the October 16, 2010, Beaufort
23 County property tax bills.

24 Q. Okay.

25 A. So it was the assessed value as shown on

1 the bills. Again, I didn't have the bills at the
2 time. Frances drafted this. You know, it was --
3 this was her verbiage, but it was agreed upon
4 because the bills -- it turns out the bills shows
5 the assessed value as being the same as the taxable
6 value in the data file that I have.

7 So in terms of -- in terms of the figures
8 that we were talking about and how -- whether it's
9 the assessed value on the bill itself or the taxable
10 assessed value on the data file that comes from the
11 County -- and I'm not exactly sure why there is a
12 distinction, but as shown on -- in Footnote 3 it
13 references the property tax bill.

14 THE WITNESS: And you now have in
15 front of you, Judge, the property tax bill which has
16 assessed value as being the same number as the
17 taxable value on the data file from which we were
18 dealing.

19 BY MS. LOHR:

20 Q. Okay. I want to ask you when -- when did
21 you first have -- realize that there was an issue
22 with regard to the Fire District claiming an
23 underpayment?

24 A. Actually it was in June of 2012. It was
25 when Frances and I received this letter of June 29

1 from Fred Kuhn. And I have the original in my file.
2 In which he said -- that was the first time in
3 Paragraph 3 of that letter which --

4 Q. I've handed you what has been marked as
5 Defendant's exhibit --

6 A. Twenty-two.

7 Q. -- 22.

8 A. Yeah. In Paragraph 3 of that letter it
9 talks about the difference between taxable value and
10 assessed value. That was the first time because --
11 and this was a little bit surprising to us because
12 for -- and just so I can sort of frame the issue,
13 Shirley Hughes whose name is used in the e-mails and
14 was involved in the settlement discussions, Shirley
15 Hughes retired or left the City at the end of the
16 year sometime in December of 2011.

17 So Kathy was hired to begin, I think,
18 January 1 of 2012, Kathy Todd, who you heard from.
19 Kathy Todd -- the payments -- the 2012 payment was
20 due on or before March 1. And I recall Kathy
21 calling me and said, I've gotten a letter from Fred
22 Kuhn. I've kind of screwed up because I missed the
23 March 1 payment because I've been so overwhelmed and
24 sort of getting my -- getting all the things that I
25 have to be up-to-date with, I've let that date slip.

1 And I just -- it was an error. And I
2 said, Kathy, I'm sure that we can work that out with
3 Fred given the circumstances. I mean, this is not
4 a, you know, we are not going to pay you or
5 whatever. This is -- you know, this is -- this is
6 I've got to get -- I'm a new employee type thing.

7 And I know that payments -- I know that
8 we've made the payments in the past. Did I know --
9 Kathy was not a part of the agreement so she was --
10 she didn't know all the history of this. She just
11 knew that the previous year there had been a payment
12 made and that a payment was due again.

13 She obviously was going to make it, and
14 she didn't make it by March 1st which is what the
15 date that is called for in the agreement. And she
16 got a -- something from Fred that said, you haven't
17 made the payments. You know, the penalties and
18 interest is going to be assessed. And Kathy called
19 me saying, can't we work this out.

20 Q. Was there --

21 A. That was the first time that I was dealing
22 with payments under the agreement because -- not
23 because they were wrong, but because it was late.

24 Q. Right.

25 A. And there was nothing that was said about

1 it being wrong at the time.

2 Q. I'm going to hand you what has been marked
3 Defendant's Exhibit 19.

4 MS. LOHR: Has that been entered?

5 BY MS. LOHR:

6 Q. Was this -- do you recognize this
7 document?

8 A. Yes. This is the -- I think this was the
9 letter that I got from Fred. This is a letter that
10 I got from Fred Kuhn dated April 12th. I think we
11 had a discussion beforehand, but this was all in the
12 context of what I've just said, that I don't know
13 whether Kathy had gotten a call or Kathy had gotten
14 a separate letter or whatever, but this was a letter
15 from attorney to attorney saying payment was due on
16 March 1st, you haven't made the payments, you know,
17 we are assessing penalties and interest.

18 Q. And there was no mention, by the way, you
19 paid us last year and you didn't pay us enough at
20 that time?

21 A. Right. No. Again, that was not the issue
22 here. And so I called -- when we got this I called
23 Fred and I said, look, let's set up a meeting. And
24 we had a meeting at City Hall. I remember it like
25 it was yesterday. And -- because I felt it was just

1 wrong to roll Kathy Todd under the bus under the
2 circumstances. It was just wrong.

3 Now, legally and contractually, yes, we
4 had missed a payment, but it wasn't like we weren't
5 going to pay it. It wasn't like, you know -- and
6 Kathy was a new employee. So I called Fred and I
7 said, look, Fred, this is not -- we are going to pay
8 you. And, in fact, we paid -- we paid them on
9 April -- within days of this letter. I think we
10 paid them on April 14th or 17th or something like
11 that, but it wasn't like we weren't going to pay
12 them.

13 It was like, you know, why put Kathy Todd,
14 who is a brand new employee -- she's a C.P.A. She's
15 going to make the payment.

16 MR. KUHN: I'm going to object. This
17 is getting repetitive now.

18 JUDGE DUKES: It kind of is.

19 MS. LOHR: Okay.

20 BY MS. LOHR:

21 Q. Okay. All right. I'm going to hand you
22 what has been marked as Defendant's Exhibit 20. Do
23 you recognize that?

24 A. Yeah. This was an acknowledgment by Fred.
25 This is a letter from Fred to Kathy with a copy to

1 me. I got this letter. An acknowledgment by Fred
2 that the City had paid the Fire District \$187,850
3 because -- I can tell you why, because the amount
4 had gone down because Clarendon had given the
5 conservation easement on the Clarendon properties.
6 So the value went down as far as taxable value.

7 The \$187,850 on April 17th it says the
8 City paid within days of this. And again we had a
9 meeting between April 12th and April 17 regarding
10 the payment.

11 Q. This letter is in evidence. In the letter
12 was there any issue as to the amount of payment?

13 A. I stand corrected. It says -- well, no.
14 Kathy met with Fred, how the figures were calculated
15 it says -- no. It just says that there is a
16 discrepancy between my figures and your figures.

17 Q. Okay. And we don't know what kind of
18 discrepancy that was?

19 A. It doesn't -- it doesn't say discrepancy,
20 but Kathy met with Fred and provided Fred the entire
21 County file which is essentially the data file
22 that -- essentially the data file that you have in a
23 spreadsheet format from the County which is how the
24 City gets the list of properties.

25 Q. There is a -- when did you know finally

1 what -- about the issue that we are here about
2 today?

3 A. With Fred's letter of June 29th which
4 is -- I think it's in evidence.

5 Q. I think it is, too. I just --

6 COURT REPORTER: I'm sorry. It's 22.

7 MS. LOHR: 22 is or is not?

8 COURT REPORTER: It is.

9 MS. LOHR: Okay. You've got it.

10 Okay.

11 THE WITNESS: That is Defendant's
12 Exhibit 22. June 29th of 2012, is the first time
13 that we had affirmatively heard from Burton about
14 the difference in taxable values and assessed
15 values.

16 BY MS. LOHR:

17 Q. Okay. And had you ever heard anything
18 from anyone at the Town -- I mean at the City that
19 there had been any issue raised to them?

20 A. No.

21 Q. And --

22 A. And this was -- again, this was two months
23 after we made the payment.

24 Q. Right. And the previous -- the 2011
25 payment was accepted?

1 A. There was never any discussion about the
2 2011 payment.

3 Q. When was the lawsuit that we are here
4 about today filed?

5 A. It was in 2013.

6 Q. Okay.

7 A. I don't -- I don't have the complaint so I
8 don't know.

9 Q. Okay. But it was yet another payment had
10 occurred, 2013 payment had occurred prior to the
11 lawsuit being filed; is that correct?

12 A. Correct. Again, the discussion that --
13 the discussions that I had leading up to the lawsuit
14 were with Fred Kuhn saying, what are we talking
15 about because everything that I've shown you is --
16 including e-mails from you or in conversations that
17 I had with you and e-mails to you and confirmation
18 e-mails to you and all the spreadsheets and
19 everything that we did in reaching the agreement,
20 the entire settlement including the language in
21 Paragraph 7 and the tax bills in paragraph -- in the
22 footnote, everything that we are dealing with was so
23 clear. And I was so affirmative in talking about
24 what we were dealing with that we were always
25 dealing with taxable assessed values and there was

1 never any question.

2 And I said to Fred, you know, you and I
3 are going to be witnesses against each other.
4 And -- because that was the agreement. And the
5 agreement is not only the agreement that we had, but
6 it's the agreement that is set forth in the document
7 that we were so affirmative to make sure that
8 Paragraph 7 said taxable assessed property value and
9 there was never any question about it as far as I
10 was concerned.

11 MS. LOHR: I don't have any further
12 questions. Fred?

13 JUDGE DUKES: Fred, we can do a
14 couple of things. We can -- it's 12:10 -- break for
15 lunch or you can launch right into it. Might want
16 to take a couple of minute break just because it's
17 been a while, but --

18 MS. LOHR: This is my last witness,
19 Your Honor.

20 JUDGE DUKES: All right. You all
21 want to break a couple of minutes before we start?

22 MR. KUHN: I am but a private in this
23 army that has gathered in this room, so I defer to
24 the witness and the court reporter and you.

25 THE WITNESS: We can sit through it

1 if you want.

2 JUDGE DUKES: Well, I think our court
3 reporter would like a little break.

4 THE WITNESS: Okay.

5 JUDGE DUKES: So why don't we break
6 about 10 minutes.

7 (RECESS 12:03 TO 12:13.)

8 (MARKED PLAINTIFF EXHIBIT NUMBERS 10
9 THROUGH 14.)

10 JUDGE DUKES: Back on in 13-1463.
11 And cross examination of Mr. Harvey. You are still
12 under oath. Go ahead, please.

13 MR. KUHN: May it please the court,
14 Your Honor.

15 BY MR. KUHN:

16 Q. Mr. Harvey, you've been the municipal
17 attorney for the City of Beaufort for how long?

18 A. Since 1987.

19 Q. As you demonstrated by referencing the
20 differences in appraised value and assessed value
21 and taxable value for the Marine Corps Air Station,
22 you were acutely aware of the difference between
23 those terms; appraised, assessed, and taxable; is
24 that correct?

25 A. I was acutely aware of how they were

1 reflected on the spreadsheets that we were dealing
2 with, yes, because they were listed as differences
3 in value. And we were dealing with -- the lawsuit
4 involved the allocation of tax revenues. And tax
5 revenues are derived from taxable values. So it was
6 very important from not only the taxable values, but
7 also from the service areas, that we deal with the
8 properties from which taxes are generated. It's the
9 whole basis for the lawsuit.

10 Q. The basis of the lawsuit was twofold, was
11 it not? Number one, the City and the Town had
12 annexed properties out of Burton Fire District and
13 Burton wanted to be compensated for that, correct?

14 A. For their loss of tax revenue, that was
15 the deal.

16 Q. And Number 2, the City and the Town wanted
17 Burton despite the fact those properties are annexed
18 out of their territory to continue to provide fire
19 services for those properties. So we are talking
20 about two things there, compensation for lost
21 revenues and payment for services?

22 A. Well, obviously if Burton was going to
23 continue providing services there needed to be
24 some -- I mean, the issue was -- well, actually the
25 issue could have been the City could have served the

1 areas that were annexed by the City.

2 Q. That's absolutely true.

3 A. But all along Burton had been -- had
4 agreed under the 1999 agreement, had all along been
5 servicing those under that agreement. And that
6 agreement was set to expire. So there needed to be
7 some sort of new understanding. And literally in
8 the discussions I know with the City we were talking
9 about taking over. You know, what would it cost to
10 take over the service to the annexed areas that were
11 in the Burton Fire District, you know, but --

12 Q. For whatever reasons the City decided that
13 it wanted Burton to continue to provide those
14 services?

15 A. Correct.

16 Q. In your e-mail to me of March 10th, which
17 is Defendant's Exhibit 6, is the word "taxable" in
18 that e-mail at all?

19 A. I use the word tax assessed value. I
20 mean --

21 Q. Is the word "taxable" in there at all, in
22 your e-mail?

23 A. No, because I used the word "tax assessed
24 value."

25 Q. And do you think there is a different kind

1 of assessed value other than for tax purposes?

2 MS. LOHR: I'm sorry?

3 BY MR. KUHN:

4 Q. Counsel, in terms --

5 MS. LOHR: What exhibit number are we
6 discussing?

7 THE WITNESS: Defendant's 6.

8 MR. KUHN: Defendant's Exhibit 6.

9 THE WITNESS: In terms of my -- you
10 know, whether this was a scrivener's error or
11 whatever, I mean, I was always talking about the
12 taxable assessed value on those four attachments
13 that are now Exhibits 2 and 3, the inside, outside,
14 for both the City and the Town that we've talked
15 about. Yes, it uses the word assessed value, but it
16 also uses the word tax assessed value.

17 BY MR. KUHN:

18 Q. My question was --

19 A. If you add to that tax assessed value.

20 Q. Are you aware of any other kind of
21 assessed value other than for tax purposes, for
22 property tax purposes?

23 A. I'm not -- I am not a tax assessor.
24 Again, I was dealing with the list that we are
25 talking about.

1 Q. I understand that?

2 A. And --

3 Q. My question was --

4 A. -- the list has taxable assessed value as
5 reflected in all the e-mails, including this one, we
6 were talking about taxable assessed value.

7 Q. I'll get to that in a minute. Let's
8 remember that, taxable assessed value.

9 A. Okay.

10 Q. Are you aware of any assessed value other
11 than assessed value for property tax purposes?

12 A. Again, at the time I was just dealing with
13 the list. And, no, I'm not. I'm not an assessor.
14 I don't know. I'm not attune to that.

15 Q. If we look at Exhibit 7, Defendant's
16 Exhibit 7. This is an e-mail dated April 6, 2010.
17 And this is not to me. This is to your own folks
18 and the Port Royal folks, correct?

19 A. Right.

20 Q. And it says that, I confirmed to you in a
21 telephone conversation, quote, that the universe of
22 annexed properties have a taxable value of
23 \$17,055,504 for the City of Beaufort and \$10,064,713
24 for the Town of Port Royal, correct?

25 A. Right.

1 Q. So -- and there is no doubt the universe
2 of annexed properties that we were talking about had
3 those taxable values?

4 A. That is what we were talking about
5 involving the universe of properties. We were
6 always talking about the far right column on the
7 spreadsheets that are Exhibits 2 and 3. Those are
8 the numbers that were reflected in that column. And
9 that column is entitled Taxable Values -- Taxable
10 Assessed Values.

11 Q. So we were always talking about that.

12 A. And I used that word throughout.

13 Q. You say we were always talking about. Let
14 me go back to your initial e-mail of March 10th.
15 You go, I am attaching the spreadsheets containing
16 the parcels and the taxed assessed values both
17 inside the A.A. agreements, which stands for
18 automatic aid agreements, and outside for the City
19 of Beaufort and the Town of Port Royal. If I can
20 show you Exhibits 10, 11, 12, and 13. Are those the
21 spreadsheets that you referenced in this e-mail,
22 Defendant's Exhibit 6?

23 A. Yes. And they talk about taxable values.

24 Q. Where is the word "taxable value" on that?

25 A. Taxable V.A.

1 Q. Okay. In your e-mail you talk about they
2 show the tax assessed values. Is that another
3 scrivener's error?

4 A. Counsel, there is an assessed value and a
5 taxable assessed value. My understanding of the
6 spreadsheets was the far right column was called
7 taxable assessed values. And I used the word --

8 Q. Let me -- is the phrase taxable assessed
9 value on any of these exhibits, Plaintiff's 10
10 through 12? Ten through 13. Excuse me.

11 A. Taxable values --

12 Q. Taxable assessed value is what you said.
13 Is that on any of those documents. There is
14 assessed value. There is taxable value, but isn't
15 it true the phrase taxable assessed value appears no
16 where?

17 A. The documents speak for themselves. I'm
18 telling you how -- what I was referring to very
19 affirmatively in all of our -- all of our
20 understanding.

21 Q. You say in all of our understandings, but
22 in this e-mail from you to me with these
23 spreadsheets attached only references the assessed
24 value, correct?

25 A. It talks about tax assessed value. You

1 are leaving out the word tax which is the word
2 before assessed.

3 Q. True.

4 A. I'm telling you what the intent of --

5 MR. KUHN: Your Honor, I move to
6 introduce Plaintiff's 10, 11, 12, and 13.

7 JUDGE DUKES: Aren't 10, 11, 12, and
8 13 the same as two and three?

9 MR. KUHN: They are, but I think it's
10 important to make that connection.

11 JUDGE DUKES: All right.

12 MR. KUHN: That leads into my next
13 question. I think we stipulated to this, but just
14 to be sure.

15 BY MR. KUHN:

16 Q. In Exhibits 10, 11, 12, and 13 which were
17 the attachments to your March 10th e-mail --

18 JUDGE DUKES: I'm handing you what is
19 two and three, copies of.

20 BY MR. KUHN:

21 Q. These eventually became Exhibits B and C
22 to the settlement agreement signed on September '10.
23 September 2nd, 2010?

24 A. Correct.

25 JUDGE DUKES: Anyway, I assume no

1 objection.

2 MS. LOHR: No objection, Your Honor.

3 JUDGE DUKES: I think it may be
4 duplicative, but, okay, no objection.

5 BY MR. KUHN:

6 Q. And all we did was we combined 10 and 11
7 into one exhibit and 12 and 13 into one exhibit
8 because the distinction between what was inside the
9 automatic aid agreement and what was outside the
10 automatic aid agreement was moot by that point; is
11 that correct?

12 A. One for the Town and one for the City,
13 yes.

14 Q. If I can show you what has been marked
15 Plaintiff's Exhibit 14 for I.D. Do you recognize
16 that?

17 A. Yes.

18 Q. What is that?

19 A. It's my affidavit that I submitted in
20 support of a motion for summary judgment.

21 Q. In this affidavit you talk about your
22 March 10th, 2010, e-mail right here. And you talk
23 about, I sent to Fred Kuhn the e-mail attached
24 hereto as Exhibit 1. And that is the Defendant's
25 Exhibit 7 we've just been referring to; is that

1 correct?

2 A. Okay.

3 Q. And referenced in and attached to
4 Exhibit 1 were four EXCEL spreadsheets showing the
5 parcels inside and outside the A.A. agreements for
6 both the City and Town. Copies of these
7 spreadsheets are attached hereto as Exhibits 2, 3,
8 4, and 5. Those spreadsheets are the exact same
9 documents that we just introduced as Plaintiff's
10 Exhibits 10, 11, 12, and 13; is that correct?

11 A. Yes.

12 Q. And then you state in your affidavit as
13 shown on these spreadsheets and as stated in the
14 March 10th, 2010, e-mail, Exhibit 1, aside from the
15 identification of the parcels, the important figures
16 on these spreadsheets were the, quote, tax assessed
17 values. Do you stand by that statement today?

18 A. Yes. I believe the important sheet is the
19 taxable assessed value. Whether I call it tax
20 assessed or taxable assessed, it's one in the same.
21 We were talking about the third column, the far
22 right column always. You were talking about it. I
23 was talking about it. We agreed upon it. In my
24 e-mail to you of April 6 I reference the taxable
25 property values.

1 Q. My question, Mr. Harvey, was do you stand
2 by that statement today. And you said you did.

3 A. Taxable values.

4 JUDGE DUKES: I'll let him explain.
5 You can go ahead and finish.

6 THE WITNESS: Excuse me?

7 JUDGE DUKES: I said you can finish.
8 I'm sorry.

9 THE WITNESS: Yes. And, again, there
10 was no question, none, that you and I were talking
11 about exactly the same document, the same figures,
12 the same column of figures, the same properties.
13 There was no question at all. It was crystal clear.
14 BY MR. KUHN:

15 Q. If I could show you Plaintiff's 1 which is
16 the settlement agreement. Do you recognize that?

17 JUDGE DUKES: Do you have a copy?

18 MR. KUHN: He has the original, Your
19 Honor.

20 THE WITNESS: Yes. Minus Exhibits B
21 and C attached.

22 BY MR. KUHN:

23 Q. Okay. This was drafted by Frances
24 Cantwell after several back and forth negotiations,
25 suggestions, edits. Is that a fair statement?

1 A. Most of which I was involved with, yes.

2 Q. That leads into any next question, but
3 before she would send this to me for approval, she
4 would send it to you for approval, also?

5 A. I'm sure, yes.

6 Q. Okay. And she did that, according to her
7 testimony, at least four times. Is that consistent
8 with your memory?

9 A. I had several versions, but yes.

10 Q. And in each version she testified that the
11 formula set forth in Paragraph 3-A never changed
12 except for the addition of the footnote. Is that
13 consistent with your memory?

14 A. Because the footnote -- as we now know the
15 footnote is very clear because it's defined as the
16 assessed value on the tax bill itself. And the
17 assessed value on the tax bill itself is the same
18 calculation shown as the taxable value on the
19 spreadsheets, on the data files that we have.

20 Q. You've looked at all of the tax bills for
21 all of these properties?

22 A. I am advised that they are -- yes. I've
23 looked at -- I've looked at about five of them and
24 they are the same figure. So the assessed value on
25 the property bill is in fact the taxable assessed

1 value on the spreadsheet. So we are talking exactly
2 the same figure. And she was -- she said that on --
3 that in Charleston County that was -- there was no
4 distinction. And, in fact, on the tax bill as
5 defined in the footnote there is no distinction.

6 Q. It says assessed value, correct?

7 A. The assessed value is defined as the
8 assessed value on the tax bill, not the assessed
9 value on the data file.

10 Q. Go to Page 4. It says to provide a base
11 line of the properties subject to Subparts A and B,
12 which are the formulas, this paragraph, lists of the
13 Port Royal annexed properties and the Beaufort
14 annexed properties and their respective assessed
15 values as of the date of this agreement are attached
16 hereto as Exhibits B and C and are made a part of
17 the agreement. Do you see that?

18 A. And then in paragraph 7, it very
19 specifically says property tax assessed value.

20 Q. I think I've already asked you, but the
21 only type of assessed value there can be is one for
22 property taxes, correct?

23 A. Again, on the tax bill itself, it is clear
24 that assessed value is the property tax assessed
25 value. We are talking a distinction that doesn't

1 exist.

2 Q. Do you know that assessed value is a term
3 set by statute?

4 A. The assessed value on the tax bill is one
5 in the same as the taxable assessed value.

6 Q. You have not --

7 JUDGE DUKES: If you would, just
8 answer whatever was the question.

9 BY MR. KUHN:

10 Q. The first time you were aware of whatever
11 basis you are making that statement on is when Ms.
12 Todd brought it to your attention, correct?

13 A. I am.

14 Q. Okay. And she discovered it years after
15 the agreement was signed, correct?

16 A. The definition is in the footnote. She
17 discovered it --

18 Q. My question was she brought it to your
19 attention and that is when you --

20 A. She did bring it to my attention.

21 Q. So that was not even in the back of your
22 mind at the time this agreement was executed?

23 A. Well, again, I've been very clear all
24 along you and I as attorneys in this case were
25 crystal clear as to what dollar amount we were

1 talking about. And it wasn't until two years after
2 the agreement that you brought it to my attention
3 that you took a different position.

4 Q. Do you know how many times they tried to
5 resolve it without getting lawyers involved?

6 A. How many times what?

7 Q. How many times Burton tried to resolve the
8 discrepancy and find out why there was a discrepancy
9 before they got lawyers involved?

10 A. Ms. Todd testified none --

11 Q. Do you know? We know what we heard from
12 the courtroom.

13 A. Yes, I know because Ms. Todd called me as
14 soon as --

15 Q. She said what she knew. Do you know? I'm
16 asking you.

17 A. I am City attorney. I only know what the
18 City staff tells me.

19 Q. All you know is what Ms. Todd knew; is
20 that correct?

21 A. No, I don't know how often it was because
22 I was involved in the entire matter because the
23 entire matter up until June of 2012, two years after
24 the agreement was signed, up until June of 2012 the
25 only discrepancy we were talking about is whether or

1 not Ms. Todd had missed the March 1 payment date.
2 And I was coming to you saying, Fred, why are you
3 rolling Kathy Todd under the bus? And I was --

4 Q. The response was that they were late
5 making a payment the year before. And we were tired
6 of forgiving late payments.

7 A. They were not --

8 MS. LOHR: I would object, Your
9 Honor.

10 THE WITNESS: They were not late
11 making the payments the year before.

12 JUDGE DUKES: You all hold on one
13 second. What is the objection?

14 MS. LOHR: The objection is there was
15 not a question for Mr. Harvey. There was a
16 statement from Mr. Kuhn which is clearly Mr. Kuhn
17 attempting to use his own testimony here as the
18 attorney without having to take the witness stand.

19 MR. KUHN: The question was do you
20 know if their response was that Burton had already
21 forgiven one late payment and wasn't inclined to
22 forgive another for --

23 THE WITNESS: I know that that wasn't
24 the case. The year prior to that had been made on
25 time by Shirley Hughes.

1 BY MR. KUHN:

2 Q. But not the Town of Port Royal?

3 A. I didn't know about the Town of Port
4 Royal. I know what I knew from the City of
5 Beaufort. There was not a late payment by the City
6 of Beaufort. This was the first time, in 2012, the
7 first -- let me finish.

8 Q. Not the record of payments.

9 A. The first time the City had missed a
10 payment date. And it was only because Kathy Todd
11 had just taken the job.

12 Q. Do you recall the response being there had
13 been one late payment already, albeit by the Town of
14 Port Royal --

15 A. The answer to your question is no.

16 Q. -- to my client. So now we had two late
17 payments?

18 A. No.

19 Q. And the Town of Port Royal did not have
20 that excuse. So we did not feel right forgiving the
21 City and not forgiving the Town?

22 A. No.

23 Q. Okay.

24 A. That was never communicated to me.

25 MR. KUHN: All right. I have no

1 further questions, Your Honor.

2 JUDGE DUKES: Anything else?

3 BY MS. LOHR:

4 Q. Was there any mention of a discrepancy in
5 value prior to -- with regard to assessed value and
6 taxable value that you knew of as the City of
7 Beaufort's attorney prior to Mr. Kuhn's letter of
8 June of 2012?

9 A. No.

10 MR. KUHN: Judge, this has been asked
11 and answered at least three times that I can recall.

12 JUDGE DUKES: Yeah, but go ahead.

13 BY MS. LOHR:

14 Q. Mr. Kuhn asked you about your
15 understanding of the value -- your understanding of
16 assessed value versus taxable or tax assessed value.
17 What is your understanding, just so that we are
18 clear, of assessed value as defined in the
19 settlement agreement?

20 MR. KUHN: Your Honor, I'm going to
21 object to his understanding of what assessed value
22 means. That is a clear, definite, well-defined
23 term.

24 BY MS. LOHR:

25 Q. Is it defined in the settlement agreement?

1 A. Yes. It's defined in the settlement
2 agreement I think in the footnotes.

3 Q. Does it matter what other definition there
4 is?

5 A. That was the definition in the tax bill.
6 I mean, again what we are talking about is -- I mean
7 ultimately what this entire lawsuit, resolution,
8 payment, everything we are talking about is a
9 reimbursement to Burton by the City and the Town of
10 lost tax revenue. It would be -- it would be
11 malpractice on my part for me to agree that the City
12 of Beaufort was going to reimburse Burton for tax
13 revenue that the City doesn't get for the air
14 station.

15 Which is what they -- if we take this to
16 the logical conclusion and use the assessed value on
17 the data sheet, that is what they would want. They
18 would want the City to reimburse Burton for
19 something because they don't -- one, they don't get
20 any tax revenue, neither the City nor Burton, nor
21 does either entity provide any services. So there
22 is nothing lost and nothing gained and -- there is
23 nothing to divvy up. Zero -- you know, half of zero
24 is zero.

25 So it would have been crazy for us to be

1 talking about the assessed column because in the
2 assessed column, Judge, as we've been talking about,
3 in the assessed column is the assessment of the air
4 station.

5 Q. And the taxable value in the taxable
6 column matches up with what figure on the tax bill?

7 A. The assessed value on the tax bill.

8 MS. LOHR: Okay. That is all the
9 questions I have.

10 JUDGE DUKES: Follow-up on that?

11 MR. KUHN: I object. Move to strike
12 that. He has not examined every tax bill. All
13 these years?

14 JUDGE DUKES: Well, if we --

15 MR. KUHN: That is an assumption.
16 That is a conclusion. That is a leap of logic.

17 THE WITNESS: We have four tax bill
18 examples.

19 JUDGE DUKES: All right. But that is
20 the -- the answer as to the tax bills that are in
21 evidence?

22 MS. LOHR: Yes. Yes, Your Honor.

23 JUDGE DUKES: I'll allow it. All
24 right.

25 BY MS. LOHR:

1 Q. Do the tax bills that are in evidence here
2 today --

3 A. Reflect that.

4 Q. Do they reflect exemptions --

5 A. Exactly.

6 Q. -- in the assessed value?

7 A. In the assessed value. Yes, they do.

8 Q. Okay. And that is the basis of your
9 understanding the taxable value on the sheet which
10 reflects exemptions is the same as assessed value on
11 the tax bill?

12 MR. KUHN: I object to the leading,
13 Number One. And Number Two, he's already testified
14 he did not see those bills until well after the
15 agreement was signed.

16 THE WITNESS: We have the tax --

17 MR. KUHN: How can that have been a
18 factor in --

19 JUDGE DUKES: Hold on. It was
20 leading. I think you've already gotten it in five
21 different ways.

22 MS. LOHR: I'll withdraw it, Your
23 Honor.

24 JUDGE DUKES: Okay. All right.
25 Anything else?

1 MS. LOHR: Nothing, Your Honor.

2 JUDGE DUKES: All right. Anything
3 else from Defendants?

4 MS. LOHR: No, Your Honor. The
5 Defendant would rest its case.

6 JUDGE DUKES: Let's do this. Before
7 we launch into motions that we may launch into --

8 MR. KUHN: I do have one witness on
9 rebuttal, Your Honor.

10 JUDGE DUKES: Okay. All right. Why
11 don't we do that, then we'll -- well, here is the
12 question. It's a quarter of 1:00. Do we want to --
13 how long is that witness going to be? Because I see
14 us taking a break at some point and then coming back
15 to at least do motions and that kind of thing. So
16 the question is when do we want to have lunch?

17 MR. KUHN: Again, I am low on the
18 totem pole. So, Deborah, do you --

19 JUDGE DUKES: You all tell me. I
20 mean, if there is one witness that can be gone and
21 be done with this business and not have to come
22 back --

23 MS. LOHR: I wouldn't have any clue,
24 Your Honor, because I don't know who he is going to
25 pull up and take on reply.

1 MR. KUHN: I have woefully
2 underestimated how long each witness would take. I
3 thought for sure we would be done by 2:30 tomorrow.
4 So I don't think he will be long, but Gary Bright
5 just to --

6 JUDGE DUKES: Okay. Why don't we do
7 that then and then we'll take lunch and then we will
8 talk about what comes after that. Come on up, sir.
9 Do you swear or affirm to tell the truth, the whole
10 truth, and nothing but the truth so help you God?

11 MR. BRIGHT: I do.

12 WHEREUPON:

13 GARY BRIGHT, being duly sworn and
14 cautioned to speak the truth, the whole truth and
15 nothing but the truth, testifies as follows:

16 DIRECT EXAMINATION

17 BY MR. KUHN:

18 Q. State your full name, please, sir.

19 A. Gary Reed Bright, Junior.

20 Q. Mr. Bright, you are still under oath. You
21 have just been put back under oath. Was the sole
22 motivating factor behind this agreement Burton being
23 reimbursed by the City and the Town for lost tax
24 revenues as a result of annexation of property by
25 those municipalities?

1 A. That was the initial basis for all of
2 this, yes, sir.

3 Q. Okay. And was this simply a matter of you
4 lost those properties and had nothing further to do
5 with them?

6 A. Once they were annexed in theory that is
7 exactly what would happen.

8 Q. And is that what happened?

9 A. We were asked during conversations about
10 providing coverage to those areas.

11 Q. Okay. So during all of these negotiations
12 leading up to this agreement, a component of
13 discussion was whether or not Burton would provide
14 fire protection services for these properties
15 instead of simply what is to be compensated to
16 Burton for losing the tax revenues for these
17 properties?

18 A. At some point that probably became the
19 most important issue.

20 Q. And why was that important to the Burton
21 Fire District?

22 A. Well, these were taxpayer citizens that
23 deserved fire protection. We knew we were in the
24 best position to provide that. We had been
25 providing it. And once they became a City property

1 we were not obligated to provide that anymore, but
2 it made sense in our opinion from our point of view
3 and for the City.

4 Q. Were you willing to do that free?

5 A. Absolutely not.

6 Q. Do you feel that would have violated your
7 obligations to the citizens who remained citizens of
8 the Burton Fire District to provide --

9 A. Absolutely.

10 Q. -- free services to --

11 A. I don't think it's legal to provide
12 services to outside agencies using Burton taxpayers'
13 dollars.

14 Q. So in your mind were you simply trying to
15 get reimbursed for lost tax revenue?

16 A. Well, it turned into a two-pronged
17 situation basically. We knew that if we provided
18 coverage to those areas and were paid for that
19 coverage, the lawsuit itself would become sort of a
20 moot point because we were actually generating
21 income from those same properties.

22 Q. And if a property -- for example, one of
23 the properties -- isn't one of the properties in the
24 Port Royal annexed areas the Community Bible Church?

25 A. I believe it is, yes, sir.

1 Q. That is a pretty big building?

2 A. Yes, sir.

3 Q. If that is exempt and has a zero taxable
4 value, did you still want to be paid if that
5 building burned down and you had to provide coverage
6 for it?

7 A. Well, once it was annexed into one of the
8 municipalities we felt we had no option. Whether
9 the property generated tax revenue for the City or
10 the Town basically became none of our business. If
11 they wanted us to provide fire protection to that
12 property, regardless of what it was or how it was
13 used, we needed to be compensated.

14 Q. And to cover all of these properties, and
15 there is a lot of them?

16 A. Yes, sir.

17 Q. Does Burton have to hire additional --
18 incur additional expense?

19 A. Additional expenses, yes, sir.

20 Q. Such as?

21 A. Well, responding to properties that are
22 not basically in our jurisdiction. So, yeah, we
23 have the same expenses we have for any call in any
24 area.

25 Q. Okay. You have to have more firefighters

1 than you would have to otherwise?

2 A. In this situation we were -- yes. We felt
3 we needed more firefighters. And it was triggered
4 by this agreement.

5 Q. This is more than a situation of being
6 compensated for lost tax revenue?

7 A. It evolved into something much bigger,
8 yes, sir.

9 Q. Okay. In your discussions was it ever
10 your intent on behalf of the Burton Fire District to
11 go by taxable value?

12 A. Absolutely not. We never even discussed
13 that, sir.

14 Q. Why not?

15 A. Because we knew enough about the situation
16 to know that if we agreed to that we would be
17 covering properties that we would not be being
18 compensated for. And we could not do that in our
19 opinion legally.

20 Q. And do you recall Mr. John Williams, I
21 think his name was, giving you a copy of the press
22 release and asking you to review it and approve it?

23 A. Absolutely not.

24 Q. Do you remember talking to him at all?

25 A. No, sir.

1 Q. At that time, September 2010, did you even
2 have an e-mail?

3 A. No, sir.

4 Q. When did you first get an e-mail?

5 A. I have a business e-mail account. And I
6 do get some personal e-mails there, but I never
7 received an e-mail -- anything to my knowledge about
8 this press release ahead of time.

9 MR. KUHN: That is all the questions
10 I have.

11 MS. LOHR: Your Honor, can I have
12 just one second?

13 JUDGE DUKES: Sure. Go ahead.

14 CROSS EXAMINATION

15 BY MS. LOHR:

16 Q. Under an automatic aid or mutual aid
17 agreement --

18 A. Yes, ma'am.

19 Q. -- does that require -- isn't that an
20 agreement to help out other agencies?

21 A. A mutual aid agreement is, yes, ma'am.

22 Q. Okay. And an automatic aid agreement?

23 A. It is different.

24 Q. Okay. How is it different?

25 A. A mutual aid usually requires the

1 department requesting aid to be on the scene or to
2 know through their own determination that they are
3 going to require assistance. And they will call the
4 nearest fire department or the one they want to
5 assist them and request that.

6 Q. Okay. That is mutual?

7 A. That is mutual aid.

8 Q. Okay. What is automatic aid?

9 A. Automatic aid is when the call is
10 dispatched our department goes automatically without
11 being requested further.

12 Q. But wouldn't you have -- if requested
13 wouldn't you have gone under a mutual aid agreement,
14 also?

15 A. Most of the time, yes, ma'am.

16 Q. Okay. So --

17 A. That is solely at the discretion of the
18 Chief.

19 Q. So you already had an agreement in place
20 to cover those properties if you were required to
21 call in a mutual aid agreement?

22 A. Not necessarily.

23 MS. LOHR: I'm going to have you mark
24 this.

25 (MARKED DEFENDANT'S EXHIBIT NO. 27.)

1 BY MS. LOHR:

2 Q. I'm handing you a photograph. Do you
3 recall this being taken?

4 A. Yes, ma'am. That was the day we signed
5 the agreement.

6 Q. That was the day you signed the agreement?

7 A. I believe so, yes, ma'am.

8 Q. Okay.

9 A. At Beaufort City headquarters.

10 Q. And you don't recall taking this as part
11 of a press release?

12 A. I recall having a picture taken. I wasn't
13 advised that it was part of a press release.

14 Q. So it's your testimony that John Williams
15 never asked you to review the press release?

16 A. That's correct.

17 Q. And you knew -- why did you think you were
18 having a picture taken?

19 A. Because we had just signed an agreement
20 that was a culmination of several years of hard
21 work.

22 Q. But why would you need a picture taken for
23 that unless you are going to use it for something?

24 A. Memories. The same reason I take most of
25 my pictures.

1 MS. LOHR: I move to have --

2 THE WITNESS: We didn't request a
3 picture.

4 MS. LOHR: I move to have this
5 submitted as Defendant's Exhibit 27.

6 MR. KUHN: No objection.

7 BY MS. LOHR:

8 Q. You were providing service to the
9 properties that were annexed previous to their
10 annexation; were you not?

11 A. Yes, ma'am.

12 Q. All right. So you were already providing
13 service to those properties, but you were missing
14 the tax dollars?

15 A. Once they were annexed, yes, ma'am.

16 Q. Okay. When you get paid then under the
17 agreement, aren't you right back at the status quo?
18 You've collected the tax dollars and you are
19 providing the services again for the same properties
20 that you were collecting tax dollars from?

21 A. Under contract, yes.

22 Q. Okay. So, basically, while there were two
23 components to this agreement; service and
24 reimbursement, in fact, the agreement puts you back
25 in the same position that you were in because you

1 are being paid now to provide service to somebody
2 who you were previously providing service to but
3 collecting tax funds from?

4 A. In a round about way that is true.

5 MS. LOHR: Okay. That is all the
6 questions I have.

7 REDIRECT EXAMINATION

8 BY MR. KUHN:

9 Q. But the amounts are different?

10 A. The amounts were different.

11 MR. KUHN: That is all I have.

12 THE WITNESS: Absolutely.

13 MR. KUHN: That is all I have, Your
14 Honor.

15 MS. LOHR: That is it, Your Honor.

16 JUDGE DUKES: All right. I don't
17 have any questions. Thank you so much, sir.

18 THE WITNESS: Thank you.

19 JUDGE DUKES: Let me ask counsel.

20 The amounts were different because of the
21 .25 percent and the .18 percent or whatever it was?
22 In addition --

23 MR. KUHN: Because the County would
24 have collected all -- a hundred percent of the
25 taxes. And then we would have submitted our budget

1 and gotten our budget based on the County collecting
2 a hundred percent. So what we got was different
3 from what they calculated (inaudible).

4 MS. LOHR: They still are meeting
5 their budget needs, Your Honor, because they are
6 telling the County exactly what it is they need for
7 their budget versus -- ultimately their needs are
8 being met through the combination of tax dollars and
9 this aid agreement. They are not suffering any loss
10 to those -- to the -- for the services they are
11 providing.

12 MR. KUHN: Well, the reason for
13 that --

14 MS. LOHR: And they would be
15 providing it under the mutual aid agreement anyway.

16 MR. KUHN: The only reason for that
17 is we go to the County and say we need X amount of
18 dollars. We have a shortfall here. We get more
19 from the County so the taxpayers of Burton have to
20 make up the shortfall then.

21 JUDGE DUKES: And we are outside of
22 the contract. Now we are talking about fairness
23 and --

24 MR. KUHN: Yes, sir.

25 MS. LOHR: And another example, Your

1 Honor, is the church, for instance. They weren't
2 collecting tax dollars from the church. They are
3 trying to collect tax dollars or trying to collect
4 compensation for the church because they couldn't
5 tax the church either just like we can't tax the
6 church.

7 JUDGE DUKES: All right. Anything
8 before we take a break and then try to come back?

9 MR. KUHN: Not from the Plaintiff,
10 Your Honor.

11 JUDGE DUKES: You want to do that?
12 And it's just about 1:00. 2:00? 2:15? Something
13 like that. Does that suit you? Call it 2:15. And
14 then we will do whatever motions. And I might just
15 want to talk counsel awhile after that. We can do
16 it this afternoon. All right. So we are adjourned
17 until 2:15.

18 (LUNCH RECESS 12:51 TO 2:39.)

19 JUDGE DUKES: Back on the record.
20 Any motions? Anything to take up?

21 MR. KUHN: May it please the court,
22 Your Honor, for the Plaintiff I would renew my
23 objections made during the course of the trial
24 particularly to the testimony and exhibits which
25 relate to all the settlement negotiations,

1 discussions, e-mails that took place leading up to
2 the execution of Plaintiff's Exhibit 1 under -- I
3 move to strike all of that testimony and evidence
4 under Rule 408.

5 Evidence of the conduct or statements made
6 in compromised negotiations is not admissible. And
7 there is a case I think that is pretty controlling.
8 It is Fesmire, F-e-s-m-i-r-e versus Digh, D-i-g-h,
9 683 SE 2nd 803. In that case, the attorneys for the
10 parties had written letters to each other during the
11 course of settlement negotiations which were sought
12 to be introduced in trial in order to construe a
13 landlord/tenant agreement.

14 And the court ruled those were not
15 admissible citing Rule 408 and explained this rule
16 contemplates that the parties need to feel free to
17 make certain assumptions for the purpose of
18 settlement negotiations. And that those statements
19 are assumed true by the author only for the purpose
20 of compromised negotiations.

21 The rule is intended to facilitate
22 settlements and facilitate people making concessions
23 to see if a case can't get settled. So I would move
24 to strike all the evidence that came in, testimony
25 that came in regarding the conversations and e-mails

1 and so forth that led up to the final agreement.

2 Additionally, Your Honor, I would move for
3 a directed verdict on behalf of the Plaintiff on the
4 ground that reviewing the evidence and viewing the
5 evidence and the inferences that can be deducible
6 from the evidence in a light most favorable to the
7 Defendant it is clear that the document is
8 unambiguous and should be enforced upon its face and
9 that the shortfall between taxable value and
10 assessed value as shown on exhibits -- Plaintiff's
11 Exhibits 2 and 3, B and C to the settlement
12 agreement, that difference in value is owed to the
13 Plaintiff applying the formula set forth in
14 Agreement Number One.

15 Alternatively, if Your Honor should find
16 that the agreement is ambiguous, that he be
17 compelled to construe that ambiguity in favor of the
18 Plaintiff since the clause that we are interpreting,
19 the formula, was drafted by the Defendants.

20 JUDGE DUKES: All right. Happy to
21 hear anything on motions, Ms. Lohr?

22 MS. LOHR: Your Honor, we believe
23 that the evidence of intent of the parties is the
24 basis for the communications with regard to the
25 settlement negotiations.

1 Additionally, there were -- there was
2 parole evidence that was subsequent to the
3 settlement agreement that would support if there
4 were -- if the court would find an ambiguity, it
5 would support the position of the Defendants in that
6 regard.

7 Additionally, we believe that the -- we
8 also believe that the contract is clear on its face.
9 However, we believe that it is clear on its face in
10 support of the Defendants' position that the
11 assessed value is the assessed value as it is
12 reflected on the property tax bill and that the
13 property tax bill reflects the post-exemption value
14 of which the amounts have been paid previously by
15 the Defendants.

16 JUDGE DUKES: Thank you very much.

17 In regard --

18 MS. LOHR: I'm sorry. Do you have
19 anymore motions?

20 JUDGE DUKES: Those were the motions
21 then.

22 MS. LOHR: I need to make motions of
23 mine so I just didn't --

24 JUDGE DUKES: Well, go ahead. Go
25 ahead and let me have your motions as well.

1 MS. LOHR: Okay. With regard to the
2 first motion, we would amend -- Defendants would
3 amend to conform the answers to the facts in
4 evidence. There is no prejudice suffered by the
5 Plaintiff in that regard.

6 We would -- we are amending to assert
7 reformation of the contract, ratification of the
8 contract, mutual mistake, and unclean hands. Prior
9 to trial the Plaintiffs were aware of all of these
10 issues, the evidence. They had the evidence in
11 supporting affidavits from the motions for summary
12 judgment for the most part or they were questioned
13 on the evidence as it relates to unclean hands in
14 the deposition.

15 And they were additional questioned with
16 regard to ratification and along with --
17 ratification evidence is the same as the laches
18 evidence which they were previously privy to.

19 JUDGE DUKES: Okay. Mr. Kuhn?

20 MR. KUHN: I would oppose the motion
21 to amend, Your Honor. We are prejudiced. The first
22 notice I had of the motion to amend is when we
23 convened yesterday to begin the trial. If I had
24 known of these defenses I would have conducted
25 discovery differently.

1 I would have most likely deposed Mayor
2 Billy Keyserling, former City manager Scott Dadson,
3 probably Mayor Sam Murray, the Town of Port Royal,
4 who were signatories or witnesses to the contract.
5 I would have probably put on notice and called some
6 of my commissioners as to what their intent was when
7 they approved and ratified the agreement. So I have
8 been prejudiced by putting these on me on the eve of
9 trial.

10 JUDGE DUKES: With regard to the
11 Plaintiff's motions, the first one in regard to
12 parole evidence, I'm going to deny that because I'm
13 going to grant the amendment of the answer request.
14 And, of course, you can't really even talk about
15 reformation or mutual mistake without getting into
16 parole evidence.

17 And so -- let's see. I'm going to deny
18 the Plaintiff's first motion, grant the Defendant's
19 only motion. And then as to directed verdict, I
20 think it would be appropriate to deny that as well.
21 That was the Plaintiff's motion.

22 MS. LOHR: Your Honor, I need to make
23 a motion for directed verdict, also. I wasn't
24 finished, yet.

25 JUDGE DUKES: Oh, okay. I'm sorry.

1 MS. LOHR: I was just arguing the
2 amended motion -- motion to amend to conform.

3 JUDGE DUKES: All right. Happy to
4 hear from you on the rest.

5 MS. LOHR: Your Honor, the Defendant
6 believes that the evidence is clear on the face of
7 the settlement agreement. I mean the language is
8 clear on the face of the settlement agreement with
9 regard to the anticipated payments.

10 Specifically, we would pray reference to
11 the language in the footnote contained defining
12 assessed value. The footnote makes specific
13 reference to the Beaufort County tax bill. And the
14 Beaufort County tax bill references assessed value
15 as a -- the post-exemption amount which is the
16 amount that the testimony indicates the Defendants
17 have paid in this case.

18 Additionally, the language property tax
19 assessed value is contained within Section 7 which
20 is again reference to the tax assessed value or the
21 taxable value. 12.37.90 sets forth the ability of
22 the assessor to tax. The assessor is not allowed
23 specifically to tax Federal government -- the
24 Federal government, State government, or any other
25 political subdivision for property which is exempt

1 from property taxation meaning property that is used
2 for a public purpose essentially.

3 Therefore, the only assessed value as
4 defined by the statute is the assessed value which
5 contains those exemptions which is consistent with
6 the Beaufort County property tax bill assessed --
7 the assessed value as set forth on the Beaufort
8 property tax -- Beaufort property tax bill.

9 So specifically Exhibit B and C, if you
10 look in the language of the contract, Your Honor,
11 Exhibit B and C were only to -- the purpose is only
12 to designate the properties, not to rely on the
13 money values.

14 And further support of that argument is
15 contained in the language of the contract where it
16 anticipates those values should change every year.
17 So with reassessment, with point of sale changes,
18 all the values that are contained on B and C --
19 Exhibits B and C aren't the values to be utilized.
20 You have to look at the property tax bill every year
21 to determine the values that where to be utilized.

22 Therefore, it makes complete sense that
23 the assessed value is defined as contained in the
24 footnote as opposed to the assessed value contained
25 on the exhibits because those numbers aren't

1 reflective of what they will be year-to-year because
2 clearly point of sale and reassessment will change
3 those values.

4 So the clear evidence in this case, the
5 clear meaning of the settlement agreement is just as
6 set forth in the assessed value definition. It's
7 whatever the sum is that is contained on the
8 Beaufort property tax bill as the assessed value for
9 each relevant property because the assessor isn't
10 authorized to assess anything else because he can't
11 assess values to properties that otherwise have
12 exemptions.

13 So our reading of assessed value is in
14 compliance with the statutory law, with the specific
15 language of the contract, and with the Beaufort
16 County property tax bill.

17 JUDGE DUKES: All right. Thank you.

18 MS. LOHR: And there is no ambiguity
19 to be found when you look at the State law, the tax
20 bill, and negate the values as contained in the list
21 at D.N.C. because those values aren't anticipated
22 even by the specific terms of the contract to be the
23 values to be utilized.

24 JUDGE DUKES: Mr. Kuhn?

25 MR. KUHN: The only ambiguity is in

1 the Defendants' position. Yesterday they argued the
2 contract was ambiguous. Now they argue the contract
3 is unambiguous. They, a few moments ago, argued
4 that you should consider parole evidence because the
5 contract is ambiguous and you need the parole
6 evidence to interpret the contract.

7 The tactic they have taken is to take a
8 contract that is unambiguous and get extrinsic
9 evidence of property tax bills, and select property
10 tax bills, to argue that the contract is ambiguous.
11 In other words, they want you to look at the
12 contract and then look at the extrinsic evidence.
13 And from the extrinsic evidence conclude that the
14 contract is ambiguous which is contrary to the law.

15 The first step is to determine is the
16 contract ambiguous or not. And to do that you look
17 solely at the contract. The case North American
18 Rescue Products versus Richardson, 769 SE 2nd 237,
19 South Carolina Supreme Court held only if the
20 document itself creates an ambiguity should a court
21 look to outside evidence to aid in interpretation.

22 In other words, the search for the
23 ambiguity must be conducted within the, quote, four
24 corners of the writing unaided by any reference to
25 external circumstances.

1 What they are wanting Your Honor to do is
2 look at a few select property tax bills. And from
3 those bills conclude that the document is ambiguous
4 instead of looking at the document itself first and
5 asking yourself am I having trouble understanding
6 what this document says.

7 If you look just at the document it is
8 crystal clear. The formula is what we are talking
9 about. The formula says assessed value. The
10 assessed values are listed on the document.

11 Their argument today is, okay, let's look
12 at the property tax bills. The property tax
13 bills -- this is their argument. I don't buy it,
14 but this is their argument -- say that the assessed
15 value is the same as the taxable value. And
16 therefore we were correct in using the taxable
17 values shown on Exhibits B and C to calculate our
18 payment.

19 That is an insane argument. They are
20 saying assessed value is the same as taxable value.
21 Well, why then do we have two columns, one labeled
22 taxable and one labeled assessed. That makes no
23 sense. The document says we are going to use
24 assessed value. It defines assessed value.

25 Their argument that assessed value is the

1 same as taxable value is not consistent with the
2 definitions of assessed value and taxable value in
3 the statutes. It's not consistent with the
4 testimony of the only expert who testified in this
5 trial, the Beaufort County assessor, who should be
6 the authority on what an assessed value is.

7 So I respectfully request that you deny
8 the motion for directed verdict.

9 JUDGE DUKES: Thank you very much.
10 There is a lot in this case. And I will deny the
11 other -- both directed verdict motions. So all
12 right. I think that is it for both parties; is that
13 correct?

14 MS. LOHR: Yes, Your Honor.

15 JUDGE DUKES: What I'm going to do
16 then is take this under advisement. And then what
17 is a -- what would be a reasonable period of time
18 for us to maybe get back together and talk and see
19 how things are going? Today is Wednesday. Early
20 next week? I can see if I can get Heather to send
21 something out. Does that work? Are you all under
22 any full day or full week things next week or
23 anything?

24 MR. KUHN: I'm sure it's a zoo, but
25 Your Honor has priority.

1 JUDGE DUKES: All right. We will
2 figure something out that works with every one's
3 schedule. All right. Then that will conclude the
4 record for today. Thank you.
5 (Whereupon, the hearing was concluded
6 at 2:55 p.m.)
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Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of Burton Fire versus Beaufort, et al, on the 27th day of January, 2016: and that the foregoing 143 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Mary Bass Lohr, Esquire, Howell, Gibson & Hughes, P.A., Post Office Box 40, Beaufort, South Carolina 29901.

In witness whereof I set my hand and seal this 20th day of October, 2016.



My Commission
expires 1/4/18

Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

